5 October, 1995

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

Dear Attorney,

I have pleasure in presenting the Annual Report of the Human Rights and Equal Opportunity Commission for the period ended 30 June 1995, pursuant to s.45 of the Human Rights and Equal Opportunity Act 1986. The report has been prepared in accordance with the requirements of sub-sections 25(6) and (7) of the Public Service Act 1922.

Yours sincerely,

Ronald Wilson
President

Human Rights and Equal Opportunity Commission
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THE COMMISSION

The Commission's mission is "to promote respect for, and observance of the human rights of all people in Australia and their access to equal opportunity". Three corporate goals provide a structure for carrying out this mission:

- Administering, as effectively as possible, the legislation for which the Commission is responsible;
- Carrying out the Commission's functions and servicing the community in the most professional, competent and efficient manner possible; and
- Managing at all levels to the highest possible standard, and maximising the potential of staff by being a fair and responsible employer.

This report is presented within the following framework:

- An introductory description of the legislative base, role and functions of the Commission;
- A corporate overview of organisational structure and management and performance information for 1994-95;
- An overview of complaint handling, legal intervention and corporate education and promotion functions;
- Separate descriptions of the functions of each of the six Commissioners and the work undertaken in fulfilling these functions;
- Individual reports from the two regional offices and the two joint State/Territory offices; and
- Information on a range of financial, staffing and administrative matters.

The report has been prepared in compliance with the requirements for Annual Reports as outlined by the Department of Prime Minister and Cabinet (March 1995).

To assist the reader, a list of abbreviations, a compliance index and an alphabetical index are provided after Attachment 3.

Details on Freedom of Information are provided in Attachment One.

For further information about the work of the Commission, the reader may consult the 1993-1995 Corporate Plan. For fuller information on the work of the Privacy
Commissioner, the reader may consult the *Seventh Annual Report on the Operation of the Privacy Act*. For fuller information on the work of the Aboriginal and Torres Strait Islander Social Justice Commissioner, the reader may consult his *Second Report 1994*. All these publications are available in the Commission library, which is open to members of the public by appointment.

A complete list of Commission publications for 1994-1995 appears in Appendix Three. Copies of this report are also available in alternative formats, including audio tape, computer disc, Braille and large print.

Addresses of the Commission's offices and agents throughout Australia are provided in Appendix Four. For information about obtaining additional copies of the 1994-1995 Annual Report, or for more information about the work of the Commission, please refer to the contact details in Appendix Five.

**STATEMENT FROM THE PRESIDENT**

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

In June 1995 the *Human Rights and Equal Opportunity Commission Act 1986* was amended to place upon the Commission a duty to ensure that its functions are performed:

\[ m \text{ with regard for:} \]

- \( o \) the indivisibility and universality of human rights; and
- \( o \) the principle that every person is free and equal in dignity and rights; and

\[ m \text{ with the greatest possible benefit to the people of Australia.} \]

These words, in section 10A of the Act, contain an expression of principle of the utmost importance. They are far more than merely a high level statement of good intent to be nodded at and then put out of mind. The principle embodies the essence of our mission, which is to advance human rights in their totality for all Australians. Equality of rights does not mean that all people are the same, and are to be treated in the same way. Rather, it reflects the fact that despite our differences we are each deserving of respect and entitled to the kind of treatment that will best enhance the dignity that is inherent in our very humanity.
The indivisibility of human rights and the mutuality of the respect that we owe to one another carries with it inescapable correlative duties to one another, to society and to the world community.

The statutory duty imposed on the Commission requires the performance of a wide range of functions, simply because there is no one approach that will sufficiently advance the struggle against disadvantage and meet everyone's needs.

I am proud of the leadership provided by the Commissioners and of the skilled and dedicated service that is gladly given by all members of the staff. It is service that often takes them well beyond the call of duty.

Nevertheless, it is out of loyalty and concern for the burdens being carried by staff and Commissioners that I am bound to draw attention to the crisis presented by the lack of resources.

The most pressing issue facing the Commission is how to fulfil its charter when the demand for complaint handling services has so dramatically outstripped our resources. During the past year the Commission has allocated a much-increased proportion of its budget to complaint handling and in the process has reduced its other activities. Nonetheless, there are now delays in complaint handling that are unacceptable to parties and to the Commission. These have occurred primarily because the limit of available funding has been reached. There is an old but worthy saying that justice delayed is justice denied. It is now patently obvious that the responsibility to deliver justice is not being met as well as it should be.

Australia has held out to its people and to the world that the Commission is a sign of the Government's sincerity of purpose in protecting human rights. It is imperative that the Commission be adequately resourced to carry out all its functions and so fulfil its statutory duty.Recent history shows that the loyalty, dedication and sheer hard work of Commissioners and staff - people in the frontline of Australia's human rights effort - are not enough without adequate resources.

I turn now to a number of important events in 1994-95.

The decision delivered by the High Court in February in Brandy v HREOC has far-reaching implications for complaints about breaches of federal anti-discrimination law. The decision does not affect the powers of the Commission to conduct hearings and make determinations. It does render invalid the scheme introduced in 1992 for those determinations to be enforceable upon registration in the Federal Court. As an interim response to Brandy's case, the Government put forward amendments to the legislation to make Commission determinations enforceable by way of full rehearing in the Federal Court. These came into effect in June 1995. This arrangement, in substance the same as that obtaining before the 1992 changes, has the serious disadvantage that a complaint must be heard twice for a legally enforceable result to be obtained.
Of course, it must be remembered that such hearings only become necessary in the comparatively few cases that cannot be resolved in other ways. Nor can it be said that Commission hearings no longer serve a useful purpose. They continue to perform a valuable educative function, often receiving considerable publicity. Furthermore there is a moral persuasion attending Commission decisions and in practice the majority of the parties to complaint hearings accept those decisions. Nevertheless, the fact remains that a respondent may refuse to comply with a determination, requiring a successful complainant to undertake the unreasonable and costly burden of instituting proceedings in the Federal Court and proving the case afresh.

For this reason the Commission looks forward to the long-term solution that the Government has foreshadowed under which complaints which cannot be conciliated proceed to a hearing that results in a conclusive and binding determination that is not open to attack on constitutional grounds.

In March 1995 the High Court delivered its decision in *Teoh v Minister for Immigration and Ethnic Affairs*. The Court held that, subject to legislative or executive indication to the contrary, ratification by Australia of an international instrument gave rise to a legitimate expectation that Government administrators exercising discretionary powers would have regard to any relevant obligations assumed by Australia under that instrument. The international instrument in question in Teoh was the Convention on the Rights of the Child. The Commission has a particular interest in this Convention because it is one of the instruments annexed to the Human Rights and Equal Opportunity Commission Act, thereby conferring on the Commission a particular responsibility to promote its observance.

The Commission has expressed its grave concern over the Government's subsequent action to seek legislation to prevent any such legitimate expectation from arising. The legislation as presently proposed will extend to all international instruments ratified by Australia, including those, annexed to the HREOC Act. The Commission takes the view, respectfully, that it is hypocritical and damaging to Australia's reputation in the human rights area for the Government to acknowledge an obligation to the international community while at the same time denying to the Australian people an expectation that its servants will observe that same obligation when making domestic decisions.

In May 1995 the Attorney-General, the Honourable Michael Lavarch, referred to the Commission for inquiry and report questions arising from the compulsory separation of Aboriginal and Torres Strait Islander Children from their families. The terms of reference have since been expanded and appear at Appendix 2. We are to report by December 1996.

The Commission is delighted to receive this important reference and is determined to pursue it with all the energy, sensitivity, compassion and commitment at its disposal.
The separation of Indigenous families by the taking away of children is an issue of great and painful significance in the relations between Indigenous and non-Indigenous Australians. The Inquiry will build on the work already done by Aboriginal communities to tell their stories of separation and its impact. It will provide the opportunity for a searching examination of history. But more than that, it provides an opportunity to find solutions to present problems and significantly advance the process of reconciliation.

The fourth term of reference calls upon the Commission to:

- examine current laws, practices and policies with respect to the placement and care of Aboriginal and Torres Strait Islander children and advise on any changes required, taking into account the principle of self-determination by Aboriginal and Torres Strait Islander peoples

In so doing we hope to address the concerns of those directly involved in separation and to help younger generations to establish control over their own lives in freedom and dignity.

By the end of June 1995, preparation for the Inquiry was underway. As I write, many submissions have been received and people will commence to give evidence in person to the Commission in November 1995.

A number of changes occurred in the composition of the Commission and its senior staff in 1994-95.

From September 1994 until February 1995 Commissioner Walpole took on the very onerous task of Acting Queensland Anti-Discrimination Commissioner in addition to her responsibilities as Sex Discrimination Commissioner. The Commission and its staff are most grateful to her for discharging these dual roles during a very difficult period.

In November 1994 we were very pleased indeed to welcome Ms Zita Antonios as Race Discrimination Commissioner. Our thanks are due to Aboriginal and Torres Strait Islander Social Justice Commissioner Michael Dodson, who acted as Race Discrimination Commissioner for an extended period.

In December 1994 the Commission farewelled its foundation Human Rights Commissioner and Chief Executive, Mr Brian Burdekin. His energy and intellect were key factors in the establishment of the Commission as a significant part of the framework for the promotion and protection of rights in Australia. We are especially pleased that he has been appointed Special Advisor to the United Nations High Commissioner for Human Rights, with particular responsibility for the development of national independent human rights institutions.
The Privacy Commissioner, Mr Kevin O'Connor, bore an unusually heavy burden in discharging the additional role of acting Human Rights Commissioner for some nine months. We are grateful for his good counsel and skill in performing this difficult task.

In December Ms Sema Varova left the position of Executive Director and went with our very best wishes to another senior appointment.

Although matters properly to be dealt with in the next annual report, I cannot forebear to mention the pleasure we take in welcoming Mr Chris Sidoti as Human Rights Commissioner and Ms Diana Temby as Executive Director. They each come with an abundance of qualities that suit them to their tasks. I am sure that they, my other colleagues and the Commission as a whole will be able to record sustained progress in next year's report.

THE ROLE OF THE COMMISSION IN THE CONTEXT OF HUMAN RIGHTS, ANTI-DISCRIMINATION, INDIGENOUS SOCIAL JUSTICE AND PRIVACY DEVELOPMENTS

History of the Commission

The original Human Rights Commission was established with the introduction, on Human Rights Day, 10 December 1981, of the Human Rights Commission Act which gave effect to five international instruments: the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural 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.

The Commission was based in Canberra, and was empowered to handle complaints, review legislation and conduct educational, promotional and research programs in relation to the Racial Discrimination Act 1975 (RDA) and the international instruments.

In 1984 the Sex Discrimination Act was passed, giving effect to Australian obligations under the Convention on the Elimination of All Forms of Discrimination Against Women and certain aspects of ILO Convention 156. The Act makes discrimination on
the grounds of sex, marital status, pregnancy and family responsibilities unlawful in a range of areas of public life such as employment, accommodation and the provision of goods and services.


On 1 January 1989, the Privacy Act took effect. The Privacy Commissioner's jurisdiction differs from those of HREOC in a number of ways, and operates with the emphasis on promoting systemic compliance with privacy principles. This is reflected in the large number of requests by agencies to the Commissioner for advice on the privacy implications of proposals, and in the Commissioner's audit function which enables monitoring of the compliance with the Privacy Act across Federal government agencies and parts of the private sector. The Privacy Act was amended in 1990 to regulate the consumer credit reporting industry. The Privacy Commissioner also has functions under several other Acts.

In 1990, a number of other significant amendments were made to the Racial Discrimination Act. Indirect discrimination on the basis of race was included as a ground for complaint, and provision was made for vicarious liability of employers and principals for acts of racial discrimination by their employees and agents. Passage of the current racial vilification legislation will have further major implications for the Race Discrimination Commissioner in terms of promoting the legislation, conducting public education campaigns and complaint handling.

Amendments to the Sex Discrimination Act have narrowed exemptions from the Act; strengthened it in its prohibition against discrimination in employment, goods and services and the provision of accommodation; broadened the prohibition of sexual harassment; and made dismissal on the grounds of family responsibilities a ground for complaint under the Act.

In 1993 the Disability Discrimination Act came into effect. This further expanded HREOC's legislative responsibilities, with the objectives of eliminating discrimination against people with disabilities and promoting community acceptance of the principle that people with disabilities have the same fundamental rights as all members of the community.

The position of Aboriginal and Torres Strait Islander Social Justice Commissioner was established in 1993 to deal specifically with Aboriginal and Torres Strait Islander issues. Under the 1-HREOCA, the Aboriginal and Torres Strait Islander Social Justice Commissioner is required to report to Federal Parliament each year on the enjoyment and exercise of human rights by Indigenous people, including recommending action.
which should be taken to ensure that their rights are fully enjoyed. Under the *Native Title Act 1993*, the Commissioner is required to report to the responsible Minister on the operation of this legislation and its impact on the human rights of the Aboriginal and Torres Strait Islander peoples. HREOC has responsibility for the implementation of two specific recommendations of the *Royal Commission Into Aboriginal Deaths In Custody* (RCIADIC) which have also been devolved to this Commissioner.

Recent amendments to the *Human Rights and Equal Opportunity Commission Act 1986* conferred Chief Executive powers, formally held by the Human Rights Commissioner, onto the Commission as a collegiate body. This change was part of a series of measures to strengthen strategic and corporate planning and accountability of the Commission as a whole.

**The Current Role of the Commission**

HREOC administers Commonwealth legislation in the area of human rights, anti-discrimination, social justice and privacy issues.

Agreements have been made with some State and Territory governments for the concurrent administration of State and Federal anti-discrimination legislation. HREOC administers Queensland and ACT legislation through joint office arrangements, while HREOC’s complaint handling powers have been delegated to Equal Opportunity Commissions in Victoria, South Australia and Western Australia. These co-operative arrangements seek to improve the quality of, and accessibility to, our complaint handling services. Links with unions, industry, and non-government organisations have strengthened the quality of policy development and advice to Government and Parliament.

The Commission also liaises internationally with governments and organisations to keep abreast of international developments, and to ensure Australia is meeting its obligations under international instruments to which it is committed, such as United Nations treaties, conventions and declarations. HREOC’s involvement in this area is detailed within individual portfolio chapters.

The scope and diversity of the Commission’s work, together with the multiplicity of organisations involved with human rights and equal opportunity issues, make it more difficult to assess the impact of any one agency for changes in this area. Nevertheless, the Commission is concerned with developing ways to measure its effectiveness. Performance measures are being further developed for each of the portfolio areas via a process which is expected to be finalised over the next twelve to eighteen months. For the 1994-95 year, the Commission’s performance is being reported against the *functions* embodied in the various legislation it administers.
Legislation Administered by HREOC and its Commissioners

The Commission is responsible for implementing certain aspects of the following legislation:

- Racial Discrimination Act 1975,
- Sex Discrimination Act 1984; and the

Functions performed under these Acts are vested in the President, the Commissioners or the Commission as a collegiate body.

Other legislation administered by Commissioners include:

- the Privacy Act 1988 implemented by the Privacy Commissioner; and
- functions under the Native Title Act 1993 performed by the Aboriginal and Torres Strait Islander Social Justice Commissioner.

Most of these Acts give force to the relevant international instruments which Australia has ratified.
The Commission as a body corporate is comprised of a part-time President and six full-time Commissioners. Details of the occupants of these positions are provided below:

<table>
<thead>
<tr>
<th>The President</th>
<th>Sir Ronald Wilson</th>
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<tbody>
<tr>
<td>Human Rights Commissioner and Acting Chief Executive Officer</td>
<td>Mr Brian Burdekin</td>
<td>completed his appointment on 9 December 1994</td>
</tr>
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<td></td>
<td>Mr Kevin O'Connor</td>
<td>acting appointment until 11 August 1995 pending commencement of the new Commissioner</td>
</tr>
<tr>
<td>Race Discrimination Commissioner</td>
<td>Mr Michael Dodson</td>
<td>acting appointment for period 12/7/94 to 9/10/94 pending commencement of the new Commissioner</td>
</tr>
<tr>
<td>Disability Discrimination Commissioner</td>
<td>Ms Zita Antonios</td>
<td>appointment expires 25 September 1999</td>
</tr>
<tr>
<td>Sex Discrimination Commissioner</td>
<td>Ms Elizabeth Hastings</td>
<td>appointment expires 7 February 1998</td>
</tr>
<tr>
<td>Privacy Commissioner</td>
<td>Ms Susan Walpole</td>
<td>appointment expires 22 February 1998</td>
</tr>
<tr>
<td>Aboriginal and Torres Strait Islander Social Justice Commissioner</td>
<td>Mr Kevin O'Connor</td>
<td>appointment expires 31 December 1996</td>
</tr>
<tr>
<td></td>
<td>Mr Michael Dodson</td>
<td>appointment expires 25 April 1998</td>
</tr>
</tbody>
</table>
The President and Commissioners of the Human Rights and Equal Opportunity Commission: Above left to right: Susan Walpole, Sex Discrimination Commissioner; Michael Dodson, Aboriginal and Torres Strait Islander Social Justice Commissioner; Zita Antonios, Race Discrimination Commissioner; Sir Ronald Wilson, President; Elizabeth Hastings, Disability Discrimination Commissioner. Below left: Kevin O’Connor, Privacy Commissioner; Brian Burdekin, Human Rights Commissioner
**THE LEGISLATION**

**Human Rights And Equal Opportunity Commission Act**

The *Human Rights and Equal Opportunity Commission Act 1986* establishes the Commission, provides for its administration and gives responsibilities to HREOC in observing seven international instruments which Australia has ratified. These instruments are:

- the *International Covenant on Civil and Political Rights*;
- the *International Labour Organisation Discrimination (Employment and Occupation) Convention ILO 111*;
- the *Convention on the Rights of the Child*;
- the *Declaration of the Rights of the Child*;
- the *Declaration on the Rights of Disabled Persons*;
- the *Declaration on the Rights of Mentally Retarded Persons*; and
- the *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*.

The Act also empowers the Aboriginal and Torres Strait Islander Social Justice Commissioner to report on and promote the human rights of Indigenous Australians.

**Racial Discrimination Act**

The *Racial Discrimination Act 1975* gives effect to Australia's obligations under the *International Convention on the Elimination of All Forms of Racial Discrimination*. Its major objectives are:

- to promote equality before the law for all persons, regardless of their race, colour or national or ethnic origin; and
- to make discrimination against people on the basis of their race, colour, descent or national or ethnic origin unlawful.
Sex Discrimination Act

The Sex Discrimination Act 1984 gives effect to Australia's obligations under the Convention on the Elimination of All Forms of Discrimination Against Women and certain aspects of International Labour Organisation (ILO) Convention 156. Its major objectives are:

- to promote equality between men and women;

vs to eliminate discrimination on the basis of sex, marital status or pregnancy and, with respect to dismissals, family responsibilities; and

- to eliminate sexual harassment at work, in educational institutions, in the provision of goods and services, in the provision of accommodation and the delivery of Commonwealth programs.

Disability Discrimination Act

The Disability Discrimination Act 1992 has as its major objectives:

m to eliminate discrimination against people with disabilities; and

m to promote community acceptance of the principle that people with disabilities have the same fundamental rights as all members of the community.

Privacy Act

The Privacy Act 1988 gives effect to the Organisation for Economic Co-operation and Development (OECD) Guidelines on the Protection of Privacy and Transborder Flows of Personal Data and the International Covenant on Civil and Political Rights (Article 17). The OECD guidelines cover the collection of personal information, its use, access to and alteration of the information.

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

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

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

The Privacy Commissioner also has a function of encouraging businesses to voluntarily conform with the Organisation for Economic Co-operation and Development (OECD) guidelines.

**Other Federal Statutes**

The Privacy Commissioner has functions under a range of other Federal statutes and which are detailed on page 201.

The Sex Discrimination Commissioner has a range of functions in relation to Federal awards and equal pay under the *Industrial Relations Act 1988*.

The Aboriginal and Torres Strait Islander Social Justice Commissioner has monitoring and reporting functions under the *Native Title Act 1993*.

**FUNCTIONS AND POWERS OF THE COMMISSION**

The major functions of the Commission are outlined in:

- a section 11(1) and 46C(1) of the *Human Rights and Equal Opportunity Commission Act 1986*;

- a section 20(1) of the *Racial Discrimination Act 1975*;

- section 48(1) of the *Sex Discrimination Act 1984*; and

- section 67(1) of the *Disability Discrimination Act 1992*.

In addition:

- a sections 27(1), 28(1), 28A(1) of the *Privacy Act 1988* confer functions on the Privacy Commissioner, as do several other Commonwealth statutes; and

- section 209 of the *Native Title Act 1993* confers additional functions on the Aboriginal and Torres Strait Islander Social Justice Commissioner.
Broad Functions of the Commission

The Commission investigates alleged infringements under the anti-discrimination and privacy legislation, and attempts to resolve these matters through conciliation where this is considered appropriate. Where conciliation is unsuccessful or inappropriate, matters may be referred for formal hearing or consideration by Hearing Commissioners. Upon further inquiry, determinations are issued to resolve these matters.

Under the Human Rights and Equal Opportunity Commission Act 1986, the Commission inquires into acts or practices that may infringe human rights or that may be discriminatory. In the event that infringements are identified and/or conciliation is unsuccessful or inappropriate, the Commission may report these to the Attorney-General.

The Commission fosters public discussion and also undertakes and coordinates research and educational programs to promote human rights and eliminate discrimination.

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

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

0 refer individual complaints to Commissioners for investigation and conciliation;

a require individuals to produce information or documents or appear before the Commission to give evidence in public hearings related to individual complaints;

a report to the Government on any matters arising in the course of its functions;

a establish advisory committees;

a formulate guidelines which ensure Governments act in conformity with human rights rules;
• intervene in court proceedings involving human rights matters; and
• conduct national inquiries into issues of major importance either on its own
  initiative or at the request of the Attorney-General.

**Specific Functions of the Commission and/or
Commissioners**

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

• under the Sex Discrimination Act, the Commission may grant exemptions from observing certain parts of the Act and may deal with matters which are referred to the Australian Industrial Relations Commission (IRC);

• the Industrial Relations Act also gives the Sex Discrimination Commissioner the power to initiate equal pay cases in the Industrial Relations Commission and refer discriminatory awards to the IRC for amendment;

• under the Disability Discrimination Act, the Commission may grant exemptions from certain parts of the Act, and may develop standards, monitor the operation of standards and compliance with guidelines, and receive action plans from service providers;

• under the Privacy Act the Privacy Commissioner may make "public interest" determinations which fulfil a similar role to exemptions under the anti-discrimination legislation. He also has several specific functions relating to guidelines, standards, codes of conduct, compliance and audits, and has a number of responsibilities in the specialised areas of credit information and Tax File Number information. The Privacy Commissioner also performs functions under the following legislation:
  
  o Part VIIC of the *Crimes Act 1914* gives the Privacy Commissioner responsibility for assessing and making recommendations to the Attorney-General about applications from organisations for exclusions from meeting requirements safeguarding the disclosure of individuals' spent convictions.
  
  o *Data-matching Program (Assistance and Tax) Act 1990* which regulates a program of data-matching between the Tax Office and four Assistance Agencies to detect overpayments, ineligibility for assistance and tax evasion. The Commissioner has particular responsibilities in the areas of issuing guidelines, investigating complaints and monitoring agency compliance.
The National Health Amendment Act 1993 provides for the Commissioner to issue guidelines which cover the storage, use, disclosure and retention of individuals' claims information under the Pharmaceutical Benefits Scheme and the Medicare program.

m under recommendation 211 and 212 of the National Report of the Royal Commission into Aboriginal Deaths In Custody, IIREOC has responsibility for the development of the National Aboriginal and Torres Strait Islander Community Education Program and the National Legal Field Officer Training Program. The implementation of these recommendations has been delegated to Aboriginal and Torres Strait Islander Social Justice Commissioner;

m the Aboriginal and Torres Strait Islander Social Justice Commissioner, under the Human Rights and Equal Opportunity Commission Act, prepares an annual report on the exercise and enjoyment of human rights by Aboriginal and Torres Strait Islander peoples, and undertakes social justice educational and promotional activities. The Commissioner has no power to receive complaints under this Act; and

- the Aboriginal and Torres Strait Islander Social Justice Commissioner also performs separate reporting functions under the Native Title Act 1993. These functions include preparing an annual report on the operation of the Act and its effect on the exercise and enjoyment of human rights of Aboriginal and Torres Strait Islander peoples, and reporting, when requested by the Minister, on any other matter relating to the rights of indigenous people under the Act.

THE MINISTER

The Attorney-General, the Honourable Michael Lavarch MP, is the Minister responsible for the Commission. He has a number of powers under the Human Rights and Equal Opportunity Commission Act 1986, the more significant being:

- to make, vary or revoke an arrangement with the States or Territories for the performance of functions relating to human rights or discrimination in employment or occupation;

- to declare, after consultation with the States, an international instrument to be one relating to human rights and freedoms for the purposes of the Act; and
to establish an advisory committee (or committees) to advise the Commission in relation to the performance of its functions and, at his request, to report to him on Australia's compliance with *ILO Convention 111* and to advise him in regard to national policies relating to equality of opportunity and treatment in employment and occupation.

The Attorney-General also has various administrative roles under legislation. Administrative powers exercised during 1994-95 include:

- referring to the Commission the task of conducting the *National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families* (This Inquiry will be a major task and the Terms of Reference are provided at Appendix Two.);

- taking steps to renew co-operative agreements with States and Territories;
  - appointing persons to act in the office of members during their absence;
  - appointing a number of persons to participate in hearings; and
  - authorising financial assistance to people who have been involved in hearings.
AN OVERVIEW OF THE COMMISSION
CORPORATE OVERVIEW

Program Structure

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

The Commission is organised into the following program elements:

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

Management Structure

For most of the year, administrative powers were vested in the Human Rights Commissioner as Chief Executive Officer. These arrangements were altered towards the end of 1994-95 to reflect amendments to the Human Rights and Equal Opportunity Commission Act 1986 in 1995. Ultimate authority for organisational decision-making and administrative matters is vested in the collegiate body of the Commission, made up of the President and six Commissioners.

The management structure of the Commission reflects the various functions performed, with Commissioners heading up their own area of legislative responsibility and sharing resources for the complaint handling, legal support and administrative functions. The Privacy Commissioner is directly responsible for all operational functions under the Privacy Act including privacy complaint handling. The Aboriginal and Torres Strait Islander Social Justice Commissioner is directly responsible for certain functions conferred under the HREOC Act and the Native Title Act. An organisational chart is provided at Figure 1.
Figure 1: Management structure of the Commission June 1995
ORGANISATIONAL PERFORMANCE DURING
1994-95

In this report, organisational performance during 1994-95 is presented within the corporate goal framework of the Corporate Plan and encapsulated within the main legislative functional areas. The Commission is currently developing more detailed performance measures appropriate to specific functions.

The recommendations of the Complaints Handling Review have already begun to be implemented, with strategic decisions taken to address matters including amended administrative arrangements, development of new database systems, standardised complaint handling practices and procedures and revised budgetary arrangements.

Corporate Goal One: Administering Legislation Effectively

Access and Equity and Social Justice — v LLecl d 3

Complaints under Federal legislation are received through offices located in Sydney, Brisbane, Rockhampton, Cairns, Canberra, Darwin and Hobart and through State Equal Opportunity Commission offices located in Melbourne, Adelaide and Perth. Education and promotion campaigns are undertaken at the local level by regional offices as well as at the national level.

Community awareness is being broadened by making information more widely available. Pamphlets and brochures explaining various legislative provisions are being progressively translated into other languages (in some cases pamphlets have been translated into eleven different languages) and made available in alternative formats such as Braille, audio tape, and large print. Some information is also available on disk.

Various ethnic groups with different social and cultural backgrounds are represented among conciliation staff to ensure community services provided are culturally and socially appropriate to Indigenous and ethnic groups. Recruitment for identified conciliation positions in the Queensland offices was initiated during the year, with occupants commencing in the Brisbane, Cairns and Rockhampton offices during 1995-96.
A range of research activities are raising and monitoring awareness of human rights and privacy issues with Indigenous groups, and these are discussed in the Aboriginal and Torres Strait Islander Social Justice chapter. Implementation of recommendations contained in past reports is actively followed up by the Race Discrimination Commissioner and the Aboriginal and Torres Strait Islander Social Justice Commissioner.

**Complaints Handling**

This year saw an increase of over 100% in the number of complaints received as compared with last year's figures.

Of the total 2780 complaints processed this year, 1900 (68%) lapsed or were formally declined. Of the remaining complaints, conciliation was successful in 576 cases, representing 71% of this balance.

There were 120 matters received by the Legal Branch for hearing during the year and 118 matters were finalised. Of those referrals finalised, 52% were resolved prior to or during hearing and 37% of matters were resolved through a decision handed down. The remaining 11% were finalised by other means.

During the year, the Commission intervened in four Court cases involving human rights and discrimination issues, which may not have been fully considered if legal intervention had not occurred.

The Commission is concerned about the difficulties experienced in managing the growing numbers of complaints, and has established a Complaint Handling Policy Unit specifically to implement the recommendations of the Complaint Handling Review conducted during 1992-93 and 1993-94. System and management improvements have been made progressively in the following areas: information systems and data collection; recruitment of conciliation staff; conciliator training; manuals for Commission hearing procedures; and Hearing Commissioner training.

Further details of complaints handling are provided in The Year In Review chapter and in each separate program chapter.
Education and Promotion

Numerous presentations and speeches were delivered during the year by Commissioners and their staff, although many more requests from various community groups were made than could be met. Copies of Commissioners' key-note speeches are publicly available.

The Commission is undertaking a proactive training program, aimed at private sector managers and supervisors, through the development and promotion of specialised training packages. Some of these training packages were developed with funding from the Education and Training Foundation of New South Wales. They cover sexual harassment, the ILO Convention No. 111, cultural diversity, and privacy concerns. This specialised marketing role has successfully operated on a cost-recovery basis with:

- 8 almost 500 training packages being sold to private and public sector organisations;
- 265 key EEO practitioners attending familiarisation sessions; and
- 200 key business people attending business breakfasts.

Further information on this proactive training role is detailed in The Year In Review chapter.

Research and Inquiries

A number of research projects were conducted within the Commission. Research projects and public inquiries generally involve extensive consultation and participation by government and non-government organisations and community groups. More specific information on these areas is detailed within each portfolio chapter.

Report of findings of research projects and public inquiries are received with interest by the community and government. A total of 1565 report publications were sold and/or distributed during 1994-95. Government support has varied in level and tangibility. The Mental Illness Inquiry, conducted by the Human Rights Commissioner, achieved a positive response from State and Federal governments with almost $500m being committed over the next four years to provide better services for people with a psychiatric disability or mental illness.
Advice to Government

All portfolio areas of the Commission are taking an active role in policy development at the national level and in contributing to State and Territory government policy-making processes. Peak industry, unions, government and community groups are represented in the membership of consultative committees.

The results of policy work include the tabling in Parliament of new and/or amending legislation, and referral of standards or codes of conduct, by the Attorney-General or other Ministers, to Parliament. Details of these developments are contained in relevant chapters.

Monitoring for consistency of national legislation and international instruments with legislation and principles pertaining to human rights, anti-discrimination, social justice and privacy has been undertaken by the Human Rights and the Aboriginal and Torres Strait Islander Social Justice portfolios. The Commission has also been involved in the development of international instruments, through the efforts of both the Human Rights and the Aboriginal and Torres Strait Islander Social Justice Commissioners. International developments relating to privacy of information are outlined in the Privacy chapter.

Applicability of the Convention on the Rights of the Child to administrative decision-makers within Australia was tested in Teoh's case in the High Court during the year. Teoh's case involved deportation of a father of seven children, and consideration of the extent to which the interests of children should be taken into account when making decisions affecting families. More detail on this case is provided in The Year In Review chapter; Commission Interventions in Court Proceedings section.

Compliance

Compliance with legislation is being monitored in various ways. Compliance with the Privacy Act, Data-matching Program (Assistance and Tax) Act is directly monitored through a program of audits, while compliance with anti-discrimination legislation is being monitored through emerging patterns of complaints received, conciliated and/or heard. Other compliance activities are detailed in the relevant chapters.
Corporate Goal Two: Providing a Professional, Competent and Efficient Service

Complaint Handling

A key outcome of the Complaints Handling Review was the development of a number of revised strategies and practices to improve efficiency and timeliness of service delivery and to effectively deal with the increasing volume of complaints. A total of 3917 complaints was registered during 1994-95. During the year the Commission developed a case flow management system, commenced drafting a procedures manual, and developed plain language guides to hearing procedures for parties to complaints which have been referred for hearing and determination. A new database is being designed for specific complaint handling, recording and reporting needs and will be installed and operating during 1995-96.

A survey undertaken in 1994 as part of the Complaints Handling Review provided some interesting feedback on HREOC's complaints handling services:

- 60% of complainants rated their experience of the complaints system as satisfactory or better;
- only 14% of complainants indicated that they would not advise someone else to lodge a complaint;
- the perceived independence of the process was demonstrated by similar results from both complainants and respondents: approximately 50% of both groups considered the system to be fair, while about 40% - 45% of both groups considered the system to be biased against them; and
- one third of respondents acknowledged that long term changes had occurred as a consequence of the complaint.

Of those complaints attempted to be resolved through conciliation during 1994-95, 71% were successful.

Education and Promotion

Events such as the Human Rights Medal and Awards presentation, anniversary celebrations for the SDA and RDA, and promotional launches for new publications were arranged and well attended during the year. The Hobart office coordinated the annual Tasmanian Human Rights Week, in conjunction with several other anti-discrimination agencies in the region. Good community support was received.
The Commission also participated in educational projects with other agencies such as the Victorian Council for Civil Liberties.

A wide range of information is produced for free distribution, and some reports and resources for example, the Disability Discrimination Act Employment Manual, are sold at cost-recovery prices. Written information is carefully drafted with the aim of being understandable, relevant, factually correct and well presented. Over 190,000 free pamphlets and brochures were distributed during the year, with the greatest demand being those relating to sexual harassment. Over 3,600 reports were sold to individuals and organisations. Reference to HREOC reports and other library resource material relating to program areas of the Commission is available to the public by appointment in the central library located in the Sydney office.

Translation of explanatory literature into several languages facilitated distribution and understanding of information throughout ethnic communities, and production of information and reports in alternative formats such as Braille and audio tape facilitated distribution throughout other segments of the community.

Demand for HREOC information may be measured, to some extent, by the 3123 public requests received during the year by the central education and promotion unit. This excludes the portfolio areas and State/Territory offices.

**Research and Inquiries**

The Commission undertakes a considerable amount of research. Details of research projects are provided in the respective portfolio chapters.

**Co-operative Arrangements**

Co-operative arrangements made with States and Territories extend the Commission's capacity to administer anti-discrimination legislation on a national level and to provide accessible complaint handling services. These arrangements have been in place for some years and will be re-negotiated progressively over the next two years.

Administrative agreements under the Co-operative Arrangements involved quarterly and annual reporting including information on complaint statistics. Statistics for complaints received under the Federal Acts are embodied in this report.
Corporate Goal Three: Being a Fair and Responsible Employer

Accountability and Financial Management

The Commission is continuing to revise its financial and information systems to accommodate the changing needs of the organisation, and internal financial policies are taking into account the anticipated requirements of the impending Financial Management and Accountability Act.

The Commission's internal audit program has not identified any issues of concern this year, nor detected any instances of fraud.

Information Technology

Networking and upgrading of the Commission's management and information systems continued during the year. An internal work practices survey is currently monitoring the extent of improvements in this area.

Training in new computer software continued this year, with Information Technology training comprising approximately 35% of all training undertaken.

Social Justice and Equity

Vacancies with specific relevance to minority groups are advertised in appropriate papers such as disability newsletters and the Koori Mail. Staff selection panels are chosen to represent as far as practicable, the diversity of interviewees, and to accommodate their needs.

The Commission's new premises in Sydney have been designed as a model of barrier-free design. The fitout incorporates a range of design features to facilitate access and mobility for people with disabilities. Office equipment, such as large size monitor screens and teletypewriter (TTY) telephones, are also available.
Industrial Democracy

Management supports union activities and negotiates with the union as necessary. Participative and/or devolved management of projects, and regular union and staff meetings, provide staff with opportunities to be involved in day-to-day management and comment on issues of interest. Staff are kept up-to-date with the internal affairs of the organisation through dissemination of Commission meeting minutes, Commissioners' reports, press releases, staff notices, and other information.

Equal Employment Opportunity (EEO)

The Commission is an equal opportunity employer, with the staff profile reflecting a good distribution of age, race and gender. Affirmative action requirements have been fully met, with women accounting for 69% of total staff (see Attachment Two: Staffing Resources Summary).

Occupational Health and Safety (OH&S)

The work environment of the new Sydney office has been ergonomically designed and evaluated through independent ergonomic consultants, in consultation with staff.

SOCIAL JUSTICE AND EQUITY

The Human Rights and Equal Opportunity Commission seeks to ensure Aboriginal and Torres Strait Islander peoples, people of non-English speaking background, people with disabilities and other minority groups are able to take full advantage of its information and services. Its commitment to social justice and access and equity, focuses on making its information and services more easily accessible to these groups. This also ensures priority issues of minority groups are equitably and adequately considered when developing policy and planning relevant activities.

The following is a brief summary of the achievements made by the Commission in 1994-95 in promoting equitable access to information and services provided and in advocating social justice for its clients.
The Complaint Handling Review

As part of the Complaint Handling Review, focus was placed on the equitable access to, and understanding of, the Commission's complaints handling system resulting in:

- production of plain language guides to hearings which are provided to complainants and respondents;

- statistics on ethnicity, gender and disability being collected and collated for the first time on individuals seeking redress through the Commission's complaint handling system;

- distribution of Practice Notes to parties involved in hearings of complaints which have not been able to be conciliated. (These notes are formal guidelines drawn up by the Commission describing how its hearings are conducted. They assist user-friendly access to the Commission's hearings); and

- development of a hearing manual for Commissioners containing access and equity information.

Interests of Aboriginal and Torres Strait Islander Peoples

During the year a number of identified positions were created in the Queensland offices to improve the appropriateness of, and accessibility to, services offered within that State.

Projects undertaken this past year to specifically address the interests of Aboriginal and Torres Strait Islander peoples include:

- the National Community Education Program which assists Aboriginal and Torres Strait Islander peoples to develop culturally appropriate strategies for achieving the best and least traumatic resolution of community conflicts involving human rights;

- the National Aboriginal and Torres Strait Islander Field Officer Training Program involving development of an appropriate program base and curriculum outline;

- the first phase of the Aboriginal and Torres Strait Islander Women's Project which aims to ascertain the level of understanding and interest in the Sex Discrimination Act among Aboriginal and Torres Strait Islander women;
the Aboriginal and Torres Strait Islander Information Privacy Awareness Project which aims to identify issues and strategies for retaining information privacy when dealing with Commonwealth agencies;

a researching, publishing, and monitoring outcomes of, the Water Report, the Mornington Island Review Report, the Alcohol Report, and the Community Development Employment Program (CDEP) Review by the Race Discrimination Commissioner.

Other projects which had direct relevance to Aboriginal and Torres Strait Islander issues include the National Complaint Handling Review which examined access and equity of the discrimination complaints process, and the National Advisory Committee on Discrimination in Employment and Occupation which created a position for an Aboriginal and Torres Strait Islander representative.

**Interests of People of Non-English Speaking Background**

Examples of educational, promotional and service delivery measures include:

- discussions with the Victorian Trades and Labour Council and Australian Council of Trade Unions to look at the development of a "Know Your Rights" campaign in relation to the Racial Discrimination Act for workers of non-English speaking background;

  o (Development of an information campaign is planned, in conjunction with the Australian Non-English Speaking Background Women's Association (ANESBWA), for the Racial Discrimination Act, Sex Discrimination Act and Disability Discrimination Act)

- publication of a general information pamphlet on the Privacy Act in Greek, Macedonian, Serbian, Polish, Turkish, Croatian and Italian, adding to the four existing translations in Arabic, Chinese, Spanish and Vietnamese. Work is currently in progress to obtain translations in a similar range of languages for an information pamphlet on ILO 111;

- extensive consultations with ethnic organisations and communities during the production of the 1994 State of the Nation report by the Race Discrimination Commissioner concerning the human rights of people of non-English speaking background.
Access and Equity Measures Specifically for People with Disabilities

Examples of educational, promotional and service delivery measures include:

- investigation by the Privacy Commissioner into the privacy needs of people with disabilities, concentrating on consumer access to medical records and policy procedures of boards and tribunals;
- publication of pamphlets, reports and other printed material in Braille, on audio cassette tapes, on computer disk and in large print;
- use of AUSLAN interpreters for all large public events organised by the Commission, and use of an audio loop in the Commission's Hearing Room;
- input into the development of a video produced by the Access Arts, a community organisation, aimed to assist people with intellectual disabilities to access the Disability Discrimination Act;
- distribution of quarterly Open Letters by the Disability Discrimination Commissioner to over 2500 organisations, peak or representative groups and other key stakeholders in the disability, government, legal, service provider, business and other relevant fields providing up-to-date information on the work of the Commission and examples of complaints handling outcomes.

INTERNAL AND EXTERNAL SCRUTINY

Inquiries by Parliamentary Committees

During 1994-95 the Commission made 15 submissions and 12 appearances before various Parliamentary Committees.

Inquiries by Parliamentary Committees

Parliamentary Committee inquiries to which the Commission made submissions include:
m Senate Legal and Constitutional Legislation Committee: Family Law Reform Bill (No. 1). Written submission made on 25 November 1994;

m Senate Legal and Constitutional Legislation Committee: Family Law Reform Bill (No. 2). Written submission made on 9 February 1995;

☐ Senate Finance and Public Administration References Committee: Service Delivery by the Australian Public Service. Written submission made on 27 January 1995.

Submissions and appearances by the Race Discrimination Commissioner include:


m House of Representatives Standing Committee on Community Affairs: Inquiry into Migrant Access and Equity. Written submission made by the Race Discrimination Commissioner on 27 March 1995;


Submissions and appearances by the Human Rights Commissioner include:

- Joint Standing Committee on Foreign Affairs, Defence and Trade: A Review of Australia's Efforts to Promote and Protect Human Rights. Appearance made by the Human Rights Commissioner on 13 October 1994;

- House of Representatives Standing Committee on Community Affairs: Inquiry into Aspects of Youth Homelessness. Appearance made by the Human Rights Commissioner on 3 November 1994;


m Joint Standing Committee on the National Capital and External Territories: Inquiry into the Right to Protest and Demonstrate on National Land. Written submission made by the acting Human Rights Commissioner on 8 June 1995.

Submissions and appearances by the Privacy Commissioner include:

m Joint Standing Committee on Migration: Inquiry Into the Migration Agents Registration Scheme. Written submission made in August 1994. Appearance made on 24 October 1994;


m Senate Standing Committee on Legal and Constitutional Affairs: Inquiry into the Rights and Obligations of the Media. Appearance made on 18 November 1994;


m Senate Finance and Public Administration References Committee: Service Delivery by the Australian Public Service. Written submission made on 19 January 1995;


Submissions and appearances by the Aboriginal and Torres Strait Islander Social Justice Commissioner include:
The Joint (Department of Finance/Attorney-General's Department/HREOC) Review

A review of the role, functions, efficiency and effectiveness of HREOC (in recognition of its broadened role and workload since its establishment in 1986) was arranged by the Attorney-General in August 1993, and has been conducted jointly by the Department of Finance, the Attorney-General's Department and HREOC.

The Joint Review incorporates recommendations for legislative and structural reform of the Commission necessitated by the High Courts decision in *Brandy v HREOC*. The Review has also considered proposals for legislative reform arising from the consistency and accessibility of the legislation.

An initial report was prepared in September 1994 and resulted in various legislative and procedural changes. During 1994-95 this joint review drew to a close, with a supplementary draft report issued for comment in September 1995. Possible outcomes of this process may involve significant changes to the organisational structure, role and practices of the Commission. Negotiations are under way with staff, the Community and Public Sector Union and other stakeholders, in relation to the recommendations.

During 1995-96, the report will be finalised and recommendations will continue to be negotiated and implemented.

Accountability

Auditor-General reports published during 1994-95 did not make specific mention of any practices or management within the Commission. Other tabled reports were followed up for matters of relevance to the Commission, and internal management and review of these matters were reported to the Attorney-General through a quarterly reporting process.

Audit and fraud risk assessments and administrative audits continued throughout the year. There were no instances of fraud identified.
MAJOR PROJECTS FOR 1995-96

National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children

The Attorney-General has asked HREOC to inquire into the separation of Aboriginal and Torres Strait Islander children from their families. The separation of indigenous children from their families is one of the most sensitive issues to confront Australian peoples in the history of this nation. A major focus will be the needs and rights of Aboriginal and Torres Strait Islander children today.

A report will be prepared by December 1996 covering the three major issues set out in the Attorney-General's terms of reference. These are provided at Appendix Two.

The Inquiry secretariat consisting of approximately six people will be based in HREOC’s Sydney office. Commissioners will travel throughout the country to receive evidence from people who choose to participate in the Inquiry. The establishment of an Advisory Committee consisting of Indigenous people working in this field will provide invaluable assistance and guidance, and contribute to the integrity of the Inquiry.

Complaints Handling Review

A comprehensive review of processes and services in complaint handling was initiated in September 1993. Findings and recommendations emanating from this review were presented to a special meeting of the Commission in November 1994, and included recommendations for numerous developments to Commission practice and procedure in handling complaints ranging from legislative review through to internal administrative practices.

The Commission has adopted most of the review's recommendations, and has given priority to developing an appropriate administrative infrastructure as a basis for improving its complaint handling services. A Complaints Handling Policy Unit has been established for this purpose.

Implementation of many of these recommendations began during 1994-95 and are detailed in this report. Continued implementation of these recommendations will form a major project of the Commission during 1995-96.
Review of the Racial Discrimination Act

The Race Discrimination Commissioner has initiated a comprehensive review of the RDA coinciding with the 20th Anniversary of the Act this year.

The Review is a major project, involving widespread expert and community consultation, with the aim of increasing the Act's effectiveness and accessibility.
THE YEAR IN REVIEW
COMPLAINT HANDLING

A central service provided by the Commission is the investigation and conciliation of complaints about discrimination under the Racial Discrimination Act (RDA), the Sex Discrimination Act (SDA), the Disability Discrimination Act (DDA) and the Human Rights and Equal Opportunity Commission Act (HREOCA).

Complaints under the Privacy Act are handled separately by the Privacy Branch of the Commission.

Conciliation is the process of settling conflict by bringing disputing parties together to reach a voluntary and mutually satisfactory solution. The disputing parties are assisted in this process by the complaints officer who is also the person responsible for the investigation and conciliation of complaints on behalf of the relevant Commissioner. Under the Racial, Sex and Disability Discrimination Acts, complaints can be referred for a public hearing when conciliation fails or is not appropriate.

In 1994-95 several landmark events have influenced and altered the Commission's handling of complaints.

Complaint Handling Review

A comprehensive review of processes and services in complaint handling was initiated by the Sex Discrimination Commissioner in September 1993. The review focused on the effectiveness, flexibility and responsiveness of complaint handling and concentrated on improving the quality and coordination of complaint data collection methods and appropriate training for staff involved in complaints work.

The review reported its findings and recommendations to a special meeting of the Commission in November 1994. While commending the professionalism and dedication of the staff handling complaints, the review noted that the Commission's responsibilities in this area have grown significantly in the past three years. It found that there was a concomitant need to develop structures to meet the growing demand and to deliver the service expected by the public. It recommended numerous developments to Commission practice and procedure in handling complaints, ranging from legislative review through to internal administrative practices.

In response to the review, the Commission gave priority to developing an appropriate administrative structure as a basis for improving its complaint handling services. The Commission adopted most of the review's recommendations.
Implementation of the Complaint Handling Review

Implementation of the review's recommendations has been the primary responsibility of the Assistant Secretary (Complaints). In 1994-95, the priorities were:

- Legislative Reform
  The Commission's review of complaint handling found that the legislation administered by the Commission was difficult to access, procedurally inconsistent in many areas and confusing to the general reader. Recommendations for legislative reform, particularly concerning complaint handling functions and procedures, have been submitted to the Joint Review of the Commission, conducted with the Attorney-General's Department, the Department of Finance, and HREOC.

- Complaints Procedures
  The review found that a more flexible, client focused approach to the handling of complaints was necessary. The lack of clear and universally understood internal procedures was noted and recommendations were made towards national consistency in procedures. One of the key mechanisms for achieving procedural consistency was seen as the development of a complaint handling procedures manual. The first stage of the manual has been completed. It deals with the initial receipt and assessment of complaints within the legal framework of complaints legislation. Stages to follow will cover inquiry/conciliation, the compilation of reports referring unconciliated complaints for hearing and other matters.
  The Commission has also developed a complaints form which can be issued after a telephone enquiry is made to the Commission. The form acts as a guide to making a complaint. Further, a data collection form is now issued to all complainants at registration of their complaint. The form collects data on the complainant's race, ethnicity, disability and gender and obtains information on any assistance the complainant might require to pursue the complaint. This information can be used for policy work, to improve service delivery and to provide individual assistance to a complainant where required.

- Hearing Procedures
  The review recommended an accessible client focused case management approach to the conduct of hearings. These are generally conducted by part-time hearing Commissioners situated throughout Australia. To this end, and to ensure procedural consistency, a hearing procedures manual has been developed for the use of hearing Commissioners and Commission staff outlining the administrative procedures for the management of complaints referred for hearing. Also prepared was a "plain English"
guide to hearing procedures for parties to hearings together with Practice Notes. The guide is now routinely sent to parties who have complaints referred for hearing. The Practice Notes are freely available and have been published. Information sessions were held in February 1995 for hearing Commissioners to explain the new guides. In addition, all decisions of the Commission are now internally available in an electronic form, which enables ready accessibility.

m Case Management

The need for national consistency and case management infrastructure led to the use of a pilot case management system in 1994-95 which records critical date and phase information in complaint handling, complaint outcomes and time lines for action.

The case management system under development also provides for each respondent and complainant to be sent a customer satisfaction form on closure of their complaint. On its return to the Commission, the complainant's evaluation of the way the complaint was handled will be used to continually improve processes.

m Training

The Review recommended the adoption of a training policy to address training needs for complaints staff. As a result, an agreement was made with the Centre for Conflict Resolution at Macquarie University to develop a conciliation skills training package. Two, three day pilot courses were run in Sydney and Brisbane in March and May 1995. Forty complaints staff participated in this training from all Commission offices. The completed package will enhance the Commission's capacity to train its staff in conciliation methods and will enable it to run training programs for other agencies.

Work has also commenced on the development of an investigations training course for staff working with Federal discrimination and human rights law. It is hoped that the course will be ready to trial for all complaints staff at the end of 1995.

• New Information Systems

In addition to the development of a hearings data base, the Commission is developing a comprehensive complaints data base which will link all its offices and allow for national reporting of complaint information. This is a major project which will build on the pilot case management system developed during this year to establish consistency in the recording and reporting of complaint information.
• Complaints Task Forces

In addition to developing complaint handling procedures and structures, the Commission has recently taken action to deal with the significant backlog of complaints. In the Sydney office, additional complaints and support staff have been appointed over the year to assist with the greater overall numbers of complaints and changed complaint handling procedures. Also, a task force of legal officers has been appointed to work for six months on old or unallocated complaints. In the Brisbane office, a small task force has been created and funded by the Queensland government for an eight month period. It will deal with complaints received prior 30 June 1995. (See the Queensland Anti Discrimination Commissioner's report).

The developments outlined above will provide the basis of an efficient and effective complaint handling service that can be measured, monitored and improved. The coming year will see wider implementation of these reforms and the development of performance measures for the improved handling of complaints.

The Definition of Complaints

The 1993-94 Annual Report outlined the implications of the Proudfoot and Ellenbogen decisions on the definition of a complaint for complaint handling purposes within the Commission and, in particular, on the processes for dealing with incoming correspondence.

In past years, officers of the Commission decided whether incoming correspondence containing a grievance was treated as a "complaint" or whether it should be dealt with less formally as an "enquiry". This decision was based on the extent to which the grievance satisfied certain legislative requirements. The effect of the Federal Court decisions is to severely restrict the Commission's discretion to treat grievances as other than formal complaints. The vast majority of all matters received by the Commission should be accepted as formal complaints under the relevant Act and considered by the Commissioner with statutory responsibility for that Act. That Commissioner may decide to decline to enquire into the complaint on a number of grounds, which may result in the complainant's application for a review of the decision by the President.

There have been a number of important consequences of this procedure. It has:

• improved the accountability of complaint handling procedures;
• required additional administrative resources and greater formalisation of procedures involving the receipt and assessment of incoming correspondence;
• required the addition of resources to the task of formally declining to enquire into complaints and to the review of such decisions;

in expanded the work of the President, who determines all applications for review; and

rs accentuated differences in the handling of complaints within the Commission and between the Commission and State anti-discrimination agencies which handle complaints under Federal Acts through Commonwealth/State co-operative arrangements.

Although complaint correspondence must be treated more formally under the relevant anti-discrimination Acts, the Commission remains a focal point for numerous grievances which cannot be categorised or dealt with under one of the pieces of anti-discrimination legislation. These have been recorded in the Commission's central office as complaints of "unknown jurisdiction" (see Table 1). It is expected that all Commission offices will operate on the same procedures for next year's annual report.

**Handling of Complaints under Commonwealth/State Agreements**

During 1994-95, complaints under Federal legislation continued to be handled by:

in the Commission's central office in Sydney or one of its joint or regional offices in the Northern Territory, Tasmania, Queensland or the Australian Capital Territory; and

• State Equal Opportunity agencies in Victoria, South Australia and Western Australia under co-operative arrangements.

Staff in the Commission's offices in Queensland and the Australian Capital Territory, as well as dealing with complaints under the Federal legislation, handle complaints lodged under the *Queensland Anti-Discrimination Act 1991* and the *ACT Discrimination Act 1991* respectively. Over the past year, complaints in these offices have been increasingly dealt with under the State/Territory legislation.

The uniformity of procedural reform in those Commission offices also administering State/Territory legislation has been complicated by different procedural requirements under State/Territory legislation.

These differences are reflected in the complaint statistics set out in Tables 1 and 2 and complicate comparisons across the various offices handling Federal complaints. The development and implementation of the Commission's national database is expected to be an important tool to promote future consistency in procedure and reporting.
Complaint Statistics

Each State or Territory office has operated its own complaints handling procedures to date, which creates some difficulties in consolidating national figures.

Table 1 provides a summary of new complaints registered under each Act within each office. Tables 2 to 4 provide various statistical breakdowns of complaints finalised during the year. These figures include complaints registered under Federal legislation only.

Complaint figures in the Commission's central Sydney office show that complaints received have more than doubled from 591 in 1993-94 to 1247 in 1994-95. A significant, though unascertainable, portion of the increase is no doubt due to the changed procedures necessitated by the Federal Court decisions referred to above. There has been a corresponding increase in the proportion of finalised complaints in the central office from 453 in 1993-94 to 1035 in 1994-95.

Figures for the Commission's regional offices (Queensland, the Northern Territory, Tasmania and the ACT) also show a higher proportion of finalised complaints than in previous years, with a total of 398 complaints closed in 1994-95 compared to 204 in 1993-94.

Complaint numbers for Victoria and South Australia reflect a number of complaints being recorded against one complainant and the raw figures cannot reliably be compared with figures recorded by the Commission's own offices.

Table 1: Total numbers of new complaints by location of office at which they were received: 1 July 1994 to 30 June 1995.

<table>
<thead>
<tr>
<th>Relevant Legislation</th>
<th>Central</th>
<th>QLD*</th>
<th>NT</th>
<th>TAS</th>
<th>ACT*</th>
<th>VIC</th>
<th>SA</th>
<th>WA</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>SDA</td>
<td>274</td>
<td>45</td>
<td>27</td>
<td>33</td>
<td>21</td>
<td>758</td>
<td>336</td>
<td>29</td>
<td>1523</td>
</tr>
<tr>
<td>RDA</td>
<td>154</td>
<td>41</td>
<td>39</td>
<td>10</td>
<td>16</td>
<td>292</td>
<td>128</td>
<td>27</td>
<td>707</td>
</tr>
<tr>
<td>HREOCA</td>
<td>262</td>
<td>65</td>
<td>32</td>
<td>5</td>
<td>4</td>
<td>368</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>DDA</td>
<td>457</td>
<td>53</td>
<td>57</td>
<td>33</td>
<td>32</td>
<td>587</td>
<td></td>
<td></td>
<td>1219</td>
</tr>
<tr>
<td>Unknown jurisdiction</td>
<td>100</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>100</td>
</tr>
<tr>
<td>Total</td>
<td>1247</td>
<td>204</td>
<td>155</td>
<td>81</td>
<td>73</td>
<td>1637</td>
<td>464</td>
<td>56</td>
<td>3917</td>
</tr>
</tbody>
</table>

* includes complaints registered under Federal legislation only
Table 2: Total numbers of complaints closed by location of office at which they were closed and by Federal legislation: 1 July 1994 to 30 June 1995.

<table>
<thead>
<tr>
<th>Legislation</th>
<th>Central</th>
<th>QLD*</th>
<th>NT</th>
<th>TAS</th>
<th>ACT*</th>
<th>VIC</th>
<th>SA</th>
<th>WA</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>SDA</td>
<td>197 60</td>
<td>31</td>
<td>28</td>
<td>16</td>
<td>717</td>
<td>216</td>
<td>23</td>
<td>23</td>
<td>1288</td>
</tr>
<tr>
<td>RDA</td>
<td>118 43</td>
<td>24</td>
<td>10</td>
<td>20</td>
<td>202</td>
<td>100</td>
<td>16</td>
<td>16</td>
<td>533</td>
</tr>
<tr>
<td>HREOCA</td>
<td>298</td>
<td>52</td>
<td>21</td>
<td>2</td>
<td>9</td>
<td></td>
<td></td>
<td></td>
<td>382</td>
</tr>
<tr>
<td>DDA</td>
<td>371</td>
<td>20</td>
<td>23</td>
<td>20</td>
<td>19</td>
<td>73</td>
<td></td>
<td></td>
<td>526</td>
</tr>
<tr>
<td>Unknown jurisdiction</td>
<td>51</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>51</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>1035</strong></td>
<td><strong>175</strong></td>
<td><strong>99</strong></td>
<td><strong>64</strong></td>
<td><strong>992</strong></td>
<td><strong>316</strong></td>
<td><strong>39</strong></td>
<td></td>
<td><strong>2780</strong></td>
</tr>
</tbody>
</table>

* includes complaints registered under Federal legislation only

Table 3: Complaints finalised by Federal legislation and by method of closure:
1 July 1994 to 30 June 1995

<table>
<thead>
<tr>
<th>Method of Closure</th>
<th>SDA</th>
<th>RDA</th>
<th>HREOCA</th>
<th>DDA Jurisdiction</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Outside jurisdiction</td>
<td>14</td>
<td>5</td>
<td></td>
<td>51</td>
<td>70</td>
</tr>
<tr>
<td>Withdrawn</td>
<td>477</td>
<td>203</td>
<td>45</td>
<td>195</td>
<td>-</td>
</tr>
<tr>
<td>Other declined</td>
<td>248</td>
<td>181</td>
<td>323</td>
<td>228</td>
<td>-</td>
</tr>
<tr>
<td>Conciliated</td>
<td>362</td>
<td>118</td>
<td>14</td>
<td>82</td>
<td>-</td>
</tr>
<tr>
<td>Conciliation failed - not referred for hearing</td>
<td>60</td>
<td>5</td>
<td></td>
<td>5</td>
<td>-</td>
</tr>
<tr>
<td>Referred for hearing</td>
<td>127</td>
<td>21</td>
<td>16</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Reported to Attorney-General</td>
<td>-</td>
<td>-</td>
<td></td>
<td>-</td>
<td>0</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>1288</strong></td>
<td><strong>533</strong></td>
<td><strong>382</strong></td>
<td><strong>526</strong></td>
<td><strong>51</strong></td>
</tr>
</tbody>
</table>

Table 4: Outcome of complaints finalised under Federal legislation by location of managing office

<table>
<thead>
<tr>
<th>Outcomes</th>
<th>Central</th>
<th>QLD</th>
<th>NT</th>
<th>TAS</th>
<th>ACT</th>
<th>VIC</th>
<th>SA</th>
<th>WA</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Outside jurisdiction</td>
<td>51</td>
<td></td>
<td>4</td>
<td>13</td>
<td>2</td>
<td>2</td>
<td></td>
<td></td>
<td>70</td>
</tr>
<tr>
<td>Withdrawn</td>
<td>238</td>
<td>42</td>
<td>29</td>
<td>21</td>
<td>35</td>
<td>430</td>
<td>117</td>
<td>8</td>
<td>920</td>
</tr>
<tr>
<td>Other declined</td>
<td>607</td>
<td>54</td>
<td>40</td>
<td>1</td>
<td>8</td>
<td>233</td>
<td>28</td>
<td>9</td>
<td>980</td>
</tr>
<tr>
<td>Conciliated</td>
<td>94</td>
<td>54</td>
<td>24</td>
<td>32</td>
<td>16</td>
<td>187</td>
<td>152</td>
<td>17</td>
<td>576</td>
</tr>
<tr>
<td>Conciliation failed - not referred for hearing</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>70</td>
</tr>
<tr>
<td>Referred for hearing</td>
<td>45</td>
<td>25</td>
<td>6</td>
<td>6</td>
<td>5</td>
<td>68</td>
<td>6</td>
<td>3</td>
<td>164</td>
</tr>
<tr>
<td>Reported to Attorney-General</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>1035</strong></td>
<td><strong>175</strong></td>
<td><strong>99</strong></td>
<td><strong>60</strong></td>
<td><strong>64</strong></td>
<td><strong>992</strong></td>
<td><strong>316</strong></td>
<td><strong>39</strong></td>
<td><strong>2780</strong></td>
</tr>
</tbody>
</table>
Interesting features to note are:

- 576 complaints (21% of finalised complaints) were successfully conciliated in 1994-95 compared to 530 complaints (38% of finalised complaints) in 1993-94. This lower percentage of conciliated complaints reflects the increased registrations of "complaints" arising from the revised definition;

- 920 complaints (33%) were discontinued or withdrawn by complainants during 1994-95, compared to 384 (27%) during 1993-94. Reasons for withdrawal can include the provision of a satisfactory explanation by a respondent or loss of interest by a complainant. Plans for surveying complainant satisfaction should help identify reasons for withdrawal in future;

- 980 complaints (35%) were otherwise declined during the year, compared to 218 (16%) during 1993-94. The increase in the proportion of complaints otherwise declined is likely to be attributable to the more formal complaint procedures explained above;

  Of these 980 complaints, over half of those under the Race, Sex and Disability Discrimination Acts were declined on the basis that the complaints lacked substance, whilst approximately 25% were declined as not unlawful. In comparison, two thirds of those under the Human Rights and Equal Opportunity Commission Act were declined on the basis that the complaints did not relate to an Act or practice of the Commonwealth.

  These statistics highlight the varying jurisdiction granted by the legislation. For example, the Human Rights and Equal Opportunity Commission Act grants a limited jurisdiction which does not permit the Commission to investigate or conciliate complaints concerning allegations of breaches of human rights by State or Local government or private enterprise, and so more complaints are declined on this ground. Other grounds for decline vary between the Acts.

  The remainder of declined complaints were discontinued on the basis that they were either frivolous, trivial, vexatious, misconceived, could be more appropriately dealt with elsewhere, had been dealt with elsewhere or that another more convenient remedy was available;

- 164 complaints (6%) were referred to the Commission for hearing and determination during the year, compared to 67 (5%) in 1993-94. Matters referred for hearing have more than doubled over the past year. The difference between this figure of 164 complaints and the figure of 120 complaints disclosed in the Legal Branch section of this Overview is attributed to administrative practices in Victoria where a number of complaints may be registered per complainant.
Inquiries

In addition to the processing of written complaints the Commission receives a high volume of telephone and personal inquiries. This function is a significant one for the Commission particularly in relation to its provision of information and promotion of anti-discrimination and human rights issues, and in the lodgement of complaints.

Details of inquiries received in Sydney (central) office are presented in Figure 2 and Tables 5 and 6 for illustrative purposes of inquiries received on a national level in other State and Territory offices. Inquiries sometimes related to more than one category in these tables, accounting for the different totals. National figures may be available in the future when comparable information is retained.

Figure 2

Distribution of Anti-Discrimination Inquiries Received in Sydney Office by Act: 1 July 1994 to 30 June 1995

A total of 6,983 anti-discrimination inquiries were received by Sydney office during the year, comprising:

- 1,232 inquiries relating to the Sex Discrimination Act;
- 415 inquiries relating to the Racial Discrimination Act;
- 1,925 inquiries relating to the Disability Discrimination Act;
- 36% inquiries of outside jurisdiction;
0808 inquiries relating to the IIREOC Act; and

a 2,608 inquiries relating to issues outside jurisdiction of the Commission.

The issues raised in these inquiries often lead to the lodgement of written complaints with the Commission. Over half the inquiries concerned issues arising in employment, whilst a strong trend related to inquiries concerning the provision of goods, services and facilities.

Table 5: Breakdown of Anti-Discrimination Inquiries received in Sydney office by Area: 1 July 1994 to 30 June 1995

<table>
<thead>
<tr>
<th>Basis of Inquiry</th>
<th>Number of Inquiries</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employment</td>
<td>2836</td>
</tr>
<tr>
<td>Provision of goods, services and facilities</td>
<td>843</td>
</tr>
<tr>
<td>Rights to equality before the law</td>
<td>45</td>
</tr>
<tr>
<td>Access to premises</td>
<td>38</td>
</tr>
<tr>
<td>Land</td>
<td>4</td>
</tr>
<tr>
<td>Accommodation</td>
<td>101</td>
</tr>
<tr>
<td>Incitement to unlawful acts</td>
<td>4</td>
</tr>
<tr>
<td>Advertisements</td>
<td>16</td>
</tr>
<tr>
<td>Superannuation and Insurance</td>
<td>31</td>
</tr>
<tr>
<td>Education</td>
<td>226</td>
</tr>
<tr>
<td>Clubs/incorporated associations</td>
<td>65</td>
</tr>
<tr>
<td>Administration of Commonwealth programs</td>
<td>35</td>
</tr>
<tr>
<td>Sport</td>
<td>17</td>
</tr>
<tr>
<td>Applications forms</td>
<td>0</td>
</tr>
<tr>
<td>Unions/accrediting bodies</td>
<td>2</td>
</tr>
<tr>
<td>Contravention of disability standards</td>
<td>0</td>
</tr>
<tr>
<td>Request for information</td>
<td>9</td>
</tr>
<tr>
<td>Acts of practices of the Commonwealth</td>
<td>15</td>
</tr>
<tr>
<td>Other</td>
<td>1395</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>5682</strong></td>
</tr>
</tbody>
</table>

All callers are assisted by Commission staff, who provide information about the way in which to make a complaint, the complaint handling process, the Commission’s legislation, and information about other organisations which might also be of assistance. The final outcomes of these inquiries are summarised in Table 6 (some inquiries have more than one outcome).
Table 6: Outcome of Inquiries received: 1 July 1994 to 30 June 1995

<table>
<thead>
<tr>
<th>Outcome of Inquiries</th>
<th>Number of Inquiries</th>
</tr>
</thead>
<tbody>
<tr>
<td>Advised to lodge a complaint</td>
<td>1611</td>
</tr>
<tr>
<td>Referred to elsewhere</td>
<td>2546</td>
</tr>
<tr>
<td>Information provided</td>
<td>2724</td>
</tr>
<tr>
<td>Other</td>
<td>296</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>7177</strong></td>
</tr>
</tbody>
</table>

THE LEGAL BRANCH

The primary responsibility of this branch of the Commission concerns complaints which cannot be conciliated and are referred to the Commission for inquiry. The legal branch organises and schedules Commission hearings into these matters, and legal officers provide associate and/or counsel assistance to hearing Commissioners.

In addition, the Branch is responsible for the provision of legal advice to the Commission, for conducting Commission interventions in legal proceedings and for external litigation in which the Commission becomes involved. Freedom of Information applications are also handled by the Branch.

Other legal matters may arise which involve the Branch, such as the recent and significant challenge of the constitutional validity of the Commission's determinations. Like any organisation created by Federal legislation, it is possible for the constitutional validity of that legislation to be questioned. This is what happened in the Brandy case.

The High Court decision in Brandy v The Human Rights and Equal Opportunity Commission & Ors.

Ruling

In this Constitutional case the High Court held that certain provisions of the Racial Discrimination Act 1975 were invalid and hence inoperative. Those provisions (sections 25ZAA, 25ZAB, 25ZAC and 25ZXC in Part III Division 3 of the RDA) had enabled determinations of the Commission made since January 1993 (excluding those made against Commonwealth agencies) to be registered with the Federal Court and to take effect, subject to a right of review to the Court, as if they were an order made by.
that Court. This system gave successful complainants (subject to the review right) the ability to enforce the Commission's decision without having to argue the case a second time in court.

The High Court invalidated the scheme because it offends Chapter III of the Constitution, which requires that the "judicial power" of the Commonwealth reside only in the High Court, Federal courts and any other courts vested with Federal jurisdiction. In the view of all seven judges, the scheme constituted an exercise of judicial power by a non-judicial body - the Commission. In the words of Mason C.J., Brennan and Deane JJ.:

"... the Act, in providing for registration of a determination of the Commission and its enforcement as if it were an order of the Federal Court, constitutes an exercise of judicial power by the Commission and ... the jurisdiction conferred on the Federal Court to review a determination of the Commission does not provide a sufficient answer to this conclusion."

The right of review did not save the scheme for two reasons: first, a right of "review" in the Federal Court does not alter the judicial nature of the Commission's determination, registration and enforcement scheme; and second, not all determinations will be the subject of review.

**Factual Background**

The background to the case is that on 23 December 1993 the Commission made a determination of unlawful racial discrimination against Mr Brandy and the Aboriginal and Torres Strait Islander Commission (ATSIC) after receiving a complaint from Mr John Bell, who worked at ATSIC with Mr Brandy at the relevant time. The Commission had awarded damages to Mr Bell, as well as directing that an apology be made. Mr Brandy responded by launching Federal Court proceedings for judicial review and also instituted a High Court challenge to the constitutional validity of the registration and enforcement scheme.

The effect of the High Court decision is that the registration, enforcement and review provisions of the RDA (ss. 25ZAA, 25ZAB, 25ZAC and 25ZXC) added in 1993 are invalid and inoperative. Similar provisions in the *Sex Discrimination Act 1984*, the *Disability Discrimination Act 1992* and the *Privacy Act 1988* are also invalid.

**Effect of decision**

In deciding this challenge to that part of the Racial Discrimination Act dealing with the enforcement of Commission determinations in complaints, the High Court's decision has had a profound effect on the future operation of the Commission. Importantly, it is not just the Racial Discrimination Act that is affected. The Disability Discrimination Act, the Sex Discrimination Act and the Privacy Act had equivalent provisions dealing with enforcement.
The consequences of the decision for the Commission mean a major restructure of its procedures. The Attorney-General immediately announced a review of the legislation administered by the Commission and, as an interim measure, Parliament passed legislation re-instituting former statutory procedures which provided that Commission determinations were not binding on the parties but had to be re-litigated in the Federal Court to be enforceable: Human Rights Amendment Act 1995. As a result, determinations of the Commission are no longer "registered" within the Federal Court.

The Attorney-General's Department has been working with the Commission and a specialist committee to devise new procedures to ensure the availability of accessible procedures and enforceable decisions in human rights and anti-discrimination matters.

**Decline Decisions Reviewed by the President**

"Decline" decisions of Commissioners (decisions not to inquire, or continue inquiring, into complaints) may be reviewed by the President of the Commission. These reviewed decisions have vastly increased as a result of this decision, with 125 being received in 1994-95 as compared with 11 in 1993-94.

**Hearings and Determinations by the Commission**

Complaints which are unable to be settled by conciliation are referred for public hearing in accordance with the requirements of the relevant legislation. Referrals may be made under the RDA, SDA and DDA. There is no provision in the HREOCA for referral of unconciliated complaints. However the Human Rights Commissioner may report to the Attorney-General where conciliation has failed or where, due to the nature of the complaint, conciliation was considered not to be appropriate.
Hearing Commissioners

Public hearings were conducted by part-time hearing Commissioners, as well as by Sir Ronald Wilson, President; Mr Kevin O'Connor, Privacy Commissioner; Mr Michael Dodson, Aboriginal and Torres Strait Islander Social Justice Commissioner and Ms Elizabeth Hastings, Disability Discrimination Commissioner. Part-time hearing Commissioners appointed by the Attorney-General include:

<table>
<thead>
<tr>
<th>State/Territory</th>
<th>Part-time Hearing Commissioners</th>
</tr>
</thead>
<tbody>
<tr>
<td>New South Wales</td>
<td>Mr John Basten QC</td>
</tr>
<tr>
<td></td>
<td>Mr Graham Innes</td>
</tr>
<tr>
<td></td>
<td>Associate Professor Regina Graycar</td>
</tr>
<tr>
<td></td>
<td>Ms Marion Brown</td>
</tr>
<tr>
<td>Victoria</td>
<td>Mr Ronald Merkel, QC</td>
</tr>
<tr>
<td></td>
<td>Ms Susan Crennan, QC</td>
</tr>
<tr>
<td></td>
<td>Mr Aaron Castan, QC</td>
</tr>
<tr>
<td></td>
<td>QC</td>
</tr>
<tr>
<td></td>
<td>Associate Professor Jenny Morgan</td>
</tr>
<tr>
<td></td>
<td>Ms Moira Rayner</td>
</tr>
<tr>
<td></td>
<td>Ms Rosemary Hunter</td>
</tr>
<tr>
<td>Queensland</td>
<td>Mr Stanley Jones, QC</td>
</tr>
<tr>
<td></td>
<td>The Hon William Carter</td>
</tr>
<tr>
<td></td>
<td>Ms Patricia Wolfe</td>
</tr>
<tr>
<td></td>
<td>Mr Stephen Keim Dr</td>
</tr>
<tr>
<td></td>
<td>Mary Kalantzis Ms</td>
</tr>
<tr>
<td></td>
<td>Roslynn Atkinson</td>
</tr>
<tr>
<td>Tasmania</td>
<td>The Hon Robert Nettlefold</td>
</tr>
<tr>
<td></td>
<td>Mr Christopher Webster</td>
</tr>
<tr>
<td></td>
<td>Ms Antonia Kohl</td>
</tr>
<tr>
<td>South Australia</td>
<td>Mr Terence Worthington Q.C.</td>
</tr>
<tr>
<td></td>
<td>Professor Hilary Charlesworth</td>
</tr>
<tr>
<td>Western Australia</td>
<td>Ms Hanifa Dean</td>
</tr>
<tr>
<td>Northern Territory</td>
<td>Ms Suzan Cox</td>
</tr>
</tbody>
</table>

Referrals to Public Hearing

An increasing volume of complaints being received and handled by the Commission is translating into an increasing number of referrals for public hearing. During 1994-95,
- 120 complaints were referred for hearing, and 118 matters were finalised (including matters outstanding from previous years). This workload compares to 52 complaints referred during 1993-94. Of the 118 matters finalised during 1994-95:

- 61 were conciliated prior to or during hearing;
- 21 were substantiated;
- 23 were dismissed; and
- 13 were finalised by other means (this includes complaints terminated by the Commission at the complainant's own request and complaints that were adjourned *sine die* by the Commission, i.e. where a party could not be located).

A further breakdown of referral statistics are provided in the tables below:

<table>
<thead>
<tr>
<th>Table 7: Trends in numbers of matters referred for public hearing</th>
</tr>
</thead>
<tbody>
<tr>
<td>Year</td>
</tr>
<tr>
<td>Total Number</td>
</tr>
</tbody>
</table>

Statistics in this table are a complete and accurate record of the number of complaints referred for hearing during the year, even though they may differ from those disclosed in the Outcome of Complaints tables. Statistical record-keeping systems and practices are being improved within the Commission, generally. During this transition period, there may be some discrepancies between sources.

The Legal Branch records the actual number of hearings conducted or required to resolve referred complaints, regardless of the number of complainants and/or respondents in any particular case.

<table>
<thead>
<tr>
<th>Table 8: Complaints referred for public hearing during 1994-95 - by location and Act</th>
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<tbody>
<tr>
<td>Office</td>
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<tr>
<td>New South Wales</td>
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<td>Victoria</td>
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<td>South Australia</td>
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<td>Northern Australia</td>
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<td>Australian Capital Territory</td>
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<td>Tasmania</td>
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<td><strong>Total</strong></td>
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1994-1995 Annual Report
Complaints referred for hearing under the Disability Discrimination Act during this period were generally handled by the Sydney office of the Commission: the statistics given here reveal the geographical location of the complaint, irrespective of the fact that such complaints were generally handled by the Sydney office. In respect of the other complaints under the Sex Discrimination Act and the Racial Discrimination Act, generally all investigation and conciliation work was undertaken by the office indicated in the table.

**Interim Determinations**

Complainants may apply to the Commission for an interim determination, the purpose of which is to prevent a party to a complaint from taking action adverse to a complainant before the complaint is investigated and determined. The rate of applications for interim determinations has increased enormously, particularly in the area of disability discrimination. In 1994-95, 61 applications for an interim determination were received compared to 3 in 1993-94.

**External Litigation**

When a complainant or respondent is dissatisfied with the decision of the Commission, they may institute proceedings against the Commission under the *Administrative Decisions (Judicial Review) Act 1977* in the Federal Court. The *Brandy* case is an example of this, and has been discussed above. The following 1993-94 case was finalised during 1994-95 and is significant in that it considered issues of indirect discrimination, burden of proof, and complaints lacking in substance.

**Clemens & Ursula Ebber v HREOC, Architects Accreditation Council of Australia and Board of Architects of Queensland: Federal Court of Australia, judgment of Drummond J dated 17 March 1995**

Two complaints of racial discrimination were lodged with the Commission by Clemens and Ursula Ebber respectively against the Architects Accreditation Council of Australia and the Board of Architects of Queensland. The complainants, German-trained architects, alleged that the respondents had directly and indirectly discriminated against them when processing their applications to be registered to practise in Queensland, claiming that the registration practice and procedure for overseas-trained architects were discriminatory against architects from non-English speaking or non-Commonwealth countries. The complainants had not managed to obtain registration as at the date of the lodgement of their complaints.

The respondents argued that they had assessed the quality of the complainants' professional qualifications against that required of graduating architects in Queensland,
which had resulted in a substantial, but not complete, accreditation of their qualifications. The Commission dismissed the complaints as lacking in substance and did not seek further evidence, essentially finding that the respondents had made decisions based on academic qualifications, not based on race or national or ethnic origin.

The Ebbers sought judicial review under the *Administrative Decisions (Judicial Review) Act 1977*. The Court found that the Commission should have sought additional evidence over and above that already provided to the Commission in documentary form to assist with proof of their indirect discrimination case. Having been informed of the general nature of the evidence the Ebbers had wanted to submit, however, the Court declined to remit the matter to the Commission, holding that such evidence would not be of assistance to the complainants. The Court upheld the Commission's decision that the conduct was not based on race or national or ethnic origin, but on an assessment of the complainants' German qualifications.

**COMMISSION INTERVENTIONS IN COURT PROCEEDINGS**

The Commission may intervene in Court proceedings which involve human rights issues. Powers of intervention enable the Commission to bring a human rights perspective to Court cases which may not otherwise be presented. The Commission need not be directly involved in these cases for the intervention powers (contained within the HREOCA, RDA, SDA and DDA) to be exercised.

Where consideration of human rights issues are relevant to existing legal cases, and there is some possibility that they may not be adequately considered without the Commission's presence, the Commission applies for leave to intervene direct to the Court holding the proceedings.

Legal cases which the Commission intervened in during the period 1 July 1994 to 30 June 1995, and details of these cases, are outlined below.

**P v P; Re L - Sterilisation of a young woman**

*Description of the case*

On 20 May 1994, at the invitation of the Family Court of Australia, the Commission sought and was granted leave to intervene in this matter which was proceeding in that Court in Sydney: a note on this case was included in last year's annual report but as at 30 June 1994 the case had not yet concluded.
This case involved a young woman, L., who was seventeen years old, had epilepsy and an intellectual disability and was in the care of her mother. L's mother, with the agreement of L's father, applied to the Family Court for authorisation of medical treatment upon L. so that she would cease to menstruate and be permanently prevented from becoming pregnant. For the trial, a separate representative was appointed by the Court to represent the interests of the child and at the end of the trial the separate representative made a submission to the Court agreeing with L's parents that the medical treatment sought should be authorised.

**Human rights matters involved in the Court proceedings**

The basis for the Commission's intervention in this case was essentially to raise two matters: first, the issue of what are the appropriate principles to guide the exercise of the judicial discretion to authorise sterilisation; and, secondly, the issue of what procedural safeguards are necessary to protect human rights in this area. The Commission made no submission as to whether the medical treatment should be authorised in this particular case.

**Outcome**

On 23 September 1994 the trial judge delivered her judgment and reasons: her decisions were that L. was not capable of giving informed consent herself to the medical treatment sought and that the Court should not authorise the medical treatment sought for L. because that treatment was not in her best interests. The trial judge generally supported the submissions made by the Commission, but was also of the view that those issues should be definitively determined by the Full Court of the Family Court. The mother, again supported by the father, appealed the trial judge's decision to the Full Court.

**Appeal**

The mother's appeal was heard by the Full Court on 15 December 1994 and was immediately and unanimously upheld. The Full Court authorised the medical treatment to proceed forthwith. The Full Court handed down the reasons for its decision on 3 May 1995. In this major joint judgment, the Full Court held that the medical treatment was in L's best interests. The Court went on to say that it did not generally agree with the Commission's submission suggesting that a strengthening of procedural safeguards was warranted in this area and affirmed the validity of the *status quo* in this regard. However, the Court did express broad agreement with the Commission's submission that guidelines should be set down by the Court for this area and proceeded to do so.

On 4 January 1995 the Commission filed an application with the Family Court pursuant to s.95(b) of the *Family Law Act 1975* seeking a certificate to take this matter to the High Court of Australia.
C, L, J, and Z v Minister for Immigration and Ethnic Affairs, Mr M. W. Gerkens and Mr J. Vrachnas - Definition of "refugee" under the Refugee Convention

Description of the case

On 28 February 1995 the Commission sought and obtained leave to intervene in proceedings before the Federal Court of Australia in Darwin for the review of four decisions of the Refugee Review Tribunal.

Each of the decisions under review involved female citizens of the People's Republic of China who had applied for refugee status on the grounds of China's "one-child policy". The applicants claimed that they had been persecuted for breaching family planning regulations, which had included forced sterilisation and in one case forced abortion, the imposition of fines, assaults by the Chinese authorities, loss of employment and work opportunities, denial of medical treatment and the victimization of their children at school. Each applicant was also a Christian, and they claimed that the forced sterilisation and abortion conflicted with their Christian beliefs.

In each case, the Refugee Review Tribunal had rejected their claims on the grounds that the "virtual finality" of sterilisation meant that there was no real chance of further interference with their bodies. The Tribunal had also found that such conduct did not interfere with their Christian beliefs, as the motivation for the sterilisation was not religious persecution, but an "enthusiastic" enforcement of family planning laws.

Human rights issues involved in the Court proceedings

The human rights issue upon which the Commission sought to intervene related to the definition of "refugee" under the 1951 Convention and 1967 Protocol relating to the Status of Refugees (the Refugee Convention), specifically, the meaning of "persecution", and whether nationals of China who are likely to be affected by the one-child policy come within the categories of "religion" or "particular social group" in the refugee definition.

The issue was important as there had been considerable community debate about applications for refugee status based upon the one-child policy, and the Government had proposed an amendment to the Migration Act 1958 seeking to limit this ground as a basis for claiming refugee status.

The Commission made three submissions to the Court. First, that the Refugee Convention provides for the protection of fundamental human rights and freedoms as set out in other international instruments, including the International Covenant on Civil and Political Rights. Secondly, it was submitted that the implementation of the one-child policy in particular cases may be in breach of international human rights principles and would therefore constitute "persecution" under the Refugee Convention, either by reason of a person's particular social group, religion or, in some cases, a person's political beliefs. Thirdly, it was argued that the mere fact of...
substantial past persecution is relevant and probative as to whether or not a person faces future persecution, and that the motive of the persecutor cannot conclusively determine whether there has been persecution within the meaning of the Refugee Convention.

**Outcome**

On 30 March 1995, O'Loughlin J. in the Federal Court handed down his decision, which basically upheld the submissions of the Commission. However, having found that the Refugee Review Tribunal had fallen into error in three of the four decisions, his Honour found that he could not order that the applications be referred back for further consideration, as each of the applications for review had been lodged one day outside the 28 day time limit for applications to the Court, and recent amendments to the Migration Act had taken away the Court's power to extend time for the lodgement of applications relating to migration decisions. The applications were therefore dismissed.

Despite the ultimate result, important principles of law were established by this case. The case is currently the subject of an appeal to the Full Court of the Federal Court on both the substantive issues relating the Refugee Convention, and the procedural issue relating to the lodgement of the applications with the Court.

**Wu Yu Fang v Minister for Immigration and Ethnic Affairs and Commonwealth of Australia - Access to lawyers by persons in detention**

**Description of the case**

On 13 April 1995 the Commission sought and obtained leave to intervene in proceedings before the Federal Court of Australia in Perth. The proceedings had been commenced by 119 Sino-Vietnamese residents of China who had arrived in Darwin in November 1994 on a boat code named Albatross. Each had been taken into detention in Port Hedland, and in material filed with the Court, each claimed that they had requested access to lawyers in order to apply for refugee status, but this request had been refused until legislation had been passed in January 1995 which prevented them from applying for refugee status. These allegations had been denied by the respondents, although it was conceded that persons in detention are not advised of their right to request a lawyer.

**Human rights issues involved in the Court proceedings**

The human rights issue upon which the Commission sought to intervene related to the issue of incommunicado detention, which generally means the imprisonment of a person without access to the outside world, including denial of access to a lawyer.

In its written submission, the Commission made the following points. Firstly, international instruments are an important influence upon Australian domestic law and must be taken into account in interpreting our law. Secondly, the relevant
international obligation in this case is Article 10 of the International Covenant on Civil and Political Rights (ICCPR), which has been interpreted so as to prohibit incommunicado detention, even for very short periods. Thirdly, the ICCPR imports other international obligations including those set out in the Standard Minimum Rules for the Treatment of Prisoners and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, which make it clear that a person in detention must be advised of his or her right to request access to a legal adviser and if such a request is made, access must be provided without delay. Finally, it was submitted that s.256 of the Migration Act 1958, which requires that "reasonable facilities" for obtaining legal advice be provided to persons in detention, must be read subject to these international obligations.

Outcome

In a decision dated 27 July 1995, O'Loughlin J dismissed the application. In relation to the submission by the Commission, his Honour held that whilst it may seem incongruous that non-English speaking arrivals are held in isolation and not informed that they have rights to apply for a refugee status, there is no statutory obligation on officers of the Department of Immigration to inform applicants of their rights to legal advice. The matter is currently under appeal to the Full Federal Court.

Minister of State for Immigration and Ethnic Affairs v Teoh - Deportation of the father of seven children

Description of the case

The Commission was granted leave to intervene in this matter, which was before the High Court of Australia on 24-25 October 1994. The case concerned the extent (if any) to which an administrative decision maker is obliged to take into account international human rights instruments for a final decision.

In this particular case, the issue was whether the Minister for Immigration was obliged to consider the international Convention on the Rights of the Child (CROC) when considering the deportation of the father of seven children. The father was not an Australian citizen, but the children were and their welfare was going to be affected by the absence of their father.

The matter had previously been before the Full Court of the Federal Court, which had held that the principles contained in CROC must be taken into account by the decision maker. The Minister for Immigration appealed to the High Court.

Human rights matter involved in the court proceedings

There were three main arguments submitted by the Commission in this intervention. Firstly, that the ratification and declaration of an international instrument under the Human Rights and Equal Opportunity Act created an expectation that the principles of CROC would be considered by administrative decision makers. Secondly, that the
decision maker must give any person potentially affected the right to be heard on whether the decision should be made without adopting the principles of CROC. Thirdly, that the decision maker is bound to apply the principles of CROC in all actions concerning children, and to treat the best interests of the child as being "a primary consideration".

Outcome

The High Court handed down its decision in the matter on 7 April 1995, and dismissed the appeal (McHugh J dissenting) giving reasons which differed slightly from the reasons contained in the decision of the Full Court of the Federal Court.

The Commission's first two submissions were wholly supported and adopted by the High Court, although the Court refrained from addressing the third argument. The Court held that, while international instruments create a "legitimate expectation" that the principles of CROC (and other treaties) will be applied by administrative decision makers, those treaties do not automatically have the force of Australian law.

The majority decision has important ramifications in that the decision maker has to consider the relevant international convention or treaty (even though he or she does not have to comply with the terms of the convention) and then either make his or her decision in compliance with it, or give the person affected by the decision the opportunity to address him or her on its relevance to the proposed decision. Accordingly, the decision of the High Court constituted a major advance in the relevance and importance of internationally accepted human rights within Australia.

EDUCATION AND PROMOTION

The Commission's education and promotion function is coordinated by the Education and Promotion Unit which promotes the external corporate face of the Commission and assists portfolio units. Corporate activities range from coordinating events such as the 1994 Human Rights Medal and Awards presentation to providing journalism and media services, industry training, and library services. Portfolio specific projects are undertaken in conjunction with specialists within each portfolio area, and these are detailed in the respective chapters.
1994 Human Rights Medal and Awards Presentation

The Human Rights Medal and Awards are presented in recognition of personal contributions to the promotion of understanding, advancement and public discussion of human rights in Australia. In addition to the Human Rights Medal, there are 15 Awards covering four categories: Media, Literature and Other Writing, Film and Corporate. Entries for the Human Rights Medal and Awards are assessed by a panel of independent judges.

The 1994 Human Rights Awards presentation ceremony was attended by approximately 500 people at the ABC Centre in Sydney. The Attorney-General, the Hon. Michael Lavarch, presented the 1994 Human Rights Medal to Dr Roberta Sykes. Extensive media coverage ensured national awareness about the event. The Commission wishes to acknowledge the support of QANTAS and the ABC, who provided sponsorship support.

From left to right: Attorney-General Hon. Michael Lavarch; Dr Roberta Sykes; Elizabeth Hastings, Disability Discrimination Commissioner; Brian Burdekin, Human Rights Commissioner (1986-1994); Sir Ronald Wilson, President, Human Rights and Equal Opportunity Commission
Other awards include:

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<thead>
<tr>
<th>Category</th>
<th>Title</th>
<th>Winners</th>
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<tr>
<td>Songwriting</td>
<td>Passage</td>
<td>Jon-Clair Lee and Jeamin Lee</td>
</tr>
<tr>
<td>Fiction</td>
<td>Safe Houses</td>
<td>Rose Zwi</td>
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<tr>
<td>Non Fiction</td>
<td>Creating a Nation</td>
<td>Patricia Grimshaw, Marilyn Lake, Marian Quartly, and Ann McGrath</td>
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<td>Children's Literature</td>
<td>The Collectors</td>
<td>Robert Carter</td>
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<td>TV Drama</td>
<td>Heartland</td>
<td>ABC TV Drama- Penny Chapman, Bruce West</td>
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<tr>
<td>Radio Documentary</td>
<td>Deafness As Culture</td>
<td>Late Night Live, ABC Radio National</td>
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<td>Current Affairs/TV News</td>
<td>7.30 Report, ABC TV</td>
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<td>Major Metropolitan</td>
<td>The Killing Time</td>
<td>Rosemary West</td>
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<td>Newspapers</td>
<td>Dying In The Dust</td>
<td>Peter Ellem</td>
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<td>May Day Magazine</td>
<td>Mark Crossin, Publisher</td>
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<td>Corporate</td>
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<td>Collected Poems</td>
<td>Sydney Electricity</td>
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<td>Drama</td>
<td>Dead Heart</td>
<td>Judith Wright</td>
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<td>Feature Film</td>
<td>Only The Brave</td>
<td>Nicholas Parsons, Playwright</td>
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<td>Documentary (Film TV)</td>
<td>Exile and the Kingdom</td>
<td>Fiona Eagger, Ana Kokkinos</td>
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<td>Frank Rijavec</td>
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**Journalism and Media Liaison**

In recent years, presentation of issues of discrimination and human rights has increased enormously in the Australian media and the Commission has played some part in popularising discussion of these issues. Journalists regularly request background information, comments on current issues, explanations of policy and interviews. There
are approximately 100 such requests each week. As media interest in HREOC’s work continues to expand, journalists with knowledge and specialisation in the area produce more in-depth work.

The diverse and complex policy areas require a flexible and extended network of contacts with media outlets. The Media Liaison Officer is the first point of contact. Journalists may be referred to specific policy officers as appropriate. Some policy officers have fostered good relations with the media, which provide them with opportunities to suggest relevant topics for programs and articles, as well as enabling them to ensure that salient points on an issue are understood and covered.

Several dozen media releases during 1994-95 covered items such as report launches and events, and raised issues of concern. The resultant influx of inquiries is handled by the relevant portfolio area, as well as the Media Liaison Officer.

The area of hearings and decisions has also seen a rising media profile and received public interest. Landmark cases can be used to increase understanding of issues surrounding legislation. In response to the enormous media interest in some of these decisions (around 30 requests from television, radio and press in a recent case), formal summaries of more significant cases have been made available for journalists. This has also helped to maintain individual privacy and minimise possible exploitation of individuals.

Complex issues of ongoing and increasing interest continue to arise. The ramifications of the launch of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children From Their Families will be felt over the next year, involving long-term work with media outlets and further strengthening relationships with journalists.

**Joint Projects during 1994-95**

**Victorian Council for Civil Liberties (VCCL) Project**

In an endeavour to increase awareness and understanding of human rights and anti-discrimination issues amongst school students, the Commission undertook a joint project with the Victorian Council for Civil Liberties (VCCL). The first phase of the project was completed with a series of 14 discussion papers written by eminent people covering key topics from each of the Commission's portfolio areas and for use by years 11 and 12 teachers. A video and information kit were produced which targeted students in year 10. The VCCL supported these resources through providing school speakers, and offering professional development seminars for teachers in the area of teaching human rights.
The project was jointly launched by the Acting Human Rights Commissioner, Kevin O'Connor, and Alan Goldberg QC, President of the VCCL, at a high school in Springvale, Victoria. The launch was enthusiastically supported by the teachers and students at the school. This high school is considered to have the highest proportion of Vietnamese students in Victoria.

An implementation phase is presently being developed for the coming year.

**Marketing and Promotion**

The Marketing and Promotions position was established in 1994 on a cost recovery basis to market and promote the five training packages produced by the Commission with funding received from the Education and Training Foundation of New South Wales.

The packages are: *Eliminating Sexual Harassment From The Workplace; The Best Person For The Job; Managing Cultural Diversity; Diversity Makes Good Business Sense;* and the *Management of Personal Information*. During the year:

- 459 training packages were sold;
- 265 representatives from private and public sector organisations who had purchased the packages attended trainer familiarisation sessions;
- 200 private sector managers and supervisors attended sexual harassment training, for which a small fee was charged.

Corporate breakfasts were organised in Sydney, Melbourne and Perth, and were attended by 200 senior executives. The Sydney breakfast was co-sponsored by the Chamber of Manufacturers of NSW, the Melbourne breakfast by the Victorian Equal Opportunity Commission, and the Perth breakfast was hosted by the Privacy Commissioner.

HREOC training packages were featured in 10 business and management magazines and in the general media, at no cost to HREOC, during the year.

Ongoing marketing of the training packages, and development of other packages, is being worked on together with the relevant policy areas.

**Community Presentations**

Community presentations are delivered by Commissioners and their portfolio staff (detailed in the respective portfolio chapters), and by other staff. The Education and Promotion Unit delivered 25 presentations at the request of community organisations,
on a wide range of issues generally based on HREOC's role in addressing human rights and anti-discrimination issues. The organisations who requested presentations in 1994-95 included schools, unions, tertiary institutions, government and non-government organisations.

**HREOC Library Services**

The HREOC Library assists Commissioners and staff with information, reference and research services from within the collection and from other agencies. Services include online and CD-ROM database searches, displays, electronic and manual awareness, and interlibrary loans. To assist users in accessing the collection and services the Library has produced two handouts, *Guide to the Library* and *HREOC Library Database Resources*.

The Library Committee, chaired by Commissioner Hastings, supports the Library on policy and directional matters, including collection development and consideration of new electronic databases.

Research activities are reflected in increased requests for database searches and for a continuing heavy demand for interlibrary loans, with 1,007 items requested and borrowed from other libraries for FIREOC; 209 items were supplied by the HREOC Library to other libraries.

The Library holds a collection of resources in print and electronic formats, including legal and specialised subject areas relevant to the work of the Commission. The main focus of the collection is on human rights and discrimination matters. The collection also includes an archives section of publications of the Human Rights and Equal Opportunity Commission and the former Human Rights Commission.

The Library accommodated several New South Wales TAFE Library Practice Associate Diploma students on short-term and long-term work experience placements during the year.

The general public may use the Sydney Library by appointment between 10.00 am and 4.30 pm, Monday to Friday.
HUMAN RIGHTS
Mr Brian Burdekin's eight year term as Australia's first Human Rights Commissioner and Chief Executive Officer of the Commission was completed on 9 December 1994.

From 12 December 1994 to 30 June 1995, the Privacy Commissioner, Mr Kevin O'Connor, acted as Human Rights Commissioner and Chief Executive Officer while continuing to carry out his duties as Privacy Commissioner.

Following amendment to the Human Rights and Equal Opportunity Commission Act 1986 in June 1995, the Chief Executive functions are now vested in "the Commission" comprising the President and all six Commissioners.

On 9 August 1995, the Attorney-General announced the appointment of Mr Chris Sidoti to the position of Human Rights Commissioner. Mr Sidoti will commence his five year term on 14 August 1995.
Statement from the Human Rights Commissioner

The year 1994-95 was one of change in this portfolio. The founding Human Rights Commissioner, Brian Burdekin, completed eight years of service on 9 December 1994. I took over on an interim basis for the remainder of the reporting year.

I wish to acknowledge the work of Brian Burdekin, especially in the area of the promotion, internationally, of independent national human rights institutions and through his work in Australia on mental illness and homeless children.

A fundamental responsibility of the Human Rights and Equal Opportunity Commission is to encourage observance within Australia of international human rights instruments. The Human Rights Commissioner carries out this task in relation to many of these instruments.

The Mental Illness Inquiry was reconvened in December 1994 under the direction of Mr Burdekin to take evidence in Victoria in relation to a number of community concerns over changes in the policies and practices of the Victorian government as they affect the care, treatment and disposition of people with mental illness. A report on these proceedings is expected to be released in November 1995.

The difficult issue of giving effective expression to Australia's human rights obligations within the framework of its migration laws and policies was a key concern during the year. Amendment bills were introduced into Federal Parliament early in 1995 which sought to overturn the effect of a Federal Court ruling on the determination of refugee status. The Court had interpreted the relevant international convention as permitting refugee status to be conferred on people persecuted under fertility control policies in a foreign country.

There was considerable controversy over this measure. This Commission opposed the abrogation of a court decision in this way, suggesting that it would be preferable for the Government to put its concerns about the validity and implications of the ruling of the court to an appeal court. This controversy raised the problem of the balance of responsibility that should exist between the courts, the judicial arm of government, and the Executive and the Parliament, in relation to the interpretation and application of human rights instruments. Individuals who bring human rights claims in the Australian court system must have confidence that decisions unwelcome to government will not be immediately legislated away.

Another example of this attitude occurred in relation to the High Court's decision in the case of Teoh. In that case the High Court asserted the importance of administrative decision-makers in Commonwealth government giving consideration to international instruments bearing on the exercise of their discretion. The case involved an attempt to stop the deportation of a father of seven children following his conviction for a serious offence. The Convention on the Rights of the Child, which requires that consideration
be given in all administrative decision-making to the impact and effect of decisions on children, had not in the High Court's view, been adequately taken into account. The High Court acknowledged that it was permissible for government to limit the effect of its ruling by way of a statement from the executive or legislation. Within weeks of the decision the Government issued a statement which abrogated this decision in relation to all international instruments including the human rights instruments attached to the Commission's legislation. A bill in similar terms was under consideration as at June 1995. The Government, in introducing the bill, acknowledged the desirability of administrators being encouraged to take account of human rights instruments, but on a voluntary rather than legally-binding basis.

Some of the Australian States have already moved to outlaw discrimination on the grounds of age and sexual preference. This is consistent with their international obligations. Federal law does not at this stage provide a similar degree of protection. The Commission has continued to be involved in discussions with the Commonwealth government on the need for age discrimination to be addressed by legislation. Federal law utilises age criteria in a wide array of settings. While the issue is a complex one, the elimination of unnecessary age criteria from Federal law and administration is now urgent.

In the area of sexual preference, the Commission welcomed the response of the Government and the Parliament to the United Nations Human Rights Committee's declaration that the Tasmanian laws proscribing adult consensual homosexual activity violated the International Covenant on Civil and Political Rights. Human rights should be held equally by all Australians without regard to internal jurisdictional boundaries. The national parliament gave effect to this principle in an important way in the Human Rights (Sexual Conduct) Act 1994.

In his final five months as Commissioner, Brian Burdekin led a Commission team which pursued, in co-operation with the Department of Foreign Affairs, initiatives for the promotion of the observance of international human rights law and the establishment of human rights institutions in other countries. In the Asia-Pacific region, the Indian government sponsored an official visit by Mr Burdekin and officers of this Commission. During the visit, briefings were provided in relation to the operation of the Australian Commission, in particular the complaint-handling mechanisms and the work of the Commission by way of national inquiries. Other visits with the same broad objective were undertaken to Papua New Guinea, Indonesia and the Philippines.
The promotion of independent national institutions is a key strategy of the United Nations and falls under the direct responsibility of the UN Commission on Human Rights and its High Commissioner for Human Rights, Ambassador Jose Ayala-Lasso. It is also a key strategy of the Australian Government reflected in the National Action Plan on Human Rights. While the principal focus of Australian activity has been in the Asia-Pacific region, Mr Burdekin also undertook consultations with the Governments of Latvia and Russia.

FUNCTIONS UNDER THE HUMAN RIGHTS AND EQUAL OPPORTUNITY COMMISSION ACT

The Human Rights and Equal Opportunity Commission Act 1986 (HREOC Act) is the major vehicle by which Australia implements its obligations under the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Rights of the Child (CROC), the Declaration of the Rights of the Child, the Declaration on the Rights of Mentally Retarded Persons, the Declaration on the Rights of Disabled Persons, the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief and the International Labour Organisation Discrimination (Employment and Occupation) Convention (ILO 111).

These international instruments, which are scheduled to the HREOC Act, provide the framework for the performance of functions conferred on the Commission and Human Rights Commissioner under sections 11, 14, 20, 27, 28, 29, 31, 32 of the Act. These functions fall into eight broad areas of activity:

- conducting public inquiries;
- promoting international human rights instruments;
- promoting human rights within Australia;
- promoting non-discrimination;
- intervening in court proceedings;
- handling complaints of violations of human rights against the Commonwealth;
- handling complaints of discrimination in employment against the Commonwealth, State, Territory and local governments and the private sector; and
The major activities of the Commission undertaken by the Human Rights Commissioner in the performance of these functions during the 1994-95 reporting period are outlined under these eight general categories.

**PUBLIC INQUIRIES**

In accordance with s.11 of the HREOC Act the Commission may undertake an examination or an inquiry in performance of its functions relating to the protection of fundamental human rights and freedoms. The performance of these functions by the Human Rights Commissioner resulted in the 1989 report *Our Homeless Children* and in the 1993 report *Human Rights of People with Mental Illness*. In the 1994-95 period, the Commissioner pursued the promotion of the findings and recommendations of the Inquiries as an area of primary activity.

**Mental Illness Inquiry**

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

Since its release, the findings and recommendations of the Report have received extensive community support, with the reaction from the mental health sector and the general public being extremely supportive. They were also well reported in the media. This increase in public awareness about mental illness has been paralleled at the practical level by significant responses to the Report from both government agencies and non-government organisations.

Initiatives from Commonwealth, State, Territory and local governments in response to the Report have included additional expenditure of almost $500 million. Funds allocated under these initiatives continue to be directed towards public awareness campaigns, service delivery, research, the development of standards and legislative change.

During this reporting period, New South Wales, South Australia and the Australian Capital Territory have all amended their Mental Health Acts to bring their legislation closer in line with Australia's obligations under UN Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care. Mental health legislation has received attention or is under review in all other States and Territories. At the national level a model uniform law has been developed by the Australian Health Ministers Advisory Council National Working Group on Mental Health Policy.
Reconvened Mental Illness Inquiry

In December 1994 the Inquiry, chaired by Brian Burdekin, with the assistance of hearing commissioners Dame Margaret Guilfoyle DBE and Mr David Hall, reconvened for two days of public hearings in Victoria. In addition to the public hearings the Inquiry called for written submissions.

The original terms of the Inquiry were broad and covered all aspects of the human rights of people affected by mental illness, including human rights in relation to institutional and non-institutional care and treatment.

The reconvened hearings focused on the provision of services with particular attention to:

- the circumstances in which medication is provided in private hotels, hostels, boarding houses or other non-specialist facilities where individuals affected by mental illness reside;
- the adequacy of services for especially vulnerable or disadvantaged groups (including individuals who are homeless, those with dual or multiple disabilities, the elderly, the young and those from non-English speaking backgrounds);
- the participation of non-government agencies in policy formulation and program planning for people affected by mental illness; and

whether there had been any intimidation, coercion, detriment or disadvantage suffered by any individuals or organisations advocating on behalf of the mentally ill, or criticising the adequacy of existing programs or services.

It is anticipated that the report of the reconvened Inquiry will be completed early in the 1995-96 financial year.

In addition to the reconvened Victorian hearings, the Commission in a variety of different forums actively promoted implementation of the Inquiry's recommendations.
PROMOTION OF INTERNATIONAL HUMAN RIGHTS INSTRUMENTS

Over several years the Commission has assisted other governments in whatever way it can to promote the international observance of human rights. The Human Rights Commissioner has played a pivotal role in offering advice and expanding human rights issues on to international political agendas as well as encouraging the establishment of Human Rights Commissions at national and regional levels, particularly in the Asia-Pacific region. The Commission also contributes to Australia's reports to human rights treaty committees.

National Institutions

The United Nations has recognised that a central ingredient in securing the objective of universal observance of human rights is the existence of effective, independent national human rights institutions. The Commission is widely seen as a model human rights institution and the Australian Government receives regular requests for assistance in the development of national human rights institutions based on the experience of the Commission.

As outlined in the Commission's 1993-94 Annual Report, efforts to encourage the establishment of national human rights institutions are producing tangible results, particularly in the Asia/Pacific region. In addition to the recently established Indian and Indonesian Commissions, Pakistan, Thailand, Sri Lanka and Papua New Guinea are currently considering establishing national human rights machinery.

Third Asia-Pacific Workshop on Human Rights


A major focus of the workshop was the establishment of national human rights institutions in Asia-Pacific States and the formation of a regional human rights system. The Asia-Pacific region remains the only region which does not presently enjoy the benefits of a regional human rights system. At the workshop, proposals were advanced for the formation of a network of national institutions throughout the region and the establishment of a regional instrument and related mechanisms.
**Latvia**

From 24 July to 8 August 1994, at the request of the United Nations and the Latvian Government, the Human Rights Commissioner led an international mission which undertook a detailed assessment of the need for mechanisms for the protection and promotion of human rights in Latvia.

The mission was on behalf of the United Nations Development Program. It included representatives from the European Union's Office for Democratic Institutions and Human Rights and the Council of Europe.

After consideration of a comprehensive report prepared by the mission for the Government of Latvia, the Prime Minister of Latvia announced that the Government would establish an independent national human rights institution, modeled closely on HREOC and develop a National Action Plan on Human Rights, which was an Australian initiative at the Vienna World Conference on Human Rights.

**Papua New Guinea**

From 6 to 7 October 1994, at the request of the United Nations and the Papua New Guinea (PNG) Government, the Commission participated in a seminar on the establishment of a national human rights institution for PNG. The Human Rights Commissioner was asked to serve as an international expert speaker and commentator. The PNG government was represented by the Minister for Justice, the Chief Justice, the Chief Ombudsman and various government officials.

As a result of this seminar and subsequent discussions, the PNG government has decided to establish a national human rights commission.

**Indonesia**

From 24 to 26 October 1994, at the request of the United Nations and the Indonesian Government, the Commission participated in the United Nations/Indonesian Second National Workshop on Human Rights. As with the PNG seminar, the Human Rights Commissioner was asked to serve as an international expert speaker and commentator.

One important outcome of the workshop was the signing of a memorandum on technical co-operation and assistance between Indonesia and the United Nations Centre for Human Rights.
India

From 8 to 9 November 1994, the Commissioner participated in a joint seminar with the Indian National Human Rights Commission (NHRC).

The Indian delegation was led by Mr Justice Ranganath Misra, Chairperson of the NHRC and former Chief Justice of the Indian Supreme Court, and included NHRC members and staff. Representatives of the Indian Government, including the Minister of State and External Affairs, also participated in the seminar. The two Commissions identified the distribution of human rights literature, staff exchanges and the development of regional human rights mechanisms as areas of future co-operation.

Russia

In December 1994, the Human Rights Commissioner, at the request of the Russian Human Rights Commissioner, Mr Sergey Kovalyov, and the Russian Federation, attended a meeting in Moscow concerning the establishment and development of human rights machinery.

A Memorandum of Understanding was signed by the two Human Rights Commissioners for the provision of technical assistance, information and staff expertise.

Philippines Delegation

In February 1995 the Commission hosted a delegation from the Philippines Commission on Human Rights (CHR) and provided a comprehensive and interactive training program on human rights and anti-discrimination legislation. The program was devised to further co-operation and communication among human rights institutions, particularly in the Asia-Pacific region.

The training program's primary aim was to equip the CHR delegation with practical and theoretical knowledge of HREOC's activities and experiences in the field of human rights and anti-discrimination legislation and its possible applicability to the Philippines. The two week intensive program included sessions on

- the international human rights framework and its relationship to domestic issues;
- domestic legislative frameworks and a review of the effectiveness of those structures;
- policy programs and functions in the areas of human rights, sex discrimination, racial discrimination, disability discrimination, privacy and indigenous rights;
m the conciliation functions of HREOC including investigation, mediation and complaint management and systems;

m the legal functions of HREOC including hearings, determinations and interventions;

m community education and promotion functions, including the role of the media in human rights promotion and the development of specialist training modules;

- corporate and institutional planning, program evaluation, access and equity strategies and information technology systems;

- the relationship between Federal/State and Territory anti-discrimination agencies; and

- the development of a National Action Plan on human rights.

The Philippines delegation also provided information on its Commission, highlighting and analysing differences in structure, programs and methods of operation.

In addition to these specific activities, the delegates from CHR achieved a broader understanding of Australia's institutional and societal human rights framework through meetings with other federal agencies, such as the human rights divisions of the departments of the Attorney-General and Foreign Affairs and Trade, and State agencies and non-government organisations, such as the NSW Anti-Discrimination Board, the National Children's and Youth Law Centre and the Law Council of Australia.

**Third International Workshop of National Institutions for the Protection and Promotion of Human Rights**

From 18-21 April 1995, the Commission was represented by the Disability Discrimination Commissioner, Ms Elizabeth Hastings and the manager of the Human Rights Policy Unit, Mr Kieren Fitzpatrick, at the Third International Workshop of National Institutions for the Protection and Promotion of Human Rights held in Manila.

The Commission presented three major items at the meeting: Regional Arrangements in the Asia-Pacific; a Protocol concerning the Sexual Exploitation of Children; and a Program of Action on Disability. The final outcomes of the workshop, in the "Manila Declaration and Recommendations", reflected the Commission's recommendations on these items.

The Commission also met separately with delegations from India, the Philippines, New Zealand and Indonesia. Following discussions at the Workshop the Commission is participating in the organisation of an Asia-Pacific regional national institutions forum.
Reporting by Australia under Human Rights Treaties

The Commission contributed to Australia's reports to international human rights monitoring bodies under human rights treaties. These included the:

- a UN Human Rights Committee established under the *International Covenant on Civil and Political Rights*;
- UN Committee on the Rights of the Child established under the *Convention on the Rights of the Child*; and
- International Labour Organisation Committee of Experts on ILO 111 and ILO 105.

World Conference on Religion and Peace

The Sixth World Assembly of the World Conference on Religion and Peace took place in Riva del Garda, Italy, from 3-10 November 1994. The President of the Commission, Sir Ronald Wilson, presented a paper on "Oppression and Discrimination: Affirming Rights and Responsibilities".

Sir Ronald's presentation noted that religious discrimination and intolerance are frequently caused or compounded by a variety of economic, social, political and cultural factors, as well as dogmatic intransigence. Further, oppression and discrimination may sometimes be a "mask" for prejudices which intrinsically have nothing to do with religion. Instead, historical, socio-cultural or economic factors may have provoked dislike and even hostility. The President put forward a number of practical strategies to ensure that States take effective measures to eliminate religious oppression and discrimination.

Optional Protocol on Child Sexual Exploitation

The Commission has specific functions under section 11 of the HREOC Act which relate to the examination of international instruments (such as Covenants and Declarations).

As reported in the 1993-94 Annual Report, an initiative of the Commission concerns the preparation of a Optional Protocol to the *Convention on the Rights of the Child* specifically strengthening measures directed at the protection of children from prostitution, trafficking and other forms of abuse and sexual exploitation. This initiative was endorsed by meetings of National Human Rights Institutions and the United Nations Commission on Human Rights.
The fiftieth session of the United Nations Commission on Human Rights in February/March 1994 agreed to form a working party to develop the Optional Protocol. The working party met in November 1994 and, with substantial agreement among the participants, produced guidelines for the preparation of the Protocol.

To assist in international discussions and negotiations on this issue, the Commission produced an information paper outlining a variety of technical issues that will need to be considered in the development of the protocol.

**PROMOTION OF THE OBSERVANCE AND PROTECTION OF HUMAN RIGHTS WITHIN AUSTRALIA**

The Commission and Human Rights Commissioner have a mandate to promote adherence to the principles contained in the international human rights instruments to which Australia is a party and which are scheduled to or declared under the HREOC Act.

In performance of the policy advising and intervention functions of the Commission under sections 11, 14, 20, and 29 of the HREOC Act, the Human Rights Commissioner may advise government on matters relating to human rights, undertake research and promotional activities, examine enactments for consistency with human rights, intervene with leave in proceedings in courts and publish guidelines for the avoidance of acts or practices inconsistent or contrary to human rights. In carrying out these functions, the Commission consults broadly with national governmental and non-governmental organisations.

**Sexuality - Federal Parliament Legislates Following United Nations Decision on Tasmanian Criminal Code**

During the year, the Human Rights Commissioner reported to the Attorney-General on certain inappropriate provisions of the *Tasmanian Criminal Code* which criminalise some forms of sexual activity. This report was subsequently tabled in Parliament on 23 August 1994. The Tasmanian provisions prohibited certain forms of sexual activity between males and females and all forms of sexual intercourse between males.

In examining the Tasmanian provisions, the Human Rights Commissioner concluded that they were inconsistent with the human rights which Australia has undertaken to protect by its ratification of the *International Covenant on Civil and Political Rights (ICCPR)* and particularly:

- the right to privacy (Article 17);
the right to non-discrimination in the exercise of the right to privacy (Article 2.1); and

n the right to equality before the law and equal protection of the law (Article 26).

The Human Rights Commissioner recommended in the Report to the Attorney-General that these provisions of the Tasmanian Criminal Code be immediately repealed by the Tasmanian Government. The Commissioner further recommended to the Attorney that, if the Tasmanian Government would not take this action, then the relevant provisions of the Tasmanian legislation should be overridden and invalidated by appropriate Federal legislation.

While the Human Rights Commissioner was undertaking this inquiry the United Nations Human Rights Committee was considering a communication under the First Optional Protocol to the ICCPR. Under the Protocol, individuals may complain of violations to the United Nations Human Rights Committee which, through its findings, may call nations to account.

A complaint was lodged on 25 December 1991 by Mr Nicholas Toonen in relation to s.122(a) and (c) and s.123 of Tasmanian Criminal Code. It resulted in a decision by the Human Rights Committee that the provisions of the Code violated Article 17 of the ICCPR.

The Federal Parliament subsequently passed legislation, the Human Rights (Sexual Conduct) Act 1994, which provides that sexual conduct between consenting adults shall not be subject to any arbitrary interference with privacy. The offending provisions of the Tasmanian Criminal Code would be open to challenge as inconsistent with and contrary to federal human rights law and therefore inoperative under s.109 of the Australian Constitution.

**Immigration and Refugees**

The Commission is concerned to ensure that Australia maintains a strong commitment to the observance of human rights in the administration of its immigration program and to the protection of the human rights of refugees, including under the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol.

There are many aspects of Australia's migration policies that demonstrate this commitment, such as the flexibility of the offshore humanitarian program to respond to exigencies of the time and Australia's continued commitment to the "women at risk" program. However, the Commission has continued to express concern about certain issues within the immigration portfolio.
Over the last year the particular focus of these concerns has been legislative proposals concerning Australia's treatment of asylum seekers/boarder refugee claimants.

**Migration Legislation Amendment Bill No. 2 1995**

The Migration Legislation Amendment Bill No. 2 1995 designated China as a "safe third country" for the purpose of all Vietnamese nationals who had been settled there.

The Commission provided comments on the Bill to the effect that the ability of asylum seekers to seek refugee status after they arrive in Australia, and the ability of individuals to have their individual case fully considered, is fundamental to our obligations under the Refugee Convention.

**Migration Legislation Amendment Bills No. 3 and No. 4 1995**

The President was invited to make a submission to the Senate Legal and Constitutional Legislation Committee concerning the Migration Legislation Amendment No.3 Bill 1995 in February 1995.

In general terms, the Bill sought to overrule a decision of Justice Sackville in the Federal Court that government fertility control polices might identify a "particular social group" within the meaning of the Convention Relating to the Status of Refugees. The Commission raised concerns over the proposed amendments with both the Federal Government and the Parliament.

As the Commonwealth was appealing the decision to the Full Court of the Federal Court, the Commission argued that the government should not proceed with the Bill until the outcome of the appeal was known.

The Commission was also concerned that the Bill did not appear to reflect stated government policy objectives, in so far as it appeared to deny the guarantee of protection for refugees with a well founded fear of persecution by forcible sterilisation or abortion.

The No.3 Bill was withdrawn but similar human rights concerns were raised by the Migration Legislation Amendment No.4 Bill 1995. Before the Bill was read a second time, the Full Federal Court decided the appeal from Justice Sackville and overturned his decision. The Migration Legislation Amendment No.4 Bill 1995 is currently in abeyance. However, it is understood that an application for leave to appeal the decision of the Full Federal Court has been lodged with the High Court.
**Detention of Refugees**

At the launch of the New South Wales Refugee Week Breakfast, the Acting Human Rights Commissioner stated that the 50th Anniversary of the United Nations was an appropriate year for Australia to review the practice of lengthy detention of applicants for refugee status.

While the government is endeavouring to speed up processing claims for asylum, the Commission has received complaints and expressions of concern that this has not alleviated the harsh conditions faced by those detained while awaiting consideration of their claims. It is acknowledged that the government has a legitimate interest in knowing where these people are before their cases have been considered. However, the Commission strongly urges that non-custodial approaches be developed which are more appropriate and proportionate and less restrictive of rights.

The President and the Human Rights Commissioner also participated in public meetings and other forums including Refugee Week and the Refugee Summit. The Commission has maintained its observer status on the National Immigration Forum.

**Human Rights and Administrative Decision-making**

The Commission continues to be encouraged by a number of recent decisions of the High Court that extend the framework of human rights protection in Australia.

In April 1995 the High Court handed down its decision in *Minister of State for Immigration and Ethnic Affairs v Teoh.*

The case concerned the application in government decision-making of the *Convention on the Rights of the Child* (CROC). The Commission had been granted leave to intervene (for full details of the case, refer to the Legal Interventions section of the chapter *The Year in Review*).

The High Court stated that Australia's human rights treaty obligations create "legitimate expectations" that decision-makers, in exercising their duties, will have regard to the terms of these treaties. The Court stated that decision-makers are not bound to comply with treaties not incorporated into domestic law but, where they determine that they will not abide by these international obligations, they should provide those parties affected with an opportunity to argue their case. Although the case involved CROC, the decision is applicable to all of Australia's international treaty obligations.

In response to the High Court's *Teoh* decision, the Federal Government introduced the *Administrative Decisions (Effect of International Treaties) Bill 1995* into the Parliament to overturn the "legitimate expectations" doctrine created by the decision.
The President and the Commission expressed concern that the legislation could undermine the effectiveness of the Human Rights and Equal Opportunity Commission Act in providing remedies for violations of human rights in accordance with the original intention of Parliament. Annexure of international treaties to this Act or declaration under the Act involves a process of Parliamentary scrutiny and is a clear statement by the legislature that Australia should abide by its international obligations under these treaties. Accordingly, the Commission has recommended that if the legislation is to proceed, it should exclude from its operation those instruments annexed to the HREOC Act. The Bill has not yet been debated in Parliament.

The Federal Government has announced that the Attorney-General’s Department in consultation with the Commission and other government departments will undertake a review to identify key areas of Commonwealth administrative decision-making where Australia’s obligations under international agreements may be relevant.

**Convention on the Rights of the Child**

In addition to the Commission's intervention in the Teoh case, the Commission participated in a number of activities relating to Australia's obligations under the Convention on the Rights of the Child (CROC). These included:

- participating in a variety of public forums promoting the rights of the child including the "Children's First" campaign;
- providing evidence to and appearing before the House of Representatives Standing Committee on Community Affairs Inquiry into Aspects of Youth Homelessness;
- providing comments on the Australian Children's Charter, produced by the Australian Youth Foundation and the National Children's and Youth Law Centre; and
- participating in the Australian Health Ministers' Advisory Committee Working Party on the Development of a National Child and Youth Health Policy.

**Bill of Rights**

From 16-18 February 1995, the Australian Rights Congress examined the important issue of whether Australia should have a Bill of Rights. The Congress was organised under the auspices of the Commission, the Law Council of Australia, the Australian
Youth Foundation, the Australian Law Reform Commission, the Law Foundation of New South Wales and the Centre for International and Public Law at the Australian National University.

Many eminent speakers attended and spoke at the Congress including representatives from all major Australian political parties, the legal profession, community advocates and international experts.

**Pro-bono Scheme in Relation to Mental Illness**

The Commission, in association with the Law Council of Australia and the Australian Bar Association, continued to administer the national pro-bono scheme providing legal representation and advice to individuals affected by mental illness. The Commission sincerely thanks those lawyers who have freely given their time and expertise in support of the scheme.

**PROMOTION OF NON-DISCRIMINATION**

The functions of the Commission and the Commissioner in the promotion of non-discrimination are in pursuance of Australia's obligations under the ICCPR and ILO 111. These functions arise under sections 11, 20, 31 and 32 of the HREOC Act, in addition to the particular coverage extended by the *Racial Discrimination Act 1975*, the *Sex Discrimination Act 1984*, and the *Disability Discrimination Act 1992*. Non-discrimination is promoted in Articles 2.1 and 26 of the *International Covenant on Civil and Political Rights* and under the *International Labour Organisation Discrimination (Employment and Occupation) Convention 1958* (ILO 111). Under s.31(b) of the HREOC Act the Commission has functions to inquire into any act or practice that may constitute discrimination in employment and occupation in the Commonwealth, State, Territory or private sectors.

**Extending Federal Human Rights Coverage - Age Discrimination**

The Commission has been active on policy issues concerning the elimination of discrimination on the ground of age within Australia.

The introduction of national comprehensive age anti-discrimination legislation has been discussed at the Commonwealth level since 1989. The Commission has been
involved in government processes concerning this issue, including most recently a large inter-departmental Age Discrimination Taskforce chaired by the Attorney-General's Department.

Federal law commonly utilises age criteria as a proxy for other factors, many of which are arbitrary or are based on stereotypical assumptions about people in particular age groups and which could be discriminatory. The prevalence of the use of distinctions on the basis of age in Commonwealth laws makes the need for further legislative action in this area particularly pressing.

The Commission hopes that the federal government will decide on a range of age anti-discrimination measures, including national age anti-discrimination legislation, in the 1995-96 financial year.

**Advocating for the Abolition of Compulsory Retirement in the Australian Public Service (APS)**

Under the *Human Right and Equal Opportunity Commission Regulations* which commenced in January 1990, the Commission's jurisdiction in relation to discrimination in employment and occupation specifically includes discrimination on the basis of age.

To promote equality of opportunity and treatment in employment and occupation, the Commission strongly supports removal of the discriminatory provisions that require individuals to retire from the work force at a specific age. These requirements operate to exclude from consideration the ability of an individual to satisfactorily perform the duties of employment. Accordingly, compulsory retirement constitutes discrimination within the meaning of section 3 of the Act.

As part of its activities as a member of the Age Discrimination Task Force, the Commission participated in discussions with major Commonwealth departments concerning the abolition of compulsory retirement at age 65 in the Australian Public Service.

Issues discussed included employment options for APS workers over 65, workers compensation, service-wide performance appraisal schemes, retirement, safeguards to ensure non-discrimination, general working arrangements and methodologies for assessing the inherent requirements of the job. The Commission anticipates that the federal government will decide on this issue in the 1995-96 financial year.
National Advisory Committee on Discrimination in Employment and Occupation

The National Advisory Committee was established by the Attorney-General under section 17 of the HREOC Act to assist the Commission in promoting equal opportunity in employment and to recommend action to be taken by Australia to ensure compliance with the provisions of the International Labour Organisation Discrimination (Employment and Occupation) Convention 1958 (ILO 111). Under Article 2 of the Convention, Member States undertake to "declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating discrimination in respect thereof".

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

The Commission acts as the secretariat to the Committee. During the reporting period, working groups of the Committee met to discuss and develop a national policy on discrimination in employment and occupation and disability employment standards under the Disability Discrimination Act.

The Commission also made a submission to the Australian Industrial Relations Commission's Family Leave test case hearing (further detailed in the Sex Discrimination chapter) and developed a new promotional brochure on the Commission's responsibilities and powers regarding ILO 111.

COMPLAINT HANDLING

Complaints of violations of human rights or discrimination relating to employment or occupation may be made to the Commission. The Commission attempts to resolve the matter by conciliation. It may make recommendations for preventing a repetition of the act or practice, as well as recommend payment of compensation or any other action to remedy or reduce loss or damage suffered. The Commission does not have the power to enforce its recommendations. It is not unlawful to breach the human rights and principles of non-discrimination protected under the HREOC Act.

Where conciliation is unsuccessful or is deemed inappropriate, and the Commission is of the opinion that the complaint constitutes a breach of human rights or
discrimination, the Commission may report on the matter to the Federal Attorney-General, who must table the report in parliament. The report would normally contain the Commission's findings and recommendations.

In accordance with s.27 and s.33 of the HREOC Act, before such a report is furnished to the Minister, the Commission must give a reasonable opportunity to respondents or their representatives to make a written or oral submission, or both, to the Commission in relation to the particular act or practice.

Complaints Investigation and Resolution
Human Rights and Equal Opportunity Commission Act

Table 9: Complaints lodged under the HREOCA 1 July to 30 June 1995

<table>
<thead>
<tr>
<th>Category of complainant</th>
<th>Relevant International Instrument</th>
<th>Central</th>
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<td><strong>Total</strong></td>
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<td><strong>262</strong></td>
<td><strong>65</strong></td>
<td><strong>32</strong></td>
<td><strong>5</strong></td>
<td><strong>4</strong></td>
<td><strong>368</strong></td>
</tr>
</tbody>
</table>

| Area of complaint       | Employment                       | 85      | 17  | 11 | 5   | 4   | 122   |
|                        | Immigration                      | 11      | 1   |    |     |     | 12    |
|                        | Access to goods and services     | 45      | 7   |    |     |     | 52    |
|                        | Education                        | 3       | 3   |    |     |     | 6     |
|                        | Civil rights in general          | 17      | 10  |    |     |     | 27    |
|                        | Other                            | 104     | 48  |    |     |     | 152   |
| **Total**              |                                  | **265** | **65** | **32** | **5** | **4** | **371** |
### Table 10: Grounds of complaints under ILO 111: July 1994 to June 1995

<table>
<thead>
<tr>
<th>Category</th>
<th>Central</th>
<th>QLD</th>
<th>NT</th>
<th>TAS</th>
<th>ACT</th>
<th>Total</th>
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<td></td>
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<td>Total</td>
<td><strong>99</strong></td>
<td><strong>17</strong></td>
<td><strong>6</strong></td>
<td><strong>5</strong></td>
<td><strong>4</strong></td>
<td><strong>131</strong></td>
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Table 11: Outcome of complaints closed under the HREOCA: 1 July 1994 to 30 June 1995

<table>
<thead>
<tr>
<th></th>
<th>Central</th>
<th>QLD</th>
<th>NT</th>
<th>TAS</th>
<th>ACT</th>
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<tr>
<td>Declined</td>
<td>260</td>
<td>48</td>
<td>15</td>
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<tr>
<td>Withdrawn</td>
<td>33</td>
<td>1</td>
<td>2</td>
<td>1</td>
<td>8</td>
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<td>Conciliated</td>
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<td>3</td>
<td>4</td>
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<td>Reported to the</td>
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<td></td>
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<td>0</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>298</td>
<td>52</td>
<td>21</td>
<td>2</td>
<td>9</td>
<td>382</td>
</tr>
</tbody>
</table>

**Case Studies**

**Age**

The complainant, a casual supermarket worker, alleged that her hours were reduced when management decided to employ a junior casual on lower pay to undertake similar work. While denying that casual work had been re-allocated on the basis of age, the employer agreed in conciliation to ensure that work would be allocated in a non-discriminatory way.

**Age**

The complainant applied for a ten-day seasonal job which he had successfully done, and enjoyed, the year previously. The local manager was embarrassed to advise the man that Head Office had stated that the complainant was not eligible because he was over the age of 65. When notified of the complaint, the organisation reviewed its guidelines and decided that it was not appropriate for casual staff to be denied employment on the basis of age and that applications should be considered on merit. The organisation stated that the local manager would be happy to assess the complainant's ability to perform the duties, should he wish to re-apply for the job that year.

**Human Rights and Race**

The complainant alleged discrimination on the basis of his race, ethnic origin, religion, sexual preference and political opinion. The complaints were investigated under both the Human Rights and Equal Opportunity Commission Act 1986 and the Racial Discrimination Act 1975. The complainant alleged that he had been denied promotion, subjected to derogatory comments and directed to perform other duties. The latter complaint was set down for public hearing, at which point the employer agreed to participate in a conciliation conference. The employer, while denying any unlawful conduct, agreed to pay a substantial amount to the complainant, who himself agreed not to make any public comment or take any further action.
Religion

The complainant alleged that he had been denied promotional opportunities and had been harassed by management and co-workers because of his religion. Whilst the employer denied the allegations of discrimination, the equal employment opportunity policy was reviewed to ensure that discriminatory practices did not arise. Subsequently, the complainant was offered and accepted a voluntary redundancy package.

EDUCATION AND PROMOTION

The Commissioner has the functions of promoting understanding and acceptance of, and observing provisions of, the Act and undertaking research and educational programs to promote the provisions of the Act.

Principle Papers Delivered by the President and the Human Rights Commissioner

July 1994

4th Opening address to the Australian Behaviour Modification Association 17th Annual Conference "Celebrating 20 Years of Progress", Perth.

16th Keynote address to conference, "Australia and Human Rights: Where to From Here?" The Bill of Rights Debate: Comparative Perspectives, Canberra.

September 1994

20th Keynote address to the Aged Care Australia 7th National Conference "Policy to Practice": The Rights of the Mentally Ill Revisited, Adelaide.

October 1994

7th Address to the Uniting Church of Australia Youth Ministry 1st Annual Dinner Human Rights, Social Justice and Christian Principles, Melbourne.

13th Schonell Memorial Lecture at the University of Queensland Human Rights and People with Disabilities, Brisbane.

20th Address to the Step Out of the Shadows Consumer Network Seminar "Twelve months after Burdekin: The Scorecard" Was it all Worthwhile?, Brisbane.

18th Address to the plenary session of the 6th Annual Family Law Conference The Renewed Role of Superior Courts in the Protection of Children, Adelaide.
December 1994

4th Address to the World Assembly of Disabled People’s International Human Rights for People with a Disability in Australia, Sydney.

February 1995


May 1995


Other Activities

A pamphlet titled Discrimination in Employment and Occupation was produced and distributed to many organisations, as well as a strategy developed for its production in alternative formats and translations.
ABORIGINAL AND TORRES STRAIT ISLANDER SOCIAL JUSTICE
ABORIGINAL AND TORRES STRAIT ISLANDER
SOCIAL JUSTICE COMMISSIONER

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

Functions of the Commissioner are many, and include those provided under the Human Rights and Equal Opportunity Commission Act 1986, responsibilities flowing from the Native Title Act 1993, together with ongoing responsibilities from the Royal Commission Into Aboriginal Deaths in Custody (including development of educational programs as part of HREOC's implementation of recommendations 211 and 212 of the Royal Commission Into Aboriginal Deaths in Custody).

During 1994-95 the Office underwent significant growth, with the establishment of the Native Title Unit, the long awaited appointment of both a co-ordinator and policy officer for the National Legal Field Officer Training Program and tendering of the National Community Education Project to consultants in the western and eastern regions. While this expansion of skilled and enthusiastic staff in the Native Title Unit has been welcomed, it has done little to reduce the gap between the core statutory functions under the Human Rights and Equal Opportunity Commission Act 1986 and the Commissioner's practical capacity to fulfill them.

Statement from the Aboriginal and Torres Strait Islander Social Justice Commissioner

For some sections of the community it was as though, on 3 June 1992, Australia was invaded by the Aboriginal & Torres Strait Islander peoples. Our landing barge was the High Court's judgement in Mabo.

For the vast majority of Australians the recognition of our rights was welcome. It was a statement of the obvious. When laid bare of decayed, racist, social theory and the fictions of lawyers, the acknowledgment of our traditional ownership of land is unexceptional. That our rights were denied for so long is the remarkable thing.

The Prime Minister gave expression to this view when he stated in Redfern Park that:
"By doing away with the bizarre conceit that this continent had no owners prior to the settlement of Europeans, Mabo establishes a fundamental truth and lays the basis for justice."

The recognition of the traditional laws and customs of the Indigenous peoples of Australia as the source of contemporary rights to land is just. But, in itself, it does not bring justice.

For over two centuries, not only our land, but our peoples and cultures were clear felled. There is precious little native title land left. The aftermath of overtly racist social policies still shapes many aspects of our lives today. This is why the Prime Minister saw that Mabo "lays the basis for justice".

The Commonwealth Government strategy to advance justice has three stages. The passage of the *Native Title Act 1993* and the creation of an Indigenous Land Fund comprise the first two stages. They are directed specifically to land. Broader issues of the exercise and enjoyment of human rights are to be addressed by a series of social justice measures, generally referred to as the "social justice package".

The preparation of a submission to the Australian Parliament regarding this third-stage response to Mabo has been our major initiative this year. The objectives and outcomes of this submission are detailed below. At this point, it is useful to identify its positioning in relation to my general commission to monitor and advance Indigenous social justice.

In my First Report 1993 I endeavoured to establish a firm conceptual framework for my work. Social justice is anchored by rights. It is not a matter of mere government policy. In particular, it is not a matter of welfare policy. The fundamental rights which should secure social justice for Aboriginal and Torres Strait Island peoples are found in existing and emerging human rights instruments, particularly the draft Declaration on the Rights of Indigenous Peoples.

In my First Report 1993 I also made it clear that the fundamental test of how well these fundamental rights are exercised and enjoyed must be made on the ground, at the local level. Social justice is about day to day experience not words.

In my Second Report 1994 I examined questions of human rights and Indigenous health. The appalling mortality and morbidity figures for our people are, in my view, the most critical social justice issue in this country. The 20 year differential in white and black life expectancies in Australia is without parallel. It is an issue of life and death where the fault line is one of race. I will be watching the longer term outcomes of recent shifts in government policy in this area. One thing is already clear. The increase in funding for Indigenous health services is patently inadequate.

More money is rarely the complete answer to any question. In examining the health services and policies which impact on our peoples, I identified certain systemic
procedural problems. Procedural problems arise at the initial stages of health policy formulation and flow through right to the end point of service delivery. They raise general issues about the effective exercise of self-determination. More money pushed into the same system will not remedy these systemic problems.

In the development of my social justice submission to the Australian Parliament, I have built on the work of my first two reports. Social justice for Indigenous Australians is a matter of rights. Simply insisting on this will not make it true. The practical enjoyment of rights is dependent on the processes and systems which shape the interaction between people, communities and governments.

My submission is structured on the notion of Indigenous rights being translated into reality through the exercise of the right of self-determination. It presents specific strategies to achieve the enhanced enjoyment of human rights at a local level. Regional agreements offer such a prospect. There is no panacea to the manifold problems which continue to beset our communities. But the resolution of those problems will certainly not be achieved by a continuation of policies or programs which are manufactured outside our communities and driven into our lives on the back of a government truck.

The recognition of the full right of Indigenous Australians to take the decisions which affect our lives - our right to self-determination - is the recognition required if the Commonwealth Government's social justice measures are to have real effect. In the area of social justice, the Commonwealth Government's recognition of the full right of self-determination would equate to the recognition of native title by the High Court of Australia. It is essential to the practical achievement of social justice for Indigenous Australians.

**FUNCTIONS UNDER THE HUMAN RIGHTS AND EQUAL OPPORTUNITY COMMISSION ACT**

The establishment of the Aboriginal and Torres Strait Islander Social Justice Commissioner was stimulated by the Royal Commission into Aboriginal Deaths in Custody (RCIADIC) and the Human Rights and Equal Opportunity Commission's National Inquiry Into Racist Violence. The Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner was established under the Human Rights and Equal Opportunity Commission Amendment Act (no 2) passed on 16 December 1992.
increase the general awareness in the Parliament, government departments and amongst the general public about the concerns and perspectives of Indigenous peoples, and to increase understanding of particular issues which may be at the forefront of policy or public debate;

- evaluate Australia’s performance with respect to the situation of Aboriginal and Torres Strait Islander peoples in terms of the international standards with which Australia is obliged to comply; and

- communicate the notion of "Indigenous Internationalism" and the role that developments in other countries can play in local policy development.

The methodology followed in the drafting, publishing and promotion of the report, to facilitate achieving these aims include:

- visits to and consultation with Aboriginal and Torres Strait Islander organisations and communities to gain insights into their experience of particular problems and their perspectives on appropriate approaches for addressing such problems;

- liaison with other bodies working in the field, including the Aboriginal and Torres Strait Islander Commission, the Council for Aboriginal Reconciliation, other government departments, academics and researchers to share ideas and findings, discuss issues and formulate strategies;

- research into the activities and spending of government departments responsible for programs affecting Indigenous peoples, including examination of government documents and reports;

- study of the situation of Indigenous peoples in other countries and policy developments and approaches being adopted to address such problems;

- examination of relevant international instruments and the work of international human rights bodies and committees;

- discussions with politicians from all parties to advise them of the contents and themes in the report;

- presentation of the report so as to maximise its accessibility and effectiveness; and

- preparation of media kits, media releases, liaison with relevant media outlets to arrange interviews and articles/programs.
Outcomes

Outcomes of the Commissioner's Report must be assessed by its unique style and approach, and long-term contribution to stimulating the Indigenous human rights debate. The Commissioner is more concerned with providing a philosophical basis for the debate and altering the way in which Indigenous policy is approached, than with providing a concrete "a, b, c" of recommendations that can be ticked off. Nevertheless, the Report does make concrete proposals and provides critiques which point to particular types of, and in some case quite specific, responses.

The chapter on the implementation of the recommendations of the Royal Commission Into Aboriginal Deaths In Custody (RCIADIC) was originally presented (in a fuller form) as a submission to the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs Inquiry Into the Commonwealth's Annual Report on the Implementation of the Recommendations of the RCIADIC. The Committee, in its report, referred extensively to the Commissioner's submission, and, in its own recommendations was significantly influenced by the Commissioner's critiques. Subsequently, the Monitoring Unit of the Aboriginal and Torres Strait Islander Commission (ATSIC) has sought assistance from the Commissioner in developing its future reports so as to address the concerns raised by the Commissioner and the Committee.

The chapter on Indigenous health formed one of a number of major reports which were released this year on Indigenous health, and contributed significantly to the debate leading up to the 1995 budget and the reformulation of health policy. It can be anticipated that as the Department of Community Services and Health (DCSH) establishes and elaborates its new Indigenous Health Policy it will draw on the Commissioner's findings and suggestions.

The chapter dealing with the National Legal Field Officer Training Program and the National Community Education Program has sparked considerable interest in these Programs, and has stimulated Indigenous contributions to the program development function.

The International chapter sought to introduce the notion that Indigenous affairs are an international concern, that Australia must become part of the international community in this regard, not only meeting international standards, but taking advantage of developments in other countries. It is difficult to assess the outcomes of this chapter, as they are likely to occur over the long term. However, other agencies and Indigenous people have remarked that they have recognised the importance of international work in the context of their own work, and have indicated an interest in obtaining more information on international standards and developments.
Since the release of the Report, it has been extensively quoted and used in policy debates, both by Indigenous people and politicians and government departments. It is used as a resource by agencies and individuals, and by the media in covering issues of public concern.

An important indirect outcome of the report has been the establishment or strengthening of connections with Indigenous communities and organisations. In the course of researching the Report, both the Commissioner and his staff were in contact with people from all over Australia. Such connections will be invaluable for the ongoing work of the Office.

The report has also been distributed to a selected number of organisations in other countries, to the United Nations Working Group On Indigenous Populations, and to other United Nations agencies. Preliminary feedback from these agencies indicates its positive impact on international developments and debate.

**The Social justice Package**

The idea of a Social Justice Package arose during negotiations emanating from the High Court's 1992 decision on native title between the Federal government and representatives of Aboriginal and Torres Strait Islander communities.

The Commonwealth agreed that the enactment of the *Native Title Act 1993* and the establishment of an Indigenous Land Fund did not represent a complete settlement of the historical injustices which had been highlighted in the High Court's decision. It agreed that in addressing the continuing disadvantage experienced by Aboriginal and Torres Strait Islander peoples a further package of measures directed towards structural reform, and encompassing a broad range of social, economic and cultural factors would be implemented.

Ideas for the contents of this Package were requested by the Acting Prime Minister, in early 1994, from the Aboriginal and Torres Strait Islander Commission and the Council for Aboriginal Reconciliation.

An independent submission from the Social Justice Commissioner, concerning the proposed Social Justice Package, was considered appropriate.
Submission Objectives and Strategies

The independent report aims to:

- participate in and provide input to the debates amongst Indigenous organisations (in particular the Aboriginal and Torres Strait Islander Commission and the Council for Aboriginal Reconciliation) in preparation of submissions on the Social Justice Package;
- provide a philosophical rights base to underpin development of future recommendations to government;
- provide input to the proposals in terms of the relevant international human rights instruments and standards and Indigenous peoples' articulations concerning their human rights;
- develop specific proposals and approaches which would lead to improved social justice outcomes for Indigenous peoples;
- provide a separate submission to the parliament of the Commonwealth of Australia on measures for the Social Justice Package; and
- inform and educate politicians, relevant government departments and other players as to the issues being raised in the submission.

The strategies and methodology for achieving these aims include:

- participation on the Aboriginal and Torres Strait Islander Commission (ATSIC) Committee (which was established to discuss key issues and develop approaches to the submission, and consisted of ATSIC Commissioners, representatives of the Council of Aboriginal Reconciliation (CAR), Land Councils and other key organisations) for a period of time, until deciding his views would be more appropriately reflected in an independent report;
- ongoing discussion with ATSIC and CAR concerning their submissions;
- establishment of an expert working group to discuss key issues for the submission, prepare background papers and contribute to the final submission;
- dissemination of background papers including papers on international instruments, regional agreements, constitutional reform and funding arrangements to other Indigenous organisations and interested parties;
- preparation of a submission to Federal parliament on measures for Social Justice;
• preparation of additional volumes of background and reference papers relating to the issues raised in the submission for use of policy makers and Indigenous organisations;

• liaison and discussion with members of the Federal parliament from all parties to raise awareness and understanding of the Social Justice Package and issues raised in the submission;

• media releases, discussions with the media and provision of papers for media use; and

• broad dissemination of the submission to key agencies and organisations, both in Australia and in other countries.

Outcomes
The outcomes of this submission project include:

• completion of a formal submission to the Federal Parliament, consisting of one volume of strategies and recommendations and two volumes of background papers;

• extensive use of the Commissioner's formal and informal contributions, by ATSIC and CAR, in their submissions put to the Prime Minister;

• some commitment to the Social Justice Package by the Government, with a formal response anticipated in the coming year;

• significant reliance on the Commissioner's formal input to the debate, and detailed analysis of key issues, by politicians, government departments and Indigenous organisations in their work and policy proposals; and

• preliminary international feedback of the relevance of the Commissioner's submission to the development of Indigenous issues on an international level, stimulating more active connections between Australian Indigenous policy makers (and specifically the Commissioner) and related international organisations.
Other activities

During the year, the Commissioner was involved in a number of other reporting and monitoring activities. A full discussion of these activities is provided in the Commissioner's 1994 Second Report. Of particular importance are the following:

- provision of a major submission to the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs Inquiry Into the Commonwealth's Annual Report on the Implementation of the Recommendations of the Royal Commission Into Aboriginal Deaths In Custody;

- liaison with other sections of the Commission and ongoing advice on matters dealt with in other portfolio areas concerning Indigenous peoples (in particular the Investigations and Complaints Section); and

ongoing meetings with members of parliament to advise on Indigenous issues and raise key concerns in relation to particular matters being debated in parliament or subject to policy development.

EDUCATION AND PROMOTION

International Activities

A priority of the Social Justice Commissioner is to ensure Australia's indigenous peoples, and their experiences, are represented at international Indigenous activities. Australia's experience is relevant to those of other countries and Australia has a positive contribution to make to international developments. This is becoming increasingly apparent from feedback and inquiries from international organisations.

Extent of the Commissioner's involvement

Through involvement at the international level, the Commissioner aims to:

- a participate in the international debate concerning the rights of Indigenous peoples so as to bring the concerns of Aboriginal and Torres Strait Islander peoples to international attention;

- develop international standards concerning the rights of Indigenous peoples which will reflect the perspectives of Aboriginal and Torres Strait Islander peoples;
bring particular concerns or alleged human rights breaches to the attention of the international community (and specifically the United Nations) so as to bring pressure to bear on the Australian Government to ensure compliance with appropriate standards; and

encourage an understanding in Australia, both within government and amongst Indigenous peoples of the international standards with which Australia is bound to comply.

These aims are being achieved through the following mechanisms:

- attending the Working Group on Indigenous Populations, participating in the debate on the development of the Draft Declaration on the Rights of Indigenous Peoples and contributing to the review of developments;

- providing a paper to the Working Group on options for a Permanent Forum for Indigenous Peoples;

- when in the capacity of Acting Race Discrimination Commissioner, attending hearings of the Committee for the Elimination of Racial Discrimination to provide evidence concerning Australia’s compliance with the International Convention on the Elimination of All Forms of Racial Discrimination;

- providing Commission representation at the second United Nations Assembly of the Indigenous Initiative for Peace in Paris in February 1995, and delivery of a paper on Aboriginal and Torres Strait Islander peoples to that conference;

- attending the Australia Week festivities in Washington in October 1995 and presenting a paper at the Australian Embassy on the human rights of Aboriginal and Torres Strait Islander peoples;

- liaising with the Department of Foreign Affairs and Trade to develop and clarify the Australian Government’s position on the Draft Declaration on the Rights of Indigenous Peoples, and the Department’s obligations in consulting with Indigenous organisations in its development;

- providing comments on Australia’s third report to the United Nations Human Rights Committee on the implementation of the International Covenant on Civil and Political Rights, and preparation of an independent report to the Committee;

- providing assistance in the preparation of a joint submission to the UN Human Rights Committee from Australian Non-Government Organisations;
liaising with Indigenous organisations, the Department of Foreign Affairs and Trade and the Department of Industrial Relations about Australia's ratification of the International Labor Organisation (ILO) Convention 169 on the Rights of Tribal and Indigenous Peoples;

researching and reviewing relevant developments in other countries, such as regional agreements and constitutional reform in Canada; and

including chapters on international instruments in both the annual report and the Social Justice Package submission.

Outcomes
Outcomes of the Commissioner's involvement are assessable through:

acceptance of the Commissioner's paper by the United Nations Working Group on Indigenous Populations on options for a Permanent Forum for Indigenous Peoples, and incorporation of key issues into the options paper prepared by the Working Group;

the UN Working Group and the Convention on the Elimination of Racial Discrimination Committee feeding information on the human rights situation of Aboriginal and Torres Strait Islander peoples into the UN system;

increased international attention on the human rights situation of Aboriginal and Torres Strait Islander peoples gained through dissemination of the Commissioner's reports and discussions with key international contacts;

improved advice to the Australian Government of the views of Indigenous peoples concerning Australia's position on the Draft Declaration and the ILO 169;

greater commitment on behalf of the Australian government to the furthering the Draft Declaration on the Rights of Indigenous Peoples in the United Nations system, and promoting it with other governments;

greater awareness amongst Indigenous peoples of international instruments, obligations, standards and developments; and

greater awareness in government and policy makers concerning international instruments, obligations, standards and developments.
Major Speaking Engagements

Once again, the Commissioner had a heavy speaking schedule, participating in a number of major conferences, as well as speaking to community, educational and academic, and professional groups. Highlights include:

- Frank Archibald Memorial Lecture: *Cultural Rights and Educational Responsibilities*, University of New England Armidale, September 1994;
- Australian Embassy Lecture Series on *The Human Rights Situation of Aboriginal and Torres Strait Islander Peoples*, Australian Embassy, Washington, USA, October 1994;
- Native Title in the North Conference: *Native Title, Persistence and Respect*, Townsville, June 1995; and

National Aboriginal and Torres Strait Islander Legal Field Officer Training Program

This program sought to implement Recommendation 212 of the RCIADIC through the development of a national para-legal education and training course for Aboriginal and Torres Strait Islander Legal Field Officers.
Roles and Strategies of the Program

The National Aboriginal and Torres Strait Islander Legal Field Officer Training Program has two roles:

- it will specifically increase the level of legal education and training available to Aboriginal and Torres Strait Islander peoples; and

- In on a broader-level, through Legal Services, it will increase community access to information and resources which relate to human and legal rights.

Strategies for the success of this program include the:

- appointment of a National Co-ordinator;

- appointment of one staff member to deal with administration (this cost is shared with the National Community Education Program);

- appointment of a Research and Development Officer to research and focus on curriculum development;

- establishment of a National Steering Committee (which is made up of representatives from Aboriginal and Torres Strait Islander Legal Services, Human Rights and Equal Opportunity Commission, Department of Employment, Education and Training, Aboriginal and Torres Strait Islander Commission, and the Attorney Generals Department);

- convening of the National Aboriginal and Torres Strait Islander Legal Field Officer Curriculum Development Meeting (Darwin 19-21 April 1995), which was attended by representatives of Legal Services from across Australia;

- development of a National Curriculum Development Advisory Committee, being a representative group made up of community people working in Legal Services as well as people involved in education areas;

- co-ordination of the Darwin Report which addresses the identification of curriculum needs in para-legal education for Aboriginal and Torres Strait Islander peoples; and

- development of consultants' briefs for curriculum consultants and course operators.

Outcomes

The appointment of a National Co-ordinator, Research and Development Officer and an Administrative officer with the development of a project plan has meant that the National Aboriginal and Torres Strait Islander Legal Field Officer Training Program has moved from being a concept to being an active program.
In identifying the project plan, a major task was the convening of a national educational forum - the National Aboriginal and Torres Strait Islander Legal Field Officer Curriculum Development Meeting held in Darwin 19-21 April 1995. Recommendations from this meeting have now set the blueprint for the development of curriculum for this program.

It must be noted that there has been a shift away from last year's position, where the National Aboriginal and Torres Strait Islander Legal Field Officer Training Program was purely human rights education. The shift has been to a rights-based approach to education, human and legal rights issues as the foundation; and other subjects developed on this basis. This shift has been driven by community people directly involved in legal services.

Tendering for curriculum developers will happen in the next reporting period.

The National Aboriginal and Torres Strait Islander Legal Field Officer Training Program involves extensive ongoing consultations with a broad range of people in legal service, education and government at all stages of program development.

The Commissioner has demonstrated his personal commitment to fulfilling his responsibility to Recommendation 212 by attending the Darwin meeting and chairing the National Steering Committee.

**National Aboriginal and Torres Strait Islander Community Education Program**

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

**Objectives and strategies of the program**

The specific objectives of developing this project include:

- diverting Aboriginal and Torres Strait Islander peoples from custody;
- enabling Aboriginal and Torres Strait Islander communities to establish and protect community standards for their human rights; and
- empowering Aboriginal and Torres Strait Islander peoples to solve community relations problems at the local level through an understanding and assertion of their rights.
A number of strategies were pursued including:

- the appointment of one staff member to assist with administration;
- the establishment of a Reference Committee comprising Aboriginal and Torres Strait Islander peoples involved in Media and community education to oversee the development, production and dissemination of the video;
- the establishment of a Reference Committee comprising Aboriginal and Torres Strait Islander peoples involved in community education (with representation from ATSIC, Council for Aboriginal Reconciliation (CAR), Department of Employment, Education and Training (DEET) and various educational authorities) to oversee the development, implementation and evaluation of the Resource Package and the Train the Trainer Package;
- the appointment of a project manager and production team to manage and produce the national video;
- the appointment of consultants to develop the Resource and Train the Trainer packages in three regions including:
  - New South Wales, Victoria, Tasmania and the Australian Capital Territory; Western Australia; South Australia and Northern Territory;
- pilot training of the resource "Tracking Your Rights" (developed in Queensland as the forerunner to the National Program) in Aboriginal and Torres Strait Islander communities in Far North Queensland and the Torres Strait, and to produce a report on the effectiveness of the resource as a training tool;
- regular meetings between the project co-ordinator and members of the Reference Committees and the consultants to develop management plans and schedules for the production of the program, chaired by the Commissioner;
- the development of proposals by consultants to visit a range of Aboriginal and Torres Strait Islander communities facilitating discussion about the overall project as well as the specific content areas and medium for the most effective delivery of the information;
- community visits to representative communities for consultation about the type and content of resources needed to facilitate future development;
- the development of funding proposals and submissions to corporate and public sector agencies; and
- the development of a mediation strategy with assistance from the Council for Aboriginal Reconciliation (CAR).
Outcomes

An Administrative Officer joined the National Community Education Program (NCEP) team in March 1995. A management plan and schedule have been developed.

Consultants were selected after a long and rigorous selection process through national advertising in capital city newspapers, Land Rights News and the Koori Mail.

The following consultants teams were successful:

Mukina Management Services
Higgins Wood & Associates
Faculty of Aboriginal & Islander Studies, University of South Australia

New South Wales, ACT, Victoria & Tasmania
Western Australia
South Australia & Northern Territory

Unfortunately due to funding limitations, the project currently cannot be implemented nationally. We have had to put a temporary freeze on its development in the Northern Territory and South Australia until further funding becomes available. The consultant team selected for this region will sit on the Reference Committee until funding becomes available for them to begin to develop their component of the project.

Tendering for the video production team will take place in our next reporting year.

Training in North Queensland continued successfully with the demand for further training exceeding our existing capacity. The following communities have been involved in training: Mornington Island, Mt Isa, Camooweal, Townsville, Yarrabah, Mer Island, Kowanyama and Mareeba.

Effectiveness of the "Tracking Your Rights" (TYR) resource as a training tool was described in the booklet Tracking Your Rights. Unfortunately, funding has not been forthcoming to implement training using TYR.

Membership of the Reference Committee for the development of the resource component of the NCEP was finalised with representation from the Aboriginal and Torres Strait Islander Commission (ATSIC), the Department of Employment, Education and Training (DEET), the Council for Aboriginal Reconciliation (CAR), Secretariat of National Aboriginal and Islander Child Care (SNAICC), National Aboriginal and Islander Legal Services Secretariat (NAILSS), Federation Aboriginal Education Consultative Groups, Western Australian Aboriginal Legal Service, South Australian Equal Opportunity Commission, Victorian Equal Opportunity Commission, Northern Territory Anti-Discrimination Commission, Native Title Unit, Tasmanian HREOC and the Faculty of Aboriginal and Islander Studies, University of South Australia. Some agencies are still to respond to the invitation for membership.
Various submissions have been developed for additional funds to develop the National Community Education Program (NCEP) in South Australia and the Northern Territory, though unsuccessful to this point.

The Commissioner attended a meeting with the National Committee of Attorney-Generals in November to discuss their commitment to the implementation of Recommendation 211 and to propose additional support for the development of the NCEP.

**FUNCTIONS UNDER THE NATIVE TITLE ACT**

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

Through Section 209 of the Act, another function was added to the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner:

1. As soon as possible after 30 June each year, the Aboriginal and Torres Strait Islander Social Justice Commissioner (appointed under the *Human Rights and Equal Opportunity Commission Act 1986*) must prepare and submit to the Commonwealth Minister a report on:

   (a) the operation of the Act; and

   (b) the effect of this Act on the exercise and enjoyment of human rights of Aboriginal peoples and Torres Strait Islanders.

2. The Commonwealth Minister may at any time, by written notice, direct the Commissioner to report to the Commonwealth Minister on any matter covered by (1)(a) or (b).

**Reporting on the Native Title Act 1993**

The objectives of the Commissioner in monitoring and reporting on the operation and human rights impact of the Native Title Act include:

- providing and promoting a human rights perspective on native title;
- assisting in the claims process to ensure Indigenous needs are met; and
- advocating a minimalist approach to extinguishment.
A number of different strategies were employed to monitor and report on the Native Title Act. Amongst these were:

- establishing of a Native Title Unit within the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner to advise the Commissioner and the Office on native title issues and assist in the production of the Commissioner's annual native title report;

- advertising nationally for submissions to assist in the preparation of the report and the assessment of the submissions received;

- consulting and networking with Aboriginal and Torres Strait Islander communities and their representatives, and with commentators and analysts working on native title;

- consulting and representing the interests of Indigenous Australians to governments, relevant government agencies (such as the National Native Title Tribunal, the Aboriginal and Torres Strait Islander Commission, the Council for Aboriginal Reconciliation, the Commonwealth Attorney-General's Department), state land use agencies (such as the NSW Department of Conservation and Land Management, and the Queensland Aboriginal and Torres Strait Islander Land Interests Program) and industry associations (such as the NT Fishing Industry Council);

- researching and analysing issues such as the operation and interpretation of the Act, the common law of native title and the human rights aspects of native title; and

- liaising and providing input and feedback on community awareness and education strategies for native title.

**Outcomes**

The Native Title Unit was established, allowing the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner to focus attention on native title issues and the implementation of the strategies listed above. Following on from this work, the Commissioner's *Native Title Report: January - June 1994* was submitted to the Minister for Aboriginal and Torres Strait Islander Affairs on 27 April 1995 and tabled on 30 May 1995. The preliminary reaction to the report has been favourable.

The report concentrated on native title during the implementation phase of the Native Title Act. It specifically focused on the Act, human rights issues, the grave concern at the potential for the massive extinguishment of native title, the National Native Title...
Tribunal, economic and resource management issues and community awareness. The report provides a sound basis for further discussion, debate and development of a range of matters relating to native title.

The Office was also involved in discussions and planning of community awareness strategies which should produce better understanding and integration of education programs on native title conducted by a range of agencies.

Through public forums and other avenues, the Commissioner has expressed his views on such matters as:

- the operation of the National Native Title Tribunal;
- the recognition of native title and the inspiration to be drawn from the struggles for land rights;
- concern about extinguishment of native title;
- the difficulties and frustrations Indigenous communities are experiencing with the claims process; and
- the relationship between mining and native title.

In a sense, the development of native title is still at an early stage, but there have also been significant developments to date. The crucial objective is that native title will develop in accordance with the human rights of Aboriginal peoples and Torres Strait Islanders.
Ms Zita Antonios was appointed Race Discrimination Commissioner in September 1994. She has been closely involved for many years with issues involving race discrimination, in particular those affecting people from non-English speaking backgrounds.

Ms Antonios holds a Bachelor of Social Studies Degree from the University of Sydney. She graduated with first class honours and her thesis was awarded the University Medal.

From January 1990 to the end of 1994, Ms Antonios worked for the Immigration Review Tribunal (NSW) as a full-time Member, hearing cases on appeal concerning decisions made in the Department of Immigration and Ethnic Affairs. Before that, she worked for three years at the Human Rights and Equal Opportunity Commission, two years of which were in the position of Chief Conciliator and one year as Assistant Secretary responsible for the legal, conciliation and research sections of the Commission.

Ms Antonios has a keen interest in women's issues, having held the position of Equal Employment Opportunity Advisor to the NSW government in the late 1980s. She also has a particular interest in the criminal justice system, having worked at the NSW Bureau of Crime Statistics and Research.

**Statement from the Race Discrimination Commissioner**

As I write, I have been in this appointment for around eight months. In that time the twentieth anniversary of the Racial Discrimination Act (RDA), the slow and controversial passage of the Racial Hatred Bill, issues arising out of racism in sport, other racist issues which attracted media attention and simply continuing the planned work of the Racial Discrimination Unit (RDU) and the complaints team has catapulted the staff and me into a year of great activity. It was important in the first few months to travel to meet as many representatives of community organisations as possible. Thus far, I have managed to visit most States and Territories save Western Australia and the Northern Territory and visits are planned there in the next few months, as are more visits to regional areas.

The twentieth anniversary of the RDA has provided an opportunity to celebrate achievements, to pause to review the legislation and to consider areas of racial
discrimination which currently fall outside its jurisdiction. I have supported, with funding, a number of organisations throughout Australia that are proposing to use the occasion of the twentieth anniversary of the RDA to undertake community education and information activities.

A formal review of the Act is planned and I am looking forward to working with communities affected by racism, legal experts and academics to see if together we can propose changes to the RDA which will ensure that it becomes a more effective tool against racial discrimination. It also needs to be more accessible to those most directly affected by racism in this country.

Issues of racial hatred have gained prominence recently and have helped to highlight the need for legal remedies for group libel. The proposed Racial Hatred Bill will go some way to addressing issues to do with racial vilification and hate speech. However, it is yet to complete a successful passage through the Parliament. The Bill has been the subject of intense debate, scrutiny and criticism, mainly because of its perceived threat to freedom of speech. This has occurred despite the fact that free speech is not an absolute right in any democracy. Many countries have held restrictions on racist speech to be reasonable and necessary exceptions to an express constitutional right to free speech. In Australia we currently have laws dealing with defamation, blasphemy, copyright, obscenity, incitement, public order, official secrecy, contempt of court and of Parliament, censorship, sedition and consumer protection. These recognise countervailing interests that must take precedence over freedom of speech in some circumstances.

It has been pleasing to see in the past year that the general public is increasingly unwilling to tolerate racism in sport. Recently I have assisted the Australian Football League (AFL) to address these issues following racist incidents on the field. The successful conciliation of a very public incident was effected by a skilled HREOC conciliator. And the AFL’s subsequent production of a code of ethics appears to be having a knock on effect in terms of action by other sporting bodies. This is progress.

Generally, much of the first few months of my appointment has been spent in evaluating the work the RDU undertakes and how it achieves its goals. In addition to the formal review of the Act, the RDU has embarked on a strategic planning process. The preliminary process has resulted in the following guiding principles: the Unit will pro-actively address strategically identified areas of racial discrimination of national significance that take into account the available resources and other necessary commitments; it will actively seek opportunities for working in partnership with other sections of HREOC and with relevant external organisations and communities; and it will be flexible enough to respond to emerging issues as they arise, linking policy development to issues arising out of the RDA complaints process.

On the basis of these principles and within this reporting period, staff of the RDU and I have already addressed ourselves to investigatory work on specific issues. The
Mornington Review, the Alcohol Report and the second State of the Nation Report are examples of major inquiry work concluded in the 1994-95 period. The recommendations in these reports and that of the Water Report are currently being pursued.

There has been a pressing need for information about the RDA and how to use it. This year we have produced a number of information and community education materials for distribution to appropriate communities, organisations and workplaces. More extensive educative material will be produced in the 1995-96 period specifically for employers and employees.

A major area of my concern over the past eight months has been to increase the effectiveness and efficiency of complaint handling under the RDA and specifically to reduce the large backlog of complaints. To this end, I have re-directed RDU resources and instigated internal mechanisms, which have resulted in the steady reduction of the backlog. To achieve this outcome it was necessary to put in place a number of strategies, including my personal involvement in conciliating cases and meeting regularly with the complaints team.

Work in the next reporting year will include continuing the formal review of the RDA, which will involve community consultations. There is also the production of the third annual State of the Nation Report which, in this twentieth anniversary year, will provide a review of changes in the last twenty years in employment, education, health, the law and women's issues for people of non-English speaking background. It will provide, at the same time, a benchmark for future work.

Further, the RDU is currently inquiring into the legislation and policies relating to the Community Development Employment Program (CDEP), to determine whether these have adverse discriminatory consequences for Aboriginal and Torres Strait Islander participants. The Report of this inquiry will be released early in 1996. Work relating to the Racial Hatred Bill has been and will continue to be relentless. The Unit will also be implementing an employment project, given that the largest number of complaints under the RDA are on the grounds of discrimination in employment.

I look forward in the next year to meeting and working closely with the community and others concerned to eliminate racism which, despite our significant achievements, remains endemic in this country.
FUNCTIONS UNDER THE RACIAL DISCRIMINATION ACT

To ensure that progress is made towards addressing discrimination issues in Australia, the Commission and the Race Discrimination Commissioner have been granted a number of functions under sections 20 and 21 of the Racial Discrimination Act 1975. These functions fall into three main categories:

- complaint handling;
- research; and
- education and promotion.

The Commissioner's contribution during 1994-95 to addressing existing race discrimination throughout Australia is outlined under these three broad categories.

COMPLAINT HANDLING

Complaints Investigation and Resolution

The variation in definition and classification of complaints across Commission offices and State and Territory equal opportunity agencies means there are some limitations aggregating and interpreting the data.

A total of 707 complaints were accepted as within the jurisdiction of the RDA during the year, (see Table 1). Table 12 provides a breakdown of the areas where these complaints arose. The total of 712 reflects some Central Office complaints relating to more than one area. While employment-related complaints constitute the largest percentage (382 or 54%) of matters dealt with under the Act, there was also a significant number of complaints (218 or 31%) relating to the provision of goods and services.
Table 12: Complaints lodged under the RDA nationally by area of complaint
1 July 1994 to 30 June 1995

<table>
<thead>
<tr>
<th>Area of complaint</th>
<th>Central</th>
<th>QLD</th>
<th>NT</th>
<th>TAS</th>
<th>ACT</th>
<th>VIC</th>
<th>SA</th>
<th>WA</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Land, housing, other accommodation</td>
<td>3</td>
<td>4</td>
<td>-</td>
<td>-</td>
<td>14</td>
<td>7</td>
<td>2</td>
<td>2</td>
<td>30</td>
</tr>
<tr>
<td>Provision of goods and services</td>
<td>51</td>
<td>11</td>
<td>13</td>
<td>2</td>
<td>5</td>
<td>78</td>
<td>45</td>
<td>13</td>
<td>218</td>
</tr>
<tr>
<td>Employment</td>
<td>67</td>
<td>22</td>
<td>17</td>
<td>5</td>
<td>11</td>
<td>195</td>
<td>57</td>
<td>8</td>
<td>382</td>
</tr>
<tr>
<td>Advertisements</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>1</td>
</tr>
<tr>
<td>Incitement to unlawful acts</td>
<td>1</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>2</td>
</tr>
<tr>
<td>Education</td>
<td>1</td>
<td></td>
<td></td>
<td>3</td>
<td>-</td>
<td>5</td>
<td>8</td>
<td></td>
<td>17</td>
</tr>
<tr>
<td>Rights to equality before the law</td>
<td>6</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>7</td>
</tr>
<tr>
<td>Trade unions</td>
<td>2</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>2</td>
</tr>
<tr>
<td>Other</td>
<td>27</td>
<td>4</td>
<td>7</td>
<td></td>
<td></td>
<td></td>
<td>11</td>
<td>4</td>
<td>53</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>159</td>
<td>41</td>
<td>39</td>
<td>10</td>
<td>16</td>
<td>292</td>
<td>128</td>
<td>27</td>
<td>712</td>
</tr>
</tbody>
</table>

*Some complaints have multiple areas

Table 13 shows the ethnicity of complainants. A total of 124 complaints were received from Aboriginal and Torres Strait Islander people (representing 17.5% of the total number of complaints received), and 273 (or 38.6%) of complaints were lodged by complainants from non-English speaking backgrounds.

Table 13: Complaints lodged under the RDA by ethnicity of complainants
1 July 1994 to 30 June 1995

<table>
<thead>
<tr>
<th>Ethnicity of Complainants</th>
<th>Central</th>
<th>QLD</th>
<th>NT</th>
<th>TAS</th>
<th>ACT</th>
<th>VIC</th>
<th>SA</th>
<th>WA</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aboriginal and Torres Strait Islander</td>
<td>26</td>
<td>5</td>
<td>22</td>
<td>2</td>
<td>34</td>
<td>23</td>
<td>12</td>
<td>124</td>
<td></td>
</tr>
<tr>
<td>Non-English speaking background</td>
<td>74</td>
<td>2</td>
<td>9</td>
<td>7</td>
<td>145</td>
<td>29</td>
<td>7</td>
<td>273</td>
<td></td>
</tr>
<tr>
<td>English speaking background</td>
<td>36</td>
<td>2</td>
<td>8</td>
<td>1</td>
<td>59</td>
<td>6</td>
<td>5</td>
<td>117</td>
<td></td>
</tr>
<tr>
<td>Not disclosed by complainant or not recorded</td>
<td>18</td>
<td>32</td>
<td>39</td>
<td>16</td>
<td>54</td>
<td>70</td>
<td>3</td>
<td>193</td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>154</td>
<td>41</td>
<td>39</td>
<td>10</td>
<td>16</td>
<td>292</td>
<td>128</td>
<td>27</td>
<td>707</td>
</tr>
</tbody>
</table>
The trend of previous years continued this year, with men being more likely than women to lodge complaints under the RDA. As Table 14 outlines, of the 619 individual complaints received under the Act, 399 (64%) were from men and 220 (36%) were from women. The balance of complaints were either lodged by groups/organisations, were representative, or were not recorded at the request of the complainants.

The majority of RDA complaints (234 or 32.7%) were made about respondents from the private sector including private enterprise, non-government organisations, educational institutions and trade union or professional organisations. There were 233 (32.6%) complaints received alleging discrimination from the three tiers of government. The largest single category of respondents was private enterprise: 181 (25.4%).

Table 14: Complaints lodged under the RDA by category of complainant and respondent 1 July 1994 to 30 June 1995. Category of complainant:

<table>
<thead>
<tr>
<th>Complainant Details</th>
<th>Central</th>
<th>QLD</th>
<th>NT</th>
<th>TAS</th>
<th>ACT</th>
<th>VIC</th>
<th>SA</th>
<th>WA</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Male</td>
<td>49</td>
<td>15</td>
<td>22</td>
<td>4</td>
<td>7</td>
<td>195</td>
<td>92</td>
<td>15</td>
<td>399</td>
</tr>
<tr>
<td>Female</td>
<td>45</td>
<td>12</td>
<td>7</td>
<td>5</td>
<td>8</td>
<td>97</td>
<td>36</td>
<td>10</td>
<td>220</td>
</tr>
<tr>
<td>More than one individual</td>
<td>8</td>
<td>6</td>
<td>5</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>20</td>
</tr>
<tr>
<td>On behalf of a person or group</td>
<td>19</td>
<td>2</td>
<td>1</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>24</td>
</tr>
<tr>
<td>Representative complaint</td>
<td>7</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>10</td>
</tr>
<tr>
<td>Not recorded</td>
<td>26</td>
<td>6</td>
<td>2</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>34</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>154</td>
<td>41</td>
<td>39</td>
<td>10</td>
<td>16</td>
<td>292</td>
<td>128</td>
<td>27</td>
<td>707</td>
</tr>
</tbody>
</table>
During the year, a total of 533 RDA complaints were closed or referred for hearing. The significant increase in this number this year reflects, to a large extent, the administrative strategy to clear the backlog by giving priority to cases which could be easily closed. Table 15 provides a breakdown of the outcomes of these complaints during 1994-95:

- 118 (22%) of all finalised complaints were resolved through conciliation;
- 181 (34%) of complaints were declined;
- 21 (4%) were referred for hearing;
- 203 (38%) complaints were withdrawn.

Reasons for withdrawal of complaints include resolution of issues through other remedies.
Table 15: Outcome of complaints closed or referred for hearing under the RDA: 1 July 1994 to 30 June 1995

<table>
<thead>
<tr>
<th>Outcome of Complaints</th>
<th>Central</th>
<th>QLD</th>
<th>NT</th>
<th>TAS</th>
<th>ACT</th>
<th>VIC</th>
<th>SA</th>
<th>WA</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Outside jurisdiction</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Declined</td>
<td>74</td>
<td>2</td>
<td>10</td>
<td>-</td>
<td>3</td>
<td>74</td>
<td>13</td>
<td>5</td>
<td>181</td>
</tr>
<tr>
<td>Conciliated</td>
<td>5</td>
<td>21</td>
<td>4</td>
<td>5</td>
<td>8</td>
<td>24</td>
<td>49</td>
<td>2</td>
<td>118</td>
</tr>
<tr>
<td>Conciliation failed - not referred</td>
<td>5</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Referred for hearing</td>
<td>1</td>
<td>3</td>
<td>1</td>
<td>9</td>
<td>4</td>
<td>3</td>
<td>3</td>
<td>21</td>
<td></td>
</tr>
<tr>
<td>Withdrawn</td>
<td>38</td>
<td>17</td>
<td>10</td>
<td>5</td>
<td>8</td>
<td>90</td>
<td>30</td>
<td>5</td>
<td>203</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>118</strong></td>
<td><strong>43</strong></td>
<td><strong>24</strong></td>
<td><strong>10</strong></td>
<td><strong>20</strong></td>
<td><strong>202</strong></td>
<td><strong>100</strong></td>
<td><strong>16</strong></td>
<td><strong>533</strong></td>
</tr>
</tbody>
</table>

**Complaints Resolved Through Formal Commission Hearings**

Where conciliation is unsuccessful, or not considered to be the most effective method of resolving an issue, the Commissioner may refer complaints to the Commission for a public hearing. Once this occurs, the Commissioner cannot further participate in the inquiries.

There were 17 matters referred for public hearing under the RDA during 1994-95.

**Case Studies**

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

**Access to Places and Facilities**

An Australian man and a woman of Indian origin, the complainants, bought petrol at a service station and asked to use the public facilities. They alleged that the attendant told them that none existed, despite signs displayed pointing to them. The complainants requested the keys and asked the attendant why they were being prevented from using the facilities. It is alleged that the attendant replied "because you people do not know how to use them".
The matter was settled by conciliation. The owners of the service station supplied the complainants and the Commission with a written apology and the attendant involved in the incident was dismissed from employment.

**Employment**

An Aboriginal man brought a complaint against a tour operator with whom he had sought a job, alleging that the operator had stated that the company did not like to employ Aborigines as they were unreliable and untrustworthy. The complainant also alleged that slurs were cast on his status as an initiated man.

The allegations were strongly denied by the respondents, who described the complaint as facetious and self-centred. Eventually, however, the respondents provided a written apology and the complaint was regarded as conciliated.

**Employment**

An Aboriginal staff member alleged that he was racially discriminated against by his supervisor and his employer, a Commonwealth government department. He alleged that his supervisor's racially motivated opinion of him lead to his failure to achieve promotion, despite having won a significant award for his contribution to the workplace. He alleged that his employer had not taken steps to ensure that the alleged discrimination ceased, even though he had reported it.

Without admission, the employer agreed to a promotion of the officer, a transfer to a different posting, and consideration for nomination to attend officer training.

**Employment**

The complainant alleged that his supervisors made derogatory remarks against Italians and Greeks, and that as a consequence of his ethnic background, he was socially and professionally isolated in the workplace. He alleged that he was given tasks that were below his professional level and skills and this resulted in him not being considered for promotions. He alleged that he had reported the matter to his employer but insufficient action was taken to remedy the matter.

Without prejudice, the parties agreed to approach each other in good faith in the future and the supervisors apologised for any hurt caused. Steps were outlined to change the way new tasks were communicated and allocated to staff members. The complainant was offered a temporary transfer to work under a new supervisor so he could rebuild
his confidence and skills and apply for reclassification of his position. A payment of $1,500 was made in lieu of back pay the complainant would have received if he had been promoted.

**RESEARCH**

The Commissioner has the functions of developing, conducting and fostering research programs to promote the provisions and purpose of the Racial Discrimination Act. The Race Discrimination Commissioner continues to take an active role in conducting research inquiries.

**State of the Nation Report**

The objective of the *State of the Nation Report* is to monitor and assess the progress being made towards achieving social justice for people of non-English speaking background, in accordance with Australia's human rights obligations. After consultations with ethnic communities, housing was identified as an urgent priority area. Research was subsequently undertaken and the results were published in the *1993-1994 State of the Nation Report*.

The Report considered some of the policies of two major Federal Government departments, the Commonwealth Department of Human Services and Health (in relation to Residential Care for the Elderly) and the Commonwealth Department of Housing and Regional Development (concerning public housing and town planning) and made a number of recommendations. There were also implications for State housing authorities. The implementation of these recommendations are still being followed up and will be included in the 1995 report. To date, we are very pleased that there has been a positive response to the second *State of the Nation Report*.

It is pleasing to note that the Department of Human Services and Health is now working on a National Aged Care Strategy for older people of non-English speaking background. In addition, the Department is trialing a new approach, which aims to improve assessment and referral practices for nursing homes and hostels and provide Community Aged Care Packages for older people of non-English speaking background. The trial, which has commenced in Western Australia and will shortly commence in Victoria, will concentrate on building linkages between assessment teams, ethnic communities and service providers.
Mornington Island Review Report

Since the publication of the Mornington Report in April 1993, follow-up has been conducted to examine the implementation of the Report's recommendations. Michael Dodson, the Aboriginal and Torres Strait Islander Social Justice Commissioner, who was also Acting Race Discrimination Commissioner at the time, visited Mornington Island to assess the extent of the implementation of the Mornington Report recommendations. All Government departments and other agencies mentioned in the recommendations had been contacted.

The results of the review were published as the Mornington Island Review Report, launched jointly by the current Race Discrimination Commissioner, Zita Antonios, and the Aboriginal and Torres Strait Islander Social Justice Commissioner, Michael Dodson, in Brisbane during April 1995. The Review Report identified some progressive changes, especially at the local level, which have occurred since the release of the original report, but noted that the rate of change was far too slow and that much remained to be done, particularly in the area of negotiation between State Government and the community.

Echoing the findings of the original report, the Review Report found that the political, economic and social problems which beset communities like Mornington Island will not be resolved until self-determination is taken seriously and until the resources, planning and decision-making processes are under Indigenous control.

An oral version of the Review Report was distributed on videotape for use within Aboriginal communities via Broadcasting for Remote Aboriginal Communities Service (BRACS) or VCRs.

The Alcohol Report

The Alcohol Report was initiated because of concerns expressed to the Race Discrimination Commissioner in a submission from the Nganyatjarra, Pitjantjatjara and Yankunytjatjara Women's Council about the effects of alcohol abuse on their communities.

The Alcohol Report is a long and complex study of the inter-relationship of racial discrimination, human rights and the distribution of alcohol in the Northern Territory (especially the Central Australian region). Attempts by Aboriginal communities to restrict alcohol availability have often met with the objection from publicans, other liquor providers and the Liquor Commission that they breach the Racial Discrimination Act. However, the "special measures" provision in the RDA provides a legally workable solution to the problem of ill-informed assertions that community action on alcohol abuse constitutes racial discrimination under the Act.
The report takes a positive stance in supporting Aboriginal self-determination. In this case, this is specifically in regard to the right of a community to control the distribution of alcohol within their environment. The report recommends both short-term and long-term measures to support the communities during their negotiations for greater autonomy.

The Alcohol Report recognises that self-determination is the key to Aboriginal communities' strategies to address alcohol abuse. The Alcohol Report was released during a community consultation with the initiating communities by the Race Discrimination Commissioner, Zita Antonios and the Aboriginal and Torres Strait Islander Social Justice Commissioner, Michael Dodson, in Alice Springs on 11 July 1995.

**Community Development Employment Program (CDEP) Inquiry**

Aboriginal and Torres Strait Islander communities have expressed some concerns in relation to alleged financial disadvantages experienced by participants in the CDEP scheme. It appears that Aborigines and Torres Strait Islanders are treated "less favourably" in the administration of several government programs and services in a number of respects because of their participation in the scheme.

In May 1995, the Race Discrimination Commissioner began an examination of policies and legislation relating to CDEP to determine whether these have "adverse discriminatory consequences that are contrary to the human rights of participants in the CDEP" and to produce a report outlining its findings. This report will be completed early in 1996.

**Water Report**


The Water Report was the result of a large-scale study into the provision of basic water and sanitation services to Aboriginal and Torres Strait Islander communities. Ten communities, mostly located in remote areas in different parts of Australia, cooperated in identifying their major problems in communicating and negotiating with technologists and bureaucrats and in gaining an equitable distribution of resources.

A formal response to the report from the Federal government has not yet been received, apparently because of the slow responses from the State and Territory
Governments and relevant Departments. During 1994-95, the Commission began to monitor the implementation of the recommendations made in the Water Report, liaising with various case study communities for an update on their water and sanitation services.

**Filipino Women’s Project**

During 1994, on the basis of community concerns, the Commission embarked on research into Filipino women in Australia who allegedly had a particularly high risk of being victims of spousal homicide. At a conference in October 1994, the Race Discrimination Commissioner reported that, on available (albeit incomplete) data, Philippines-born women were 5.6 times more likely to be killed by their husbands or partners than other Australian women.

It was agreed that specialist expertise, which was unavailable within the Race Discrimination Unit, was needed to further the project. With the agreement of the Filipino Advocacy Group, negotiations were successfully undertaken with the Institute of Criminology (Sydney University) for the Institute to continue the project and produce its findings in a report by early 1996.

**The Baryulgil Review**

The Commission monitored the implementation of the recommendations of the 1990 *Baryulgil Report* through a separate review. Progress made by government agencies was subject to protracted negotiations between the Baryulgil Aboriginal Corporation and the NSW State Government. These negotiations are now finalised, and commitments between the parties have been incorporated into the review.

**EDUCATION AND PROMOTION**

The Race Discrimination Commissioner has the functions of:

- promoting understanding and acceptance of, and observing provisions of, the Act; and
- developing, conducting and fostering educational programs and other programs to promote the provisions of the Act.
Promotion of the Racial Discrimination Act and Anti-discrimination Issues

The Attorney-General (Left) and the Prime Minister join with the choir of Melbourne’s University High School in celebrating the 20th Anniversary of the Racial Discrimination Act •

20th Anniversary of the Racial Discrimination Act 1975

The RDA was passed in the Federal Parliament on 11 June 1975 and is celebrating its twentieth anniversary during the International Year for Tolerance (IYT). The IYT Secretariat joined with the Race Discrimination Commissioner in marking the passage of the Act at an event in Melbourne on 9 June 1995. Many guests who had been involved in the introduction or implementation of the Act over the years and community representatives heard speakers such as the Prime Minister and the Chairperson of the Aboriginal and Torres Strait Islander Commission.

One of the highlights of the event was the screening (in part) of a documentary entitled Battles Small and Great: the first twenty years of the Racial Discrimination Act, produced especially for the occasion by the Australian Broadcasting Commission.

The Race Discrimination Commissioner wishes to record her deep appreciation of the Department of Immigration and Ethnic Affairs, through its International Year for Tolerance Secretariat, for its assistance in the 20th anniversary events: and to the Australian Broadcasting Commission for its generous contribution of the video, Battles Small and Great.

The Commissioner is concerned to take the opportunity of the twentieth anniversary of the RDA to inform and educate people, especially Aboriginal and Torres Strait Islander peoples and non-English speaking background people about the RDA and how to use it if the need arises. For this reason, funds have been provided to regional offices and
agencies to inform people about the RDA. A number of educative materials were produced which were launched at the anniversary and these will also be used to publicise the passage of the Act. They included a series of fact sheets about the RDA and the work of the Race Discrimination Unit, and video copies of the documentary *Battles Small and Great*. A monograph expanding the themes of the video is currently being produced and will be released at the end of 1995. There are plans to make the video a school resource to combat racism.

From left to right: Race Discrimination Commissioner Zita Antonios, HREOC President Sir Ronald Wilson, ATSIC Chairperson Lois O'Donoghue, Attorney-General the Hon. Michael Lavarch and Prime Minister the Hon. Paul Keating at the 20th Anniversary of the Racial Discrimination Act in Melbourne, 9 June 1995

**Video: Accents Are Everywhere**

A video entitled *Accents Are Everywhere*, co-produced by the Race Discrimination Unit and the Public Service Commission in conjunction with the Adult Migrant English Service, was launched on 29 June 1995 by the Race Discrimination Commissioner and the Commonwealth Public Service Commissioner.

The video, focusing on attitudes towards accents and communication styles as a source of discrimination, is aimed at managers and supervisors within the public and the private sectors. Its release during 1995 is a contribution towards the International Year for Tolerance. It is accompanied by a monograph which can be utilised in workplace training sessions.
Racial Discrimination Act (RDA) Awareness Project for Unions and Employers

As employment related complaints constitute the majority of complaints received under the RDA, the Race Discrimination Commissioner has initiated a project focusing on raising awareness about the RDA in both unions and employer bodies. Preliminary work has commenced with one peak union body.

This project is focusing on informing workers of their rights to lodge complaints and informing employers of their responsibilities in minimising the occurrence of racial discrimination at work.

Different Colours One People Campaign (DCOP)

The Different Colours One People Campaign (DCOP) was the result of research and community consultations which confirmed that racism was an issue for young people. It encouraged and supported young people to fight against racism. Whilst the RDU’s role in the campaign has now been completed since funding for the program has ceased, many schools and youth groups continue the campaign.

Riverview Primary School

Following concerns raised about the situation at Riverview Primary School, the Commissioner visited the school at the invitation of the principal. Situated in an outer disadvantaged Brisbane suburb, the school has a student population of 40-50% Aboriginal children, 20-30% Pacific Islander children and the rest are from various non-English speaking backgrounds. After letters to the Queensland Ministers for Education and for Community Services and negotiations with community groups and service providers, the situation has substantially improved. Three Aboriginal teachers have now been appointed to the school.

Commissioner's Speeches and Papers Delivered

The Commissioner and her staff delivered a number of speeches and papers during the year. Copies of speeches and papers are available and may be obtained by contacting the Commission.
Some of these included:

**in July 1994**

a an address by Sue Zelinka in Darwin to the Ninth National Conference of the Network for Intercultural Communications: *Not the Same Difference.*

**in October 1994**

a a keynote address by Sue Zelinka of the RDU in Melbourne to the Conference on Stopping Violence Against Filipino Women: *Human Rights and Filipino Women;*

- Saku Akmeemana participated in a debate on racial vilification legislation at the Dialectic Forum, Macquarie University, Sydney;

**in November 1994**

- a keynote address by the Commissioner to the Western Sydney Filipino Community Forum: *The RDA and Future Directions;*

- a an address in Sydney by the Commissioner to the AJWS - Jewish Community Service's Annual General Meeting: *The Human Rights and Equal Opportunity Commission and its Work to Combat Racism.*

**in December 1994**

- a keynote address by the Commissioner at Wiley Park Girls High School Graduation ceremony: *Racism and the Work of the Race Discrimination Commissioner;*

- a an address by the Commissioner in Hobart to the Federation of Ethnic Communities' Councils of Australia (FECCA) National Annual Conference: *The RDA and Future Directions;*

- a an address by the Commissioner in Sydney for the Australian Human Rights Law Centre at the University of NSW to launch a special edition on *Racial Vilification* in their Australian Journal on Human Rights.

**in January 1995**

- a an address by the Commissioner in Brisbane to the National Aboriginal and Islander Legal Services Secretariat (NAILSS) National Conference: *Proposed Racial Hatred Legislation.*

**in February 1995**

- an address by the Commissioner in Sydney to the conference on a Bill of Rights for Australia entitled: *The Adequacy of Present Protection for People of Non-English Speaking Background.*
in March 1995

an address by Racho Donef of the RDU to the Newcastle University: *Discourses on Racism, Resistance & Identity*.

in April 1995

an address in Melbourne by the Commissioner, at a seminar on racism organised by the Victorian Council for Civil Liberties Inc. (VCCL): *The Challenge of Multiculturalism*;

an address by the Commissioner in Melbourne at State Parliament House together with Herman Ousley, Chairman, Commissioner for Racial Equality, London: *Current Issues and Directions in Australia*;

Commissioner Antonios chaired a session in Sydney at the International Global Cultural Diversity Conference on *Human Rights and the Political Participation of Ethnic Communities*.

in May 1995

the Commissioner launched a video project by the Australian Arabic Welfare Council: *Shifting Sands*;

an address by the Commissioner in Brisbane at a State Conference held by the Department of Education, Employment Branch, Human Resources Directorate: *Empowering People of Non-English Speaking Background*;

an address by Saku Akmeemana in Adelaide on *Racial Vilification* organised by the Multicultural and Ethnic Affairs Commission of South Australia;

keynote address by the Commissioner in Armidale at the University of New England Racism in Universities Seminar paper: *Valuing Social and Cultural Diversity*;

an address by Sue Zelinka in Melbourne at the Bureau of Immigration, Multiculturalism and Population Research Forum: *Access and Equity: Progress and Potential*.

in June 1995

an address by Commissioner Antonios in Melbourne at the National Gallery: *The 20th Anniversary of the Racial Discrimination Act*;

the Commissioner and the Public Service Commissioner co-launched a video in Sydney, titled: *Accents are Everywhere*. 
LEGISLATIVE REFORM

Review of the Racial Discrimination Act

The Race Discrimination Commissioner has commenced a thorough review of the Racial Discrimination Act 1975 on the occasion of the Act's twentieth anniversary. Since its enactment, the RDA has been amended in an ad hoc fashion, but a comprehensive and fundamental evaluation of its provisions has not been undertaken. Areas which will be addressed by the review include systemic discrimination, the conciliation framework, collective rights, special measures, and means by which to enhance effective dispute resolution. The review will also evaluate whether the Act is working for those who are the primary victims of racial discrimination in Australia, and will address law reform in a number of practical areas of operation which are necessary to enable more efficient and effective complaint handling.

The outcome of the review will to be to produce a package of significant recommendations for legislative reform, which will ensure that the Act is more effective and accessible.
SEX DISCRIMINATION
Sue Walpole took up her appointment as Sex Discrimination Commissioner in February 1993. Ms Walpole has brought to the position an extensive background in employment and industrial relations. Most recently a human resources executive with the Australian Broadcasting Corporation, she has specialised in employment policy and practice, particularly in the development of equal opportunity policies for women; has worked for Government agencies at both State and Federal level; and was a national official for a major public sector trade union.

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

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

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

**Statement from the Sex Discrimination Commissioner**

The year 1994-95 began with joy and celebration at the 10th Anniversary of the Sex Discrimination Act. When I began to plan the anniversary celebrations, the object was to involve as many people as possible in a range of ways across Australia. As well as our achievements and hard work, a sense of fun, the celebration part of the equation, was to be included. The anniversary took on a life of its own. It included concerts and plays, research projects and scholarships, commemorative lunches, dinners and cake cuttings, awards and speaking tours. It stretched from Darwin to Hobart, east to west and included towns, capital cities and rural communities. Women and men of all ages and backgrounds took part. There was truly a sense of achievement and recognition of what was still to be done. A celebration.

The 10th anniversary also provided a time for reflection. During its ten year life, we estimated that some 50,000 people have been affected by the complaints procedures
under the Act. Many more have come into contact with the Act through our policy and educational work. It is perhaps difficult to place into perspective the changes that have occurred over the last ten years. The idea that you could be sacked because you got married or became pregnant seems outrageous now, but for many just ten years ago, this was not only the reality but it was a reality for which there was no redress. There was no right to equality of treatment and outcomes. As I have said on many occasions over the course of the year, the shift in our perceptions and expectation of what is acceptable behaviour and what are our rights is perhaps one of the greatest achievements of the Act. It is not how many complaints there are, but rather how few, as the right to equality is practically exercised on a daily basis with little or no fanfare.

While such changes exemplify achievement, the ongoing work of the Sex Discrimination Unit demonstrates just how much is still to be done. This year has been one of the busiest yet, with the unit's work being targeted at long-term structural reform to complement the individual remedies offered by the complaints team. Particular attention has been placed on work in the industrial relations, superannuation and education spheres, as well as assisting in the overall process of legislative reform and ensuring the non-discriminatory administration of Commonwealth programs. Major and beneficial outcomes from this work will become apparent in the 1995-96 financial year as change is implemented, particularly through the industrial and statutory systems. In some ways, these are the quiet achievements of the Sex Discrimination Act. They do not often garner headlines, but they do provide positive benefits for all Australians in achieving equality. A further benefit of the work required to achieve such structural change is that it provides an opportunity for community leaders not directly involved in discrimination issues to become personally aware of the subtleties of how discrimination operates. Such knowledge should continue to inform other aspects of their work and thus provide a key element in the ongoing community education task associated with the successful operation of the Sex Discrimination Act.

One unexpected item of this year's work was that I spent six months fulfilling dual roles as Sex Discrimination Commissioner and as Queensland Anti-Discrimination Commissioner. Although personally demanding, this experience was a very rewarding one. In particular it provided me with an opportunity to work in a legislative environment where all elements of discrimination, be they race, disability, age or whatever, are considered under the one Act. As we had identified last year in the Review of Complaint Handling, there are considerable procedural benefits for both complainants and respondents in such an environment. Nevertheless, I remain convinced that there is great benefit in having specific Commonwealth legislation dealing with sex discrimination. Discrimination against different groups manifests itself in different ways and has different solutions. The co-existence of generic State
Based legislation and specific Commonwealth legislation allows for the appropriate targeting of solutions, as well as providing a symbolic centre of attention for particular issues that supports and complements the operation of State legislation.

Discrimination law is perhaps unique in Australia's Federal system in providing complementarity of operation between the Commonwealth and the States. It is a model that works for the benefit of all.

This year I also had the benefit of examining anti-discrimination legislation in Eire, Northern Ireland, the UK and Canada. Australia can be proud of its track record in relation to addressing sex discrimination. In many respects we are a world leader. However, there is still much of interest to observe overseas. Of particular interest to me was the operation of the Northern Ireland Fair Employment Commission, which deals with religious and political discrimination. The Commission combines the operations of anti-discrimination and affirmative action legislation in the one body, with considerable benefit to both. As a model, it reaffirmed for me the close link between the two issues in achieving equality of outcomes for individuals and for groups.

At a practical level, it reinforced the desirability of keeping close links between the Affirmative Action Agency and the Sex Discrimination Unit’s work, an example of which can be seen in this year’s release of *Fair Enough*, the hospitality industry training module described in the body of this report.

As I have noted in earlier reports, one of the most rewarding aspects of being the Sex Discrimination Commissioner is the opportunity it provides to meet a huge variety of people engaged in an equally enormous range of activities. Although I would not normally single out any particular set of people or activities, this year I must. Through HREOC’s Cairns office, I was privileged to be invited to the 4th annual Cape Women Meet in Weipa. This event has been held every second year since it began as a bicentennial project. It draws women of all backgrounds from all over the Cape York and Torres Strait areas. The format is both practical and fun, with everything from computer to belly dancing workshops, family barbecues to church services. But it was the women of the Cape themselves who were truly impressive, with lives and experiences as rich as you could dream of. My special thanks to them for making me, and my mother, feel so welcome and for providing me with the sort of personal inspiration that makes this job so worthwhile.

As I have each year, I also have to congratulate all those in the Sex Discrimination Unit for their prodigious efforts. In addition, this year I need to especially thank all who contributed to the success of the 10th anniversary celebrations and the staff of the Queensland office of HREOC for their support and assistance during my time as Queensland Anti-Discrimination Commissioner. Without them, the achievements of this year would not have been possible.
Finally, I think it appropriate to return to the beginning of the year and the five awards that were made symbolising the achievements of the last ten years. The first went to Chris Ronalds, Susan Ryan and Anne Summers, who between them established the legislative schema that protects women's rights and provides the framework for achieving equality through affirmative action. The second went to the "Australian Iron and Steel Women" who, using the NSW Anti-Discrimination Act, ran two of Australia's most important cases to achieve equality in the workplace. The third went to Adele Horin, a Sydney journalist who, over the entirety of her career, has worked for and publicised the cause of women's equality and provided consistent support to the objectives of the Sex Discrimination Act. The fourth award went to Karina Barker from Tasmania. At 19, she launched Australia's first common law action for sexual harassment, and at great personal cost, continued with it until she had won, firmly establishing that sexual harassment is not acceptable and is a legal wrong. The final award went to the Congress Alukura Council in Alice Springs. Over the ten years of the Sex Discrimination Act's existence, they have fought their own battle for the recognition of Aboriginal women's customary law with respect to childbirth.

All of these awards, all of these women from all over Australia, represent a cause for celebration. The work of my office this year will, I hope, have laid some of the groundwork for an equally successful second decade of the Sex Discrimination Act.

**FUNCTIONS UNDER THE SEX DISCRIMINATION ACT (SDA)**

To ensure that progress is made towards addressing discrimination issues in Australia, the Commission and the Sex Discrimination Commissioner have been granted a number of functions under sections 48 and 49 of the *Sex Discrimination Act 1984* (SDA). These functions fall into four broad categories:

- complaint handling;
- research, education and promotion;
- advice to government and Parliament on sex-discrimination issues; and
- additional functions.

The Commission's contribution during 1994-95 to addressing existing discrimination throughout Australia (on the basis of sex, marital status or pregnancy, or involving sexual harassment or dismissal on the grounds of family responsibilities) is outlined under these four categories.
COMPLAINT HANDLING

Complaints of unlawful discrimination may be brought to the Commissioner for investigation. Complaints are investigated and conciliated. Where the complaints fall within the jurisdiction of the provisions of the Sex Discrimination Act, unless an exemption has been granted, conciliation is undertaken to resolve the issue. Where complaints cannot be resolved through conciliation, they are referred to the Commission for formal hearing.

Temporary Exemptions Under the Sex Discrimination Act

The Commissioner has the power to grant temporary exemptions from the operation of the provisions of the SDA prohibiting discrimination (except those concerning sexual harassment), for a specified period not exceeding five years. Applications may be made to the Administrative Appeals Tribunal to review a Commission decision to grant such exemptions.

Temporary exemptions granted under the SDA, for the period 30 May 1994 and 30 June 1995, are listed below. The following exemptions all relate to superannuation schemes and cover provisions in schemes relating to dowry benefits and early retirement:

- Commonwealth Bank Limited
- Sentro Pty Ltd
- Nestle Australia Ltd
- Shell Australia
- NRMA
- NSW Superannuation Office
- Bowater Retirement Plan A & B
- P&O Australia & POCAS
- P&O Australia & OCAL
- Conaust Australia Pty Ltd
- Provincial Insurance
- Email Ltd
- HJ Heinz Australia Ltd
  WTH Pty Ltd/Avis
  Thomas Cook Ltd
- Colgate Palmolive Pty Ltd
Table 17 continues to demonstrate that employment is the single biggest area of concern, representing nearly 85% of complaints. The second largest area is again goods, services and facilities. A new area, superannuation, is included in the table for the first time this year, reflecting amendments to the Act.

<table>
<thead>
<tr>
<th>Area of Complaint</th>
<th>Central</th>
<th>QLD</th>
<th>NT</th>
<th>TAS</th>
<th>ACT</th>
<th>VIC</th>
<th>SA</th>
<th>WA</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employment</td>
<td>211</td>
<td>30</td>
<td>18</td>
<td>28</td>
<td>18</td>
<td>707</td>
<td>297</td>
<td>26</td>
<td>1335</td>
</tr>
<tr>
<td>Accommodation - Land</td>
<td>2</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>7</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>11</td>
</tr>
<tr>
<td>Goods and services - facilities</td>
<td>32</td>
<td>3</td>
<td>4</td>
<td>1</td>
<td>33</td>
<td>25</td>
<td>3</td>
<td>1</td>
<td>101</td>
</tr>
<tr>
<td>Clubs - incorporated associations</td>
<td>2</td>
<td>4</td>
<td>1</td>
<td>1</td>
<td>4</td>
<td>5</td>
<td>-</td>
<td>-</td>
<td>16</td>
</tr>
<tr>
<td>Administration of Commonwealth laws and programs</td>
<td>15</td>
<td>4</td>
<td>4</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>23</td>
</tr>
<tr>
<td>Education</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>13</td>
<td>2</td>
<td>-</td>
<td>-</td>
<td>18</td>
</tr>
<tr>
<td>Superannuation</td>
<td>6</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>6</td>
</tr>
<tr>
<td>Trade unions - accredited bodies</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>0</td>
</tr>
<tr>
<td>Other</td>
<td>10</td>
<td>7</td>
<td>-</td>
<td>1</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>18</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>279</strong></td>
<td><strong>45</strong></td>
<td><strong>27</strong></td>
<td><strong>33</strong></td>
<td><strong>21</strong></td>
<td><strong>758</strong></td>
<td><strong>336</strong></td>
<td><strong>29</strong></td>
<td><strong>1528</strong></td>
</tr>
</tbody>
</table>

Table 18 outlines the proportion of men making use of the provisions of the SDA has risen from 8% to 14.7%, largely reflecting a change in the Central Office profile. Private enterprise (41%), the Commonwealth (13%) and individual men (21%) continue to be the major categories of respondents.

<table>
<thead>
<tr>
<th>Category of complainant</th>
<th>Central</th>
<th>QLD</th>
<th>NT</th>
<th>TAS</th>
<th>ACT</th>
<th>VIC</th>
<th>SA</th>
<th>WA</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Male</td>
<td>65</td>
<td>5</td>
<td>10</td>
<td>3</td>
<td>5</td>
<td>90</td>
<td>45</td>
<td>4</td>
<td>227</td>
</tr>
<tr>
<td>Female</td>
<td>206</td>
<td>37</td>
<td>17</td>
<td>30</td>
<td>16</td>
<td>668</td>
<td>291</td>
<td>25</td>
<td>1290</td>
</tr>
<tr>
<td>More than one individual</td>
<td>10</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>10</td>
</tr>
<tr>
<td>Trade Union</td>
<td>0</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>0</td>
</tr>
<tr>
<td>On behalf of a person or group</td>
<td>7</td>
<td>3</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>10</td>
</tr>
<tr>
<td>Representative complaint</td>
<td>2</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>2</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>292</strong></td>
<td><strong>45</strong></td>
<td><strong>27</strong></td>
<td><strong>33</strong></td>
<td><strong>21</strong></td>
<td><strong>758</strong></td>
<td><strong>336</strong></td>
<td><strong>29</strong></td>
<td><strong>1541</strong></td>
</tr>
</tbody>
</table>
Table 19 describes outcomes. The number of cases referred to hearing has doubled from 5% to 10% since last year. Similarly, the proportion of complaints withdrawn has nearly doubled. More than half of all withdrawals occurred in Victoria as did more than half of all declines. The percentage of complaints declined has risen dramatically (from 6.5% to 19%) reflecting Federal Court decisions outlined elsewhere in this report. Of greatest concern is that the percentage of complaints resolved by conciliation has fallen from 40.6% to 28%. This will be further investigated in the coming year.

Table 19: Outcome of complaints closed or referred for hearing under the SDA
1 July 1994 to 30 June 1995

<table>
<thead>
<tr>
<th>Category of respondent</th>
<th>Central</th>
<th>QLD</th>
<th>NT</th>
<th>TAS</th>
<th>ACT</th>
<th>VIC</th>
<th>SA</th>
<th>WA</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Female</td>
<td>4</td>
<td>3</td>
<td>1</td>
<td>8</td>
<td>2</td>
<td></td>
<td></td>
<td></td>
<td>18</td>
</tr>
<tr>
<td>Male</td>
<td>15</td>
<td>2</td>
<td>9</td>
<td>15</td>
<td>211</td>
<td>42</td>
<td>1</td>
<td></td>
<td>295</td>
</tr>
<tr>
<td>Educational institution</td>
<td>3</td>
<td>2</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>6</td>
</tr>
<tr>
<td>Non-government organisation</td>
<td>6</td>
<td>7</td>
<td>2</td>
<td>-</td>
<td>16</td>
<td>5</td>
<td>-</td>
<td></td>
<td>36</td>
</tr>
<tr>
<td>Private enterprise</td>
<td>115</td>
<td>11</td>
<td>7</td>
<td>11</td>
<td>3</td>
<td>290</td>
<td>129</td>
<td>15</td>
<td>581</td>
</tr>
<tr>
<td>Trade Union - professional organisation</td>
<td>1</td>
<td>4</td>
<td></td>
<td></td>
<td>-</td>
<td>2</td>
<td></td>
<td></td>
<td>7</td>
</tr>
<tr>
<td>Local government</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>1</td>
<td>8</td>
<td>10</td>
</tr>
<tr>
<td>State government department or Statutory authority</td>
<td>13</td>
<td>4</td>
<td>1</td>
<td>17</td>
<td>13</td>
<td></td>
<td></td>
<td></td>
<td>48</td>
</tr>
<tr>
<td>Commonwealth department or Statutory authority</td>
<td>84</td>
<td>10</td>
<td>4</td>
<td>3</td>
<td>17</td>
<td>53</td>
<td>7</td>
<td>5</td>
<td>183</td>
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<tr>
<td>Not recorded</td>
<td>33</td>
<td>18</td>
<td></td>
<td>163</td>
<td>15</td>
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<tr>
<td><strong>Total</strong></td>
<td><strong>274</strong></td>
<td><strong>45</strong></td>
<td><strong>37</strong></td>
<td><strong>33</strong></td>
<td><strong>21</strong></td>
<td><strong>758</strong></td>
<td><strong>216</strong></td>
<td><strong>29</strong></td>
<td><strong>1413</strong></td>
</tr>
</tbody>
</table>

Table 19: Outcome of complaints closed or referred for hearing under the SDA
1 July 1994 to 30 June 1995

<table>
<thead>
<tr>
<th>Category</th>
<th>Central</th>
<th>QLD</th>
<th>NT</th>
<th>TAS</th>
<th>ACT</th>
<th>VIC</th>
<th>SA</th>
<th>WA</th>
<th>Total</th>
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<tbody>
<tr>
<td>Outside jurisdiction</td>
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</tr>
<tr>
<td>Declined</td>
<td>65</td>
<td>2</td>
<td>7</td>
<td>1</td>
<td>2</td>
<td>152</td>
<td>15</td>
<td>4</td>
<td>248</td>
</tr>
<tr>
<td>Conciliated</td>
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<td>20</td>
<td>9</td>
<td>14</td>
<td>4</td>
<td>159</td>
<td>103</td>
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<td>Referred for hearing</td>
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<td>19</td>
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<td>4</td>
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<tr>
<td>Withdrawn</td>
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<td>19</td>
<td>9</td>
<td>8</td>
<td>6</td>
<td>283</td>
<td>87</td>
<td>3</td>
<td>477</td>
</tr>
<tr>
<td>Concilation failed - not yet referred for hearing</td>
<td>60</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>60</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>197</strong></td>
<td><strong>60</strong></td>
<td><strong>31</strong></td>
<td><strong>28</strong></td>
<td><strong>16</strong></td>
<td><strong>717</strong></td>
<td><strong>216</strong></td>
<td><strong>23</strong></td>
<td><strong>1288</strong></td>
</tr>
</tbody>
</table>
Case Studies

Sexual Harassment in Employment

A young woman was employed as a waitress in a large hotel. She alleged that a more senior member of the kitchen staff sexually harassed her and was abusive towards her. She alleged that she made a complaint to the hotel's Equal Opportunity/Human Resources manager, who took some informal action. The complainant alleged that after this, she was subjected to victimisation from the individual respondent. She felt she could not raise the issue with the HR manager because of the lack of action on the previous occasion, and subsequently lodged a complaint with Human Rights and Equal Opportunity Commission.

The respondent employer denied that it had failed to treat the complaint appropriately. It produced documents which showed the amount of training given to staff on workplace harassment, EEO policies and procedures and the seriousness with which it regarded breaches of those policies. It also produced information regarding the disciplinary action taken against the individual respondent, and the warning that future breaches of conduct could warrant dismissal. This information had not, prior to the Commission's involvement, been disclosed to the complainant.

At the conciliation conference, the parties discussed the adequacy of the Hotel's procedures. The Hotel denied any inadequacy, but acknowledged that the complaint could have been dealt with differently and that the complainant could have been more informed about the warning given to the individual respondent. The complainant sought financial compensation, which the respondent refused. However, the parties agreed to settle the complaint by offering to the complainant certain benefits that were available through the Hotel network.

Sexual Harassment in Employment

A young women was employed in a large private financial institution. A male colleague of the woman had allegedly made sexual advances towards her while they were socialising with other colleagues out of work hours. The woman allegedly rejected his advances.

Over the following weeks the male colleague had been promoted to a position which included supervising the woman's work. Over a period of time the woman was dismissed, allegedly for poor work performance and misconduct.
The complainant alleged that her dismissal was unfair and was as a result of having rejected the previous sexual advances made to her by the male colleague. Furthermore, she alleged that attempts to lodge a complaint with management about the behaviour was to no avail.

The complainant attended a conciliation conference with her union representative. The individual respondent and the Company Director, on behalf of the organisation, both attended with legal representatives. The complaint was successfully resolved at conciliation. The complainant received a written apology from the individual respondent and from the organisation as to the handling of the matter. She also received a written reference and $20,000 compensation for the loss of income and general damages.

**Indirect Sex Discrimination**

A representative complaint was lodged by an individual woman on behalf of the women who served in the Australian Defence Forces during World War II. The complaint was against a government department which administered an Act of Parliament that conferred particular benefits to returned servicemen and women. The complainants had been seeking changes to the benefit scheme for over 40 years.

The criteria for entitlement to the benefit required the applicant to have enlisted for active service overseas during WWII or that the applicant in fact served overseas. This meant that a person who enlisted for active overseas service, but did not in fact serve overseas, was eligible for the benefit.

The complainants argued that the criteria for eligibility was indirect discrimination against women who served in the defence forces. The complainants argued that at the time of enlistment in the forces, the government restricted women serving overseas, therefore very few women were able to enlist for active overseas service. It was also important to note that the women were also volunteers, and many believed that they could have been sent overseas. Even though this was a mistaken belief, it emphasised the women's commitment to serve the defence of Australia during the war.

The complainants argued that the criteria allowed more men than women to be eligible for the scheme and that it was an unreasonable condition. Information provided by the respondent demonstrated that over 91% of total male enlistments were eligible for the benefit, whereas only 6% of total female enlistments were eligible.

The Department responded by stating that eligibility for benefits under the scheme actually reflected the different divisions in the defence services, that is, those raised for service abroad and those raised for home service. The Department further argued that
it was not of itself being discriminatory, but was bound to determine eligibility for assistance under the scheme in accordance with the Act, even if the legislation was discriminatory.

At the conciliation conference, the parties agreed to settle the complaint, on the undertaking that the department would take steps to recommend changes to the legislation and the removal of the eligibility bar to the complainant and the other women she represented. In the 1995 Budget the Government announced changes to the legislation to take effect from 1 July 1995 which extended full eligibility to the complainants. The complaint was settled.

**Pregnancy Discrimination**

A woman had left her previous place of employment to accept a higher position with a large non-profit community organisation. Following a number of months with the organisation, she informed her supervisor that she had become pregnant. She explained she was concerned that her unplanned pregnancy would affect her career with the organisation, yet she was keen to begin a family. Her supervisor was thrilled with her news and reassured her that she would be able to resume her position following a period of maternity leave. The woman was extremely pleased with the response.

The following day, the woman was called into a meeting with her supervisor and the section head of the organisation. She was told that, as a result of restructuring within the organisation and as one of the most recent employees "on board", her position would unfortunately be made redundant.

The complainant alleged that her redundancy was unfair and that the real reason she was made redundant was that she was now pregnant and would need to take maternity leave. Her employers explained that the decision was not related to her pregnancy at all.

The parties attended a conciliation conference to discuss and attempt to resolve the matter. The complaint was successfully resolved at conciliation. The complainant received a written apology from the organisation in relation to the handling of the matter. She also received a written reference and $14,500 compensation for loss of income and general damages.

The organisation further agreed to contact the Commission with a view to developing internal training courses for management on the area of sex discrimination in employment, with particular emphasis on anti-discrimination legislation dealing with pregnancy and family responsibilities.
EDUCATION AND PROMOTION

The Commissioner has the functions of:

m promoting understanding and acceptance of, and observing provisions of, the Act; and

m undertaking research and educational programs to promote the provisions of the Act.

Promotion of the Sex Discrimination Act and Anti-discrimination Issues

10th Anniversary Activities

August 1, 1994 was the tenth anniversary of the passing of the Sex Discrimination Act. A number of celebratory activities took place to mark the occasion.

Celebrations

A luncheon was held on 29 July 1994 at the Regent Hotel Sydney to celebrate the anniversary. It was attended by over four hundred people. The keynote address was delivered by the Prime Minister, who announced the Government's intention to amend the SDA. These amendments, forming the Sex Discrimination Amendment Bill 1995, are discussed later.

The Hon. Michael Lavarch, Attorney-General, and the Hon. Carmen Lawrence, Minister Assisting the Prime Minister for the Status of Women, presented a number of awards to women who have made significant contributions to promoting and improving the status of women over the last ten years.

Banner artworks were commissioned from five women artists for the anniversary and were displayed at the lunch. Entertainment was provided by Alice Haines and Le Gioie delle Donne (The Joys of the Women) who also performed, with other artists, at a public concert the same evening.
10th Anniversary Projects

A number of joint projects to mark the anniversary were announced at the luncheon.

Flexible working hours project

This project is being undertaken jointly with the Australian Council of Trade Unions and should be finalised before the end of the 1995 calendar year.
The aims of the project are to:

so identify the range of flexible work patterns being introduced under enterprise agreements and their impact on women workers; and

a develop practical guidelines to facilitate consideration of women's needs when developing flexible work patterns.

**Women, Superannuation and Actuarial Data**

This project is being financed by an Association of Superannuation Funds of Australia research grant. It will look at the impact of discrimination law on actuarial practice, and consider alternative approaches to the use of sex-based actuarial tables.

**Asia Women's Fellowship Program**

The program is a joint project with the Asia-Australia Institute, University of NSW. Objectives include educating Australians about the leadership role played by women in government, economic, social, cultural and intellectual life in the Asian region, and providing an opportunity for a high profile woman from north-east or south-east Asia to visit Australia for an intensive program of consultation with Australian leaders in her field. The program will take place annually. Planning work is underway to select the first candidate who will visit Australia late 1995.

**Commissioner's Speeches and Papers Delivered**

The Commissioner and her staff delivered over forty speeches and papers during the year. Copies of speeches and papers are available and may be obtained by contacting the Commission.

Some of the more topical speeches included:

6.7.94 Women, Management and Industrial Relations Conference in Sydney: *Enterprise Bargaining and Sex Discrimination*;

23.9.94 Flinders University of South Australia, The New Industrial Relations: An Inter-disciplinary Critique Conference; *Godzilla Meets Bride of Frankenstein: Duel to the Death or Marriage Made In Heaven?: The new partnership between industrial relations and anti-discrimination law*;

16.2.95 Australian Rights Congress, Sydney Convention Centre: *The Adequacy of Present Protection for Women* ;
20.2.95 University of Melbourne Law School, Centre for Employment and Labour Relations Law, Workplace Discrimination and the Law Conference: *Sex Discrimination a and Related Issues*;

22.2.95 Lakeside Hotel Canberra, Opening Address, Promoting Gender Equity Conference: *Gender Equity in Education, A View from Outside the Classroom*;

15.3.95 Wrestpoint Hotel Hobart, Conference of Major Superannuation Fund: *Discrimination in Super Funds*;

1.4.95 Novotel Wollongong, Industrial Relations Society of NSW Annual Conference: *Reform in NSW and Federal Industrial Relations: Equity Issues*;

5.6.95 University of New England Armidale, EEO Unit Work and Family Conference, keynote address: *Marrying Work and Family Responsibilities*;

14.6.95 Royal Air Force Base, Williamtown, RAAF Legal Conference: *SDA and the ADF*.

**Industry-Specific Activities**

A brochure dealing with sexual harassment and anti-discrimination issues and outlining the rights of workers in the Australian meat industry has been endorsed by the Federal Council of the Australasian Meat Employees Union and by women meatworkers. This brochure, designed by a rank and file meat worker, will be printed by the Union shortly and distributed through union delegates. The work was sponsored by the Sex Discrimination Commissioner and was based in the Commission's Rockhampton office.

The Sex Discrimination Unit worked with the Construction, Forestry, Mining and Energy Union (CFMEU) Mining Division to provide training to union delegates at the mine in Emerald, Queensland on sex discrimination legislation.

Handbooks for union delegates, workers and management involved in enterprise bargaining in local government, the finance sector and small public sector agencies should be available before the end of the 1995 calendar year.
Educational Activities

Hospitality Industry Training Module

The training package *Fair Enough: Your Guide to Hospitality, Women and the Law* was launched at the Annual National Tourism Training Conference, held at the Sydney Hilton on 22 June 1995. It is designed to teach staff, supervisors and managers in the hospitality industry about sex discrimination, equal employment opportunity and affirmative action and to provide practical assistance and support to company trainers and industry teachers. It includes sample learning resources, a competency based training format and methodology specifically designed for this industry, and uses gender inclusive curriculum design.

The Federal Group of Hotels and HREOC have worked co-operatively over the last few years to actively promote a new non-discriminatory workplace ethic and environment, effective complaint resolution mechanisms and a positive recognition of women staff. The culmination of this work is the training package.

Industry endorsement of the training package will be sought through the Australian Hospitality Review Panel.

Sex Discrimination: A Guide for Unions

The Commissioner produced a comprehensive manual for unionists on sex discrimination issues. It contains information on using the SDA and the anti-discrimination and equal pay provisions of the Industrial Relations Act. It is aimed at union officials and industrial, research and training officers.

Many unions have ordered copies and considerable positive feedback has been expressed. Since its release, the manual has generated a number of enquiries from unions for advice about workplace situations which may be discriminatory. Staff have participated in a number of Trade Union Training Authority seminars on sex discrimination issues.


The Women's Employment Coordination Group (an inter-departmental committee comprising agencies involved in women's employment issues) jointly funded this project which was initiated and managed by HREOC.
The handbook covers services provided in relation to women's employment by the Departments of Employment, Education and Training, Industrial Relations and Community Services and Health; the Affirmative Action Agency, Public Service Commission, Office of Status of Women and HREOC. It will be distributed primarily to organisations and people who refer others to services.

**Sexual Harassment Comic**

Last year, *Streetwise Comics* was commissioned to produce a comic for school students on sexual harassment. During 1994-95 nearly 100,000 copies of the comic, called *Hands Off!*, were distributed nationally. It has been extremely well-received and is one of Streetwize's most popular publications. Due to demand, *Hands Off!* was reprinted in June 1995. At the request of the Independent Education Union, a copy has been inserted into its magazine, *Independent Education*, which has a national circulation of 35,000.

**Access to Publications**

To improve access and equity within broader community groups, the Commissioner is producing publications in several languages. Recent translations of *Sexual Harassment: Knowing Your Rights, Your Guide to the Sex Discrimination Act* and *Your Rights at Work* are currently being tested within the Chinese, Arabic and Vietnamese communities. They will be available for distribution in 1995-96. Translations into other community languages are planned.

**INTERVENTIONS**

**Review of Wage Fixing Principles**

The Sex Discrimination Commissioner made a submission to the Review of Wage Fixing Principles on the basis of her responsibility to eliminate discrimination in employment. The submission raised concerns about dealing with discrimination in awards and agreements and addressing pay equity issues.

The Australian Industrial Relations Commission (AIRC) found that the amended *Industrial Relations Act 1988* provides scope for dealing with these concerns, but, should these measures fail to deal with the problem, appropriate action will be taken by the AIRC to remedy the situation. The Commission affirmed that the range of
anti-discrimination and equal pay provisions in the legislation could be relied on in individual cases, and that these provisions would guide the Commission in its implementation of the wages system.

**Section ISOA Award Reviews**

The amended *Industrial Relations Act 1988* requires industrial awards to be reviewed against a number of criteria, including discrimination, every three years (s.150A). Where the AIRC is satisfied that discrimination exists, it must take steps to remedy this.

The Commissioner has participated in the pilot program of award reviews involving fourteen Federal awards. Reports have been submitted to the AIRC about direct and possible indirect discrimination in those awards. A number of hearings and conferences of parties have been attended, and material was prepared for inclusion in a Bench book which will guide parties to future reviews. The pilot program of reviews ends in August 1995.

**Special Family Leave Test Case**

In August 1994, the Sex Discrimination Commissioner intervened in the Special Family Leave Test Case on behalf of HREOC. The Commissioner supported most aspects of the ACTU’s application for five days non-cumulative paid leave per year for full-time and part-time workers to care for their sick dependent child/children or other members of their immediate family. In line with the Commission's statutory basis, the submission supported a definition of family which would include same sex partners, extended family and kinship networks, and carers for people with disabilities.

The Australian Industrial Relations Commission decision introduced a two stage package. The first stage allowed employees to use their sick leave entitlements to provide care and support for ill members of their immediate family or household. The second stage will examine the introduction of a range of facilitative provisions in relation to annual leave, hours of work and unpaid leave. Further hearings on this issues are scheduled for August 1995.
ADVICE TO GOVERNMENT AND PARLIAMENT ON SEX DISCRIMINATION ISSUES

Legislative Review

The Commissioner may review proposed and existing legislation to assess consistency with the provisions of the SDA, and to recommend to the Attorney-General improvements to Commonwealth legislation, policy and practices in addressing discrimination issues.

Legislative Changes to the SDA

The *Half Way to Equal* Report of the House of Representatives Standing Committee on Legal and Constitutional Affairs Inquiry into Equal Opportunity and Equal Status for Women in Australia proposed a number of amendments to improve the operation and effectiveness of the SDA. The Sex Discrimination Commissioner commented upon the Government's Discussion Paper about the amendments and has been actively involved in the discussions which have brought the *Sex Discrimination Amendment Bill 1995* before Cabinet.

The Bill proposes amendment of the Act to:

- insert a preamble incorporating both a general prohibition on discrimination and provision of equality before the law (Recommendation 60);
- simplify the test for indirect discrimination and place the onus of proof on the respondent to show that the imposition of a discriminatory requirement, condition or practice is reasonable (Recommendation 70);
- include potential pregnancy as an unlawful ground of discrimination and to remove the reasonableness test for direct discrimination on the ground of pregnancy;
- amend the Special Measures provision to make clear that such measures are not discriminatory and to move the provision from the exemptions division to the definitions division of the Act (Recommendation 72); and
- delete the exemption in relation to combat-related duties from the Act.
Discussions are continuing concerning Recommendation 62 to extend the scope of discrimination on the ground of family responsibilities to cover all areas of employment. The Commissioner has been involved in the inter-departmental committee responsible for the Federal Government's implementation strategy on the International Labour Organisation Convention No. 156, Workers with Family Responsibilities.

**Australian Law Reform Commission: Equality Before the Law Reference**

The Sex Discrimination Commissioner has formally responded to the *Equality Before the Law: Justice for Women* Report No 69 Part 1. The response focused on recommendations in Part II of the report "Measures to combat discrimination", which included seventeen recommendations on strengthening the operation and effectiveness of the Act. A number of these recommendations have already been dealt with in the Sex Discrimination Amendment Bill currently before Parliament.

Other important recommendations still under consideration include:

- greater emphasis on auditing and compliance to support the complaint-based process. This would require clarification of the Sex Discrimination Commissioner's general investigative, inquiry and reporting powers under the SDA, and may involve the Minister formulating standards or codes of practice (as in the *Disability Discrimination Act 1992*) instituting procedures specifically to deal with repeat respondents;

- removal of permanent exemptions which have hampered the effectiveness of the Act since its inception; and

- development of strategies for improving access to the complaints process by sectors of the community more likely to experience discrimination.

**Transgender Discrimination and the SDA**

A discussion paper entitled *Transgenders and Discrimination: Options for Legislative Protection* was prepared in response to numerous enquiries received by HREOC from transgender persons and organisations about the potential for securing protection from discrimination for transgenders under the SDA. The purpose of the paper included assessing the potential of existing legislative mechanisms to provide an avenue of redress for transgenders who are discriminated against.
The paper has been distributed to most of those with whom HREOC consulted during preparation and will be officially released soon. There will be a period for general public comment and submission following which legislative options can be identified and assessed and considered by the Attorney-General and his Department.

**Section 26 Administration of Commonwealth Laws and Programs**

Under section 26 of the Sex Discrimination Act, it is unlawful for persons administering Commonwealth laws and programs to discriminate against a person on the grounds of sex, marital status or pregnancy. The Commissioner may undertake reviews to ensure Commonwealth agencies observe the provisions of the SDA.

**Commonwealth Employment Service (CES)**

The report of the *Review of CES Services and Programs*, conducted under Section 26 of the Sex Discrimination Act, was released in June 1995. It was coordinated by the Sex Discrimination Commissioner, with advice provided by a Reference Group comprising Department of Employment Education and Training (DEET) and the Office of Status of Women. A DEET officer was seconded to HREOC to work on the review.

While the report of the Review's outcome focuses on policies and practices which are potentially discriminatory, it does not suggest that the practices described are necessarily widespread or endemic in the CES. Rather, it concentrates on a series of measures to improve practices and eliminate discrimination. Its aim is to achieve the objectives of the SDA.

The report strongly recommends that DEET remind staff of the importance of applying non-discriminatory practices in the delivery of CES services and programs. Staff need adequate and appropriate training to assist them undertake what is an enormous responsibility. Quality control measures in relation to discrimination should be introduced and must be explicit in the parameters of program design so as to identify and prevent discriminatory treatment of service users and discriminatory elements of program design. Monitoring and evaluation processes must be implemented and should be informed by culturally appropriate and meaningful consultations with service users. Further discussion has been planned regarding the implementation of recommendations.

The Review of the CES and programs also served as a pilot for similar reviews of major Commonwealth programs. The implications of this Review for future Section 26 evaluations will be addressed separately.
Social Security Act

A review of the exemption of the Social Security Act from the Sex Discrimination Act has commenced. This review is required by statute to be completed by June 1996. A steering committee has been established comprising representatives of the Australian Law Reform Commission, the Department of Social Security, the Attorney-General's Department, the Office of the Status of Women and HREOC.

Extensive work was conducted in identifying all the discriminatory provisions under the Social Security Act. Position papers have been prepared by steering committee members. A final report on the review and recommendations in relation to the exemption will be completed by the end of 1995.

ADDITIONAL FUNCTIONS

Legal Intervention in Court Proceedings

The Commission has the powers under the Sex Discrimination Act to intervene in Court proceedings which involve sex discrimination issues. This power ensures that the provisions of the Act are adequately presented and taken into consideration in the final decision. The Commission need not be directly involved in these cases for the intervention powers to be exercised. Details of legal interventions are provided in the The Year in Review chapter.

Anti-Discrimination Guidelines

The Commission has the powers to prepare and publish guidelines on the avoidance of discrimination within the provisions of the Act.

Codes of Practice

Research has begun for the production of codes of practice on equal pay, sexual harassment and sex discrimination. The codes will provide guidance about the implications of anti-discrimination and industrial legislation and cases in Australia. Several organisations have agreed to test the equal pay code and self-audit methodology.
Superannuation Industry Projects

The Commission has been working with superannuation industry representatives on a taskforce to produce specific Guidelines for the industry on the operation of the superannuation amendments to the SDA. These Guidelines have been finalised and will be available for the industry from 30 June 1995.

Guidelines deal with:

- early retirement and dowry benefits;
- marital status;
- part-time and casual workers;
- leave without pay; and
- past discrimination.

Sexual Harassment Guidelines for Educational Institutions

The SDA prohibits sexual harassment of staff and students in educational institutions. The relevant provisions contain some complex legal and jurisdictional issues.

Plain English guides have been produced for educational institutions to explain these issues and to provide information on prevention strategies and complaint procedures. The guidelines will be printed and distributed in the new financial year.
DISABILITY
DISCRIMINATION
Ms Elizabeth Hastings was appointed as the first Disability Discrimination Commissioner on 17 December 1992 and commenced duty on 8 February 1993.

Ms Hastings was a Commissioner with the original Human Rights Commission from 1981 to 1986. She has practised as a psychologist and psychotherapist for over 20 years, and was Senior Counsellor at La Trobe University from 1977 until her appointment as Disability Discrimination Commissioner. She holds a Bachelor of Arts with Honours from the University of Melbourne.

Ms Hastings was a founding member of the Victorian Consultative Committee on Disability and the Victorian branch of Disabled People's International. She was a member of the Victorian Executive Committee for the International Year of Disabled Persons and a delegate to the inaugural Disabled People's International Congress in Singapore in 1981.

The Disability Discrimination Commissioner exercises certain statutory powers and functions of inquiry, investigation and conciliation for the Commission.

**Statement from the Disability Discrimination Commissioner**

People who have disabilities have been routinely excluded from Australian society through lack of access to the built environment, to public transport, to education and employment opportunities, to goods and services, to recreation, entertainment and sport, to the protections of insurance and superannuation, and to the personal power and autonomy that is the result of being possessed of relevant and essential information. This is the direct, albeit unintended, result of generally unspoken assumptions about the supposedly "normal" characteristics of the Australian population, including intellectual acuity, physical health status, emotional and behavioural homogeneity, mobility, vision, and hearing.

The Disability Discrimination Act (DDA) requires that these exclusions and systemic discriminations cease, and that people who have disabilities can legitimately expect to live in their own community with freedom, equality and the dignity of choice.

During the past year, many steps have been taken towards this goal, as outlined in the following report. One area of particular significance is public transport. As a result of the granting of two interim determinations, and the management of these and other complaints from people in three states who have disabilities and who could not use the
Public Transport system, all Ministers for Transport have now begun working together with disability and other representative groups, the Attorney-General and HREOC to develop a draft national standard which may be proposed to the Attorney-General as a Disability Standard under the DDA. This is a most exciting development, which will transcend State and Territory boundaries and make it possible for people who have disabilities to travel independently about their personal and business activities. It will establish the parameters of an accessible service, including for people who have vision, hearing and intellectual disabilities, and will provide a basis for confidence both for people who have disabilities and for those who provide transport services. That this until now intractably inaccessible area of daily living is at last undergoing change is a sign to people who have disabilities that government is serious about the elimination of discrimination. I trust the process will be supported to completion.

In a similar vein, I am gratified by the cross-sectional co-operation which has been demonstrated so far in work towards the possible development of an Employment Standard under the DDA. The committee, which includes employer, union and disability representation, has produced and distributed for the first round of consultation a resource paper and a discussion paper on this extremely complex area. Employment is one of the largest areas of complaint under the DDA and it will again be of enormous benefit to all parties to have a Standard which clarifies the meaning of the legislation and provides for consistent and predictable compliance.

A decision under the Queensland Anti-Discrimination Act (QADA) late last year established that "adequate" access to a building was not "equal" under the QADA and that compliance with the Building Code of Australia (BCA) was not sufficient for compliance with the QADA. This decision put into legal and official words what people who have disabilities have always known, as we have attempted to go about the ordinary activities of living. The Australian Building Code Board has decided, in the light of this decision and of probable future actions under anti-discrimination legislation, to revise the BCA to make it compatible with the DDA. Again, a wide cross-section of interested parties, including disability advocacy groups and Local Government, is represented on the relevant committees.

Concerted nation-wide action in these three areas - transport, employment and access is an unprecedented advance in the long-fought battle of people who have disabilities for real equality of opportunity and choice. I shall be actively supporting these processes as they unfold over the next year.

There are major areas still to be addressed, not the least of which is education at all levels. A large number of complaints attest to the failure of the mainstream school and tertiary education systems to offer real choice and equality of opportunity to children and older students who have disabilities. All over Australia there are children whose education is interrupted or limited by the failure of government and private schools to grasp the idea that there are many children, all of whom have an equal right to
whatever education is able to be provided out of hard pressed budgets, not one set of children who fit the system, then another set of children who have disabilities who may be educated only if, and so far as, some other budget allows. The phrase "our Australian children" means just that - our Australian children. Many children have one or more disabilities - that is the population of children. Many children have siblings or friends who have disabilities, with whom they should be able to expect to go to school.

I shall be conducting focused research and community development activities in this area in the coming year.

Access to justice has also been the subject of major activity this year. The recent report of the Access to Justice Advisory Committee paid scant attention to the specific requirements of people who have disabilities in order that they may benefit from and contribute to the justice system. Access in its fullest sense is not yet well understood in the justice system at large. Physical access not only to the floor of the court and to the lavatories but also to the police station, the jury stand and witness box; the use of sign interpreters; recognition of the need for support persons for people who have an intellectual disability; and understanding and use of assisted communication are some of the requirements that must be met before people with disabilities can begin really to be equal before the law. The significant over-representation in the police and court systems of defendants who have an intellectual disability, a psychiatric disability or an acquired brain injury, and the under representation of people who have disabilities in legal service delivery, demands that this matter be addressed swiftly and effectively.

The government's Justice Statement indicates a commitment to ensuring equality of access to justice for all Australians. I look forward to developments in this fundamentally important aspect of life, and to being involved in the articulation and establishment of processes which are free of discrimination, both direct and indirect.

Access to the political processes of this country is also a focus for attention in the light of the requirements of the DDA, not merely for people who have disabilities as observers on school excursions, or as tourists, but as voters, office bearers and active participants in the various political agendas. It is still the case that a voter who has a disability is expected to seek help to cast a vote, to stay home and send a postal vote, or to seek an exemption on grounds of ill health. This is entirely unacceptable: it makes a mockery of our voting system when people who have disabilities cannot, because of systemic discrimination, do that which we are all taught is not only compulsory, but is also the significant civic act of adulthood.

Throughout this year complaints on all these matters, and more, have continued to be lodged at an extraordinary rate with the Commission, both in the Central Office and in our six Regional Offices, and with the Victorian Equal Opportunity Commission acting on my behalf The number and complexity of complaints under the DDA has been evidence of the daily exclusions, limitations, humiliations and disappointments faced
by people who have disabilities, and a challenge for the staff of the Commission who have been interpreting this still new and relatively unstretched legislation to complainants and respondents, as well as to the wider community.

I have sought always to ensure that the work of complaints handling informs, and is informed by, policy development, so that individually conciliated outcomes will reflect the broader principles of the legislation. I have also sought to ensure that all publications or projects relating to the Act will be cognisant of the practical and real issues being brought to my attention through the management of complaints. As matters which are not capable of conciliation are referred for public hearing, so will the body of discrimination case law be established and developed.

While I and the staff of the Commission continue, within the sphere of influence of the DDA, to work towards the realisation of a discrimination-free environment in which all Australians can expect equal enjoyment of their rights and of their responsibilities, it must be recognised that the mere implementation of the Act, no matter how effective, will not eradicate all the injustices and indignities experienced by Australians with disabilities. Other aspects of the Commission's mandate may also be used in defence of the rights of a person who has a disability. An instance of this is detailed elsewhere in this report, in relation to the Commission's intervention in P-v-P.

It is necessary for the attainment of a just society that the rights of people with the most profoundly disabiling conditions, such as severe psychiatric illness or physical or intellectual disabilities, or multiple disabilities requiring high levels of care and support, are protected from the violations to which they are so vulnerable and so often exposed. While they continue to be subjected to physical and sexual assault, to inadequate nutrition, to minimal attention for their broader health needs, to lives with little or no stimulation or hope, to accommodation in inappropriate facilities, or to the care of families stretched beyond their capacity to cope, then Australia is failing in its obligation to its own people. Discrimination and Human Rights law, as they currently exist, do not easily reach into these areas. I urge all levels of government to attend to the legitimate needs of this largely silent section of our community.
FUNCTIONS UNDER THE DISABILITY DISCRIMINATION ACT

To ensure that progress is made towards addressing discrimination issues in Australia, the Commission and the Disability Discrimination Commissioner have been granted a number of functions under sections 67 and 68 of the Disability Discrimination Act 1984. These functions fall into five broad categories:

- complaint handling;
- education and promotion;
- advice to government and Parliament on disability discrimination issues;
- compliance activities; and

The Commission's contribution during 1994-95 to addressing existing disability discrimination throughout Australia is outlined under these five categories.

COMPLAINT HANDLING

Complaints of unlawful discrimination on the grounds of disability may be brought to the Commissioner for investigation. Complaints are within jurisdiction, are investigated by the Disability Discrimination Commissioner. Unless exemptions have been granted to specific organisations under the Act, conciliation is undertaken to resolve the issue, if this is considered appropriate. Where complaints cannot be resolved through conciliation or are inappropriate for conciliation, they are referred to the Commission for hearing.

Temporary Exemptions under the Disability Discrimination Act

The Commission may grant temporary exemptions from the operation of the provisions of the DDA prohibiting discrimination (except those relating to harassment or Disability Standards), for a period not exceeding five years.

The Commission granted two exemptions under the DDA during 1994-95. The first was to the State of Western Australia in August 1994, for a period of three months, to
allow time for development and implementation of non-discriminatory policies regarding HIV positive prisoners. The second was to the South Australian Minister for Transport, the Passenger Transport Board and Trans Adelaide in February 1995, for a period of 12 months for exemption from section 24 of the DDA regarding inaccessibility of buses to certain people with a disability. This will allow time for the transport authorities concerned to conduct trials of accessible vehicles and develop and implement strategies to achieve equal access to public transport more generally.

The Commission has also received applications for exemption under the DDA which have been withdrawn by the applicants. These include the application referred to in the Commission's Annual Report for 1993-94 regarding accessibility of Automatic Teller Machines.

The Commission has adopted a policy which it uses in dealing with applications for exemptions under the DDA. This policy provides for input from interested parties before the Commission makes a decision to ensure that the exemption power is administered within the objects and purposes of the Act. Copies of this policy are available on request.

Complaints Investigation and Resolution

The Commissioner has the power to investigate alleged infringements of the Act and to attempt to resolve the issues by conciliation.

Complaints under the Disability Discrimination Act (DDA) have been received since 1 March 1993 when the Act came into operation. Complaints under the DDA are received by HREOC offices in NSW, Queensland, Northern Territory, Tasmania, and the ACT. Existing co-operative agreements with Victoria, South Australia and Western Australia do not provide for management of Federal complaints under the DDA in those States. However, the Commission was able to enter into an interim agreement under which the Victorian Equal Opportunity Commission handles DDA complaints arising in Victoria.

Details of disability discrimination complaint investigations undertaken during 1994-95 are provided on the following pages.

A total of 1219 complaints were accepted as being within the jurisdiction of the DDA during 1994-95 (see Table 17). Any differences between this figure and the total numbers in the following tables are attributable to complaints sometimes applying to more than one category.

Table 17 details complaints lodged at each office by type of disability. During 1994-95, around 25% of total complaints involved physical disabilities, 11% involved psychiatric disabilities, and 8% involved sensory disabilities. Last year, 57% of
complaints involved physical disabilities. Complainants with intellectual disabilities are under represented in comparison to their proportion in the community. The Commission will be looking into reasons for this with a view to improving its accessibility to this group of people and to others whose disabilities are similar in their effect on communication and information.

Table 20: Complaints lodged under the DDA by the complainant's type of disability: 1 July 1994 to 30 June 1995

<table>
<thead>
<tr>
<th>Type of Disability</th>
<th>Central</th>
<th>QLD</th>
<th>NT</th>
<th>TAS</th>
<th>ACT</th>
<th>VIC</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Physical disability</td>
<td>169</td>
<td>25</td>
<td>15</td>
<td>18</td>
<td>11</td>
<td>73</td>
<td>311</td>
</tr>
<tr>
<td>Intellectual disability</td>
<td>23</td>
<td>7</td>
<td>3</td>
<td>3</td>
<td>-</td>
<td>10</td>
<td>46</td>
</tr>
<tr>
<td>Psychiatric disability</td>
<td>51</td>
<td>8</td>
<td>31</td>
<td>6</td>
<td>-</td>
<td>34</td>
<td>130</td>
</tr>
<tr>
<td>Neurological disability</td>
<td>38</td>
<td>1</td>
<td>2</td>
<td>8</td>
<td>-</td>
<td>34</td>
<td>49</td>
</tr>
<tr>
<td>Sensory disability</td>
<td>57</td>
<td>7</td>
<td>2</td>
<td>3</td>
<td>34</td>
<td>49</td>
<td>103</td>
</tr>
<tr>
<td>Learning disability</td>
<td>17</td>
<td>2</td>
<td>-</td>
<td>-</td>
<td>2</td>
<td>4</td>
<td>25</td>
</tr>
<tr>
<td>Work related disability</td>
<td>45</td>
<td>2</td>
<td>6</td>
<td>44</td>
<td>97</td>
<td></td>
<td></td>
</tr>
<tr>
<td>HIV/Aids</td>
<td>21</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>7</td>
<td>28</td>
<td></td>
</tr>
<tr>
<td>Other organisms capable of causing disease</td>
<td>14</td>
<td>1</td>
<td>2</td>
<td>4</td>
<td>21</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Physical disfigurement</td>
<td>2</td>
<td>10</td>
<td>-</td>
<td>-</td>
<td>3</td>
<td>15</td>
<td></td>
</tr>
<tr>
<td>Uncoded disability</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>352</td>
<td>352</td>
<td></td>
</tr>
<tr>
<td>Other</td>
<td>30</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>22</td>
<td>52</td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>467</td>
<td>53</td>
<td>57</td>
<td>33</td>
<td>32</td>
<td>587</td>
<td>1229</td>
</tr>
</tbody>
</table>

*Some complainants have multiple disabilities.

Table 21 outlines the areas of complaint, the most significant being employment (43% of total) and the provision of goods, services and facilities (37% of total). The next largest area of complaint is in the area of education. Given that the provision of goods, services and facilities is often an access related matter, and adding in the complaints about access per se, the areas of complaint are an accurate reflection of the most common difficulties faced by people who have disabilities.
Table 21: Complaints lodged under the DDA by area of complaint:
1 July 1994 to 30 June 1995

<table>
<thead>
<tr>
<th>Area of complaint</th>
<th>Central*</th>
<th>QLD</th>
<th>NT</th>
<th>TAS</th>
<th>ACT</th>
<th>VIC</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employment</td>
<td>147</td>
<td>27</td>
<td>10</td>
<td>14</td>
<td>17</td>
<td>307</td>
<td>522</td>
</tr>
<tr>
<td>Education</td>
<td>32</td>
<td>3</td>
<td>12</td>
<td>4</td>
<td>3</td>
<td>46</td>
<td>100</td>
</tr>
<tr>
<td>Access to premises</td>
<td>24</td>
<td>2</td>
<td>1</td>
<td>3</td>
<td>-</td>
<td>-</td>
<td>30</td>
</tr>
<tr>
<td>Goods/services/facilities</td>
<td>198</td>
<td>10</td>
<td>26</td>
<td>10</td>
<td>11</td>
<td>190</td>
<td>445</td>
</tr>
<tr>
<td>Accommodation/land</td>
<td>10</td>
<td>3</td>
<td>4</td>
<td>2</td>
<td>-</td>
<td>38</td>
<td>57</td>
</tr>
<tr>
<td>Clubs/incorporated associations</td>
<td>3</td>
<td>2</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>6</td>
</tr>
<tr>
<td>Sport</td>
<td>2</td>
<td>1</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>3</td>
</tr>
<tr>
<td>Administration of Commonwealth laws and programs</td>
<td>7</td>
<td>2</td>
<td>4</td>
<td>-</td>
<td>-</td>
<td>13</td>
<td></td>
</tr>
<tr>
<td>Advertisements</td>
<td>1</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>1</td>
</tr>
<tr>
<td>Superannuation and insurance</td>
<td>4</td>
<td>-</td>
<td>-</td>
<td>1</td>
<td>-</td>
<td>5</td>
<td></td>
</tr>
<tr>
<td>Trade unions/accredited bodies</td>
<td>2</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>Other</td>
<td>53</td>
<td>3</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>56</td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>482</strong></td>
<td><strong>53</strong></td>
<td><strong>57</strong></td>
<td><strong>33</strong></td>
<td><strong>32</strong></td>
<td><strong>587</strong></td>
<td><strong>1244</strong></td>
</tr>
</tbody>
</table>

Some complainants have multiple areas of complaint.

Table 22 which outlines the categories of complainants and respondents shows that more complaints have been received from males (54%) than females (40%). The reasons for this difference in use of the legislation are not clear, but it may be a function of the high number of employment related complaints. In general, men who have disabilities have a greater expectation of being involved in the workforce than have women with disabilities. Twenty-two complaints involved two or more individuals, 6% were lodged on behalf of a person or group of persons and 2% were representative complaints.

Table 22: Complaints lodged under the DDA by category of complainants and respondent: 1 July 1994 to 30 June 1995

<table>
<thead>
<tr>
<th>Category of complainant</th>
<th>Central</th>
<th>QLD</th>
<th>NT</th>
<th>TAS</th>
<th>ACT</th>
<th>VIC</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Male</td>
<td>233</td>
<td>23</td>
<td>12</td>
<td>20</td>
<td>14</td>
<td>355</td>
<td>657</td>
</tr>
<tr>
<td>Female</td>
<td>178</td>
<td>12</td>
<td>38</td>
<td>7</td>
<td>16</td>
<td>232</td>
<td>483</td>
</tr>
<tr>
<td>More than one individual</td>
<td>19</td>
<td>1</td>
<td>2</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>22</td>
</tr>
<tr>
<td>On behalf of a person/or group</td>
<td>41</td>
<td>18</td>
<td>6</td>
<td>3</td>
<td>2</td>
<td>-</td>
<td>70</td>
</tr>
<tr>
<td>Representative complainant</td>
<td>28</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>29</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>499</strong></td>
<td><strong>53</strong></td>
<td><strong>57</strong></td>
<td><strong>33</strong></td>
<td><strong>32</strong></td>
<td><strong>587</strong></td>
<td><strong>1261</strong></td>
</tr>
</tbody>
</table>
### Category of Respondent

<table>
<thead>
<tr>
<th>Respondent Details</th>
<th>Central</th>
<th>QLD</th>
<th>NT*</th>
<th>TAS</th>
<th>ACT</th>
<th>VIC</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Female</td>
<td>1</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>37</td>
</tr>
<tr>
<td>Male</td>
<td>10</td>
<td>6</td>
<td>1</td>
<td></td>
<td>72</td>
<td></td>
<td>89</td>
</tr>
<tr>
<td>Educational Institution</td>
<td>17</td>
<td>11</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td>29</td>
</tr>
<tr>
<td>Non-government organisations</td>
<td>19</td>
<td>1</td>
<td>2</td>
<td></td>
<td></td>
<td></td>
<td>48</td>
</tr>
<tr>
<td>Private Enterprise</td>
<td>119</td>
<td>14</td>
<td>13</td>
<td>2</td>
<td>168</td>
<td></td>
<td>317</td>
</tr>
<tr>
<td>Trade Union/Professional organisation</td>
<td>3</td>
<td>-</td>
<td>-</td>
<td>1</td>
<td>2</td>
<td></td>
<td>6</td>
</tr>
<tr>
<td>Local Government</td>
<td>17</td>
<td>4</td>
<td></td>
<td>14</td>
<td></td>
<td></td>
<td>35</td>
</tr>
<tr>
<td>State Government Department or Statutory Authority</td>
<td>111</td>
<td>24</td>
<td>9</td>
<td>10</td>
<td>112</td>
<td></td>
<td>267</td>
</tr>
<tr>
<td>Commonwealth Department or Statutory Authority</td>
<td>95</td>
<td>7</td>
<td>7</td>
<td>4</td>
<td>59</td>
<td></td>
<td>190</td>
</tr>
<tr>
<td>Unspecified</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>99</td>
<td>99</td>
</tr>
<tr>
<td>Other</td>
<td>65</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td></td>
<td></td>
<td>65</td>
</tr>
<tr>
<td>Not Recorded</td>
<td></td>
<td>44</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>44</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>457</strong></td>
<td><strong>53</strong></td>
<td><strong>64</strong></td>
<td><strong>33</strong></td>
<td><strong>32</strong></td>
<td><strong>587</strong></td>
<td><strong>1226</strong></td>
</tr>
</tbody>
</table>

Complaints were made against 317 identifiable persons or organisations in the private sector, representing 26% of the total, and against 492 identifiable persons or organisations within the government sector, representing 40% of the total.

Table 23 outlines complaints under the DDA closed or referred for hearing during 1994-95. Of the 526 complaints finalised, 80% were withdrawn or declined and 16% conciliated. The large number of declined cases relate to revised complaint handling processes which have been discussed in the Year In Review chapter of this report.

### Table 23: Outcome of Complaints Closed or Referred for Hearing under the ODA:

#### 1 July 1994 to 30 June 1995

<table>
<thead>
<tr>
<th>Outcome of Complaints</th>
<th>Central</th>
<th>QLD</th>
<th>NT</th>
<th>TAS</th>
<th>ACT</th>
<th>VIC</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Declined</td>
<td>209</td>
<td>1</td>
<td>8</td>
<td>3</td>
<td>7</td>
<td></td>
<td>228</td>
</tr>
<tr>
<td>Conciliated</td>
<td>46</td>
<td>10</td>
<td>7</td>
<td>12</td>
<td>3</td>
<td>4</td>
<td>82</td>
</tr>
<tr>
<td>Referred for hearing</td>
<td>12</td>
<td>3</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td>16</td>
</tr>
<tr>
<td>Withdrawn</td>
<td>104</td>
<td>6</td>
<td>8</td>
<td>7</td>
<td>13</td>
<td>57</td>
<td>195</td>
</tr>
<tr>
<td>Conciliation unsuccessful - not yet referred</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>5</td>
<td>5</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>371</strong></td>
<td><strong>20</strong></td>
<td><strong>23</strong></td>
<td><strong>20</strong></td>
<td><strong>19</strong></td>
<td><strong>73</strong></td>
<td><strong>526</strong></td>
</tr>
</tbody>
</table>

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Case Studies

Access to Public Transport

In November 1994, three people who have disabilities brought a complaint against the Minister for Transport and the Department of Transport in Western Australia. This was one of three similar matters, the others being brought in South Australia and New South Wales. The complaints all related to the Departments' tendering for new buses without stipulating any requirement for access provisions for passengers who use wheelchairs. The matter was conciliated satisfactorily, with an agreement that the Government and the Department were committed to creating a passenger transport system which would facilitate the equal use of all services in Perth by people with disabilities, including an emphasis on customer service, equity of access, and efficient use of physical and financial resources. It was agreed that by mid-November of 1995 the Department would, in full co-operation with representatives of people with disabilities, develop an Action Plan which complies with the requirements of the Disability Discrimination Act 1992. It was further agreed that any new purchase of buses, or services that may be developed by way of private tender, will be required to specify accessibility for people who use wheelchairs. A form of words for tender documents was settled between the parties. There was also a commitment on behalf of the Department to review the existing taxi voucher scheme and to engage in the Accessible Transport Committee Working Group process mentioned elsewhere in this report.

Access to Education for a Deaf Student

A man with a severe hearing impairment attended a TAFE College for seven hours a week but received assistance from an interpreter for only four hours a week. His difficulties forced him to withdraw from the course and transfer to another College where he was given appropriate support. He brought a complaint against his original college, which resulted in a conciliated agreement. The TAFE agreed that within six months it would develop a policy to give students who are deaf or hearing impaired sufficient services to ensure their full participation in their courses. The complainant and the Deaf Society provided input into this policy. The Council of the TAFE also gave the complainant a written apology.

This was a good outcome which will assist many students in the future and encourage people who are deaf or who have a hearing impairment to continue with post-school study.
Physical Disability and Employment with Telecom

A woman who has multiple sclerosis and who sometimes uses a wheelchair or crutches applied for a job in a local office of Telecom and was told that, despite the company's Equal Employment Opportunity (EEO) policy the workplace would not be accessible. On being notified that a complaint had been made to HREOC, the National EEO co-ordinator of Telecom advised the local manager that this response was not consistent with the company's policy and was not acceptable. At the conciliation conference, an apology was given to the complainant. As a result of this complaint it was recognised that many front-line managers were not aware of how to put EEO policies into practice. The Telecom General Manager agreed to "fast track" training to all managers nationally. An emphasis on the provisions of the DDA would be provided. It also was seen that current recruitment practices were not conforming with DDA requirements, nor with Telecom's own EEO policy. New forms and practices are now being developed. Finally, a commitment was given by the National Co-ordinator to ensure that all business buildings would be checked to identify areas which require modification.

HIV and Pathology Services

A man who was HIV-positive was refused tests by a pathology company. A conciliation conference resulted in an agreement that the pathology company would conduct a training program about HIV/AIDS for its employees and make a payment of $8,000 to the complainant for reimbursement of expenses and for injuries to his feelings.

Employment and Psychiatric Disability

The complainant suffers from a mental illness and during her employment with the respondent, she was hospitalised on two occasions. When the complainant returned to work following her second hospitalisation, her employment was terminated. The complainant alleged that her employment was terminated because of her disability.

The respondent claimed that the complainant's employment was terminated because of her poor work performance and her inability to fulfil the inherent requirements of the job. While the complainant agreed that her medication may have initially affected her work performance she alleged that the respondent did not give her sufficient opportunity following her second return to work to demonstrate her ability to fulfil the inherent requirements of the position.

This matter was successfully conciliated at a conference, with an agreement that the respondent provide the complainant with a Statement of Service and financial compensation of $3,000.
**Goods and Services: Superannuation**

The complainant who has Multiple Sclerosis (MS) was employed on a contract basis with the first respondent. A condition of employment was compulsory contribution to the employer's superannuation scheme. The complainant stated that, on joining the fund, restrictions were imposed on his benefits which related not only to MS but to any other illness or disability which may arise. The complainant requested that death and disability restrictions be limited to conditions arising from his declared illness (MS).

The matter was resolved when the superannuation scheme advised that amendments had been made to the Trust deed. This in effect meant that the complainant's benefits would be restricted only for claims directly or indirectly related to MS.

**Complaints Resolved through Formal Commission Hearings**

Under the Act, complaints may be referred to the Commission for hearing or further inquiry, if the Commissioner considers that a matter cannot be settled successfully by conciliation or if the Commission would be more effective in dealing with the matter.

Other matters may also be referred by the Commissioner and Attorney-General.

During the year, the Disability Discrimination Commissioner referred 16 matters to the Commission for hearing, and there were another two matters outstanding from 1993-94:

- 4 of these matters were heard:
  - in *X v Dr Arthur John McHugh, Auditor-General for the State of Tasmania* and *McNeill v Commonwealth of Australia* decisions were made in favour of the complainants, with damages being awarded to the complainants in the amounts of $20,000 and $50,000 respectively. Interim determinations on questions of lawfulness were made in favour of complainants in two other matters. Those matters are still awaiting resolution as to remedy;

- 6 of these matters were resolved prior to hearing, and other matters are still awaiting hearing.
**Interim Determinations**

The Commission may make an interim determination at the request of a complainant or the Disability Discrimination Commissioner. Interim determinations prevent allegedly discriminatory actions until the Commissioner has conciliated, determined or declined the relevant complaint.

During the year, there were 57 interim determination applications considered with eight being granted.

**EDUCATION AND PROMOTION**

The Commission has the functions of:

- promoting understanding and acceptance of, and compliance with, the Act;
- and
- undertaking research and educational programs to promote the provisions of the Act.

**Promotion of the Disability Discrimination Act and Anti-Discrimination Issues**

**Compliance Promotion**

Major strategies adopted for compliance promotion during 1994-95 were conducted through the *Action Plan* project (detailed later in this Report), and through work towards *Disability Standards* (also detailed later in this Report). Disability Standards, if adopted, are expected to provide clearer and authoritative guidance on the obligations under the DDA, enabling compliance, and accountability for compliance, to be more readily achievable.

Work also commenced during 1994-95 on a range of compliance promotion activities as agreed under the *Commonwealth Disability Strategy* (CDS). The CDS was developed by the Commonwealth Office of Disability in consultation with the Commission and adopted by Cabinet in November 1994.
Open Letter

The Disability Discrimination Commissioner published four Open Letters during 1994-95 which were distributed to over 2500 organisations, peak or representative groups and other key stakeholders in the disability, government, legal, service provider, business and non-government organisation fields. The Open Letters provide up-to-date information on work of the Commission and examples of complaints handling outcomes. A review and evaluation of the Open Letter, including a survey of recipients, conducted in early 1995, indicated generally very positive responses to this publication. A number of areas for expansion of the information provided which will be implemented commencing with the next edition.

Regional Visits

The Disability Discrimination Commissioner has maintained a commitment to a program of meetings in two regional centres each year. During 1994-95 the Commissioner visited centres in North Queensland and in Tasmania and held a number of meetings and a public forum with people with a disability, government departments, legal representatives, service providers and the business community.

Disability Peak Representative Organisations

The Disability Discrimination Commissioner is committed to close communication with national disability community peak representative organisations through regular meetings, as well as in relation to major Commission projects and decisions. During 1994-95 Commission representatives met three times with the following organisations:

- Disabled Peoples' International (Australia);
- National Council on Intellectual Disability;
- National Federation of Blind Citizens of Australia;
- Australian Psychiatric Disability Coalition;
- Deafness Forum of Australia;
- Carers Association of Australia;
- ACROD;
- Australian Federation of AIDS Organisations;
a Head Injury Council of Australia;
a Australian Council of Social Service; and
0 the Federation of Ethnic Communities' Councils.

**Communication with Disability Discrimination Act Legal Advocacy Services (DDALAS)**

These services, established in 1993-94 and funded by the Attorney-General's Department, have played an important role during 1994-95 in providing information, advice and legal representation to people with a disability in using the DDA. These services are independent of the Commission, but the Commission maintains close communication with them on matters of policy and procedure. Commission staff contributed to a workshop involving this network to develop guidelines on the effective use of the representative complaints procedure under the DDA. The Disability Discrimination Commissioner visited the services in Cairns, Melbourne, Canberra and Launceston during 1994-95.

**Provision of Information on Legal Outcomes**

Notification of HREOC legal determinations relating to the DDA has been provided through the *Open Letter* produced by the Commissioner. Key networks such as the disability peak representative groups, anti-discrimination agencies and DDALAS have been provided with more detailed information on legal determinations. The possible use of the Internet and computer Bulletin Boards is presently under consideration.

**Commonwealth Disability Strategy (CDS) projects**

Part Two of the Strategy sets out a framework of measures to be taken by all Commonwealth departments and authorities to achieve equality of access to, and participation in, Commonwealth programs and services. These measures are also reflected in the Action Plan Guide produced by the Commission for departments and authorities. Part Three of the CDS also sets out more specific measures involving particular agencies, including the Commission.

Action taken on these measures is described below.
Employment by the Commonwealth of People with a Disability

Development of Disability Standards regarding employment of people with a disability by the Commonwealth is being considered by the DDA Standards Working Group through the processes outlined in this Report regarding DDA Disability Standards on employment more generally.

See the section Advice to Government and Parliament on Disability Discrimination Issues for further information on this topic.

Compliance by the Parliamentary Departments

To ensure that people with a disability enjoy equality of democratic rights, whether as citizens or as parliamentarians, in matters within the authority of the Parliament, the Executive Government has committed itself to developing plans to achieve this and will be encouraging the Parliamentary Departments to develop similar plans.

The Disability Discrimination Commissioner has offered her assistance for this and has begun relevant discussions with the Parliamentary Secretary to the Attorney-General.

Accessibility of Premises Owned or Occupied by the Commonwealth

The need for a Disability Standard regarding equal access to premises owned or occupied by the Commonwealth is being determined by the DDA Disability Standards Working Group, which has decided this issue should be considered through the processes outlined in this Report involving the Australian Building Codes Board (ABCB). It is proposed that a regulatory regime providing for equal access to all buildings be developed, rather than a distinct and possibly inconsistent regime for the Commonwealth only. This approach may need to be reviewed during 1995-96 depending on progress made in co-operation with the ABCB.

Accessibility of Premises not Covered by the Building Code

The Office of Local Government and the Commission have started consultations for preparing a paper on options to ensure accessibility of those parts of the built environment not covered by the Building Code of Australia.

Transport

During the year the Commission developed several strategies in consultation with the National Accessible Transport Committee (NATC), to inform transport operators of their obligations under the DDA and to assist operators to develop associated Action Plans.

Strategies developed in 1994 and implemented during 1994-95 included:

• regular participation in, and briefings to, meetings of the NATC, attended by representatives of public sector transport authorities and private bus, coach and taxi industries;
a co-operation in production by the NATC of materials on Action Plans;

a provision of the Action Plan Guide for Commonwealth departments and authorities to the Australian National Railways Commission, the Federal Airports Corporation and Qantas Airways;

a publicising significant complaint processes and outcomes regarding public transport (including through press releases and through mail-out of a regular Open Letter from the Disability Discrimination Commissioner); and

a letters from the Disability Discrimination Commissioner to all Transport Ministers (followed by meetings with Ministers and/or officials in a number of jurisdictions), highlighting issues arising from complaints, encouraging the development of Action Plans and offering assistance for this purpose, and encouraging positive consideration of development of Disability Standards.

The processes detailed in this Report regarding possible Disability Standards covering public transport are expected to be the principal focus of compliance promotion by the Commission in this area during 1995-96.

**Telecommunications**

The Commission is continuing to advise all telecommunications carriers and major equipment manufacturers of their obligations under the DDA and to assist them in developing Action Plans.

Rights and obligations under the DDA in relation to telecommunications were included in the National Awareness Campaign conducted by the Commission commencing in March 1993. Issues regarding telecommunications have also been featured in the regular Open Letter from the Disability Discrimination Commissioner.

The Guide developed by the Commission to assist business enterprises, including organisations in the telecommunications industry, to develop Action Plans is expected to be released in August 1995. The Action Plan Guide for Commonwealth departments and authorities was provided to Telstra in February 1995.

Discussions specifically in relation to equal access to payphone services were held between the Disability Discrimination Commissioner and representatives of Telecom in May 1995, following a letter from the Commissioner drawing attention to the expiry in March 1996 of the exemption under the DDA for payphone services. Discussions with other major organisations in the telecommunications industry are intended to occur later in the year.

A decision by the Commission arising from the public hearing of a complaint under the DDA, *Scott v Telstra*, issued in June 1995, provides important clarification of rights
and obligations regarding telecommunications. The Commission will ensure that telecommunications providers and other affected parties are aware of this decision and its implications.

**Broadcasting**

The Commission is continuing to advise all major broadcasting proprietors of their obligations under the DDA, and to assist these proprietors in developing Action Plans.

Issues regarding broadcasting were included in the National Awareness Campaign conducted by the Commission commencing in March 1993, and have also been featured in the regular *Open Letter* from the Disability Discrimination Commissioner.

More specific discussions with broadcasting organisations are planned to follow the availability of the *Action Plan Guide* for business enterprises. The Action Plan Guide for Commonwealth departments and authorities was provided in February 1995 to the Australian Broadcasting Corporation and the Special Broadcasting Service.

**Financial institutions**

The Commission is continuing to inform licensed financial institutions of their obligations under the DDA and has planned consultations with the Insurance and Superannuation Commission and other insurance and superannuation industry associations. The consultations will focus on the practical implications of the DDA and provide assistance to financial institutions in developing Action Plans under the DDA.

Issues regarding banking, insurance and superannuation were included in the National Awareness Campaign conducted by the Commission commencing in March 1993 and have also been featured in the regular *Open Letter* from the Disability Discrimination Commissioner.

More specific discussions with financial institutions and with insurance and superannuation industry organisations are planned once the Action Plan Guide for business enterprises is available.

Insurance and superannuation industry representatives will be included in consultations regarding possible Disability Standards concerning employment, as some insurance and superannuation issues may be covered by Disability Standards dealing with terms and conditions of employment.

**Culture and the Arts**

The Commission, in consultation with the Australian Cultural Development Office, is developing a strategy to inform individuals and organisations within the arts and cultural sector of their obligations under the DDA.

Consultations on a draft strategy began during 1995.
Recreation, Sports and Tourism

The Commission, in consultation with the Department of Tourism and the Department of Environment, Sport and Territories, is developing a strategy to inform operators in the tourism and recreation sectors of their obligations under the DDA, and will encourage tourism and sporting organisations to develop Action Plans.


Action Plans

The Commission has the function of receiving voluntary Action Plans which providers of services (including Commonwealth or State government departments or authorities) may prepare and implement. An Action Plan provides a structure for a service provider to develop and implement its own strategies to eliminate and avoid discrimination.

The Commission is required to consider the provisions of an Action Plan submitted by a provider of services in dealing with any issues of "unjustifiable hardship" which may arise in consideration of a complaint made under the DDA against that provider.

Action Plans are to include provisions on:

- devising policies and programs to achieve the objectives of the DDA;
- communicating these policies and programs to personnel;
- reviewing practices to eliminate discriminatory practices; and
- setting goals and targets, where appropriate, and other means of evaluating the success of the plan.

Submission of an Action Plan is voluntary under the DDA. However, Commonwealth departments and authorities are required, under the Commonwealth Disability Strategy adopted by Federal Cabinet in November 1994, to submit Action Plans by 1997.

During 1994-95 four Action Plans were submitted, all by tertiary education institutions. Several other Action Plans have been provided to the Commission in draft form but are not yet finalised. The number of Action Plans submitted is expected to increase significantly during 1995-96, both from Commonwealth departments and authorities in response to the Commonwealth Disability Strategy and from other service providers in response to promotional work in this area by the Commission.

The Commission has produced guidelines for organisations developing action plans. Guidelines have been prepared for:
• Commonwealth departments and authorities (prepared in consultation with the Office of Disability in the Department of Human Services and Health and released February 1995);

• State and Territory government authorities (prepared in consultation with the NSW Office on Disability and the Disability Services Commission of Western Australia and released in June 1995);

• community and non-government organisations (prepared with the assistance of comments from national disability peak representative organisations and the Disability Discrimination Legal Advocacy Services in each State and Territory, and released in June 1995);

• local government (prepared with the Australian Local Government Association, to be released in July 1995);

• tertiary educational institutions (prepared with the assistance of comments from a reference group including disability access officers from a number of tertiary institutions, and due to be released in July 1995); and

• business (to be released in August 1995 after completion of co-operative work with business representatives).

A list of Action Plans which have been lodged is available on request. Copies of these Action Plans may be purchased from the Commission.

Educational and Research Programs

The Commission may undertake research and educational programs and other programs to promote the provisions of the DDA.

Research

Limited resources have restricted independent research activity by the Commission in the disability discrimination area. The Commission has been compelled to decline a number of requests to conduct major inquiries regarding human rights and discrimination in the disability area due to limited resources. Funding for research on equal access to education is currently being sought as a direct response to the high level of complaints in this area and to the difficulties in achieving, and relying on, outcomes effected solely through the complaints process.
DDA Resource and Training Project

A number of projects initiated under the project management of the Commission with funding from Legal Aid and Family Services, were completed in 1994-95 with major input from Commission staff. These included:

- the publication of *Acting Against Disability Discrimination - A practical manual for using the Disability Discrimination Act* (produced by Villamanta Publishing and Social Change Media);

- the production of *A User Guide to the Disability Discrimination Act* (produced by Villamanta Publishing); and

- the completion of a workshop and production of a reference paper on Representative Complaints (compiled by the NSW DDA Legal Advocacy Service).

ADVICE TO GOVERNMENT AND PARLIAMENT ON DISABILITY DISCRIMINATION ISSUES

Development of Disability Standards

The Commission may report to the Attorney-General on the development and monitoring of disability standards.

The Attorney-General has the authority, under section 31 of the DDA, to formulate *Disability Standards* (which take legal effect subject to Parliamentary approval or amendment) in relation to:

- employment;
- education;
- accommodation;

a public transport services and facilities; and

- the administration of Commonwealth laws and programs.

The Commission advises the Attorney-General on these matters to assist him in carrying out this function.

Disability Standards are intended to specify, in greater detail and with more certainty than is provided by the existing provisions of the DDA, requirements for providing equal opportunity and access for people with a disability.
The Disability Discrimination Commissioner participates in the *DDA Disability Standards Working Group*, which the Attorney-General has established to advise him on issues relating to development of Disability Standards.

Progress in the specific areas provided for under section 31 of the Act is set out below.

**Employment**

A Discussion Paper and Resource Paper have been prepared by the Commission on issues regarding possible Disability Standards in the employment area. These papers were prepared on behalf of a sub-committee of the National Committee on Discrimination in Employment and Occupation and includes representatives of employer peak organisations, the ACTU, organisations representing people with a disability, and Federal and State and Territory Governments. Depending on the results of consultations on these papers in the second half of 1995, the subcommittee intends to release a draft Disability Standard on employment for public consultation in early 1996, before submission of a proposed Standard (if consultations confirm this to be appropriate) to the Attorney-General in mid 1996.

**Public transport**

The Federal, State and Territory Transport Ministers agreed at the April 1995 Australian Transport Council meeting to consider a Disability Standard on public transport. This agreement followed a number of related complaints and interim determinations under the DDA, and meetings between the Disability Discrimination Commissioner, Commission representatives, and relevant Ministers and officials.

The Disability Discrimination Commissioner is participating on behalf of the Attorney-General in a taskforce (which commenced meeting in June 1995), established by the Transport Ministers and chaired by the NSW Department of Transport. This taskforce was established to prepare options and conduct appropriate consultative processes (including consultations with people with a disability and with private and public sector transport industry interests) for this purpose.

The proposed Disability Standard forms a key part of a strategy approved by Transport Ministers to achieve within 20 years equal access to public transport for people with a disability within 20 years. The Commission regards these processes as having outstanding potential for the achievement of equality.

**Accommodation**

The Commission commenced co-operative work with the Australian Building Codes Board (ABC) during 1994-95 with a view to bringing the Building Code of Australia (BCA) into closer conformity with the DDA and with equivalent requirements of State and Territory anti-discrimination laws. At present, compliance with the BCA does not fully ensure access for people with a disability, or protect the building industry and
other relevant parties against complaints under the DDA. Work in this area is also directed to developing draft Disability Standards to obtain a consistent and clear legal regime for equal accessibility of buildings to all people with a disability.

**Administration of Commonwealth laws and programs**

In mid 1995 the Commonwealth Government commenced internal consideration of issues regarding a possible Disability Standard on accessibility of Commonwealth Government communications and information. The Commission will contribute as appropriate to development of options in this area during 1995-96.

**Education**

Specific consideration by the established Working Group of Disability Standards regarding education remained in the preliminary stages. It is anticipated that, with additional resources made available through the Justice Statement, further developments will take place during 1995-96.

**Legislative Review and Reporting**

The Commission may review proposed and existing Commonwealth legislation for consistency with the objects and purposes of the DDA.

The Attorney-General is currently co-ordinating a review of Commonwealth legislation for consistency with the DDA and the Commission intends to await the results of this review before deciding on any other work which may be required in this respect (other than in relation to the Migration Act, discussed below).

The Attorney-General has also requested State governments to review their legislation for consistency with the DDA. At the request of the NSW Anti-Discrimination Board (ADB), Commission staff met with representatives of the NSW Attorney-General's Department and the NSW ADB in June 1995 to discuss consistency with the DDA in the NSW government's legislative review.

**Commonwealth Laws and Other Commonwealth Action Against Disability Discrimination**

The Commission may recommend to the Attorney-General laws that should be made by Parliament, or action taken by the Commonwealth, on disability discrimination matters.
Extensive consideration has been given to possible amendments to the legislation administered by the Commission through the review conducted jointly with the Department of Finance and the Attorney-General's Department, including issues arising as a result of the decision of the High Court in *Brandy v HREOC*.

Amendments to the DDA permitting Disability Standards to cover an expanded list of acts considered unlawful under section 31 of the Act are also being considered by the Attorney-General. The Commission has also suggested that the DDA amendments be consistent with amendments to the Sex Discrimination Act proposed by the Prime Minister in 1994 including those simplifying indirect discrimination.

**Migration Exemption**

The DDA exempts discriminatory actions in relation to the administration of the Migration Act. As reported in the 1993-94 Annual Report, the Disability Discrimination Commissioner has advised the Attorney-General that this exemption is broader than can be justified by the Government's legitimate responsibilities and objectives in the migration area, and should be replaced by a more narrowly tailored provision. The Commission will be pursuing this issue further, and seeking to identify achievable options for reform.

**ADDITIONAL POWERS**

**Legal Intervention in Court Proceedings**

The Commission has the power to intervene in legal proceedings involving issues of disability discrimination where it thinks it appropriate and with the leave of the Court.

During the year the Commission intervened in one court case about sterilisation of a young woman with disabilities. Details of *P v P: Re L* are available in the Commission Interventions in Court Proceedings section of this report.

**Guidelines**

The Commission may prepare and publish guidelines for the avoidance of disability discrimination.
Unlike Disability Standards, such guidelines would not be legally binding. There is no provision in the DDA regarding whether, and how, guidelines may be applied in determining any particular complaint.

Interest in guidelines under the DDA to date has principally concerned employment issues. As reported in the 1993-94 Annual Report, the Commission published a manual on employment issues in 1993. With the agreement of representatives of business, people with a disability and the ACTU, the Commission has decided to consider any further employment guidelines in the process of considering possible Disability Standards. One possibility is that non-binding guidelines may be published covering any issues which are not covered by binding Disability Standards.

In areas other than employment, guidance is being given on the meaning of discrimination under the DDA, and on appropriate measures to avoid and eliminate discrimination, within guidelines on development of Action Plans. Areas not covered in the guidelines already issued are being addressed on a continuing basis.
PRIVACY
The Privacy Act includes a set of eleven *Information Privacy Principles* with which Commonwealth and ACT agencies must comply when handling personal information. These establish standards for how personal information can be collected, stored, used and disclosed. The Principles allow individuals to have access to the records agencies hold about them and to correct them if necessary. The Act also regulates the use of Tax File Numbers throughout the community and lays down controls over the collection, use and dissemination of consumer credit information.

The 1994-95 year saw significant developments in public debate about the extent to which privacy is being eroded as a result of technological and administrative change. Concerns were expressed in the media about issues such as video surveillance, the use of smart cards, computer profiling techniques, caller identification, genetic testing, and random drug testing. Instances of unauthorised access to personal information by police officers, tax officers and other public servants also featured in media reports.

Increasingly, calls are being made to extend the coverage of privacy protections within the community. In December 1994, for example, the Broadband Services Expert Group recommended to government that the privacy of all users of Broadband Services should be protected by way of codes under the auspices of the Privacy Act. In June 1995, the House of Representatives Standing Committee on Legal and Constitutional Affairs recommended that the Act be strengthened with regard to Commonwealth agencies and that there should be a national privacy code covering both the public and private sectors.

Privacy has also been an issue for some State governments. Although the Data Protection Bill being considered by the NSW Parliament last financial year lapsed upon the dissolution of Parliament for the State election, the incoming government is reportedly in favour of introducing privacy legislation.

In keeping with my functions under the Privacy Act, I have been providing an increasing amount of advice about privacy issues in areas that are not currently regulated by the Act, particularly direct marketing and telecommunications. To foster public awareness of emerging issues in these areas, I issued papers on new communication networks, profiling, genetic testing and smart cards. In the regulated area I completed a review of the legally binding credit reporting code of conduct and the voluntary data-matching guidelines that I issue, and I commenced a review of the privacy guidelines for the Medicare and Pharmaceutical Benefits programs. During the year, I published advice to government agencies on the privacy issues arising from the growing practice of outsourcing administrative functions, and I issued plain English guidelines to the three *Information Privacy Principles* concerning the collection of personal information. I hope to publish guidelines on the remaining Principles next financial year.
During the year, my office handled 793 written complaints and enquiries and received more than 13,000 calls on the toll-free hotline. Privacy inquiries and complaints are handled by a special unit within the Privacy Branch of the Commission.

My audit program continued throughout the year and again its main focus was on the practices of credit providers in handling consumer credit information. A comprehensive computer security survey of all Commonwealth and ACT Government Service agencies, which commenced in May 1994, was completed during the year. A number of Information Privacy Principles audits addressed information exchanges between Commonwealth agencies.

In addition, I have responsibility for ensuring that privacy safeguards are in place for the data-matching program which is administered under the Data-matching Program (Assistance and Tax) Act 1990. This program which compares all records of benefit and pension payments of the Departments of Social Security, Veterans' Affairs, and Employment, Education and Training with data held by the Australian Taxation Office, is due to finish on 22 January 1996 unless the legislation is amended in the meantime. During 1994-95, the Department of Housing and Regional Development, which provided data concerning the First Home Owners' Scheme, ceased to be involved in the program. In addition, the legally binding guidelines that I issue under the data-matching legislation were reviewed.

A more detailed discussion of these matters may be found in the Seventh Annual Report on the Operation of the Privacy Act.

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

**FUNCTIONS UNDER THE PRIVACY ACT**

Numerous functions are conferred on the Privacy Commissioner under sections 27 (relating to government agencies), 28 (relating to Tax File Numbers) and 28A (relating to credit reporting) of the Privacy Act, in relation to ensuring privacy sensitive practices for handling personal information.

Broadly speaking, the functions may be categorised as:

- complaint handling;
- education and promotion;
- policy and regulatory advice and development;
• audit and compliance;
• monitoring the data-matching program; and a
  additional functions such as liaison and consultation.

Work undertaken by the Privacy Commissioner during 1994-95 is discussed below within these categories.

**Functions Under Other Acts**

Under Part VIIC of the *Crimes Act 1914*, the Privacy Commissioner is given jurisdiction in relation to breaches of limitations on the use and disclosure of certain categories of old and spent conviction information. The Privacy Commissioner also has responsibility for ensuring that privacy safeguards are in place for the data-matching program which is administered under the *Data-matching Program (Assistance and Tax) Act 1990*, and for issuing guidelines under section 135AA of the *National Health Act 1953*.

For reporting purposes, these are included in the categories below.

**COMPLAINT HANDLING**

The Commissioner is empowered to investigate breaches of the Information Privacy Principles, and the Tax File Number and credit reporting provisions of the Privacy Act, and to resolve complaints through conciliation where appropriate.

During the year, 793 written inquiries and complaints were received. Of these, 150 were assessed as potentially involving an interference with privacy. These are very similar figures to those of the previous year.

The majority of complaints relate either to credit reporting or to Information Privacy Principle matters. Although there were only a relatively small number of Tax File Number complaints, these complaints have doubled over the previous twelve months. Almost all of these complaints related to the inappropriate distribution of Group Certificates or the inadvertant release of Tax File Numbers in relation to workers compensation claims.
Complaints by category were:

- 45 - Credit Reporting;
- 91 - Information Privacy Principles;
- 14 - Tax File Numbers; and
- Nil - Spent Convictions.

During the year, 207 complaints were finalised. Complaints were substantiated in 69 instances and resolved by negotiation (after the respondent conceded that there had been a breach of the Act and undertook remedial action), making it unnecessary for the Privacy Commissioner to exercise his formal s.52 determination powers. Investigation of another 70 cases established that there was no interference with the privacy of the complainant. A further 3 complaints were referred to other agencies and the remaining 65 complaints were withdrawn or lapsed [see table below].

**Table 24: Outcome of complaints closed under the Privacy Act 1988 — 1 July 1994 to 30 June 1995**

<table>
<thead>
<tr>
<th>Outcome</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Conciliated</td>
<td>69</td>
</tr>
<tr>
<td>Withdrawn</td>
<td>21</td>
</tr>
<tr>
<td>No further contact from complainant</td>
<td>44</td>
</tr>
<tr>
<td>Declined</td>
<td>70</td>
</tr>
<tr>
<td>Referred elsewhere</td>
<td>3</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>207</strong></td>
</tr>
</tbody>
</table>

The high number of "no further contact from complainant" cases refers to those complaints where the Commissioner exercised his discretion not to investigate a complaint until the respondent had been given an opportunity to adequately deal with it. In these cases, an assessment of the complaint was made, and frequently some preliminary enquiries were undertaken. The complainant was then given assistance formulating their complaint and was advised how to best present their complaint to the respondent. The complainant was then invited to further complain to the Commissioner if he or she was not satisfied with the respondent's reply. In 44 such cases the complainant did not make a further complaint to the Commissioner.

The majority of cases which were withdrawn by the complainant related to credit reporting matters where investigation of the complaint had highlighted a substantial factual dispute. Frequently, the complainant withdrew the complaint when the Commissioner's staff sought their consent to interview witnesses of the alleged breach.

Where a complaint was conciliated, remedial action generally consisted of an apology to the complainant together with revised procedures (including staff training) to minimise the risk of a future breach of the Act. In a number of cases, additional
remedies involved action such as amending personal records, providing additional security in relation to those records, adjusting benefit payments, and in some cases the payment of monetary compensation for loss or damage to the complainant (including hurt or embarrassment).

Many credit complaints related to the contents of consumer credit information files (such as defaults) held by credit reporting agencies. The Privacy Commissioner has continued to find that a significant number of these complaints were without substance. Default listings on credit reporting files can frequently result in a credit provider declining an application for credit, so there is a strong financial incentive for a person to dispute the accuracy of a default listing.

The Privacy Hotline staff received in excess of 13,000 calls on the toll-free number in the reporting year, compared with 14,000 the previous year. Approximately 62 percent of calls specifically related to the jurisdiction of the Privacy Commissioner. Of these calls, approximately two thirds related to credit reporting issues. A further 20 percent of calls raised general privacy issues which were not within the jurisdiction of the Privacy Act, such as the conduct of State and local governments and private employers. A significant number of the calls came from solicitors, accountants and other professional advisers. The balance of the inquiries did not specifically relate to the Privacy Commissioner's jurisdiction, but did raise broad privacy related issues, such as the right to privacy within the home.

During the year the Privacy Hotline staff dispatched over 18,000 privacy pamphlets and brochures, including over 4,000 copies of the recently released *Information Privacy Principles 1 to 3: Plain English Guidelines*.

### Case Studies

#### Incorrect Garnishee Order

A student was overpaid Austudy, due to a miscalculation in relation to her parent's income. When she was advised of the overpayment, she paid back the required amount by cheque. Two years later, she obtained a position with a community centre after the previous occupant of the position was sacked for stealing. Due to the nature of the position, it was very important that the employee was seen to be a person of good repute. Shortly after her employment in this position, her employer asked her why the community centre had received an order garnisheeing her wages to cover the Austudy debt. The agency informed the employer and that it had been chasing the student for the debt over a number of years.
Both the ex-student and her employer were very upset about the garnishee order and the agency's disclosure of incorrect personal information, and the ex-student spent a week investigating the matter. It transpired that the original cheque had been paid into a wrong account and the garnishee order had been based upon incorrect information.

The agency apologised, reviewed its procedures and paid the complainant $2000 to compensate her for her embarrassment and inconvenience.

**Intrusive Security Checks**

The Migration Agents Registration Scheme, administered by the Department of Immigration and Ethnic Affairs, contained new stringent requirements to be met by persons applying to become registered as migration agents. Several solicitors objected that they were asked to provide many personal details to establish that they were persons of good character, when they had already established their good character when they were admitted as solicitors. They also complained that they were required to sign a very broad consent form allowing the agency to collect personal information about them and to disclose it to a number of other agencies.

The agency redesigned the consent form to ensure that it complies with the Privacy Act and the Commonwealth Crimes Act in relation to the spent conviction scheme. The criminal record checking procedure was also amended so that it is now administered by the Australian Federal Police.

**Disclosure of Credit Details**

The complainants had a mortgage on a property that they were letting out, and had made arrangements for the tenants to pay their rent directly into the mortgage account. When asked, a bank teller informed the tenants of the amount outstanding in the mortgage account. The bank apologised to the complainants and instituted tighter procedures to minimise the risk of such an unauthorised disclosure in the future.

**EDUCATION AND PROMOTION**

The Privacy Commissioner has the functions of promoting an understanding and acceptance of the Information Privacy Principles, Codes of Conduct and other aspects of the Privacy Act; and undertaking educational and research programs to assist in this process.

The Privacy Commissioner and his staff engage in a number of training and education activities to support agencies subject to the Privacy Act including: producing training materials; giving training directly; assisting agencies to develop their own training.
material; producing a newsletter (*Privacy Link*); and promoting a network of Privacy Contact Officers within agencies. The Federal Privacy Act Training Package, originally published in 1990, was revised and updated during the year with an emphasis on its use by agencies which are subject to the full scope of the Act.

As part of regular activity during the year, the Commissioner and Privacy Branch staff have given speeches, responded to media inquiries, assisted with private sector and public sector training, and updated the *Privacy Act Handbook* (a compendium of advice, guidelines and legislation).

**Access and Equity**

The Privacy Commissioner is particularly concerned to ensure that the privacy needs of all groups in the community are addressed. During the year projects were followed up or commenced which aimed to examine, and find ways to reduce, barriers to access to privacy protections for people with disabilities, people from non-English speaking backgrounds and Aboriginal people.

General information on the Privacy Act was published in Greek, Macedonian, Serbian, Polish, Turkish, Croatian and Italian adding to four existing translations in Arabic, Chinese, Spanish and Vietnamese. Promotional seminars and a publicity campaign directed at members of these communities commenced in May 1995 with a media launch of the new set of translated pamphlets.
In 1993-94, the Privacy Commissioner released a report on the privacy needs of people with disabilities. This report established a number of concerns about circumstances where the right to privacy is overlooked or denied for people with disabilities, especially in medical or legal settings. As follow up to this research, in 1994-95 the Privacy Commissioner commissioned and received further research into two areas identified by the initial report:

- consumer access to medical records; and
- policy and procedures of boards and tribunals.

A researcher was engaged during the year to investigate the privacy needs of Aboriginal people as a follow up to earlier discussions between Privacy Branch staff and members of Aboriginal communities in the Northern Territory. The field work was completed within the year and the finalised report is expected by October 1995.

**Interstate Visits**

The Commissioner, and his staff, in the course of audit, policy, complaint handling and training work, regularly visit other cities, particularly Canberra and Melbourne. In order to promote privacy issues in other States, especially in the non-government sector, the Privacy Commissioner began a series of promotional visits. During May, he and his staff conducted a series of seminars and briefings and held a large number of media interviews in Perth. This was followed up with a visit to Adelaide where the Commissioner spoke at a forum organised by the South Australian Privacy Committee.

**School Students**

During the year the Victorian Council of Civil Liberties and the Human Rights and Equal Opportunity Commission worked together on a joint project to produce resources for secondary school students. The Privacy Branch contributed editorial input to two discussion papers on privacy issues: 'Data Matching in a Democracy' by John Wadsley and 'Privacy Issues: HIV/AIDS Disclosure' by David Bradford.

The Privacy Commissioner was also able to offer assistance to school teams from Australia competing in the International Problem Solving Competition (Boston June 1995) where the subject was privacy. The successful teams will be providing the Privacy Commissioner with a full report.
The Privacy Commissioner's Speeches

The Commissioner delivered eighteen speeches during the year, as shown below. In addition, as the Privacy Commissioner was also acting Human Rights Commissioner from December 1994 and unable to meet all of the requests he received to give presentations, staff of the Privacy Branch delivered a number of other speeches on his behalf.

Copies of these speeches are available to the public if desired. Further details may be found in the Seventh Annual Report on the Operation of the Privacy Act.

POLICY AND REGULATORY ADVICE AND DEVELOPMENT

The Privacy Commissioner has broad ranging powers to provide advice to the Attorney-General, agencies, corporations, and individuals on privacy-related matters. The Commissioner may examine, and report to the Attorney-General on, existing and proposed legislation to ensure that the privacy of the individual is maintained as far as possible. The Commissioner may also issue Guidelines and Codes of Conduct, which are legally binding, under the Privacy Act and other Acts such as the Data-matching Program (Assistance and Tax) Act 1990, National Health Act 1953 and the Employment Services Act 1994.

Review of the Freedom of Information Act

A major review of the Freedom of Information Act 1982 commenced during the year and may have significant implications for the jurisdiction of the Privacy Commissioner. The review is being conducted jointly by the Australian Law Reform Commission and the Administrative Review Council. The review addresses, among other things, the interrelationship between the Freedom of Information Act and Privacy Act provisions dealing with access to and amendment of personal information. In December 1994 the Privacy Commissioner forwarded his submission to the review team.

A discussion paper was released in May 1995 inviting comment on proposals to reform the Freedom of Information Act. Among other things, the paper proposes that the private sector should be subject to the Privacy Act by means of Codes of Conduct, issued by the Privacy Commissioner. A Code of Conduct for the private medical and health industry would be given first priority. The Discussion Paper proposes that, in the longer term, there should be a single information Act, dealing with FOI, Archives and Privacy. The final report is expected in December 1995.
Review of the Credit Reporting Code of Conduct

The 1994-95 year saw the completion of a review of the Code of Conduct for Credit Reporting, issued by the Privacy Commissioner under s.18A of the Privacy Act. The review involved extensive consultation with the Credit Reporting Consultative Group, the wider industry and the general public.

Responses to the consultation process did not indicate that major changes to the Code were warranted. Rather, some technical changes were required and further practical guidance was needed in a few areas. A number of amendments to the Code were tabled in Parliament in early March 1995 and took effect on 27 March 1995.

Review of Statutory Data-matching Guidelines

The guidelines issued by the Privacy Commissioner under the Data-matching Program (Assistance and Tax) Act 1990 were reviewed during the year. Revised guidelines were tabled in Parliament on 9 October 1994 and took effect on 9 February 1995. The changes were technical in nature.

Employment Services Act

The passage of the Employment Services Act and the Employment Services (Consequential Amendments) Act in December 1994 have resulted in a significant extension of the Privacy Act to the private sector. The Acts establish the Employment Services Regulatory Authority (ESRA) and provide for the accreditation of public and private sector organisations which are then appointed under contract to provide case management services to the long term unemployed. The legislation makes ESRA the regulatory body for case managers and case management services, and it designates the private sector case managers as "agencies" under the Privacy Act. The public sector case manager is also subject to the Act. There are over 250 contracted case managers which will become agencies under the Privacy Act because of these provisions - resulting in a doubling of the number of agencies subject to the Privacy Act. This is likely to have significant workload implications for the Privacy Branch.

The Privacy Commissioner provided comment on the Bills and on the instruments issued under the legislation. Comments have also been provided on ESRA's guidelines for case managers. The Privacy Branch has had some involvement in the training on the Privacy Act for contracted case managers.
Review of Medicare and Pharmaceutical Benefits Programs Privacy Guidelines

The Medicare and Pharmaceutical Benefits Programs Privacy Guidelines, issued under the *National Health Act 1953*, which provide standards for the storage and management of information stored on computer concerning claims made by individuals under the two programs, came into effect on 15 April 1994. At that time, the Privacy Commissioner indicated that he would review the Guidelines after 12 months of operation. The review has commenced and preliminary consultations have taken place. The Privacy Commissioner will be consulting widely during the review.

Telecommunications

Telecommunications privacy emerged as a key issue during the year. The Privacy Commissioner provided input to a number of government inquiries on telecommunications developments, notably the work of the Broadband Services Expert Group, and the Department of Communications and the Arts' review of post-1997 telecommunications policy and regulatory arrangements. Both of these reviews recognise the importance of privacy within the regulatory framework for telecommunications. The Broadband Services Expert Group recommended that there be a self-regulatory scheme for network participants within the framework of the Privacy Act.

As part of the Government's response to the 1992 AUSTEL report on Privacy and Telecommunications, AUSTEL was invited by the Minister for Communications and the Arts to establish a Privacy Advisory Committee to examine issues relating to telecommunications privacy. The Privacy Commissioner is represented on the Committee, along with industry, government and consumer representatives. The Committee was asked to give priority to three issues: telemarketing, the protection of customer personal information (particularly silent line customer personal information) by telecommunications carriers, and Calling Number Display.

Tax File Numbers

The Privacy Commissioner provided general advice on the application of the Tax File Number Guidelines (1992) throughout the year. Comments were also provided on legislation allowing the limited use of the Tax File Number in superannuation schemes.
Direct Marketing

The 1994-95 year saw continuing interest by governments around Australia in addressing consumer concerns about direct marketing. The Privacy Commissioner was invited to participate in the work of two working groups, both of which gave high priority to privacy issues: the Commonwealth Working Group on Direct Marketing, which wound up its deliberations early in the year, and the Standing Committee of Officials of Consumer Affairs Working Group on Direct Marketing, which was established shortly thereafter.

Review of Voluntary Data-matching Guidelines

In July 1992, the Privacy Commissioner issued general data-matching guidelines for use in Commonwealth administration. After an initial period of operation, the Privacy Commissioner is reviewing the guidelines with a view to putting forward recommendations about the possibility of making them legally binding. As a first stage of the review, the Privacy Commissioner reported to the Attorney-General in November 1994 on the extent and nature of the Commonwealth's data-matching activities. Negotiations with agencies on the content of revised guidelines are under way. It is expected that the review will be finalised in the first half of 1995-96.

Outsourcing Advice

In August 1994 the Privacy Commissioner issued advice, developed under the auspices of the Privacy Advisory Committee (a statutory body set up under the Privacy Act to advise the Privacy Commissioner), on the outsourcing (contracting out) of information technology and other services by Commonwealth agencies. The advice has been well received and a number of agencies have indicated that they are revising their contracts for outsourcing in line with the paper's suggested approach. As well, in 1994-95, the Privacy Commissioner addressed the privacy issues raised by outsourcing in a submission to the Industry Commission's inquiry into contracting out by the public sector.

Information Privacy Principles Guidelines

In October 1994 the Commissioner issued plain English guidelines to the first three of the Information Privacy Principles which are set out in the Privacy Act and regulate the way Commonwealth agencies handle the personal information under their control.
The guidelines were distributed to all Commonwealth agencies and have been made available on the Commonwealth Managers’ Toolbox, a CD-ROM package of administrative reference materials issued by the Department of Finance. A more detailed set of guidelines to *Information Privacy Principles 1 to 3* is in an advanced stage of preparation and will be included in the *Federal Privacy Handbook* loose leaf service. Detailed and plain English guidelines to Principles 8 to 11 are also in preparation.

**Information papers**

The Privacy Commissioner periodically issues information papers focusing on emerging privacy issues, many of them with a technological focus. In 1994-95, two final papers were released, one on *The Privacy Implications of New Communications Networks and Services* and one on *Profiling and Privacy*. As well, two draft papers were released for consultation and comment before finalisation, one on *The Privacy Implications of Genetic Testing* and one on *Smart Cards: Implications for Privacy*.

**AUDIT AND COMPLIANCE**

The Privacy Commissioner may investigate acts or practices involving potential breaches under the Privacy Act, conduct privacy audits, evaluate compliance with guidelines, and monitor the management and use of personal information.

**Audit program**

A program of auditing compliance with the *Information Privacy Principles*, the credit reporting provisions of the Privacy Act, and the Tax File Number guidelines issued by the Privacy Commissioner, was undertaken during the year with the focus again on credit information held by credit providers.

Forty eight audits were conducted: 16 on compliance with the *Information Privacy Principles*; 29 on compliance with the credit reporting provisions; and 3 on compliance with the Tax File Number guidelines. The Tax File Number and credit information audits were undertaken by consultants under the direction of Privacy Branch staff.

*Information Privacy Principle 4* requires agencies to protect personal information from loss, unauthorised access, modification or disclosure and other misuse. To assess compliance with this principle a computer security survey was commenced in May 1994 and was completed in the reporting year. A summary of the survey findings may be found in the *Seventh Annual Report on the Operation of the Privacy Act*.
To assist in improving compliance with the credit reporting provisions of the Privacy Act, Privacy Branch staff held a seminar for representatives of associations covering the credit union industry to provide some feedback to the industry on some of the issues identified in audits. It is expected that the issues will be raised throughout the industry by national training programs and/or regular publications.

**Investigations into Potential Breaches of the Act**

A number of matters, some of which attracted media attention, were investigated. These matters related to Information Privacy Principles, Tax File Number information and consumer credit information. The Privacy Commissioner was satisfied with action taken by the record-keepers which included implementation of procedures to prevent recurrence and, in one case, referral by the agency to the Australian Federal Police for further investigation.

**Personal Information Digests**

In accordance with section 27(1)(g) of the Privacy Act, the Commissioner published and distributed the *1994 Commonwealth Personal Information Digest* in May 1995. The *1994 ACT Government Service Digest* is expected to be published in July 1995. The digests contain descriptions of the personal information held by the agencies which are covered by the Privacy Act: what is held, where, why, who sees it and how individuals can obtain access to records containing information about themselves.

**MONITORING THE DATA-MATCHING PROGRAM**

The Information Technology Standards Section of the Privacy Branch, located in Canberra, monitors compliance with the privacy safeguards of the *Data-matching Program (Assistance and Tax) Act 1990*.

The Matching Agency which undertakes the matching activity is staffed by specially designated officers of the Department of Social Security. It undertook six matching cycles in 1994-95. In each cycle the records of 13.8 million individuals were matched and produced on average 21,115 payment matching discrepancies and 139,400 income matching discrepancies. Payment matches are investigated to ensure that an individual is only receiving benefits to which he or she is entitled. Income matches occur when there is a difference between the income disclosed to a benefit agency and that declared to the Tax Office. These discrepancies are investigated to ensure that an individual's income is within the limits for a benefit which is means tested.
The staff of the Privacy Branch have continued inspections of the procedures and practices for investigating data-matching discrepancies in State, area and regional offices of participating agencies. This year staff inspected 53 offices and as a result agencies have modified their procedures in accordance with the Privacy Commissioner's recommendations.

Other monitoring activities conducted during the year have included:

- reviews of the procedures for handling data that are used by the program within each participating agency;
- checks of the computer code that is used in the program against the matching rules that are specified in the Technical Standards Report to ensure that the program is performing to specifications;
- examinations of the sampling procedures used by each agency for selecting cases for further investigation; and
- reviews of the computer security within the matching agency.

Generally agencies have complied with the requirement of the Act and guidelines. The Department of Social Security reported that its savings from the program for the 1994-95 financial year exceeded its estimate for the first time. The Department estimated its gross savings to be $58.3 million and reported gross savings of $80.1 million. The final costings for the year were not available at the time of reporting.

**ADDITIONAL FUNCTIONS**

**Liaison and Consultation**

**The Privacy Advisory Committee**

The Privacy Advisory Committee is a statutory body set up under the Privacy Act to advise the Commissioner generally, to make recommendations on guidelines and to assist with community education and consultation. The Act specifies that this advisory committee should comprise representatives from various community sectors and interests including trade unions, civil liberties, information technology, social welfare and public or private sector management. The membership of the committee changed during the year. Stephen Skehill resigned from the committee when he took up his appointment as Secretary of the Attorney-General's Department. He was replaced by Colin Neave, his successor as Deputy Secretary of the Department. At the October
1994 meeting of the Privacy Advisory Committee, John Rome, the representative of the welfare sector, resigned to take up a new position. Action to replace him was in train at the end of the reporting year.

The committee has made a number of recommendations on information technology issues and community education. A Community Education Strategy was considered by the Privacy Advisory Committee at the last meeting of the year in May and, following further refinements, will form a framework for community education activities during the next year.

**Privacy Agencies of Australia and New Zealand**

The Privacy Commissioner and members of other privacy bodies in Australia and New Zealand continued to meet regularly to consider issues, exchange information and arrange joint projects. The NSW Privacy Committee, the South Australian Privacy Committee, the ACT Attorney-General's Department, the New Zealand Privacy Commissioner, the Western Australian Information Commissioner and the Queensland Department of Justice participated during the year. Representatives of other States were also invited to attend.

**International Privacy Perspectives**

The work of the Privacy Commissioner has a basis in international instruments such as the Organisation for Economic Co-operation and Development (OECD), principles concerning the protection of privacy and personal liberty and in the International Covenant on Civil and Political Rights, to which Australia is a signatory and which includes the right of persons not to be subjected to arbitrary or unlawful interferences with their privacy (Article 17).

The Privacy Commissioner meets regularly with the Privacy and Data Protection Commissioners of other countries to discuss emerging issues in the world context. During the year he attended the annual Commissioners' conference (this year held at the Hague) and later met with a smaller group of Commissioners in Vancouver.

A member of staff of the Privacy Commissioner's office also attended an ad hoc OECD meeting of experts on information infrastructures in November 1994 which considered issues relating to privacy, security and intellectual property. This was followed by a symposium on information superhighway issues generally in Vancouver during February 1995 organised jointly by the OECD, the Asia Pacific Economic Co-operation Forum, and the Pacific Economic Co-operation Conference. The Privacy Commissioner attended as a member of the Australian delegation.
State and Territory offices
JOINT OFFICES

Co-operative arrangements have been made between HREOC and States and Territories to provide for joint administration of Federal and State anti-discrimination legislation in an effort to simultaneously minimise duplication of services and expenses and to improve the accessibility to and quality of complaint handling services delivered to the community. Agreements are currently in place with all States except Tasmania, and in the Australian Capital Territory but not the Northern Territory.

Co-operative arrangements currently exclude joint administration of the Disability Discrimination Act although this will be included in future negotiations. Complaints under the Privacy Act are all managed from the Sydney office.

The Queensland and the Australian Capital Territory governments have entered bilateral agreements with HREOC for the Commonwealth to maintain responsibility for administering Federal and State anti-discrimination legislation in those areas. These governments pay the Commonwealth half of the costs of administration. The Commissioners in these offices are required, under their legislation, to furnish an annual report to the State Parliament. This reporting mechanism may be satisfied through presentation of the HREOC annual report or through an independent report.

The Victorian, South Australian and Western Australian governments have entered bilateral agreements with HREOC for the States to maintain responsibility for administering Federal and State anti-discrimination legislation in those States. The Commonwealth pays the State governments for some of the costs of administration. These States satisfy certain reporting requirements under the agreement, and provide quarterly statistics to HREOC of complaints registered under Federal legislation, which are subsequently aggregated into HREOC's Federal legislative complaint statistics tables.

Details of discrimination complaints for all States are consolidated in the complaint statistics tables and charts in the chapter entitled The Year in Review: Complaint Handling. Complaints accepted by all States and Territories under Federal legislation are identified separately in these consolidated tables by location of managing office, and complaints registered under Queensland and ACT legislation are identified separately by the name of Act.

Details of financial payments paid and received under co-operative arrangements are provided in Appendix Two: Financial Statements.
Ms Zrinka Johnston was the Queensland Anti-Discrimination Commissioner until September 1994. From September 1994 to February 1995 the role of Commissioner was undertaken on an acting and inevitably part-time basis by the Federal Sex Discrimination Commissioner Sue Walpole, conjointly with her other responsibilities.

John Briton commenced as Queensland Anti-Discrimination Commissioner and State Manager of the Human Rights and Equal Opportunity Commission in February 1995 pending advertisement and recruitment of the position for the duration of the current Commonwealth/State Co-operative Agreement.

Mr Briton has had long experience with human rights and social justice issues in government, non-government and statutory agencies, most recently as Deputy Public Advocate in Victoria's Office of the Public Advocate.

Statement from the Queensland Anti-Discrimination Commissioner

The Commission faced significant difficulty going into the 1994-95 reporting year. Firstly, and most obviously, a protracted industrial dispute was in progress. Complaint loads had increased dramatically and the available staff resources were very limited. In her part-time role as acting Commissioner from September 1994 to February 1995, Commissioner Walpole faced a time-consuming and logistically difficult combination of roles. It is to her great credit that she was able to re-focus the office and to initiate essential organisational and expenditure reforms.
Encouragingly, the Queensland office enters 1995-96 much better placed to overcome these difficulties and to give Queenslanders the quality of service the legislation entitles them to expect.

The Commission has two broad functions - an individual function for people who believe they have suffered unlawful discrimination and/or sexual harassment to seek redress, and a broader, proactive, community development function concerning equal opportunity and anti-discrimination matters more generally. These are described in more detail in the body of this report.

The Commission's difficulties stem from the fact that while the number of individual complaints resolved has increased steadily over the years, it still has not been able to keep pace with complaints as they are lodged, and therefore has fallen increasingly behind. The backlog of complaints totals 659 at 30 June. This is one and a half times the total number of complaints finalised during the preceding year. Despite a statutory framework which envisages an accessible and speedy resolution of complaints, the time lag between complaints being lodged with the Commission and work starting on their resolution was unacceptably long, in some cases as long as 14 months.

A committed staff team has been frustrated by the quality of service it can offer against these basic measures, and morale has been at a low ebb in the face of a constant struggle to resolve those old complaints which are characterised by entrenched conflict. Crucially, the Commission's exercise of its broader and more proactive community development functions has atrophied as resources have been diverted to bolster complaint handling. Statutory expectations and those of staff were being failed in this regard also.

There are several fundamental explanations for this situation, not least the rate at which Queenslanders have exercised their entitlements under the Queensland Anti-Discrimination Act since its proclamation in June 1992, a rate not anticipated in the Co-operative Commonwealth/State Agreement which governs the funding arrangements. In particular, the already tight funding base has been increasingly compromised by the demands placed upon it by the rapidly increasing costs associated with administration of the Queensland Anti-Discrimination Tribunal.

There are other causes more within the Commission's control. The Commission has had long-standing difficulties in recruiting, training and retaining a skilled workforce, due to staffing arrangements which have been characterised by undue reliance on acting higher duties assignments and a high turnover of temporary staff. Additionally, staff have been frustrated by the lack of articulated principles, guidelines and protocols on which to base complaint handling methodologies, and management information systems have not been up to the task.

By the middle of 1995 these matters had been substantially resolved. In particular, a detailed strategy has been developed to contain the problem of backlog to those
complaints now in the queue and to deal with the backlog by means of separate and
dedicated resources as a time-limited project. A project team will be established in
July and will be headed by a senior member of the Commission's complaint handling
staff. The Department of Justice and Attorney-General has provided $50,000 to assist
with the project.

This strategy is made possible by the imminent implementation of a number of
measures which will have the combined effect of ensuring that the Commission will be
better positioned in future to keep pace with new complaints as they are lodged. If this
objective is achieved, these complainants (and respondents) will receive a quality of
service from the Commission which it has not been able to offer for some years, staff
morale will rise, and public confidence in the Commission and the legislation it
administrers will be progressively restored.

These "efficiency savings" include the regularisation of staffing arrangements, now all
but complete, adjustments to the management structure to ensure single-point
accountabilities and better facilitate team-based processes for workload management
and performance monitoring; significantly enhanced management information systems
on which to base this exercise; and the development of revised and more rigorous
gate-keeping and complaint handling methodologies, which will re-invigorate what has
been described hitherto as a "culture of caution". The work that staff have put into
developing revised complaint handling methodologies has built upon the outcomes of a
national review of complaint handling undertaken by the Human Rights and Equal
Opportunity Commission in 1993-94, and has been complemented in recent months by
intensive training provided through its Sydney Office.

All Commission staff have been engaged with these improvements in a range of
task-oriented working groups. The quick progress made is a tribute to their enthusiasm
and commitment. This should not go unnoticed.

The regularisation of staffing arrangements has included the dedication of a senior
position to oversight the Commission's community development functions, with the
objective of ensuring that their exercise also is re-invigorated, in tandem with the
improvements in complaint handling.

It is particularly pleasing to be able to report the appointment of increased numbers of
Aboriginal and Torres Strait Islander staff to both complaint handling and
administrative support positions in all three offices of the Commission. Their
appointment gives better recognition to the needs of Aboriginal and Torres Strait
Islander people and the Commission looks forward to improved service delivery to
these communities.
Commonwealth/State Co-operation

The functions of the Queensland Anti-Discrimination Commission and the Federal Human Rights and Equal Opportunity Commission are performed from joint offices in Brisbane, Rockhampton and Cairns in the framework of a co-operative agreement between the Federal and Queensland Governments. The Commission's principal place of business is 27 Peel Street, South Brisbane. Regional offices are located at 19 Aplin Street, Cairns and 130 Victoria Parade, Rockhampton.

This arrangement provides a co-ordinated approach to anti-discrimination and human rights issues in Queensland, as well as a single point of contact on relevant State and Federal laws.

The Queensland Anti-Discrimination Commissioner, who also performs the functions of the Human Rights and Equal Opportunity Commission State Manager, reports directly to the Queensland Attorney-General on a regular basis.

The Legislation

The Queensland Anti-Discrimination Commission and the Anti-Discrimination Tribunal were established by the Anti-Discrimination Act 1991 which was proclaimed on 30 June 1992.

The Act aims to promote equality of opportunity for everyone by protecting them from unfair discrimination in various areas of public life, from sexual harassment and from conduct such as discriminatory advertising and victimisation.

Commission Functions

The main functions of the Anti-Discrimination Commission are:

- to enquire into and attempt to conciliate complaints of discrimination and sexual harassment;
- to carry out investigations relating to discrimination;
- to examine legislation to determine whether it is inconsistent with the purposes of the Act and to report on these matters to the Attorney-General;
- to undertake research and educational programs to promote the purposes of the Act;
a to consult with relevant organisations on ways of improving services and conditions affecting disadvantaged groups;

- when requested by the Attorney-General, to research and develop additional grounds of discrimination and to make recommendations for their inclusion in the Act;

ri to promote an understanding, an acceptance and the public discussion of human rights in Queensland; and

a to intervene, where appropriate, in court proceedings involving human rights issues.

**Grounds for complaint**

If people are treated unfairly in the areas covered by the Act because of any of the following personal attributes, they can lodge complaints with the Commission:

a sex;

a marital status;

a pregnancy;

a parental status;

a breast feeding;

a age;

a race;

a impairment;

a religion;

a political belief or activity;

- trade union activity;

- lawful sexual activity;

- association with, or relation to, someone identified on the basis of any of these attributes.

The areas covered in the Act are:

a work;

a education;
ta goods and services;
• accommodation;
• superannuation and insurance;
• disposition of land;
• club membership and affairs;
• administration of state laws and programs; and
• local government.

Sexual harassment provisions

The Act prohibits sexual harassment in any situation. Sexual harassment is broadly defined to include any unwelcome sexual conduct that is offensive, humiliating or intimidating.

COMPLAINT HANDLING

The Commission finalised 1595 written enquiries during 1994-95 and 430 complaints. The term enquiries here includes requests for advice and information about equal opportunity, anti-discrimination and human rights matters more generally, in addition to prospective complaints. Prospective complaints are allegations of discrimination and/or sexual harassment which are accepted or rejected as complaints depending on whether the material provided establishes a prima facie breach of either the Queensland or Federal Acts.

The tables in this chapter provide a breakdown of these matters by the relevant Acts, by the areas and grounds of the complaints, by categories of complainants and respondents, and by outcomes.

The following case studies illustrate the range of complaints which the Commission finalised during 1994-95.
Case Studies

Sexual Harassment

1. A woman renting an apartment complained of sexual harassment by the man who collected the rent for the property owner. The woman said the man visited or telephoned her every day. She said she tolerated the visits because minor repairs were required to the property. However, she said the man began making remarks with sexual connotations and eventually offered to pay part of her rent in exchange for sexual favours. Shortly after this occurred, the woman was evicted from the apartment for non-payment of rent.

The man denied he had harassed the woman. He said he sympathised with her being a single mother on a low income and visited to provide assistance. The man said he believed they were developing a relationship and admitted saying he would make a financial contribution to the woman if their relationship developed into a sexual one.

The matter was conciliated when the owner of the property agreed to waive the rent owed when the woman moved from the premises.

2. A young woman working as a clerk in the building industry alleged she had been sexually harassed by her supervisor. She claimed he repeatedly asked her to go out socially with him, asked her questions about her sexual views and activities and commented that she looked "sexy". When the young woman resisted her supervisor's invitations, it was claimed he began treating her detrimentally in her employment. She said her level of responsibilities and authority were reduced and she was expected to share duties with a new and less experienced employee. She was treated as a more subordinate employee.

The woman complained to a senior manager of the company but was dissatisfied with his handling of her complaint. The manager claimed at the conciliation conference that it was not clear to him that she was making a complaint of sexual harassment. He said he thought she was complaining only about the changed responsibilities. The supervisor denied the allegations of sexual harassment. The delay in making a complaint to the manager was attributable to the woman's youth and lack of knowledge and assertiveness in dealing with such issues.

Not long after making the complaint the woman's employment was terminated by the supervisor. She was subsequently out of work for some time. She eventually obtained a lower paid job, outside her chosen field.

The company agreed to settle the matter through conciliation for a sum of $5,000.
Age

A woman complained that when she inquired about finance to purchase a washing machine she was told she was too old. The sales person at the store told the woman she was too old to qualify for finance and no finance company would lend her the necessary amount. The woman said that she had sufficient cash to purchase the item outright if she had wished to, however, her practice in the past when buying electrical goods had been to pay them off rather than outlaying a large sum at once. The company said it was not up to them to provide finance and therefore such comments should not have been made to the woman.

After a complaint was made with the Commission the company provided a written apology to the woman and also agreed to counsel sales staff regarding age discrimination.

Race

1. A complaint was lodged in May 1994 on behalf of 19 Aboriginal people. They stated that they were forcibly taken by bus, hired by Cairns City Council, from the Esplanade at Cairns, where most of the complainants had been living. The complainants stated that they had been forced or coerced by Council staff, police and security staff engaged by the Council to travel on the bus. The Council had intended to take the complainants to Lockhart River Aboriginal community, but one of the buses became stranded in the flood waters of the Wenlock River. All the passengers were subsequently abandoned on the river bank. Later, they were taken to the Lockhart River Community by Community members and government staff.

The matter could not be conciliated and was referred for public hearing before a Commissioner. A further attempt was made to conciliate the matter in April 1995, about six weeks prior to the hearing. An agreement between the parties was reached.

A public apology was made by the Cairns City Council but the other terms of the agreement were confidential. A complaint against the Queensland Police Service was resolved by agreement and a complaint against the security company engaged by the Cairns City Council was withdrawn.

2. Two Aboriginal women complained of race discrimination. They alleged that they had been denied access to their children when their children were held in Police custody. The families were distressed that they could not reassure themselves about their children's welfare before the children were transferred. The complaint was resolved by conciliation when the local Police Service agreed to formulate and publish in a handbook policies and procedures in relation to this issue. Several appropriate persons were appointed to the local cell-watch program to deal with juvenile offenders.
3. An Aboriginal man complained of racist comments he alleged had been made at his work by other employees. He complained that co-workers referred to him as "one of Mabo’s lot" and made derogatory remarks about Aboriginal people in the community. He also stated that a racist remark was written on a piece of equipment. The matter was settled by conciliation with the individual respondents providing written apologies.

The organisation agreed to:

- implement an anti-discrimination policy in consultation with the Queensland Anti-Discrimination Commission;
- formally reprimand the individual respondents;
- review the complainant's personnel file to remove any inappropriate negative comments regarding the complainant's work performance;
- provide a written reference;
- re-employ the complainant when a suitable position becomes available and the complainant is considered to be the most suitable applicant; and
- pay $500 for any general damages.

**Marital Status**

A woman applied for a number of positions with an airline. She was already an employee of the airline, as was her partner. She was informed that her resume was the best of all the applicants and so she expected to be appointed to one of the positions. Her application was unsuccessful and she was informed that there was concern that, if promoted, she would be subjected to criticism as a result of perceived favouritism because of the relationship. The allegation was denied by the company. The complainant produced documents which appeared to support her complaint of discrimination and subsequent victimisation.

The complaint was resolved in conciliation, in which the company agreed to the payment of $30,000 in compensation, removal of unsatisfactory personnel records and provision to the complainant of a Certificate of Service.

**Impairment**

1. A man seeking employment with a mining company complained through the Disability Legal Advocate that the application form provided requested unlawful information. The application form asked for details of the number of sick days taken in the last 12 months, for details about any workers compensation claims over the last 10 years and for prospective applicants to state any physical disabilities or medical
conditions. The man suffered from a bi-polar disorder and was concerned that if he answered the questions on the application form, he may be disadvantaged in his application.

To enable the man to apply for the position within the time frame, the Commission contacted the employing agency immediately and the matter was resolved by conciliation. The company agreed to disregard any answers to the unlawful questions, to ensure that all selections were made on the basis of skill, knowledge, ability and experience, and to ensure that any further application forms do not include any unlawful questions.

The man was able to complete his application within the time frame.

2. A child was denied access to the activities of a club on the basis of her disability. The club indicated concerns about safety and supervision. Her mother brought a complaint to the Commission on her behalf. The matter was conciliated with the parties agreeing to the following:

- the complainant could take part in the club’s program;
- the club would publicly apologise;
- the club would provide appropriate programs for other people with disabilities;
- the complainant could have free club membership for a period of time; and
- the club would comply with the Ministerial, State and Federal guidelines on discrimination set down in their funding agreements.

3. A complaint was lodged with the Commission seeking an urgent interim order by the Anti-Discrimination Tribunal, to prevent a local council approving plans for a major redevelopment at a landmark tourist site. This redevelopment restricted access for people with disabilities

The Commission advised the respondent of the complaint and the relevant legislation applying to disability discrimination. It also advised him of the ramifications if the matter came to the attention of the public by way of a public Tribunal determination.

Discussion took place with the relevant parties, including the architects. The outcome of the discussions was a major redesign of the redevelopment plans, both internally and externally. The architect commented that "not only has the change resulted in equality for people with disabilities, but the improvements have resulted in a better building for the community at large".

This matter was resolved within days of the Commission receiving it, resulting in an outcome with which all parties were satisfied and with a minimum outlay of time and resources.
The following are examples of significant consultations:

- joint work was done with a large union in Central Queensland. The union had an interest in developing an EEO policy, developing better assistance for members who were discriminated against or harassed and raising awareness about the types of issues with which the Commission deals. The Union sought the Commission’s input regarding these issues;

- preliminary discussions have commenced with the Public Sector Management Commission regarding overlapping jurisdictions and areas of mutual interest. The expected outcome of such discussions will be more appropriate referral of people at an early stage of their grievances and more rational use of resources; and

- discussions have commenced with Directors-General of large Queensland Government Departments regarding more expeditious handling of discrimination and harassment complaints and a preventive approach, based on best practice. A significant number of complaints were lodged against State Public Sector agencies highlighting the importance of a preventive approach. The response by public sector agencies to anti-discrimination legislation has been variable. The Commission's aim is to work positively with such agencies, with a view to reducing the incidence of complaints.

**Participation on Committees**

Commission staff participate in a number of committees, advising on the application of anti-discrimination law, including:

- the Police Ethnic Advisory Group, which advises Police on policy and practice relevant to a diverse and multi-cultural community;

- the Bargaining for Diversity Steering Committee, which advises on a project to increase the participation of non-English speaking background workers in enterprise bargaining;

- the Queensland Community Relations Consortium, which is oversighting a project designed to develop models of best practice in managing multicultural community relations; and

- a working group examining strategies in relation to work issues and ageing.
Participation in Community Events

This participation aims to establish the Commission's links with the community and raise awareness of the Commission's role and services.

Examples of key events in the past year include:

- in participation on the International Women's Day (IWD) Steering Committee and involvement in International Women's Day activities in Brisbane, Rockhampton and Cairns, including addresses at functions, hosting of functions and staffing of a display in the City Mall; and

- in address to a rally to celebrate the anniversary of the Disability Discrimination Act.

Conducting joint Projects or Activities with Other Agencies

The Commission considers this to be an important strategy to establish links with key groups and raise awareness about the Commission's role. It is also a cost-effective means of undertaking community education and liaison activities.

Joint projects in the past year include:

- producing and launching jointly with the ACTU (Qld) a poster and brochure on the rights of pregnant workers. The launch was held to coincide with International Women's Day;

- a input into the development of a video produced by Access Arts aiming to assist people with intellectual disabilities to access the Disability Discrimination Act;

- initiating and co-ordinating the establishment of a group to set up a watch-house register, in response to a key recommendation in the Race Discrimination Commissioner's Report into Mornington Island;

- os participation in training and mediator selection processes for the Community Justice Program;

- al community information and training sessions on Commission legislation and processes and Legal Aid issues, conducted jointly by the Central Queensland office and the Legal Aid Office in Biloela and Hervey Bay;
liaison with the Queensland Industrial Relations Commission. In recognition of the significant overlap between the discrimination and industrial relations jurisdictions, the Commission has established closer links with the Queensland Industrial Relations Commission to ensure clients are appropriately referred. The Queensland Industrial Relations Commission permitted Commission conciliators to observe conferences conducted by Industrial Relations Commissioners. This provided valuable staff training. The Commission has also involved itself in a number of matters before the Industrial Relations Commission, including making a submission at the Family Leave Test Case and agreeing to participate in a review of discriminatory provisions in Awards; and

a establishment of a system of referral for complainants and respondents to the Legal Aid Office (Q1d) and Welfare Rights Centre (Inc).

Regional/Outreach Visits

Outreach visits are an important strategy for Commission staff to ensure access and equity in the diverse geographical area covered by the three Queensland offices. The Northern Queensland office trialed a modified approach to community visits, combining visits by a number of staff who undertake investigation and conciliation of complaints, and training and community education work. For example, at Mt Isa over a five day period, 3 staff resolved 7 complaints, brought 3 others to a near conclusion, delivered training to a Government agency and an Aboriginal organisation, discussed issues with community groups and undertook a series of media interviews.

Other significant outreach visits included:

- a tour through the Central West (including Longreach) and Central Highlands (including Emerald) of Queensland establishing key government and non-government contacts in Aboriginal communities and with key service providers;

- a regular visits to the Wide Bay and Burnett regions where firm contacts have been established with key agencies; and

- two visits were made to the traditional lands of the Darumbal people in the Shoalwater Bay region of Central Queensland. Discussions were held with the community and this provided valuable links for local Commission staff and the Aboriginal and Torres Strait Islander Social Justice Commissioner.
**Media Liaison**

The Commission has extensive contact with the media. Comments to the media are considered to be an important way of reaching the community, advising of the Commission's role and activities and raising awareness of discrimination, harassment and human rights issues. The Commissioner and staff were interviewed by the media or provided background in excess of 100 occasions in the past year.

**Library Services**

The Commission provides a specialist library collection to support its work. Resources in a variety of formats are selected, acquired, processed and made available to Commission staff in Brisbane, Cairns and Rockhampton. The library is staffed by a part-time librarian. In line with the Commission's obligations "to promote an understanding, an acceptance and public discussion of human rights in Queensland" the library is available to members of the public one day each week for reference purposes. Last year, 279 visitors utilised this popular service. The librarian responded to 109 written requests for information.

Resources are available to government departments, private enterprise, solicitors' offices, schools, and other organisations through the inter-library loan system.

The Commission is represented at the Community Information Agency Librarians Group. This is an active self help and information sharing group with a focus on co-operative arrangements.

**Other Significant Activities**

**Mornington Island Report**

Staff from the North Queensland region and the Queensland Aboriginal Liaison Officer made two visits to Mornington Island as part of the preparation of the review by the Race Discrimination Commissioner and the Aboriginal and Islander Torres Strait Islander Social Justice Commissioner of the Mornington Island Report into conditions at the Gulf of Carpentaria community.

Staff accompanied the Acting Race Discrimination Commissioner, Mr Michael Dodson, to the Island to present the Commissioner's draft review, then returned in March to present the final review document.
An innovative aspect of this report was the presentation by video of a summary of the review and its findings, by videotaped interview with the Race Discrimination Commissioner and the Aboriginal and Torres Strait Islander Social Justice Commissioner.

**Sex Discrimination Act 1984 Tenth Anniversary**

As part of the national celebration of the tenth anniversary of the *Sex Discrimination Act 1984*, the Queensland Anti-Discrimination Commission, in conjunction with the Sex Discrimination Commissioner, Ms Sue Walpole, sponsored a dinner in Rockhampton attended by 100 representatives of government and non-government, business and women's organisations in Central Queensland and the production in both Cairns and Port Douglas of a play *Innerface-Innerface* by the Just Us Theatre Ensemble.

**QUEENSLAND ANTI-DISCRIMINATION TRIBUNAL**

The Tribunal has a number of functions:

- providing opinions to the Anti-Discrimination Commissioner as requested;
- hearing applications for exemptions;
  - the Tribunal has dealt with an application by a Children's Home for an exemption to allow discrimination to occur in the areas of work and accommodation on the basis of impairment, religion, political beliefs or activities and lawful sexual activity. After the Tribunal sought submissions from a range of interested parties, the applicant withdrew the application; and
  - the Tribunal is in the process of dealing with an exemption application which seeks to allow discrimination to occur in the provision of accommodation on the basis of age, during the period known as "schoolies week".
- reviewing the Commissioner's decision to permit complaints to lapse in circumstances where complainants appear to have lost interest.
- hearing functions under the *Queensland Anti-Discrimination Act 1991*.
  - the Tribunal has conducted hearings in Maryborough, Townsville, Maroochydore, Ingham, Atherton and Brisbane. The matters dealt with were allegations of discrimination in relation to dismissal and other discrimination on the basis of pregnancy; sexual harassment at work; race
discrimination in the provision of accommodation and discrimination on the basis of impairment in the provision of access to the Brisbane Convention Centre. Sample case studies appear on the following pages.

The Tribunal referred several matters back to the Anti-Discrimination Commissioner for a further attempt at conciliation, and successfully conciliated a number of matters within the Tribunal.

The President of the Tribunal has spoken at a meeting of the Bar Association and to Labour Lawyers Association on the Anti-Discrimination Act 1991 and on the procedures of the Tribunal. The Tribunal is willing to arrange a speaker for groups seeking information on the procedures at the Tribunal.

The following accounts of matters heard by the Tribunal illustrate its work.

_Cocks -v- State of Queensland - Impairment Discrimination - Provision of Services_

In September 1994, the Tribunal heard a case in which a man who was a quadriplegic reliant on a wheelchair for mobility alleged that the State of Queensland had discriminated against him in the provision of access to the Brisbane Convention and Exhibition Centre, which was in the process of being constructed. This Centre was opened in June 1995.

Half the entrances to the Centre were suitable for use by persons with an impairment which precluded them from using the stairs. The main entrance could only be accessed by 27 steps. Approximately 43 meters away there was a covered entrance at ground level suitable for people who use wheelchairs. Evidence showed that 10.2% of persons in Queensland, representing 315,000 people, have a mobility problem.

The Tribunal found that there was a case of indirect discrimination against persons with the attribute of mobility impairment. Those people were being discriminated against in the provision of services and in the administration of State laws and programs. The Tribunal ordered the respondent to construct access to the front entrance of the Centre to allow access by persons with mobility impairment.

_Lynton -v- Maugeri - Race Discrimination - Provision of Accommodation_

The complainant was an Aboriginal woman, who alleged she had been declined rental accommodation by the respondent on the basis of her race. Upon telephoning the respondent's wife in relation to a newspaper advertisement for a house to rent, she was told the house was still available. The complainant went to the house later that day to inspect it. As soon as the complainant met the respondent's wife, she was told the house was "too good for you" and that the house would not be rented to her. When the complainant's husband telephoned the respondent's daughter later in the day, he was told that her father said they "didn't want any blacks in the house".
The Tribunal found that the complainant had been discriminated against on the basis of race, and awarded general damages of $18,000 as compensation for loss and damage.

*Whittle & Hughes v Paulette & Specific Pools - Sexual Harassment*

Ms Whittle and Ms Hughes, former employees of Mr Paulette, alleged they had been sexually harassed by him on various occasions throughout 1992 and early 1993. Both were working in the Townsville office of the business owned by the respondent. Both complainants alleged the respondent had made comments about their breasts and buttocks, as well as touching them in a sexual way which was both unsolicited and unwelcome. Sexual propositions were also made to Ms Whittle by Mr Paulette.

The Tribunal found that the respondent had sexually harassed the complainants, and that the touching and the remarks occurred in circumstances where a reasonable person would have anticipated the possibility that the other person would have been offended, humiliated and intimidated by the conduct.

The Tribunal awarded Ms Hughes special damages of $9,000 for loss of earnings, and $2,053 for past and future medical care. Ms Whittle was awarded $2,530 special damages. For their distress, loss of dignity, injury to their feelings, loss to their self esteem and self confidence and loss of their enjoyment of work, the complainants were both awarded $10,000 each for general damages. Mr Paulette's refusal to apologise publicly to the complainants was taken into account in assessing the damages awarded.

*Haddock v Moore & Musostock Pty Ltd - Pregnancy Discrimination - Employment*

In October 1991, the complainant commenced work as a furniture salesperson at "Super A-Mart" furniture store on the Sunshine Coast. Evidence accepted by the Tribunal was that whilst the complainant was an experienced salesperson, some conflict developed between her and other sales staff over her attitude to customers and other staff and the stealing of other people's sales. In July 1992, the complainant discovered she was pregnant. She later told her employer of her pregnancy. In December 1992 she was dismissed from employment, and was told it was because her sales figures were down. She complained to the Anti-Discrimination Commission in the belief that she had been dismissed because she was pregnant. The evidence accepted by the Tribunal showed that this was in fact untrue and that the reason for her dismissal was her attitude towards work and customers. During the course of the Tribunal hearing, the complaint was amended to include an allegation of sex discrimination on the contention that, had she been a man, the conduct for which the respondent said she was dismissed would have been tolerated.

The Tribunal found that the evidence did not establish that the complainant had been treated less favourably at work because of her sex, and that her pregnancy was not the substantial reason for her dismissal. It pointed out that it is not the law that a person cannot be dismissed when she is pregnant. However, it is unlawful to dismiss a person because she is pregnant. The Tribunal stated that had the respondents acted more
honestly and responsibly in dismissing the complainant, she could have commenced proceedings in a more appropriate industrial tribunal dealing with unfair dismissal. The complaint was dismissed.

Tables 25 and 26 detail the matters received and finalised at the Tribunal during 1994-95.

Table 25: Matters received by the QADT - 1 July 1992 to 30 June 1995

<table>
<thead>
<tr>
<th>Period</th>
<th>Exemptions</th>
<th>Applications for Hearings</th>
<th>Requests for Opinions</th>
<th>Misc Matters</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Applications</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Full Year</td>
<td>3</td>
<td>2</td>
<td>0</td>
<td>0</td>
<td>11</td>
</tr>
<tr>
<td>1992-93</td>
<td>3</td>
<td>2</td>
<td>0</td>
<td>0</td>
<td>14</td>
</tr>
<tr>
<td>Full Year</td>
<td>1</td>
<td>13</td>
<td>0</td>
<td>3</td>
<td>29</td>
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<tr>
<td>1993-94</td>
<td></td>
<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Full Year</td>
<td>4</td>
<td>13</td>
<td>0</td>
<td>3</td>
<td>29</td>
</tr>
<tr>
<td>1994-95</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Table 26: Matters finalised by the QADT - 1 July 1994 to 30 June 1995

<table>
<thead>
<tr>
<th>Exemption</th>
<th>Applications</th>
<th>Application for Hearings</th>
<th>Requests for Opinions</th>
<th>Misc Matters</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dismissed</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Upheld</td>
<td>0</td>
<td>3</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Conciliated prior to hearing QADT</td>
<td>0</td>
<td>4</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>Conciliated prior to hearing QADC</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Settled prior to hearing</td>
<td>0</td>
<td>7</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>Withdrawn prior to hearing</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Opinion given</td>
<td>n/a</td>
<td>n/a</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Case heard - Decision reserved</td>
<td>0</td>
<td>3</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>
Table 27: Telephone Enquiries received - 1 July 1994 to 30 June 1995

<table>
<thead>
<tr>
<th>Allocated discrimination/prospective complaints</th>
<th>North Qld</th>
<th>Central Qld</th>
<th>South Qld</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Requests for general information</td>
<td>1386</td>
<td>1390</td>
<td>6398</td>
<td>9174</td>
</tr>
<tr>
<td>Requests for publications</td>
<td>501</td>
<td>358</td>
<td>1407</td>
<td>2266</td>
</tr>
<tr>
<td>Advice to employers</td>
<td>52</td>
<td>158</td>
<td>149</td>
<td>359</td>
</tr>
<tr>
<td>Requests for community education</td>
<td>8</td>
<td>77</td>
<td>348</td>
<td>433</td>
</tr>
<tr>
<td>Other</td>
<td>15</td>
<td>24</td>
<td>100</td>
<td>139</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>1990</strong></td>
<td><strong>2205</strong></td>
<td><strong>8552</strong></td>
<td><strong>12747</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Number advised to lodge complaints</th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal enquiries (walk-ins)</td>
<td>542</td>
<td>411</td>
<td>1199</td>
<td>2152</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>542</strong></td>
<td><strong>411</strong></td>
<td><strong>1199</strong></td>
<td><strong>2152</strong></td>
</tr>
</tbody>
</table>

Table 28: Written enquiries received - 1 July 1994 to 30 June 1995

<table>
<thead>
<tr>
<th>On hand -</th>
<th>North Qld</th>
<th>Central Qld</th>
<th>South Qld</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 July 1994</td>
<td>50</td>
<td>66</td>
<td>315</td>
<td>431</td>
</tr>
<tr>
<td>Opened (+)</td>
<td>260</td>
<td>215</td>
<td>831</td>
<td>1306</td>
</tr>
<tr>
<td>Closed (-)</td>
<td>282</td>
<td>244</td>
<td>1069</td>
<td>1595</td>
</tr>
<tr>
<td><strong>On hand - 30 June 1995</strong></td>
<td><strong>28</strong></td>
<td><strong>37</strong></td>
<td><strong>77</strong></td>
<td><strong>142</strong></td>
</tr>
</tbody>
</table>

Table 29: Complaints opened under Queensland and Federal legislation - 1 July 1994 to 30 June 1995

<table>
<thead>
<tr>
<th>On hand -</th>
<th>North Qld</th>
<th>Central Qld</th>
<th>South Qld</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 July 1994</td>
<td>118</td>
<td>77</td>
<td>247</td>
<td>442</td>
</tr>
<tr>
<td>Opened (+)</td>
<td>176</td>
<td>154</td>
<td>583</td>
<td>913</td>
</tr>
<tr>
<td>Closed (-)</td>
<td>139</td>
<td>63</td>
<td>228</td>
<td>430</td>
</tr>
<tr>
<td><strong>On hand - 30 June 1995</strong></td>
<td><strong>155</strong></td>
<td><strong>168</strong></td>
<td><strong>602</strong></td>
<td><strong>925</strong></td>
</tr>
</tbody>
</table>
Table 30: Complaints lodged under the *Queensland Anti-Discrimination Act 1991* by category of complainant and respondent - 1 July 1994 to 30 June 1994

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Male</td>
<td>84</td>
<td>185</td>
<td>Old Government</td>
<td>65</td>
<td>135</td>
</tr>
<tr>
<td>Female</td>
<td>186</td>
<td>429</td>
<td>Private enterprise</td>
<td>239</td>
<td>574</td>
</tr>
<tr>
<td>Group/Organisation</td>
<td>8</td>
<td>52</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other</td>
<td>26</td>
<td>43</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>304</strong></td>
<td><strong>709</strong></td>
<td><strong>Total</strong></td>
<td><strong>304</strong></td>
<td><strong>709</strong></td>
</tr>
</tbody>
</table>

Table 31: Outcomes of complaints closed under Queensland and Federal legislation -1 July 1994 to 30 June 1995

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No.</td>
<td>No.</td>
<td>No.</td>
</tr>
<tr>
<td>Conciliated</td>
<td>248</td>
<td>71.3</td>
<td>209</td>
</tr>
<tr>
<td>Not conciliated - referred for hearing</td>
<td>13</td>
<td>3.7</td>
<td>23</td>
</tr>
<tr>
<td>Not conciliated - not referred for hearing</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Referred elsewhere</td>
<td>7</td>
<td>2.0</td>
<td>0</td>
</tr>
<tr>
<td>Declined/rejected/outside jurisdiction</td>
<td>45</td>
<td>12.9</td>
<td>7</td>
</tr>
<tr>
<td>Complaint withdrawn by complainant</td>
<td>31</td>
<td>8.9</td>
<td>107</td>
</tr>
<tr>
<td>No contact from complainant/lost interest</td>
<td>4</td>
<td>1.1</td>
<td>123</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>348</strong></td>
<td><strong>100</strong></td>
<td><strong>469</strong></td>
</tr>
</tbody>
</table>

Table 32: Complaints closed under Queensland and Federal legislation - summary by Act:

<table>
<thead>
<tr>
<th>Act</th>
<th>89-90</th>
<th>90-91</th>
<th>91-92</th>
<th>92-93</th>
<th>93-94</th>
<th>94-95</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No.</td>
<td>%</td>
<td>No.</td>
<td>%</td>
<td>No.</td>
<td>%</td>
</tr>
<tr>
<td>QADA</td>
<td>N/A</td>
<td>N/A</td>
<td>NN</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>RDA</td>
<td>61</td>
<td>40.7</td>
<td>74</td>
<td>30.6</td>
<td>53</td>
<td>22.7</td>
</tr>
<tr>
<td>SDA</td>
<td>87</td>
<td>58</td>
<td>116</td>
<td>47.9</td>
<td>125</td>
<td>53.6</td>
</tr>
<tr>
<td>DDA</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>HREOCA</td>
<td>2</td>
<td>1.3</td>
<td>52</td>
<td>21.5</td>
<td>55</td>
<td>23.6</td>
</tr>
</tbody>
</table>

**Total** | **150** | **100** | **242** | **100** | **233** | **100** | **348** | **100** | **469** | **100** | **430** | **100** |

QADA proclaimed
Table 33: Complaints opened under the Queensland Anti-Discrimination Act 1991 by area and ground of complaint
1 July 1994 to 30 June 1995

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Age</td>
<td>9</td>
<td>-</td>
<td>36</td>
<td>1</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>40</td>
<td>21</td>
<td>46</td>
</tr>
<tr>
<td>Association</td>
<td>_</td>
<td>3</td>
<td>1</td>
<td>-</td>
<td>-</td>
<td>4</td>
<td>0.9%</td>
<td>1</td>
<td>4</td>
<td>0.5%</td>
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<tr>
<td>Impairment</td>
<td>2</td>
<td>13</td>
<td>21</td>
<td>91</td>
<td>47</td>
<td>1</td>
<td>-</td>
<td>83</td>
<td>54</td>
<td>1.7%</td>
</tr>
<tr>
<td>Marital status</td>
<td>2</td>
<td>-</td>
<td>16</td>
<td>5</td>
<td>-</td>
<td>14</td>
<td>3.3%</td>
<td>5</td>
<td>23</td>
<td>3.2%</td>
</tr>
<tr>
<td>Pregnancy</td>
<td>-</td>
<td>38</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>31</td>
<td>7.3%</td>
<td>28</td>
<td>38</td>
<td>5.3%</td>
</tr>
<tr>
<td>Political activity</td>
<td>1</td>
<td>-</td>
<td>3</td>
<td>-</td>
<td>-</td>
<td>0</td>
<td>-</td>
<td>0</td>
<td>4</td>
<td>0.5%</td>
</tr>
<tr>
<td>Political belief</td>
<td>_</td>
<td>-</td>
<td>3</td>
<td>-</td>
<td>-</td>
<td>0</td>
<td>0.6%</td>
<td>-</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Parental status</td>
<td>2</td>
<td>-</td>
<td>11</td>
<td>3</td>
<td>-</td>
<td>19</td>
<td>4.5%</td>
<td>6</td>
<td>16</td>
<td>2.2%</td>
</tr>
<tr>
<td>Race</td>
<td>12</td>
<td>11</td>
<td>4</td>
<td>56</td>
<td>24</td>
<td>56</td>
<td>13.3%</td>
<td>54</td>
<td>17.7%</td>
<td>108</td>
</tr>
<tr>
<td>Religion</td>
<td>1</td>
<td>-</td>
<td>3</td>
<td>-</td>
<td>-</td>
<td>1</td>
<td>1.4%</td>
<td>4</td>
<td>5</td>
<td>0.7%</td>
</tr>
<tr>
<td>Sex</td>
<td>-</td>
<td>2</td>
<td>-</td>
<td>63</td>
<td>4</td>
<td>59</td>
<td>14%</td>
<td>27</td>
<td>69</td>
<td>9.7%</td>
</tr>
<tr>
<td>Sexual Harassment</td>
<td>5</td>
<td>163</td>
<td>6</td>
<td>-</td>
<td>20</td>
<td>94</td>
<td>22.4%</td>
<td>90</td>
<td>194</td>
<td>27.3%</td>
</tr>
<tr>
<td>Sexual Harassment</td>
<td>2</td>
<td>1</td>
<td>15</td>
<td>4</td>
<td>-</td>
<td>10</td>
<td>2.3%</td>
<td>9</td>
<td>22</td>
<td>3.1%</td>
</tr>
<tr>
<td>Trade Union activity</td>
<td>-</td>
<td>5</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>3</td>
<td>0.7%</td>
<td>5</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>TOTAL</td>
<td>27</td>
<td>30</td>
<td>31</td>
<td>503</td>
<td>95</td>
<td>2</td>
<td>1</td>
<td>20</td>
<td>419</td>
<td>709</td>
</tr>
</tbody>
</table>

*Under the Queensland Anti-Discrimination Act 1991 sexual harassment may occur in any area of like and is not confined to specific areas.
Commonwealth/Territory Co-operation

The ACT Human Rights Office was established in 1991 by agreement between the ACT Government and the Commonwealth. The office is jointly funded by the ACT and the Commonwealth and is staffed and administered by the Human Rights and Equal Opportunity Commission. The Human Rights Office (HRO) deals with complaints under the *ACT Discrimination Act 1991* and under the Federal discrimination laws.

**ACT Discrimination Act 1991**

The ACT Discrimination Act came into force on 20 January 1992. The Act makes discrimination on the following grounds unlawful:

- **sex**;

- **sexuality**;

- **transsexuality**;

- **marital status**;

- **race**;

- **pregnancy**;

- **status as a parent or carer**;

- **religious or political conviction**;

- **impairment**;

- membership or non-membership of an association or organisation of employers or employees;

- **age**;
• profession, trade, occupation or calling; and
• association with a person who has one of these attributes.
Sexual harassment, racial vilification and victimisation are also unlawful under the Act.

The Act operates in the areas of employment, education, access to premises, the provision of goods and services, accommodation and clubs.

**ACT Discrimination Commissioner**

The ACT Discrimination Commissioner is a part-time statutory appointee. The Commissioner has a range of functions under the Act. Her primary function is to exercise formal decision making powers under the Act and to conduct hearings. The Commissioner delegates the powers of investigation and conciliation of complaints to the staff of the ACT HRO.

During 1994, the ACT upgraded the position to a half-time appointment. Ms Robin Burnett was appointed to this position in November 1994, replacing Professor Phillip Alston.

**Amendments to the Act**

The Act was amended to prevent the use of anything said or done during conciliation as evidence at hearings.

Further amendments were made in June 1994 through two private members’ bills. Under these amendments, a member of the Legislative Assembly who employs staff under the *Legislative Assembly Members’ Staff Act 1989* is to be considered as an employer for the purposes of the Discrimination Act 1991. A further provision includes other workplace participants as possible respondents to complaints of sexual harassment.

**INVESTIGATION OF COMPLAINTS**

The HRO received a total of 148 complaints of discrimination during the year, with 75 of these falling under the ACT Act and 73 of these falling under Federal legislation (with the majority relating to disability and sex discrimination). A breakup of the Federal legislation covering each complaint is detailed in this chapter.

As in previous years, the employment sector attracted the most complaints. This year, 70% of complaints related to discrimination in employment, compared to 58% in 1993-94. There was also a substantial increase in sexual harassment complaints lodged under the Discrimination Act 1991 (16 were lodged this year as compared to 7 in 1993-94). The office received a total of 25 complaints involving sexual harassment under the Commonwealth *Sex Discrimination Act 1984* and the ACT Act.
The complaints cover problems of sexual harassment in small businesses, multiple complainants against the same employer, and complaints from men involving sexual harassment and sexuality discrimination. While there were fewer complaints of sex discrimination under the *ACT Discrimination Act 1991* (8 compared to 15 last year), there were more complaints alleging pregnancy discrimination (8 compared to 3 last year). Complaints were made under the new grounds of union membership or non-membership and profession, trade, occupation or calling.

Amendments to include age as a ground of complaint under the ACT Act came into force in March 1994. Only one complaint of age discrimination was received this reporting year, although there were many inquiries about age-based compulsory retirement. The Act will not apply to retirement in the private and the ACT Government sectors until 4 March 1996.

Further details of complaints under the Discrimination Act 1991 will be found in the Annual report of the ACT Discrimination Commissioner.

**Table 34: Complaints lodged under the *ACT Discrimination Act 1991* by area and ground of complaint - 1 July 1994 to 30 June 1995**

<table>
<thead>
<tr>
<th>Ground of Complaint</th>
<th>Employment</th>
<th>Education</th>
<th>Access to premises</th>
<th>Goods, services, facilities</th>
<th>Clubs</th>
<th>Accommodation</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sex</td>
<td>3</td>
<td>3</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>8</td>
<td></td>
</tr>
<tr>
<td>Sexuality</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>1</td>
</tr>
<tr>
<td>Marital status</td>
<td>2</td>
<td></td>
<td></td>
<td>1</td>
<td></td>
<td>3</td>
<td></td>
</tr>
<tr>
<td>Status as parent or carer</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>Pregnancy</td>
<td>8</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>8</td>
<td></td>
</tr>
<tr>
<td>Race</td>
<td>6</td>
<td>1</td>
<td>3</td>
<td></td>
<td></td>
<td>10</td>
<td></td>
</tr>
<tr>
<td>Religious or political conviction</td>
<td></td>
<td>2</td>
<td></td>
<td></td>
<td></td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>Impairment</td>
<td>10</td>
<td>1</td>
<td>4</td>
<td></td>
<td></td>
<td>15</td>
<td></td>
</tr>
<tr>
<td>Association</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sexual harassment</td>
<td>15</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td>16</td>
<td></td>
</tr>
<tr>
<td>Racial Vilification</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>Union membership or non membership</td>
<td>3</td>
<td>1</td>
<td>1</td>
<td></td>
<td></td>
<td>5</td>
<td></td>
</tr>
<tr>
<td>Age</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td>1</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>Profession</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>Victimisation</td>
<td>2</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>2</td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>53</td>
<td>1</td>
<td>1</td>
<td>2</td>
<td>2</td>
<td>75</td>
<td></td>
</tr>
</tbody>
</table>
Table 35: Complaints lodged under the *ACT Discrimination Act 1991* by category of complaint and respondent - 1 July 1994 to 30 June 1995

<table>
<thead>
<tr>
<th>Category of complainant</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Male</td>
<td>27</td>
</tr>
<tr>
<td>Female</td>
<td>48</td>
</tr>
<tr>
<td>Group/Organisation</td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>75</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Category of respondent</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>ACT Government</td>
<td>22</td>
</tr>
<tr>
<td>Private Enterprise</td>
<td>53</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>75</strong></td>
</tr>
</tbody>
</table>

Table 36: Outcomes of complaints closed under the *ACT Discrimination Act 1991*  
1 July 1993 to 30 June 1994

<table>
<thead>
<tr>
<th>Outcome</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Conciliated</td>
<td>33</td>
</tr>
<tr>
<td>Withdrawn</td>
<td>28</td>
</tr>
<tr>
<td>No contact from complainant</td>
<td>8</td>
</tr>
<tr>
<td>Declined</td>
<td>7</td>
</tr>
<tr>
<td>Outside jurisdiction</td>
<td></td>
</tr>
<tr>
<td>Referred elsewhere</td>
<td></td>
</tr>
<tr>
<td>Referred for hearing</td>
<td>7</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>83</strong></td>
</tr>
</tbody>
</table>

**Hearings**

Commissioner Alston handed down two decisions on matters heard in March and April 1994. In both cases, the Commissioner decided unlawful discrimination had occurred. In the first case, *Goff v Chelsea Girl Pty Ltd*, the Commissioner found that Ms Goff was discriminated against because of her pregnancy when her work hours were reduced and when she was later dismissed. The complainant was awarded $4,119 in damages and an order for costs was made in her favour.

In the second case, *Della Costa v ACT Department of Health*, the Commissioner found that discrimination because of disability occurred when the complainant was denied access to mainstream speech therapy services because he attended a special school where speech therapy services were available. The Commissioner considered this was an exclusionary policy that resulted automatically from the child's admission to
therapy services at the special school. It was found that the policy and the failure to permit opportunities for individual assessment or for individual circumstances to be taken into account amounted to discrimination within the meaning of the Act. The Commissioner rejected the respondent's submission that the matter fell within the provisions for unjustifiable hardship in the Act.

The Commissioner directed that the policy be changed, although he did not make directions for damages or costs. The complainant has sought review of the decision to the ACT Administrative Appeals Tribunal.

In January 1994, Commissioner Burnett heard applications for a direction under section 88 of the Act to suppress publication of evidence relating to a complaint. These directions were granted against a number of media companies and individuals. The removal of these directions in June 1994 involved a further hearing by the Commissioner and an application for review of the decision by the AAT.

Five cases were referred for hearing during January and June 1994. Three of these cases have been settled prior to hearing.

**Review of Decisions**

Section 94 of the Discrimination Act provides for review of the Commissioner's decisions by the ACT Administrative Appeals Tribunal.

Two applications for review are currently before the AAT. The first is the appeal in the Della Costa case, and the second is an application for review of the Commissioner's decision to discontinue enquiries because the matter was considered to be lacking in substance.

**EDUCATION AND PROMOTIONAL ACTIVITIES**

The office has limited its involvement in generating promotional or community education activities and focused attention on complaint handling. However, staff have had a continued involvement in public speaking. This included an active role in sessions on discrimination law, EEO and grievance procedures for the Community Public Sector Union, training sessions on discrimination law for ACT and Commonwealth Government Departments, as well as talks and training sessions for a number of community groups.

In August 1994, the ACT Human Rights Office celebrated the 10th anniversary of the *Sex Discrimination Act 1984*. The Sex Discrimination Commissioner, the ACT Chief Minister, ACT Attorney General, Senator Bob McMullan, the ACT Discrimination Commissioner, Professor Alston and Grace Coe, ACT Woman of the Year, attended a cake cutting ceremony in City Walk in Canberra.
REGIONAL OFFICES
The Commission has two regional offices operating: the Darwin office in the Northern Territory, and the Hobart office in Tasmania.

Here follows a summary of the events occurring in these offices during the year.

**NORTHERN TERRITORY**

The 1994-95 year was characterised by a dramatic growth in complaint and inquiry numbers, an increased range and quantity of community education activities and continuing involvement in national projects and local issues. The year also saw an increased emphasis on staff development and the achievement of an impressive level of staff productivity.

**Complaint Handling**

Inquiry and complaint numbers for the Northern Territory Regional Office continued to grow in the 1994-95 year. Complaint numbers in 1994-95 increased three-fold on the 1993-94 figures. This was a continuation of the pattern established in 1993-94 when they were triple the figures for 1992-93. The growth in inquiry figures was less dramatic, but still steady; up 58% on 1993-94.

Although there were more complaints under every piece of legislation administered by the office, there was a noticeable shift in the overall nature of the complaints being handled in the office. Disability Discrimination Act (DDA) complaints rose from 15.4% to 36.8% of all complaints, Human Rights and Equal Opportunity Commission Act (HREOCA) complaints rose from 3.9% to 20.65%, Racial Discrimination Act (RDA) complaints declined from 30.8% to 25.2%, and Sex Discrimination Act (SDA) complaints declined from 50% to 17.4%. The reasons for these changes are not clear, although increased public awareness of some of the legislation would be a factor. It is unlikely that the changes are related to any changes in patterns of discrimination.

The pattern of inquiries also changed, although differently from the formal complaints; the percentage of inquiries relevant to each piece of legislation rose, with the major change being a decrease in the number of inquiries which were considered outside jurisdiction (NUA). NUA inquiries dropped from 40.73% of all inquiries to 25% of all inquiries.
The number of complaints finalised in the year also increased dramatically; with finalised complaints for 1994-95 being 2.76 times that of 1993-94. Given that there was no significant increase in staffing, this figure indicates much higher levels of productivity in the Northern Territory Regional Office.

**Education and Promotion Activities**

During the 1994-95 financial year the office increased its level of community education despite the increased pressure of complaint handling and other resource constraints. The second half of 1994 was particularly busy with events such as Human Rights Week and the 10th Anniversary of the Sex Discrimination Act. Throughout the year the office responded to numerous requests for speakers at conferences, seminars and training sessions, continued its proactive targeted community education program and continued its involvement in community and interagency committees and meetings.

In planning and conducting community education activities the office maintained its commitment to providing a service to the whole of the Northern Territory. Whenever possible, travel for complaint handling was combined with advertised "inquiry clinics", community education and training activities. The office also tried to ensure that activities organised around events such as Human Rights Week were spread throughout the Northern Territory. The face-to-face activities of the Regional Office were supplemented throughout the year by the targeted distribution of information by mail. Considerable use was also made of the media throughout the Northern Territory to publicise events and issues.

The office's community education and liaison efforts were assisted during the year by the visits to Northern Territory of the Sex Discrimination Commissioner, the Aboriginal and Torres Strait Islander Social Justice Commissioner and a number of HREOC planning and policy staff.

Events for the 10th Anniversary of the Sex Discrimination Act, held in September 1994, included seminars, working lunches and meetings in Darwin and Katherine, seminars and meetings in Alice Springs and media interviews with both radio and press throughout the Northern Territory.

The program for Human Rights Week was planned and co-ordinated through the collective efforts of the Regional Office and community committees set up in Darwin, Tennant Creek and Alice Springs. Successful events included a number of seminars, community information stalls, numerous media interviews, public events (including music and speeches), a phone-in, library displays, the preparation of a bibliography on human rights literature, a competition in Alice Springs schools, donations of human rights material to all NT public libraries and the promotion of recent publications on human rights and anti-discrimination law to the public.
Aside from the outreach activities summarised above, the Regional Office library pamphlet and publication collection continued to have a high level of usage by students, other individuals and organisations seeking information about a variety of topics in the human rights and anti-discrimination area. There was also a steady demand from the public for copies of various HREOC publications.

**Office Administration and Staff Development**

The efficiency, effectiveness and appropriateness of the overall operations of the Regional Office were targeted for improvement in the 1994-95 financial year. The upgrading of inefficient equipment was successfully made a budget priority during the year and the office also benefited from the Commission's information technology replacement strategy. A review of the office's various administrative systems was completed and considerable improvements were made.

Staff development was also made a priority issue. During the year, all staff members undertook a range of staff development activities. These activities were tailored to the core competency requirements of the various positions. As well as accessing external courses and conferences, the office made maximum use of the staff development opportunities available within the Commission, including the utilisation of the skills and knowledge of visiting Commission staff.

**Summary**

In summary, although the 1994-95 financial year involved a dramatic increase in the workload of the NT Regional Office, this increased workload was accompanied by significant increases in productivity and considerable improvements in key aspects of the office's operations.
TASMANIA

The Hobart office performs various functions on behalf of HREOC throughout Tasmania, which include:

- administering the Sex, Racial and Disability Discrimination Acts, and complaints under ILO 111;
- conciliating anti-discrimination complaints; and raising community awareness through undertaking education and promotion.

Complaints under Federal anti-discrimination legislation continued to rise this year, and community education activities continued to be co-ordinated with other human rights and associated community organisations. A State Sex Discrimination Act was also introduced during the year, but administrative arrangements have not yet allowed for complaints to be received under that legislation.

Complaint Handling

Formal complaints received during 1994-95 increased a further 18% on the 1993-94 figures, with the majority of this increase being attributed to a doubling of complaints lodged under the Disability Discrimination Act. The first public hearing and determination issued under the Disability Discrimination Act took place in Tasmania which may explain the apparent increase in community awareness of disability discrimination issues.

Early intervention, formal conciliation, together with other outcomes where the complainant chose not to pursue a matter, accounted for 80% of total complaints settled. Approximately 10% of cases were referred for Hearing although the majority of these were also settled before the actual hearing. The remainder were either declined or constituted cases where contact with the complainant was lost.

Of complaints received, 41% were lodged under the Sex Discrimination Act, another 41% under the Disability Discrimination Act and 12% under Racial Discrimination Act. The remaining 6% of complaints fell within the ILO 111 jurisdiction. Around 65% of complaints under all Acts relate to employment.

Details of complaints handled by the Tasmanian office are contained in the earlier Overview of Complaint Handling.
Education and Promotional Activities

During this year the Tasmanian office continued to receive a large number of invitations to conduct seminars and to address audiences across the spectrum of the community. Seminars, workshops and other training activities took place with government departments and agencies, non-government and community organisations, trade unions, schools and colleges and a range of private sector and industry groups. Requests for information and advice also remained at high levels during the year.

The Tasmanian regional office was actively involved in a number of significant events during the year, including:

- hosting the annual National Conference of Community Educators which was attended by representatives from Equal Opportunity Commissions throughout Australia and from the New Zealand Human Rights Commission;
- organising a Youth Forum on the Convention on the Rights of the Child which was sponsored by the National Child and Youth Law Centre;
- co-ordinating Human Rights Week throughout Tasmania, in conjunction with a variety of community organisations; and
- organising a celebratory lunch for the 10th Anniversary of the Sex Discrimination Act at which the Commissioner spoke.

Human Rights Week

The celebration of Human Rights Week in the first week of December has become a prominent feature in Tasmania, and helps to promote the understanding and acceptance of human rights in the broader community. This year emphasised the legal aspects of human rights, with a particular focus on young people's rights.

Highlights included:

- the Hon. Mr Justice Pierre Slicer of the Tasmanian Supreme Court launching Human Rights Week and presenting the Tasmanian Awards for Humanitarian Activities;
- a Human Rights March through the city centre concluded with addresses from Members of Parliament, religious leaders and other representatives of community groups and a two minute silence for victims of human rights abuses throughout the World;
- a Human Rights Day Concert at Franklin Square in Hobart, attended by several hundred people;
• an open day and information session for students presented by the Registrar of the Supreme Court and by the Children's Magistrate at the Children's Court;

• a mock trial for high school students organised by the Legal Aid Commission; and

• a lunch time seminar on International Humanitarian Law presented by International Red Cross.


Other Human Rights Developments

In December 1994 the Tasmanian State Government passed the Sex Discrimination Act 1994 which makes unlawful all forms of discrimination on the grounds of sex and extending to discrimination on the grounds of family responsibilities and parental status. The legislation will come into force as soon as administrative arrangements are complete.
APPENDICES
APPENDIX ONE

INTERNATIONAL INSTRUMENTS OBSERVED UNDER THE HREOC ACT

The Human Rights and Equal Opportunity Commission Act 1986 establishes the Commission, provides for its administration and gives effect to seven international instruments which Australia has ratified. These instruments are:

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

- freedom from torture or cruel and inhumane punishment;
- equality before the law;
- humane treatment if deprived of liberty;
- freedom of thought, conscience and religion;
- peaceful assembly;
- vote and be elected by equal suffrage;
- marriage and family.

The Declaration of the Rights of the Child provides that every child has the right to:

- a name and nationality;
- adequate nutrition, housing and medical services;
- education;
- special treatment, education and care if the child has a disability;
- adequate care, affection and security;
- protection from neglect, cruelty and exploitation.

The Declaration on the Rights of Disabled Persons provides that people with disabilities have the right to:

- respect and dignity;
- assistance to enable them to become as self-reliant as possible;
- education, training and work;
family and social life;

- protection from discriminatory treatment.

The *Declaration on the Rights of Mentally Retarded Persons* provides that people with a mental disability have the right to:

- proper medical care and therapy;
- protection from exploitation, abuse and degrading treatment;
- a decent standard of living;
- education, training and work;
- due process of law;
- review of procedures which may deny them these rights.

*International Labour Organisation (ILO) Convention 111* is concerned with discrimination in employment and occupation. Australian adherence to this Convention provides that all people have the right to equal treatment in employment and occupation without discrimination on the basis of:

- race;
- colour;
- sex;
- religion;
- political opinion;
- national extraction;
- social origin;
- age;
- medical record;
- criminal record;
- sexual preference;
- trade union activity;
- marital status;
- nationality;
- disability (whether physical, intellectual, psychiatric or mental);
§ impairment (including HIV/AIDS status).

*Convention on the Rights of the Child* confirms that children are entitled to the full range of human rights recognised in international law (subject to limitations relating to their capacity to exercise these rights and to the responsibilities of families). The Convention also recognises a range of rights relating to the special needs of children. It seeks to ensure that the protection of these rights in law and practice is improved.

*Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief* became part of the definition of human rights for the purposes of the Human Rights and Equal Opportunity Act 1986 on 24 February, 1994. The Declaration recognises the right to freedom of religion. The only limitation to this right are those limits which are prescribed by law and which are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.
I, MICHAEL LAVARCH, Attorney-General of Australia, HAVING REGARD TO the Australian Government's human rights, social justice and access and equity policies in pursuance of section 11(1)(e), (j), and (k) of the Human Rights and Equal Opportunity Commission Act 1986, HEREBY REVOKE THE REQUEST MADE ON 11 MAY 1995 AND NOW REQUEST the Human Rights and Equal Opportunity Commission to inquire into and report on the following matters:

To:

(a) trace the past laws, practices and policies which resulted in the separation of Aboriginal and Torres Strait Islander Children from their families by compulsion, duress or undue influence, and the effects of those laws, practices and policies;

(b) examine the adequacy of and the need for any changes in current laws, practices and policies relating to services and procedures currently available to those Aboriginal and Torres Strait Islander peoples who were affected by the separation under compulsion, duress or undue influence of Aboriginal and Torres Strait Islander children from their families, including but not limited to current laws, practices and policies relating to access to individual and family records and to other forms of assistance towards locating and reunifying families;

(c) examine the principles relevant to determining the justification for compensation for persons or communities affected by such separations;

(d) examine current laws, practices and policies with respect to the placement and care of Aboriginal and Torres Islander children and advise on any changes required taking into account the principle of self-determination by Aboriginal and Torres Strait Islander peoples.

IN PERFORMING its functions in relation to the reference, the Commission is to consult widely among the Australian community, in particular with Aboriginal and Torres Strait Islander communities, with relevant non-government organisations and with relevant Federal, State and Territory authorities and if appropriate may consider and report on the relevant laws, practices and policies of any other country.

THE COMMISSION IS REQUIRED to report no later than December 1996.

Dated 2 August 1995

MICHAEL LAVARCH
APPENDIX THREE

List of Publications

The following publications were produced by the Commission in 1994-95.

**Pamphlets**
Discrimination in Employment and Occupation
A User's Guide to the DDA

**Reports**
Towards an Australian Bill of Rights
State of the Nation No 2
Mornington Island Review Report
Juvenile Justice and Young People of NESB
Native Title Act Report
Aboriginal and Torres Strait Islander Social Justice Commissioner's Second Report
Sex Discrimination in Queensland Awards - A Review
A Review of CES Services and Programs

**Poster**
Charter of Rights for Women Students under the SDA

**Kits**
Fair Enough - Your Guide to Hospitality, Women and the Law
Sex Discrimination - A Guide for Unions

Accents are Everywhere (video)
APPENDIX FOUR

Addresses of Commission Offices and Agents throughout Australia

Addresses and contact details of HREOC offices are provided below. Teletypewriters (TTY), for hearing and speech impaired callers, have been installed.

Central Office

Human Rights and Equal Opportunity Commission
(GPO Box 5218 Sydney 2001)
Level 8, Piccadilly Tower
133 Castlereagh Street
SYDNEY NSW 2000
Tel: (02) 284 9600
TTY: 1800 620 241
Facsimile: (02) 284 9611

Joint Regional Offices

Brisbane

Queensland Anti-Discrimination Commission
(P 0 Box 5363 West End 4101)
Ground Floor, 27 Peel Street
SOUTH BRISBANE QLD 4101
Tel: (07) 3844 6099
Toll Free: 1800 177 822 (Qld only)
TTY: (07) 3846 4123
Facsimile: (07) 3846 2211

Rockhampton

Queensland Anti-Discrimination Commission
(P 0 Box 1390 Rockhampton 4700)
Queensland Government Centre
1F, 209 Bolsover Street
ROCKHAMPTON QLD 4700
Tel: (079) 226 877
Toll Free: 1800 804 288 (Qld only)
TTY: (079) 212 647
Facsimile: (079) 226 772
Cairns
Queensland Anti-Discrimination Commission
(P 0 Box 375 Cairns 4870)
Second Floor, Aplin House
19 Aplin Street
CAIRNS QLD 4870
Tel: (070) 317 399
Toll Free: 1800 803 271 (Qld only)
TTY: (070) 512 349
Facsimile: (070) 312 127

Canberra
ACT Human Rights Office
(PO Box 222 Civic Square ACT 2608)
Level 2, Comcare Building
40 Allara Street
CANBERRA ACT 2600
Tel: (06) 247 3002
TTY: (06) 247 4117
Facsimile: (06) 247 3358

Regional Offices

Darwin
Human Rights and Equal Opportunity Commission
(LMB 4 GPO)
First Floor, TCG Centre
80 Mitchell Street
DARWIN NT 0800
Tel: (089) 819 111
Toll Free: 1800 810 815 (NT only)
Facsimile: (089) 411 508

Hobart
Human Rights and Equal Opportunity Commission
Ground Floor
AMP Society Building
Cnr Elizabeth and Collins Streets
HOBART TAS 7000
Tel: (002) 238 511
Toll Free: 1800 001 222
Facsimile (002) 232 092
State Equal Opportunity Commissions

Victoria

Equal Opportunity Commission
Fourth Floor, 356 Collins Street
MELBOURNE VIC 3000 Tel:
(03) 9602 3338
Toll Free: 1800 134 142 (VIC only)
TTY: (03) 9670 1951
Facsimile: (03) 9670 2922

South Australia

Equal Opportunity Commission
Ground Floor, Wakefield House
30 Wakefield Street
ADELAIDE SA 5000
Tel: (08) 226 5660
Toll Free: 1800 188 163 (SA only)
TTY: (08) 226 5692
Facsimile: (08) 223 3285

Western Australia

Equal Opportunity Commission
(P O Box 7370 Cloisters Square Perth WA 6850)
Floor 2, Westralia Square
141 St George's Terrace
PERTH WA 6000
Tel: (09) 264 1930
Toll Free: 1800 198 149 (WA only)
TTY: (09) 264 1936
Facsimile: (09) 264 1960
APPENDIX FIVE

CONTACT DETAILS FOR FURTHER INFORMATION

Copies of the 1994-95 Annual Report are also available in alternative formats including audio tape, computer disc, Braille and large print.

If additional copies of this report are required (including alternative formats), or any other publication of the Commission, the reader should contact:

Education and Promotion Unit
Human Rights and Equal Opportunity Commission
GPO Box 5218
SYDNEY NSW 2001
Telephone: (02) 284 9600
Toll Free: 1800 021 199
TTY: 1800 620 241
Facsimile: (02) 284 9751

If any additional information is required on the content of the report, the reader should contact:

Policy Co-ordination, Planning and Evaluation Unit
Human Rights and Equal Opportunity Commission
Telephone: (02) 284 9600
Toll Free: 1800 021 199
TTY: 1800 620 241
Facsimile: (02) 284 9611

The Commission's publications may be consulted in the Library which is open to the public by appointment and is located at:

Level 8
Piccadilly Tower
133 Castlereagh Street
SYDNEY NSW 2000
Telephone: (02) 284 9600
Toll Free: 1800 021 199
TTY: 1800 620 241
Facsimile: (02) 284 9611
COMPLIANCE INFORMATION
INFORMATION ON SPECIFIC STATUTORY PROVISIONS

INDUSTRIAL DEMOCRACY

The Commission's policy on industrial democracy is to ensure that staff are fully able to contribute to the efficient operation of the Commission. It asserts that staff will enjoy a better quality of working life if they are involved in the decision-making process and that in this way the Commission can provide a more effective service to the public. The Commission is therefore committed to the involvement of its staff through the industrial democracy procedures outlined below.

The position of Director, Corporate Services has, as part of its functions the responsibility for implementing industrial democracy principles and practices in the workplace. This responsibility is shared in a general sense by all staff of the Commission through the Consultative Council.

Significant Activities 1994-95

The Commission's joint union/management Consultative Council was established five years ago. The Council comprises equal numbers of union and management members, and regional office management and staff are represented at meetings.

The following sub-committees report to the Consultative Council:

Industrial Democracy Sub-Committee (this sub-committee is also responsible for HRD matters);

Equal Employment Opportunity Sub-Committee; and

Occupational Health and Safety and Accommodation Sub-Committee.

The Industrial Democracy sub-committee revised the Union Membership Policy, and developed and implemented the Policy on the Non-Official Use of the Telephone, and Attendance, Flextime and Overtime Procedures and Guidelines. A review of the Staff Selection Handbook, Temporary Employment Policy, and Higher Duties Policy is underway. Drafts of the Grievances Policy, Induction Handbook and Security Guidelines have also been developed.
Consultative Mechanisms

Apart from the Consultative Council, which is the peak management/union consultative forum, there are a number of other consultative mechanisms in the Commission:

- Monthly meetings between the union delegates and the Human Rights Commissioner and Executive Director, to discuss topical matters;
- Staff Notices issued by the Human Rights Commissioner on matters of interest to all staff (e.g., the Commission’s Statement of Principles relating to staff with family or carer responsibilities);
- Union meetings, where matters of industrial concern are discussed;
- A weekly Staff Notice, which informs staff of a wide variety of issues, including personnel matters and other items of interest, which is easily accessible by all staff through the computer network;
- Commission meetings, to which staff have input by way of discussion papers and the minutes of which, except for items of a confidential or sensitive nature, are made readily available to staff via the computer network;
- Branch/Section/Regional Office meetings, where senior officers involve their staff in the process of developing individual programs, tailored to the relevant work area;
- Project/Work Group meetings, where planning, implementing and monitoring specific projects takes place.

Monitoring, Review and Evaluation

The Consultative Council is charged with responsibility for monitoring, review and evaluation of the progress and effectiveness of industrial democracy in the Commission.

Major Priorities 1995-96

The major priorities for the coming year are to:
- Complete an evaluation of Performance Appraisal;
- Finalise the review of the Staff Selection Handbook, Temporary Employment Policy, and Higher Duties Policy;
a finalise the draft Grievances Policy, Induction Handbook, Securi
Guidelines; and

a review a number of human resource management policies including the
Industrial Democracy Plan, and Studybank Guidelines.

OCCUPATIONAL HEALTH AND SAFETY

An Occupational Health and Safety (OH&S) Sub-committee forms part of the
Commission's Occupational Health and Safety Policy and Agreement. The Committee
comprises management and union representatives, and reports to the Consultative
Council on a regular basis. Health and Safety representatives are routinely elected in
all offices of the Commission.

During 1994-95 the OH&S Sub-committee:

• formulated a policy and arranged training for First Aid Officers;
  a provided ongoing OH&S advice and assistance to staff;

a purchased and arranged screenings of two OH&S videos; and

a purchased OH&S reference material.

The Sydney office moved into new premises during 1994-95, and the Commonwealth
Occupational Health and Safety standards were taken into account when fitting out
these premises. Needs of people with disabilities were addressed through the
installation of wide automated doors, broad passageways, and well designed kitchen
and bathroom facilities. An ergonomist was contracted in early 1995 to assess
ergonomic use of all workstations. Other OHS concerns arising from the move have
been progressively addressed.

An electro-magnetic field survey was conducted on one of the Commission's levels in
Central Office following reports of interference to personal computers. The outcomes
of the survey indicated that the electro-magnetic fields present were well below any
dangerous level. No accidents or other dangerous occurrences were reported during
the year.

The Commission also entered into an employee assistance program during the year
with Industrial Program Service which provides a free, confidential counselling service
to Commission employees and their families.
The Freedom of Information (FOI) Act provides for legal access to government documents by the general public.

Functions of the agency are broadly outlined in the Introduction, and detailed in individual program chapters. Decision-making generally rests with the Commission (as a collegiate body) or individual Commissioners and senior managers.

The Commission undertakes broad community and industry consultation in its policy development, which is detailed to some extent in each program chapter. External consultation in administrative practices is satisfied through organisational review, interchange with community and other government bodies, and union representation and involvement.

**FOI statistics**

During the period of 1 July 1994 to 30 June 1995 the Commission received 20 requests for access to documents under the Freedom Of Information Act:

- 15 requested access to documents relating to complaints;
- 1 requested access to national inquiry documents;
- 2 requested access to policy documents; and
- 2 requested access to administration documents.

A total of 34 FOI applications were processed this year (including finalisation of applications from 1993-94). Freedom of Information applications have steadily increased over recent years as reflected in the table below:

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>4</td>
<td>11</td>
<td>34</td>
</tr>
</tbody>
</table>

**Categories of Documents**

Documents held by the Commission relate to:

- administration matters including personnel and recruitment, accounts, purchasing, registers, registry and library records, and indices;
• **conciliation** matters including the investigation, clarification and resolution of complaints;

• **legal** matters including legal documents, opinions, advice and representations;

• **research** matters including research papers in relation to complaints, existing or proposed legislative practices, public education, national inquiries and other relevant issues;

  a **Policy** including minutes of meetings of the Commission, administrative and operational guidelines;

• **Operational** matters including files on formal inquiries; and

  **Reference materials** including press clippings, survey and research materials, documents relating to conferences, seminars and those contained in the library.

Printed material available for public distribution is listed in Appendix 3.

**FOI Procedures**

Initial enquiries concerning access to Commission documents should be directed to the FOI Officer by either telephoning (02) 284-9600 or by writing to:

FOI Officer  
Human Rights and Equal Opportunity Commission  
GPO Box 5218  
SYDNEY NSW 2001

Procedures for dealing with FOI requests are detailed in section 15 of the FOI Act. A valid request:

• must be in writing;

  m is accompanied by payment of $30 to cover some of the administrative costs in providing the information;

• provides details of the name and address of the person requesting the information;

  m specifies the documents to be accessed; and

• is processed within 30 days of receipt.
Some documents are exempt from public perusal under the FOI Act. Where documents are not accessible by the applicant, valid reasons shall be provided. The Commission’s decisions about accessibility of documents may be reviewed by the Administrative Appeals Tribunal.

Facilities for Examining Documents

The general public may obtain Commission publications and information from each of the Commission offices:

Human Rights and Equal Opportunity Commission
Level 8, Piccadilly Tower
133 Castlereagh Street
SYDNEY NSW 2000
Telephone: (02) 284 9600
Facsimile: (02) 284 9611

Queensland Anti-Discrimination Commission
Ground Floor, 27 Peel Street
SOUTH BRISBANE QLD 4101
Telephone: (07) 3844 6099
Facsimile: (07) 3844 2211

ACT Human Rights Office
Level 2, Comcare Building
40 Allara Street
CANBERRA ACT 2601
Telephone: (06) 247 3002
Facsimile: (06) 247 3358

Human Rights and Equal Opportunity Commission
80 Mitchell Street
DARWIN NT 0800
Telephone: (089) 819 111
Facsimile: (089) 411 508

Human Rights and Equal Opportunity Commission
Suite 4, Ground Floor
The City Mill, 11-13 Morrison Street
HOBART TAS 7000
Telephone: (002) 238 511
Facsimile: (002) 232 092
ADVERTISING AND MARKET RESEARCH

Payments to advertising agencies

No advertising campaigns were undertaken in the reporting year 1994/95.

Payment to market research organisations

Roy Morgan Research Centre Ltd $14,336
Roy Morgan Research Centre Ltd $10,000

Payments to master media advertising organisations

Master agency for non-campaign print advertising $35,703

Direct mail organisations

WDF Coghlan Pty Ltd $1247
FINANCIAL AND STAFFING RESOURCES
## FINANCIAL AND STAFFING RESOURCES SUMMARY

### Table 37

<table>
<thead>
<tr>
<th>BUDGETARY (CASH) BASIS</th>
<th>Actual 1993-94</th>
<th>Budget &amp; AEs 1994-95</th>
<th>Actual 1994-95</th>
</tr>
</thead>
<tbody>
<tr>
<td>Components of Appropriations</td>
<td>17,296</td>
<td>17,480</td>
<td>17,301</td>
</tr>
<tr>
<td>Running Costs</td>
<td>989</td>
<td>1,521</td>
<td>1,042</td>
</tr>
<tr>
<td>Total</td>
<td>18,285</td>
<td>19,001</td>
<td>18,343</td>
</tr>
<tr>
<td>Less adjustments</td>
<td>1,739</td>
<td>1,952</td>
<td></td>
</tr>
<tr>
<td>Total Outlays</td>
<td>16,546</td>
<td>19,001</td>
<td>16,391</td>
</tr>
<tr>
<td>Total Revenue</td>
<td>1,739</td>
<td>1,342</td>
<td>1,952</td>
</tr>
<tr>
<td>Staffing</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Staff years (actual)</td>
<td>177.4</td>
<td></td>
<td>206</td>
</tr>
</tbody>
</table>

## SUMMARY TABLE OF RESOURCES

### Table 38

<table>
<thead>
<tr>
<th>Sub-Program</th>
<th>Number</th>
<th>A+</th>
<th>B+</th>
<th>C+</th>
<th>D=</th>
<th>E</th>
<th>-F</th>
<th>=G</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Nos 1 &amp; 3</td>
<td>Nos 2 &amp; 4</td>
<td>Approps.</td>
<td>Approps.</td>
<td>Approps.</td>
<td>Special Annotated</td>
<td>Program Adjustments</td>
<td>Program Outlays</td>
</tr>
<tr>
<td>3.1</td>
<td>16,145,000</td>
<td>904,000</td>
<td>nil</td>
<td>$1,952,172</td>
<td>19,001,172</td>
<td>$1,952,172</td>
<td>17,049,000</td>
<td></td>
</tr>
</tbody>
</table>
### STAFFING OVERVIEW

An overview of HREOC’s staffing profile, as at 30 June 1995, is summarised in the following tables.

**Table 39: Staffing overview as at 30 June 1995**

<table>
<thead>
<tr>
<th>Classification</th>
<th>Male</th>
<th>Female</th>
<th>FIT</th>
<th>PIT Temp</th>
<th>NSW</th>
<th>OLD</th>
<th>ACT</th>
<th>NT</th>
<th>TAS</th>
<th>VIC</th>
</tr>
</thead>
<tbody>
<tr>
<td>Statutory office</td>
<td>3</td>
<td>3</td>
<td>5</td>
<td>1</td>
<td>5</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>SES Band 2</td>
<td>2</td>
<td>2</td>
<td></td>
<td>1</td>
<td>1</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>SES Band 1</td>
<td>2</td>
<td>1</td>
<td>3</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>SOG A</td>
<td>1</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>SOG B</td>
<td>6</td>
<td>9</td>
<td>15</td>
<td>2</td>
<td>12</td>
<td>1</td>
<td>2</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Legal 2</td>
<td>1</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>SOG C</td>
<td>10</td>
<td>21</td>
<td>29</td>
<td>2</td>
<td>1</td>
<td>25</td>
<td>3</td>
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<td>SITO C</td>
<td>1</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>SPO C</td>
<td>1</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Legal 1</td>
<td>4</td>
<td>8</td>
<td>11</td>
<td>1</td>
<td>11</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>ASO 6</td>
<td>20</td>
<td>36</td>
<td>52</td>
<td>4</td>
<td>6</td>
<td>45</td>
<td>7</td>
<td>2</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>P02</td>
<td>1</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>ASO 5</td>
<td>7</td>
<td>7</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>ITO 1</td>
<td>2</td>
<td>2</td>
<td>4</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>ASO 4</td>
<td>4</td>
<td>18</td>
<td>22</td>
<td>4</td>
<td>17</td>
<td>3</td>
<td>1</td>
<td>1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>ASO 3</td>
<td>4</td>
<td>21</td>
<td>24</td>
<td>1</td>
<td>3</td>
<td>16</td>
<td>5</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>ASO 2</td>
<td>4</td>
<td>11</td>
<td>14</td>
<td>1</td>
<td>6</td>
<td>11</td>
<td>2</td>
<td>2</td>
<td></td>
<td></td>
</tr>
<tr>
<td>ASO 1</td>
<td>1</td>
<td>5</td>
<td>6</td>
<td>1</td>
<td>4</td>
<td>2</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>66</strong></td>
<td><strong>143</strong></td>
<td><strong>199</strong></td>
<td><strong>10</strong></td>
<td><strong>25</strong></td>
<td><strong>166</strong></td>
<td><strong>25</strong></td>
<td><strong>9</strong></td>
<td><strong>3</strong></td>
<td><strong>3</strong></td>
</tr>
</tbody>
</table>

**Table 40: Senior Executive Service (SES) Information. Profile of SES Positions as at 30 June 1995**

<table>
<thead>
<tr>
<th>SES Level</th>
<th>Male</th>
<th>Female</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>SES Band 2</td>
<td>2</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>SES Band 1</td>
<td>2</td>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>4</strong></td>
<td><strong>1</strong></td>
<td><strong>5</strong></td>
</tr>
</tbody>
</table>
Movements during the year:

Nigel Waters  SES Band 1 on temporary transfer with Administrative Review Council, ACT from 2 May 1994 to 30 June 1995.

Sema Varova  SES Band 2 transferred to Dept of Territories and Local Government, ACT on 12 December 1994.


John Briton  SES Band 1 temporary contract 16/2 - 28/7/95

David Allen  SES Band 1 temporary contract 20/6 - 20/12/95

Performance Pay

SOG B and equivalent:  No of officers = 19
- Rating 5  $4,750  26%
- Rating 4  $3,800  68%
- Rating 3  $2,850  6%

SOG C and equivalent:  No of officers =24
- Rating 5  $1,800  8%
- Rating 4  $1,440  88%
- Rating 3  $1,080  4%

Human Resource Development

The Commission spent over $425,000 on training and development activities. This represents approximately 4.7% of total salary expenditure. Over 200 staff participated in training activities involving 850 person days.

Attendance at training and development activities for staff from EEO target groups comprised:

- Women  400 activities
- NESB  80 activities
- ATSI  25 activities
People With Disabilities 10 activities

Over one third of all training activities were information technology related, in response to the system changes that have taken place in the Commission during the year.

Training and development included a range of seminars and courses, general skills development and courses of particular relevance to the APS. In-house training has primarily been focussed on the development of staff selections skills in staff at the AS04 level and above. In addition, the Commission commenced a national program for the development of conciliator skills and the groundwork has been laid for the introduction of individual learning agreements.

**Studies Assistance**

A total of 36 staff were supported in tertiary study under the Commission's Studies Assistance scheme. Payments to students to meet study related costs totalled $18,000.

**Middle Manager Development**

Three staff members participated in the NSW Public Sector Management Course.

**CONSULTANTS**

The need for all consultancies during 1994-95 arose from either the need for new or additional specialised knowledge and/or skills, or insufficient timeframes allowed for existing resources to complete the work.

* Denotes consultancies advertised externally

**Research**

<table>
<thead>
<tr>
<th>Project</th>
<th>Consultant(s)</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>ATSI issues</td>
<td>Australian Institute of Aboriginal &amp; Torres Strait Islander Studies</td>
<td>2,800.00</td>
</tr>
<tr>
<td>ATSI human rights and Native Title</td>
<td>David Allen</td>
<td>62,083.10</td>
</tr>
<tr>
<td>SDA TAFE project</td>
<td>Sharon Brown and Barbara Bee</td>
<td>7,540.00</td>
</tr>
<tr>
<td>NT Alcohol report</td>
<td>Paul Castley</td>
<td>8,340.00</td>
</tr>
<tr>
<td>SDA Anniversary project</td>
<td>Sara Charlesworth</td>
<td>10,000.0Q</td>
</tr>
<tr>
<td>Mornington Island Review</td>
<td>Chris Cunneen</td>
<td>5,500.00</td>
</tr>
<tr>
<td>Project Description</td>
<td>Institution/Consultant</td>
<td>Amount</td>
</tr>
<tr>
<td>--------------------------------------------------------------</td>
<td>---------------------------------------------</td>
<td>----------</td>
</tr>
<tr>
<td>Barriers to Women in the Finance Industry</td>
<td>Edith Cowan University</td>
<td>5,000.00</td>
</tr>
<tr>
<td>Alcohol Project</td>
<td>Ann Fieldhouse</td>
<td>16,098.60</td>
</tr>
<tr>
<td>NESB State of the Nation</td>
<td>Focus Pty Ltd</td>
<td>3,000.00</td>
</tr>
<tr>
<td>NESB - young people &amp; juvenile justice issues</td>
<td>Institute of Criminology</td>
<td>10,000.00</td>
</tr>
<tr>
<td>Aboriginal &amp; Torres Strait Islander Social Justice Annual Report</td>
<td>Peter Jull</td>
<td>9,660.00</td>
</tr>
<tr>
<td>Mental Illness Inquiry</td>
<td>Martyn Communications</td>
<td>9,600.00</td>
</tr>
<tr>
<td>Native Title report</td>
<td>Greg McIntyre</td>
<td>4,563.00</td>
</tr>
<tr>
<td>Native Title report</td>
<td>G J McNaught Pty Ltd</td>
<td>3,000.00</td>
</tr>
<tr>
<td>Aboriginal &amp; Torres Strait Islander Social Justice Annual Report</td>
<td>Roger Milliss</td>
<td>3,600.00</td>
</tr>
<tr>
<td>Mental Illness</td>
<td>Rebecca Peters</td>
<td>29,225.00</td>
</tr>
<tr>
<td>Aboriginal &amp; Torres Strait Islander</td>
<td>Sarah Pritchard</td>
<td>2,500.00</td>
</tr>
<tr>
<td>Social Justice</td>
<td>Dr Patrick Sullivan</td>
<td>2,000.00</td>
</tr>
<tr>
<td>Native Title issues</td>
<td>Urban Concepts*</td>
<td>10,000.00</td>
</tr>
<tr>
<td>NESB State of the Nation</td>
<td>Yamine &amp; Associates Consulting*</td>
<td>10,000.00</td>
</tr>
<tr>
<td>Public Housing Privacy public awareness and attitude survey; ATSI</td>
<td>The Roy Morgan Research Centre</td>
<td>14,336.00</td>
</tr>
<tr>
<td>Privacy Awareness consultation and research</td>
<td>Jennifer McAsey</td>
<td>4,400.00</td>
</tr>
<tr>
<td>Privacy - Community Attitudes Information Paper</td>
<td>Statistical Laboratory</td>
<td>11,200.00</td>
</tr>
<tr>
<td>Security Survey</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>244,445.70</strong></td>
</tr>
</tbody>
</table>

**Legal**

<table>
<thead>
<tr>
<th>Legal Items</th>
<th>Person</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legal advice re mental illness</td>
<td>Ms M Brenton</td>
<td>17,598.00</td>
</tr>
<tr>
<td>Description</td>
<td>Provider</td>
<td>Cost</td>
</tr>
<tr>
<td>-----------------------------------------------------------------------------</td>
<td>-------------------------------------------</td>
<td>--------</td>
</tr>
<tr>
<td>Legal advice on complaint handling procedures</td>
<td>John Basten QC</td>
<td>2,093.00</td>
</tr>
<tr>
<td>Advice on sex discrimination issues</td>
<td>Chris Ronalds</td>
<td>2,500.00</td>
</tr>
<tr>
<td>Provide legal advice to the Commission</td>
<td>Phillip Tahmindjis</td>
<td>30,042.00</td>
</tr>
<tr>
<td>Advice on Aboriginal &amp; Torres Strait Islander Social Justice issues</td>
<td>Hon J. H Wootten</td>
<td>4,653.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>56,886.00</strong></td>
</tr>
</tbody>
</table>

**Media**

<table>
<thead>
<tr>
<th>Description</th>
<th>Provider</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Media services, various human rights projects</td>
<td>Margie Cook &amp; Associates</td>
<td>16,835.38</td>
</tr>
<tr>
<td>Media services for SDA 10th anniversary</td>
<td>The Rea Francis Company</td>
<td>6,527.06</td>
</tr>
<tr>
<td>Media consultancy services for the DDA Media Campaign</td>
<td>Jane Singleton Pty Ltd</td>
<td>4,750.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>28,112.44</strong></td>
</tr>
</tbody>
</table>

**Community Education**

<table>
<thead>
<tr>
<th>Description</th>
<th>Provider</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rockhampton Meatworkers project - design and graphics</td>
<td>Australian Meat Industry Employees’ Union</td>
<td>4,581.30</td>
</tr>
<tr>
<td>Production of Accents video</td>
<td>C’est La Vie Film &amp; Video Productions</td>
<td>28,183.62</td>
</tr>
<tr>
<td>Production of Women's Employment Guide</td>
<td>Communikate</td>
<td>9,500.00</td>
</tr>
<tr>
<td>ATSI National Community Education project</td>
<td>Higgins Wood &amp; Associates*</td>
<td>50,000.00</td>
</tr>
<tr>
<td>Alcohol Report - design and layout</td>
<td>Liz McNiven</td>
<td>2,400.00</td>
</tr>
<tr>
<td>ATSI National Community Education</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Project</td>
<td>Contractor/Provider</td>
<td>Amount</td>
</tr>
<tr>
<td>--------------------------------------------</td>
<td>--------------------------------------</td>
<td>------------</td>
</tr>
<tr>
<td>Sexual Harassment comic</td>
<td>Streetwize Comics</td>
<td>$13,500.00</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td><strong>$148,164.92</strong></td>
</tr>
</tbody>
</table>

**Privacy Audits**

<table>
<thead>
<tr>
<th>Privacy Audits</th>
<th>Contractor/Provider</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Privacy audits</td>
<td>Coopers and Lybrand*</td>
<td>$60,983.20</td>
</tr>
<tr>
<td>Privacy audits</td>
<td>Deloitte Touche Tohmatsu*</td>
<td>$59,719.60</td>
</tr>
<tr>
<td>Privacy audits</td>
<td>Duesburys Chartered Accountants*</td>
<td>$2,450.00</td>
</tr>
<tr>
<td>Privacy audits in Western Australia</td>
<td>Price &amp; Newman*</td>
<td>$4,996.50</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td><strong>$128,149.30</strong></td>
</tr>
</tbody>
</table>

**General**

<table>
<thead>
<tr>
<th>Description</th>
<th>Contractor/Provider</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Review of Complaint Handling process</td>
<td>Distaff</td>
<td>$9,000.00</td>
</tr>
<tr>
<td>Conciliator training course</td>
<td>Blake Dawson Waldron</td>
<td>$2,500.00</td>
</tr>
<tr>
<td>Planning workshop</td>
<td>Sandy Halley</td>
<td>$3,000.00</td>
</tr>
<tr>
<td>Complaints handling database - design,</td>
<td>The Learning Laboratory</td>
<td>$21,541.00</td>
</tr>
<tr>
<td>installation, training</td>
<td>Dr G Tillet</td>
<td>$14,714.40</td>
</tr>
<tr>
<td>Conciliator training program</td>
<td></td>
<td><strong>$50,755.40</strong></td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td><strong>$656,513.76</strong></td>
</tr>
</tbody>
</table>
HUMAN RIGHTS AND EQUAL OPPORTUNITY COMMISSION

INDEPENDENT AUDIT REPORT

To the Attorney General

Scope

I have audited the financial statements of the Human Rights and Equal Opportunity Commission for the year ended 30 June 1995.

The statements comprise.

- Statement by the Commissioners and Principal Accounting Officer,
- Operating Statement;
- Statement of Assets and Liabilities;
- Statement of Cash Flows;
- Statement of Transactions by Fund; and
- Notes to and forming part of the Financial Statements.

The Commissioners and Principal Accounting Officer are responsible for the preparation and presentation of the financial statements and the information contained therein. I have conducted an independent audit of the financial statements in order to express an opinion on them.

The audit has been conducted in accordance with the Australian National Audit Office Auditing Standards, which incorporate the Australian Auditing Standards, to provide reasonable assurance as to whether the financial statements are free of material misstatement. Audit procedures included examination, on a test basis, of evidence supporting the amounts and other disclosures in the financial report, and the evaluation of accounting policies and significant accounting estimates. These procedures have been undertaken to form an opinion whether, in all material respects, the financial statements are presented fairly in accordance with Australian Accounting Concepts and Standards and other mandatory professional reporting requirements and statutory requirements so as to present a view of the Commission which is consistent with my understanding of its financial position, its operations and its cash flows.

The audit opinion expressed in this report has been formed on the above basis.
Audit Opinion

In accordance with sub-section 51(1) of the Audit Act 1901, I now report that in my opinion, the financial statements:

• are in agreement with the accounts and records kept in accordance with section 40 of the Act;

• are in accordance with the Guidelines for Financial Statements of Departments; and

present fairly in accordance with Statements of Accounting Concepts, applicable Accounting Standards and other mandatory professional reporting requirements the information required by the Guidelines including the Commission's departmental and administered operations and its cash flows for the year ended 30 June 1995 and departmental and administered assets and liabilities as at that date.

Australian National Audit Office

[Signature]
Paul Hinchey
Acting Executive Director
For the Auditor-General

Date Opinion Formed : 4 October 1995

Sydney
HUMAN RIGHTS AND EQUAL OPPORTUNITY COMMISSION

STATEMENT BY THE COMMISSION

AND

PRINCIPAL ACCOUNTING OFFICER

CERTIFICATION

The Commission and the Principal Accounting Officer certify that the attached financial statements for the year ended 30 June 1995 are:

in agreement with the Commission's accounts and records; and

in our opinion, present fairly the information required by the Financial Statements Guidelines of Departments

The seal of the Commission is by resolution duly affixed.

Signed

Date

Diana Temby
Executive Director

Tom McKnight
Assistant Secretary, Management
## OPERATING STATEMENT
for the year ended 30 June 1995

<table>
<thead>
<tr>
<th>Notes</th>
<th>1994-95</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>NET COST OF SERVICES</strong></td>
<td></td>
</tr>
<tr>
<td>Expenses</td>
<td></td>
</tr>
<tr>
<td>Employee expenses</td>
<td>2</td>
</tr>
<tr>
<td>Administrative expenses</td>
<td>3</td>
</tr>
<tr>
<td><strong>Total expenses</strong></td>
<td></td>
</tr>
<tr>
<td>Revenues from independent sources</td>
<td></td>
</tr>
<tr>
<td>Other revenue</td>
<td></td>
</tr>
<tr>
<td><strong>Total revenues from independent sources</strong></td>
<td></td>
</tr>
<tr>
<td>Net cost of services</td>
<td></td>
</tr>
<tr>
<td><strong>REVENUES FROM GOVERNMENT</strong></td>
<td></td>
</tr>
<tr>
<td>Appropriations used for:</td>
<td></td>
</tr>
<tr>
<td>Ordinary annual services (net appropriations)</td>
<td>6.2</td>
</tr>
<tr>
<td>Liabilities assumed by other departments</td>
<td>4</td>
</tr>
<tr>
<td>Resources received free of charge from other departments</td>
<td>5</td>
</tr>
<tr>
<td><strong>Total revenues from government</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Total expenses less revenues</strong></td>
<td></td>
</tr>
<tr>
<td>Accumulated expenses less revenues at beginning of reporting period</td>
<td></td>
</tr>
<tr>
<td>Accumulated expenses less revenues at end of reporting period</td>
<td></td>
</tr>
</tbody>
</table>

### ADMINISTERED: REVENUES:

Administered revenues

<table>
<thead>
<tr>
<th>Miscellaneous revenues</th>
<th>140</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Total administered revenues</strong></td>
<td>140</td>
</tr>
</tbody>
</table>

The accompanying notes form an integral part of these statements
## STATEMENT OF ASSETS AND LIABILITIES

as at 30 June 1995

<table>
<thead>
<tr>
<th>Notes</th>
<th>1994-95</th>
<th>1993-94</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>CURRENT ASSETS</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cash</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Receivables</td>
<td>7</td>
<td>12,735</td>
</tr>
<tr>
<td>Other</td>
<td></td>
<td>54,628</td>
</tr>
<tr>
<td>Total current assets</td>
<td></td>
<td>526,802</td>
</tr>
<tr>
<td><strong>NON-CURRENT ASSETS</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Property plant and equipment</td>
<td>8</td>
<td>5,510,528</td>
</tr>
<tr>
<td>Total non-current assets</td>
<td></td>
<td>5,510,528</td>
</tr>
<tr>
<td><strong>Total assets</strong></td>
<td></td>
<td>6,037,330</td>
</tr>
<tr>
<td><strong>CURRENT LIABILITIES</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Creditors</td>
<td>9</td>
<td>756,895</td>
</tr>
<tr>
<td>Provisions</td>
<td>10</td>
<td>1,079,189</td>
</tr>
<tr>
<td>Other liabilities</td>
<td>11</td>
<td>758,313</td>
</tr>
<tr>
<td>Total current liabilities</td>
<td></td>
<td>2,594,397</td>
</tr>
<tr>
<td><strong>NON-CURRENT LIABILITIES</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Provisions</td>
<td>10</td>
<td>720,057</td>
</tr>
<tr>
<td>Other liabilities</td>
<td>11</td>
<td>5,019,543</td>
</tr>
<tr>
<td>Total non-current liabilities</td>
<td></td>
<td>5,739,600</td>
</tr>
<tr>
<td><strong>Total liabilities</strong></td>
<td></td>
<td>8,333,997</td>
</tr>
<tr>
<td><strong>NET LIABILITIES</strong></td>
<td></td>
<td>(2,296,667)</td>
</tr>
</tbody>
</table>

The accompanying notes form an integral part of these statements
# Statement of Cash Flows

**for the year ended 30 June 1995**

<table>
<thead>
<tr>
<th>Notes</th>
<th>1994-95</th>
</tr>
</thead>
</table>

## Cash Flows from Administered Transactions

<table>
<thead>
<tr>
<th>Inflows:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Miscellaneous revenues</td>
<td>146</td>
</tr>
</tbody>
</table>

Net cash provided by administered transactions

## Cash Flows from Operating Activities

### Inflows:
- Parliamentary appropriations
- Section 35 annotated appropriations (18,059,160)

### Outflows:
- Payments to suppliers and employees 12
- 279,371

Net cash provided by operating activities

## Cash Flows from Investing Activities

### Inflows:
- Proceeds from sale of plant and equipment 292,169

### Outflows:
- Payment for plant and equipment (287,984)

Net cash used in investing activities (8,613)

## Net Increase (Decrease) in Cash

<table>
<thead>
<tr>
<th>Cash at the beginning of reporting period</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>21,348</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Cash at end of reporting period</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>12,735</td>
<td></td>
</tr>
</tbody>
</table>

The accompanying notes form an integral part of these statements.
### STATEMENT OF TRANSACTIONS BY FUND

for the year ended 30 June 1995

<table>
<thead>
<tr>
<th>Notes</th>
<th>1994-95 Budget</th>
<th>1994-95 Actual</th>
<th>1993-94 Actual</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$</td>
<td>$</td>
<td>$</td>
</tr>
</tbody>
</table>

**CONSOLIDATED REVENUE FUND (CRF)**

**RECEIPTS**

<table>
<thead>
<tr>
<th>Description</th>
<th>1994-95 Budget</th>
<th>1994-95 Actual</th>
<th>1993-94 Actual</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 35 receipts</td>
<td>1,342,000</td>
<td>1,952,172</td>
<td>1,733,270</td>
</tr>
<tr>
<td>Miscellaneous receipts</td>
<td>81,000</td>
<td>146</td>
<td>5,865</td>
</tr>
<tr>
<td><strong>Total receipts</strong></td>
<td><strong>1,423,000</strong></td>
<td><strong>1,952,318</strong></td>
<td><strong>1,739,135</strong></td>
</tr>
</tbody>
</table>

**EXPENDITURE**

<table>
<thead>
<tr>
<th>Description</th>
<th>1994-95 Actual</th>
<th>1993-94 Actual</th>
</tr>
</thead>
<tbody>
<tr>
<td>Appropriation Act No. 1</td>
<td>15,163,544</td>
<td>15,667,900</td>
</tr>
<tr>
<td>Appropriation Act No. 3</td>
<td>323,000</td>
<td></td>
</tr>
<tr>
<td>Section 35 receipts deemed to be appropriated</td>
<td>1,952,172</td>
<td>1,733,270</td>
</tr>
<tr>
<td>Appropriation Act No. 2</td>
<td>904,000</td>
<td>884,000</td>
</tr>
<tr>
<td><strong>Total expenditure</strong></td>
<td><strong>18,002,000</strong></td>
<td><strong>18,285,170</strong></td>
</tr>
</tbody>
</table>

**LOAN FUND**

<table>
<thead>
<tr>
<th>Description</th>
<th>1994-95 Actual</th>
<th>1993-94 Actual</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>nil</td>
<td>nil</td>
</tr>
</tbody>
</table>

**TRUST FUND**

<table>
<thead>
<tr>
<th>Description</th>
<th>1994-95 Actual</th>
<th>1993-94 Actual</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trust accounts (Commonwealth activities)</td>
<td>20,000</td>
<td>6,502</td>
</tr>
<tr>
<td>Receipts</td>
<td>39,101</td>
<td></td>
</tr>
<tr>
<td>Expenditure</td>
<td>42,993</td>
<td>3,443</td>
</tr>
<tr>
<td><strong>Total receipts</strong></td>
<td><strong>20,000</strong></td>
<td><strong>6,502</strong></td>
</tr>
<tr>
<td><strong>Total expenditure</strong></td>
<td><strong>20,000</strong></td>
<td><strong>3,443</strong></td>
</tr>
</tbody>
</table>

The accompanying notes form an integral part of these statements.
NOTE 1 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

11 Basis of Accounting

The financial statements have been prepared in accordance with the guidelines for “Financial Statements of Departments” issued by the Minister for Finance, hereinafter referred to as the Guidelines which incorporate Statements of Accounting Concepts and Australian Accounting Standards.

The financial statements have been prepared on an accrual basis and in accordance with historical cost principles and do not take into account current values of non current assets.

This is the first year the Human Rights and Equal Opportunity Commission has been required to prepare the financial statements on a full accrual accounting basis.

12 Comparative figures

Comparative information for the year ended 30 June 1994 has not been included in the Operating Statement, Statement of Cash Flows and associated notes. The accounts for the year ended 30 June 1995 are the initial accounts prepared on an accrual basis and it was either not feasible or not possible to obtain information for prior periods.

Comparative figures for the year ended 30 June 1994 have been included in the Statement of Assets and Liabilities and the Statement of Transaction by Fund. These may differ from the figures shown in the 1993-94 financial statements as a result of items being reclassified and additional data reported to correspond with the adoption of accrual reporting.

13 Asset Capitalisation Threshold

All depreciable non current assets with an historical cost equal to or in excess of $2,000 are capitalised in the year of acquisition and included on the Commission's Asset Register. Except where stated all plant and equipment is valued at historical cost. All purchases under $2,000 are expensed in the year of acquisition.

14 Depreciation

Depreciation is calculated on a straight line basis so as to write off the cost of each item of property, plant and equipment over its expected useful life.

For leasehold improvements the depreciation is calculated over the lease term or the useful life, whichever is the shorter.
1.5 **Leased Assets**

A distinction is made between finance leases which effectively transfer from the lessor to the lessee substantially all the risks and benefits incidental to ownership of leased non-current assets, and operating leases under which the lessor effectively retains all such risks and benefits. All leases entered into by the Commission have been classified as Operating Leases and are treated as expenses in the reporting period in which they are incurred.

1.6 **Employee entitlements**

**Long Service Leave**

Provision is made for the estimated liability for long service leave entitlements of permanent employees. It is calculated scan estimate of the future cash flows required by the Commission for payment of long service leave to eligible employees.

The calculations are based on the average entitlements for staff with greater than three years service and entitlements for staff with greater than four years service. This is consistent with the guidance provided by the Australian Government Actuary which takes into consideration the probability of staff attaining 10 years service and include a discount of 5% for that portion of the notional value of Long Service Leave not expected to be settled within 12 months. This effectively discounts the expected future cash flows at the Australian long term bond rate.

**Annual Leave/Annual Leave Bonus**

These provisions are based on the individual staff leave balances plus an amount representing the accrued entitlement since commencement or the last crediting date.

**Sick Leave**

Employees of the Commission are entitled to non vesting sick leave which accumulates with the length of service and is payable upon a valid claim. An assessment of sick leave taken by employees was made which indicated that on a group basis staff utilise less than their yearly entitlement. As such no liability for accumulated sick leave has been provided for in the financial statements.

1.7 **Agreements equally proportionately unperformed**

Agreements equally proportionately unperformed (AEPU) reflect agreements between the Commission and third parties in which both parties have performed to an equal extent some of their obligations whilst other obligations have yet to be honoured.

Future payments for AEPUs have been recognised in the notes to the accounts only

1.8 **Taxation**

The Commission’s activities are exempt from all form of taxation except Fringe Benefits Tax
1.9 Insurance

The Commission pays an annual premium to Comcare which assumes the liability in respect of payments under the Safety Rehabilitation and Compensation Act 1988.

In accordance with government policy, other insurable risks and assets are not insured and any losses that may arise are expensed as they are incurred.

1.10 Resources received free of charge

Resources received free of charge are recognised as an expense and revenue where values are capable of reliable measurement. Details of resources received free of charge are provided in Note 6.

The expenditure for the services provided has been met from the appropriations from the departments and agencies concerned.

1.11 Program statement

As the Commission constitutes a sub-program of the Attorney-General’s portfolio and there is no separate component recognised within the sub-program, the Guidelines do not require a program statement to be prepared.

1.12 Departmental and Administered Items

The financial statements distinguish between ‘departmental’ and ‘administered’ items to enable assessments of efficiency in providing goods and services. Departmental items include assets, liabilities, revenues and expenses which are controlled by the Commission, whereas administered items relate to revenue received on behalf of the Commonwealth which is repaid to the Consolidated Revenue Fund.

1.13 Bad and Doubtful Debts

A provision is raised for any doubtful debts based on a review of all outstanding accounts as at year end. Bad debts are written off during the year in which they are identified.

1.14 Superannuation

Employer’s contributions are not made by the Commission but are payable out of the Consolidated Revenue Fund when CSS and PSS members terminate their service and become eligible for a payment. This amount is recorded as part of employee expenses with an equal amount recorded as “liabilities assumed by other departments” (Note 5 refers).

1.15 Lease Incentives

Lease incentives have been disclosed in accordance with the Urgent Issues Group consensus view. This has resulted in rental expenses and fixed assets received free of charge as an incentive to entering into property leases being recognised in the accounts.

The lease incentive liability recognised as a result is amortised over the lease term by allocating a portion of the rent expense against the current balance. Fixed assets that are recognised are depreciated over the term of the lease.
### NOTE 2- EMPLOYEE EXPENSES

<table>
<thead>
<tr>
<th></th>
<th>1994-95</th>
<th>1993-94</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employee entitlements</td>
<td>1</td>
<td>0,488,141</td>
</tr>
<tr>
<td>Employee entitlement provisions</td>
<td>6</td>
<td></td>
</tr>
</tbody>
</table>

### NOTE 3 ADMINISTRATIVE EXPENSES

<table>
<thead>
<tr>
<th>Description</th>
<th>1994-95</th>
<th>1993-94</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cooperative arrangements</td>
<td>904,000</td>
<td></td>
</tr>
<tr>
<td>Complaint handling and hearings</td>
<td>377,347</td>
<td></td>
</tr>
<tr>
<td>Computer operating expenses</td>
<td>290,174</td>
<td></td>
</tr>
<tr>
<td>Depreciation and amortisation</td>
<td>976,368</td>
<td></td>
</tr>
<tr>
<td>Education and promotional activities</td>
<td>502,903</td>
<td></td>
</tr>
<tr>
<td>Loss on Sale and disposal of fixed assets</td>
<td>129,328</td>
<td></td>
</tr>
<tr>
<td>Office requisites and equipment</td>
<td>296,187</td>
<td></td>
</tr>
<tr>
<td>Personnel expenses</td>
<td>297,627</td>
<td></td>
</tr>
<tr>
<td>Property operating expenses</td>
<td>2,848,399</td>
<td></td>
</tr>
<tr>
<td>Postage and Phones</td>
<td>710,817</td>
<td></td>
</tr>
<tr>
<td>Travel and subsistence</td>
<td>1,459,356</td>
<td></td>
</tr>
<tr>
<td>Training</td>
<td>259,189</td>
<td></td>
</tr>
<tr>
<td>Write offs</td>
<td>814</td>
<td></td>
</tr>
<tr>
<td>Other administrative expenses</td>
<td>1,533,248</td>
<td></td>
</tr>
<tr>
<td><strong>Total administrative expenses</strong></td>
<td><strong>10,585,756</strong></td>
<td><strong>10,585,756</strong></td>
</tr>
</tbody>
</table>

### NOTE 4- LIABILITIES ASSUMED BY OTHER DEPARTMENTS

The following notional amount has been calculated as disclosed in Note 19

- **Comsuper - employer superannuation contribution**
  - 1994-95: 1,336,018
  - 1993-94: 1,122,914

### NOTE 5- RESOURCES RECEIVED FREE OF CHARGE FROM OTHER DEPARTMENTS

<table>
<thead>
<tr>
<th>Description</th>
<th>1994-95</th>
<th>1993-94</th>
</tr>
</thead>
<tbody>
<tr>
<td>Department of Finance:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Computerised finance ledger and payroll services</td>
<td>11,330</td>
<td>11,200</td>
</tr>
<tr>
<td>Auditor-General:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Auditing the financial statements</td>
<td>35,000</td>
<td></td>
</tr>
<tr>
<td><strong>Total resources received free of charge</strong></td>
<td><strong>46,330</strong></td>
<td><strong>11,200</strong></td>
</tr>
</tbody>
</table>
## NOTE 6 - PARLIAMENTARY APPROPRIATIONS

### 6.1 - Ordinary annual services

<table>
<thead>
<tr>
<th></th>
<th>1994-95 Appropriation</th>
<th>1994-95 Actual</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Appropriation Acts 1 and 3</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Division 129</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. Running costs (i)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Appropriation Act No 1</td>
<td>15,139,000</td>
<td>14,959,942</td>
</tr>
<tr>
<td>Appropriation Act No 3</td>
<td>323,000</td>
<td>323,000</td>
</tr>
<tr>
<td>Section 35 receipts deemed</td>
<td>1,952,172</td>
<td>1,952,172</td>
</tr>
<tr>
<td>to be appropriated</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Additional appropriation in</td>
<td>66,000</td>
<td>66,000</td>
</tr>
<tr>
<td>respect of increases in</td>
<td></td>
<td></td>
</tr>
<tr>
<td>salaries</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>2. Other Services</strong></td>
<td>617,000</td>
<td>137,602</td>
</tr>
<tr>
<td><strong>Division 812 - Payments to</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>or for the States and the</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Northern Territory and the</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Australian Capital</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Territory**</td>
<td></td>
<td></td>
</tr>
<tr>
<td>01. Payments under co-operative arrangements</td>
<td></td>
<td></td>
</tr>
<tr>
<td>with the States</td>
<td>904,000</td>
<td>904,000</td>
</tr>
<tr>
<td><strong>Total appropriation</strong></td>
<td>19,001,172</td>
<td>18,342,716</td>
</tr>
</tbody>
</table>

(i) **Included in** running costs is an amount carried over pursuant to cabinet endorsed arrangements of $179,000.

### 6.2 - Appropriations disclosed in the Operating Statement

<table>
<thead>
<tr>
<th></th>
<th>1994-95</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Total Appropriation</strong></td>
<td></td>
<td>18,342,716</td>
</tr>
<tr>
<td>Less: Section 35 receipts</td>
<td></td>
<td>1,952,172</td>
</tr>
<tr>
<td><strong>Total appropriation</strong></td>
<td></td>
<td>16,390,544</td>
</tr>
</tbody>
</table>

### 6.3 - Section 35 receipts disclosed in the Operating Statement

<table>
<thead>
<tr>
<th></th>
<th>1994-95</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 35 receipts deemed</td>
<td>1,952,172</td>
<td></td>
</tr>
<tr>
<td>to be appropriated</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Plus adjustment for year</td>
<td>21,668</td>
<td></td>
</tr>
<tr>
<td>end accruals</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Total revenues from</strong></td>
<td>1,973,840</td>
<td>13,985</td>
</tr>
<tr>
<td><strong>independent sources</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

## NOTE 7 - RECEIVABLES

### 1994-95

<table>
<thead>
<tr>
<th></th>
<th>1994-95</th>
<th>1994-95</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trade debtors</td>
<td>459,439</td>
<td>3,231</td>
</tr>
<tr>
<td>Other departments</td>
<td>nil</td>
<td>15</td>
</tr>
<tr>
<td>Other entities controlled</td>
<td>nil</td>
<td>10,739</td>
</tr>
<tr>
<td>by the Commonwealth</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Total receivables</strong></td>
<td>459,439</td>
<td>13,985</td>
</tr>
</tbody>
</table>
### NOTE 7 - RECEIVABLES (continued)

<table>
<thead>
<tr>
<th></th>
<th>1994-95</th>
<th>1993-94</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aging of overdue receivables</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Less than 30 days overdue</td>
<td>253</td>
<td>6,839</td>
</tr>
<tr>
<td>Greater than 30 days less than 60 days overdue</td>
<td>459,186</td>
<td>nil</td>
</tr>
<tr>
<td>Overdue greater than 60 days</td>
<td>nil</td>
<td>7,146</td>
</tr>
<tr>
<td><strong>Total receivables</strong></td>
<td>459,439</td>
<td>13,985</td>
</tr>
</tbody>
</table>

### NOTE 8 - PROPERTY PLANT AND EQUIPMENT

<table>
<thead>
<tr>
<th></th>
<th>1994-95</th>
<th>1993-94</th>
</tr>
</thead>
<tbody>
<tr>
<td>Computers, Plant &amp; Equipment at cost</td>
<td>2,016,589</td>
<td>1,923,890</td>
</tr>
<tr>
<td>Less: Accumulated depreciation</td>
<td>1,056,633</td>
<td>775,395</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>959,956</td>
<td>1,148,495</td>
</tr>
<tr>
<td>Leasehold improvements at cost</td>
<td>5,115,785</td>
<td>397,576</td>
</tr>
<tr>
<td>Less: Accumulated depreciation</td>
<td>565,213</td>
<td>75,287</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>4,550,572</td>
<td>322,289</td>
</tr>
</tbody>
</table>

### NOTE 9 - CREDITORS

<table>
<thead>
<tr>
<th></th>
<th>1994-95</th>
<th>1993-94</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trade creditors</td>
<td>307,552</td>
<td>187,061</td>
</tr>
<tr>
<td>Other creditors</td>
<td>449,343</td>
<td>62,533</td>
</tr>
<tr>
<td><strong>Total creditors</strong></td>
<td>756,895</td>
<td>249,594</td>
</tr>
</tbody>
</table>

### NOTE 10 - PROVISIONS FOR EMPLOYEE ENTITLEMENTS

<table>
<thead>
<tr>
<th></th>
<th>1994-95</th>
<th>1993-94</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>CURRENT PROVISIONS</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Recreational leave and bonus</td>
<td>916,764</td>
<td>899,594</td>
</tr>
<tr>
<td>Long service leave</td>
<td>162,425</td>
<td>139,796</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>1,079,189</td>
<td>1,039,390</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>1994-95</th>
<th>1993-94</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>NON-CURRENT PROVISIONS</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Long service leave</td>
<td>720,057</td>
<td>675,774</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>1,799,246</td>
<td>1,715,164</td>
</tr>
</tbody>
</table>

**Aggregate employee entitlement liability including accrued salaries**

<table>
<thead>
<tr>
<th></th>
<th>1994-95</th>
<th>1993-94</th>
</tr>
</thead>
<tbody>
<tr>
<td>1,917,842</td>
<td>1,725,842</td>
<td></td>
</tr>
</tbody>
</table>
NOTE 11 - OTHER LIABILITIES

<table>
<thead>
<tr>
<th></th>
<th>1994-95</th>
<th>1993-94</th>
</tr>
</thead>
<tbody>
<tr>
<td>Other liabilities current</td>
<td>758,313</td>
<td></td>
</tr>
<tr>
<td>Other liabilities non current</td>
<td>5,019,543</td>
<td></td>
</tr>
<tr>
<td><strong>Total other liabilities</strong></td>
<td><strong>5,777,856</strong></td>
<td><strong>5,777,856</strong></td>
</tr>
</tbody>
</table>

Other liabilities represent the balance of lease incentives to be amortised against future rental payments.

NOTE 12 - RECONCILIATION OF OPERATING RESULT WITH NET CASH PROVIDED BY OPERATING ACTIVITIES

<table>
<thead>
<tr>
<th>Item</th>
<th>1994-95</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Expenses less Revenue</td>
<td>(1,947,918)</td>
</tr>
<tr>
<td>Depreciation and amortisation</td>
<td>976,368</td>
</tr>
<tr>
<td>Loss on sale of non-current assets</td>
<td>129,327</td>
</tr>
<tr>
<td>Proceeds on disposal</td>
<td>(4,185)</td>
</tr>
<tr>
<td>Increase/(Decrease) in Employee Entitlement Provisions</td>
<td>84,082</td>
</tr>
<tr>
<td>(Increase)/Decrease in Receivables</td>
<td>(445,454)</td>
</tr>
<tr>
<td>Increase/(Decrease) in Prepayments</td>
<td>55,262</td>
</tr>
<tr>
<td>Increase/Decrease in Creditors</td>
<td>507,301</td>
</tr>
<tr>
<td>Increase/decrease in other non current liabilities</td>
<td>924,587</td>
</tr>
<tr>
<td><strong>Net cash provided by operating activities</strong></td>
<td><strong>279,371</strong></td>
</tr>
</tbody>
</table>

NOTE 13 - TRUST ACCOUNTS (COMMONWEALTH ACTIVITIES) (COMCARE)

Comcare account operates for the purpose of receiving from Comcare amounts payable to employees under a determination under the "Safety Rehabilitation and Compensation Act 1988" (Legal Authority - Section 60. Audit Act 1901).

<table>
<thead>
<tr>
<th></th>
<th>1993-94</th>
<th>1994-95</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Opening Balance</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Receipts</td>
<td>1,382</td>
<td>4,441</td>
</tr>
<tr>
<td>Payments</td>
<td>6,502</td>
<td>(3,443)</td>
</tr>
<tr>
<td><strong>Closing balance</strong></td>
<td>4,441</td>
<td>549</td>
</tr>
</tbody>
</table>

NOTE 14 - AGREEMENTS EQUALLY PROPORTIONATELY UNPERFORMED

<table>
<thead>
<tr>
<th>Property Operating Leases and Agreements</th>
<th>1993-94</th>
<th>1994-95</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not later than one year</td>
<td>1,330,560</td>
<td>1,282,202</td>
</tr>
<tr>
<td>Later than one year and not later than two years</td>
<td>2,074,636</td>
<td>1,120,049</td>
</tr>
<tr>
<td>Later than two years and not later than five years</td>
<td>6,083,443</td>
<td>6,075,517</td>
</tr>
<tr>
<td>Later than five years</td>
<td>9,131,750</td>
<td>9,059,475</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>18,620,389</td>
<td>17,537,243</td>
</tr>
</tbody>
</table>
### NOTE 14 - AGREEMENTS EQUALLY PROPORTIONATELY UNPERFORMED (continued)

<table>
<thead>
<tr>
<th>CONSULTANCY AGREEMENTS</th>
<th>1994-95</th>
<th>1993-94</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not later than one year</td>
<td>173,256</td>
<td></td>
</tr>
<tr>
<td>Later than one year and not later than two years</td>
<td>nil</td>
<td></td>
</tr>
<tr>
<td>Later than two years and not later than five years</td>
<td>nil</td>
<td></td>
</tr>
<tr>
<td>Later than five years</td>
<td>nil</td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>173,256</strong></td>
<td></td>
</tr>
</tbody>
</table>

### NOTE 15 - AUDITORS REMUNERATION

**Auditor-General:**
- Auditing the financial statements | 35,000 | 37,000 |

**Other Services**
- Amounts paid in relation to the audit of the Queensland Anti Discrimination Commission (QADC) | 2,000 | 2000, |

**Total** | 37,000 | 39,000 |

The audit of the financial statements was not required to be paid by the Commission in the current year due to changes in government policy. These changes did not affect the charging of fees by the Auditor-General for work performed at the QADC.

### NOTE 16 - ACT OF GRACE PAYMENTS, WAIVERS AND WRITE-OFFS

**Act of Grace Payments:**
- Act of Grace Payments made under Subsection 34A(1) of the Audit Act 1901 | Nil | Nil |

**Waivers**
- Waivers pursuant to Subsection 70C(2) of the Audit Act 1901 | Nil | Nil |

**Losses and Deficiencies under 70C(1) of the Audit Act 1901**
- Amounts of debts, the recovery of which has been deemed to be uneconomical | 814 | Nil |
- Lost, deficient, condemned, unserviceable or obsolete stores | 127,358 | 46 |

---

The table continues with more detailed entries, which are not fully visible in the provided excerpt.
NOTE 17- EXECUTIVES REMUNERATION

The number of executive officers of the Commission whose total fixed remuneration for the financial year is more than $100,000 are shown below in their relevant remuneration bands.

<table>
<thead>
<tr>
<th>REMUNERATION OF</th>
<th>NUMBER</th>
</tr>
</thead>
<tbody>
<tr>
<td>$100,000-$109,999</td>
<td>4</td>
</tr>
<tr>
<td>$110,000-$119,999</td>
<td></td>
</tr>
<tr>
<td>$120,000-$130,000</td>
<td></td>
</tr>
</tbody>
</table>

Aggregate amount of fixed remuneration received or due and receivable, by the above officers on the Commission was $671,829.74

Performance pay is not applicable for the above officers as the positions are statutory appointments.

NOTE 18 - APPROPRIATIONS MADE FOR FUTURE REPORTING PERIODS

1995-96

Appropriation Act 1
Division 129.1
Running Costs
   Additional appropriation in respect of increases in salaries 1994-95 17,167,000
   Section 35 receipts deemed to be appropriated 66,000
   1,757,000

Division 129.2.01
Other Program Costs
   Aboriginal Deaths in Custody-Legal and Field Officer Training 676,000

Appropriation Act 2

Division 806.01
Payments under co-operative arrangements with the States 918,000

Total Appropriations 20,584,000

NOTE 19 - SUPERANNUATION

Superannuation has been calculated at 17.9% of total salary and allowances for superannuation purposes of all CSS and PSS members employed by the Commission. ($1,122,914 for 1993-94 & $1,336,018 for 1994-95)

Actual contributions paid/payable by the Commission to the Australian Government Employee Superannuation Trust (AGEST) and other non-Commonwealth schemes. ($22,371 for 1993-94 and $20,139 for 1994-95).
INFORMATION AVAILABLE ON REQUEST

Information generally included in Attachment Three is being held as information available on request. Information as listed below will be provided upon request:

**General**

Legislation (Human Rights Legislation Amendment Act 1995)
Legal Exemptions
Other HREOC Information

**Social Justice and Equity**

EEO in Appointments
Social Justice

Access and Equity

**Equal Employment Opportunity**

EEO Resources and Consultative Mechanisms
Status of Women

**Staffing Matters**

Performance Pay
Training

Interchange Program

**Financial Matters**

Claims and Losses
Purchasing

Information Technology Purchasing Arrangements
Payment of Accounts
Consultancy Services
Capital Works Management

**Internal and External Scrutiny**

Fraud Control
Reports by the Auditor-General
Inquiries by Parliamentary Committees
Comments by the Ombudsman
Decisions of Courts and Tribunals
Privacy

**Environmental Matters**
Environmental Issues
Energy Issues (general, building, transport and equipment)

**Other Matters**

Property Usage
Business Regulations
**LIST OF ABBREVIATIONS**

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>AAT</td>
<td>Administrative Appeals Tribunal</td>
</tr>
<tr>
<td>ACTU</td>
<td>Australian Council of Trade Unions</td>
</tr>
<tr>
<td>ADF</td>
<td>Australian Defence Forces</td>
</tr>
<tr>
<td>AIRC</td>
<td>Australian Industrial Relations Commission</td>
</tr>
<tr>
<td>ATSISJC</td>
<td>Aboriginal and Torres Strait Islander Social Justice Commissioner</td>
</tr>
<tr>
<td>CAR</td>
<td>Council of Aboriginal Reconciliation</td>
</tr>
<tr>
<td>CDEP</td>
<td>Community Development Employment Program</td>
</tr>
<tr>
<td>CES</td>
<td>Commonwealth Employment Service</td>
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