

Battles Small and Great

Race Discrimination Commissioner, Human Rights and Equal Opportunity Commission Battles Small and Great - The First Twenty years of the Racial Discrimination Act, Canberra, Australian Government Publishing Service, 1995.

The First Twenty Years of the Racial Discrimination Act

An Act of Change

The Australia of twenty years ago was a markedly different place to the Australia today. In order to understand the need for the Racial Discrimination Act, and the forces that brought it about, it is necessary to understand the Australia of the late 1960s and early 1970s: an Australia shaped by a colonial legacy, enormous natural resources, a record unbroken term of conservative government, wealthy primary industries, a massive post-war immigration program, and an involvement in a strange and unwinnable war in a foreign country.

For millennia, Australia has had a diverse Indigenous population. The last two centuries or so have seen a rapid and varied intake of non-Indigenous people arriving in Australia. The population profile changed almost from decade to decade during the 19th century. However, by the time of the Second World War, more than 90%, of Australians were Australian-born, and the great majority were of Anglo-Saxon or Celtic descent. The first two and a half decades after the war saw a massive immigration program of such magnitude that, in a generation, the proportion of overseas-born Australians had more than doubled (from 9.7%, in 1947 to 20.2%, in 1971). The immigration intake in this time consisted of three categories of people: British subjects, mainly from the United Kingdom; refugees, mainly from Eastern Europe; and other Europeans, increasingly from

Mediterranean countries. This was in line with the restricted immigration policy of the time, known as the White Australia policy, although even the introduction of 'white' non-British immigrants caused certain problems. (The information and figures relating to post-war immigration are largely taken from the Race Discrimination Commissioner's *State of the Nation Report on People of Non-English Speaking Background 1993*).

However, the Government's firm commitment to the target of a 1% per annum population increase could not be met solely through British immigration, and as the Displaced Person's camps cleared, attention turned to other source countries. Official migration agreements, including arrangements for assisted passages, were signed between 1951 and 1971 with Malta, Italy, Greece, Spain, the former Yugoslavia and Turkey. The latter, although officially a European country, was unusual in that its population was predominantly Muslim and immigrants from that country suffered, and continued to suffer, particularly severe settlement problems in Australia. By 1971, there were over 700,000 settlers from southern Europe and the Middle East (Egypt and Lebanon, for example), greatly outnumbering those from the rest of continental Europe.

In the mid-sixties, there was an easing of White Australia restrictions and an average of 6,500 Asians were admitted annually between 1966 and 1970. This did not result in a large Asian community by any means: even by the 1976 Census, the Australian Chinese community still numbered only 36,000 or so and there were fewer than 700 Vietnam-born citizens. One of the stabilising characteristics of Australia during the twenty-five years of post-war immigration was economic prosperity and full employment. Huge construction projects were undertaken, such as the hydro-electricity schemes in

Tasmania and the Snowy Mountains; the mining industry was booming and the manufacturing sector, including the automotive industry, was strong. There was work for all comers, including the unskilled and semi-skilled.

As Europe was coming to Australia, it seemed that some Australians at least were noticing events in other parts of the globe. The civil rights movement in the southern states of America struck a chord, and a young Aboriginal activist (to use a term coined later), Charles Perkins, organised thirty or so of his fellow students at Sydney University in a 'Freedom Ride' in 1965. Their bus took them through country towns in north-western NSW where they exposed the segregation of, and discrimination against, Aboriginal people that was rife. They found that 'Aboriginal people were refused service in shops, confined to separate sections of cinemas, banned from hotels and clubs, excluded from municipal swimming pools and socially ostracised' (Horton, D. [ed] 1994, *Encyclopedia of Aboriginal Australia*, Australian Institute of Aboriginal and Torres Strait Islander Studies, Canberra): that they were, in fact, the 'fringe dwellers' on the edge of the white man's world.

In the year following the Freedom Ride, the savagery of apartheid was emblazoned on the world's conscience by the Sharpeville massacre in South Africa. In Australia, there was another type of apartheid - not an official one, not one that sanctioned troop movements and massacre; simply a huge gulf between Indigenous and non-Indigenous Australians. This had been brought to public attention during well-publicised clashes between white townspeople of Walgett and Moree and the student Freedom Riders. It was underlined in mid-1966 as urban Australians followed media reports of 'walk-offs' from cattle stations in the Northern Territory: by the stockmen from Newcastle Waters station and two hundred Gurindji people from Wave Hill, owned by the powerful English family company, Vestey's.

The words of Aboriginal leaders like Vincent

Lingiari and articulate sympathisers like Frank Hardy did a great deal to educate urban Australia to the appalling conditions under which Aboriginal people lived and worked. They learnt that Aboriginal men and women were working as stockmen and domestics for 'wages' that often bore more relation to the 19th century 'flour and 'baccy rations' than to any 20th century industrial award. Indeed, it was not until 1966 that the Conciliation and Arbitration Commission found in favour of an application from the North Australian Workers' Union for award wages for Aboriginal workers. Even then, the pastoralists (through their lawyer John Kerr) successfully argued for a three-year phasing in of the equal wages and a special 'slow worker' category which perpetuated the systemic discrimination long evident against Aboriginal people.

The Gurindji strike was very significant in that it was not only a struggle against unfair conditions but it was also a statement about ownership of land. The Gurindji people had never relinquished their attachment to their traditional land which, as Crown land, was being leased by Vestey's and used as a cattle station. During the protracted strike (which lasted several years), the Gurindji people withdrew from the station section to another part of their country - but never left their traditional land. This relationship between Aboriginal peoples and their land was probably a new concept to many Australians at this stage; it was effectively presented by the strike leaders who were traditional Aborigines, often speaking in their own language.

It is significant that the Gurindji strike occurred at a stage in history when newly independent regimes in the Third World were making their mark in international affairs... The Gurindji strike was at once an anti-colonial protest by a suppressed people as well as a protest against unfair and unequal wages and working conditions. (Jennett, C. 1988 'Politics, the Law and Aborigines' in Jupp, J. [ed], *The Australian People: An Encyclopedia of the Nation, Its People and their Origins*, Angus and Robertson, Sydney.)

One of the standard defences employed by the Commonwealth Government against charges of its neglect of Indigenous Australians was its constitutional inability to accept responsibility for them, as land management and Aboriginal affairs were vested in the States. During 1964-5, the Federal Council for the Advancement of Aborigines and Torres Strait Islanders (FCAATSI) circulated a petition calling for a constitutional referendum. This campaign succeeded when Prime Minister Holt announced such a referendum to be held in May 1967. At issue was the amendment of two sections of the Constitution: the first, s.51(xxvi), effectively prevented the Commonwealth legislating for Indigenous people except in its own territories; the second, s.127, prevented the inclusion of Indigenous peoples in national censuses. The result of the referendum authorised the removal of the phrase 'other than the aboriginal [sic] race' from the sentence about the Commonwealth making laws 'for the people of any race... in any State for whom it is deemed necessary to make special laws'. It also deleted the sentence in s.127: 'In reckoning the number of people of the Commonwealth, or of a State or other part of the Commonwealth, aboriginal natives [sic] shall not be counted'.

The overwhelming 'yes' vote in the 1967 referendum showed an awareness within the Australian community of the inherent unfairness of the treatment of Indigenous Australians and a feeling that something ought to be done. The same sense of fair play had seen Australia become an early signatory, the year before, to the United Nations' Convention on the Elimination of All Forms of Racial Discrimination (CERD). It had permeated the thinking of the Australian Labor Party which had finally expunged the White Australia Policy from its platform and, indeed, the party was actively promoting the idea of legislation that would give domestic effect to CERD. Don Dunstan and his Labor Government in South Australia took the lead by enacting State legislation on 1 December 1966 to prohibit discrimination on grounds of race, colour or country of origin.

In the mid 'sixties, Australia's place in the world was changing. This was partly because Britain was withdrawing from its 'mother hen' role as its Empire collapsed and more and more of its former colonies gained independence - some acrimoniously, like Rhodesia (now Zimbabwe). The emerging European Economic Community occupied the UK's attention and Australia began to seek new markets and new alliances. In 1963, Australia had become involved in a small way in the war in Vietnam. This involvement escalated and in 1966, the first conscripts were sent to the battlefields, to an increasing wave of protest at home. The anti-conscription and anti-Vietnam War movement spread across the country, and the major cities were eventually brought to a halt during the moratorium protests. Activity here mirrored that in the United States and around the world: the late 'sixties saw political uprisings in Czechoslovakia, student uprisings in Paris, urban terrorism in Germany and Italy, and anti-colonial independence movements in Africa and the Caribbean. There seemed to be a world-wide surge of energy for overthrowing the old: giving voice to new, fresh thoughts. Part of this was empowering the disenfranchised - ethnic minorities (in some cases, ethnic majorities), Indigenous peoples, young people - those who had been denied a voice by the traditional leadership.

By the end of the decade, Aboriginal peoples in Australia had:

the rights to equal pay (if they could find employment), to vote and to most social services benefits, and spending on Aboriginal affairs was increasing. Aborigines had developed a much higher profile in the cities where they could attract media attention. 'Black power' concepts were used by some Aboriginal leaders (who were usually young and located in urban areas) and their supporters as they began to take control of voluntary groups working in Aboriginal affairs and instruct non-Aborigines to stand back from decision-making roles ...

By late 1969 all the elements of the national land rights struggle were present - pride of race, land rights, compensation, self-determination and an

incipient pan-Aboriginalism. The visit of Roosevelt Brown, chairman of the Caribbean and Latin American Black Power Movement (from Bermuda) to Australia in August 1969, and the subsequent attendance of a Black Power conference in Georgia by five Aborigines, linked the local movement to the international scene. This placed Aboriginal protests over local issues in a world context of anti-colonial, liberation and black power movements. (Jennett, 1988)

Rising consciousness of racial discrimination and the rights of Indigenous populations, combined with the fact that 1971 was declared by the United Nations to be the Year Against Racism, ensured vigorous protests against the rugby tour by the all-white South African Springboks during that year. Violence flared, games were disrupted, and heated debates about the South African and Australian treatment of Indigenous peoples were pursued. The continuing marginalisation of Aboriginal peoples was underscored by the Prime Minister (William McMahon) announcing a new form of 'general purpose lease for Aborigines, which would be conditional upon their *intention and ability to make reasonable economic and social use of the land* and which would *exclude all mineral and forest rights*'. (Horton, 1994. Italics indicate McMahon's words) In response to this policy statement, activists erected the Aboriginal Tent Embassy on the lawn outside Parliament House on Australia Day, 26 January 1972. They chose the term 'embassy' to indicate that they were 'foreigners in their own country so long as they have no legal freehold to any part of Australia' (Horton, 1994). Six months later, the embassy was torn down by police and re-erected, with a large crowd preventing its removal for a second time. In September it was again removed and subsequently re-erected, where it remained undisturbed until its negotiated closure in 1975. One of the lasting symbols of the tent embassy was the Aboriginal flag, the bold black, red and gold design symbolising black people on the red earth under the sun, the giver of life. (It was designed by Harold Thomas, a Luritja man from Central Australia, a graduate of the South Australian School of Art. First flown in Adelaide's Victoria Square in 1971, it was

subsequently selected for the Tent Embassy. The striking flag was quickly adopted by other Aboriginal groups and is now universally recognised as the Aboriginal flag.)

The end result of this turbulent period of change and desire for social justice was the election of the Whitlam government, the first change of party in twenty-three years. The mood was captured by the period of duumvirate, where within a three-day period conscription and Australia's involvement in the Vietnam War ended, and Australia recognised the People's Republic of China, home to one quarter of the world's population.

During his first year in office, Attorney-General Lionel Murphy drafted the Racial Discrimination Bill and presented it to the Senate on 21 November 1973 and again on 4 April 1974, but the Bill was not debated before Parliament was dissolved for the election in that year. The outcome of that election was to have a special bearing on the future of race discrimination legislation.

During the first Whitlam Government, the Minister for Immigration was A1 Grassby who had been responsible for wide-ranging reforms to Australia's immigration and visa rules. He was the first Minister for Immigration to visit Asia, he offered the first amnesty for illegal immigrants, produced Australian passports without the words 'British Subject', excluded racially selected sporting teams from Australia, instituted an Emergency Telephone Interpreter Service and gave funds for special migrant education needs. However, as Gough Whitlam explained, 'None of these great reforms raised the ire of the racists in our society more than the abolition of the last vestige of the White Australia policy'.

The election campaign in May 1974 was remarkable for an outburst of virulent racism targeted directly at Grassby in his rural seat of Riverina (NSW). In the ten days preceding the election, a number of advertisements, including

full page spreads, were placed in newspapers in the Riverina district (three local papers refused to run the copy). Some of the advertisements read: 'For your children's sake stop coloured immigration - Grassby must go' and 'Asia has a brown and yellow Asia policy, Africa has a black Africa policy, what's wrong with the White Australia policy - Grassby?'

In addition, the letterboxes of his constituents were filled with leaflets and pamphlets while Grassby's own letterbox was filled with hate mail and threats, severe enough for the Government to assign a full-time security guard to watch over him and his family. When the votes were counted, Grassby, who had originally taken the Riverina with a 22% swing, lost his seat by 792 primary votes. It was the only seat lost by a Government Minister at that election.

Throughout the period leading up to the Labor Party forming government in 1972, Whitlam and Murphy had been the instigators and the advocates for legislation about racial discrimination. This was to enable Australia to take seriously its responsibilities as a global citizen and be in position to ratify international instruments which the country had signed but had never put into domestic effect. There was also a consciousness of the intolerable position of Aboriginal and Torres Strait Islander peoples in Australia and a feeling that racial discrimination legislation would assist Indigenous Australians in a practical sense as well as indicating to the international community that Australia was going to improve its appalling track record in regard to Aboriginal affairs. However, according to Grassby, neither Whitlam nor Murphy - nor probably anyone else - had seriously considered racial discrimination legislation in relation to non-Indigenous Australians; nor the need to educate the community at large about racial discrimination and protect those from ethnic minorities (or thought to be from ethnic minorities) from racial harassment.

Whitlam appointed Grassby as Special Advisor to the Government on Community Relations with a brief to assist the Attorney-General,

Lionel Murphy, with redrafting the Racial Discrimination Bill, which was then to be presented to Parliament as quickly as possible. The Attorney-General presented the Bill to the Senate on 31 October 1974, introducing it thus:

The purpose of this Bill is to make racial discrimination unlawful in Australia and to provide an effective means of combating racial prejudice in this country... The Bill implements into Australian law the obligations contained in the International Convention on the Elimination of All Forms of Racial Discrimination... the ratification of the Convention by Australia is, I believe, urgent and overdue.

...The common law provides no effective remedies against discrimination in the exercise of human rights, whether it be based on race, or colour or on other grounds. Legislation therefore has a vital role to play in the elimination of racial discrimination. The proscribing of racial discrimination in legislative form not only makes people more aware of the evils of discrimination and makes it more obvious and conspicuous, but also furnishes an essential legal background on which to base changes to basic community attitudes. The fact that racial discrimination is unlawful will make it easier for people to resist social pressures that result in discrimination.

The Bill relied on administrative machinery to examine complaints of racial discrimination and to settle them by conciliation, emphasising the point that 'mediation and conciliation is a more satisfactory way of tackling individual instances of racial discrimination and the tensions that are associated with individual disputes'. To undertake these tasks, the position of Commissioner for Community Relations was to be established with a number of powers. These included the power to call a compulsory conference; to commence legal proceedings before a court if mediation failed; to apply to a judge to obtain evidence to assist the conciliation process (or prevent its frustration); and to conduct education and research programs.

The Bill did not proceed and soon after, Senator Murphy was elevated to the High Court. On 13 February 1974, an identical Bill was introduced to the House of Representatives by the new Attorney-General, Kep Enderby. The response by the Opposition set the tone for a debate which was to continue over several months. In replying to Enderby's motion 'that the Bill be now read a second time', Mr Killen, the Member for Moreton, moved:

That all the words after 'That' be omitted with a view to substituting the following words:

'While the House supports the Bill's condemnation of acts of racial discrimination it is of the opinion that the Bill should be substantially amended because it:

(i) denies the operation of the rule of law by the conferring of 'Star Chamber' functions and powers upon administrative officials;

(ii) contains objectionable intrusions upon individual rights and privacy, and

(iii) fails to provide adequate rights of appeal, legal aid and representation'.

The Bill was argued, clause by clause, through its second reading in the House of Representatives where the Government had the numbers to carry it. However, the Opposition remained unhappy, and was able to exert more pressure for change when the Bill went to the Senate where the Government lacked a majority. The debate in the Senate started with criticisms of the administrative law provisions of the Bill, particularly the creation of a Commissioner of Community Relations, who the Opposition thought would enjoy powers of enormous scope... a power which we believe is wide open to abuse'.

The debate soon moved to the fundamental question of racism, with examples being given of racist behaviour necessitating the Racial Discrimination Bill: examples such as that of the Colonial Mutual Life Assurance Society, which would not insure people who could not 'speak,

write and understand English without any difficulty' and would not offer sickness and accident insurance to 'people born on the shores of the Mediterranean Sea, with the exception of the French'. A number of examples of serious racial discrimination towards Aboriginal people were also recorded, including a personal case advanced by the only Aboriginal parliamentarian, Senator Neville Bonner.

A number of major changes were made to the Bill during its passage through the Senate in May. These were summarised by the Attorney-General when the Bill came back to the House of Representatives in early June and accepted by the Government 'with a total lack of enthusiasm'.

The Senate has amended the Racial Discrimination Bill in a number of respects, the most important of which are as follows. First, the power vested in the Commissioner for Community Relations to commence legal proceedings where he is unable to effect a settlement by conciliation has been removed. Second, the power of the Commissioner to apply to a judge to obtain evidence to assist the conciliation process and prevent its frustration has also been removed. Third, offences relating to incitement and promotion of racial hatred that are required by the International Covenant have been removed. Amendments have also been made to the Bill to remove the provision making employers vicariously liable for the acts of their employees and vesting the Superior Court and the Industrial Court with jurisdiction in respect of proceedings commenced under the legislation.

The Government's major concerns as a result of the amendments were that the Commissioner for Community Relations was unable to act as a 'representative of the public interest... [with] power to bring proceedings on behalf of disadvantaged persons, persons with language difficulties and persons who may be diffident about enforcing their rights'; and that Australia would be unable to ratify fully the International Covenant on Racial Discrimination (CERD) because of its lack of racial vilification provisions. However, it was 'nonetheless gratified that the main objectives and

framework of the Bill have received general support from the Opposition [and that]... the legislation, even in its amended form, still has a number of features that constitute an improvement on the legislation of many other countries.'

Kep Enderby concluded that 'the legislation is a significant step forward in the development of policies for the promotion of human rights in Australia'; and it was assented to on 11 June 1975.

Just six weeks later, both the Prime Minister, Gough Whitlam and the Leader of the Opposition, Malcolm Fraser, publicly displayed the same bipartisan support of multiculturalism that they had demonstrated during the passage of the Racial Discrimination Act. They sat on the platform of the Sydney Town Hall, flanking the convener, Wadim (Bill) Jegorow, at the inaugural conference of the Ethnic Communities' Council of NSW. Over one thousand people, representatives of the many communities who now called Australia home, were gathered for the occasion. They were pleased that the Racial Discrimination Act was a public affirmation by the Parliament of Australia that discrimination on the grounds of race, colour, descent, ethnic or national origin was unacceptable; and especially pleased to learn that section 5 of the new Act specifically made unlawful a number of actions that would discriminate against a person simply because s/he was or had been an immigrant.

It is important to understand the situation of both indigenous and immigrant communities in the period prior to and surrounding the formulation of the Racial Discrimination Act (and both will be discussed in the course of this chapter). The perception of the needs of those two major groupings as possible beneficiaries of the Act influenced the way the legislation developed. In 1973, when the legislation was being devised, there were few obvious models for the Australian legislation to follow.

Although New Zealand had enacted its Race Relations Act in 1971, England did not follow suit until 1976. Australia wished to give domestic effect to the International Covenant on the Elimination of All Forms of Racism, but the legislative paths that it could have followed in order to achieve this aim were many and varied. The legislation as enacted must be seen as the result of the social and political forces of the day.

The formation of the Ethnic Communities' Council of NSW was a year later than that of the Ethnic Communities' Council of Victoria, which had started in 1974 under the guidance of Walter Lippmann. At the time, Mr Lippmann was the Chairman of the Immigration Advisory Council Committee on Community Relations and the President of the Victorian Council of Social Services, as well as President of the Australian Jewish Welfare and Relief Society.

The voice of the ethnic community was far more organised - and at an earlier stage - in Victoria than elsewhere. There were two distinct loci: immigrant workers and industrial relations issues; and an emerging discussion on 'rights' centred around the Ecumenical Migration Centre and its associated Clearing House of Migration Issues. This latter focus embraced discrimination and racism; lack of consultation and representation; and issues of language - both English classes and recognition of community languages. Also in Melbourne and in the forefront of the 'ethnic rights' movement were the earliest ethnospecific welfare organisations - the Australian Greek Welfare Society, Co.As.It. (the Italian agency), and the Australian Jewish Welfare Society. Also making a major contribution on the Melbourne scene was the Centre for Urban Research and Action (CURA) located at Fitzroy, whose director reported on 'the capacity of ethnic populations to operate as organised groups in the articulation of needs and the delivery of welfare services' in the Henderson Poverty Inquiry.

Language issues included the inadequacy of the Child Migrant Education Program which was

finally discontinued and replaced with block grants for 'Migrant and Multi-cultural Education' in 1976 following the recommendations of the Schools Commission; the total inadequacy of adult migrant English classes; and the under-resourcing of the Telephone Interpreter Service (TIS), begun in 1973 and used beyond all expectations. For example, it was envisaged that a minor function to be performed by TIS operators would be arranging community interpreters to attend in person the cases which could not be handled by phone. In fact, due to the real need for comprehensive interpreting services, this function escalated to the point of putting TIS under severe financial strain. Later in 1976, the National Accreditation Authority for Translators and Interpreters was established, but proper employment opportunities and recompense for its graduates remained minimal.

Language issues also included the use of community languages in the media. A wide range of locally-published ethnic newspapers in community languages was available - at least in Sydney and Melbourne. However, there was formal, regulated restriction on the use of 'foreign' languages in programs and advertisements. The Government of the time found that this presented a real impediment in its attempt to reach the whole community with information about its new national health insurance scheme, Medibank. Within a month of a community access station, 3ZZ in Melbourne, broadcasting regular weekly programs in 26 languages, the Government initiated two radio stations with a charter to broadcast in languages other than English. Radio 2EA (Sydney) and 3EA (Melbourne) commenced in June 1975 for a twelve-week trial period, but overwhelming popular demand extended this for a further six months with longer daily broadcasting hours and an increased number of languages. The stations had three objectives: to provide a broadcast service to more than one million immigrants in the two major cities who were beyond regular points of contact for vital community and government information; to provide recognition of the cultures and traditions that were important to

various ethnic communities; and to aid in the development of Australia as a multicultural society. The trail-blazing community language service on community radio and the ultimate establishment in 1978 of the Special Broadcasting Service were testimony to the strength of the ethnic community's new cohesion and purposeful pursuit of its rights.

The focus on migrant workers and industrial issues came to prominence during the 1973 strike at Ford's Broadmeadow plant. About 80% of the rank and file were immigrants of non-English speaking background and spokespersons for this substantial group were as angry at the union leadership as they were at the employers. The workers were confined to assembly lines, under severe pressure, isolated from any participation in either union or company management by language barriers, with seemingly no attention paid by either party to occupational health and safety issues nor to work-time English classes. The unions recruited migrant workers as fee-paying members, shop-stewards and collectors, but denied them any effective voice in union meetings or as union organisers, delegates or other responsible positions.

Two fiery seminars on migrants and unions were delivered (both, incidentally, by Australians of Greek background) in the the 1973 lecture series organised by CURA and in the same year, Migrant Workers' Conferences were held in both Melbourne and Sydney. Another similar conference followed in Melbourne in November 1975, where some progress was reported since the first conference. For example, in August 1975 the Australian Council of Trade Unions (ACTU) had passed its first ever resolution on migrant workers' problems; and the passage of the *Trade Union Training Authority Act 1975* provided a national framework in which to educate unionists. Equally, the fact that 1975 was International Women's Year had prompted the study of immigrant women, including their relationship with the labour market.

The cross-pollination of ideas in those fertile years of social change prior to 1975 is a

fascinating yet virtually impossible trail to follow. The emerging community voice articulating demands on behalf of immigrants was supportive of, and being supported by, the views of Al Grassby and a number of his Parliamentary colleagues. In a speech to the Cairnmiller Institute, Grassby linked multiculturalism firmly with social justice. He spoke of how a society dare not devalue its minorities nor deny them the dignity of self-determination because injustice to one group (or groups) within a culturally diverse society must, in time, result in 'explosive pressures - or else naked repression'. He repeated this theme in his first report as Commissioner for Community Relations:

Pluralism implies first and foremost mutual tolerance and respect for racial and cultural differences by all the members and institutions of Australian society.

Within such a perspective newcomers can adjust to their new lives without having to be completely submerged into the ethos and ways of larger and prior groups. This counters the imposition of uniformity on society and enables newcomers to relate to the life of the larger society at their own pace, from a position of strength and emotional security, so that their own sense of personal worth and dignity is preserved rather than merely tolerated.

In 1973, the Department of Immigration set up a Committee on Community Relations under the Chairmanship of Walter Lippmann. This was one of the committees of the Immigration Advisory Council, providing advice to the Minister who was, at the time, Al Grassby. The work of this committee, as communicated through its Interim Report in 1974 and its Final Report in 1975, was significant for several reasons. Firstly, the committee itself, unlike most others of its day, included a number of people of non-English speaking background; and secondly, its reports were informed by the views of community groups, both ethnospecific and more general such as the Ecumenical Migration Centre, CURA and the Good Neighbour Councils through a wide (and in its day uncommon) process of consultation. Thirdly, it investigated discrimination against

immigrants in a number of areas such as employment, housing, education, and access to services.

Against this background, it was not surprising that the racial discrimination legislation evolved with a strong emphasis on research and education programs as part of the duties of the Commissioner for Community Relations. Indeed, the whole concept of the Office of the Commissioner for Community Relations was very much aligned with social justice thinking. It was also appropriate to the changes in Aboriginal affairs that had been effected during the term of the Whitlam Government.

Whitlam had upgraded the Office of Aboriginal Affairs to a Department with its own Cabinet Minister, and established the Woodward Commission into land rights. The Woodward Report was accepted, although the significant Aboriginal Land Rights (Northern Territory) Act drafted as a result of the report was not passed until 1976 (in an amended form by Fraser's Coalition Government). In 1974, both the Aboriginal Land Fund and the Aboriginal Loans Commissions were established, followed a year later by the National Aboriginal and Islander Health Organisation. The Government had also set up an elected Aboriginal advisory body, the National Aboriginal Consultative Committee, whose members became frustrated over time with the lack of real power that they could exert. The pre-election rhetoric of self-determination had led Aboriginal people to believe that they themselves would be running their own affairs, but this was not the case. 'In practice, the government encouraged limited Aboriginal self-management at the community rather than the national level, and increased funding for Aboriginal-run functional and service agencies.' (Jennett, 1988)

However, steps had been made in the direction of self-determination. There was acknowledgement of the appalling disparity between the living conditions of Indigenous and non-Indigenous Australians and the opportunities open to them and their children. The issue of land rights was firmly on the

agenda and the legal framework within which racial discrimination could be addressed had been established.

Other minority groups had also been recognised. Australia's ethnic communities had found a common voice and their needs and demands began to be treated as legitimate rights.

The battle against racial discrimination could not begin and end with the Act. But the legislation was to powerfully recast the terms of the struggle and give real legal and moral muscle to those who waged it. (Commentary by Al Grassby in the video, *Battles Small and Great*.)

An Act of Recognition

The Commissioner for Community Relations was empowered to take complaints of racial discrimination and attempt to mediate a settlement. And complaints there were: a total of 359 between 31 October 1975 and 30 June 1976. By far the largest group of complainants were those who gave their ethnicity as Greek - a total of 126 out of 359 complaints, or 35%, certainly disproportionate to the Greek community as a percentage of the Australian population. This high number probably reflects the raised political consciousness of the Australian-Greek community within 'ethnic politics' and the familiarity of a well-established community with Australian procedures. It was almost certainly a result of the large number of community education activities such as consultations, addresses and articles in ethnospecific journals, undertaken with the Australian-Greek community and listed in the Commissioner's first *Annual Report*. The report did not specify what types of complaints were lodged by this group except that they were mostly under s.9 of the RDA. However, a lengthy discussion about discrimination in industry detailed the disadvantaged position of migrant women workers and pointed out that the RDA could be 'an effective agent of change' on the factory floor. During the following year of operation of the RDA, complainants of Greek background were still the largest distinct

ethnic group (making 16.2% of the complaints) but Aboriginal people made more complaints. In subsequent years, the number of Australian-Greek complainants was no more disproportional than any other ethnic group.

In its first eight months of operation, as reported in the first *Annual Report*, nearly 20% of complaints (69 out of 359) were from Aboriginal people. However, as Commissioner Grassby pointed out, 'the number of complaints does not accurately gauge the extent of the existence of racial discrimination in Australia. The most prevalent form of racial discrimination is institutional, and this form is not evidenced in single acts [about which a complaint can be lodged].' He emphasised the point that Aboriginal peoples were the most discriminated against - *oppressed* was the term he used - and, in support of this argument, appended to his first *Annual Report* two reports which he had prepared following field trips to northern NSW and north Queensland.

In the following year (1976-7), a further twenty Aboriginal towns and communities were visited in Queensland, New South Wales and Victoria. Concerted efforts were made to link into Aboriginal education and community development programs and the increased awareness of Aboriginal people of the RDA could be seen by the increase in the complaint statistics: 27% of the total in that year and almost 40% in the following (1977-78). The majority of these complaints concerned the denial of access to goods and services, such as publicans and shopkeepers refusing service to Aboriginal people and housing authorities or agents denying them rental properties.

The Racial Discrimination Act was crucial in the struggle to highlight the oppression of Indigenous Australians. It empowered the Commissioner for Community Relations and his staff to undertake field trips and work closely with communities on discrimination and complaints - and to bring them to public attention through the tabling of *Annual Reports* in Federal Parliament. Frequently staff would assist complainants formulate their complaints

and then mediate them on the spot. However, they attended to these complaints and to many other duties under great difficulties.

The Commissioner had no permanent staff, simply what he could beg and borrow from other departments. He had no budgetary allocation. He did not even have a permanent office. He had no Community Consultative Council, although stipulated in the RDA, for a Ministerial decree early in 1976 after the change of government had prevented the establishment of one. Grassby set up a voluntary network to help publicise and utilise the RDA (and serendipitously taught community leaders from both Indigenous and ethnic communities about how the RDA could help them, as well as teaching them conciliation and negotiation skills).

One of the landmark cases of the RDA was just beginning as A1 Grassby settled into his first year as Commissioner. It began when the Aboriginal Land Fund Commission tried to buy a Crown Lease of pastoral property in Queensland for the benefit of John Koowarta and other members of the Winychanam Group. The lease could not be transferred without the approval of the Queensland Government, which refused on the grounds that 'sufficient land in Queensland is already reserved and available for the use and benefit of Aborigines' (in the words of the then Minister for Lands). John Koowarta, who had been active in arranging the purchase of the land, decided to challenge the Queensland Government over its decision. The granting of a certificate by the Commissioner for Community Relations enabled him to take the Queensland Government to the Supreme Court to seek resolution of alleged racial discrimination: specifically the breaching of s.9 and s.12 of the RDA. The Queensland Premier, Joh Bjelke-Petersen, reacted by challenging the validity of the RDA itself. The Federal Attorney-General removed the challenge to the High Court for resolution and it was heard in the first part of 1982.

By a majority of four judges to three, the High Court of Australia upheld the validity of the

RDA on the grounds that, since it was enacted to give effect to the United Nations' Convention on the Elimination of Racial Discrimination, it therefore fell within the Commonwealth's external affairs power spelt out in section 51 (xxix) of the Constitution.

It was a landmark constitutional decision in that it affirmed the Commonwealth's power to implement international treaty obligations into domestic law (creating a precedent that would be used in later cases such as the Tasmanian Dams case). It enabled the advancement of federal human rights law, by giving the Commonwealth the option of proceeding directly by its own legislation to enact Australia's international obligations under various human rights treaties.

Specifically, the validity of the RDA was confirmed, as was the Commonwealth's power to ensure that States complied with that Act.

Despite the actions of the Queensland and Western Australian State Governments, there were noticeable improvements elsewhere. In 1981, the South Australian Government passed the Pitjantjatjara Land Rights Act, vesting a large area of the north-west of the State in the Pitjantjatjara people. They had unrestricted access to the land, and all others needed permission to enter. The Act was a victory for the Pitjantjatjara Council, an incorporated community organisation which had been formed in 1976 to protect the interests of all the Pitjantjatjara-speaking peoples whose country stretched across three states and territories.

Various Aboriginal Land Councils were gathering strength legally and politically. (In the twenty years since the formation of the first two Land Councils in 1973, almost 150 have been formed to represent the interests of traditional land owners.) The first, the Northern Land Council, was formed provisionally in 1973 and received statutory recognition following the passage of the *Aboriginal Land Rights (NT) Act 1976*, as did the Central Land Council (incorporated in early 1977). These have become two of the most significant Aboriginal

political organisations in the country today and can count among their successes over the past two decades the return of the Uluru Katatjuta National Park (including Ayer's Rock) to its traditional owners; the defeat of proposed national land rights legislation in 1985 which would have been detrimental to traditional owners; the publication of the bimonthly *Land Rights News* (the major organ for disseminating political information to a national Aboriginal audience); and the nurturing of Aboriginal leaders such as Patrick and Michael Dodson, Galarrwuy Yunupingu, Wesley Lhanapuy and John Ah Kit.

In 1977, the then federal Attorney-General, R. J. Ellicott, requested the recently established Law Reform Commission (ALRC) to investigate the possibility of formally recognising Aboriginal customary law. This proved to be a difficult task and almost a decade elapsed before the ALRC presented its two-volume report. Meanwhile, off the coast of Queensland, the foundations of the case that would rock white Australia's notion of its own history were being formed.

The autonomy of the Commissioner for Community Relations came to an end on 10 December 1981 after the *Human Rights Commission Act 1981* came into effect. Rather than continuing to report directly to Parliament, the Community Relations Commissioner was now required to work with, and through, the new Human Rights Commission established by the Fraser Government and chaired by Dame Roma Mitchell. Although the Community Relations Commissioner continued to carry out complaint-handling and conciliation functions, the *Racial Discrimination Amendment Act 1981* repealed the Commissioner's independent statutory powers, including the education and research functions which became the responsibility of the Human Rights Commission. The Commission was also empowered to allow various States to handle race discrimination complaints under co-operative arrangements, rather than the centralised system which had characterised the Office of the Commissioner for Community

Relations.

Less than a year after the establishment of the Human Rights Commission, A1 Grassby's seven-year term expired in October 1982, and he was succeeded by Jeremy Long, the Deputy Secretary of the then Department of Aboriginal Affairs. Commissioner Long had had a long involvement in Aboriginal issues and on his appointment, moved to have special pamphlets about the RDA and the complaint process prepared for Aboriginal communities (including their translation into several Aboriginal languages). He kept up his predecessor's practice of extensive field trips and community meetings. It was not an easy time to be working in race relations.

A number of major trends were emerging during the late 1970s and early 1980s which, when discerned by the general public, caused some concern to those who did not like the thought of the *status quo* changing - especially those who thought it had already changed far too much during the Whitlam years. The Fraser Coalition Government which took office in 1976 kept Labor's non-discriminatory migration policy and began to raise immigration targets in line with traditional Liberal growth philosophies. The Fraser Government also moved quickly to accept refugees, particularly the large number of Vietnamese who had fled their country as a result of the fall of Saigon and the defeat of the South Vietnamese forces.

From 1975 to 1984, Australia resettled over 90,000 Indo-Chinese refugees. In addition, many people came under the immigration guidelines of family reunion or skills: the number of settlers rose from the very low numbers in 1975 to between 70-80,000 per annum for the period 1977-80 and then jumped to 111,000 and 118,000 in 1981 and 1982 respectively. Unfortunately, the economic plunge in 1974 triggered by the OPEC crisis marked the beginning of a period of cyclical recession, with a particularly bad period in 1981-2. Throughout the 'seventies, Australian industry had been restructuring and the demand for unskilled or semi-skilled labour had

decreased markedly.

The prolonged period of economic recession and high unemployment brought about a community backlash against perceived high levels of immigration and ultimately, against immigrants themselves. Geoffrey Blainey, then Professor of History at Melbourne University, made a strong attack on the Government's immigration policy in March 1984, asserting that it was giving strong preference to Asians and claiming that the pace of Asian immigration was well ahead of community acceptance. The so-called 'Blainey debate' raged for many months, finding expression in the Federal Parliament as well as in the popular media (where displays of xenophobia and racism were commonplace). Although the 'debate' focused on Asian immigration, a careful analysis of the evidence showed that opposition to immigration was more general.

...after 1979, the proportion opposed to Asian immigration was almost exactly the same as the proportion who said that Australia should not accept any immigrants at all 'at the present time'. And in 1984, when immigration became an issue of bitter public debate, there were almost as many saying that the total migrant intake was too high as those saying that the Asian intake was too high. This is no coincidence - exactly the same people who said the total intake was too high also said the Asian intake was too high. (Groot, M. 1988 'Public Opinion on Immigration' in Jupp, *The Australian People*.)

There was also reason to be concerned with community attitudes towards Aboriginal issues: a strenuous campaign against any recognition of Aboriginal land rights was waged in public fora throughout 1984. This was triggered by the prospect of new land rights legislation in Western Australia, of legislation to provide for a consideration of Aboriginal claims to Crown Land in Victoria and of national land rights legislation to underpin the various pieces of State legislation. The proportion of the Australian population who considered that the Government had not done enough for Aborigines dropped from 51.5% in 1981 to 30.5% in 1984, according to opinion polls. As

Community Relations Commissioner Jeremy Long summarised in his annual report for 1984-5: 'If the 'Immigration Debate' did nothing to improve community relations, continuing discussion of Aboriginal land rights issues certainly did nothing for relations between Aboriginal Australians and others'.

In 1985, debate surfaced (again) about the need for an Australian Bill of Rights. A Bill was introduced in the Federal Parliament in October 1985, preceded by vigorous public debate. Although the Bill was introduced by the Attorney-General, Lionel Bowen, it was, in fact, the work of Senator Gareth Evans and substantially based on his previous draft which had foundered during the first Whitlam Government. It provided for the domestic application of the International Covenant on Civil and Political Rights with supportive administrative machinery. However,

it foundered in the Senate by attrition late in March 1986, after an enormously protracted, but very slow moving, debate. There was simply not the will in the Government to keep pushing a measure that had become extremely unpopular and efforts were focused on preserving and improving the human rights machinery that had been in operation since the previous Government had it enacted in 1981. (Bailey, P. 1992 'Analysis of the Australian Debate' in *Seminar Papers on a Bill of Rights for Queensland*, Electoral and Administrative Review Commission, Brisbane).

The Federal Government passed the Human Rights and Equal Opportunity Act in 1986, to replace the Human Rights Commission. Enabling legislation also provided for substantial and significant amendment to the Racial Discrimination Act, including the cessation of the position of Commissioner for Community Relations. Complaints lodged under the Racial Discrimination Act were to be handled by a new Race Discrimination Commissioner, one of three Commissioners, who, together with a President, would constitute the Human Rights and Equal Opportunity Commission (HREOC).

Changes in the complaint-handling process had been occurring since July 1983, when delegations were given to the Victorian Equal Opportunity Commissioner and four of her staff to conduct inquiries into, and attempt to settle, complaints made under the RDA. Similar co-operative arrangements were entered into with other States with complementary legislation, and delegations from the Commissioner for Community Relations were conferred onto the President and staff of the NSW Anti-Discrimination Board in August 1984 and the Commissioner for Equal Opportunity in South Australia and her staff in September 1984. The co-operative arrangements were continued and expanded by HREOC.

The first Race Discrimination Commissioner, Irene Moss, was appointed for a seven-year term commencing (like the new Commission itself) on 10 December 1986. Unlike her predecessors, she had (through the Commission) adequate resources for inquiries and major research projects which would reveal systemic discrimination and uncover hurdles of which the dominant culture was simply unaware. As a lawyer, she was well aware of the strength of the Act (as demonstrated in the Koowarta case) and as the former senior conciliator with the NSW Anti-Discrimination Board, was only too conscious of the barriers faced by Aboriginal people and those of non-English speaking backgrounds.

The High Court had confirmed the validity of the Act and signalled its importance. The Act would not simply resolve racial battles. It would enable Australians to make sense of them. Investigations such as the Toomelah Inquiry began to unpack the meaning of race conflict. (Commentary by Irene Moss in video, *Battles Small and Great.*)

The Toomelah inquiry was the investigation that HREOC undertook following a 'race riot' in Goondiwindi, a small Queensland town near the NSW border. During the unrest on 10 January 1987, nine people were injured, hotels and shops were damaged and charges were laid against 17 Aboriginal men from nearby Toomelah and Boggabilla. Racial tension

between Aboriginal and non-Aboriginal people in the area was blamed for the riot.

In the past, scenes such as these had been witnessed with little understanding, and often had only compounded racist perceptions. The HREOC Inquiry, however, in the aftermath of the riots, was concerned with the wider causes of the conflict.

Commissioner Moss had visited the area immediately after the 'riot' to investigate the situation at first hand. She found Goondiwindi to be a relatively prosperous regional centre, servicing the surrounding farmlands and small townships and settlements. Goondiwindi's unemployment rate was below the national average and all necessary educational, health, recreational and municipal needs were adequately catered for. Boggabilla, across the river in NSW, was smaller and poorer with unemployment running slightly above the national average. However, its services were still adequate. Compared to Goondiwindi's population of four thousand, Boggabilla had only five hundred residents, eight per cent of whom were Aboriginal.

A stark contrast was presented by Toomelah, a settlement of five hundred Aboriginal people eighteen kilometres from Boggabilla. It was without basic services: no proper water supply, an inadequate sewerage system, no sealed roads, no garbage collection, no street lighting, not even a store. The houses were inadequate in both quantity and quality for the number of families; and at the time of her visit, Commissioner Moss found that the artesian water was rationed and being dispensed in two fifteen-minute periods per day.

The underlying cause for the racial discontent which had erupted violently in Goondiwindi was clearly the disparity between the living standards and socio-economic expectations of Aboriginal and non-Aboriginal people. The disadvantages suffered by the people of Toomelah, Commissioner Moss concluded, was the result of a degree of racial discrimination which meant that the Aboriginal community

was not 'free and equal in dignity and rights' (HREOCA s.12). She recommended that HREOC conduct a public inquiry into the poverty and neglect which made up the fabric of the lives of Aborigines at Toomelah and, to a lesser extent, at Boggabilla.

This was constituted as the Inquiry into the Social and Material Needs of Residents of the NSW-Queensland Border Towns of Toomelah, Boggabilla and Goondiwindi and commenced in July 1987. It was conducted by HREOC's President, the Hon. Justice Marcus Einfeld, the Hon. Sir James Killen and Ms Kaye Mundine. The Inquiry made specific recommendations, assigning each to a responsible authority. HREOC then revisited the area several months after the report's release to check on the implementation of the recommendations. Commissioner Moss concluded: 'Not only did the Inquiry raise the structural discrimination at the roots of the violence as a national concern, it sought real remedies on the ground in Toomelah.'

The gulf between Aboriginal and non-Aboriginal Australia was evident during 1988, when Australia celebrated the Bicentennial Year and Indigenous Australians mourned the 200th anniversary of the invasion of their land. Australia Day (26 January) was renamed Survival Day, and as millions of Sydneysiders flocked to the Harbour's edge to watch a re-enactment of the arrival of the First Fleet, thirty thousand Aboriginal people and their supporters gathered at Redfern Oval to begin a march into Hyde Park in the centre of Sydney. It was the biggest gathering of Indigenous people in the written history of the country and the largest in Australia since the height of the Anti-Vietnam War protests. The march was testimony to the resilience of Aboriginal peoples; to the fact that they had survived two hundred years of mistreatment ranging from attempted genocide to benign neglect. For that reason, many of the Indigenous marchers wore headbands saying: 'We have survived'.

Later in the year, a statement of national Aboriginal political objectives, written on bark,

was presented to the Prime Minister during the Barunga Festival. (Barunga is a settlement near Katherine, NT...) It called for Aboriginal self-management, a national system of land rights, compensation for loss of lands, respect for Aboriginal identity, an end to discrimination, and the granting of full civil, economic, social and cultural rights. It was clearly a calling to account of the Hawke Labor Government, which the Aboriginal people saw as failing them with the national lands rights legislation it had proposed in 1985 - legislation that capitulated to the interests of the States and the mining companies. Although the legislation had not gone ahead, there was fence-mending to do.

One task that had been tackled was the establishment of a Royal Commission into Aboriginal Deaths in Custody, announced by the Prime Minister in August 1987 in response to ongoing pressure from the Committee to Defend Black Rights and its Deaths in Custody Watch Committee. Justice Muirhead, a Federal Court judge, presided and presented an interim report at the end of 1988 before his departure from the Royal Commission. This is discussed later in this chapter.

The Committee to Defend Black Rights, which instigated the Royal Commission, became a target of violent acts including fire-bombs, break-ins, violent disruption of its fund-raising events and personal threats of violence against its Aboriginal leaders. But it was not just this Committee that suffered blatantly racist attacks. Throughout 1988, Commissioner Moss had been approached by a number of community groups representing ethnic or religious affiliations with concerns about racist violence. There were indications of a possible surge of racist violence generally and an increase in organised violence by racist groups, particularly against people actively involved in working against racism. A number of church and community leaders and other prominent anti-racists had recently been subjected to what seemed to be a well-organised campaign to intimidate them or deter them from their activities. These violent activities most commonly involved slashing tyres, throwing

bricks through windows, daubing graffiti on home and work places, and death threats.

Although the public may have been largely unaware of racist violence at this point, there was some concern about levels of violence generally in the community, with two major Government-funded inquiries currently being held into Violence in Television and Violence in Australian Society (not to mention the evidence that was coming from the Royal Commission into Aboriginal Deaths in Custody). In December 1988, the Human Rights and Equal Opportunity Commission announced that it would conduct a National Inquiry into Racist Violence with Commissioner Moss as Chair and Mr Ron Castan QC as a Hearing Commissioner, particularly to assist at public hearings.

The terms of the National Inquiry allowed the Commission to inquire into:

1. acts of violence or intimidation based on racism directed at persons, organisations or property;
2. acts of violence or intimidation directed at persons or organisations on the basis of their advocacy of, support for, or implementation of non-racist policies, including violence or intimidation intended to deter such advocacy, support or implementation;
3. current or prospective measures by government or government instrumentalities to deal with the above matters.

The Inquiry commenced with public hearings: two each in NSW and Western Australia, and one each in Queensland, Victoria and South Australia. During these seven hearings, evidence was taken from 171 witnesses, including community workers, police and public servants, and most importantly, those who had been victims of racist violence. 239 written submissions were received and sorted into general opinion or one of five different

categories of victims. Specialised research studies were commissioned on various aspects of the problem: for example, an overview of racism in Australia historically; overseas experience with combating racism; inter-ethnic violence; and police-Aboriginal relations.

The Inquiry was determined to understand the wider causes of racial conflict. It placed the harassment of Aboriginal people in Redfern, the bombing of Asian restaurants in Perth and the burning of synagogues in Sydney in the context of wider racial conditions, which it found to be disturbing. The Commission reported that:

* racist violence against Aborigines and Torres Strait Islanders is endemic, nationwide and very severe;

* there have been serious incidents of racist violence against people from non-English speaking background, their property and places of worship. Although this was a matter of concern to the Inquiry, the extent of racist violence on the basis of ethnic identity is not as severe as that experienced by Aboriginal people;

* anti-racist activists have been subjected to violence because of their advocacy of human rights. The evidence indicates that this is largely perpetrated by organised extremist groups.

The Commission made sixty-seven recommendations in areas such as police practices, the administration of justice, education, employment, housing and community relations. It also recommended legislative changes, proposing among other things, legislation relating to racial hatred (reinforcing previous calls that had been made by the Commissioners for Community Relations and the Human Rights Commission). During the two years or so of the Inquiry's hearings, research and report-writing, a number of the issues under discussion were highlighted in dramatic ways. Early in 1990, the police

Tactical Response Group conducted an operation against Aboriginal people in Sydney which became known as the 'Redfern Raid'. The controversial use of such a force heightened the antagonism already existing between police and Aboriginal communities generally; a distrust which became more pronounced as the findings of the Royal Commission into Aboriginal Deaths in Custody began to be made public later that year. In September 1990, the Supreme Court in Western Australia convicted the leader of an extremist organisation of 53 offences including wilful damage, assault causing grievous bodily harm, arson and causing an explosion - acts mainly directed against Perth's Asian community.

The eruption of the Gulf War saw an increase of racism directed at people believed to be 'Arabs' or 'Muslims' (with the two nouns often used interchangeably) and the Race Discrimination Commissioner, in conjunction with the NSW Ethnic Affairs Commission, convened meetings between leaders of affected communities and senior media personnel in an effort to calm potentially inflammatory reportage. A similar meeting was held three months later in Melbourne. It was not only Muslim communities who were under threat: four Sydney synagogues were subject to arson attacks in the space of two months in early 1991.

Other forms of racist behaviour and abuses of human rights were being detailed in the reports emanating from the Royal Commission into Aboriginal Deaths in Custody. Following Justice Muirhead's departure, the Royal Commission had continued its inquiries with five commissioners working simultaneously, supported by a large advisory and research staff and Aboriginal Issues Units established in each State and Territory. Overall, the Commission investigated the deaths of 99 Aboriginal and Torres Strait Islander people who died in the nine years between January 1980 and May 1989 in prison, youth detention centres or police custody.

The Commission released its reports on the 99 individual cases in groups progressively from

January 1989 and presented its twelve general reports and findings to the governments (State and Federal) in March-April 1991. As well as examining the immediate circumstances of each death, the reports dealt exhaustively with the broader historical, cultural, socioeconomic and judicial influences leading to the detention of Aboriginal and Torres Strait Islander peoples at rates far higher than for other people in Australia. The reports put forward 339 recommendations and Commonwealth and State Governments are required to report on their progress in implementing these recommendations. However, deaths in custody have continued to occur since the release of these recommendations.

Following the Toomelah Inquiry, the Race Discrimination Commissioner was concerned with the broader issues of systemic discrimination. There were many Aboriginal townships and communities which were similar to Toomelah in their degree of marked disadvantage and a number of representations were made by these communities following the inquiry's report. A major study was commissioned to undertake a broad overview of the provision of water and sanitation to Aboriginal and Torres Strait Islander communities, especially those in remote locations. The study involved the participation of eight Aboriginal communities, including those settled within, or on the fringe of, country towns; those whose communities were former mission stations; and those who chose a more traditional existence without a permanent township. There were also two communities from different islands in the Torres Strait.

The study continued over several years and was wide-ranging in its findings. The final report covered a broad range of social, technical, political and legal issues relating to Indigenous communities here and overseas. The recommendations were based on the recognition of Indigenous rights and self-determination, and included references to sustainable development and the need for community-controlled review of scientific and technical advice.

One of the spin-offs from the National Inquiry into Racist Violence was the formulation of the Federal Government's Community Relations Strategy. This was launched in April 1991, following a year's planning by an inter-Agency Working Party which included the Race Discrimination Commissioner. The evidence being presented to the National Inquiry into Racist Violence was of great interest to the Working Party and it helped mould the development of the Community Relations Strategy. Of the \$5.7 million allocated to finance the entire Community Relations Strategy, the Race Discrimination Commissioner received almost \$925,000 for seven projects, including \$240,000 earmarked for a 'youth project' to 'influence youth culture in Australia to an awareness of racism as an issue'.

The Community Relations Strategy was part of the Government's implementation of its National Agenda for a Multicultural Australia, a framework announced in 1989 as its response to the challenge of cultural diversity. The rights of members of ethnic communities had been progressively recognised during the 1980s and a variety of mechanisms were being established to help implement these rights. In the year of the vitriolic 'Blainey debate', the first National Congress of the Federation of Ethnic Communities' Councils of Australia (FECCA) was held in Melbourne to establish FECCA's broad policy base and direction. The following year, the Government announced its Access and Equity Strategy, a policy direction aimed at ensuring that immigrants had access to Government programs and services and received an equitable share of the resources delivered through such programs. (The strategy was extended in 1989 to include Aboriginal and Torres Strait Islander peoples and all people of non-English speaking background: that is, all residents of Australia who may face barriers relating to their race, religion, culture or language.) Major reports were commissioned and tabled by the Federal Government: Dr James Jupp's Review of Migrant and Multicultural Programs and Services (ROMAMPAS) in 1986 and Dr Stephen

FitzGerald's Committee to Advise on Australia's Immigration Policies Report in 1988 (although this latter report tended to be viewed as *anti-multicultural*). Meanwhile, in 1987, the Government had established an Office of Multicultural Affairs within the influential Department of Prime Minister and Cabinet, a move urged by both FECCA and ROMAMPAS.

The Government also established a principal agency for administering Aboriginal and Islander affairs in March 1990. The Aboriginal and Torres Strait Islander Commission, or ATSIC brought together the functions previously handled separately by the Department of Aboriginal Affairs and the Aboriginal Development Commission. (The ATSIC Board consists of an appointed chairperson, two appointed commissioners and seventeen commissioners elected from the ATSIC zones around the country. The seventeen zones are further divided into thirty-six regions, each with its own elected regional council, voted for by all Indigenous people in the region.) The Government had, in fact, announced its intention of reforming Aboriginal administration in mid-1987, but the enabling legislation was delayed and revised legislation was not passed until late 1989 after lengthy debate. The formation of an agency which had control of major funding programs (such as the Community Development Employment Program and the Community Housing Infrastructure Program) and which was ultimately answerable to elected representatives voted for by all Aboriginal and Torres Strait Islander peoples was a step along the road to self-determination.

One of the major cases in the Indigenous struggle for self-determination had surfaced to some extent, during 1988. The High Court had again upheld the validity of the Racial Discrimination Act and its power over the States. The case had begun in 1982 when five Meriam people began legal proceedings seeking recognition to native title rights to the Murray Islands. After the proceedings commenced, the Queensland Government sought to end the

Islanders' claim by passing an Act which retrospectively abolished the rights and interests of the Meriam people to their islands, without compensation. The first part of the High Court decision, known as Mabo Number 1, was handed down in 1988 and declared the Queensland Government's Act invalid because it was inconsistent with the RDA. It was significant because it reaffirmed the power of the RDA over discriminatory state legislation and drew attention to the discriminatory behaviour of the law-makers in Queensland.

It also enabled the original native title claim to be heard. It was the findings in this case, Mabo Number 2, that overturned the doctrine of 'terra nullius' and found that the common law of Australia recognises a form of native title to land where Indigenous people have maintained their connection with their land and where their title has not been extinguished by legislation or any action of the executive arm of government. The court further suggested that since its enactment in 1975, the RDA gave native title holders additional rights to those available under common law and found that compensation was payable after 1975 if there had been an arbitrary deprivation of the proprietary rights of Indigenous peoples.

The decision in Mabo No. 2 had great political and symbolic significance, as well as practical consequences. It not only gave Aboriginal and Torres Strait Islander peoples a measure of justice but real legal clout; and it put land rights back on the agenda.

The significance of the High Court decision in 1992 cannot be over-estimated. In the words of Commissioner Moss: 'This was the retraction of Australia's most profoundly racist fiction - the doctrine of *'terra nullius.'*

For the Prime Minister, the Mabo decision was a major landmark on the road to reconciliation between Indigenous and non-Indigenous Australia. He took the next step in the form of a public acknowledgement of the wrongs that had been done to the Indigenous peoples.

...the problem starts with us non-Aboriginal Australians.

It begins, I think, with the act of recognition. Recognition that it was we who did the dispossessing.

We took the traditional lands and smashed the traditional way of life.

We brought the diseases. The alcohol.

We committed the murders.

We took the children from their mothers.

We practised discrimination and exclusion.

It was our ignorance and our prejudice.

And our failure to imagine these things being done to us.

(From the text of Prime Minister Paul Keating's speech to mark the Australian launch of the International Year for the World's Indigenous Peoples...)

During 1993, Government and Aboriginal leaders grappled with the problem of translating the legal decision into workable legislation. In the difficult and volatile debate that followed, the RDA became a focal point. Aboriginal spokespeople who were negotiating the parameters of the Native Title Act with the Government held up the RDA as the protector of their rights against those who wanted the Court's recognition of native title to be legislated away and the RDA to be suspended to allow that to happen. They argued forcefully that human rights must not be suspended for economic convenience; and such was the change in political climate in the eighteen years since the RDA was enacted, the wholesale suspension of the RDA was advocated only by the fringe groups of politics. The Federal Opposition, while rejecting the Native Title Act, nevertheless stated that its policy was that any State Government dealings with native title must be in accord with the RDA. The Government gave an undertaking that, except for the validation of past titles, the RDA would continue to operate. In the end, native title was legislatively enshrined in a non-discriminatory way.

However, the passage of the *Native Title Act 1993* did not see the end of the debate. Richard Court's Government in Western Australia commenced proceedings in the High Court to

challenge the constitutional validity of the new Act. It also argued that, even if the Native Title Act was valid, all native title in Western Australia had been extinguished at the time of settlement and therefore there was no native title in Western Australia to which to apply the Native Title Act.

The State Government had, prior to the passage of the Commonwealth Act, passed its own Land (Titles and Traditional Usage) Act which purported to extinguish native title in Western Australia and to replace it with 'rights of traditional usage', a form of statutory title.

The first issue dealt with by the High Court was whether native title to land had been extinguished upon settlement. It found it had not. To determine the issue of whether the Western Australian Act was valid and had successfully extinguished native title, the Court had to consider s.10 of the RDA. The Court said that s.10 ensures that native title holders have the same security of enjoyment of their native title as do others who are holders of titles granted by the Crown.

After considering the degree to which the Western Australian Act made rights of traditional usage (the statutory equivalent of native title created by the WA Government in place of extinguished native title) vulnerable to extinction, and comparing this relative insecurity with the security of native title as protected by the RDA, and the relative security of Crown titles, the Western Australia Act was declared to be invalid by reason of inconsistency with the RDA.

The High Court upheld all but one section of the Native Title Act as being a valid exercise of Parliament's power to make special laws with respect to persons of any race. This is the so-called 'races power' embodied in s.51(xxvi) of the Constitution.

The judgement at last revealed the powerful protections of Native Title embedded in the RDA against extinguishment by state governments. This was the culmination of a long, painful struggle under

the RDA.

Throughout, the impact of the legislation had been progressively stretched by those who had used it. The Act was delivering on its original purpose of empowerment. (Commentary by Irene Moss in the video, *Battles Small and Great.*)

An Act for the People

In 1995, the International Year for Tolerance tells us that we have come a long way. The RDA has brought us a good deal of that way...

It has been the base of landmark legal actions which have dramatically reshaped Australia's idea of itself. And it has been at the shoulder of individual women and men who, unheralded, daily seek to assert a different idea of themselves in a society still in the midst of great change. (Commentary by Zita Antonios in the video *Battles Small and Great.*)

The demographic changes that have occurred in the twenty years since the passage of the RDA have been profound: Australia is now home to communities who were scarcely represented here in 1975 (if at all): people from Indochina, South East Asia, Central America, sub-Saharan Africa and what used to be called Asia Minor (Iran, Iraq and Afghanistan, for example). By the 1991 Census, 42% of Australians were either immigrants or the children of immigrants, bringing 'some of the culture of their homeland with them and contribut[ing] to the diverse and varied cultures which have been an integral part of Australia's development as a nation.' In the fifty years since the establishment of a Department of Immigration, over five million immigrants have arrived in Australia.

The Indigenous community has also changed during the last twenty years. Quantitatively, it has almost doubled from 116,000 in the 1971 Census to 303,261 in the Aboriginal and Torres Strait Islander Survey published in 1994. Not all of this was due to natural population increase: over the years, there has been a greater willingness amongst Indigenous peoples to identify themselves as being Aboriginal or Torres Strait Islander; and there has also been a great

improvement in data collection techniques.

The first half of the 1990s has seen a determined effort on the part of the Federal Government to overcome the disparity of conditions and expectations between Indigenous and non-Indigenous Australians. The landmark Mabo decision was almost contiguous with the Government's response to the Royal Commission into Aboriginal Deaths in Custody and to the National Enquiry into Racist Violence. The Government agreed with almost all the recommendations of both investigations, and set up mechanisms for monitoring the implementation of the inclusion of an Aboriginal and Torres Strait Islander Social Justice Commissioner amongst its ranks, with the express purpose of reporting on the overall 'exercise of basic human rights by Aboriginal and Torres Strait Islander peoples'. The same year (1992) saw the publication of the Commonwealth's major statement concerning Aboriginal and Torres Strait Islander peoples, *Social Justice for Indigenous Australians*, and Prime Minister Keating's Redfern Speech which has been cited earlier.

Michael Dodson, a director of the Northern Land Council and former Counsel Assisting the Royal Commission into Aboriginal Deaths in Custody, was appointed to the new position of Aboriginal and Torres Strait Islander Social Justice Commissioner in January 1993 although he did not take up his duties until 26 April 1993. Commissioner Dodson has no power to receive complaints but fulfills a series of obligations under the HREOC Act and the Native Title Act relating to the rights of Indigenous peoples and their exercise and enjoyment of human rights.

Following the resignation of Commissioner Irene Moss on 31 May 1994 after seven and a half years in office, Commissioner Dodson assumed responsibility for the race portfolio while awaiting the appointment of a new Race Discrimination Commissioner. During these four months, Commissioner Dodson contributed particularly to a long-term study of conditions on Mornington Island in the Gulf of

Carpentaria, initiated by Commissioner Moss as a result of a petition she had received from members of the Aboriginal community there. The *Mornington Report* was publicly released in 1993 and a year later Commissioner Dodson, as Acting Race Discrimination Commissioner, guided a review process which followed up, and commented on, the implementation of the many recommendations which had been presented in the original report. Since the appointment of a permanent Race Discrimination Commissioner, Commissioner Dodson has continued with his active co-operation in those Race Unit projects which involve Indigenous Australians.

Commissioner Dodson also accompanied the Minister for Aboriginal Affairs to Geneva in August 1994 to report on Australia's compliance with the Convention on the Elimination of All Forms of Racial Discrimination (CERD). The CERD Committee reported favourably on the meeting and was impressed by the representation of Indigenous peoples, a course it stated it will suggest to other member countries in future.

October 1994 saw the commencement of the term of Zita Antonios as Race Discrimination Commissioner. She is a Sydney woman of Lebanese background, whose professional training is in social work. When appointed, Commissioner Antonios had completed a five-year term as a full-time member of the Immigration Review Tribunal. Before that, she had been the chief conciliator in HREOC, and therefore familiar with the complaint-handling process - its strengths and weaknesses. A major issue in the new Commissioner's eyes was the backlog of complaints that had accumulated for a variety of reasons. One of the Commissioner's main functions is to deal with discrimination complaints: undue delay in processing these was frequently compounding discrimination for complainants and would have a detrimental effect on public perception of HREOC as an effective remedial body.

The current Race Discrimination Commissioner is also concerned about the lack of complaints

of *indirect* racial discrimination, the small number of race complaints from women, and the access to redress for those from small and emerging communities. These concerns and others have prompted her to initiate a comprehensive review of the Act. This is the first of its kind in the Act's twenty year history although *ad hoc* changes have been made over the years. (The review is discussed in the next chapter).

The *Law and Justice Legislation Amendment Act 1990* inserted a new section - s. 9(1A) - into the RDA making it clear that the RDA extends to acts of indirect racial discrimination. That is, it relates to a term, condition or requirement which appears to apply to everybody in a non-discriminatory fashion but which, on examination, can be seen to apply to one group more than another because of race, colour, descent, or national or ethnic origin. Further consideration must be given to whether the term, condition or requirement is reasonable in the circumstances.

Section 18 was amended to allow that where a reason is one of a number of reasons for doing a racially discriminatory act, then that is sufficient to bring the matter within jurisdiction (even if it is not the dominant reason nor a substantial reason). A new section was also added (s.18A) to extend the liability of employers for racially discriminatory acts to acts committed by employees or agents in the course of their work. A saving clause exempted the employer from liability if s/he had taken all reasonable steps to prevent such acts.

The 1990 changes relating to indirect discrimination, dominant reason and vicarious liability were important changes to the Racial Discrimination Act. Another legislative change which had particular consequence for the Commission as a whole was included in the *Sex Discrimination and Other Legislation Amendment Act 1992*. This related to a new mechanism for enforcing determinations made by HREOC, which up to that point, were not binding on the parties. Either the parties voluntarily accepted the determination or fresh proceedings had to

be instituted in the Federal Court. The new amendments which commenced on 13 January 1993 provided that a HREOC determination must be registered in the Federal Court Registry as soon as practicable after it was made, and that if no proceedings were instituted within 28 days to review the determination, it would be taken as if it were an order of the Federal Court. Furthermore, the amendment provided that HREOC determinations were to be binding on Commonwealth agencies.

In the course of a long-running dispute which began with a complaint under the RDA, a respondent challenged HREOC's powers to enforce its determinations - the powers which came into effect as described above. On 23 February 1995, the High Court agreed with Mr Harry Brandy and declared certain sections of the RDA invalid as contravening Chapter III of the Constitution. In the view of all seven High Court judges, the enforcement procedure put in place by those sections constituted an exercise of judicial power by a non-judicial body, clearly a breach of the separation of powers doctrine enshrined in the Constitution. It was not only the RDA which was affected by the High Court decision; similar provisions in the *Sex Discrimination Act 1984*, the *Disability Discrimination Act 1992* and the *Privacy Act 1988* were also made invalid.

This decision did not affect the Race Discrimination Commissioner's day-to-day work profoundly, as most of the race complaints are settled during the conciliation process and very few go on to public hearing. However, there was inarguably a problem. A temporary solution saw the reintroduction of the system previously in place before 1992, a procedure that forced parties into re-litigation in the Federal Court in order to make HREOC determinations binding. A longer term solution was put into the hands of the committee which, at the time, was reviewing the operation of the Commission. The review committee was strengthened by three additional persons with specific expertise in particular areas of law; and the terms of the review were expanded. The review committee's draft report indicates that

consideration will be given to the establishment of a separate human rights division in an existing court, thus making any determinations judicial ones. This proposal has to balance issues of access to justice and concerns about equity and costs within a court system: some of the factors which had originally led to the administrative law model being pursued.

During the twenty years of its operation, more than 10,000 individual women and men have lodged complaints under the Racial Discrimination Act. It has proved to be a valuable tool in redressing wrongs done to individuals on the basis of their race, colour or national or ethnic origin. Through attention to individual complaints - for example, those about racism in the workplace - it is possible that more general areas were addressed, especially if the conciliated outcome included some remedial action (such as cross-cultural training for managers and staff in the case of a workplace complaint). However, the Act has not been seen to address some of the wider issues of institutionalised or systemic discrimination.

Structural discrimination is the inequitable outcome resulting from a series of compounding disadvantages against a particular group or groups. It is often so gradual or so well-hidden that it is difficult to extract particular circumstances of racial discrimination from the process. An example of structural discrimination would be the lack of provision of specialised English language teaching to immigrant children within the school system. A lack of fluency in English in an officially monolingual country would seriously hamper the child's ability to succeed at school with consequent detrimental effects on education, training and employment prospects.

The result of two centuries of structural discrimination (compounded by more overt racial discrimination) can be clearly seen in the lives of Indigenous Australian; in their mortality and morbidity statistics, their unemployment rates and low proportion of home ownership, for example. Commissioner Dodson explained the limitations of the RDA:

What the Act doesn't confront is the day-to-day life of Indigenous people. We've got a long way to go. There are lots of challenges we still have to meet - for example, education, housing, health, community infrastructure - those sorts of 'quality of life' things that Indigenous Australians aren't enjoying. The RDA can't really address all of those, but it can be a partner with Indigenous Australians in confronting and addressing those challenges.

The current Race Discrimination Commissioner is committed to the concept of partnership with Indigenous people and it is partly to further this ideal that she has undertaken a major review of the Racial Discrimination Act. In addition, there are a number of other projects which have been done with, or at the instigation of, Indigenous communities. The most recent is a review of the Community Development Employment Program (CDEP) which is being finalised at the time of writing. As a result of concerns expressed by Aboriginal and Torres Strait Islander communities about certain financial disadvantages experienced by CDEP participants, the Race Discrimination Commissioner decided to examine legislation and policies relating to CDEP to determine whether they have adverse discriminatory consequences that are contrary to the human rights of participants in the CDEP. The project is not intended as a review of CDEP itself, but to identify any discrimination suffered by CDEP participants in comparison to social security beneficiaries (for example) and to recommend ameliorative measures.

July 1995 saw the launch of a major study which had been undertaken by the previous Race Discrimination Commissioner and brought to a conclusion by Commissioner Antonios in conjunction with Commissioner Dodson. The subject of the report was the legality of measures undertaken to limit or prohibit the availability of alcohol to members of Aboriginal communities. It originated from expressions of serious concern from a number of Aboriginal communities and organisations in Central Australia and the Northern Territory who felt that they were being obstructed when they tried to combat the effects of alcohol abuse.

During the lengthy course of the study, consultations were held with Aboriginal communities in Central Australia and the Northern Territory, relevant State and Territory legislation was examined, overseas data on alcohol and Indigenous communities sought, and a serious discourse on the 'special measures' provisions of the RDA was pursued.

This examination of 'special measures' and the realisation that the RDA was ill-equipped to deal with the issue of collective rights contributed to the view that the RDA needed to be reviewed. Legislation must reflect the views of a society at a certain time. When the RDA was being formulated, the concept of collective rights for Indigenous peoples was not current. The RDA was, understandably, a piece of legislation addressing the rights of an individual and the redress of wrongs done to an individual. However, since that time, the world's Indigenous peoples have expressed their rights in draft international documents and have argued that non-Indigenous people need to understand that there are concepts relating to rights that are different from those embraced by a Western individualistic tradition. It is timely that the RDA is reviewed in light of this.

Changes in social attitudes have prompted other changes to the RDA over the years. For example, the clause relating to vicarious liability, or employer responsibility for racist actions in the workplace, was voted out of the original Bill in 1975 because a majority of Senators thought that it reversed the usual legal 'onus of proof'. However, by 1990, a Parliamentary majority accepted the view that an employer should take responsibility for acts of racial discrimination against an employee perpetrated by other employees or agents, unless that employer could show that all reasonable steps had been taken to prevent such a situation arising. The change in the legislation clearly signalled new community standards about acceptable practices in workplaces and the employer's obligations to enforce acceptable standards. Likewise, the racial hatred provisions, which were discarded in 1975, have finally been added (or rather, the civil provisions have been accepted but the

criminal provisions still failed to be legislated). They are quite recent, coming into operation only in October 1995 and they have not, at the time of writing, been tested by the complaint-handling process.

Legislation itself can provide a benchmark of community standards: the changes to the RDA over its twenty years indicate standards that the community, as represented by a Parliamentary majority, is prepared to accept. Other benchmarks can be established by research projects or inquiries which the Race Discrimination Commissioner is entitled to carry out on behalf of the Human Rights and Equal Opportunity Commission. The National Inquiry into Racist Violence in 1991 provided, for the first time, qualitative and quantitative descriptions of the extent of racist violence in this country. The earlier Toomelah Report had likewise provided irrefutable evidence of the standard of service which was meted out to Aboriginal communities by both Government and private agencies, as did the Cooktown Report about the provision of medical services. Subsequent studies can compare their results with these earlier ones to assess if changes have occurred.

In some of the landmark studies or Inquiries undertaken by the Race Discrimination Commissioner, HREOC and other agencies (for example, the Royal Commission into Aboriginal Deaths in Custody), the circumstances described are such an indictment of Australian society that the Government announced major administrative or legislative changes or special funding and programs to address the situation.

One such example is the report on Australian South Sea Islanders published in December 1992 under the title, *The Call for Recognition*. The then Attorney-General, using his power to request HREOC to report to him on certain matters, had commissioned the Race Discrimination Commissioner to inquire into and report on the situation of South Sea Islander people in Australia with a view to preparing recommendations for consideration by the Government.

After consultation with community representatives, it was realised that there was a significant absence of statistical data on this group of people. Thus the priority became the organisation and implementation of a census - the collection of data from all those who identified themselves as Australian South Sea islanders, a term used to describe the descendents of the indentured labour brought to Queensland in the mid to late 19th century.

This project resulted in a comprehensive report on the size and location of the Australian South Sea Islander community; findings on their distinctiveness as an ethnic minority group and the degree of racial discrimination and disadvantage which they have suffered; and seven recommendations on actions that the Government should take in order to recognise the community and redress some of its disadvantages. All recommendations were subsequently endorsed by the Government and follow-up actions implemented.

Other reports and Inquiries, and not only those by HREOC, have precipitated major responses by the Federal Government. For example, the introduction of racial hatred legislation was part of the Government's response to both the National Inquiry into Racist Violence and the Royal Commission into Aboriginal Deaths in Custody. The package of measures announced in response to the two reports had other implications for the work of the Race Discrimination Unit and HREOC:

The Commission [HREOC] would also have a 'watchdog' role and would provide to the Government every year separate 'State of the Nation' Reports on the human rights situation of Aboriginal and Torres Strait Islander peoples and peoples of non-English speaking backgrounds, noting that the issues may be different in scope and detail. (Attorney-General 1991, 'Government Response to the Report of the National Inquiry into Racist Violence in Australia', House of Representatives 1991, *Debates*, vol. HR181.)

The Indigenous 'State of the Nation' Report came to fruition as the *Annual Report* of the

Aboriginal and Torres Strait Islander Social Justice Commissioner, an appointment created in response to the Royal Commission. The annual *State of the Nation Report on People of Non-English Speaking Background* became the responsibility of the Race Discrimination Commissioner who presented the first one to the Attorney-General in December 1993.

It showed that some immigrant groups (especially those from war-torn backgrounds) had very inequitable outcomes in the area of employment, and consequently on other socio-economic indicators. The first *Annual Report of the Aboriginal and Torres Strait Islander Social Justice Commissioner* (1993) was unequivocally condemnatory about the health status of Indigenous Australians and their access to a decent standard of health care in the broadest terms.

Commissioner Antonios has just released the third *State of the Nation Report on People of Non-English Speaking Background* (November 1995). Being the twentieth anniversary year of the RDA, she was particularly conscious of the need to establish benchmarks of discriminatory practices against people of non-English speaking background in various fields at this time in order to gauge changes which might have occurred over the past twenty years, and to provide direction for future work. In the areas of employment, education and training, health and criminal justice she examined the anti-discrimination measures that have been introduced in the last two decades and attempted to assess the current status of people of non-English speaking background in those areas. Although many anti-discrimination measures have been introduced by governments (Federal, State and Territory legislation, access and equity strategies and various multicultural policies), overall, the report concludes that progress towards real social justice for people of non-English speaking background has been slow and patchy.

Reports such as the *State of the Nation Reports* are tabled in Federal Parliament, with each member of the House and the Senate receiving a

copy. With availability through the Australian Government bookshops, and wide distribution to community organisations, they serve a valuable role in community education. Commissioner Antonios - like other Commissioners before her - stresses that legislation, although essential, is not of itself sufficient to cause a change in community behaviour. Perhaps the most important role the legislation can play is to foster education.

The RDA specifically demands education programs, as is made quite clear in section 20 which confers on the Commission the functions:

- (b) to promote an understanding and acceptance of, and compliance with, this Act; and
- (c) to develop, conduct and foster research and educational programs and other programs for the purpose of:
 - (i) combating racial discrimination and prejudices that lead to racial discrimination;
 - (ii) promoting understanding, tolerance and friendship among racial and ethnic groups; and
 - (iii) propagating the purposes and principles of the Convention [CERD].

Under certain circumstances, funding is made available for specific community education endeavours and more effective and targeted campaigns can then be undertaken. The recent passage of the racial hatred legislation, for example, has been accompanied by funding to promote awareness of the new provisions and an appropriate campaign can now be planned.

Effective community education programs on race issues were able to be undertaken between 1991-4 with funding from the Federal Government's Community Relations Strategy (CRS). The CRS itself, launched in April 1991, had been devised as a coordinated strategy to

promote better community relations within Australia. As mentioned in the last chapter, the CRS Working Party and subsequent direction of the final strategy were heavily influenced by the evidence being presented at the concurrent National Inquiry into Racist Violence.

The Race Discrimination Commissioner dedicated a substantial part of her CRS funding to a national youth anti-racism campaign. This evolved as the *Different Colours, One People* campaign, utilising young people's 'heroes' of the entertainment and sporting arenas to pass on the anti-racist message via youth culture channels such as popular music, broadsheets and apparel. The campaign's aim was to make young people 'more aware of racism and its consequences... to change behaviour (especially of the 'fence sitters' who tolerated racist behaviour in their peers) and to empower the young victims of racist violence or harassment.' (Zelinka, S. 1995, 'Racism and One Response' in Guerra, C. and White, R. [eds], *Ethnic Minority Youth in Australia: Challenges and Myths*, National Clearinghouse for Youth Studies, Hobart.)

Other Race Unit projects funded by the CRS included advocacy training for Aboriginal field workers and ethnic community workers; the development of a code of practice for agents and landlords in the private housing and rental market; and a pilot project to test the viability of collecting uniform data on racist motivation in crimes or incidents. Like many Race Unit projects, all of these embraced a large component of community education directed at a particular community rather than society at large. The real estate code of practice, for example, involved winning the support of the Real Estate Institute and empowering and encouraging it to educate its own members in non-discriminatory behaviour.

Another well-used avenue for community education is through the participation of the Race Discrimination Commissioner and her staff in public fora. The Commissioner has a full schedule of speaking engagements ranging from keynote speeches on important race or

multicultural themes to chairing and commenting on panel discussions about issues ranging from settlement services for immigrants to discrimination in the workplace. Her staff equally try to attend a range of community activities, both to keep abreast of current areas of concern and to disseminate information about race discrimination and race issues generally.

Apart from reports, the Race Discrimination Commissioners have, over time, also published resource materials which are directed towards public education. These include training kits to assist employers in the better management of their culturally diverse workplaces and a video for public and private sector managers on communication skills and discrimination against people on the basis of their perceived accent.

However, it is clear that much more needs to be done in the area of community education. There is a continual need to ensure that all potential users of the RDA are aware of its existence and scope and feel comfortable with the complaint-handling process. As Angela Chan, Chair of the Ethnic Communities' Council of NSW stated:

It's necessary that education be ongoing and reflect the attitudes and needs of the community. We should never give up the fight nor assume that the fight has been won.

As the twentieth anniversary year wanes, the determination to pursue the RDA's objectives is renewed. It has been invigorated by revisiting the past, and seeing the gains that have been achieved by the creative use of the RDA, especially the landmark victories for Aboriginal Australians in the High Court. Commissioner Dodson reflects that the 'creative use' of the Act has changed not only the circumstances of Aboriginal people as victims of racial discrimination, but has also changed the judiciary and law-makers over time.

I think the fighting spirit of people like John Koowarta and Eddie Mabo has given a lot of other people a great deal of courage to expand the

application of the Race Discrimination Act, to have the courage to go beyond conservative interpretations of the law and interpret it in the way in which I think the Convention intended.

The 'fighting spirit' has also been seen recently in people like Ekaterina Djokic and Dr Burney Siddiqui. The former pursued her right to work in an environment free of racist and sexist slurs and harassment; the latter his right to put his professionalism to the test on an equal footing with other Australian doctors. Both fought long and hard in pursuit of their rights and in so doing, paved the way for others to enjoy working in less discriminatory environments. Victor Rebikoff, Chair of the Federation of Ethnic Communities' Councils of Australia, commented on the special place that the RDA occupies in multicultural Australia:

The Racial Discrimination Act stands as a beacon for ethnic communities, because in some cases it is the only avenue of redress for ethnic communities.

Over the last twenty years, the avenues of redress for complaints about racial discrimination have become more numerous, so at the time of writing, only one State (Tasmania) has no anti-discrimination legislation except the all-encompassing Federal pieces. Australians in all other States and Territories can make complaints about certain acts of racial discrimination under the *Anti-Discrimination Act 1977* (NSW), the *Equal Opportunity Act 1984* (Vic) (SA) and (WA), the *Anti-Discrimination Act 1991* (Qld), the *Discrimination Act 1991* (ACT) and the *Anti-Discrimination Act 1992* (NT). The Federal Racial Discrimination Act is not intended 'to exclude or limit the operation of any State or Territory laws that are capable of acting concurrently' with it. Indeed, HREOC has entered into a number of co-operative arrangements to allow some State and Territory anti-discrimination agencies to carry out certain functions on its behalf.

Not only has additional anti-discrimination legislation come into operation in Australia since the time of the introduction of the RDA,

but legislation and policies in other areas have been added to or amended to include reference to racial discrimination. For example, the *Industrial Relations Reform Act 1993* specifically makes reference to racial discrimination in awards. Equal Employment Opportunity legislation and policies also provide protection and assistance for those who may suffer discrimination on account of their race, colour or national or ethnic origin.

The Racial Discrimination Act has moved in the course of twenty years from being the only piece of anti-discrimination legislation to one of a number of complimentary pieces designed to make a culturally diverse society such as Australia a more equitable place.

This twentieth anniversary, then, is a time for pride and activism. It is a time to reflect on the Act as a force in a progressive social history.

To recall the courage and endeavour of the men and women who have pushed the limits of the Act's powers. And to catch something of their spirit.

To recognise that in Australia today, the challenges of discrimination remain national and compelling.

And to renew our commitment to a national law to confront those challenges.

(Commentary by Zita Antonios in the video, *Battles Small and Great*.)

An Act for the Future

The twentieth anniversary of the passage of the Racial Discrimination Act provided the ideal moment to look back and celebrate the highlights of the Act's existence and also to look forward and ensure that the Act is appropriate and effective for the future. That the Act needed to be critically examined with an open-minded view to possible amendments was vigorously endorsed by the Attorney-General who formally launched the review in August 1995 at a seminar for legal practitioners and others.

The review will be most successful if it is considered in the context of other current developments which

impact upon it. These include, first, the broader changes which are afoot with respect to our human rights legislative framework; and second, demands from Indigenous peoples, both domestically and internationally, for a rethinking of the thrust of discrimination legislation. The third element is the changing socio-political environment in which issues of racism and discrimination are now being debated.

In deciding to mark the twentieth anniversary of the RDA with a review of the Act, a number of factors were considered. The first was simply that the RDA, being the oldest piece of anti-discrimination legislation, had been the subject of a number of *ad hoc* changes over the years, but it had never been comprehensively evaluated against its objects. During its twenty years of existence, a number of other pieces of legislation with significant implications for the RDA had been enacted - legislation such as the Native Title Act and the Industrial Relations Reform Act - and the RDA had not been examined in light of these. Moreover, a number of administrative deficiencies and anomalies in the RDA had become evident since the introduction of more recent anti-discrimination legislation such as the *Disability Discrimination Act 1992*, creating inconsistencies even within those enactments administered by HREOC.

It was also important to establish whether or not the Act was working for those most affected by racial discrimination in Australia, for recent complaint trends seemed to indicate that those who were using the Act were not those for whom it was primarily intended. Only a small number of complaints had been lodged relating to indirect racial discrimination. Why was this so?

The first public event of the RDA review was an academic seminar held in August 1995 in conjunction with the Centre for Human Rights at the University of NSW. The importance of the occasion was underlined by the fact that the Federal Attorney-General opened the seminar.

In the sessions that followed, papers were presented on issues such as collective rights, special measures, the conciliation model,

indirect discrimination, the intersection of race and gender and the adequacy of remedies.

The Race Discrimination Commissioner expressed her hopes of making the RDA an even more effective and accessible means of challenging racial discrimination in Australia. Commissioner Antonios explained:

The RDA can also benefit from developments in the concept of equality in international law and the practice of international human rights treaty bodies, as well as practice under municipal anti-discrimination legislation and constitutional equality clauses in other jurisdictions...

The purpose of the review is to produce a report which accurately reflects the problems experienced in the operation of the RDA and the concerns and needs of target groups, and which makes a significant contribution to the literature on racial discrimination legislation in Australia. Ultimately, the aim is to have the recommendations implemented by the legislature. The entire process of the review, moreover, would have the added effect of increasing awareness of the Act itself.

Staff in the Race Discrimination Unit have prepared a publication to be released concurrently with this monograph. It is a comprehensive document, setting the RDA in its legal and social context. It presents the seminar papers covering a variety of issues as sketched above and it concludes with a number of practical questions to be faced.

This discussion paper will be distributed as widely as possible and consultations throughout the country are planned for the first half of 1996. Following the consultation period, a report will be produced for consideration by the Attorney-General. The success of the review will be measured in part by the extent to which its recommendations are adopted by the Government and implemented by the legislation, but also by the range of the contributors to the review process.

The Racial Discrimination Act is a concrete sign of Australia's commitment to acceptance,

pluralism, equality and individual dignity. The involvement of a range of Australians from all racial, cultural and social backgrounds in the formulation and utilisation of the Racial Discrimination Act reaffirms its universal qualities as 'An Act for the People'.

The Twentieth Anniversary

The Racial Discrimination Act was assented to on 11 June 1975. Almost twenty years to the day after the passage of that landmark legislation, many of those who had been involved with the legislation in some way gathered to recall, reflect and celebrate.

It was a gala occasion, and due to support from the International Year for Tolerance Secretariat, it was able to be celebrated at a morning ceremony and luncheon in the Great Hall of the National Gallery of Victoria. The proceedings were hosted by the Federal Race Discrimination Commissioner, Zita Antonios.

The Prime Minister, the Hon. P. J. Keating MP was the keynote speaker. He was not alone in paying tribute to the Racial Discrimination Act. Joining him were the Attorney-General, the Hon. Michael Lavarch MP; Senator the Hon. Nick Bolkus in his capacity as the Minister Responsible for the International Year of Tolerance; Chairperson of the Aboriginal and Torres Strait Islander Commission, Ms Lois O'Donoghue and the President of the Human Rights and Equal Opportunity Commission, Sir Ronald Wilson.

In the body of the Great Hall sat 250 invited guests, representing people who had been involved in some way with the Racial Discrimination Act over the past twenty years. Kep Enderby, the Attorney-General in 1975 when the Bill was finally passed, was present. The previous Attorney-General and original architect of the Bill, the late Lionel Murphy, was missed and mentioned often during the course of the day. The then Senator Murphy's Special Advisor on the Bill, A1 Grassby, was present. He had not only been involved in formulating the Bill but had the responsibility of implementing

it in his capacity as first Commissioner for Community Relations. Joining him were Irene Moss, the first Race Discrimination Commissioner, and the Hon. Robert Tickner, Minister for Aboriginal and Torres Strait Islander Affairs.

In addition to the full complement of current Commissioners at the Human Rights and Equal Opportunity Commission (Kevin O'Connor, the Privacy Commissioner, also acting at that time as the Human Rights Commissioner; Sue Walpole, the Sex Discrimination Commissioner; Elizabeth Hastings, the Disability Discrimination Commissioner; and the most recent Commissioner, Mick Dodson, the Aboriginal and Torres Strait Islander Social Justice Commissioner) were representatives of State governments, of the legal profession, of human rights and anti-discrimination organisations. There were people who had worked or were still working to implement the Act; there were academics; and there were representatives of community groups. There were Aboriginal and Torres Strait Islander Australians, for whom, as O'Donoghue remarked, 'the benefits of the Racial Discrimination Act have been great indeed'; and many different ethnic communities were represented.

In the Great Hall, with its dramatic stained glass ceiling, the lights went down; images of modern multicultural Australia appeared on the large screen. *We Australians are a people of many different peoples*, said the narration. A kaleidoscope of images followed: black and white footage of lady bowlers, fussing about 'the Asiatics'; a young Charles Perkins; Faith Bandler at the 1967 referendum; a National Front demonstration; words from Angela Chan and Victor Rebikoff; migrant workers; Mick Dodson in his trademark hat explaining what HREOC does on a daily basis; and the iconic shot of Cathy Freeman with the Aboriginal and Australian flags.

The presentation was a condensed version of a

thirty-minute documentary, *Battles Small and Great: the first 20 years of the Racial Discrimination Act*, produced especially for the occasion by ABC Television.

In back-announcing the video, Senator Bolkus said: 'It's a documentary which reminds us all how far we have come in building a nation which sees its diversity as a source not of fear or of conflict, but of richness and strength.'

The twentieth anniversary of the RDA had been recognised as one of the key events of the International Year for Tolerance. Senator Bolkus connected the events thus:

As Minister for Immigration and Ethnic Affairs, and as someone who remembers with pride the passage of the Act, it is significant for me that this anniversary falls in 1995 - the year in which we celebrate half a century of post-war migration, and which has been designated the International Year for Tolerance.

In taking the stage, Commissioner Antonios firstly paid tribute to the Wurundjeri people, the traditional owners of the land. The Wurundjeri people had intended to hold a welcome ceremony, but a death in the community shortly before the day of the event meant that this would not occur. The Commissioner went on to acknowledge the ground-breaking work done by her predecessors - the two Commissioners for Community Relations and the first Race Discrimination Commissioner - and a host of support staff and advocates. She reflected that it was through the 'individual and collective contribution' of the guests present and those commemorated in the video' that the significant achievements we have seen in the past twenty years have occurred.'

HREOC President Sir Ronald Wilson, widened the scope of the remarks to a broader appreciation of human rights and the responsibility to uphold them. He focused particularly on Indigenous rights and the crucial reconciliation process between Indigenous and non-indigenous Australia.

Ms Lois O'Donoghue, Chairperson of ATSIC stressed the importance of the RDA as an Act which 'has stood guard against racist laws and racist actions by governments'. She elaborated on this theme by reminding her audience of some of the most famous cases in the course of the Aboriginal struggle for land rights.

In line with other speakers - perhaps even more than other speakers - Ms O'Donoghue was under no illusions that the battle against racism had been won, even though certain important victories had been chalked up. 'Racism and discrimination, in their many forms, are still powerful forces in the community. And Aboriginal and Torres Strait Islander people are their chief victims.' However, she continued positively: 'The Act we celebrate today provides a recourse against discrimination and sends a message to Indigenous Australians that they do not have to accept racism. But clearly it is not the whole answer.' She finished her speech on a note of exhortation:

The persistence of racism is incompatible with a mature, compassionate society. Australia must commit itself to continue and expand the fight against racism in all its forms, that was begun so well twenty years ago.

Responsibility for the Racial Discrimination Act lies ultimately with the Federal Attorney-General. The current Minister, Michael Lavarch, participated in a number of events to commemorate the anniversary of the Act. In sketching in what was to come, Mr Lavarch referred to the Act as 'the first of our bedrock laws to establish our right to equality of treatment and opportunity.' Like Lois O'Donoghue, he stated that the RDA has brought about change and that 'it has been a valuable weapon, and shield, for victims of racial discrimination.'

The Attorney-General also elaborated on the review with his comments that, although the Act was fundamentally sound and had stood Australia in good stead for two decades, it was still open to examination, criticism, amendment and improvement. For that reason, the

Government was, at the time, attempting to introduce racial hatred legislation which it felt would strengthen the 'safety net' available for the protection of victims of racial intolerance.

The keynote address was delivered by the Prime Minister, Paul Keating. Regarding racial discrimination legislation and the then proposed Racial Hatred Bill, the Prime Minister said:

Legislation like this does not spring from any utopian vision of society or human nature. It springs from recognition of the less than perfect reality.

And it doesn't spring from a wish to punish the perpetrators of racism, but from a desire to protect its victims...

It is a reminder to minorities that a democratically elected parliament has decided that discrimination or vilification is unacceptable; that it is hostile to the values of the majority of Australians, outside the boundaries of what Australia is and what Australia stands for...

The Prime Minister then moved to a broader perspective, recalling the seeming innocence and simplicity of Australia through the 1950s and '60s, but also its underlying xenophobia and the appalling attitudes manifested in Aboriginal policy, before bringing his audience back to the present day.

For those of us old enough to remember, the distance we have travelled as a society since then is simply extraordinary.

I don't suggest for a moment either that we have made this progress because of the Racial Discrimination Act, or that we can now sit back and congratulate ourselves on creating one of the world's most tolerant multicultural societies.

This society is not free of prejudice, and we cannot even say that the trend is ineluctably *towards* tolerance.

None of us can ever justify complacency on this. All of us have to engage ourselves in the difficult questions of how we make sure that Australia

continues to be a tolerant society and becomes one which is *more* tolerant.

The role of the Racial Discrimination Act - and for that matter the Sex Discrimination Act and the Racial Hatred Bill - is not to punish every act of prejudice, but to make clear that tolerance and justice are things we live by and goals to which we aspire.

...racism is wrong, racial vilification and incitement to racial violence is wrong. And because it harms our fellow citizens and the peace, cohesion and harmony of our society, it is also illegal.

That is why the Racial Discrimination Act is a landmark Act - and one we should celebrate.