

Michelle Lindley

From: Padma Raman
Sent: Monday, 19 September 2016 1:14 PM
To: Edward Santow
Subject: RE: Senate Estimates [SEC=UNCLASSIFIED]

Hi Ed

I usually contact the Committee a couple of weeks before estimates and ask which Commissioners are required to attend. The general assumption is that all commissioners are meant to make themselves available. However to reduce costs, we try and get the Committee to nominate who they would like to question before the session.

Happy to chat more...
Padma

From: Edward Santow
Sent: Monday, 19 September 2016 11:30 AM
To: Padma Raman
Subject: Senate Estimates

Hi Padma,

As you'll be aware, the fortnightly commissioners' meeting has been cancelled for this week. One of the issues that I was going to ask about was Senate Estimates. I'm a bit unsure about whether there's an expectation that we'll all be going to this in October, or just some of us, or just Gillian. Would you mind letting me know when you get a chance?

Cheers,
Ed.

Edward Santow
Human Rights Commissioner
Australian Human Rights Commission
Level 3, 175 Pitt Street, Sydney NSW 2000
GPO Box 5218, Sydney NSW 2001

| [W humanrights.gov.au](http://www.humanrights.gov.au)

Human rights: everyone, everywhere, everyday



Find out more about the [Human Rights Awards](#)

Michelle Lindley

From: Padma Raman
Sent: Monday, 10 October 2016 2:58 PM
To: Julie O'Brien; s 47F [REDACTED]
Cc: Darren Dick; s 47F [REDACTED]
Subject: RE: Senate Estimates Back Pocket Briefing Complaints May 2016 - Supplementary.doc [DLM=Sensitive:Legal]

s 42, s 47C, s 47E

From: Julie O'Brien
Sent: Monday, 10 October 2016 2:56 PM
To: Padma Raman; s 47F [REDACTED]
Cc: Darren Dick; s 47F [REDACTED]
Subject: Senate Estimates Back Pocket Briefing Complaints May 2016 - Supplementary.doc [DLM=Sensitive:Legal]

Padma,

s 47C, s 47E, s 42

Thanks

Julie

Michelle Lindley

From: s 47F
Sent: Tuesday, 18 October 2016 4:07 PM
To: Padma Raman
Subject: RE: s 47C, s 47E [DLM=Sensitive:Personal]

s 47C, s 47E

From: Padma Raman
Sent: Tuesday, 18 October 2016 4:04 PM
To: s 47F
Subject: Re: s 47C, s 47E [DLM=Sensitive:Personal]

s 47C, s 47E

Padma Raman, Executive Director, Australian Human Rights Commission.
Sent From my iPhone. Apologies for brevity and any spelling errors.

On 18 Oct. 2016, at 4:02 pm, s 47F <s 47F@humanrights.gov.au> wrote:

Also important to note that even if the Commission terminates a complaint as lacking in substance we have no option but to issue a termination notice which gives the individual the right to lodge an application to the court

From: Padma Raman
Sent: Tuesday, 18 October 2016 3:07 PM
To: s 47F <s 47F@humanrights.gov.au>
Subject: Re: s 47C, s 47E [DLM=Sensitive:Personal]

Are you watching??

Padma Raman, Executive Director, Australian Human Rights Commission.
Sent From my iPhone. Apologies for brevity and any spelling errors.

On 18 Oct. 2016, at 1:46 pm, s 47F <s 47F@humanrights.gov.au> wrote:

Hi Padma,

s 47C, s 47E

Kind regards,

s 47F

Australian Human Rights Commission

Level 3, 175 Pitt Street, Sydney NSW 2000

GPO Box 5218, Sydney NSW 2001

s 47F F +61 2 9284 9611 Toll free 1300 369 711

E s 47F@humanrights.gov.au W www.humanrights.gov.au

Human rights: everyone, everywhere, everyday

Michelle Lindley

From: Padma Raman
Sent: Friday, 28 October 2016 4:41 PM
To: Darren Dick
Subject: Re: quick update [SEC=UNCLASSIFIED]

s 47C, s 47E
Not within request

Padma Raman, Executive Director, Australian Human Rights Commission.
Sent From my iPhone. Apologies for brevity and any spelling errors.

On 28 Oct. 2016, at 11:53 am, Darren Dick [@humanrights.gov.au](mailto:darren.dick@humanrights.gov.au) wrote:

Not within request

Not within request

s 47C, s 47E

S 47C, S 47E

Darren Dick
Director - Policy and Programs
Australian Human Rights Commission

Level 3, 175 Pitt St, Sydney NSW 2000
GPO Box 5218, Sydney NSW 2001

[W www.humanrights.gov.au](http://www.humanrights.gov.au)

Human rights: everyone, everywhere, everyday

Find out more about the [Human Rights Awards](#)

Michelle Lindley

From: Padma Raman
Sent: Monday, 14 November 2016 4:52 PM
To: Commissioners
Subject: Pre reading [SEC=UNCLASSIFIED]
Attachments: 16.11.10 Attorney-General re freedom of speech inquiry.pdf

Dear Gillian and Commissioners

Some pre-reading for tomorrow's meeting. Please find attached letters from AG and links to our previous submission and Tim's Alice Tay Lecture.

<https://www.humanrights.gov.au/submissions/amendments-part-ii-a-racial-discrimination-act-1975>

<https://www.humanrights.gov.au/news/speeches/two-freedoms-freedom-expression-and-freedom-racial-vilification>

warm regards
Padma

Padma Raman
Executive Director

Australian Human Rights Commission
Level 3, 175 Pitt Street, Sydney NSW 2000
GPO Box 5218, Sydney NSW 2001

[W humanrights.gov.au](http://www.humanrights.gov.au)

Human rights: everyone, everywhere, everyday



[Buy your tickets](#) for the 2016 Human Rights Awards today!
Ay lecture.

Michelle Lindley

From: Padma Raman
Sent: Monday, 21 November 2016 5:59 PM
To: Julie O'Brien
Subject: Re: s 42, s 47C, s 47E [DLM=Sensitive:Legal]

Hi Julie

s 42, s 47C, s 47E

Padma Raman, Executive Director, Australian Human Rights Commission.

Sent From my iPhone. Apologies for brevity and any spelling errors.

On 21 Nov. 2016, at 5:35 pm, Julie O'Brien @humanrights.gov.au> wrote:

Dear Gillian,

s 42, s 47C, s 47E

Happy to discuss future course.

Kind regards

Julie

Julie O'Brien
Director, Legal Section
Australian Human Rights Commission
Level 3, 175 Pitt Street, Sydney NSW 2000
GPO Box 5218, Sydney NSW 2001

W humanrights.gov.au

Human rights: everyone, everywhere, everyday

[Buy your tickets](#) for the 2016 Human Rights Awards today!

From: s 47F s 47F ags.gov.au
Sent: Monday, 21 November 2016 5:25 PM
To: Michelle Lindley @humanrights.gov.au>
Cc: s 47F ags.gov.au>
Subject: RE: s 42, s 47C, s 47E [DLM=Sensitive:Legal]
s 47C, s 47E, s 42
Dear Michelle

s 42, s 47C, s 47E

s 42, s 47C, s 47E

Best regards, s 47F

s 47F

Australian Government Solicitor

s 47F

s 47F s 47F ags.gov.au

Find out more about AGS at <http://www.ags.gov.au>

Important: This message may contain confidential or legally privileged information. If you think it was sent to you by mistake, please delete all copies and advise the sender. For the purposes of the *Spam Act 2003*, this email is authorised by AGS.

From: Michelle Lindley [@humanrights.gov.au](mailto:humanrights.gov.au)

Sent: Monday, November 21, 2016 9:57 AM

To: s 47F

Subject: s 42, s 47C, s 47E [DLM=Sensitive:Legal]

Hi s 47F

s 42, s 47C, s 47E

s 42, s 47C, s 47E

s 42, s 47C, s 47E

Regards

Michelle

Michelle Lindley

Deputy Director

Legal Section

Australian Human Rights Commission

Level 3, 175 Pitt St, Sydney NSW 2000

GPO Box 5218, Sydney NSW 2001

W www.humanrights.gov.au

Human rights: everyone, everywhere, everyday

WARNING: The information contained in this email may be confidential.

If you are not the intended recipient, any use or copying of any part of this information is unauthorised. If you have received this email in error, we apologise for any inconvenience and request that you notify the sender immediately and delete all copies of this email, together with any attachments.

Michelle Lindley

From: Padma Raman
Sent: Wednesday, 23 November 2016 5:46 PM
To: Michelle Lindley
Cc: Julie O'Brien
Subject: Re: s 42, s 47C, s 47E [AGSDMS-DMS.FID3085520]
[DLM=Sensitive:Legal]

Thanks

Padma Raman, Executive Director, Australian Human Rights Commission.

Sent From my iPhone. Apologies for brevity and any spelling errors.

On 23 Nov. 2016, at 5:19 pm, Michelle Lindley <Michelle.Lindley@humanrights.gov.au> wrote:

s 42, s 47C, s 47E

Michelle Lindley

Deputy Director

Legal Section

Australian Human Rights Commission

Level 3, 175 Pitt St, Sydney NSW 2000

GPO Box 5218, Sydney NSW 2001

W www.humanrights.gov.au

Human rights: everyone, everywhere, everyday

From: s 47F <s 47F@ags.gov.au> [mailto:s 47F s 47F@ags.gov.au]

Sent: Wednesday, 23 November 2016 5:07 PM

To: Michelle Lindley <Michelle.Lindley@humanrights.gov.au>

Cc: s 47F <s 47F@ags.gov.au> [mailto:s 47F@ags.gov.au]

Subject: RE: s 42, s 47C, s 47E [DLM=Sensitive:Legal] [AGSDMS-DMS.FID3085520]

Our ref: s 47C, s 47E

s 42, s 47C, s 47E

Best regards, s 47F

s 47F s 47F

Counsel

Australian Government Solicitor

T 02 6253 7002

s 47F s 47F <s 47F@ags.gov.au>

Find out more about AGS at <http://www.ags.gov.au>

Important: This message may contain confidential or legally privileged information. If you think it was sent to you by mistake, please delete all copies and advise the sender. For the purposes of the *Spam Act 2003*, this email is authorised by AGS.

From: s 47F s 47F

Sent: Monday, November 21, 2016 5:25 PM

To: 'Michelle Lindley'

Cc: s 47F s 47F

Subject: RE: s 42, s 47C, s 47E [DLM=Sensitive:Legal]

Our ref: s 47C, s 47E

Dear Michelle

s 42, s 47C, s 47E

Best regards, s 47F

s 47F s 47F

Counsel

Australian Government Solicitor

T 02 6253 7002

s 47F s 47F ags.gov.au

Find out more about AGS at <http://www.ags.gov.au>

Important: This message may contain confidential or legally privileged information. If you think it was sent to you by mistake, please delete all copies and advise the sender. For the purposes of the *Spam Act 2003*, this email is authorised by AGS.

From: Michelle Lindley @humanrights.gov.au

Sent: Monday, November 21, 2016 9:57 AM

To: s 47F s 47F

Subject: s 47C, s 47E, s 42 [DLM=Sensitive:Legal]

Hi s 47F

s 42, s 47C, s 47E

s 42, s 47C, s 47E



s 42, s 47C, s 47E

s 42, s 47C, s 47E

Regards

Michelle

Michelle Lindley

Deputy Director

Legal Section

Australian Human Rights Commission

Level 3, 175 Pitt St, Sydney NSW 2000

GPO Box 5218, Sydney NSW 2001

W www.humanrights.gov.au

Human rights: everyone, everywhere, everyday

WARNING: The information contained in this email may be confidential.
If you are not the intended recipient, any use or copying of any part
of this information is unauthorised. If you have received this email in
error, we apologise for any inconvenience and request that you notify
the sender immediately and delete all copies of this email, together
with any attachments.

Michelle Lindley

From: Padma Raman
Sent: Tuesday, 6 December 2016 8:09 AM
To: Tim Soutphommasane
Cc: s 47F
Subject: Re: This morning [SEC=UNCLASSIFIED]

s 42, s 47C, s 47E

Padma Raman, Executive Director, Australian Human Rights Commission.
Sent From my iPhone. Apologies for brevity and any spelling errors.

> On 6 Dec. 2016, at 7:34 am, Tim Soutphommasane
@humanrights.gov.au> wrote:

>
> Hi Padma
>

s 42, s 47C, s 47E, s 47F

>
> Thanks
> Tim
>
> Sent from my iPhone

Michelle Lindley

From: Padma Raman
Sent: Wednesday, 7 December 2016 10:08 AM
To: Gillian Triggs; Tim Soutphommasane; Edward Santow
Cc: Julie O'Brien; Graeme Edgerton
Subject: FW: Invitation to give evidence at public hearing [SEC=UNCLASSIFIED]
Attachments: Invitation to AHRC.pdf; Witness form.docx; Hearing program - 12 December 2016.pdf
Importance: High

FYI. I will complete witness forms for all of us...

From: s 47F [REDACTED]@aph.gov.au] **On Behalf Of** Committee, Human Rights (SEN)
Sent: Wednesday, 7 December 2016 9:57 AM
To: President AHRC
Cc: Padma Raman ; 18C Inquiry ; Dawes, Toni (SEN)
Subject: Invitation to give evidence at public hearing
Importance: High

Dear Professor Triggs

Please find attached correspondence from the Committee Secretary of the Parliamentary Joint Committee on Human Rights, regarding an upcoming hearing on Monday 12 December 2016 for the committee's inquiry into freedom of speech in Australia.

Additional documents are also attached, including a Hansard witness form and a copy of the hearing program.

Kind regards,

s 47F [REDACTED]

Parliamentary Joint Committee on Human Rights | Legislative Scrutiny Unit
Department of the Senate

www.aph.gov.au/senate

Michelle Lindley

From: Padma Raman
Sent: Thursday, 8 December 2016 9:20 AM
To: Tim Soutphommasane
Subject: Re: PJCHR Inquiry hearing 12 December - attendance of Race Discrimination Commissioner [DLM=Sensitive:Personal]

Depends where you are I will ring secretariat and find out how they do vc

Padma Raman, Executive Director, Australian Human Rights Commission.
Sent From my iPhone. Apologies for brevity and any spelling errors.

On 7 Dec. 2016, at 9:55 pm, Tim Soutphommasane @humanrights.gov.au wrote:

Shall we try to do video conference?

Sent from my iPhone

Begin forwarded message:

From: "Dawes, Toni (SEN)" @aph.gov.au>
Date: 7 December 2016 at 4:49:37 PM AEDT
To: 'Tim Soutphommasane' @humanrights.gov.au>
Cc: "Committee, Human Rights (SEN)" <Human.rights@aph.gov.au>, @humanrights.gov.au" @humanrights.gov.au>
Subject: RE: PJCHR Inquiry hearing 12 December - attendance of Race Discrimination Commissioner [DLM=Sensitive:Personal]

Dear Dr Soutphommasane,
Thank you for your email. Mr Goodenough has asked me to acknowledge your circumstances and pass on his thanks for providing advance notice of your possible inability to participate in the hearing on Monday. Mr Goodenough asked me to let you know that if you are unable to travel to Canberra, but available to participate from Sydney, we are able to offer teleconference, and possibly video-conference, capability.
Best wishes to you and your family and kind regards,

Toni

Toni Dawes | Committee Secretary

Parliamentary Joint Committee on Human Rights | Legislative Scrutiny Unit
Department of the Senate
Phone 02 6277 3066 | Fax 02 6277 5881
www.aph.gov.au/senate



From: Tim Soutphommasane @humanrights.gov.au
Sent: Monday, 5 December 2016 11:46 AM
To: Dawes, Toni (SEN)
Cc: Padma Raman
Subject: PJCHR Inquiry hearing 12 December - attendance of Race Discrimination Commissioner [DLM=Sensitive:Personal]
Dear Toni

I believe our executive director Padma Raman spoke to you earlier today. I would be grateful if you are able to pass on the following information to Mr Ian Goodenough MP, the Committee Chair.

I would like to advise that there is a possibility that I may be unable to the Committee's hearing, relating to its inquiry into freedom of speech, scheduled for 12 December. s 47F

May I assure the Committee that I will make every effort to attend the hearing, and believe it remains likely that I will. At the same time, I wish to advise the Committee at this stage of the possibility that I may not be able to join it next Monday. In that event, I would like to propose that I appear at one of the other hearings scheduled, or consider other alternatives so as to ensure I have the opportunity to answer any questions the Committee may have for me.

I thank the Committee for its understanding.

Yours sincerely

Dr Tim Soutphommasane
Race Discrimination Commissioner
Australian Human Rights Commission

Level 3, 175 Pitt St, Sydney NSW 2000
GPO Box 5218, Sydney NSW 2001, Australia

[@humanrights.gov.au](https://www.humanrights.gov.au)

W www.humanrights.gov.au

<http://racediscriminationcommissioner.wordpress.com>

Human rights: everyone, everywhere, everyday



Follow us on Twitter via @itstopswithme and @timsout

WARNING: The information contained in this email may be confidential.
If you are not the intended recipient, any use or copying of any part
of this information is unauthorised. If you have received this email in
error, we apologise for any inconvenience and request that you notify
the sender immediately and delete all copies of this email, together
with any attachments.

Michelle Lindley

From: Tim Soutphommasane
Sent: Sunday, 11 December 2016 1:06 PM
To: Julie O'Brien
Cc: Gillian Triggs; Edward Santow; Graeme Edgerton; Padma Raman
Subject: RE: Meeting in relation to PJCHR Inquiry [DLM=Sensitive:Legal]

Thanks for this Julie – and sorry for not responding sooner.

s 42, s 47C, s 47E

Best regards
Tim

From: Julie O'Brien
Sent: Thursday, 8 December 2016 5:18 PM
To: Tim Soutphommasane @humanrights.gov.au>
Cc: Gillian Triggs @humanrights.gov.au>; Edward Santow @humanrights.gov.au>;
Graeme Edgerton @humanrights.gov.au>; Padma Raman @humanrights.gov.au>
Subject: Meeting in relation to PJCHR Inquiry [DLM=Sensitive:Legal]

Dear Tim,

s 42, s 47C, s 47E

s 42, s 47C, s 47E

Please let me know if you would like to discuss

Kind regards

Julie

Julie O'Brien

Director, Legal Section

Australian Human Rights Commission

Level 3, 175 Pitt Street, Sydney NSW 2000

GPO Box 5218, Sydney NSW 2001

@humanrights.gov.au | [W humanrights.gov.au](http://www.humanrights.gov.au)

Human rights: everyone, everywhere, everyday



Michelle Lindley

From: Julie O'Brien
Sent: Thursday, 8 December 2016 8:50 AM
To: Edward Santow
Cc: Padma Raman
Subject: Re: PJCHR hearing preparation: legal question [DLM=Sensitive:Legal]

Hi Ed,

s 42, s 47C, s 47E

Thanks
Julie

Sent from my iPhone

On 8 Dec. 2016, at 8:22 am, Edward Santow [@humanrights.gov.au](mailto:edward.santow@humanrights.gov.au)> wrote:

Legal professional privilege is claimed in respect of this email

Dear Julie,

s 42, s 47C, s 47E

s 42, s 47C, s 47E

Regards,
Ed.

Edward Santow
Human Rights Commissioner
Australian Human Rights Commission
Level 3, 175 Pitt Street, Sydney NSW 2000
GPO Box 5218, Sydney NSW 2001

| [W humanrights.gov.au](http://www.humanrights.gov.au)

Human rights: everyone, everywhere, everyday

Season's Greetings from all of us at the Australian Human Rights Commission.
The Commission will be closed from 24 December 2016 and reopens on 3 January 2017.

Michelle Lindley

From: Julie O'Brien
Sent: Tuesday, 6 December 2016 4:50 PM
To: Gillian Triggs; Padma Raman
Subject: Correspondence from the Senate Committee [DLM=Sensitive:Legal]
Attachments: Letter to Professor Triggs - 23 November 2016.pdf; 2016 12 08 President letter to Sen Ctee.docx; 2016 12 08 President letter to Sen Ctee.docx; Senate Committee Clarification 271016.pdf; Senate SP statement2.docx

Dear Gillian,

s 42, s 47C, s 47E

Kind regards

Julie

Julie O'Brien
Director, Legal Section
Australian Human Rights Commission
Level 3, 175 Pitt Street, Sydney NSW 2000

Michelle Lindley

From: s 47F
Sent: Friday, 2 December 2016 5:30 PM
To: Padma Raman; Darren Dick
Cc: Michelle Lindley; Julie O'Brien
Subject: Drafting questions [SEC=UNCLASSIFIED]
Attachments: Estimates - s 47C, s 47E .docx

Importance: High

Dear Padma and Darren

s 47C, s 47E

Kind regards

s 47F

s 47F

Adviser to the President

Australian Human Rights Commission

Level 3, 175 Pitt Street, Sydney NSW 2000

GPO Box 5218, Sydney NSW 2001

E s 47F @humanrights.gov.au | W humanrights.gov.au

Human rights: everyone, everywhere, everyday

Michelle Lindley

From: Darren Dick
Sent: Tuesday, 27 September 2016 3:20 PM
To: Commission Secretaries; Commissioners; Policy Managers AHRC; Policy Advisers; s 47F Michelle Lindley; Julie O'Brien; Adrian Flood
Subject: FW: Draft programme of Supplementary Budget Estimates Hearing - 18 October 2016 [SEC=UNCLASSIFIED]
Attachments: DRAFT_Supplementary2016-17.docx

Dear colleagues

FYI – the Estimates day has been confirmed. We were told almost certainly would be Monday 17 October and so inevitably, it is now confirmed as **Tuesday 18 October** – program to follow in the coming weeks,

Regards
Darren

From: Senate Estimates Inbox [mailto:Senate.EstimatesInbox@ag.gov.au]
Sent: Tuesday, 27 September 2016 2:10 PM
To: Darren Dick @humanrights.gov.au>
Cc: s 47F/Irrelevant

Subject: Draft programme of Supplementary Budget Estimates Hearing - 18 October 2016 [SEC=UNCLASSIFIED]

UNCLASSIFIED

Good afternoon

The draft schedule for the upcoming Supplementary Budget Estimates hearing has been released and is attached.

The **portfolio** is expected to appear on **Tuesday, 18 October 2016** (confirmation to come).

Please note, there is a chance that the **AFP** will need to appear for approximately one hour on **Monday, 17 October 2016** (confirmation to come).

The official programme, advice about the hearing date/s, and names of the agencies required to appear will be sent as soon as we receive any confirmation from the Committee Secretariat.

Please be reminded that hot topic briefs and witness/observer lists are due to the Senate Estimates Inbox by 10.00am Wednesday, 5 October 2016.

Please let me know if you have any questions.

Warm regards

s 47F

s 47F

| Attorney-General's Department

T: (02) 6141 3627 | E: s 47F @ag.gov.au

You are currently subscribed to agd_agency_contact_list as:

s 47F@humanrights.gov.au.

To unsubscribe click here:

http://lstsvr1.ag.gov.au/u?id=64668.55e875a41fe6ef14540212235cf7d507&n=T&l=agd_agency_contact_list&o=184492

or send a blank email to leave-184492-64668.55e875a41fe6ef14540212235cf7d507@lstsvr1.ag.gov.au

If you have received this transmission in error please notify us immediately by return e-mail and delete all copies. If this e-mail or any attachments have been sent to you in error, that error does not constitute waiver of any confidentiality, privilege or copyright in respect of information in the e-mail or attachments.

Michelle Lindley

From: s 47F
Sent: Tuesday, 6 December 2016 3:45 PM
To: Graeme Edgerton
Subject: Chart [SEC=UNCLASSIFIED]
Attachments: Complaints Process chart.docx

Kind regards

s 47F

Executive Assistant to the President, Professor Gillian Triggs

Australian Human Rights Commission

Level 3, 175 Pitt Street, Sydney NSW 2000
GPO Box 5218, Sydney NSW 2001

E s 47F @humanrights.gov.au | W humanrights.gov.au

Human rights: everyone, everywhere, everyday



[Buy your tickets](#) for the 2016 Human Rights Awards today!

Michelle Lindley

From: s 47F
Sent: Wednesday, 7 December 2016 2:03 PM
To: Graeme Edgerton
Subject: complaints process chart - [SEC=UNCLASSIFIED]
Attachments: IGA_7_12_2016_13_59_59_302.pdf

Hi Graeme

s 47F s 47C, s 47E

FYI

s 47F

Michelle Lindley

From: s 47F
Sent: Thursday, 8 December 2016 11:42 AM
To: Graeme Edgerton
Subject: Complaints Process chart 161208.docx [DLM=Sensitive:Personal]
Attachments: Complaints Process chart 161208.docx

Hi Graeme

s 42, s 47C, s 47E, s 47F

Thanks,

s 47F

Michelle Lindley

From: Darren Dick
Sent: Thursday, 10 November 2016 4:29 PM
To: Commissioners
Cc: Julie O'Brien; Graeme Edgerton; s 47F
Subject: Freedom of speech inquiry [SEC=UNCLASSIFIED]
Attachments: JPCHR inquiry.docx

Dear Commissioners

s 47C, s 47E

Regards
Darren

Darren Dick
Director - Policy and Programs
Australian Human Rights Commission

Level 3, 175 Pitt St, Sydney NSW 2000
GPO Box 5218, Sydney NSW 2001

@humanrights.gov.au [W www.humanrights.gov.au](http://www.humanrights.gov.au)

Michelle Lindley

From: Graeme Edgerton
Sent: Wednesday, 7 December 2016 9:05 PM
To: Julie O'Brien
Subject: Notes for hearing [DLM=Sensitive:Legal]
Attachments: s 42, s 47C, s 47E

.docx

Hi Julie,

s 42, s 47C, s 47E

Cheers,
Graeme

Graeme Edgerton

Senior Lawyer

Australian Human Rights Commission

Level 3, 175 Pitt Street, Sydney NSW 2000

GPO Box 5218, Sydney NSW 2001

| [W humanrights.gov.au](http://www.humanrights.gov.au)

Human rights: everyone, everywhere, everyday

Season's Greetings from all of us at the Australian Human Rights Commission.

The Commission will be closed from 24 December 2016 and reopens on 3 January 2017.

Michelle Lindley

From: Julie O'Brien
Sent: Tuesday, 6 December 2016 6:56 PM
To: Graeme Edgerton
Subject: [DLM=Sensitive:Legal]
Attachments: s 42, s 47C, s 47E docx

s 42, s 47C, s 47E

J

Julie O'Brien

Director, Legal Section

Australian Human Rights Commission

Level 3, 175 Pitt Street, Sydney NSW 2000

GPO Box 5218, Sydney NSW 2001

[W humanrights.gov.au](http://humanrights.gov.au)

Human rights: everyone, everywhere, everyday



[Buy your tickets](#) for the 2016 Human Rights Awards today!

Michelle Lindley

From: Graeme Edgerton
Sent: Thursday, 8 December 2016 6:23 PM
To: Julie O'Brien
Subject: [DLM=Sensitive:Legal]
Attachments: Draft [REDACTED] docx

Hi Julie,

s 42, s 47C, s 47E

Cheers,
Graeme

Graeme Edgerton
Senior Lawyer

Australian Human Rights Commission
Level 3, 175 Pitt Street, Sydney NSW 2000
GPO Box 5218, Sydney NSW 2001

| [W humanrights.gov.au](http://www.humanrights.gov.au)

Human rights: everyone, everywhere, everyday

*Season's Greetings from all of us at the Australian Human Rights Commission.
The Commission will be closed from 24 December 2016 and reopens on 3 January 2017.*

Michelle Lindley

Not within request

-----Original Message-----

From: Tim Soutphommasane

Sent: Tuesday, 13 December 2016 5:40 PM

To: Graeme Edgerton @humanrights.gov.au>

Cc: Gillian Triggs @humanrights.gov.au>; Edward Santow

@humanrights.gov.au>; Padma Raman

@humanrights.gov.au>;

Julie O'Brien @humanrights.gov.au>

Subject: Re: Freedom of speech inquiry transcript [DLM=Sensitive:Legal]

s 42, s 47C, s 47E

Thanks
Tim

Sent from my iPhone

> On 13 Dec. 2016, at 2:09 pm, Graeme Edgerton
wrote:

@humanrights.gov.au>

>

> All,

>

> Attached is the

transcript<<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22committees%2Fcommjnt%2F8cee83ef-31be-4aad-9696-55de0c602a09%2F0000%22>> of the hearing
yesterday at the PJCHR.

s 42, s 47C, s 47E

> Kind regards,
> Graeme
>

s 42, s 47C, s 47E

-
- ¹ 'Politics podcast: Julian Leaser on section 18C of the Racial Discrimination Act' *Politics with Michelle Grattan*, 8 November 2016. At <https://theconversation.com/politics-podcast-julian-leaser-on-section-18c-of-the-racial-discrimination-act-68432> (viewed 8 December 2016).
- ² These are recommendations 1, 2 and 3 in the Commission's submission.
- ³ AHRC Act, s 46PH(1)(c).

s 47C, s 47E

⁴ *Assal v Department of Health, Housing and Community Services* (1992) EOC ¶92-409 at 78,900; [1990] HREOCA 8. See the discussion in the Commission's submission at [193]-[202].

⁵ See the discussion in the Commission's submission at [218]-[224].

⁶ These are recommendations 1 and 2 in the Commission's submission. See the discussion in the Commission's submission at [182]-[192].

s 47C, s 47E

⁷ *Brandy v Human Rights and Equal Opportunity Commission* (1995) 183 CLR 245, 264 (Mason CJ, Brennan and Toohey JJ), 271 (Deane, Dawson, Gaudron and McHugh). See the discussion in the box in the Commission's submission at [160].

⁸ See the discussion in the Commission's submission at [227]-[230].

⁹ This is recommendation 3 in the Commission's submission. See the discussion in the Commission's submission at [204]-[214].

s 47C, s 47E

¹⁰ *Australian Equity Investors, An Arizona Limited Partnership v Colliers International (NSW) Pty Limited* [2012] FCAFC 57 at [25].

¹¹ *KP Cable Investments Pty Ltd v Meltglow Pty Ltd* (1995) 56 FCR 189.

¹² *Barton v Minister for Foreign Affairs* (1984) 54 ALR 586 at 592.

s 47C, s 47E

s 47C, s 47E

s 47C, s 47E

s 47C, s 47E

s 47C, s 47E

S 47C, S 47E

s 47C, s 47E

s 47C, s 47E



Australian
Human Rights
Commission

Memo

To: Kate Jenkins
From: Julie O'Brien
CC: Padma Raman
Date: 11 October 2016
Re: **ABS Exemption**

Kate,

s 47C, s 47E, s 42

s 42, s 47C, s 47E



e

Budget Estimates (Supplementary Hearings)

17 October 2016

Australian Human Rights Commission

CONTENTS

1	AUSTRALIAN HUMAN RIGHTS COMMISSION WITNESS LIST	5
2	PORTFOLIO BUDGET STATEMENTS 2016-2017 (From May 2016).....	6
3	BACKPOCKET BRIEFS	17
3.1	<i>Index of briefing topics</i>	17
	<i>AHRC-01 – Australian Defence Force (ADF) Collaboration.....</i>	<i>18</i>
	<i>AHRC-02 – Recent AHRA Act Reports.....</i>	<i>20</i>
	<i>AHRC-03 – Pathways to Protection Report</i>	<i>26</i>
	<i>AHRC-04 – Children’s Report: Consultations on the Optional Protocol to the Convention Against Torture (OPCAT) and Don Dale Youth Detention Centre</i>	<i>28</i>
	<i>AHRC-05 – Indigenous Property Rights and Economic Development.....</i>	<i>31</i>
	<i>AHRC-06 – BSWAT Exemption.....</i>	<i>36</i>
	<i>AHRC-07 – National Anti-Racism Partnership and Strategy (NARPS).....</i>	<i>38</i>
	<i>AHRC-08 – Universal Periodic Review – Australia 2nd Cycle Review.....</i>	<i>41</i>
	<i>AHRC-09 – Prior -v- Queensland University of Technology Case</i>	<i>44</i>
	<i>AHRC-10 – Complaints in the Media</i>	<i>46</i>
	<i>AHRC-11 – University Sexual Assault and Sexual Harassment Project.....</i>	<i>49</i>
	<i>AHRC-12 – ABS Exemption</i>	<i>53</i>
	<i>AHRC-13 – ATAA and ‘Racism. It Stops With Me’</i>	<i>55</i>
	UNIT BRIEFINGS	57
3.2	<i>Complaint Handling Report</i>	57
3.3	<i>Legal Report.....</i>	63
4	HANSARDS FROM PRIOR SENATE HEARINGS.....	66
4.1	<i>5 May 2016 (Budget Estimates)</i>	66
4.2	<i>9 February 2016 (Additional Estimates).....</i>	96
5	QUESTIONS ON NOTICE FROM PRIOR SENATE HEARINGS	162
5.1	<i>23 May 2016 (Budget Estimates)</i>	162
	<i>Question No. BE16/001 (Senator Macdonald - Number of Complaints Applying to Refugee, Immigration and Asylum Seeker Issues)</i>	<i>162</i>
	<i>Question No. BE16/002 (Senator Hanson-Young – Jail Sentence for Attempted Suicide).....</i>	<i>163</i>
	<i>Question No. BE16/003 (Senator Hanson–Young – Non-Refoulement Based on Abortion)</i>	<i>165</i>
	<i>Question No. BE16/004 (Senator Hanson-Young – Non-Refoulement Based on Sexual Orientation)</i>	<i>167</i>
	<i>Question No. BE16/005 (Senator Hanson-Young – Legal Status of the Widow of an Asylum Seeker).....</i>	<i>169</i>
	<i>Question No. BE16/006 (Senator Heffernan – Handling of a Child Trafficking Case)</i>	<i>170</i>
	<i>Question No. BE16/007 (Senator McKim – Australian Human Rights Commission’s Position on Post-Sentence Preventative Detention).....</i>	<i>172</i>

Question No. BE16/008 (Senator Hanson-Young – At-Risk Legal Status of Potentially Stateless Children).....	174
5.2 9 February 2016 (Additional Estimates)	175
Question No. AE16/002 (Senator Canavan – UPR Submission – Same Sex Marriage)	175
Question No. AE16/003 (Senator Collins – Travel to the UN)	176
Question No. AE16/004 (Senator Collins – HR Ambassadors)	179
Question No. AE16/005 (Senator Collins – AHR Commissioner Travel Expenses)	180
Question No. AE16/006 (Senator Collins – Travel Costs)	182
Question No. AE16/007 (Senator Collins – Gifts)	187
Question No. AE16/008 (Senator Canavan – UPR)	188
Question No. AE16/009 (Senator O'Sullivan – Trauma Levels of Refugees)	190
Question No. AE16/010 (Senator McKim – Permanent Residency)	192
Question No. AE16/011 (Senator MacDonald – Geneva UPR)	196
Question No. AE16/012 (Senator McKim – Workplaces Act)	197
Question No. AE16/062 (Senator Xenophon – SeMPRO)	199
Question No. AE16/063 (Senator Xenophon – SeMPRO)	201
6 MEDIA RELEASES FROM 5 May 2016 – 13 September 2016	202
Commission Welcomes New Appointments	202
Close the Gap Campaign voices support for National Congress.....	203
Sexual Harassment and Assault on Campus	204
NSW report highlights ageing population crisis	205
Age and disability employment summit	206
Commission calls on all to recognise World Elder Abuse Day	207
Mick Gooda congratulates Tanya Hosch on AFL appointment.....	208
Blueprint challenges organisations to rethink Anglo-Celtic bias	209
AHRC welcomes new Commissioners	210
AHRC welcomes Gooda to Royal Commission.....	211
AG appoints interim Social Justice Commissioner	212
Universities partner on sexual assault survey	213
Commission offers alternatives to third country processing.....	215
7 OPINION PIECES.....	217
<i>I didn't imagine we would need a Sex Discrimination Commissioner in 2016 by Kate Jenkins, Sex Discrimination Commissioner, published in the Sydney Morning Herald on Wednesday 4 May 2016.....</i>	<i>217</i>
<i>Workplace sexism: we still don't want to talk about it by Kate Jenkins, Sex Discrimination Commissioner, published in the Australian Financial Review on Wednesday 1 June 2016.....</i>	<i>220</i>
<i>57 seconds - that's all it took to undo much of the good work done by many sports codes by Kate Jenkins, Sex Discrimination Commissioner, published in The Herald Sun on Tuesday, 21 June 2016</i>	<i>222</i>
<i>Diversity is more than just souvlaki and dragon dance by Dr Tim Soutphommasane, Race Discrimination Commissioner, published in the Sydney Morning Herald on Friday 29 July 2016</i>	<i>224</i>
<i>Indigenous injustice: it beggars belief that so much evidence was ignored by Professor Gillian Triggs, President, published in The Guardian on Tuesday 2 August 2016</i>	<i>226</i>

*The NDIS: delivering results, delivering equality and even delivering your coffee by
Mr Alastair McEwin, Disability Discrimination Commissioner, published in
Fairfax Newspapers on Thursday, 6 October 2016..... 229*

1 AUSTRALIAN HUMAN RIGHTS COMMISSION WITNESS LIST

- Professor Gillian Triggs, President of the Australian Human Rights Commission and Acting Aboriginal and Torres Strait Islander Social Justice Commissioner
- Dr Tim Soutphommasane, Race Discrimination Commissioner
- Ms Megan Mitchell, Children's Commissioner
- Mr Alistair McEwin, Disability Discrimination Commissioner
- Mr Edward Santow, Human Rights Commissioner
- Ms Kate Jenkins, Sex Discrimination Commissioner
- Dr Kay Patterson, Age Discrimination Commissioner
- Ms Padma Raman, Executive Director

2 PORTFOLIO BUDGET STATEMENTS 2016-2017 (From May 2016)

AUSTRALIAN HUMAN RIGHTS COMMISSION

Section 1: Entity overview and resources

1.1 STRATEGIC DIRECTION STATEMENT

The Australian Human Rights Commission (the Commission) is Australia's national human rights institution that provides independent and impartial services to promote and protect human rights and fundamental freedoms, and address discrimination.

The Commission works to build understanding of and respect for rights in our community. Its role is to conduct education and awareness-raising about rights and responsibilities, contribute to the prevention of discrimination and human rights breaches within society, and provide access to justice in relation to alleged discrimination and breaches of human rights.

The Commission has identified three strategic priorities for 2015-19 of tackling violence, harassment and bullying; working with business to improve productivity and promote best practice in respecting human rights and fundamental freedoms; and building awareness of rights and freedoms across the community and encouraging a culture of respect and responsibility that values dignity.

The Commission exercises functions under the following Acts:

- *Australian Human Rights Commission Act 1986*
- *Racial Discrimination Act 1975*
- *Sex Discrimination Act 1984*
- *Disability Discrimination Act 1992*
- *Age Discrimination Act 2004*.

Functions under these Acts are vested in the Commission as a whole, individual members, the President as Chief Executive Officer or the Attorney-General. The Commission also has functions under the *Fair Work Act 2009* and *Native Title Act 1994*.

The Commission has independent participation status at a number of United Nations human rights bodies to address the implementation status of Australia's international human rights obligations.

The Commission works closely with other government agencies, the business community, the non-government sector and individuals to fulfil its role. The Commission aims to provide an independent, timely and effective complaint handling function in accordance with legislative requirements.

Its services are evaluated through both qualitative and quantitative measures, including project-specific evaluations, complaint statistics and a service satisfaction survey.

In the 2014–15 Budget, the government announced that the Office of the Australian Information Commissioner (OAIC) would cease operation from 1 January 2015, with an Office of the Privacy Commissioner established as a separate statutory office within the Australian Human Rights Commission.

The government has decided that it will not proceed with the legislation and that the OAIC will remain responsible for privacy and freedom of information regulation. Funding provided to the Commission for privacy functions will be reappropriated in full to the OAIC in the 2016–17 Budget.

1.2 ENTITY RESOURCE STATEMENT

Table 1.1 shows the total funding from all sources available to the Commission for its operations and to deliver programs and services on behalf of the government.

Table 1.1 is prepared on a resourcing (appropriations and cash available) basis, while the outcome expenses table in section 2 and the financial statements in section 3 are prepared on an accrual basis.

Table 1.1: Entity resource statement—Budget estimates for 2016–17 as at Budget May 2016

	2015–16 Estimated actual \$'000	2016–17 Estimate \$'000
Opening balance and cash reserves at 1 July	13,388	12,906
FUNDS FROM GOVERNMENT		
Annual appropriations—ordinary annual services(a)		
Outcome 1	15,515	14,583
Amounts from other entities	6,570	6,660
Total funds from government	22,085	21,253
FUNDS FROM OTHER SOURCES		
Interest	350	400
Sale of goods and services	674	825
Other	51	51
Total funds from other sources	1,075	1,276
Total net resourcing for entity	36,548	35,435
	2015–16	2016–17
Average staffing level (number)	114	111

Note: All figures are GST exclusive and may not match figures in the cash flow statement.

(a) Appropriation Bill (No. 1) 2016–17.

1.3 BUDGET MEASURES

Budget measures announced since the 2015–16 Mid-Year Economic and Fiscal Outlook (MYEFO) relating to the Commission are detailed in Budget Paper No. 2 and are summarised in Part 1 of Table 1.2. MYEFO measures and other measures not previously reported in a portfolio statement are summarised in Part 2.

Table 1.2: Entity 2016–17 Budget measures

Part 1: Measures announced since the 2015–16 MYEFO

	Program	2015–16 \$'000	2016–17 \$'000	2017–18 \$'000	2018–19 \$'000	2019–20 \$'000
Expense measures						
Office of the Australian Information Commissioner—continuation	1.1					
Departmental expenses		–	(6,715)	(6,655)	(6,671)	(6,686)
Total expense measures		–	(6,715)	(6,655)	(6,671)	(6,686)

Prepared on a Government Finance Statistics (fiscal) basis. Figures displayed as a negative represent a decrease in funds, and figures displayed as a positive represent an increase in funds.

Part 2: MYEFO measures and other measures not previously reported in a portfolio statement

	Program	2015–16 \$'000	2016–17 \$'000	2017–18 \$'000	2018–19 \$'000	2019–20 \$'000
Expense measures						
Attorney-General's—one-off efficiency savings to specific agencies	1.1					
Departmental expenses		–	(526)	(526)	(527)	(527)
Public Sector Superannuation Accumulation Plan administration fees(a)	1.1					
Departmental expenses		–	(12)	(12)	(12)	(12)
Total expense measures		–	(538)	(538)	(539)	(539)

Prepared on a Government Finance Statistics (fiscal) basis. Figures displayed as a negative represent a decrease in funds, and figures displayed as a positive represent an increase in funds.

(a) This is a cross-portfolio measure that was published in the 2014–15 MYEFO. The lead entity is the Department of Finance.

Section 2: Outcomes and planned performance

Government outcomes are the intended results, impacts or consequences of actions by the government on the Australian community. Commonwealth programs are the primary vehicle by which government entities achieve the intended results of their outcome statements. Entities are required to identify the programs that contribute to government outcomes over the budget and forward years.

The Commission's outcome is described below together with its related program.

2.1 BUDGETED EXPENSES AND PERFORMANCE FOR OUTCOME 1

Outcome 1: An Australian society in which human rights are respected, protected and promoted through independent investigation and resolution of complaints, education and research to promote and eliminate discrimination, and monitoring and reporting on human rights

Budgeted expenses for Outcome 1

Table 2.1 shows how much the Commission intends to spend (on an accrual basis) on achieving Outcome 1.

Table 2.1: Budgeted expenses for Outcome 1

	2015-16 Estimated actual \$'000	2016-17 Budget \$'000	2017-18 Forward estimate \$'000	2018-19 Forward estimate \$'000	2019-20 Forward estimate \$'000
Program 1.1: Australians have access to independent human rights complaint handling and public inquiries processes and benefit from human rights education, promotion and monitoring, and compliance activities					
Revenue from government					
Ordinary annual services (Appropriation Bill No. 1)	15,515	14,593	14,720	16,811	16,978
Payments from related entities	6,570	6,660	6,760	6,760	6,760
Resources received free of charge	51	51	51	51	51
Revenues from other independent sources	924	1,225	1,125	1,125	1,125
Total expenses for Outcome 1	23,060	22,529	22,656	24,747	24,914

	2015-16	2016-17
Average staffing level (number)	114	111

Performance criteria for Outcome 1

Table 2.2 details the performance criteria for the program associated with Outcome 1. It also summarises how the program is delivered.

Table 2.2: Performance criteria for Outcome 1

Outcome 1: An Australian society in which human rights are respected, protected and promoted through independent investigation and resolution of complaints, education and research to promote and eliminate discrimination, and monitoring and reporting on human rights		
Program 1.1: Australians have access to independent human rights complaint handling and public inquiries processes and benefit from human rights education, promotion and monitoring, and compliance activities		
The Commission provides leadership to ensure human rights issues are on the national agenda, with the goal that human rights and fundamental freedoms are respected and protected in Australian law, policy and practice. We provide impartial information and dispute resolution services to prevent and resolve disputes about breaches of human rights and discrimination, and conduct research and project work that is evidence-based and contributes to improved protection and respect for human rights.		
Delivery	The following delivery strategies support, target and benefit a range groups and audiences: <ul style="list-style-type: none">an efficient and effective information and investigation and conciliation service that assists members of the public to understand rights and responsibilities and take action to prevent and resolve disputes about discrimination and breaches of human rightstimely analysis of how law, policy and practice can better respect and protect rights and freedoms, particularly through engaging with parliamentary and government inquiry processes, applying our expertise in court proceedings and reporting breaches of human rights to Parliamentdelivery of educational programs to promote awareness of human rights, with a focus on schools, early education settings, the public sector (federal, state and local government) and employersresearch and consultations that identify best practice and compliance with human rights with a particular emphasis on vulnerable groups, including children and Aboriginal and Torres Strait Islander peoples, through the preparation of annual reports to Parliamentengagement with the United Nations and other international and regional partners to promote the full implementation of human rights and freedoms in Australia and within our region, in our capacity as a national human rights institution.	
Performance information		
Year	Performance criteria	Targets [expected achievement]
2015–16	Percentage of parties satisfied with the overall investigation and complaint handling process	80% of parties to complaints are satisfied with the service provided
	Percentage of complaints finalised within 12 months	80% of complaints are finalised in under 12 months
	Percentage of complaints conciliated per annum	30% of complaints are resolved by conciliation
	Customer/stakeholder surveys to rate the effectiveness of major educational and promotional activity	80% of surveyed respondents rate as effective
	Extent of contact with government, community and industry groups	More than 70,000 publications are distributed and more than 35 million website hits

Program 1.1: Australians have access to independent human rights complaint handling and public inquiries processes and benefit from human rights education, promotion and monitoring, and compliance activities		
Performance information		
Year	Performance criteria	Targets [expected achievement]
2016–17	<p>We provide an efficient and effective complaint service</p> <p>Our public presence and communications increase public awareness and debate about human rights issues</p> <p>Our research, reports and recommendations are cited or acted upon by Parliament, governments, the courts, businesses and in the community</p> <p>Effective education, training and information resources increase human rights knowledge and skills and contribute to changes in behaviours and attitudes</p>	<p>85% of complaints are finalised in under 12 months</p> <p>40% of complaints are resolved by conciliation</p> <p>85% of parties to complaints are satisfied with the service they receive</p> <p>Effective reach among identified audiences with relevant and useful information about human rights is demonstrated by web and social media analytics that exceed the previous year's bench mark by 5%</p> <p>Citation and other analyses of parliamentary debates and committee reports demonstrate that our research and recommendations have contributed to human rights impacts being considered</p> <p>Evaluations of our education and training programs demonstrate that:</p> <ul style="list-style-type: none"> learning objectives have been met for the majority of participants the majority of participants are satisfied with the quality and relevance of the training. the new school resources are of a satisfactory quality and relevance to the National Curriculum
2017–18 and beyond	Same as for 2016–17	Same as for 2016–17
Purpose	As Australia's national human rights institution, our purpose is to provide independent and impartial services to promote and protect human rights and fundamental freedoms, and address discrimination.	

Section 3: Budgeted financial statements

This section presents budgeted financial statements that provide a comprehensive snapshot of entity finances for the 2016–17 budget year, including the impact of budget measures and resourcing.

3.1 DIFFERENCES BETWEEN ENTITY RESOURCING AND FINANCIAL STATEMENTS

There is no material difference between the entity resourcing and financial statements.

3.2 ANALYSIS OF BUDGETED FINANCIAL STATEMENTS

Income statement

In 2016–17, income is budgeted at \$22.529m. This is a net decrease of \$0.531m over the 2015–16 estimated actual of \$23.060m. The decrease in revenue is primarily due to the *Attorney-General's – one-off efficiency savings to specific agencies* measure.

The Commission's revenue from government has decreased from \$15.515m for 2015–16 to \$14.593m for 2016–17. This is the net result of new measures, cumulative parameter adjustments, the application of the efficiency dividend, and targeted and additional one-off savings measures.

Own-source revenue funding arising from service fees and direct cost recoveries is projected to be \$7.885m in 2016–17. The revenues arise primarily from the supply of international human rights technical assistance programs to the Department of Foreign Affairs and Trade, accommodation and shared services under a memorandum of understanding with the Office of the Australian Information Commissioner and interest income from bank deposits with the Reserve Bank of Australia. The 2016–17 period also includes projected cost recoveries from the continuation of the review into gender equality in the Australian Defence Force.

The expenditure reflects the anticipated costs from delivering the Commission's deliverables under its outcome and fee-for-service activities identified above for the 2016–17 Budget and forward estimates.

Balance sheet

In 2015–16 the Commission anticipates capital expenditure of \$0.455m for the purchase and replacement of end-of-life assets and equipment.

3.3 BUDGETED FINANCIAL STATEMENTS TABLES

Table 3.1: Comprehensive income statement (showing net cost of services) for the period ended 30 June

	2015-16 Estimated actual \$'000	2016-17 Budget \$'000	2017-18 Forward estimate \$'000	2018-19 Forward estimate \$'000	2019-20 Forward estimate \$'000
EXPENSES					
Employee benefits	15,090	15,545	15,545	17,313	17,313
Suppliers	7,075	6,089	6,216	6,696	6,863
Depreciation and amortisation	895	895	895	738	738
Total expenses	23,060	22,529	22,656	24,747	24,914
LESS:					
OWN-SOURCE INCOME					
Own-source revenue					
Sale of goods and rendering of services	6,159	6,500	6,500	6,500	6,500
Interest	350	400	400	400	400
Rental income	985	985	985	985	985
Total own-source revenue	7,494	7,885	7,885	7,885	7,885
Gains					
Other	51	51	51	51	51
Total gains	51	51	51	51	51
Total own-source income	7,545	7,936	7,936	7,936	7,936
Net cost of (contribution by) services	15,515	14,593	14,720	16,811	16,978
Revenue from government	15,515	14,593	14,720	16,811	16,978
Surplus (deficit) attributable to the Australian Government	-	-	-	-	-
OTHER COMPREHENSIVE INCOME					
Changes in asset revaluation surplus	-	-	-	-	-
Total other comprehensive income	-	-	-	-	-
Total comprehensive income (loss)	-	-	-	-	-
Total comprehensive income (loss) attributable to the Australian Government	-	-	-	-	-

Prepared on Australian Accounting Standards basis.

Table 3.2: Budgeted departmental balance sheet (as at 30 June)

	2015-16 Estimated actual \$'000	2016-17 Budget \$'000	2017-18 Forward estimate \$'000	2018-19 Forward estimate \$'000	2019-20 Forward estimate \$'000
ASSETS					
Financial assets					
Cash and cash equivalents	11,856	11,525	11,007	10,133	10,558
Trade and other receivables	102	102	102	102	102
Total financial assets	11,958	11,627	11,109	10,235	10,660
Non-financial assets					
Property, plant and equipment	3,643	3,602	3,587	3,712	3,654
Intangibles	555	425	485	607	729
Other non-financial assets	161	161	161	161	161
Total non-financial assets	4,359	4,188	4,233	4,480	4,544
Total assets	16,317	15,815	15,342	14,715	15,204
LIABILITIES					
Payables					
Suppliers	372	372	372	372	372
Other payables	1,361	1,437	1,256	1,075	1,075
Total payables	1,733	1,809	1,628	1,447	1,447
Non-interest-bearing liabilities					
Lease incentives	2,830	2,026	1,222	418	–
Total non-interest-bearing liabilities	2,830	2,026	1,222	418	–
Provisions					
Employee provisions	4,250	4,397	4,547	4,550	4,550
Other provisions	6,258	6,337	6,699	7,054	7,961
Total provisions	10,508	10,734	11,246	11,604	12,511
Total liabilities	15,071	14,569	14,096	13,469	13,958
Net assets	1,246	1,246	1,246	1,246	1,246
EQUITY					
Parent entity interest					
Contributed equity	2,511	2,511	2,511	2,511	2,511
Reserves	1,077	1,077	1,077	1,077	1,077
Retained surplus (accumulated deficit)	(2,342)	(2,342)	(2,342)	(2,342)	(2,342)
Total parent entity interest	1,246	1,246	1,246	1,246	1,246
Total equity	1,246	1,246	1,246	1,246	1,246

Prepared on Australian Accounting Standards basis.

Table 3.3: Departmental statement of changes in equity—summary of movement (budget year 2016–17)

	Retained earnings \$'000	Asset revaluation reserve \$'000	Contributed equity/ capital \$'000	Total equity \$'000
Opening balance as at 1 July 2016				
Balance carried forward from previous period	(2,342)	1,077	2,511	1,246
Adjustment for changes in accounting policies	—	—	—	—
Adjusted opening balance	(2,342)	1,077	2,511	1,246
Estimated closing balance as at 30 June 2017	(2,342)	1,077	2,511	1,246
Closing balance attributable to the Australian Government	(2,342)	1,077	2,511	1,246

Prepared on Australian Accounting Standards basis.

Table 3.4: Budgeted departmental statement of cash flows (for the period ended 30 June)

	2015–16 Estimated actual \$'000	2016–17 Budget \$'000	2017–18 Forward estimate \$'000	2018–19 Forward estimate \$'000	2019–20 Forward estimate \$'000
OPERATING ACTIVITIES					
Cash received					
Appropriations	15,515	14,593	14,720	16,811	16,978
Sale of goods and rendering of services	7,244	7,485	7,395	7,485	7,485
Interest	350	400	400	400	400
Net GST received	150	150	150	150	—
Total cash received	23,259	22,628	22,665	24,846	24,863
Cash used					
Employees	15,504	15,936	15,895	18,020	17,313
Suppliers	7,680	7,618	6,718	7,200	6,625
Cash transferred to the Official Public Account	1,050	—	—	—	—
Total cash used	24,234	23,554	22,613	25,220	23,938
Net cash from (used by) operating activities	(975)	(926)	52	(374)	925
INVESTING ACTIVITIES					
Cash used					
Purchase of property, plant and equipment and intangibles	557	455	570	500	500
Total cash used	557	455	570	500	500
Net cash from (used by) investing activities	(557)	(455)	(570)	(500)	(500)
Net increase (decrease) in cash held	(1,532)	(1,381)	(518)	(874)	425
Cash and cash equivalents at the beginning of the reporting period	13,388	12,906	11,525	11,007	10,133
Cash and cash equivalents at the end of the reporting period	11,856	11,525	11,007	10,133	10,558

Prepared on Australian Accounting Standards basis.

Table 3.5: Departmental capital budget (for the period ended 30 June)

The Commission does not receive capital budget funding.

Table 3.6: Statement of asset movements (budget year 2016–17)

	Property, plant & equipment \$'000	Computer software & intangibles \$'000	Total \$'000
As at 1 July 2016			
Gross book value	3,643	1,433	5,076
Accumulated depreciation/amortisation and impairment	—	(878)	(878)
Opening net book balance	3,643	555	4,198
CAPITAL ASSET ADDITIONS			
Estimated expenditure on new or replacement assets			
By purchase—appropriation ordinary annual services(a)	455	—	455
Total additions	455	—	455
Other movements			
Depreciation/amortisation expense	(710)	(185)	(895)
Other	214	55	269
Total other movements	(496)	(130)	(626)
As at 30 June 2017			
Gross book value	4,312	1,488	5,800
Accumulated depreciation/amortisation and impairment	(710)	(1,063)	(1,773)
Closing net book balance	3,602	425	4,027

Prepared on Australian Accounting Standards basis.

(a) 'Appropriation ordinary annual services' refers to funding provided through Appropriation Bill (No. 1) 2016–17 for operational expenses.

3 BACKPOCKET BRIEFS

3.1 Index of briefing topics

INDEX

BACKPOCKETS

AHRC 01 – Australian Defence Force (ADF) Collaboration

AHRC 02 – Recent AHRC Act Reports

AHRC 03 – Pathways to Protection Report

AHRC 04 – Children’s Report: Consultations on the Optional Protocol to the Convention Against Torture (OPCAT) and Don Dale Youth Detention Centre

AHRC 05 – Indigenous Property Rights and Economic Development

AHRC 06 – BSWAT Exemption

AHRC 07 – National Anti-Racism Partnership and Strategy (NARPS)

AHRC 08 – Universal Periodic Review – Australia 2nd Cycle Review

AHRC 09 – Prior -v- Queensland University of Technology Case

AHRC 10 – s 47C, s 47E

AHRC-11 – University Sexual Assault and Sexual Harassment Project

AHRC-12 – ABS Exemption

AHRC-13 – s 47C, s 47E, s 42

BACKPOCKET BRIEF***AHRC-01 – Australian Defence Force (ADF) Collaboration***

Background

On July 1 2014 the Australian Human Rights Commission (the Commission) entered into a collaborative relationship with the Australian Defence Force (ADF) to assist it to embed cultural change across the three Services (Army, Navy and Air Force) and to ensure the intent of the Defence cultural change strategy, *Pathway to Change*, is fully realised. Specifically, the work includes an examination of issues relating to gender, cultural and ethnic background, sexual orientation and the impact of social media and alcohol on unacceptable behaviour.

The work is undertaken by a dedicated ADF Cultural Reform team (the team) and involves visits to bases and focus groups and interviews with personnel, as well as analysis of relevant reference material. Under the terms of reference, reports are to be provided to Defence that may include strategies for further reform.

Process

The purpose and scope of each project and related base visits are determined in consultation with each of the Services. The visits include focus groups and interviews with personnel, administering a survey with focus group and interview participants and briefings with Command Teams. Prior to each visit a range of information is provided by Defence regarding the base, including prevalence data on unacceptable behaviour and complaints.

Base visits to date, include:

1. HMAS Cerberus (Victoria) – August 2014
2. RAAF School of Fire and Security (SFS), Amberley (Queensland) – September 2014
3. Al Minhad Air Base (United Arab Emirates) – November 2014
4. RAAF Base, Edinburgh (South Australia) – November 2014
5. Australian Defence Force Academy (ADFA) (Canberra) – December 2014
6. Gallipoli Barracks (Queensland) – March 2015
7. HMAS Creswell (New South Wales) – April 2015
8. RAAF Williamtown (New South Wales) – May 2015
9. RAAF Amberley (Queensland) – July 2015
10. RAAF Pearce (Western Australia) - September 2015
11. Basic Flying Training School, Tamworth (New South Wales)- September 2015
12. HMAS Cairns - October 2015
13. Army Logistical Training Centre (ALTC), Bandiana (New South Wales) - November 2015
14. HMAS Cerberus (Victoria) – March 2016
15. Robertson Barracks (Northern Territory) – April 2016

16. HMAS Cerberus (Victoria)- July 2016
17. HMAS Kuttabul and HMAS Waterhen (New South Wales)- September 2016
18. HMAS Coonawarra (Northern Territory) – September 2016

Themes covered during visits include:

- Leadership and communication
- Cultural change programs
- Representation of women and particular issues experienced by women
- Representation of Aboriginal and Torres Strait Islander members
- Representation of culturally and linguistically diverse members
- Representation of LGBTI members
- Flexible work and child care options
- Unacceptable behaviour, including nature, prevalence and reporting

Reports on HMAS Cerberus, SFS Amberley, Al Minhad Air Base, RAAF Edinburgh, ADFA, Gallipoli Barracks, HMAS Creswell, HMAS Cairns, ALTC and Robertson Barracks have been forwarded to Defence. An extended research report 'Improving opportunities for women to become fast jet pilots in Australia' was also been provided to Defence in June 2016.

Specific projects currently underway include:

- Examining cultural change in the context of Plan Beersheba – Army's deployment cycle strategy. The next visit will be to 3 Brigade in Townsville in November 2016.
- Examining workforce issues, particularly any cultural issues related to the recruitment and retention of women and culturally and linguistically diverse Navy Marine Technicians. This project will be completed in April 2017.
- Examining Air Force's gender programs, including the Women's Integrated Networking Groups (WINGs), experiential camps, Technet and Graduate Pilot Scheme. This project will commence in October 2016.

Budget and Staffing

Funding of approximately \$6 million over four years (14/15 – 17/18) is being provided by Defence to the Commission to undertake this work. The team currently includes 5 staff (1 full time and 4 part time).

Version #: 1	Cleared by:	Action officer: s 47F	Manager, ADF Cultural Reform Team
Current at: 22 September 2016	Phone number:	Action officer number: 02 9284	s 47F

BACKPOCKET BRIEF

AHRC-02 – Recent AHRA Act Reports

Six reports in which the Commission found human rights breaches by the Commonwealth have been tabled in Parliament this year:

- Kong v Commonwealth (DIBP) [2015] AusHRC 98
- CM v Commonwealth (DIBP) [2015] AusHRC 99
- HG v Commonwealth (DIBP) [2015] AusHRC 100
- AI v Commonwealth (DIBP) [2015] AusHRC 101
- Kolind v Commonwealth (DET) [2015] AusHRC 102
- Ghahani v Commonwealth (DIBP) [2015] AusHRC 103

The reports are available on the Commission website.

KONG v COMMONWEALTH [2015] AUSHRC 98

The Commission found that Mr Kong's detention in the Villawood Immigration Detention Centre from 28 March 2011 until 16 December 2011 amounted to a breach of his rights under article 9(1) of the ICCPR.

Mr Kong is a 46 year old citizen of the People's Republic of China, who was actively involved in the May 1989 Tiananmen Square protests. He first came to Australia on 4 March 2001 on a student visa. On 6 May 2004, Mr Kong's student visa was cancelled due to a breach of condition 8202 (meet course requirements). He was granted several bridging visas while he unsuccessfully challenged the Department's decision to cancel his visa through the courts.

On 20 March 2011, Mr Kong's bridging visa expired. On 28 March 2011, he voluntarily presented himself to the Department's compliance office and was then detained in the VIDC. On 20 April 2011, there was a riot at the VIDC. Mr Kong was identified as being involved in the riot and subsequently became 'a person of interest' to the Australian Federal Police. On 23 April 2011, he was moved to Blaxland compound, a high security facility within the VIDC. On 18 July 2011, Mr Kong was cleared of any involvement in the riot and transferred to the Hughes compound, a less restrictive facility. On 4 August 2011, Mr Kong initiated a hunger strike and was moved to the Annex where he remained until 6 September 2011. On 16 December 2011, Mr Kong was released from detention on a bridging visa. The Department granted Mr Kong a permanent protection visa on 7 November 2013.

The President was not satisfied that Mr Kong's detention in the VIDC was necessary or proportionate to the Commonwealth's legitimate aim of ensuring the effective operation of its migration system. Mr Kong had been living in the community on bridging visas prior to his detention and had presented himself voluntarily to the Department when his bridging visa expired. This indicated that Mr Kong was prepared to co-operate with the Department and suggests he did not represent a flight risk. There was no evidence that Mr Kong posed any risk to the Australian community. He was cleared of any involvement in the VIDC riot on 19 July 2011. The President found that the Department had not justified Mr Kong's detention in the VIDC.

The President made recommendations that the Commonwealth pay an appropriate amount of compensation to Mr Kong and provide him with a formal apology. These recommendations were not accepted by the Commonwealth.

CM v Commonwealth [2015] AusHRC 99

The policy of deprioritising family reunion visa applications made by people recognised by Australia as refugees is the focus of this report by the Commission that was tabled in Parliament on 22 February 2016.

Mr CM arrived in Australia by boat from Sri Lanka in May 2012 and was granted a permanent protection visa in September 2013. Mr CM's wife subsequently applied for a Family Stream visa that would allow her and their two young children to migrate to Australia. Mr CM complained about a direction given by the Minister for Immigration and Border Protection to his delegates, which impacted on the priority given to his wife's visa application.

The direction provides that delegates are not to take into account any special circumstances of a compelling or compassionate nature in relation to Family Stream visa applications in which the applicant's sponsor is a person who entered Australia as an unauthorised maritime arrival and holds a permanent visa.

The President found that applying this policy only to asylum seekers arriving in Australia by boat was arbitrary. The direction was not necessary, reasonable or proportionate to the aim of discouraging unauthorised maritime arrivals from coming to Australia and was contrary to articles 17 and 23 of the International Covenant on Civil and Political Rights.

By preventing the consideration of compelling or compassionate circumstances that may justify a prompt consideration of applications for family reunification, the direction runs a serious risk of unnecessarily prolonging situations in which split families of Australian permanent residents are at risk.

The President recommended that the direction be amended and that the Minister take into account any special circumstances of a compelling or compassionate nature in considering the application by Mr CM's wife. At the time of reporting, the Commonwealth did not indicate that it was taking any action in response to the Commission's recommendations.

HG v Commonwealth [2015] AusHRC 100

The Commission found that the Department of Immigration and Border Protection failed to consider whether Mr HG could be placed in community detention, or another less restrictive form of detention, for a period of approximately 20 months. The Commission found this failure to be arbitrary and inconsistent with Mr HG's right to liberty under article 9 of the International Covenant on Civil and Political Rights.

Mr HG, a national of Iran, had been granted a Temporary Humanitarian visa and Bridging visa (BVE) on 25 March 2013. His BVE expired on 11 August 2013. On 21 August 2013, Mr HG attended the Department's office for consideration of his BVE re-grant. There he was intercepted by police, detained under s 189(1) of the Migration Act 1958 (Cth) and placed into Perth Immigration Detention Centre.

Under international law, to avoid being arbitrary, detention must be necessary and proportionate to a legitimate aim of the Commonwealth. There is also an obligation on the Commonwealth to demonstrate that there was not a less invasive way than detention to achieve the ends of its immigration policy.

During the course of the Commission's inquiry, the Department confirmed that since Mr HG was placed in detention on 21 August 2013, it had not referred his case to the Minister for consideration of his powers to

either grant Mr HG a visa or make a residence determination that Mr HG reside somewhere other than in immigration detention.

The President found that the Department had not justified Mr HG's prolonged detention in an immigration detention centre as necessary and proportionate to any legitimate aim of the Commonwealth. She noted that this was of particular concern given the Department's awareness of the gravity of Mr HG's mental health issues. On this point, the Department's records indicated that Mr HG had:

- reported a history of torture and trauma;
- been involved in at least 7 incidents of actual and threatened self-harm during his time in detention;
- been admitted as an in-patient at mental health hospitals on four occasions; and
- engaged in 57 days of voluntary starvation.

Furthermore, the Department was in receipt of advice from mental health professionals that Mr HG's mental health condition could only be adequately addressed in a community environment.

The President found that the Department's failure to consider whether Mr HG could be placed in community detention, or another less restrictive form of detention than an immigration detention centre, was arbitrary and inconsistent with his right to liberty under article 9(1) of the ICCPR.

The President recommended that an appropriate amount of compensation be paid to Mr HG. She also recommended that the Commonwealth provide a formal written apology to Mr HG. The Commonwealth did not take any action in response to the Commission's recommendations.

AI v COMMONWEALTH (DIBP) [2015] AusHRC 101

The Commission found that a 58 year old Chinese national was detained arbitrarily at Villawood Immigration Detention Centre. The Department of Immigration and Border Protection has agreed with the Commission's recommendation to refer his case back to the Minister for reconsideration.

Mr AI has lived in Australia for the past 27 years. His wife, and one of his sons are Australian citizens and his other son is a permanent resident. His sons made a complaint to the Commission, claiming that Mr AI should be released into community detention pending the outcome of his current legal proceedings seeking review of a decision to refuse him a protection visa.

During the time that Mr AI has been in Australia, he has been convicted of four offences. He was also refused two visas on character grounds. Three of Mr AI's offences resulted in him having to pay a fine. One of the offences resulted in a custodial sentence of 5 months and 15 days. By contrast, Mr AI has been held in immigration detention for a cumulative period of more than 4 years. Most of this period of detention was later found to be unlawful. He has been provided with compensation by the Commonwealth for part of this period of unlawful detention.

The department first considered whether to refer Mr AI's case to the Minister for consideration of a community detention placement in June 2014. The department decided not to refer Mr AI's case to the Minister. The department's internal assessment as to whether Mr AI's case should be referred to the Minister properly took into account his criminal history and prior visa refusals on character grounds. The mitigation of risks to the Australian community was a legitimate aim on behalf of the Commonwealth.

However, there was material before the department which could have led to the conclusion that the risk to the community either was low or could have been mitigated by conditions placed on community detention.

This material included the department's view that Mr Al's previous convictions were 'relatively minor', the fact that he has not been convicted of any offence for more than 10 years, and its view from the time when Mr Al was living in the community that Mr Al was compliant with the department and therefore unlikely to be a flight risk. These factors did not form part of the department's internal assessment.

Further, the department's internal assessment failed to properly take into account the fact that from at least October 2012 Mr Al had outstanding legal applications which would take a significant amount of time to resolve. There was no prospect of his imminent removal from Australia. As a result, there was a significant risk that his continued detention while the assessment of his claims for protection were finally determined would be protracted and could become arbitrary.

The President found that the failure to refer Mr Al's case to the Minister in order for the Minister to assess whether to exercise his public interest powers in light of all of the facts was not proportionate to the aim of either facilitating his removal from Australia or mitigating risks to the Australian community.

The department should have made a referral in or around October 2012 for the Minister to consider exercising his public interest powers. That referral should have contained a risk assessment of Mr Al balancing relevant factors in his case, along with a consideration of whether any risks could be mitigated in a community detention placement.

The failure to refer Mr Al's case to the Minister at that time resulted in Mr Al's detention being arbitrary, contrary to article 9(1) of the ICCPR. For the same reason, there was an arbitrary interference with Mr Al's family, contrary to articles 17(1) and 23(1) of the ICCPR.

The President recommended that the department promptly put a submission to the Minister for consideration of a residence determination in favour of Mr Al, subject to such reporting requirements or other conditions as may be necessary. The Department accepted this recommendation.

KOLIND v COMMONWEALTH (DIBP) [2015] AusHRC 102

The Commission found that the Commonwealth failed to take all appropriate administrative and other measures to make free primary education available to all children in Australia, including Mr Kolind's children. In so doing, the Commonwealth acted inconsistently with the right to free primary education under article 28 of the Convention on the Rights of the Child (CRC).

Mr Kolind, his wife and three children are Danish citizens. In March 2011, the Kolind family relocated from Denmark to Australia, having been granted a Business (Long Stay) visa (subclass 457). In April 2011, Mr Kolind enrolled his five-year old twins, Emilie and Gustav Kolind, in East Lindfield Public School. The school advised Mr Kolind that he would have to pay school fees of \$4,500 per year for each of his children. Mr Kolind applied for a waiver of that fee with the NSW Department of Education and Training, but was advised that he did not qualify for a waiver.

Mr Kolind lodged a complaint with the Commission, claiming that the inability of his children to avail themselves of free primary education in a public school in New South Wales was inconsistent with article 28(1)(a) of the CRC.

The Commission found that article 28 of the CRC recognises a right to education. It also imposes on each state party certain obligations to 'achieving the right progressively and on the basis of equal opportunity', including the affirmative obligation to 'make primary education compulsory and available free to all.'

The Commission considered whether the Commonwealth had taken all appropriate measures to implement the right to education, including by taking measures to make available to all primary education free of

charge. In assessing whether the Commonwealth had taken all appropriate measures, the President considered the following two questions (among other matters):

- Were there any avenues open to the Commonwealth?
- Did the Commonwealth take any measures to ensure that primary education is made available for free to Mr Kolind's children?

The President found that that there were avenues available to the Commonwealth to at least attempt to achieve the outcomes required by article 28 of the CRC, including seeking to attach appropriate conditions to the funding agreements entered into with New South Wales, to ensure that primary education is provided free to all children in New South Wales. She noted that in January 2014, the Commonwealth had written to relevant state and territory education ministers and encouraged them

... to consider the issues surrounding the provision of free primary school education at a government school for children who have accompanied their parents and are residing in Australia on a temporary basis.

However, while this correspondence was welcome, the President did not consider it to satisfy the Commonwealth's positive obligation to take all appropriate administrative and other measures to make free primary education available to all children in Australia.

The President concluded that the Commonwealth has acted inconsistently with Emilie and Gustav's right to free primary education under article 28 of the CRC.

The Department maintained its position that the Commission did not have jurisdiction to inquire into this matter as the Commonwealth is not responsible for a state's compliance with human rights obligations in this area. However, the Department indicated its agreement that 'a real issue had been raised' and, in recognition of the importance of this matter, it had written to the states and territories in relation to obligations under the CRC.

GHAHANI v COMMONWEALTH (DIBP) [2015] AusHRC 103

The Commission found that Mr Ghahani's detention in the VIDC from 7 March 2013 to 10 September 2014 was inconsistent with the prohibition on arbitrary detention in article 9(1) of the ICCPR.

Mr Ghahani is a national of Iran who arrived in Australia by boat on 11 June 2012. He was initially detained on Christmas Island and then in various immigration detention centres on mainland Australia until he was placed into community detention on 7 July 2012.

On 13 December 2012, Mr Ghahani was arrested and charged with alleged intimidation of his ex-partner under s 13 of the Crimes Act 2007 (NSW). Mr Ghahani had allegedly threatened to kill his ex-partner during a chance meeting in Sydney. On 14 December 2012 he was released on bail and issued a provisional Apprehended Domestic Violence Order. On 21 December 2012, the Minister revoked his community detention order. On 1 January 2013, Mr Ghahani was arrested and charged with failing to abide by his bail conditions as he had failed to report to the Ryde Police Station on two occasions. On 2 January 2013, Mr Ghahani was apprehended by the Commonwealth and placed in detention in the VIDC. On 11 January 2013, the Burwood Local Court issued an Apprehended Domestic Violence Order against Mr Ghahani. On 7 March 2013, the Burwood Local Court dismissed all charges against Mr Ghahani due to no evidence being offered.

The Department refused Mr Ghahani's Protection Visa application, which he successfully challenged before the Refugee Review Tribunal (RRT). The RRT remitted the matter back to the Department. The Department refused Mr Ghahani's Protection Visa application a second time and he successfully challenged this second

refusal before the RRT. Mr Ghahani remained in detention at the VIDC until 10 September 2014 when the Minister granted him a Temporary Humanitarian Concern, subclass 786 visa.

The Commonwealth maintained that its decision to detain Mr Ghahani in the VIDC from 2 January 2013 was due to criminal charges being laid against Mr Ghahani while he was in community detention. The President noted that it appeared the Department had formed the view that this charge demonstrated an individualised risk of danger of crimes against others which justified detention. However, this charge was dismissed for lack of evidence on 7 March 2013. After this time, there was no longer a basis for considering Mr Ghahani posed a risk to the Australian community. The President found that the Department had not demonstrated that the detention of Mr Ghahani in the VIDC for 19 months after the charges against him were dismissed was necessary or proportionate to the Commonwealth's legitimate aim of protecting the Australian community, or of ensuring the effective operation of Australia's migration system, or of any other legitimate aim of the Commonwealth.

The Commission made recommendations that the Commonwealth pay an appropriate amount of compensation to Mr Ghahani and provide him with a formal apology. These recommendations were not accepted by the Commonwealth.

Version:	Cleared by:	Action officer: Julie O'Brien
Current at: 19 September 2016	Phone number:	Action officer number:

BACKPOCKET BRIEF

AHRC-03 – Pathways to Protection Report

Background

The *Pathways to Protection* report aims to identify options for responding to the flight of asylum seekers by sea which are consistent with Australia's international human rights obligations.

The report was developed in consultation with non-government organisations, academics, intergovernmental bodies and think tanks with expertise in refugee policy, human rights, international law and protection issues in the Asia-Pacific region

The report was originally due to be launched in June but was delayed due to the commencement of the caretaker period. It was instead released on 14 September.

Briefings

Prior to the release of the report, briefings were provided to:

- Frances Adamson, Secretary, Department of Foreign Affairs and Trade
- s 47F, Ambassador for People Smuggling and Human Trafficking for Australia
- Jamie Isbister, First Assistant Secretary, Humanitarian, NGOs and Partnerships Division, Department of Foreign Affairs and Trade
- Chris Moriatis, Secretary, Attorney-General's Department
- Rachel Noble, Deputy Secretary, Policy Group, Department of Immigration and Border Protection
- David Wilden, First Assistant Secretary, Immigration and Citizenship Policy Division, Department of Immigration and Border Protection

The Minister for Immigration and Border Protection, the Secretary of the Department of Immigration and Border Protection and the Australian Border Force Commissioner were invited to briefings but sent their apologies.

Key findings

The report notes that the key driver of flight by sea towards Australia is the lack of effective protection for refugees and people seeking asylum in the Asia-Pacific region. It therefore proposes that improving access to effective protection represents the most effective and sustainable means of preventing flight by sea.

The Commission identified two thematic areas which comprise an alternative, human rights-based policy response to flight by sea:

- Expand opportunities for safe entry: This theme focuses on facilitating access to effective protection and providing safe alternatives to dangerous journeys. It incorporates options for expanding Australia's resettlement program and improving access to alternative migration pathways.
- Enhance foreign policy strategies on migration in the Asia-Pacific region: This theme seeks to coordinate aid, diplomatic efforts and humanitarian response to enable a comprehensive and holistic response to migration-related concerns across the region. It incorporates options for building on the good work already being done in the region, enhancing regional capacity to respond to the needs of displaced people, and working towards an effective regional cooperation framework on refugee protection.

Policy options

Some of the specific options put forward in the report include:

- Increasing the size of the resettlement program and introducing a wider range of private and community sponsorship options
- Increasing opportunities for safe departure, such as through introducing temporary visas for the purpose of seeking asylum
- Addressing barriers to skilled, family and study migration, including through providing waivers, differentiated processing procedures, access to relevant services and safeguards against *refoulement*
- Increasing funding for humanitarian agencies, NGOs and community groups working with refugees and using our aid program more strategically to support displaced people
- Supporting regional preparedness in relation to regional search-and-rescue protocols and emerging crises
- Providing support to expand the solutions available to refugees in the region, including through technical assistance and targeted projects
- Engaging with countries in the region on a broader range of migration issues to provide a useful entry point for future discussions on refugee protection
- Promoting the rights of children as a platform for engagement with countries in the region on migration issues.

Version #: 1	Cleared by:	Action officer: s 47F, Specialist Adviser – Immigration
Current at: 23 September 2016	Phone number:	Action officer number: 02 8231 4 s 47F

BACKPOCKET BRIEF***AHRC-04 – Children’s Report: Consultations on the Optional Protocol to the Convention Against Torture (OPCAT) and Don Dale Youth Detention Centre***

Project Background

Under section 46MB of the *Australian Human Rights Commission Act 1986* (Cth), the National Children’s Commissioner is specifically required to submit a report to the Minister as soon as practicable after 30 June in each year.

This report must deal with matters relating to the enjoyment and exercise of human rights by children in Australia as the National Children’s Commissioner considers appropriate; and may include recommendations that the Commissioner considers appropriate as to the action that should be taken to ensure the enjoyment and exercise of human rights by children in Australia.

The National Children’s Commissioner is able to pay particular attention to children who are at risk or vulnerable. In 2016, the National Children’s Commissioner examined how the special needs and interests of children and young people under the age of 18 in youth justice detention centres, and those under 18 years detained in adult detention facilities could be considered and monitored under the Optional Protocol to the Convention against Torture (OPCAT). And

The key aim of the OPCAT is to prevent the mistreatment of people, including children, in detention or closed environments. Australia signed the OPCAT on 19 May 2009 but has not yet ratified the treaty. Ratification of OPCAT is currently under consideration by the Australian Government.

The OPCAT provides for a dual system of regular visits to places of detention and closed environments by independent expert bodies. These are the Subcommittee on the Prevention of Torture (SPT) and the National Preventive Mechanism (NPM). These two mechanisms are complementary and both have a preventive approach. At the domestic level, the OPCAT requires Australia to designate NPM’s to conduct regular visits and monitor the treatment of people in all forms of detention.

The National Children’s Commissioner undertook this work because children and young people in youth justice detention centres and those under 18 years who are held in adult facilities account for the largest proportion of children and young people held in places of detention or closed environments in Australia.

This work is particularly timely given the recent revelations of ill treatment experienced by children and young people detained in youth justice centres in the Northern Territory and Queensland.

On 28 July 2016, the Prime Minister of Australia and the Attorney-General announced a Royal Commission into the detention of children and the child protection system in the Northern Territory, including the Don Dale Youth Detention Centre.

The National Children's Commissioner has been invited to appear before the Royal Commission in October 2016. She visited the Don Dale Youth Detention Centre as part of her work this year. While most centres that she visited were well equipped and had a range of programs in place, this was not the case in relation to the 17 year olds in the adult prison, nor in the Don Dale Youth Detention Centre. The National Children's Commissioner visited on 31 May 2016.

The National Children's Commissioner hopes that her work will be of assistance to the Royal Commission in the Northern Territory which is due to report by 31 March 2017, to the inquiry underway in Queensland, and to the Council of Australian Governments.

The Australian Human Rights Commission considers that ratification of the OPCAT, and its subsequent implementation, would be a significant step towards protecting the human rights of people, including children, in all forms of detention in Australia.

The National Children's Commissioner specifically recommended the Australian Government ratify the OPCAT in her 2013 Children's Rights Report. In 2014 and in 2015, the Australian Government indicated to her that it had not formed a formal position on ratification of the OPCAT.

The National Children's Commissioner wants to make sure that the unique experiences and needs of children are a critical focus as Australia moves towards ratification and implementation of the OPCAT, in turn contributing to greater transparency and consistency in the treatment of children in detention and closed environments across Australia.

Scope of the project

My work in the context of youth justice included a stock-take of current oversight, complaints and reporting arrangements across the jurisdictions, an analysis of their adequacy in meeting the OPCAT requirements, and identification of opportunities for improvements nationally over time.

Information gathered for this examination was derived from: formal requests to relevant state and territory departments; a series of expert roundtables; submissions from non-government bodies and oversight agencies; and consultations with young detainees in each jurisdiction. This was supplemented by publicly available data.

There was overwhelming support for Australia's ratification of the Optional Protocol to the Convention against Torture (OPCAT) in both submissions and roundtables.

Progress to date and next steps

The National Children's Commissioner will transmit the report to the Attorney-General by 17 October 2016.

Version: #1	Cleared by: ^Division head name^	Action officer: s 47F s 47F
Current at: 26 September 2016	Phone number: ^Number^	Action officer number: (02) 9284 s 47F

BACKPOCKET BRIEF

AHRC-05 – Indigenous Property Rights and Economic Development

Background**Broome Roundtable**

In May 2015, the Australian Human Rights Commission (the Commission) held a two-day roundtable for Indigenous leaders in Broome (the land of the Yawuru people). From a small meeting, the numbers of participants grew to over 40 attendees, including Indigenous experts in native title, land rights, water, environmental and cultural rights as well as researchers, advisors and officers from Prime Minister and Cabinet and the Attorney General's Department.

The purpose of the Broome Roundtable was to identify options to address challenges to Aboriginal and Torres Strait Islander peoples creating economic development opportunities on the Indigenous Estate, particularly due to barriers that prevent the leveraging of the rights and interests (including communal, inalienable rights under native title and through state/territory land rights schemes).

The Attorney-General, Senator George Brandis joined participants during both days. Participants canvassed a number of issues and agreed that there were 5 priorities:

1. **Fungibility and native title** – enabling communities to build on their underlying communal title to create opportunities for economic development.
2. **Business development support and succession planning** – ensuring that Aboriginal and Torres Strait Islander peoples have the governance and risk management skills and capacity to successfully engage in business and manage their estates.
3. **Financing economic development within the Indigenous estate** – developing financial products, such as bonds, to underwrite economic development through engaging the financial services sector and organisations including the ILC and IBA.
4. **Compensation** – rectifying the existing unfair processes for compensation for extinguishment of native title and considering how addressing unfinished business could leverage economic development opportunities.
5. **Promoting Indigenous peoples' right to development** – promoting opportunities for development on Indigenous land including identifying options to provide greater access to resources on the Indigenous estate.

Participants called for the Australian Human Rights Commission to lead an ongoing dialogue on these issues. Senator Brandis agreed to consider funding work to progress this process.

Progress

The Commission has convened a series of meetings and Roundtables facilitating a new dialogue between Aboriginal and Torres Strait Islander peoples and the government about Indigenous property rights and economic development. Communiqués from the roundtables are on the Commission's website. The following key meetings have been held to date:

- **7 December 2015, Sydney planning meeting** - participants considered ways to progress the dialogue, established an Indigenous Strategy Group (see appendix B) and the Indigenous Property Rights Network – an open network of experts. Participants developed an initial program of work, and agreed that the Australian Human Rights Commission would lead both the secretariat and research work.
- **31 March 2016, Canberra Roundtable** - hosted by the Australian Institute for Aboriginal and Torres Strait Islander Studies (AIATSIS). The roundtable was attended by Indigenous Property Rights Network members and technical experts in land, native title, tenure and mapping.

The purpose of this roundtable was to discuss the commercial and social potential of rights and interests in land and waters within the Indigenous Estate.

The Commission reported on its work creating an inventory of state, territory and Commonwealth legislation which recognise or create rights and interests that make up the Indigenous Estate as well as heritage protection laws.

A definition of the Indigenous Estate includes lands, waters, seas and resources was agreed.

The National Native Title Tribunal provided their ongoing support to the Indigenous Property Rights Network to map the Indigenous Estate using an online mapping tool based on geospatial technologies.

- **16-18 May 2016, Indigenous Banking Roundtable, North Stradbroke Island** - discussions occurred about the role of the financial sector in the realisation of economic benefit from the Indigenous Estate.

Attendees included members of the Indigenous Property Rights Network, ILC, IBA and representatives from ANZ, CBA, NAB and Westpac.

There was a strong consensus between both the banks and the Indigenous participants that this was the first of many conversations and that the reform agenda for the Indigenous Property Rights Network reform agenda should:

- continue building the relationship with the banking and finance sector to expand discussions about risk, return and serviceability.

- continuing mapping the Indigenous Estate to better understand its characteristics.
 - increase capacity building among Indigenous property holders to facilitate effective participation in decisions.
 - continue building knowledge about the market value of specific economic development opportunities.
 - continue to explore and test tenure models that provide for economic development and maintain the Indigenous ownership of the Estate.
 - continue exploring the potential for tax incentives and more flexible incorporation options for Indigenous organisations.
 - Explore finance mechanisms to mitigate risk.
 - Increase understanding about types of economic development that meets the risk appetite among Indigenous land holders.
 - Increase understanding about the diverse ways to share benefits with Indigenous land holders.
- **1 June 2016, National Native Title Conference Workshop and Panel, Darwin** - the workshop provided an opportunity for conference delegates to hear about the work on Indigenous Property Rights so far and contribute to strategic thinking and approaches to tenure, economic development, law, policy and industry innovation with regards to the Indigenous Estate.

A panel of four members of the Indigenous Strategy Group was held during the workshop to provide local and practical examples of Aboriginal and Torres Strait Islander peoples experiences, challenges and benefits of economic development on the Indigenous Estate.

- **21 July 2016, Indigenous Property Rights Technical Working Group Meeting, Sydney** - on 21 July 2016, a Technical Working Group Meeting was held to discuss a number of models arising from discussions on Indigenous Property Rights to date which provide options for creating registrable/commercial interests on native title land.
- **21 July 2016, Indigenous Strategy Group meeting, Sydney** - the third Indigenous Strategy Group meeting was held to discuss outcomes from the Indigenous Banking Roundtable and the National Native Title Conference Workshop and to prepare for the planned discussions at the Garma Festival. Members discussed draft proposals of legislative and non-legislative reform.
- **30-31 July 2016, Garma Festival, Gulkula** - A number of planned discussions at the Garma Festival aimed to continue to address issues of current tenure and future options that maximize social and economic benefits to Indigenous peoples from the Indigenous Estate.

On 30 July 2016, an evening lecture was held on international perspectives on Indigenous Property Rights.

On 31 July 2016, former Social Justice Commissioner Mick Gooda gave an address on Indigenous Property Rights: Land, Business and Governances at the Key Forum.

On 31 July 2016, a brief discussion on the Indigenous Property Rights Project and process to date was held with festival delegates.

Follow up work

s 47C, s 47E

Version #: 1	Cleared by:	Action officer: Robynne Quiggin, Deputy Aboriginal and Torres Strait Islander Social Justice Commissioner
Current at: 28 September 2016	Phone number:	Action officer number: 02 _____

Appendix A

Indigenous Strategy Group Members

First name	Last name	Job Title	Organisation
*Robynne	Quiggin	Deputy Aboriginal and Torres Strait Islander Social Justice Commissioner	Australian Human Rights Commission
s 47F	s 47F		Nyamba Buru Yawuru Board
			Central Land Council
			National Congress of Australia's First Peoples
			National Native Title Council
			National Congress of Australia's First Peoples
			Northern Land Council
			Torres Strait Regional Authority
			Aboriginal Lands Trust SA
			North Australian Indigenous Land and Sea Management Alliance (NAILSMA)
			Alinytjara Wilurara Natural Resources Management Board
			National Congress of Australia's First Peoples
			National Native Title Tribunal
			Torres Strait Regional Authority

*since appointment on 19 August 2016

BACKPOCKET BRIEF

AHRC-06 – BSWAT Exemption

On 28 April 2014 the Commission granted a 12 month, conditional, temporary exemption to the Commonwealth and Australian Disability Enterprises (ADEs) to allow them to continue to pay employees assessed under the Business Services Wage Assessment Tool (BSWAT). The exemption expired on 29 April 2015.

(i) Interim Application

On 22 April 2015 the Commonwealth made an application on its behalf and that of the ADEs for an exemption for the period between the expiry of the original exemption on 29 April 2015 and ‘the date on which the Commission publishes its determination in relation to the application of 21 April 2015’ (Interim Application).

On 30 April 2015 the Commission granted a 4 month exemption on the same terms as the original exemption.

On 5 May 2015 People with Disability Australia lodged an application in the AAT for review of the decision to grant the interim 4 month exemption. On 25 July 2015 the Administrative Appeals Tribunal set aside the decision of 30 April 2015 and remitted the matter to the Commission on the basis that it found the Commission had denied stakeholders procedural fairness because we did not call for submissions.

On 22 March 2016 the Commission granted a conditional exemption for the interim period being 30 April 2015 to 17 December 2015 (Interim Decision).

On 11 April 2016 People with Disability Australia lodged an application in the AAT for review of the decision to grant the Interim Exemption.

The First Directions hearing in the AAT was on 27 April 2016. The review of the Interim Decision has been joined with the review of the Primary Decision.

(ii) Primary Application

On 21 April 2015 the Commonwealth applied for a further exemption for 12 months (Primary Application). On 25 June 2015, as a result of an Order of the Fair Work Commission, the Secretary amended the Primary Application to align with the Order of FWC to cover the period to 29 February 2016.

On 18 December 2015 the Commission granted a limited, conditional, temporary exemption to the Commonwealth and any ADE that is granted additional time to use BSWAT by the Fair Work Commission.

On 18 January 2016 People with Disability Australia lodged an application for review of the decision with the Administrative Appeals Tribunal. The second directions hearing in the AAT was on 27 April 2016.

- The Fair Work Commission (FWC) Order varies the Supported Employment Services Award 2010 to remove the Business Services Wage Assessment Tool and provides transitional provisions
- Both of the exemptions mirrored the orders of the FWC and both have now expired.

Version: ^Number^	Cleared by: ^Division head name^	Action officer: Julie O'Brien
Current at: 5 October 2016	Phone number: ^Number^	Action officer number: 61 2

BACKPOCKET BRIEF***AHRC-07 – National Anti-Racism Partnership and Strategy (NARPS)***

On 24 August 2012, the National Anti-Racism Strategy 2012-15 was launched by then Attorney-General Nicola Roxon and then Minister for Multicultural Affairs, Senator Kate Lundy.

From 2012-15, the Strategy and its implementation have been led by the Australian Human Rights Commission, informed by a partnership which includes:

- the Attorney-General's Department
- the Department of Prime Minister and Cabinet (staff formerly at the Department of Families, Housing, Communities and Indigenous Affairs)
- the Department of Social Services (staff formerly at the Department of Immigration and Citizenship)
- the Australian Multicultural Council
- the Federation of Ethnic Communities Councils of Australia
- the National Congress of Australia's First Peoples
- Migration Council of Australia

The Commission will continue to lead the work of the Strategy from 2015-18. In July 2015 the Commission released a report on the summary evaluation of the Strategy and its future direction. This states that work under the Strategy will fall under two distinct but complementary themes:

- Combating racism and discrimination, and
- Supporting diversity and inclusion.

The Commission has \$90,000 approx in 2016-17 to deliver the National Anti-Racism Strategy.

Staffing

Race Discrimination Commissioner Dr Tim Soutphommasane is leading the Strategy.

Currently, the Secretariat is staffed by a Project Officer (APS 6) 3.5 days per week. The Manager, Education and Innovation (EL2) and the Executive and Research Assistant (APS3/4) to the Race Discrimination Commissioner also support the work of the Strategy.

The Manager, Education and Innovation, maintains oversight of the Strategy.

Partnership activities

The National Anti-Racism Partnership will next meet in Canberra in early November 2016.

The current partners are:

Australian Human Rights Commission (AHRC)

Attorney-General's Department (AGD)

Australian Multicultural Council (AMC)

Department of Prime Minister and Cabinet (PM&C)

Department of Social Services (DSS)

Federation of Ethnic Communities' Councils of Australia (FECCA)

Migration Council Australia

Reconciliation Australia

The Department of Human Services recently joined the Partnership in July 2016.

Campaign activities

'Racism. It Stops with Me' is the public campaign of the National Anti-Racism Strategy, launched on 24 August 2012.

Since 2012, 439 organisations have been involved in supporting the campaign. The number of current supporter organisations is 350.

Strategy activities

- Early childhood project

The Commission committed \$30,000 in 2015-16 for development of resources for early childhood educators on cultural diversity and prejudice. These resources will assist educators to address issues relating to cultural diversity and prejudice in the context of early childhood education. The project is supported by a reference group of early childhood experts and practitioners.

The Commission is currently working with Kimberlin Education, an education consultancy, to develop 'Building Belonging' which is a comprehensive toolkit of early education resources which includes an ebook, song with actions, educator guide, posters and lesson plans, focussed on encouraging respect for cultural diversity and tackling racial prejudice in early childhood settings.

Building Belonging will be launched at the Early Childhood National Conference on 3 October in Darwin.

- Community Service Announcement

The AHRC had received \$50 000 from the Department of Social Services for the production and promotion of a 'Racism. It Stops with Me' community services announcement. This will be produced during the 2016-17 financial year.

- Initial Teacher Education project

The Secretariat is consulting with key stakeholders on the development of a project to create professional development resources for pre-service teachers completing their qualifications, on promoting cultural diversity and addressing racism.

- Sporting activities

The Commission is currently working on a number of initiatives in partnership with a range of national sporting codes. In particular, the Commission has been working with the NRL and the AFL Players Association (AFLPA) to address racism and support cultural diversity in sport.

A preliminary report mapping a pathway to promote inclusion and address racism and discrimination in rugby league as prepared for the NRL in 2015. This report provides the basis for a new initiative with the NRL to design an inclusion framework and implementation strategy, and to develop an anti-discrimination/vilification policy and implementation strategy. The Commission has received \$44,000 (inc GST) from the NRL to undertake this work. This work will be completed during 2016-17.

The Commission has collaborated with the AFLPA on an anti-racism video that was aired during finals season (beginning at the end August 2016). The AFL have also recently confirmed that this video will be shown during AFL matches throughout the 2016 season. Clubs will play tailored videos featuring their players and supporters at home games for the remainder of the 2016 season and beyond.

Version #: 1	Cleared by: Padma Raman Executive Director	Action officer: s 47F
Current at: 23 September 2016	Phone number: (02) 9284 s 47F	Action officer number

BACKPOCKET BRIEF***AHRC-08 – Universal Periodic Review – Australia 2nd Cycle Review***

The Universal Periodic Review (UPR) is a process undertaken by the United Nations (UN) Human Rights Council. It involves review of the human rights record of all 192 UN Member States once every four years. Review under the UPR does not depend on a country being a party to a particular human rights treaty.

The UPR is a peer review process. Recommendations on actions Australia should take are made by individual governments of other states. They are not made by the UN or the Human Rights Council as a whole.

The UPR is based on information provided by the State under review, information contained in the reports of human rights treaty bodies and other UN entities and information from stakeholders including national human rights institutions (NHRIs) and non-governmental organisations.

In its decision 17/119, the UN Human Rights Council adopted General Guidelines for the preparation of information under the UPR, to guide the input of stakeholders including NHRIs. The Guidelines envisage stakeholder input will be broad in scope, and may involve consideration of any issues that raise concerns about human rights, be they best practice or challenges and constraints in the relevant country.

Australia's review under the second cycle of the UPR took place on 9 November 2015. 110 countries spoke at the review and provided 290 recommendations, which again included recommendations concerned with marriage equality. The Australian Government provided Australia's response to the Report of the Working Group on the UPR at the 31st Regular Session Human Rights Council (17 March 2016).

COMMISSION ACTIVITY PRIOR TO AUSTRALIA'S 2ND CYCLE UPR

The Commission's engagement prior to the 2nd cycle UPR has involved:

- Preparation of annual progress reports on the status of implementation of the 1st cycle recommendations. The reports were prepared on behalf of the Australian Council of human Rights Agencies. Each report was lodged with the UN Human Rights Council as part of its ongoing monitoring of Australia's UPR implementation.
- Collaboration with the NGO sector, including hosting workshops and convening coordination meetings.

- Preparation of a submission to the Office of the High Commissioner for Human Rights (OHCHR) for Incorporation into the stakeholder information. In accordance with the General Guidelines, the topics included in the Commission's submission were broad in scope and involved consideration of issues that raise human rights concerns, for example, marriage equality. The submission was transmitted to the UPR Working Group on 22 March 2015.
- Preparation of a series of fact sheets on issues contained in the Commission's submission. The information contained in the fact sheets together with the Commission's submission formed the basis of the meetings with Missions to Australia and Permanent Missions in Geneva.
- Canberra based meeting with Missions to Australia undertaken on 2 July 2015. Representatives from approximately 70 Missions attended the event.
- Attendance at the UPR-Info Pre Session held in Geneva, October 2015. 30 plus bilateral meetings were held during a 5 day period with representatives of Permanent Missions to the UN.
- On the issue of marriage equality, the Commission prepared a position paper in 2012. The President has written an opinion piece on marriage equality that includes an analysis of the decision of the US Supreme Court in *Obergefell v. Hodges* 576 U.S. _ (2015). The Commission has also provided a paper to Senator Canavan setting out the case law on marriage equality.

COMMISSION ACTIVITY FOLLOWING TO AUSTRALIA'S 2ND CYCLE UPR

The Commission's engagement following the 2nd cycle UPR has involved:

- The Commission attended the 2nd cycle review as observers and was represented by the Commission President, Professor Gillian Triggs and Commissioner Gooda.
- A meetings was also held with the High Commissioner for Human Rights Zied Ra'ad Al Hussein.
- The President of the Commission, Professor Gillian Triggs provided an oral statement to the Human Rights Council on the Australian Government's response to the Report of the Working Group on the UPR at the 31st Regular Session Human Rights Council (17 March 2016).
- The Commission has provided to the Attorney Generals Department a list of priority recommendations and suggested actions.
- The Commission has been in dialogue with the Australian Government regarding the development of a mechanism to monitor the implementation of the accepted recommendations and the noted recommendations, which are to be further considered.

- Questions on next steps would be more appropriately directed to the Attorney-General's Department and the Department of Foreign Affairs and Trade.

Version: #1	Cleared by: ^Division Head name^	Action officer: s 47F Manager, Human Rights Scrutiny
Current at: 27 September 2016	Phone number:	Action officer number: 02 8231 s 47F

BACKPOCKET BRIEF***AHRC-09 – Prior -v- Queensland University of Technology Case***

There has been some recent media coverage about an application in the Federal Circuit Court based on s 18C of the RDA by Ms Cindy Prior against the Queensland University of Technology.

Ms Prior is an Aboriginal woman and was employed in the Oodgeroo Unit at QUT. In May 2013, three men entered the computer lab in the Oodgeroo Unit. Ms Prior asked them to leave because they were not Indigenous. She complains about comments later made on a Facebook page called “QUT Stalker Space” in relation to the incident which she claims were reasonably likely to offend, insult, humiliate or intimidate her or Aboriginal and Torres Strait Islander students or Indigenous people more generally.

The claim is made against QUT, two officers of QUT and a number of students who were allegedly responsible for the Facebook comments. She complains about the publication of the comments and the actions taken by QUT in responding to her complaint.

In their defence, two of the students have claimed that they were not properly notified of the Commission’s inquiry and that the Commission has therefore not performed its statutory functions of inquiring into the complaint and seeking to conciliate it. The students say that the consequence is that the complaint was not properly terminated and Ms Prior was not entitled to bring a claim in the Federal Circuit Court.

The Commission is monitoring the proceedings.

Prior v QUT

- On 11 March 2016, three of the students sought to have the Federal Circuit Court proceedings summarily dismissed, or alternatively to have Ms Prior’s Statement of Claim struck out.
- Judge Jarrett in the Federal Circuit Court in Brisbane heard the applications and reserved his decision. His Honour has not yet delivered judgment on these applications.

Commission’s role in relation to the Prior Complaint

- There has been some inaccurate reporting about the Commission’s role in relation to the Prior complaint.
- When a complaint under the *Racial Discrimination Act 1975* (Cth) is made to the Commission, the Commission is required to inquire into the complaint and to attempt to conciliate it. If the complaint cannot be conciliated, the Commission will terminate the complaint. If a complaint is terminated, the complainant can decide to commence proceedings in the Federal Circuit Court or the Federal Court.

- Some media reports have said that the Commission gave a 'green light' to Ms Prior commencing court proceedings and suggested that the Commission supported or endorsed these proceedings being commenced. These reports are incorrect. Whether or not court proceedings are commenced in relation to a complaint that has been terminated is entirely a matter for the complainant.
- The Commission has had no role in the Federal Circuit Court proceedings.
- Some media reports have suggested that the Commission should have terminated Ms Prior's complaint at an early stage on the basis that it was lacking in substance. These reports have suggested that such action by the Commission would have prevented Ms Prior commencing court proceedings. These reports are also inaccurate. The Commission has the power to terminate a complaint if it is satisfied that the alleged unlawful discrimination is not unlawful discrimination, or if the complaint is misconceived or lacking in substance. However, in those circumstances a complainant may still decide to commence court proceedings. Again, whether or not court proceedings are commenced is entirely a matter for the complainant.

Complaints to the Australian Human Rights Commission

- Between 29 April 2016 and 8 July 2016, three of the students involved in the Federal Circuit Court proceedings made complaints to the Australian Human Rights Commission about the way in which the Commission conducted its inquiry into the complaint by Ms Prior.
- The students complained that the Commission had acted in a way that was inconsistent with their human rights. At least one of the students also complained that the Commission had discriminated against him contrary to the *Racial Discrimination Act 1975* (Cth).
- Because the complaints were made against the Commission, the President delegated her powers of inquiry to a senior member of the bar, Mr Angus Stewart SC. Mr Stewart is conducting inquiries into the complaints by each of the students.
- The Commission denies the allegations made by the students and has provided a detailed response to each of the claims that have been made. The Commission has also provided Mr Stewart and the students with a bundle of the relevant documents.
- While those inquiries are being conducted, it would not be appropriate for the Commission to make any further public comment about them.
- Mr Stewart has made a non-publication direction in relation to some of the documents produced to him because they contain personal information about the parties to the complaint by Ms Prior.
- The lawyer acting for two of the students has made a range of Freedom of Information requests both before and after making complaints to the Commission on behalf of his clients. The Commission has responded to each of those requests. The documents produced by the Commission in response to those FOI requests are not subject to the non-publication direction made by Mr Stewart.

Version: ^Number^	Cleared by: ^Division Head name^	Action officer: Julie O'Brien
Current at: 5 October 2016	Phone number:	Action officer number:

AHRC-10 – Complaints in the Media

- An application has been filed in the Federal Circuit Court based on s 18C of the RDA by Ms Cindy Prior against the Queensland University of Technology (QUT). Ms Prior is an Aboriginal woman and was employed in the Oodgeroo Unit at QUT. In May 2013, three men entered the computer lab in the Oodgeroo Unit. Ms Prior asked them to leave because they were not Indigenous. She complains about comments later made on a Facebook page called “QUT Stalker Space” in relation to the incident which she claims were reasonably likely to offend, insult, humiliate or intimidate her or Aboriginal and Torres Strait Islander students or Indigenous people more generally. The claim is made against QUT, two officers of QUT and a number of students who were allegedly responsible for the Facebook comments. She complains about the publication of the comments and the actions taken by QUT in responding to her complaint.
- In their defence, two of the students have claimed that they were not properly notified of the Commission’s inquiry and that the Commission has therefore not performed its statutory functions of inquiring into the complaint and seeking to conciliate it. The students say that the consequence is that the complaint was not properly terminated and Ms Prior was not entitled to bring a claim in the Federal Circuit Court.
- The Commission is monitoring the court proceedings.
- The Commission has now also received two complaints against the Commission from the legal representative for two of the individual respondents named in Ms Prior’s application. The complainants allege that the Commission has breached their human rights in the handling of the complaint. Specifically they allege a breach of articles 1, 14(1) (right to equality before courts/tribunals), 16 (right to recognition as a person before the law), 25(c) (right to have access /equality to public service), 26 (rights to equality/non-discrimination) of the ICCPR.
- It is not appropriate to comment on the matter that is before the court. In relation to the complaints against the Commission, we can confirm the receipt of the complaint as this has been placed in the media by the complainant. However, due to confidentiality requirements under the *Australian Human Rights Commission Act, 1986 (AHRC Act)* we cannot comment further on the complaints. We can however provide general information about the complaint process, such as the information provided below.

Overview of the process for complaints of unlawful discrimination

- If a complaint is lodged with the Commission that meets the legislative threshold, the complaint must be referred to the President. The legal requirements for a complaint are that it: is in writing; is made by or on behalf of an aggrieved person; and alleges unlawful discrimination
- On receipt of a complaint the law says that the President must inquire into and attempt to conciliate the complaint (subject to the complaint not continuing - for example because it is withdrawn or dismissed). The AHRC Act does not specify the way in which this process must occur, subject to some requirements in relation to the procedures for compulsory conciliation. This allows for a degree of flexibility in the process to suit the specific circumstances of a particular complaint.
- At any time during the course of the complaint process, a complaint may be terminated (dismissed) if the President or her Delegate is satisfied that any of the grounds in section s46PH of the AHRC Act apply. For example where:
 - the complaint was lodged more than 12 months after the alleged unlawful discrimination took place;
 - the President is satisfied that some other more appropriate remedy in relation to the subject matter of the complaint is reasonably available; or
 - the President is satisfied that there is no reasonable prospect of the matter being settled by conciliation.
- The law says that where a complaint is terminated under s46PH, a complainant can make an application to the court. Where a complaint is finalised because it is conciliated or where it is withdrawn/deemed that the person does not want to continue, there is no ability to lodge an application in court.

Notification of respondents to complaints

- Generally the Commission will directly notify a person/organisation (respondent) that a complaint has been made against them. However, the process of notification or the stage at which it occurs, may vary depending on the circumstances of the matter.
- In some circumstances there may be a delay in notifying an individual respondent where for example:
 - it is unclear if the complainant in fact wishes to proceed against the individuals named in the complaint; and/or
 - the complainant is unable to provide contact details for an individual respondent.
- In some circumstances the Commission may not directly notify an individual respondent for example where:
 - contact details for the individual are only known to the organisation; and
 - the organisation wishes to give notice to the individual respondent(s) (in which case the Commission seeks confirmation that this notification has occurred prior to any conciliation or termination of the complaint).

- A respondent may not be notified of a complaint where the complaint has been withdrawn/ deemed that the person does not wish to proceed as in such cases, the complainant cannot not take any further action.

Procedures where complaints are lodged against the Commission/President/Commissioners

Complaints of unlawful discrimination

- Section 46PE of the AHRC Act states that in such situations, a complainant may request that the complaint be terminated upfront, thus providing direct access to the court. The section also says that the President cannot delegate her power in relation to the complaint except in accordance with section 19(2)(b) – that is, only to a person/body that is not a member of the Commission or a member of the staff of the Commission.
- The explanatory memorandum to the AHRC Act states that this is designed to address concerns about perceived or actual conflict of interest/bias.

Complaints of breaches of human rights

- In order to address any concerns about perceived or actual conflict of interest/bias in such complaints, the President has, in the past, delegated her powers to conduct an inquiry under section 11(1)(f) to an external person such as a lawyer or barrister with experience in human rights law. The Delegate would conduct an inquiry into the complaint alleging a breach of human rights following the statutory framework set out in the AHRC Act but do so at an arms distance and with independence.
- Section 19 of the AHRC Act provides for the President to make such a delegation.

Version	#:	Cleared by:	Action officer: s 47F /Julie O'Brien
Current at:		Phone number:	Action officer number:

BACKPOCKET BRIEF

AHRC-11 – University Sexual Assault and Sexual Harassment Project

Project background

The Australian Human Rights Commission has been asked by Universities Australia, the peak body which represents Australia's 39 universities, to conduct a national project on sexual assault and sexual harassment at university.

This project has two components:

- A national university student survey of sexual assault and sexual harassment; and
- An open call for submissions on sexual assault and sexual harassment at university.

The project is part of the university sector's Respect.Now.Always campaign, which is aimed at preventing and addressing sexual assault and sexual harassment.

Sexual assault and harassment experienced by students in university settings in Australia has been identified as an issue that needs to be addressed with evidence-based strategies and robust data.

The Commission's 2011 Review into the Treatment of Women in the Australian Defence Force Academy (ADFA) found that 'sexual harassment and assault is a problem across Australian universities'.¹ It recommended that ADFA develop a survey in consultation with universities and their residential halls and colleges in order to measure levels of 'unacceptable sexual behaviour' at Australian universities.

A 2015 survey conducted by the National Union of Students found that of 1,343 respondents, 72.75% had experienced some form of sexual harassment or unwelcome sexual behavior (though not necessarily while on campus) and 27% had experienced sexual assault.

The Hunting Ground documentary, which depicts sexual assault on American university campuses, and which highlights the potential problem for Australian universities, has also emphasised the importance of further research into this issue.

¹ Australian Human Rights Commission, *Review into the Treatment of Women in the Australian Defence Force Academy*, 2011, 34.

Asking the Commission to do this important work ensures that it will be conducted independently, and will produce statistically reliable data which will inform universities responses to sexual harassment and assault in the future.

The Commission brings significant expertise to this area through its work examining the treatment of women in the Australian Defence Force and conducting the National Workplace Sexual Harassment Survey since 2004.

The National university student survey of sexual assault and sexual harassment

The survey will focus on the nature and prevalence of sexual harassment and assault on university campuses, but also, importantly, student's experiences of their University's responses to these incidents.

The survey is being conducted by Roy Morgan Research on behalf of the Australian Human Rights Commission and has received ethics approval from the Human Research Ethics Committee at the University of New South Wales.

It is being rolled out in three waves across all 39 universities:

- The first wave of invitations was sent to students at 32 universities in the week of 19 September 2016;
- The second wave of invitations will be sent to students at six universities in the week of 24 October;
- The final university will send the survey to students in the week of 31 October.

The survey is being conducted as a sample survey in order to ensure the responses received are representative of the student population as a whole.

Universities are sending out the survey invitations to their own students to ensure confidentiality of responses; the Commission and Roy Morgan will receive the data without any identifying information (names, email addresses) and universities will not know which students have responded to the survey, nor will they receive any raw data.

The survey has been through a process of cognitive testing and refinements made on the basis of that feedback.

The Commission will produce a national report on sexual assault and sexual harassment at Australian universities in 2017 on the basis of the results of this survey. Each university will also receive an individual report of their own results – provided enough responses are received to ensure statistically relevant data.

The Commission is working with universities, student bodies and other organisations to promote the survey to students. Information sessions and consultations on the survey have been held in: Sydney, Melbourne, Hobart, Brisbane, Adelaide and Perth.

Submissions process

The second part of this work involves an open call for submissions to the Australian Human Rights Commission in relation to the issues of sexual assault and sexual harassment at university.

Any individual who wishes to have their say on these issues is free to make a submission, either via the form on our website or by emailing or calling the Commission. This includes current and former students, university staff, parents and organisations.

These submissions will be an important source of qualitative information on sexual assault and sexual harassment at university. This process also provides students who are not selected to participate in the survey and individuals who are not current students with the opportunity to provide the Australian Human Rights Commission with their views.

The Commission is working with 1800RESPECT and Rape and Domestic Violence Services Australia to ensure that appropriate support is available to people who have experienced sexual assault or sexual harassment.

The submissions process has been open since 23 August and to date we have received 1311 submissions (as at 10 October 2016).

The submissions will close in late December 2016.

Progress to date and next steps

- The project was formally launched at the University of New South Wales on 23 August 2016.
- Submissions opened on 23 August 2016 and will close in late December 2016.
- The first survey invitations were sent out in the week of 19 September 2016. The survey will conclude in November 2016.
- The report on the survey and submissions is expected to be published in March/April 2017.

Budget

Universities Australia has provided the Australian Human Rights Commission with \$850,000 to conduct the university sexual assault and sexual harassment project.

The Hunting Ground Australia Project has also provided the Commission with seed funding of \$150,000 for the development of the survey.

Version: #1	Cleared by: ^Division or Business Unit Head name^	Action officer: s 47F
Current at: 10/02/2017 6:00 PM	Phone number:	Action officer number: s 47F s 47F

BACKPOCKET BRIEF

AHRC-12 – ABS Exemption

Australian Bureau of Statistics exemption

On 26 May 2016, the Australian Bureau of Statistics (ABS) applied to the Commission for an exemption from the *Sex Discrimination Act 1984* (Cth) to enable it to use predominantly female interviewers to conduct its 2016- 17 Personal Safety Survey (PSS).

The PSS is a survey that collects sensitive information about a person's experience of violence, in particular domestic violence. The survey will be conducted in 2016 and 2017 by personal interviews of around 22,000 adults (aged 18 years or over) nationally (excluding very remote areas of Australia). It is proposed that approximately 280 interviewers nation-wide will be used.

On 30 June 2016, the Commission notified the State and Territory Anti-Discrimination Boards and Equal Opportunity Commissions of the exemption application and invited their comment. The Anti-Discrimination Commissions in NSW, WA, SA and Tasmania supported the grant of an exemption.

The Commission also sought submissions from ABS employees. Of the 124 male and 266 female interviewers employed by the ABS, 10 male employees responded to the Commission's call for submissions. Additionally, the Community and Public Sector Union (CPSU) made a submission on behalf of male employees at the ABS. Three of the submissions supported the use of predominantly female interviewers to carry out the PSS and 7 strongly opposed it.

On 6 September 2016 the Commission granted a conditional, temporary exemption to the Australian Bureau of Statistics (ABS) to allow it to:

- allocate the Personal Safety Survey (PSS) interviewing work to female rather than male interviewers on its existing panel of casual interviewers;
- recruit approximately 50 female non-ongoing interviewers to conduct the PSS; and
- train and provide professional development opportunities to the predominantly female interviewers selected to conduct the PSS.

The exemption was granted with immediate effect until 30 June 2017 and is conditional on the ABS reporting to the Commission at the end of the PSS on the proportion of male and female respondents who use the computer to respond to the violence-related questions.

The reasons for the Commission's decision included that:

- The Commission accepts the importance of the PSS and the data that it collects about the experiences of female and male victims of violence. The PSS results are significant for developing prevention strategies as well as services for those experiencing violence.
- there was evidence from the Women's Support Network (the leading national peak body for Australian Domestic and Family Violence Services) that there is a risk that a male interviewer might cause some respondents who have experienced violence by another man to have an adverse

triggered response to the sensitive questions asked during the PSS due to the fact that the interviewer is a man (regardless of how skilled he is).

- The ABS' experience in conducting the PSS three times in the past was that respondents are more likely to reveal violence incidents to women.

While the use of predominantly female interviewers to conduct the PSS is discriminatory, the Commission considered that the success of the PSS in collecting high quality data about the prevalence of violence, and the avoidance of any adverse reactions by respondents were significant factors weighing in favour of the grant of the exemption.

Application may be made to the Administrative Appeals Tribunal for a review of this decision by any person or persons whose interests are affected by the decision.

The Commission granted the ABS an exemption to use predominantly female interviewers to conduct its Personal Safety Survey in 1995 and 2005.

- The Commission granted the ABS an exemption to allow it to use predominantly female interviewers to conduct its 2016-17 Personal Safety Survey.
- The Commission consulted with State and Territory Anti-Discrimination Boards and Commissions as well as ABS employees.
- The ABS' experience in conducting the PSS three times in the past was that respondents are more likely to reveal violence incidents to women.
- There was also evidence that there is a risk that a male interviewer might cause some respondents who have experienced violence by another man to have an adverse triggered response to the sensitive questions asked during the PSS due to the fact that the interviewer is a man (regardless of how skilled he is).

Version: ^Number^	Cleared by: ^Division head name^	Action officer: Julie O'Brien
Current at: 20 September 2016	Phone number: ^Number^	Action officer number: _____

BACKPOCKET BRIEF

AHRC-13 – s 47C, s 47E, s 42**Summary**

In July 2016, the AHRC formally advised the Australian Turkish Advocacy Alliance (ATAA) that its membership of *RISWM* would be terminated because the organisation's actions were inconsistent with the purpose of the Commission's anti-racism campaign.

Specifically, the AHRC was concerned about content published and promoted on the ATAA's website, including an April 2016 article which singled out Armenian Australians for criticism on the basis of their race. In terminating the agreement, the RDC expressed the view that ATAA had not "exercised all reasonable care and diligence to protect the Commission's reputation" in accordance with cl 2(b)(e) of the *RISWM* Supporter obligations.

The decision to terminate the Agreement came after correspondence between AHRC and ATAA regarding website material; a face-to-face meeting with representatives of the ATAA about the material; a proposal from the RDC that the ATAA voluntarily withdraw and AHRC could consider an alternative Turkish Australian organisation to join *RISWM*, or otherwise have their agreement terminated by AHRC; and a written response from ATAA that contained no offer to voluntarily withdraw.

A more expansive timeline is below.

Timeline/Sequence of Main Events

- August 2015 – ATAA joins the *RISWM* campaign by completing the Supporter Agreement with the Commission.
- 14 March 2016 – Armenian National Committee (ANC) writes to AHRC, expressing concern about ATAA online materials and activities.
- 24 April 2016 – ATAA publishes an article on its website 'Armenians undermine multi-cultural harmony of Australia', singling out Armenian Australians for criticism on the basis of their race. ANC then brings this article to AHRC's attention.
- 27 May 2016 – AHRC writes to ATAA and provides a copy of ANC's correspondence. AHRC offers meeting with ATAA.
- 21 June 2016 – ATAA and AHRC meet to discuss concerns about ATAA's materials and activities, and the ATAA's response. RDC expresses concern about material published, including reputational risk to AHRC. RDC offers option that ATAA could voluntarily withdraw from the campaign, and AHRC could consider an alternative Turkish Australian organisation to join. Alternatively, AHRC could terminate the Agreement.

- 12 July 2016 – ATAA writes to AHRC, formally responding to allegations. They do not offer to voluntarily withdraw.
- 25 July 2016 – By letter, AHRC terminates the agreement with ATAA, effective in 30 days, as per cl 9 of the Agreement (24 August). The RDC is clear that this decision is not based on any view about events in the Ottoman Empire in 1915. RDC points to the inflammatory language used to describe Armenians on the ATAA website, and refers to:
 - The supporter obligation to “exercise all reasonable care and diligence to protect the Commission’s reputation”, as well as
 - The supporter agreement clause that no conflict exists, or is anticipated, relevant to the performance of the Supporter’s obligations under the Agreement. If a conflict arises, the Supporter must notify the Commission immediately.
 - The ATAA’s publishing and promotion of material which involves the ATAA acting inconsistently with the purpose of the campaign.

Media Coverage

ABC RN The World Today reported on this story on 7 October 2016 (summary below):

> - 07 Oct 2016 12:24PM

> - AM Radio: Radio National, Canberra, The World Today, Emily Bourke

>

> Report by RN correspondent Will Ockenden on an Australian entity having its membership of a Human Rights Commission campaign revoked. The Australian Human Rights Commission has ended the Australian Turkish Advocacy Alliance's (ATAA) membership of the Commission's Racism: It Stops With Me campaign, stating the Alliance's actions were inconsistent with the campaign's purpose. Race Discrimination Commissioner Dr Tim Soutphommasane has explained the decision was made after it was found the ATAA's representation of Armenian Australians was discriminatory. Armenian Australian groups have welcomed the decision, including Meher Grigorian, director of the Australian Institute for Holocaust and Genocide Studies. Grigorian remains concerned about how the ATAA came to be part of the campaign, questioning the commission's vetting processes. Although approximately 20 countries recognise the 1915 events in Armenia as a genocide, both the Australian Federal Coalition and Labor party have stopped short of this stance. Borisher Timen(*), executive secretary of the ATAA, has stated the ATAA respects the Human Rights decision, but has not removed offending statements from the ATAA website.

To our knowledge there have been no further media reports as of 11 October 2016.

Version:	Cleared by:	Action officer: s 47F
Current at: 11 October 2016	Phone number:	Action officer number: 61 2 9284 s 47F

UNIT BRIEFINGS

3.2 Complaint Handling Report

A. Complaint statistics for the period 1 July 2015 – 30 June 2016

1. National Information Service

- In the reporting year, the Commission received 16 836 enquiries.

2. Complaints received

- The Commission received 2 013 complaints which is 16% lower than the number received in the previous reporting year. This decrease reflects the significant decrease in immigration detention complaints. Consistent with past years, the majority of complaints were lodged under the DDA (37%). In comparison with last year, there has been a very minor increase in complaints under the DDA (1%) and a 2% increase in complaints under the ADA. There has been a decrease in complaints received under the SDA (10%) and RDA (23%) and a significant decrease in complaints under the AHRCA (44%), indicative of the decrease in complaints about immigration detention.

Table 1 - Complaints received by Act in 2015-16 reporting year

	Received	Percentage
RDA	429	21%
SDA	409	20%
DDA	750	37%
ADA	152	8%
AHRCA	273	14%
Total	2 013	100%

Table 2 - Complaints received by Act over the past five years

	2011-12	2012-13	2013-14	2014-15	2015-16	Average over 5 years
RDA	477	500	380	561	429	469
SDA	505	417	474	453	409	452
DDA	955	793	830	740	750	814
ADA	196	157	184	149	152	168
AHRCA	477	310	355	485	273	380
Total	2 610	2 177	2 223	2 388	2 013	2 282

RDA

- 10% of RDA complaints raised allegations of racial hatred which is similar to the last reporting year (11%). The main sub areas for racial hatred complaints were employment (32%) and the provision of goods and services (29%). Complaints about internet material made up 8% of racial hatred complaints, which is the same as in the previous reporting year. In 2015-16 there was a drop in the number and percentage of racial hatred complaints about the media (16% - 7%).
- Complaints about employment made up 21% of RDA complaints and complaints about provision of goods and services - 18%.
- 54% of complainants under the RDA identified as Aboriginal and/or Torres Strait Islander, up from 38% last year. Across all jurisdictions, 13% of complainants identified as such and this is an increase from last year (9%).

SDA

- 22% of complaints were about sexual harassment in contrast with 19% in the last reporting year. Complaints about pregnancy discrimination (11%) and family responsibilities (4%) were relatively consistent with last year.
- Complaints relating to gender identity made up 3% of complaints, down 2% from last year. Complaints about sexual orientation discrimination made up 5% of complaints which is a slight increase over last year (3%).
- The main areas of complaint were employment (82%) a 5% increase on last year (77%) and the provision of goods and services (12%), a 6% decrease from last year (18%).
- 77% of complainants under the SDA were female, down 2% from last year and 21% of complainants were male, which is consistent with last year.

DDA

- The main areas of complaint continue to be employment (35%) and provision of goods, services and facilities (33%).
- Consistent with the last reporting year, the main recorded disabilities of complainants were mental health/psycho-social disability (25%) and physical disability (20%). The percentage of complainants recording mental health/psycho-social disabilities has increased in comparison with last year (23% - 25%).

ADA

- Similar to the previous reporting year, the main area of complaint was employment (62%) followed by the provision of goods and services (23%).
- The main age groups of complainants were 55-64 years (30%), 65-74 years (24%) and 45-54 years (16%). In comparison with the previous year, we have seen a decrease in complainants in the 55-64 age group (38% - 30%) and an increase in proportion of complainants in the 65-74 age group (16% - 24%).

AHRCA

- Consistent with last year, the main grounds of complaint were alleged violations of the ICCPR (59%). There has been a significant decrease in proportion of complaints under the CROC (22% - 10%) due to the decrease in complaints about children in detention. In comparison with last year, we received a similar number of complaints about criminal record discrimination.

- ***Table 3 - State of origin of complainants in 2015-16 reporting year***

	NSW	VIC	QLD	SA	WA	TAS	NT	ACT	OS/U	Total
Number	702	402	422	129	179	17	62	70	30	2013
Percentage	35%	20%	21%	6%	9%	1%	3%	3%	2%	100%

3. Complaints finalised

- The Commission finalised 1,982 complaints during 2015-16. Of all finalised complaints, 52% were conciliated. This is 1% higher than last year and the highest conciliation rate on record. The Commission conducted approximately 1,308 conciliation processes of which 989 complaints (76%) were successfully resolved. The conciliation success rate in 2015-16 is 4% higher than the previous year and the highest on record.
- Information on the outcomes of conciliated complaints indicates that 34% included terms which will have benefits for people beyond the individual complainant.
- Commission survey data also highlights the educative effect of the Commission's complaint process. For example, in relation to conciliated complaints, 72% of surveyed participants indicated that involvement in the complaint process had assisted them to better understand rights and responsibilities under federal human rights and anti-discrimination law.

Table 4 - Outcomes of finalised complaints over past five years

	2011-12	2012-13	2013-14	2014-15	2015-16
Terminated/declined	31%	33%	23%	23%	19%
Conciliated	48%	45%	49%	51%	52%
Withdrawn	12%	13%	16%	16%	17%
Discontinued	8%	9%	9%	9%	9%
Reported (AHRCA)	1%	-	3%	1%	3%

Table 5 - Complaints resolved by conciliation over the past five years

	2011-12	2012-13	2013-14	2014-15	2015-16
Complaints successfully resolved	66%	65%	70%	72%	76%
Complaints unable to be resolved	34%	35%	30%	28%	24%

4. Timeliness of the complaint process

Table 6 – Time from receipt to finalisation of complaint in 2015-16 reporting year

Time taken	Percentage
0 – 3 months	47%
3 - 6 months	82%
6 - 9 months	94%
9 - 12 months	98%
Average time	3.8 months

5. Satisfaction with complaint process

- In 2015-16 the Commission also surpassed its performance standard for service satisfaction. In this reporting year 94% of surveyed parties reported that they were satisfied with the service and 73% rated the service as ‘very good’ or ‘excellent’. Where complaints were conciliated, 98% of parties reported they were satisfied with the service and 82% rated the service they received as ‘very good’ or ‘excellent’.

Version	#: Cleared by:	Action officer: S 47F
Current at:	Phone number:	Action officer number: S 47F

3.3 Legal Report

Commission Interventions and Amicus Curiae Matters (5 October 2016)

	<i>2013-2014</i>	<i>2014-2015</i>	<i>2015-2016</i>	<i>2016-2017</i>
Interventions: leave granted to the Commission to intervene	0	3	1	1
Interventions in which the Cth or a Minister of the Cth was a party or intervener	0	1	0	0
Common Law Amicus curiae: leave granted to the Commission	2		1	0
Common Law Amicus in which the Cth or a Minister of the Cth was a party or intervener	1 (Magaming v The Queen)		1	0
Amicus curiae: leave granted to Commissioner	0			0
Direct cost expenditure on interventions	0	\$12,420	\$8,878*	0
Direct cost expenditure on amicus curiae	\$20,038.57		\$7,364	0

*Includes costs for matters ongoing from the previous financial year

Fair Work Commission proceedings (Family or domestic violence leave)

The Commission sought leave to intervene as an 'interested party' supporting the introduction of Family and domestic violence leave in these proceedings before the Fair Work Commission.

The proceedings

The Fair Work Commission is required to conduct a 4 yearly review of modern awards. As part of that review, the ACTU is seeking to include a new entitlement of paid leave for workers who experience family or domestic violence in all modern awards. The ACTU is claiming for 10 days paid leave per year (followed by 2 days unpaid leave on each occasion that an employee's entitlement to paid leave is exhausted) in order to, for example, make re-location and other safety arrangements, seek legal advice, or to make court appearances or attend relevant appointments.

The Commission made a submission in support of the ACTU's claim for paid domestic violence leave focusing on the following key areas:

- access to decent work and violence against women are human rights issues;
- the importance of workplace support (specifically paid leave) for victims of domestic violence given the impact that violence has on employees' capacity to remain in employment and the importance of economic security in assisting women to leave situations of domestic violence; and
- the practice of employers providing this kind of leave in Australia and overseas.

The Commission's submission did not include a specific endorsement of any particular number of days of paid leave.

Status

The matter will be listed for hearing before the Fair Work Commission later this year.

Intervention - Farnell & Li v Minjaroen

At the invitation of the Chief Judge of the Family Court of Western Australia the Commission sought, and was granted, leave to intervene in this matter on 3 November 2014. The proceedings were an application for parenting orders relating to a child born in Thailand through a surrogacy arrangement.

Background

The Applicants were an Australian couple (the intended parents) who entered into a surrogacy arrangement in Bangkok. A Thai woman agreed to act as surrogate and consented to the intended parents having the care of the child or children after birth.

The surrogate mother was implanted with fertilised embryos (using the sperm of the intended father and the egg of an anonymous egg donor). The surrogate mother gave birth to twins in Bangkok in December 2013. One child, who has down syndrome, is in Thailand. The child the subject of these proceedings has been granted Australian citizenship and the intended parents are caring for the child.

The circumstances surrounding the birth of the twins and the return of one of them to Australia was subject to significant media attention when it became publicly known that the intended father was a convicted paedophile and that the twin that remained in Thailand, Gammy, had Down Syndrome.

1. The proceeding raises important human rights issues including; the identification of parents of a child born to an international surrogacy arrangement; the best interests of the child; and the human rights of the surrogate mother.

Status

Judgement was handed down on 14 April 2016. The Court made orders that the child in Australia live with them and that they have equal shared parental responsibility for her and that her name be changed to Farnell, the name of the Applicant father. The orders were subject to compliance with a raft of orders relating to ongoing monitoring of the family by the Department of Child Protection. The Court also made findings that the Applicants did not abandon the boy, Gammy and did not attempt to access the funds in a trust account set up for him by an Australian charity, both allegations that had been publicly made against them.

Version:	Cleared by:	Action officer: Julie O 'Brien
Current at: 5 October 2016	Phone number:	Action officer

Michelle Lindley

From: Julie O'Brien
Sent: Tuesday, 15 November 2016 2:39 PM
To: Commissioners
Subject: FW: FYI - the letter [SEC=UNCLASSIFIED]
Attachments: 15.04.07 Attorney-General update letter.docx

Gillian and Commissioners

Please find attached 2015 correspondence to the Attorney requesting amendments to the AHRC Act.

Kind regards

Julie O'Brien
Director, Legal Section
Australian Human Rights Commission
Level 3, 175 Pitt Street, Sydney NSW 2000
GPO Box 5218, Sydney NSW 2001

[@humanrights.gov.au](https://twitter.com/humanrights.gov.au) | [W humanrights.gov.au](http://www.humanrights.gov.au)

Human rights: everyone, everywhere, everyday



[Buy your tickets](#) for the 2016 Human Rights Awards today!

From: Darren Dick
Sent: Monday, 7 November 2016 12:00 PM
To: Julie O'Brien @humanrights.gov.au; **s 47F** @humanrights.gov.au>
Subject: FYI - the letter [SEC=UNCLASSIFIED]

Sent April 2015, referred to in subsequent letters (inc to Secretary)

s 47C, s 47E

Darren Dick
Director - Policy and Programs
Australian Human Rights Commission
Level 3, 175 Pitt St, Sydney NSW 2000
GPO Box 5218, Sydney NSW 2001

[W www.humanrights.gov.au](http://www.humanrights.gov.au)

Human rights: everyone, everywhere, everyday



7 April 2015

Senator the Hon. George Brandis QC
Attorney-General
Parliament House
Canberra ACT 2600

Dear Attorney,

Updates re Commission work, absorbing budget cuts and AHRC Act complaints

I write to update you about the Commission's activities across a range of areas.

First, I am delighted that you will join the Honourable Susan Ryan AO on 15 April to launch the *Willing to work Inquiry* into discrimination in employment on the basis of age or disability.

This significant project will provide a basis for the Commission to focus its engagement with the business sector to prevent discrimination and importantly, to identify strategies to proactively embrace the diversity of the Australian community for the economic benefit of the country.

Over the coming months we will also be:

- Launching the report of consultations with Australians identifying the key issues relating to sexual orientation, gender identity and / or intersex status
- Releasing tools for business for addressing discrimination on the basis of pregnancy and return to work – this follows from research funded by the AG's Department in 2014, with the current work funded by the Department of Prime Minister and Cabinet, with significant corporate support from Price Waterhouse Cooper
- Celebrating 40 years of the Racial Discrimination Act 1975 with an event at the Commission to commemorate the assent to the bill in June 1975
- Conducting an Indigenous leaders' roundtable in Broome on May 19-20 on unlocking the economic potential of native title: this should provide useful input into the recently established COAG working group on native title reforms
- Launching an inter-active website and video celebrating the 800 year anniversary of the Magna carta, as well as educational resources linked to the national curriculum on rights and freedoms

- Continuing our high level engagement with the business sector by co-hosting the annual Global Compact Network Australia workshop and meeting of the Male Champions of Change, both in August.

Please let me know if you would like further information about any of these activities and events.

The Commission is also adjusting our activities to accommodate the significant budget cuts that were included in the Mid-Year Economic Forecast in December 2014 as well as to ensure that we have the capacity to undertake the *Willing to work inquiry* without dedicated funding.

We anticipate that the Commission will lose 15 staff positions (from a total of 130 at 30 June last year) as well as re-task remaining positions in order to address the budget situation. Voluntary redundancies will be included among the positions to go.

While the budget cuts will place great pressure on our ability to meet our functions, I am confident that the Commission can continue to operate without significantly adverse impacts on quality or the timeliness of our dispute resolution services in particular. Further cuts, however, are likely to impact substantially on the efficiency of our core services.

To assist in our ability to maintain high quality services, I am keen to discuss with you some potential procedural changes to the Commission's enabling legislation. As you may recall, in August 2014 we discussed reforms that would reduce regulatory burden in the complaint handling process as well as limit the resources required to undertake our mandatory reporting obligations. I attach a copy of the proposals previously identified by the Commission. In brief, these proposed reforms to the AHRC Act are:

- Procedural changes to simplify the investigation and conciliation services that the Commission provides
- Amending the scope of matters that fall with the human rights complaints jurisdiction, particularly by removing the requirement for the Commission to report to Parliament on all complaint matters that are unresolved
- Amending the requirement for the Social Justice Commissioner and National Children's Commissioner to report to parliament annually, so that they have more discretion as to the best manner to undertake their functions – at present, the mandatory report requirement dictates that the majority of their efforts are put to the production of these reports when it may be that other approaches would be more appropriate at any given time.

Please do not hesitate to contact me to discuss any of the matters raised in this letter.

Yours sincerely,

Gillian Triggs
President

T +61 2 9284 9614
F +61 2 9284 9794
E president.ahrc@humanrights.gov.au

CC:

Joshua Faulks, Human Rights Adviser, AGO [@ag.gov.au](mailto:Joshua.Faulks@ag.gov.au);

David Fredericks, Deputy Secretary, Civil Justice & Legal Services Group, AGD
[@ag.gov.au](mailto:David.Fredericks@ag.gov.au);

John Reid, First Assistant Secretary, International Law and Human Rights Division, AGD
[@ag.gov.au](mailto:John.Reid@ag.gov.au);

Paul Pfitzner, Acting Assistant Secretary, Human Rights Policy Branch, AGD
[@ag.gov.au](mailto:Paul.Pfitzner@ag.gov.au)

Technical fixes to aid the smooth operation of the Commission's jurisdiction

There are a number of modest, technical legislative amendments that would improve efficiency and reduce regulatory burden in how the Commission exercises its existing jurisdiction, as follows:

- **Discretion for Commission on when to prepare statutory reports (Social Justice, Native Title and Children's Commissioner Reports):** The Aboriginal and Torres Strait Islander Social Justice Commissioner and the National Children's Commissioner are both required to produce reports each year in their respective areas of responsibility. The Native Title Act 1992 also requires the Aboriginal and Torres Strait Islander Social Justice Commissioner produce a Native Title Report on an annual basis. This compulsory reporting detracts from the capacity of the Commissioners to perform priority work and is difficult to justify in a resource-constrained environment. **Amendments could allow the relevant Commissioner to decide when it is appropriate to provide these reports to the Attorney General, rather than requiring them to be produced annually.**
- **Consider whether a separate Native Title statutory report remains necessary:** The Native Title Report has been an annual statutory requirement for the Social Justice Commissioner since 1994. The Commission has now adopted a practice of including the Native Title Report alongside the Social Justice Report, to ensure a more holistic approach to indigenous human rights and for efficiency reasons. Section 209 of the Native Title Act could be repealed, and replaced with a clarification in section 43A(1) of the AHRC Act that in preparing the Social Justice Report the commissioner should consider the impact of the Native Title Act on the enjoyment of human rights by Indigenous peoples.
- **New ground for the Commission to close human rights complaints where no further action warranted** - The Commission could be empowered to take no further action on human rights complaints (under section 20 and section 31 of the AHRC Act) where there is no reasonable prospect that the complaint will be settled by conciliation and where it considers that no further action is warranted. This would allow the Commission to expeditiously dispose of human rights complaints that are ill conceived or vexatious.
- **Discretion for the Commission not to produce a report to the Minister in relation to human rights complaints** - Currently, the AHRC Act requires (sections 20 and 31) that the Commission give a report to the Minister in relation to a human rights inquiry (whether conducted because of a complaint or on the Commission's initiative) in situations where the Commission finds that the act or practice is inconsistent with human rights, and attempting to settle the matters is not appropriate or unsuccessful. Once a report has been provided to the Minister, it must be tabled in Parliament.

The Commission could be provided with a broad discretion as to whether to provide a report to the Minister. It is envisaged that these provisions would reduce the Government's administrative burden related to Parliamentary tabling of human rights reports that have not found significant human rights breaches, as well as the administrative burden on the Commission of producing reports on own-motion inquiries where investigation has not disclosed major issues. This would make the complainants and respondents the principal recipients of the report, with the Minister (and thereby Parliament) kept informed of major issues at the Commission's discretion. This would strike a balance between keeping the Minister informed of significant issues and ensuring that the Minister and Parliament's time is not taken up with reports that do not identify significant issues.

- **Change to sections dealing with conciliation to make it clear that legislative proscriptions re proceedings apply to both compulsory and voluntary conciliation conferences** – This would address technical omission in previous drafting and accord with accepted ADR practice. Would require replacing existing section 46PJ and 46PK of the AHRC Act.
- **Inclusion of section re confidentiality of conciliation** – This would address apparent omission in previous drafting and to accord with accepted ADR practice and similar state and territory legislation. Include a new provision which clearly states that things said and done in conciliation are not admissible in evidence
- **Amend definition of what can constitute a complaint** - Reduce potential for unmeritorious complaints by including new provision which makes it clear that for complaint to be accepted by the Commission a person must allege an act which, if true/proven, could constitute a breach of federal human rights and anti-discrimination law. This differs from current wording which requires the person to allege it is unlawful discrimination – that is, it doesn't have to be something which *could* amount to unlawful discrimination, they just have to allege that it is.

s 42, s 47C, s 47E



s 42, s 47C, s 47E

s 42, s 47C, s 47E, s 47F

s 42, s 47C, s 47E, s 47F

s 42, s 47C, s 47E, s 47F

s 42, s 47C, s 47E, s 47F

s 42, s 47C, s 47E, s 47F

s 42, s 47C, s 47E, s 47F

s 42, s 47C, s 47E, s 47F

s 42, s 47C, s 47E, s 47F

s 42, s 47C, s 47E, s 47F

s 42, s 47C, s 47E



s 42, s 47C, s 47E

s 42, s 47C, s 47E

s 42, s 47C, s 47E

s 42, s 47C, s 47E

s 42, s 47C, s 47E

s 42, s 47C, s 47E

s 42, s 47C, s 47E

s 42, s 47C, s 47E

s 42, s 47C, s 47E

s 42, s 47C, s 47E

s 42, s 47C, s 47E



s 42, s 47C, s 47E



s 42, s 47C, s 47E

s 42, s 47C, s 47E

s 42, s 47C, s 47E

From: s 47F
Sent: Thursday, 17 November 2016 12:02 PM
To: s 47F; Tim Soutphommasane; Edward Santow; s 47F
Subject: Ian Goodenough op-ed, Free Speech/RDA Inquiry chair [SEC=UNCLASSIFIED]

Hi all, you may have seen this already in today's clips. If not, worth bringing to your attention. Ian Goodenough will be chairing the party inquiry into free speech and the RDA.

He says: "The free speech inquiry relates only to cases where cultural sensibilities are the subject of speech which may be deemed to "insult" and "offend" persons based on race or ethnicity. Racial vilification as well as "humiliation" and "intimidation" will still be considered as offences as they are intended to cause detriment or incite racial hatred."

Dom

Free speech best way to resolve differences

[West Australian, Perth](#), General News Ian Goodenough

17 Nov 2016

ASR AUD 6,872 • Australia • WA • Page 20 • 718 words • Adrian • Photo: No • Type: News Item • Size: 392.00 cm² • ID: 687331087

Australia has obligations internationally to implement protections against racial hatred. It is important for the public to understand the nuances of the current parliamentary inquiry into free speech - that it involves cases at the acute end of the spectrum, namely "insult" and "offend" as opposed to "humiliate" and "intimidate".

In our multicultural society, cultural differences do exist and these conflicts can be resolved by mature dialogue.

Unresolved cultural conflicts, in a politically correct society which is often reluctant to offend, have the potential to escalate into more serious situations.

Consider the following anecdote of how innocently a cultural or customary difference can give rise to unintentional offence and insult, which may unnecessarily escalate under the current laws.

A fortnight ago, I was invited to attend a significant ethnic religious festival and feast. My friend the mayor, who is female, was also invited, so we travelled together, as we often do to civic functions. On arrival we were warmly greeted by the hosts and ushered into separate areas for men and women. After the formal proceedings, we were invited to partake in the feast. I stood at the entrance to the hall waiting for my friend so we could eat together, as we normally do at community events. The hosts ushered me in to the dining area saying "Come in, don't wait, men must eat first".

Not wanting to cause an incident I entered the room and was hospitably served food while seated among tables of men. After a second serving I noticed the women had started entering the room and were seated at tables to the rear for their meals.

I was raised according to the Western culture of "ladies first" where it is customary for ladies to enter first, and for ladies to be served their food and drinks before gentlemen at the dining table. Other ethnic cultures have different customs where men take precedence over women in social settings. I am not expressing a view of which approach is correct.

Imagine if I had stood my ground, saying to my hosts, "This is Australia, mate, in our society it is customary for women to either be served their meals first or together with men".

That may have caused insult or offence to my ethnic hosts in a public setting with more than 2000 people present. Even more so had I resorted to social media to express my contrary views on Facebook or Twitter.

Could I have been deemed to have contravened section 18C of the Racial Discrimination Act and been the subject of a complaint to the Human Rights Commission, in the same way as a discussion about access to a computer laboratory in the Queensland University of Technology case led to students facing legal action?

I make it clear it is not my intention to cause offence to my hosts for the festival as they were hospitable and the mayor and I were amenable to their customs. That is why I have not identified the group concerned.

Wouldn't it be better to discuss cultural sensitivities through free speech than be silent about such important issues as the treatment of women in our society?

The pathway to a multicultural Australia is a two-way street, and we must exhibit goodwill to other cultural groups by learning to give and take.

Will the diametrically opposed Western "ladies first" and Eastern "men first" customs combine to result in a more gender-neutral approach in future social settings? Perhaps in 20 to 30 years time descendants of this particular ethnic group may still practise their traditional religious observances, yet adopt a more equal approach to gender.

The free speech inquiry relates only to cases where cultural sensibilities are the subject of speech which may be deemed to "insult" and "offend" persons based on race or ethnicity.

Racial vilification as well as "humiliation" and "intimidation" will still be considered as offences as they are intended to cause detriment or incite racial hatred.

By fine-tuning our existing laws we can allow free speech to bridge cultural differences to achieve compromise.

Mature debate is preferable to harbouring unresolved cultural conflicts, which have the potential to breed resentment and escalate into more serious situations.

.....
? Ian Goodenough is a Federal Liberal MP and chairman of the parliamentary joint committee on human rights

 [View original](#)

ITEM DETAILS

Audience

153,763

Circulation

Dr Dominic O'Grady | Media Adviser to:
Robynne Quiggin, Deputy Commissioner, Aboriginal and Torres Strait Islander Social Justice;
Edward Santow, Human Rights Commissioner;
Dr Tim Soutphommasane; Race Discrimination Commissioner.

Australian Human Rights Commission

Level 3, 175 Pitt Street, Sydney NSW 2000
GPO Box 5218, Sydney NSW 2001

| [W www.humanrights.gov.au](http://www.humanrights.gov.au)

Human rights: everyone, everywhere, everyday



[Buy your tickets](#) for the 2016 Human Rights Awards today!

s 42, s 47C, s 47E

s 42, s 47C, s 47E

Joint Parliamentary Committee on Human Rights Inquiry into freedom of speech

Monday, 12 December 2016
1.30pm to 3.30pm

Committee Room 2S3, Parliament House

Tab	Document
1.	Terms of reference for inquiry and hearing program
2.	Opening statement
3.	Australian Human Rights Commission submission
4.	s 47C, s 47E
5.	Flowchart of unlawful discrimination complaints process
6.	s 47C, s 47E
7.	s 47C, s 47E
8.	Chronology of complaint by Ms Dinnison against <i>The Australian</i> and Mr Leak

Joint Parliamentary Committee on Human Rights inquiry into freedom of speech

1 Membership

- **Chair:** Mr Ian Goodenough MP, Liberal Party of Australia , Moore WA
- **Deputy Chair:** Mr Graham Perrett MP, Australian Labor Party , Moreton QLD

Members:

- Mr Russell Broadbent MP, Liberal Party of Australia , McMillan VIC
- Senator Carol Brown, Australian Labor Party , TAS
- Ms Madeleine King MP, Australian Labor Party , Brand WA
- Mr Julian Leeser MP, Liberal Party of Australia , Berowra NSW
- Senator Nick McKim, Australian Greens , TAS
- Senator Claire Moore, Australian Labor Party , QLD
- Senator James Paterson, Liberal Party of Australia , VIC
- Senator Linda Reynolds, Liberal Party of Australia , WA

5 x members: Liberal Party of Australia

4 x members: Australian Labor Party

1x member: Australian Greens

2 Terms of reference for inquiry

PARLIAMENTARY JOINT COMMITTEE ON HUMAN RIGHTS

To inquire, and report to the Parliament by 28 February 2017, on the following matters:

1. Whether the operation of Part IIA of the Racial Discrimination Act 1975 (Cth) imposes unreasonable restrictions upon freedom of speech, and in particular whether, and if so how, ss. 18C and 18D should be reformed.
2. Whether the handling of complaints made to the Australian Human Rights Commission (“the Commission”) under the Australian Human Rights Commission Act 1986 (Cth) should be reformed, in particular, in relation to:
 - a. the appropriate treatment of:
 - i. trivial or vexatious complaints; and
 - ii. complaints which have no reasonable prospect of ultimate success;
 - b. ensuring that persons who are the subject of such complaints are afforded natural justice;
 - c. ensuring that such complaints are dealt with in an open and transparent manner;
 - d. ensuring that such complaints are dealt with without unreasonable delay;
 - e. ensuring that such complaints are dealt with fairly and without unreasonable cost being incurred either by the Commission or by persons who are the subject of such complaints;
 - f. the relationship between the Commission’s complaint handling processes and applications to the Court arising from the same facts.
3. Whether the practice of soliciting complaints to the Commission (whether by officers of the Commission or by third parties) has had an adverse impact upon freedom of speech or constituted an abuse of the powers and functions of the Commission, and whether any such practice should be prohibited or limited.
4. Whether the operation of the Commission should be otherwise reformed in order better to protect freedom of speech and, if so, what those reforms should be.

The Committee is asked, in particular, to consider the recommendations of the Australian Law Reform Commission in its Final Report on Traditional Rights and Freedoms – Encroachments by Commonwealth Laws [ALRC Report 129 – December 2015], in particular Chapter 4 – “Freedom of Speech”.

In this reference, “freedom of speech” includes, but is not limited to, freedom of public discussion, freedom of conscience, academic freedom, artistic freedom, freedom of religious worship and freedom of the press.

s 47C, s 47E

s 47C, s 47E

s 47C, s 47E

s 47C, s 47E

6 Summary – ALRC ‘freedoms’ report – Chapter 4

Full report available here: <https://www.alrc.gov.au/publications/freedoms-alrc129>

Summary report available here: <https://www.alrc.gov.au/publications/freedoms-alrc129-summary>

Main report - extract

4. Freedom of Speech - Summary

4.1 Freedom of speech has been described as ‘the freedom *par excellence*; for without it, no other freedom could survive’.^[1] Freedom of speech is ‘closely linked to other fundamental freedoms which reflect ... what it is to be human: freedoms of religion, thought, and conscience’.^[2]

4.2 This chapter discusses the source and rationale of the common law right of freedom of speech; how this right is protected from statutory encroachment; and when laws that interfere with freedom of speech may be considered justified, including by reference to the concept of proportionality.

4.3 Free speech and free expression are understood to be integral aspects of a person’s right of self-development and fulfilment. The freedom is intrinsically important, and also serves a number of broad objectives:

First, it promotes the self-fulfilment of individuals in society. Secondly, in the famous words of Holmes J (echoing John Stuart Mill), ‘the best test of truth is the power of the thought to get itself accepted in the competition of the market’. Thirdly, freedom of speech is the lifeblood of democracy. The free flow of information and ideas informs political debate. It is a safety valve: people are more ready to accept decisions that go against them if they can in principle seek to influence them. It acts as a brake on the abuse of power by public officials. It facilitates the exposure of errors in the governance and administration of justice of the country.^[3]

4.4 At the same time, it is widely recognised that freedom of speech is not absolute. In Australia, legislation prohibits, or renders unlawful, speech or expression in many different contexts. Some limitations on speech have long been recognised by the common law itself, such as obscenity and sedition, defamation, blasphemy, incitement, and passing off.

4.5 Numerous Commonwealth laws may be seen as interfering with freedom of speech and expression. There are, for example, more than

500 government secrecy provisions alone. In the area of commercial and corporate regulation, a range of intellectual property, media, broadcasting and telecommunications laws restrict the content of publications, broadcasts, advertising and other media products. In the context of workplace relations, anti-discrimination law—including the general protections provisions of the *Fair Work Act 2009* (Cth)—prohibit certain forms of speech and expression.

4.6 Some areas identified as being of concern are:

- various counter-terrorism offences provided under sch 1 of the *Criminal Code Act 1995* (Cth) (*Criminal Code*) and, in particular, the offence of advocating terrorism;
- various terrorism-related secrecy offences in the *Criminal Code*, *Crimes Act 1914* (Cth) and *Australian Security Intelligence Organisation Act 1979* (Cth) (*ASIO Act*) and, in particular, those relating to ‘special intelligence operations’;
- Commonwealth secrecy offences generally, including the general secrecy offences in ss 70 and 79 of the *Crimes Act*; and
- anti-discrimination law and, in particular, s 18C of the *Racial Discrimination Act 1975* (Cth) (*RDA*).

4.7 Counter-terrorism and national security laws, including those mentioned above, should be subject to further review to ensure that the laws do not interfere unjustifiably with freedom of speech, or other rights and freedoms. Further review on this basis could be conducted by the Independent National Security Legislation Monitor (INSLM) and the Parliamentary Joint Committee on Intelligence and Security (Intelligence Committee).

4.8 The ALRC has not established whether s 18C of the *RDA* has, in practice, caused unjustifiable interferences with freedom of speech. However, it appears that pt IIA of the *RDA*, of which s 18C forms a part, would benefit from more thorough review in relation to freedom of speech.

4.9 In particular, there are arguments that s 18C lacks sufficient precision and clarity, and unjustifiably interferes with freedom of speech by extending to speech that is reasonably likely to ‘offend’. In some respects, the provision is broader than is required under international law to prohibit the advocacy of racial hatred, broader than similar laws in other jurisdictions, and may be susceptible to constitutional challenge.

4.10 However, any such review should take place in conjunction with a more general review of anti-vilification laws. This could consider not only existing encroachments on freedom of speech, but also whether existing

Commonwealth laws serve their purposes, including in discouraging the urging of violence towards targeted groups distinguished by race, religion, nationality, national or ethnic origin or political opinion. Greater harmonisation between Commonwealth, state and territory laws in this area may also be desirable.

4.11 There is also reason to review the range of legislative provisions that protect the processes of tribunals, commissions of inquiry and regulators. Some of these laws may unjustifiably interfere with freedom of speech—and may be unconstitutional—in prohibiting criticism of public officers engaged in performing public functions.

4.12 Finally, the Australian Government should give further consideration to the recommendations of the ALRC in its 2009 report on secrecy laws,^[4] and to whether Commonwealth secrecy laws—including the *Australian Border Force Act 2015* (Cth)—provide for proportionate limitations on freedom of speech.

Executive summary report - extract

Freedom of speech

24 Freedom of speech has been described as ‘the freedom *par excellence*; for without it, no other freedom could survive’ and is closely linked to other fundamental freedoms, such as freedom of religion, thought, and conscience.

25 In Australia, legislation prohibits, or renders unlawful, speech or expression in many different contexts—including in relation to various terrorism offences and terrorism-related secrecy offences, other secrecy laws and the *Racial Discrimination Act 1975* (Cth) (*RDA*). At the same time, many limitations on speech have long been recognised by the common law itself, such as incitement to crime, obscenity and sedition.

26 The ALRC has not established whether s 18C of the *RDA* has, in practice, caused unjustifiable interferences with freedom of speech. Part IIA of the *RDA*, of which s 18C forms a part, would benefit from more thorough review in relation to freedom of speech. However, any such review should take place in conjunction with consideration of anti-vilification laws more generally.

27 There is also reason to review the range of legislative provisions that protect the processes of tribunals, commissions of inquiry and regulators; and whether Commonwealth secrecy laws provide for proportionate limitations on freedom of speech.

Further consideration or review

81 A range of Commonwealth laws appear to warrant further consideration or review. Some of these laws might be reviewed by a parliamentary committee, a government department, or a body such as the INSLM or the ALRC itself. Others may simply warrant reconsideration by government, given their effect on traditional rights and freedoms.

Freedom of speech

- *Racial Discrimination Act 1975* (Cth) pt IIA—review in conjunction with consideration of anti-vilification laws more generally.
- Legislative provisions that protect the processes of tribunals, commissions of inquiry and regulators, for example *Veterans' Entitlements Act 1986* (Cth) s 170.
- Secrecy offences, including the general secrecy offences in *Crimes Act 1914* (Cth) ss 70, 79.
- *Criminal Code* s 80.2C (advocating terrorism), ss 102.1, 102.3, 102.5, 102.7 (prescribed terrorist organisations), s 105.41 (preventative detention orders)—review by INSLM and the Intelligence Committee as part of their ongoing roles.
- *Australian Security Intelligence Organisation Act 1979* (Cth) (*ASIO Act*) s 35P (special intelligence operations)—review by INSLM and the Intelligence Committee as part of their ongoing roles.

Agency/Business unit name:	Australian Human Rights Commission
	Hot topic only
	OR
	Hot topic AND supporting Backpocket
	OR
Topic title	Backpocket only
ADF collaboration - update	Backpocket only
Complaints - update	Backpocket only
Legal section briefing - update	Backpocket only
National Anti-Racism Partnership and Strategy - u	Backpocket only
Pathways to Protection report	Backpocket only
OPCAT, Don Dale and Children's Rights Report	Backpocket only
Indigenous property rights project - update	Backpocket only
Recent AHRC Act reports	Backpocket only
UPR - Australian 2nd cycle update	Backpocket only

If hot topic, why?	Action officer name	Action officer number
	s 47C, s 47E	s 47C, s 47E
	s 47C, s 47E	s 47C, s 47E
	Julie O'Brien	
	Annie Pettitt	
	Darren Dick	
	Darren Dick	
	Robynne Quiggin	
	Julie O'Brien	
	Darren Dick	

**Is input required from
another business unit or
agency? If so, which?**

Select "Hot topic only" if you have a hot topic brief which does not require further supporting information beyond the limit of two pages.

Select "Hot topic AND supporting Backpocket" if your hot topic brief could be usefully supplemented with further information (eg background, detailed facts, attachments etc).

Select "Backpocket only" if the issue is not significant enough to warrant being a Hot topic but where a brief could usefully be prepared for use by the business unit or agency.

BACKPOCKET BRIEF

AHRC-13 - ATAA and ‘Racism. It Stops With Me’

Summary

In July 2016, the AHRC formally advised the Australian Turkish Advocacy Alliance (ATAA) that its membership of *RISWM* would be terminated because the organisation’s actions were inconsistent with the purpose of the Commission’s anti-racism campaign.

Specifically, the AHRC was concerned about content published and promoted on the ATAA’s website, including an April 2016 article which singled out Armenian Australians for criticism on the basis of their race. In terminating the agreement, the RDC expressed the view that ATAA had not “exercised all reasonable care and diligence to protect the Commission’s reputation” in accordance with cl 2(b)(e) of the *RISWM* Supporter obligations.

The decision to terminate the Agreement came after correspondence between AHRC and ATAA regarding website material; a face-to-face meeting with representatives of the ATAA about the material; a proposal from the RDC that the ATAA voluntarily withdraw and AHRC could consider an alternative Turkish Australian organisation to join *RISWM*, or otherwise have their agreement terminated by AHRC; and a written response from ATAA that contained no offer to voluntarily withdraw.

A more expansive timeline is below.

Timeline/Sequence of Main Events

- August 2015 – ATAA joins the *RISWM* campaign by completing the Supporter Agreement with the Commission.
- 14 March 2016 – Armenian National Committee (ANC) writes to AHRC, expressing concern about ATAA online materials and activities.
- 24 April 2016 – ATAA publishes an article on its website ‘Armenians undermine multi-cultural harmony of Australia’, singling out Armenian Australians for criticism on the basis of their race. ANC then brings this article to AHRC’s attention.
- 27 May 2016 – AHRC writes to ATAA and provides a copy of ANC’s correspondence. AHRC offers meeting with ATAA.
- 21 June 2016 – ATAA and AHRC meet to discuss concerns about ATAA’s materials and activities, and the ATAA’s response. RDC expresses concern about material published, including reputational risk to AHRC. RDC offers option that ATAA could voluntarily withdraw from the campaign, and AHRC could consider an alternative Turkish Australian organisation to join. Alternatively, AHRC could terminate the Agreement.
- 12 July 2016 – ATAA writes to AHRC, formally responding to allegations. They do not offer to voluntarily withdraw.
- 25 July 2016 – By letter, AHRC terminates the agreement with ATAA, effective in 30 days, as per cl 9 of the Agreement (24 August). The RDC is clear that this decision is not based on any view about events in the Ottoman Empire in 1915. RDC points to the inflammatory language used to describe Armenians on the ATAA website, and refers to:

Formatted: Border: Left: (Single solid line, Auto, 0.5 pt Line width)

- The supporter obligation to “exercise all reasonable care and diligence to protect the Commission’s reputation”, as well as
- The supporter agreement clause that no conflict exists, or is anticipated, relevant to the performance of the Supporter’s obligations under the Agreement. If a conflict arises, the Supporter must notify the Commission immediately.
- The ATAA’s publishing and promotion of material which involves the ATAA acting inconsistently with the purpose of the campaign.

Media Coverage

ABC RN The World Today reported on this story on 7 October 2016 (summary below):

> - 07 Oct 2016 12:24PM

> - AM Radio: Radio National, Canberra, The World Today, Emily Bourke

>

> Report by RN correspondent Will Ockenden on an Australian entity having its membership of a Human Rights Commission campaign revoked. The Australian Human Rights Commission has ended the Australian Turkish Advocacy Alliance’s (ATAA) membership of the Commission’s Racism: It Stops With Me campaign, stating the Alliance’s actions were inconsistent with the campaign’s purpose. Race Discrimination Commissioner Dr Tim Soutphommasane has explained the decision was made after it was found the ATAA’s representation of Armenian Australians was discriminatory. Armenian Australian groups have welcomed the decision, including Meher Grigorian, director of the Australian Institute for Holocaust and Genocide Studies. Grigorian remains concerned about how the ATAA came to be part of the campaign, questioning the commission’s vetting processes. Although approximately 20 countries recognise the 1915 events in Armenia as a genocide, both the Australian Federal Coalition and Labor party have stopped short of this stance. Borisher Timen(*), executive secretary of the ATAA, has stated the ATAA respects the Human Rights decision, but has not removed offending statements from the ATAA website.

To our knowledge there have been no further media reports as of 11 October 2016.

Version:	Cleared by:	Action officer: s 47F
Current at: 11 October 2016	Phone number:	Action officer number: 61 2 9284 9 s 47F

University sexual assault and sexual harassment project

Project background

The Australian Human Rights Commission has been asked by Universities Australia, the peak body which represents Australia's 39 universities, to conduct a national project on sexual assault and sexual harassment at university.

This project has two components:

- A national university student survey of sexual assault and sexual harassment; and
- An open call for submissions on sexual assault and sexual harassment at university.

The project is part of the university sector's Respect.Now.Always campaign, which is aimed at preventing and addressing sexual assault and sexual harassment.

Sexual assault and harassment experienced by students in university settings in Australia has been identified as an issue that needs to be addressed with evidence-based strategies and robust data.

The Commission's 2011 Review into the Treatment of Women in the Australian Defence Force Academy (ADFA) found that 'sexual harassment and assault is a problem across Australian universities'.¹ It recommended that ADFA develop a survey in consultation with universities and their residential halls and colleges in order to measure levels of 'unacceptable sexual behaviour' at Australian universities.

A 2015 survey conducted by the National Union of Students found that of 1,343 respondents, 72.75% had experienced some form of sexual harassment or unwelcome sexual behavior (though not necessarily while on campus) and 27% had experienced sexual assault.

The Hunting Ground documentary, which depicts sexual assault on American university campuses, and which highlights the potential problem for Australian universities, has also emphasised the importance of further research into this issue.

Asking the Commission to do this important work ensures that it will be conducted independently, and will produce statistically reliable data which will inform universities responses to sexual harassment and assault in the future.

The Commission brings significant expertise to this area through its work examining the treatment of women in the Australian Defence Force and conducting the National Workplace Sexual Harassment Survey since 2004.

The National university student survey of sexual assault and sexual harassment

The survey will focus on the nature and prevalence of sexual harassment and assault on university campuses, but also, importantly, student's experiences of their University's responses to these incidents.

The survey is being conducted by Roy Morgan Research on behalf of the Australian Human Rights Commission and has received ethics approval from the Human Research Ethics Committee at the University of New South Wales.

It is being rolled out in three waves across all 39 universities:

- The first wave of invitations was sent to students at 32 universities in the week of 19 September 2016;
- The second wave of invitations will be sent to students at six universities in the week of 24 October;
- The final university will send the survey to students in the week of 31 October.

The survey is being conducted as a sample survey in order to ensure the responses received are representative of the student population as a whole.

Universities are sending out the survey invitations to their own students to ensure confidentiality of responses; the Commission and Roy Morgan will receive the data without any identifying information (names, email addresses) and universities will not know which students have responded to the survey, nor will they receive any raw data.

The survey has been through a process of cognitive testing and refinements made on the basis of that feedback.

The Commission will produce a national report on sexual assault and sexual harassment at Australian universities in 2017 on the basis of the results of this survey. Each university will also receive an individual report of their own results – provided enough responses are received to ensure statistically relevant data.

The Commission is working with universities, student bodies and other organisations to promote the survey to students. Information sessions and consultations on the survey have been held in: Sydney, Melbourne, Hobart, Brisbane, Adelaide and Perth.

Submissions process

The second part of this work involves an open call for submissions to the Australian Human Rights Commission in relation to the issues of sexual assault and sexual harassment at university.

Any individual who wishes to have their say on these issues is free to make a submission, either via the form on our website or by emailing or calling the Commission. This includes current and former students, university staff, parents and organisations.

These submissions will be an important source of qualitative information on sexual assault and sexual harassment at university. This process also provides students who are not selected to participate in the survey and individuals who are not current students with the opportunity to provide the Australian Human Rights Commission with their views.

The Commission is working with 1800RESPECT and Rape and Domestic Violence Services Australia to ensure that appropriate support is available to people who have experienced sexual assault or sexual harassment.

The submissions process has been open since 23 August and to date we have received 1227 submissions (as at 7 October 2016).

The submissions will close in late December 2016.

Progress to date and next steps

- The project was formally launched at the University of New South Wales on 23 August 2016.

- Submissions opened on 23 August 2016 and will close in late December 2016.
- The first survey invitations were sent out in the week of 19 September 2016. The survey will conclude in November 2016.
- The report on the survey and submissions is expected to be published in March/April 2017.

Budget

Universities Australia has provided the Australian Human Rights Commission with s 45 to conduct the university sexual assault and sexual harassment project.

The Hunting Ground Australia Project has also provided the Commission with seed funding of s 45 for the development of the survey.

Version: #1	Cleared by: ^Division or Business Unit Head name^	Action officer: s 47C, s 47E
Current at: 10/02/2017 6:03 PM	Phone number:	Action officer number: s 47C, s 47E

ⁱ Australian Human Rights Commission, *Review into the Treatment of Women in the Australian Defence Force Academy*, 2011, 34.

Building Belonging – A toolkit for early childhood educators on cultural diversity and responding to prejudice

In 2015-16, the Commission initiated the development of resources for early childhood educators on cultural diversity and prejudice. These resources aim to assist educators to address issues relating to cultural diversity and prejudice in the context of early childhood education. The project was supported by a reference group of early childhood experts and practitioners.

The Commission commissioned Kimberlin Education, an education consultancy, to develop 'Building Belonging'. Building Belonging' is a comprehensive toolkit of early education resources which includes an ebook, song with actions, educator guide, posters and lesson plans. It is focused on encouraging respect for cultural diversity and tackling racial prejudice in early childhood settings.

The total cost of the contract with Kimberlin Education for the development of the resources was \$35,285.25.

The Building Belonging Toolkit was launched at the Early Childhood Australia National Conference on 7 October in Darwin.

In October and November 2015 the Commission conducted a survey of early childhood educators to learn more about their experiences with educating about cultural diversity and prejudice. With the support of Early Childhood Australia the survey was promoted widely among early childhood workers. The survey was open to responses for 4 weeks and received 476 responses. The survey itself was developed with support from the reference group of experts in both early childhood and anti-racism education.

The first question asked if people had experience working with children in early childhood education. Those who answered yes continued through the survey. Those who answered no were directed to the end of the survey and not asked any other questions.

The survey found that:

- 77% of respondents indicated that a child had asked a question, or made a comment, about their own, or another person's, racial, cultural or ethnic background.
- 43% of respondents had heard a child say something negative about another person's racial, cultural or ethnic background.
- 49% of respondents had heard a parent say something negative about another person's racial, cultural or ethnic background.
- 72% of respondents reported that there were challenges to educating about cultural diversity.
- 72% of respondents reported that there were challenges to addressing prejudice.
- 86 to 90% of respondents indicated they were quite or extremely likely to use resources designed to support them to educate about cultural diversity, create an inclusive environment or respond effectively to comments or questions by students and parents about another person's racial, cultural or ethnic background.

- Respondents indicated that their preferred resource format would include: factsheets, lesson plans, strategies for responding to comments/questions, books/stories, posters, videos, games and songs/music.

Following the launch, the resources were promoted widely through the early childhood education sector and through social media.

In the period from 1 October – 30 November the Building Belonging toolkit has been downloaded 12,448 (at 30/11) times. There have been 21,380 page views during the same period.

The Commission has received numerous comments and feedback on the resource – all of which have been positive.

During the period 14 – 17 November, the Building Belonging resources received some media attention from sources including: The Daily Telegraph, The Herald Sun, Sunrise, Ten News, The Educator and The Australia and 3AW radio. Some concerns were raised in the commentary regarding the potential risk of introducing ideas around difference, race and racism to children as young as three. There were also questions as to whether it was appropriate for educators to be teaching about these issues, rather than parents.

However, as the survey conducted with early childhood educators reinforced, children are aware of difference, including racial difference, from a very young age. An article published by ANU academic Dr. Naomi Priest on 16 November 2016, reinforced this, and the importance of early education in this area:

“Children do recognise difference at an early age. By three or four years children have already begun to internalise bias and stereotypes, key antecedents of discriminatory behaviour and core components of racism.”

“Myths persist that children don’t notice difference or “see” race and so we shouldn’t unduly bring it to their attention. These “colour blind” approaches instead focus on a shared, common humanity – that we are all part of the one human race – without explicitly recognising that difference and diversity are pervasive. In other words, that sameness and difference coexist...Scientific evidence, including from experimental studies, also documents that colour-blind approaches that avoid talking about difference tend to reinforce rather than counter prejudice in children.”

“Children need support to develop the cognitive and emotional skills required for positive cultural attitudes and to negotiate successfully the complex intercultural context of our increasingly diverse world. This includes learning to navigate the messages they receive from politicians, the media, social media and friends and families about racism and cultural diversity. Sustainable, multilevel whole-of-school and whole-of-community approaches that specifically address racism and support cultural diversity among children and young people are an ongoing priority.”

“Many parents, particularly those from white majority backgrounds, are also uncomfortable or unsure how to talk to their children about cultural difference and diversity.”

s 47F was a member of the reference group.

Staffing

The National Children's Commissioner Megan Mitchell and the Race Discrimination Commissioner Dr Tim Soutphommasane have overseen the development of the Building Belonging resources and their promotion.

The Manager, Education and Innovation, maintains oversight for the development of all education resources.

This project was and continues to be supported by a Manager, Education and Innovation (EL2) and a Project Officer (APS 6).

Reference group membership

In September 2015 a Reference Group of early childhood experts and practitioners was established. Membership of the Reference Group is as follows:

Early Childhood Australia (s 47F), Ethnic
Childcare Services Coop (s 47F), Access Settlement Services
(s 47F), FECCA (s 47F), Reconciliation Australia (s 47F), SDN
(s 47F), SNAICC (s 47F), ANU (s 47F), Macquarie University
(s 47F)

Version #: 1	Cleared by: Padma Raman Executive Director	Action officer: s 47C, s 47E Manager, Engagement and Innovation Team
Current at: 23 September 2016	Phone number: ()	Action officer number

National Anti-Racism Partnership and Strategy

On 24 August 2012, the National Anti-Racism Strategy 2012-15 was launched by then Attorney-General Nicola Roxon and then Minister for Multicultural Affairs, Senator Kate Lundy.

From 2012-15, the Strategy and its implementation have been led by the Australian Human Rights Commission, informed by a partnership which includes:

- the Attorney-General's Department
- the Department of Prime Minister and Cabinet (staff formerly at the Department of Families, Housing, Communities and Indigenous Affairs)
- the Department of Social Services (staff formerly at the Department of Immigration and Citizenship)
- the Australian Multicultural Council
- the Federation of Ethnic Communities Councils of Australia
- the National Congress of Australia's First Peoples
- Migration Council of Australia

The Commission will continue to lead the work of the Strategy from 2015-18. In July 2015 the Commission released a report on the summary evaluation of the Strategy and its future direction. This states that work under the Strategy will fall under two distinct but complementary themes:

- Combating racism and discrimination, and
- Supporting diversity and inclusion.

The Commission has \$90,000 approx in 2016-17 to deliver the National Anti-Racism Strategy.

Staffing

Race Discrimination Commissioner Dr Tim Soutphommasane is leading the Strategy.

Currently, the Secretariat is staffed by a Project Officer (APS 6) 3.5 days per week. The Manager, Education and Innovation (EL2) and the Executive and Research Assistant (APS3/4) to the Race Discrimination Commissioner also support the work of the Strategy.

The Manager, Education and Innovation, maintains oversight of the Strategy.

Partnership activities

The National Anti-Racism Partnership will next meet in Canberra in early June 2017.

The current partners are:

Australian Human Rights Commission (AHRC)
Attorney-General's Department (AGD)
Australian Multicultural Council (AMC)
Department of Prime Minister and Cabinet (PM&C)
Department of Social Services (DSS)
Federation of Ethnic Communities' Councils of Australia (FECCA)

Migration Council Australia
Reconciliation Australia

The Department of Human Services recently joined the Partnership in July 2016.

Campaign activities

'Racism. It Stops with Me' is the public campaign of the National Anti-Racism Strategy, launched on 24 August 2012.

Since 2012, 446 organisations have been involved in supporting the campaign. The number of current supporter organisations is 356.

Organisations come from a range of sectors including government, business, health, education and sports.

Strategy activities

- Early childhood project

The Commission committed \$30,000 in 2015-16 for development of resources for early childhood educators on cultural diversity and prejudice. These resources will assist educators to address issues relating to cultural diversity and prejudice in the context of early childhood education. The project is supported by a reference group of early childhood experts and practitioners.

The Commission has recently worked with Kimberlin Education, an education consultancy, to develop 'Building Belonging' which is a comprehensive toolkit of early education resources which includes an ebook, song with actions, educator guide, posters and lesson plans, focussed on encouraging respect for cultural diversity and tackling racial prejudice in early childhood settings.

Building Belonging was launched at the Early Childhood National Conference on 3 October 2017 in Darwin.

Commented [KL1]: Do you want more detail

- Community Service Announcement

The AHRC had received \$50 000 from the Department of Social Services for the production and promotion of a 'Racism. It Stops with Me' community services announcement. This will be produced during the 2016-17 financial year.

- Initial Teacher Education project

The Secretariat is consulting with key stakeholders in the education sector on the development of a project to create professional development resources for pre-service teachers. These will help teachers meet their professional obligations to promote cultural diversity and addressing racism. These resources will be consistent with Australian Professional standards for Teachers This project will be developed throughout 2017.

- Sporting activities

The Commission is currently working on a number of initiatives in partnership with a range of national sporting codes. In particular, the Commission has been working with the NRL and the AFL Players Association (AFLPA) to address racism and support cultural diversity in sport.

A preliminary report mapping a pathway to promote inclusion and address racism and discrimination in rugby league as prepared for the NRL in 2015. This report provides the basis for a new initiative with the NRL to design an inclusion framework and implementation strategy, and to develop an anti-discrimination/vilification policy and implementation strategy. The Commission has received s 47F, s 48 (inc GST) from the NRL to undertake this work. This work will be completed during 2016-17.

The Commission has collaborated with the AFLPA on an anti-racism video that was aired during finals season (beginning at the end August 2016). The AFL have also recently confirmed that this video will be shown during AFL matches throughout the 2016 season. Clubs will play tailored videos featuring their players and supporters at home games for the remainder of the 2016 season and beyond.

Commented [KL2]: Priya

Version #: 1	Cleared by: Padma Raman Executive Director	Action officer: s 47C, s 47E Manager, Engagement and Innovation Team
Current at: 23 September 2016	Phone number: (_____) _____	Action officer number

Australian Bureau of Statistics exemption

On 26 May 2016, the Australian Bureau of Statistics (ABS) applied to the Commission for an exemption from the *Sex Discrimination Act 1984* (Cth) to enable it to use predominantly female interviewers to conduct its 2016- 17 Personal Safety Survey (PSS).

The PSS is a survey that collects sensitive information about a person's experience of violence, in particular domestic violence. The survey will be conducted in 2016 and 2017 by personal interviews of around 22,000 adults (aged 18 years or over) nationally (excluding very remote areas of Australia). It is proposed that approximately 280 interviewers nation-wide will be used.

On 30 June 2016, the Commission notified the State and Territory Anti-Discrimination Boards and Equal Opportunity Commissions of the exemption application and invited their comment. The Anti-Discrimination Commissions in NSW, WA, SA and Tasmania supported the grant of an exemption.

The Commission also sought submissions from ABS employees. Of the 124 male and 266 female interviewers employed by the ABS, 10 male employees responded to the Commission's call for submissions. Additionally, the Community and Public Sector Union (CPSU) made a submission on behalf of male employees at the ABS. Three of the submissions supported the use of predominantly female interviewers to carry out the PSS and 7 strongly opposed it.

On 6 September 2016 the Commission granted a conditional, temporary exemption to the Australian Bureau of Statistics (ABS) to allow it to:

- allocate the Personal Safety Survey (PSS) interviewing work to female rather than male interviewers on its existing panel of casual interviewers;
- recruit approximately 50 female non-ongoing interviewers to conduct the PSS; and
- train and provide professional development opportunities to the predominantly female interviewers selected to conduct the PSS.

The exemption was granted with immediate effect until 30 June 2017 and is conditional on the ABS reporting to the Commission at the end of the PSS on the proportion of male and female respondents who use the computer to respond to the violence-related questions.

The reasons for the Commission's decision included that:

- The Commission accepts the importance of the PSS and the data that it collects about the experiences of female and male victims of violence. The PSS results are significant for developing prevention strategies as well as services for those experiencing violence.
- there was evidence from the Women's Support Network (the leading national peak body for Australian Domestic and Family Violence Services) that there is a risk that a male interviewer might cause some respondents who have experienced violence by another man to have an adverse triggered response to the sensitive questions asked during the PSS due to the fact that the interviewer is a man (regardless of how skilled he is).
- The ABS' experience in conducting the PSS three times in the past was that respondents are more likely to reveal violence incidents to women.

While the use of predominantly female interviewers to conduct the PSS is discriminatory, the Commission considered that the success of the PSS in collecting high quality data about the prevalence of violence, and

the avoidance of any adverse reactions by respondents were significant factors weighing in favour of the grant of the exemption.

Application may be made to the Administrative Appeals Tribunal for a review of this decision by any person or persons whose interests are affected by the decision.

The Commission granted the ABS an exemption to use predominantly female interviewers to conduct its Personal Safety Survey in 1995 and 2005.

-
- The Commission granted the ABS an exemption to allow it to use predominantly female interviewers to conduct its 2016-17 Personal Safety Survey.
 - The Commission consulted with State and Territory Anti-Discrimination Boards and Commissions as well as ABS employees.
 - The ABS' experience in conducting the PSS three times in the past was that respondents are more likely to reveal violence incidents to women.
 - There was also evidence that there is a risk that a male interviewer might cause some respondents who have experienced violence by another man to have an adverse triggered response to the sensitive questions asked during the PSS due to the fact that the interviewer is a man (regardless of how skilled he is).

Version: ^Number^	Cleared by: ^Division head name^	Action officer: Julie O'Brien
Current at: 20 September 2016	Phone number: ^Number^	Action officer number:

Background

On July 1 2014 the Australian Human Rights Commission (the Commission) entered into a collaborative relationship with the Australian Defence Force (ADF) to assist it to embed cultural change across the three Services (Army, Navy and Air Force) and to ensure the intent of the Defence cultural change strategy, *Pathway to Change*, is fully realised. Specifically, the work includes an examination of issues relating to gender, cultural and ethnic background, sexual orientation and the impact of social media and alcohol on unacceptable behaviour.

The work is undertaken by a dedicated ADF Cultural Reform team (the team) and involves visits to bases and focus groups and interviews with personnel, as well as analysis of relevant reference material. Under the terms of reference, reports are to be provided to Defence that may include strategies for further reform.

Process

The purpose and scope of each project and related base visits are determined in consultation with each of the Services. The visits include focus groups and interviews with personnel, administering a survey with focus group and interview participants and briefings with Command Teams. Prior to each visit a range of information is provided by Defence regarding the base, including prevalence data on unacceptable behaviour and complaints.

Base visits to date, include:

1. HMAS Cerberus (Victoria) – August 2014
2. RAAF School of Fire and Security (SFS), Amberley (Queensland) – September 2014
3. Al Minhad Air Base (United Arab Emirates) – November 2014
4. RAAF Base, Edinburgh (South Australia) – November 2014
5. Australian Defence Force Academy (ADFA) (Canberra) – December 2014
6. Gallipoli Barracks (Queensland) – March 2015
7. HMAS Creswell (New South Wales) – April 2015
8. RAAF Williamtown (New South Wales) – May 2015
9. RAAF Amberley (Queensland) – July 2015
10. RAAF Pearce (Western Australia) - September 2015
11. Basic Flying Training School, Tamworth (New South Wales)- September 2015
12. HMAS Cairns - October 2015
13. Army Logistics Training Centre (ALTC), Bandiana (New South Wales) - November 2015
14. HMAS Cerberus (Victoria) – March 2016
15. Robertson Barracks (Northern Territory) – April 2016
16. HMAS Cerberus (Victoria)- July 2016
17. HMAS Kuttabul and HMAS Waterhen (New South Wales)- September 2016
18. HMAS Coonawarra (Northern Territory) – September 2016

Themes covered during visits include:

- Leadership and communication
- Cultural change programs
- Representation of women and particular issues experienced by women
- Representation of Aboriginal and Torres Strait Islander members
- Representation of culturally and linguistically diverse members
- Representation of LGBTI members
- Flexible work and child care options
- Unacceptable behaviour, including nature, prevalence and reporting

Reports on HMAS Cerberus, SFS Amberley, Al Minhad Air Base, RAAF Edinburgh, ADFA, Gallipoli Barracks, HMAS Creswell, HMAS Cairns, ALTC and Robertson Barracks have been forwarded to Defence. An extended research report 'Improving opportunities for women to become fast jet pilots in Australia' was also been provided to Defence in June 2016.

Specific projects currently underway include:

- Examining cultural change in the context of Plan Beersheba – Army's deployment cycle strategy. The next visit will be to 3 Brigade in Townsville in November 2016.
- Examining workforce issues, particularly any cultural issues related to the recruitment and retention of women and culturally and linguistically diverse Navy Marine Technicians. This project will be completed in April 2017.
- Examining Air Force's gender programs, including the Women's Integrated Networking Groups (WINGs), experiential camps, Technet and Graduate Pilot Scheme. This project will commence in October 2016.

Budget and Staffing

Funding of approximately \$6 million over four years (14/15 – 17/18) is being provided by Defence to the Commission to undertake this work. The team currently includes 5 staff (1 full time and 4 part time).

Version #: 1	Cleared by:	Action officer: S 47F, Manager, ADF Cultural Reform Team
Current at: 22 September 2016	Phone number:	Action officer number: 02 9284 S 47F

BACKPOCKET BRIEF

BSWAT exemption

October 2016

On 28 April 2014 the Commission granted a 12 month, conditional, temporary exemption to the Commonwealth and Australian Disability Enterprises (ADEs) to allow them to continue to pay employees assessed under the Business Services Wage Assessment Tool (BSWAT). The exemption expired on 29 April 2015.

(i) Interim Application

On 22 April 2015 the Commonwealth made an application on its behalf and that of the ADEs for an exemption for the period between the expiry of the original exemption on 29 April 2015 and 'the date on which the Commission publishes its determination in relation to the application of 21 April 2015' (Interim Application).

On 30 April 2015 the Commission granted a 4 month exemption on the same terms as the original exemption.

On 5 May 2015 People with Disability Australia lodged an application in the AAT for review of the decision to grant the interim 4 month exemption. On 25 July 2015 the Administrative Appeals Tribunal set aside the decision of 30 April 2015 and remitted the matter to the Commission on the basis that it found the Commission had denied stakeholders procedural fairness because we did not call for submissions.

On 22 March 2016 the Commission granted a conditional exemption for the interim period being 30 April 2015 to 17 December 2015 (Interim Decision).

On 11 April 2016 People with Disability Australia lodged an application in the AAT for review of the decision to grant the Interim Exemption.

The First Directions hearing in the AAT was on 27 April 2016. The review of the Interim Decision has been joined with the review of the Primary Decision.

(ii) Primary Application

On 21 April 2015 the Commonwealth applied for a further exemption for 12 months (Primary Application). On 25 June 2015, as a result of an Order of the Fair Work Commission, the Secretary amended the Primary Application to align with the Order of FWC to cover the period to 29 February 2016.

On 18 December 2015 the Commission granted a limited, conditional, temporary exemption to the Commonwealth and any ADE that is granted additional time to use BSWAT by the Fair Work Commission.

On 18 January 2016 People with Disability Australia lodged an application for review of the decision with the Administrative Appeals Tribunal. The second directions hearing in the AAT was on 27 April 2016.

-
- The Fair Work Commission (FWC) Order varies the Supported Employment Services Award 2010 to remove the Business Services Wage Assessment Tool and provides transitional provisions
 - Both of the exemptions mirrored the orders of the FWC and both have now expired.

Version: ^Number^	Cleared by: ^Division head name^	Action officer: Julie O'Brien
Current at: 5 October 2016	Phone number: ^Number^	Action officer number: _____

Background

- An application has been filed in the Federal Circuit Court based on s 18C of the RDA by Ms Cindy Prior against the Queensland University of Technology (QUT). Ms Prior is an Aboriginal woman and was employed in the Oodgeroo Unit at QUT. In May 2013, three men entered the computer lab in the Oodgeroo Unit. Ms Prior asked them to leave because they were not Indigenous. She complains about comments later made on a Facebook page called “QUT Stalker Space” in relation to the incident which she claims were reasonably likely to offend, insult, humiliate or intimidate her or Aboriginal and Torres Strait Islander students or Indigenous people more generally. The claim is made against QUT, two officers of QUT and a number of students who were allegedly responsible for the Facebook comments. She complains about the publication of the comments and the actions taken by QUT in responding to her complaint.
- In their defence, two of the students have claimed that they were not properly notified of the Commission’s inquiry and that the Commission has therefore not performed its statutory functions of inquiring into the complaint and seeking to conciliate it. The students say that the consequence is that the complaint was not properly terminated and Ms Prior was not entitled to bring a claim in the Federal Circuit Court.
- The Commission is monitoring the court proceedings.

s 47C

- It is not appropriate to comment on the matter that is before the court. In relation to the complaints against the Commission, we can confirm the receipt of the complaint as this has been placed in the media by the complainant. However, due to confidentiality requirements under the *Australian Human Rights Commission Act, 1986 (AHRC Act)* we cannot comment further on the complaints. We can however provide general information about the complaint process, such as the information provided below.

Overview of the process for complaints of unlawful discrimination

- If a complaint is lodged with the Commission that meets the legislative threshold, the complaint must be referred to the President. The legal requirements for a complaint are that it: is in writing; is made by or on behalf of an aggrieved person; and alleges unlawful discrimination
- On receipt of a complaint the law says that the President must inquire into and attempt to conciliate the complaint (subject to the complaint not continuing - for example because it is withdrawn or dismissed). The AHRC Act does not specify the way in which this process must occur, subject to some requirements in relation to the procedures for compulsory conciliation. This allows for a degree of flexibility in the process to suit the specific circumstances of a particular complaint.
- At any time during the course of the complaint process, a complaint may be terminated (dismissed) if the President or her Delegate is satisfied that any of the grounds in section s46PH of the AHRC Act apply. For example where:
 - the complaint was lodged more than 12 months after the alleged unlawful discrimination took place;
 - the President is satisfied that some other more appropriate remedy in relation to the subject matter of the complaint is reasonably available; or

- the President is satisfied that there is no reasonable prospect of the matter being settled by conciliation.
- The law says that where a complaint is terminated under s46PH, a complainant can make an application to the court. Where a complaint is finalised because it is conciliated or where it is withdrawn/deemed that the person does not want to continue, there is no ability to lodge an application in court.

Notification of respondents to complaints

- Generally the Commission will directly notify a person/organisation (respondent) that a complaint has been made against them. However, the process of notification or the stage at which it occurs, may vary depending on the circumstances of the matter.
- In some circumstances there may be a delay in notifying an individual respondent where for example:
 - it is unclear if the complainant in fact wishes to proceed against the individuals named in the complaint; and/or
 - the complainant is unable to provide contact details for an individual respondent.
- In some circumstances the Commission may not directly notify an individual respondent for example where:
 - contact details for the individual are only known to the organisation; and
 - the organisation wishes to give notice to the individual respondent(s) (in which case the Commission seeks confirmation that this notification has occurred prior to any conciliation or termination of the complaint).
- A respondent may not be notified of a complaint where the complaint has been withdrawn/ deemed that the person does not wish to proceed as in such cases, the complainant cannot not take any further action.

Procedures where complaints are lodged against the Commission/President/Commissioners

Complaints of unlawful discrimination

- Section 46PE of the AHRC Act states that in such situations, a complainant may request that the complaint be terminated upfront, thus providing direct access to the court. The section also says that the President cannot delegate her power in relation to the complaint except in accordance with section 19(2)(b) – that is, only to a person/body that is not a member of the Commission or a member of the staff of the Commission.
- The explanatory memorandum to the AHRC Act states that this is designed to address concerns about perceived or actual conflict of interest/bias.

Complaints of breaches of human rights

- In order to address any concerns about perceived or actual conflict of interest/bias in such complaints, the President has, in the past, delegated her powers to conduct an inquiry under section 11(1)(f) to an external person such as a lawyer or barrister with experience in human rights law. The Delegate would conduct an inquiry into the complaint alleging a breach of human rights following the statutory framework set out in the AHRC Act but do so at an arms distance and with independence.
- Section 19 of the AHRC Act provides for the President to make such a delegation.

Version #:	Cleared by:	Action officer: s 47C, s 47E Julie O'Brien
Current at:	Phone number:	Action officer

A. Complaint statistics for the period 1 July 2015 – 30 June 2016

1. National Information Service

- In the reporting year, the Commission received 16 836 enquiries.

2. Complaints received

- The Commission received 2 013 complaints which is 16% lower than the number received in the previous reporting year. This decrease reflects the significant decrease in immigration detention complaints. Consistent with past years, the majority of complaints were lodged under the DDA (37%). In comparison with last year, there has been a very minor increase in complaints under the DDA (1%) and a 2% increase in complaints under the ADA. There has been a decrease in complaints received under the SDA (10%) and RDA (23%) and a significant decrease in complaints under the AHRCA (44%), indicative of the decrease in complaints about immigration detention.

Table 1 - Complaints received by Act in 2015-16 reporting year

	Received	Percentage
RDA	429	21%
SDA	409	20%
DDA	750	37%
ADA	152	8%
AHRCA	273	14%
Total	2 013	100%

Table 2 - Complaints received by Act over the past five years

	2011-12	2012-13	2013-14	2014-15	2015-16	Average over 5 years
RDA	477	500	380	561	429	469
SDA	505	417	474	453	409	452
DDA	955	793	830	740	750	814
ADA	196	157	184	149	152	168
AHRCA	477	310	355	485	273	380
Total	2 610	2 177	2 223	2 388	2 013	2 282

RDA

- 10% of RDA complaints raised allegations of racial hatred which is similar to the last reporting year (11%). The main sub areas for racial hatred complaints were employment (32%) and the provision of goods and services (29%). Complaints about internet material made up 8% of racial hatred complaints, which is the same as in the previous reporting year. In 2015-16 there was a drop in the number and percentage of racial hatred complaints about the media (16% - 7%).
- Complaints about employment made up 21% of RDA complaints and complaints about provision of goods and services - 18%.

- 54% of complainants under the RDA identified as Aboriginal and/or Torres Strait Islander, up from 38% last year. Across all jurisdictions, 13% of complainants identified as such and this is an increase from last year (9%).

SDA

- 22% of complaints were about sexual harassment in contrast with 19% in the last reporting year. Complaints about pregnancy discrimination (11%) and family responsibilities (4%) were relatively consistent with last year.
- Complaints relating to gender identity made up 3% of complaints, down 2% from last year. Complaints about sexual orientation discrimination made up 5% of complaints which is a slight increase over last year (3%).
- The main areas of complaint were employment (82%) a 5% increase on last year (77%) and the provision of goods and services (12%), a 6% decrease from last year (18%).
- 77% of complainants under the SDA were female, down 2% from last year and 21% of complainants were male, which is consistent with last year.

DDA

- The main areas of complaint continue to be employment (35%) and provision of goods, services and facilities (33%).
- Consistent with the last reporting year, the main recorded disabilities of complainants were mental health/psycho-social disability (25%) and physical disability (20%). The percentage of complainants recording mental health/psycho-social disabilities has increased in comparison with last year (23% - 25%).

ADA

- Similar to the previous reporting year, the main area of complaint was employment (62%) followed by the provision of goods and services (23%).
- The main age groups of complainants were 55-64 years (30%), 65-74 years (24%) and 45-54 years (16%). In comparison with the previous year, we have seen a decrease in complainants in the 55-64 age group (38% - 30%) and an increase in proportion of complainants in the 65-74 age group (16% - 24%).

AHRCA

- Consistent with last year, the main grounds of complaint were alleged violations of the ICCPR (59%). There has been a significant decrease in proportion of complaints under the CROC (22% - 10%) due to the decrease in complaints about children in detention. In comparison with last year, we received a similar number of complaints about criminal record discrimination.

Table 3 - State of origin of complainants in 2015-16 reporting year

	NSW	VIC	QLD	SA	WA	TAS	NT	ACT	OS/U	Total
Number	702	402	422	129	179	17	62	70	30	2013
Percentage	35%	20%	21%	6%	9%	1%	3%	3%	2%	100%

3. Complaints finalised

- The Commission finalised 1,982 complaints during 2015-16. Of all finalised complaints, 52% were conciliated. This is 1% higher than last year and the highest conciliation rate on record. The Commission conducted approximately 1,308 conciliation processes of which 989 complaints (76%) were successfully resolved. The conciliation success rate in 2015-16 is 4% higher than the previous year and the highest on record.
- Information on the outcomes of conciliated complaints indicates that 34% included terms which will have benefits for people beyond the individual complainant.

- Commission survey data also highlights the educative effect of the Commission's complaint process. For example, in relation to conciliated complaints, 72% of surveyed participants indicated that involvement in the complaint process had assisted them to better understand rights and responsibilities under federal human rights and anti-discrimination law.

Table 4 - Outcomes of finalised complaints over past five years

	2011-12	2012-13	2013-14	2014-15	2015-16
Terminated/declined	31%	33%	23%	23%	19%
Conciliated	48%	45%	49%	51%	52%
Withdrawn	12%	13%	16%	16%	17%
Discontinued	8%	9%	9%	9%	9%
Reported (AHRCA)	1%	-	3%	1%	3%

Table 5 - Complaints resolved by conciliation over the past five years

	2011-12	2012-13	2013-14	2014-15	2015-16
Complaints successfully resolved	66%	65%	70%	72%	76%
Complaints unable to be resolved	34%	35%	30%	28%	24%

4. Timeliness of the complaint process

Table 6 – Time from receipt to finalisation of complaint in 2015-16 reporting year

Time taken	Percentage
0 – 3 months	47%
3 - 6 months	82%
6 - 9 months	94%
9 - 12 months	98%
Average time	3.8 months

5. Satisfaction with complaint process

- In 2015-16 the Commission also surpassed its performance standard for service satisfaction. In this reporting year 94% of surveyed parties reported that they were satisfied with the service and 73% rated the service as 'very good' or 'excellent'. Where complaints were conciliated, 98% of parties reported they were satisfied with the service and 82% rated the service they received as 'very good' or 'excellent'.

Version #:	Cleared by:	Action officer: s 47F
Current at:	Phone number:	Action officer number: 02 s 47F

INDIGENOUS PROPERTY RIGHTS

Indigenous Australians have asserted their rights to land and waters since colonisation. These rights have been recognised to some extent in common law and legislation since the 1970s in land rights legislation in the Northern Territory, New South Wales and other states as well as recognition of native title at common law and in Commonwealth and state legislation.

Since this legal recognition Aboriginal and Torres Strait Islanders have asserted their rights with successive governments, businesses and others.

Background

In 2015 there were a number of developments with implications for the rights of Aboriginal and Torres Strait Islander peoples in relation to their land, waters, resources and native title.

These include the:

- Broome Roundtable on Indigenous property rights (see below)
- *Our North, Our Future: White Paper on Developing Northern Australia* (the *White Paper*) followed by the *Northern Australia Infrastructure Facility consultation paper*
- the Council of Australian Government's (COAG) Investigation into Indigenous Land Administration and Use, released on Friday 13 December 2015
- Australian Law Reform Commission (ALRC) Native Title Inquiry (*Connection to Country: Review of the Native Title Act 1993* (Cth))

Broome Roundtable

In May 2015, the Commission held a two day roundtable for Indigenous leaders at the Nulungu Research Institute at the Notre Dame University in Broome (the land of the Yawuru people). From a small meeting, the numbers of participants grew to over 40 attendees, including Indigenous experts in native title, land rights, water, environmental and cultural rights as well as researchers, advisors and officers from Prime Minister and Cabinet and the Attorney General's Department.

The Attorney-General, Senator George Brandis joined participants during both days, engaging in discussion with Indigenous leaders across the broad range of issues. Participants canvassed a number of issues and agreed that there were 5 priorities:

1. **Fungibility and native title** – enabling communities to build on their underlying communal title to create opportunities for economic development.
2. **Business development support and succession planning** – ensuring that Aboriginal and Torres Strait Islander peoples have the governance and risk management skills and capacity to successfully engage in business and manage their estates.

3. **Financing economic development within the Indigenous estate** – developing financial products, such as bonds, to underwrite economic development through engaging the financial services sector and organisations including the ILC and IBA.
4. **Compensation** – rectifying the existing unfair processes for compensation for extinguishment of native title and considering how addressing unfinished business could leverage economic development opportunities.
5. **Promoting Indigenous peoples' right to development** – promoting opportunities for development on Indigenous land including identifying options to provide greater access to resources on the Indigenous estate.

Participants called for the Australian Human Rights Commission to lead an ongoing dialogue on these issues and called on the government to commit resources to this end. Senator Brandis agreed to consider funding work to progress this process.

A Communique of the meeting is available on the AHRC website.

Sydney Planning meeting

On 7 December 2015 a follow up planning meeting was held in Sydney attended by most of the participants at the Broome meeting and some additional experts.

The Attorney-General, Senator George Brandis attended the meeting during the morning. He noted that reform of native title legislation could improve economic development opportunities and reiterated his belief that Indigenous peoples, particularly those at the Broome and Sydney meetings, are best placed to take the lead and set the agenda on the matters that require reform across the Indigenous Estate.

At the Sydney meeting the Attorney-General announced funding of \$250,000 (\$125,000 from PM&C and \$125,000 from AGD) for the Commission to progress this process. Participants concluded the morning session by reaffirming to Senator Brandis, the importance of Government engaging effectively with Indigenous representatives, and getting its own governance arrangements and processes in order to properly deal with matters affecting Indigenous people.

Participants considered ways to progress the dialogue, established an Indigenous Strategy Group (see appendix B) and the Indigenous Property Rights Network – an open network of experts. Participants developed an initial program of work, and agreed that the Australian Human Rights Commission would lead both the secretariat and research work.

Indigenous Strategy Group Meeting

On 18 March 2016, the first Indigenous Strategy Group Meeting was held to prepare for the next roundtable on mapping the Indigenous Estate and seek agreement on the agenda and approach to mapping the Indigenous Estate.

Mapping the Indigenous Estate – Canberra Roundtable

On 31 March 2016, a second roundtable was held in Canberra, hosted by the Australian Institute for Aboriginal and Torres Strait Islander Studies (AIATSIS). The roundtable was

attended by Indigenous Property Rights Network members and technical experts in land, native title, tenure and mapping.

The purpose of this roundtable was to discuss the commercial and social potential of rights and interests in land and waters within the Indigenous Estate.

The Commission reported on its work creating an inventory of state, territory and Commonwealth legislation which recognise or create rights and interests that make up the Indigenous Estate as well as heritage protection laws.

A definition of the Indigenous Estate includes lands, waters, seas and resources was agreed.

The National Native Title Tribunal provided their ongoing support to the Indigenous Property Rights Network to map the Indigenous Estate using an online mapping tool based on geospatial technologies.

A number of legislative and non-legislative reforms were discussed. Participants agreed that the AHRC would conduct further analysis and research in relation to tenure for consideration at future Roundtables and that the Indigenous Property Rights reform proposals will be reported in the Social Justice and Native Title Report 2016.

A Communique of the meeting is available on the AHRC website.

Indigenous Strategy Group Meeting

On 26 April 2016, the second Indigenous Strategy Group Meeting was held to prepare for the next roundtable (Indigenous Banking Forum) scheduled in May 2016.

The purpose of the Indigenous Banking Forum is to build on relationships between Indigenous land holders, owners and their representatives, discuss opportunities and challenges to lending on the Indigenous Estate, consider zoning, the market, risk and other issues as they arise.

Indigenous Banking Roundtable

From 16-18 May 2016 an Indigenous Banking Roundtable was held on North Stradbroke Island (the land of the Quandamooka people) to discuss the role of the financial sector may play in the realisation of economic benefit from the Indigenous Estate.

A non-exhaustive list of attendees included members of the Indigenous Property Rights Network, ILC, IBA and representatives from ANZ, CBA, NAB and Westpac.

There was a strong consensus between both the banks and the Indigenous participants that this was the first of many conversations and that the reform agenda for the Indigenous Property Rights Network reform agenda should:

- continue building the relationship with the banking and finance sector to expand discussions about risk, return and serviceability.
- continuing mapping the Indigenous Estate to better understand its characteristics.
- increase capacity building among Indigenous property holders to facilitate effective participation in decisions.

- continue building knowledge about the market value of specific economic development opportunities.
- continue to explore and test tenure models that provide for economic development and maintain the Indigenous ownership of the Estate.
- continue exploring the potential for tax incentives and more flexible incorporation options for Indigenous organisations.
- Explore finance mechanisms to mitigate risk.
- Increase understanding about types of economic development that meets the risk appetite among Indigenous land holders.
- Increase understanding about the diverse ways to share benefits with Indigenous land holders.

A Communique of the meeting is available on the AHRC website.

National Native Title Conference Workshop and Panel

On 1 June 2016, a workshop was held at the National Native Title Conference in Darwin. The workshop provided an opportunity for conference delegates to hear about the work on Indigenous Property Rights so far and contribute to strategic thinking and approaches to tenure, economic development, law, policy and industry innovation with regards to the Indigenous Estate.

A panel of four members of the Indigenous Strategy Group was held during the workshop to provide local and practical examples of Aboriginal and Torres Strait Islander peoples experiences, challenges and benefits of economic development on the Indigenous Estate.

Indigenous Property Rights Technical Working Group Meeting

On 21 July 2016, a Technical Working Group Meeting was held to discuss a number of models arising from discussions on Indigenous Property Rights to date which provide options for creating registrable/commercial interests on native title land.

Indigenous Strategy Group Meeting

On 21 July 2016, the third Indigenous Strategy Group meeting was held to discuss outcomes from the Indigenous Banking Roundtable and the National Native Title Conference Workshop and to prepare for the planned discussions at the Garma Festival. Members discussed the draft proposals of legislative and non-legislative reform proposed within the Garma paper.

Garma Festival Forum

A number of planned discussions at the Garma Festival aimed to continue to address issues of current tenure and future options that maximize social and economic benefits to Indigenous peoples from the Indigenous Estate.

On 30 July 2016, an evening lecture was held on international perspectives on Indigenous Property Rights.

On 31 July 2016, former Social Justice Commissioner Mick Gooda gave an address on Indigenous Property Rights: Land, Business and Governances at a the Key Forum.

On 31 July 2016, a brief discussion on the Indigenous Property Rights Project and process to date was held with festival delegates.

Follow up work

The Commission will continue to progress the tenure mapping work, convene ongoing Strategy Group meetings, liaise with finance and risk experts and will report on the progress to date in the *Social Justice and Native Title Report 2016*.

Planning for the next Indigenous Property Rights Network Roundtables in 2017 will commence end of 2016.

Version #: 1	Cleared by:	Action officer: Robynne Quiggin, Deputy Aboriginal and Torres Strait Islander Social Justice Commissioner
Current at: 28 September 2016	Phone number:	Action officer number: _____

Appendix A

Indigenous Strategy Group Members

First name	Last name	Job Title	Organisation
*Robynne	Quiggin	Deputy Aboriginal and Torres Strait Islander Social Justice Commissioner	Australian Human Rights Commission
S 47F			Nyamba Buru Yawuru Board
			Central Land Council
			National Congress of Australia's First Peoples
			National Native Title Council
			National Congress of Australia's First Peoples
			Northern Land Council
			Torres Strait Regional Authority
			Aboriginal Lands Trust SA
			North Australian Indigenous Land and Sea Management Alliance (NAILSMA)
			Alinytjara Wilurara Natural Resources Management Board
			National Congress of Australia's First Peoples
			National Native Title Tribunal
			Torres Strait Regional Authority

*since appointment on 19 August 2016

Legal

Commission Interventions and Amicus Curiae Matters (5 October 2016)

	2013-2014	2014-2015	2015-2016	2016-2017
Interventions: leave granted to the Commission to intervene	0	3	1	1
Interventions in which the Cth or a Minister of the Cth was a party or intervener	0	1	0	0
Common Law Amicus curiae: leave granted to the Commission	2		1	0
Common Law Amicus in which the Cth or a Minister of the Cth was a party or intervener	1 (Magaming v The Queen)		1	0
Amicus curiae: leave granted to Commissioner	0			0
Direct cost expenditure on interventions	0	\$12,420	\$8,878*	0
Direct cost expenditure on amicus curiae	\$20,038.57		\$7,364	0

*Includes costs for matters ongoing from the previous financial year

Fair Work Commission proceedings (Family or domestic violence leave)

The Commission sought leave to intervene as an 'interested party' supporting the introduction of Family and domestic violence leave in these proceedings before the Fair Work Commission.

The proceedings

The Fair Work Commission is required to conduct a 4 yearly review of modern awards. As part of that review, the ACTU is seeking to include a new entitlement of paid leave for workers who experience family or domestic violence in all modern awards. The ACTU is claiming for 10 days paid leave per year (followed by 2 days unpaid leave on each occasion that an employee's entitlement to paid leave is exhausted) in order to, for example, make re-location and other safety arrangements, seek legal advice, or to make court appearances or attend relevant appointments.

The Commission made a submission in support of the ACTU's claim for paid domestic violence leave focusing on the following key areas:

- access to decent work and violence against women are human rights issues;

- the importance of workplace support (specifically paid leave) for victims of domestic violence given the impact that violence has on employees' capacity to remain in employment and the importance of economic security in assisting women to leave situations of domestic violence; and
- the practice of employers providing this kind of leave in Australia and overseas.

The Commission's submission did not include a specific endorsement of any particular number of days of paid leave.

Status

The matter will be listed for hearing before the Fair Work Commission later this year.

Intervention - Farnell & Li v Minjaroen

At the invitation of the Chief Judge of the Family Court of Western Australia the Commission sought, and was granted, leave to intervene in this matter on 3 November 2014. The proceedings were an application for parenting orders relating to a child born in Thailand through a surrogacy arrangement.

Background

The Applicants were an Australian couple (the intended parents) who entered into a surrogacy arrangement in Bangkok. A Thai woman agreed to act as surrogate and consented to the intended parents having the care of the child or children after birth.

The surrogate mother was implanted with fertilised embryos (using the sperm of the intended father and the egg of an anonymous egg donor). The surrogate mother gave birth to twins in Bangkok in December 2013. One child, who has down syndrome, is in Thailand. The child the subject of these proceedings has been granted Australian citizenship and the intended parents are caring for the child.

The circumstances surrounding the birth of the twins and the return of one of them to Australia was subject to significant media attention when it became publicly known that the intended father was a convicted paedophile and that the twin that remained in Thailand, Gammy, had Down Syndrome.

The proceeding raises important human rights issues including; the identification of parents of a child born to an international surrogacy arrangement; the best interests of the child; and the human rights of the surrogate mother.

Status

Judgement was handed down on 14 April 2016. The Court made orders that the child in Australia live with them and that they have equal shared parental responsibility for her and that her name be changed to Farnell, the name of the Applicant father. The orders were subject to compliance with a raft of orders relating to ongoing monitoring of the family by the Department of Child Protection. The Court also made findings that the Applicants did not abandon the boy, Gammy and did not attempt to access the funds in a trust account set up for him by an Australian charity, both allegations that had been publicly made against them.

Version:	Cleared by:	Action officer: Julie O'Brien
Current at: 5 October 2016	Phone number:	Action officer number: _____

CHILDREN'S RIGHTS REPORT, THE OPTIONAL PROTOCOL TO THE CONVENTION AGAINST TORTURE (OPCAT) AND DON DALE YOUTH DETENTION CENTRE

Project Background

Under section 46MB of the *Australian Human Rights Commission Act 1986* (Cth), the National Children's Commissioner is specifically required to submit a report to the Minister as soon as practicable after 30 June in each year.

This report must deal with matters relating to the enjoyment and exercise of human rights by children in Australia as the National Children's Commissioner considers appropriate; and may include recommendations that the Commissioner considers appropriate as to the action that should be taken to ensure the enjoyment and exercise of human rights by children in Australia.

The National Children's Commissioner is able to pay particular attention to children who are at risk or vulnerable. In 2016, the National Children's Commissioner examined how the special needs and interests of children and young people under the age of 18 in youth justice detention centres, and those under 18 years detained in adult detention facilities could be considered and monitored under the Optional Protocol to the Convention against Torture (OPCAT). And

The key aim of the OPCAT is to prevent the mistreatment of people, including children, in detention or closed environments. Australia signed the OPCAT on 19 May 2009 but has not yet ratified the treaty. Ratification of OPCAT is currently under consideration by the Australian Government.

The OPCAT provides for a dual system of regular visits to places of detention and closed environments by independent expert bodies. These are the Subcommittee on the Prevention of Torture (SPT) and the National Preventive Mechanism (NPM). These two mechanisms are complementary and both have a preventive approach. At the domestic level, the OPCAT requires Australia to designate NPM's to conduct regular visits and monitor the treatment of people in all forms of detention.

The National Children's Commissioner undertook this work because children and young people in youth justice detention centres and those under 18 years who are held in adult

facilities account for the largest proportion of children and young people held in places of detention or closed environments in Australia.

This work is particularly timely given the recent revelations of ill treatment experienced by children and young people detained in youth justice centres in the Northern Territory and Queensland.

On 28 July 2016, the Prime Minister of Australia and the Attorney-General announced a Royal Commission into the detention of children and the child protection system in the Northern Territory, including the Don Dale Youth Detention Centre.

The National Children's Commissioner has been invited to appear before the Royal Commission in October 2016. She visited the Don Dale Youth Detention Centre as part of her work this year. While most centres that she visited were well equipped and had a range of programs in place, this was not the case in relation to the 17 year olds in the adult prison, nor in the Don Dale Youth Detention Centre. The National Children's Commissioner visited on 31 May 2016.

The National Children's Commissioner hopes that her work will be of assistance to the Royal Commission in the Northern Territory which is due to report by 31 March 2017, to the inquiry underway in Queensland, and to the Council of Australian Governments.

The Australian Human Rights Commission considers that ratification of the OPCAT, and its subsequent implementation, would be a significant step towards protecting the human rights of people, including children, in all forms of detention in Australia.

The National Children's Commissioner specifically recommended the Australian Government ratify the OPCAT in her 2013 Children's Rights Report. In 2014 and in 2015, the Australian Government indicated to her that it had not formed a formal position on ratification of the OPCAT.

The National Children's Commissioner wants to make sure that the unique experiences and needs of children are a critical focus as Australia moves towards ratification and implementation of the OPCAT, in turn contributing to greater transparency and consistency in the treatment of children in detention and closed environments across Australia.

Scope of the project

My work in the context of youth justice included a stock-take of current oversight, complaints and reporting arrangements across the jurisdictions, an analysis of their adequacy in meeting the OPCAT requirements, and identification of opportunities for improvements nationally over time.

Information gathered for this examination was derived from: formal requests to relevant state and territory departments; a series of expert roundtables; submissions from non-government bodies and oversight agencies; and consultations with young detainees in each jurisdiction. This was supplemented by publicly available data.

There was overwhelming support for Australia's ratification of the Optional Protocol to the Convention against Torture (OPCAT) in both submissions and roundtables.

Progress to date and next steps

The National Children's Commissioner will transmit the report to the Attorney-General by 17 October 2016.

Version: #1	Cleared by: ^Division head name^	Action officer: s 47F s 47F
Current at: 26 September 2016	Phone number: ^Number^	Action officer number: (02) 9284 s 47F

Background

The *Pathways to Protection* report aims to identify options for responding to the flight of asylum seekers by sea which are consistent with Australia's international human rights obligations.

The report was developed in consultation with non-government organisations, academics, intergovernmental bodies and think tanks with expertise in refugee policy, human rights, international law and protection issues in the Asia-Pacific region

The report was originally due to be launched in June but was delayed due to the commencement of the caretaker period. It was instead released on 14 September.

Briefings

Prior to the release of the report, briefings were provided to:

- Frances Adamson, Secretary, Department of Foreign Affairs and Trade
- **s 47F**, Ambassador for People Smuggling and Human Trafficking for Australia
- Jamie Isbister, First Assistant Secretary, Humanitarian, NGOs and Partnerships Division, Department of Foreign Affairs and Trade
- Chris Moriatis, Secretary, Attorney-General's Department
- Rachel Noble, Deputy Secretary, Policy Group, Department of Immigration and Border Protection
- David Wilden, First Assistant Secretary, Immigration and Citizenship Policy Division, Department of Immigration and Border Protection

The Minister for Immigration and Border Protection, the Secretary of the Department of Immigration and Border Protection and the Australian Border Force Commissioner were invited to briefings but sent their apologies.

Key findings

The report notes that the key driver of flight by sea towards Australia is the lack of effective protection for refugees and people seeking asylum in the Asia-Pacific region. It therefore proposes that improving access to effective protection represents the most effective and sustainable means of preventing flight by sea.

The Commission identified two thematic areas which comprise an alternative, human rights-based policy response to flight by sea:

- **Expand opportunities for safe entry:** This theme focuses on facilitating access to effective protection and providing safe alternatives to dangerous journeys. It incorporates options for expanding Australia's resettlement program and improving access to alternative migration pathways.
- **Enhance foreign policy strategies on migration in the Asia-Pacific region:** This theme seeks to coordinate aid, diplomatic efforts and humanitarian response to enable a comprehensive and holistic response to migration-related concerns across the region. It incorporates options for building on the good work already being done in the region, enhancing regional capacity to

respond to the needs of displaced people, and working towards an effective regional cooperation framework on refugee protection.

Policy options

Some of the specific options put forward in the report include:

- Increasing the size of the resettlement program and introducing a wider range of private and community sponsorship options
- Increasing opportunities for safe departure, such as through introducing temporary visas for the purpose of seeking asylum
- Addressing barriers to skilled, family and study migration, including through providing waivers, differentiated processing procedures, access to relevant services and safeguards against *refoulement*
- Increasing funding for humanitarian agencies, NGOs and community groups working with refugees and using our aid program more strategically to support displaced people
- Supporting regional preparedness in relation to regional search-and-rescue protocols and emerging crises
- Providing support to expand the solutions available to refugees in the region, including through technical assistance and targeted projects
- Engaging with countries in the region on a broader range of migration issues to provide a useful entry point for future discussions on refugee protection
- Promoting the rights of children as a platform for engagement with countries in the region on migration issues.

Version #: 1	Cleared by:	Action officer: S 47F, Specialist Adviser – Immigration
Current at: 23 September 2016	Phone number:	Action officer number: 02 8231 S 47F

BACKPOCKET BRIEF

RECENT AHRC ACT REPORTS

October 2016

Six reports in which the Commission found human rights breaches by the Commonwealth have been tabled in Parliament this year:

- Kong v Commonwealth (DIBP) [2015] AusHRC 98
- CM v Commonwealth (DIBP) [2015] AusHRC 99
- HG v Commonwealth (DIBP) [2015] AusHRC 100
- AI v Commonwealth (DIBP) [2015] AusHRC 101
- Kolind v Commonwealth (DET) [2015] AusHRC 102
- Ghahani v Commonwealth (DIBP) [2015] AusHRC 103

The reports are available on the Commission website.

KONG v COMMONWEALTH [2015] AUSHRC 98

The Commission found that Mr Kong's detention in the Villawood Immigration Detention Centre from 28 March 2011 until 16 December 2011 amounted to a breach of his rights under article 9(1) of the ICCPR.

Mr Kong is a 46 year old citizen of the People's Republic of China, who was actively involved in the May 1989 Tiananmen Square protests. He first came to Australia on 4 March 2001 on a student visa. On 6 May 2004, Mr Kong's student visa was cancelled due to a breach of condition 8202 (meet course requirements). He was granted several bridging visas while he unsuccessfully challenged the Department's decision to cancel his visa through the courts.

On 20 March 2011, Mr Kong's bridging visa expired. On 28 March 2011, he voluntarily presented himself to the Department's compliance office and was then detained in the VIDC. On 20 April 2011, there was a riot at the VIDC. Mr Kong was identified as being involved in the riot and subsequently became 'a person of interest' to the Australian Federal Police. On 23 April 2011, he was moved to Blaxland compound, a high security facility within the VIDC. On 18 July 2011, Mr Kong was cleared of any involvement in the riot and transferred to the Hughes compound, a less restrictive facility. On 4 August 2011, Mr Kong initiated a hunger strike and was moved to the Annex where he remained until 6 September 2011. On 16 December 2011, Mr Kong was released from detention on a bridging visa. The Department granted Mr Kong a permanent protection visa on 7 November 2013.

The President was not satisfied that Mr Kong's detention in the VIDC was necessary or proportionate to the Commonwealth's legitimate aim of ensuring the effective operation of its migration system. Mr Kong had been living in the community on bridging visas prior to his detention and had presented himself voluntarily to the Department when his bridging visa expired. This indicated that Mr Kong was prepared to co-operate with the Department and suggests he did not represent a flight risk. There was no evidence that Mr Kong posed any risk to the Australian community. He was cleared of any involvement in the VIDC riot on 19 July 2011. The President found that the Department had not justified Mr Kong's detention in the VIDC.

The President made recommendations that the Commonwealth pay an appropriate amount of compensation to Mr Kong and provide him with a formal apology. These recommendations were not accepted by the Commonwealth.

CM v Commonwealth [2015] AusHRC 99

The policy of deprioritising family reunion visa applications made by people recognised by Australia as refugees is the focus of this report by the Commission that was tabled in Parliament on 22 February 2016.

Mr CM arrived in Australia by boat from Sri Lanka in May 2012 and was granted a permanent protection visa in September 2013. Mr CM's wife subsequently applied for a Family Stream visa that would allow her and their two young children to migrate to Australia. Mr CM complained about a direction given by the Minister for Immigration and Border Protection to his delegates, which impacted on the priority given to his wife's visa application.

The direction provides that delegates are not to take into account any special circumstances of a compelling or compassionate nature in relation to Family Stream visa applications in which the applicant's sponsor is a person who entered Australia as an unauthorised maritime arrival and holds a permanent visa.

The President found that applying this policy only to asylum seekers arriving in Australia by boat was arbitrary. The direction was not necessary, reasonable or proportionate to the aim of discouraging unauthorised maritime arrivals from coming to Australia and was contrary to articles 17 and 23 of the International Covenant on Civil and Political Rights.

By preventing the consideration of compelling or compassionate circumstances that may justify a prompt consideration of applications for family reunification, the direction runs a serious risk of unnecessarily prolonging situations in which split families of Australian permanent residents are at risk.

The President recommended that the direction be amended and that the Minister take into account any special circumstances of a compelling or compassionate nature in considering the application by Mr CM's wife. At the time of reporting, the Commonwealth did not indicate that it was taking any action in response to the Commission's recommendations.

HG v Commonwealth [2015] AusHRC 100

The Commission found that the Department of Immigration and Border Protection failed to consider whether Mr HG could be placed in community detention, or another less restrictive form of detention, for a period of approximately 20 months. The Commission found this failure to be arbitrary and inconsistent with Mr HG's right to liberty under article 9 of the International Covenant on Civil and Political Rights.

Mr HG, a national of Iran, had been granted a Temporary Humanitarian visa and Bridging visa (BVE) on 25 March 2013. His BVE expired on 11 August 2013. On 21 August 2013, Mr HG attended the Department's office for consideration of his BVE re-grant. There he was intercepted by police, detained under s 189(1) of the Migration Act 1958 (Cth) and placed into Perth Immigration Detention Centre.

Under international law, to avoid being arbitrary, detention must be necessary and proportionate to a legitimate aim of the Commonwealth. There is also an obligation on the Commonwealth to demonstrate that there was not a less invasive way than detention to achieve the ends of its immigration policy.

During the course of the Commission's inquiry, the Department confirmed that since Mr HG was placed in detention on 21 August 2013, it had not referred his case to the Minister for consideration of his powers to

either grant Mr HG a visa or make a residence determination that Mr HG reside somewhere other than in immigration detention.

The President found that the Department had not justified Mr HG's prolonged detention in an immigration detention centre as necessary and proportionate to any legitimate aim of the Commonwealth. She noted that this was of particular concern given the Department's awareness of the gravity of Mr HG's mental health issues. On this point, the Department's records indicated that Mr HG had:

- reported a history of torture and trauma;
- been involved in at least 7 incidents of actual and threatened self-harm during his time in detention;
- been admitted as an in-patient at mental health hospitals on four occasions; and
- engaged in 57 days of voluntary starvation.

Furthermore, the Department was in receipt of advice from mental health professionals that Mr HG's mental health condition could only be adequately addressed in a community environment.

The President found that the Department's failure to consider whether Mr HG could be placed in community detention, or another less restrictive form of detention than an immigration detention centre, was arbitrary and inconsistent with his right to liberty under article 9(1) of the ICCPR.

The President recommended that an appropriate amount of compensation be paid to Mr HG. She also recommended that the Commonwealth provide a formal written apology to Mr HG. The Commonwealth did not take any action in response to the Commission's recommendations.

AI v COMMONWEALTH (DIBP) [2015] AusHRC 101

The Commission found that a 58 year old Chinese national was detained arbitrarily at Villawood Immigration Detention Centre. The Department of Immigration and Border Protection has agreed with the Commission's recommendation to refer his case back to the Minister for reconsideration.

Mr AI has lived in Australia for the past 27 years. His wife, and one of his sons are Australian citizens and his other son is a permanent resident. His sons made a complaint to the Commission, claiming that Mr AI should be released into community detention pending the outcome of his current legal proceedings seeking review of a decision to refuse him a protection visa.

During the time that Mr AI has been in Australia, he has been convicted of four offences. He was also refused two visas on character grounds. Three of Mr AI's offences resulted in him having to pay a fine. One of the offences resulted in a custodial sentence of 5 months and 15 days. By contrast, Mr AI has been held in immigration detention for a cumulative period of more than 4 years. Most of this period of detention was later found to be unlawful. He has been provided with compensation by the Commonwealth for part of this period of unlawful detention.

The department first considered whether to refer Mr AI's case to the Minister for consideration of a community detention placement in June 2014. The department decided not to refer Mr AI's case to the Minister. The department's internal assessment as to whether Mr AI's case should be referred to the Minister properly took into account his criminal history and prior visa refusals on character grounds. The mitigation of risks to the Australian community was a legitimate aim on behalf of the Commonwealth.

However, there was material before the department which could have led to the conclusion that the risk to the community either was low or could have been mitigated by conditions placed on community detention.

This material included the department's view that Mr Al's previous convictions were 'relatively minor', the fact that he has not been convicted of any offence for more than 10 years, and its view from the time when Mr Al was living in the community that Mr Al was compliant with the department and therefore unlikely to be a flight risk. These factors did not form part of the department's internal assessment.

Further, the department's internal assessment failed to properly take into account the fact that from at least October 2012 Mr Al had outstanding legal applications which would take a significant amount of time to resolve. There was no prospect of his imminent removal from Australia. As a result, there was a significant risk that his continued detention while the assessment of his claims for protection were finally determined would be protracted and could become arbitrary.

The President found that the failure to refer Mr Al's case to the Minister in order for the Minister to assess whether to exercise his public interest powers in light of all of the facts was not proportionate to the aim of either facilitating his removal from Australia or mitigating risks to the Australian community.

The department should have made a referral in or around October 2012 for the Minister to consider exercising his public interest powers. That referral should have contained a risk assessment of Mr Al balancing relevant factors in his case, along with a consideration of whether any risks could be mitigated in a community detention placement.

The failure to refer Mr Al's case to the Minister at that time resulted in Mr Al's detention being arbitrary, contrary to article 9(1) of the ICCPR. For the same reason, there was an arbitrary interference with Mr Al's family, contrary to articles 17(1) and 23(1) of the ICCPR.

The President recommended that the department promptly put a submission to the Minister for consideration of a residence determination in favour of Mr Al, subject to such reporting requirements or other conditions as may be necessary. The Department accepted this recommendation.

KOLIND v COMMONWEALTH (DIBP) [2015] AusHRC 102

The Commission found that the Commonwealth failed to take all appropriate administrative and other measures to make free primary education available to all children in Australia, including Mr Kolind's children. In so doing, the Commonwealth acted inconsistently with the right to free primary education under article 28 of the Convention on the Rights of the Child (CRC).

Mr Kolind, his wife and three children are Danish citizens. In March 2011, the Kolind family relocated from Denmark to Australia, having been granted a Business (Long Stay) visa (subclass 457). In April 2011, Mr Kolind enrolled his five-year old twins, Emilie and Gustav Kolind, in East Lindfield Public School. The school advised Mr Kolind that he would have to pay school fees of \$4,500 per year for each of his children. Mr Kolind applied for a waiver of that fee with the NSW Department of Education and Training, but was advised that he did not qualify for a waiver.

Mr Kolind lodged a complaint with the Commission, claiming that the inability of his children to avail themselves of free primary education in a public school in New South Wales was inconsistent with article 28(1)(a) of the CRC.

The Commission found that article 28 of the CRC recognises a right to education. It also imposes on each state party certain obligations to 'achieving the right progressively and on the basis of equal opportunity', including the affirmative obligation to 'make primary education compulsory and available free to all.'

The Commission considered whether the Commonwealth had taken all appropriate measures to implement the right to education, including by taking measures to make available to all primary education

free of charge. In assessing whether the Commonwealth had taken all appropriate measures, the President considered the following two questions (among other matters):

- Were there any avenues open to the Commonwealth?
- Did the Commonwealth take any measures to ensure that primary education is made available for free to Mr Kolind's children?

The President found that there were avenues available to the Commonwealth to at least attempt to achieve the outcomes required by article 28 of the CRC, including seeking to attach appropriate conditions to the funding agreements entered into with New South Wales, to ensure that primary education is provided free to all children in New South Wales. She noted that in January 2014, the Commonwealth had written to relevant state and territory education ministers and encouraged them

... to consider the issues surrounding the provision of free primary school education at a government school for children who have accompanied their parents and are residing in Australia on a temporary basis.

However, while this correspondence was welcome, the President did not consider it to satisfy the Commonwealth's positive obligation to take all appropriate administrative and other measures to make free primary education available to all children in Australia.

The President concluded that the Commonwealth has acted inconsistently with Emilie and Gustav's right to free primary education under article 28 of the CRC.

The Department maintained its position that the Commission did not have jurisdiction to inquire into this matter as the Commonwealth is not responsible for a state's compliance with human rights obligations in this area. However, the Department indicated its agreement that 'a real issue had been raised' and, in recognition of the importance of this matter, it had written to the states and territories in relation to obligations under the CRC.

GHAHANI v COMMONWEALTH (DIBP) [2015] AusHRC 103

The Commission found that Mr Ghahani's detention in the VIDC from 7 March 2013 to 10 September 2014 was inconsistent with the prohibition on arbitrary detention in article 9(1) of the ICCPR.

Mr Ghahani is a national of Iran who arrived in Australia by boat on 11 June 2012. He was initially detained on Christmas Island and then in various immigration detention centres on mainland Australia until he was placed into community detention on 7 July 2012.

On 13 December 2012, Mr Ghahani was arrested and charged with alleged intimidation of his ex-partner under s 13 of the Crimes Act 2007 (NSW). Mr Ghahani had allegedly threatened to kill his ex-partner during a chance meeting in Sydney. On 14 December 2012 he was released on bail and issued a provisional Apprehended Domestic Violence Order. On 21 December 2012, the Minister revoked his community detention order. On 1 January 2013, Mr Ghahani was arrested and charged with failing to abide by his bail conditions as he had failed to report to the Ryde Police Station on two occasions. On 2 January 2013, Mr Ghahani was apprehended by the Commonwealth and placed in detention in the VIDC. On 11 January 2013, the Burwood Local Court issued an Apprehended Domestic Violence Order against Mr Ghahani. On 7 March 2013, the Burwood Local Court dismissed all charges against Mr Ghahani due to no evidence being offered.

The Department refused Mr Ghahani's Protection Visa application, which he successfully challenged before the Refugee Review Tribunal (RRT). The RRT remitted the matter back to the Department. The Department

refused Mr Ghahani's Protection Visa application a second time and he successfully challenged this second refusal before the RRT. Mr Ghahani remained in detention at the VIDC until 10 September 2014 when the Minister granted him a Temporary Humanitarian Concern, subclass 786 visa.

The Commonwealth maintained that its decision to detain Mr Ghahani in the VIDC from 2 January 2013 was due to criminal charges being laid against Mr Ghahani while he was in community detention. The President noted that it appeared the Department had formed the view that this charge demonstrated an individualised risk of danger of crimes against others which justified detention. However, this charge was dismissed for lack of evidence on 7 March 2013. After this time, there was no longer a basis for considering Mr Ghahani posed a risk to the Australian community. The President found that the Department had not demonstrated that the detention of Mr Ghahani in the VIDC for 19 months after the charges against him were dismissed was necessary or proportionate to the Commonwealth's legitimate aim of protecting the Australian community, or of ensuring the effective operation of Australia's migration system, or of any other legitimate aim of the Commonwealth.

The Commission made recommendations that the Commonwealth pay an appropriate amount of compensation to Mr Ghahani and provide him with a formal apology. These recommendations were not accepted by the Commonwealth.

Version:	Cleared by:	Action officer: Julie O'Brien
Current at: 19 September 2016	Phone number:	Action officer number: _____

Universal Periodic Review Australia 2nd Cycle Review

The Universal Periodic Review (UPR) is a process undertaken by the United Nations (UN) Human Rights Council. It involves review of the human rights record of all 192 UN Member States once every four years. Review under the UPR does not depend on a country being a party to a particular human rights treaty.

The UPR is a peer review process. Recommendations on actions Australia should take are made by individual governments of other states. They are not made by the UN or the Human Rights Council as a whole.

The UPR is based on information provided by the State under review, information contained in the reports of human rights treaty bodies and other UN entities and information from stakeholders including national human rights institutions (NHRIs) and non-governmental organisations.

In its decision 17/119, the UN Human Rights Council adopted General Guidelines for the preparation of information under the UPR, to guide the input of stakeholders including NHRIs. The Guidelines envisage stakeholder input will be broad in scope, and may involve consideration of any issues that raise concerns about human rights, be they best practice or challenges and constraints in the relevant country.

Australia's review under the second cycle of the UPR took place on 9 November 2015. 110 countries spoke at the review and provided 290 recommendations, which again included recommendations concerned with marriage equality. The Australian Government provided Australia's response to the Report of the Working Group on the UPR at the 31st Regular Session Human Rights Council (17 March 2016).

COMMISSION ACTIVITY PRIOR TO AUSTRALIA'S 2ND CYCLE UPR

The Commission's engagement prior to the 2nd cycle UPR has involved:

- Preparation of annual progress reports on the status of implementation of the 1st cycle recommendations. The reports were prepared on behalf of the Australian Council of human Rights Agencies. Each report was lodged with the UN Human Rights Council as part of its ongoing monitoring of Australia's UPR implementation.
- Collaboration with the NGO sector, including hosting workshops and convening coordination meetings.
- Preparation of a submission to the Office of the High Commissioner for Human Rights (OHCHR) for Incorporation into the stakeholder information. In accordance with the General Guidelines, the topics included in the Commission's submission were broad in scope and involved consideration of issues that raise human rights concerns, for example, marriage equality. The submission was transmitted to the UPR Working Group on 22 March 2015.
- Preparation of a series of fact sheets on issues contained in the Commission's submission. The information contained in the fact sheets together with the Commission's submission formed the basis of the meetings with Missions to Australia and Permanent Missions in Geneva.
- Canberra based meeting with Missions to Australia undertaken on 2 July 2015. Representatives from approximately 70 Missions attended the event.

- Attendance at the UPR-Info Pre Session held in Geneva, October 2015. 30 plus bilateral meetings were held during a 5 day period with representatives of Permanent Missions to the UN.
- On the issue of marriage equality, the Commission prepared a position paper in 2012. The President has written an opinion piece on marriage equality that includes an analysis of the decision of the US Supreme Court in *Obergefell v. Hodges* 576 U.S. _ (2015). The Commission has also provided a paper to Senator Canavan setting out the case law on marriage equality.

COMMISSION ACTIVITY FOLLOWING TO AUSTRALIA'S 2ND CYCLE UPR

The Commission's engagement following the 2nd cycle UPR has involved:

- The Commission attended the 2nd cycle review as observers and was represented by the Commission President, Professor Gillian Triggs and Commissioner Gooda.
- A meetings was also held with the High Commissioner for Human Rights Zied Ra'ad Al Hussein.
- The President of the Commission, Professor Gillian Triggs provided an oral statement to the Human Rights Council on the Australian Government's response to the Report of the Working Group on the UPR at the 31st Regular Session Human Rights Council (17 March 2016).
- The Commission has provided to the Attorney Generals Department a list of priority recommendations and suggested actions.
- The Commission has been in dialogue with the Australian Government regarding the development of a mechanism to monitor the implementation of the accepted recommendations and the noted recommendations, which are to be further considered.
- Questions on next steps would be more appropriately directed to the Attorney-General's Department and the Department of Foreign Affairs and Trade.

Version: #1	Cleared by: ^Division Head name^	Action officer: s 47F, Manager, Human Rights Scrutiny
Current at: 27 September 2016	Phone number:	Action officer number: 02 8231 s 47F

BACKPOCKET BRIEF

PRIOR v Queensland University of Technology

There has been some recent media coverage about an application in the Federal Circuit Court based on s 18C of the RDA by Ms Cindy Prior against the Queensland University of Technology.

Ms Prior is an Aboriginal woman and was employed in the Oodgeroo Unit at QUT. In May 2013, three men entered the computer lab in the Oodgeroo Unit. Ms Prior asked them to leave because they were not Indigenous. She complains about comments later made on a Facebook page called “QUT Stalker Space” in relation to the incident which she claims were reasonably likely to offend, insult, humiliate or intimidate her or Aboriginal and Torres Strait Islander students or Indigenous people more generally.

The claim is made against QUT, two officers of QUT and a number of students who were allegedly responsible for the Facebook comments. She complains about the publication of the comments and the actions taken by QUT in responding to her complaint.

In their defence, two of the students have claimed that they were not properly notified of the Commission’s inquiry and that the Commission has therefore not performed its statutory functions of inquiring into the complaint and seeking to conciliate it. The students say that the consequence is that the complaint was not properly terminated and Ms Prior was not entitled to bring a claim in the Federal Circuit Court.

The Commission is monitoring the proceedings.

Prior v QUT

- On 11 March 2016, three of the students sought to have the Federal Circuit Court proceedings summarily dismissed, or alternatively to have Ms Prior’s Statement of Claim struck out.
- Judge Jarrett in the Federal Circuit Court in Brisbane heard the applications and reserved his decision. His Honour has not yet delivered judgment on these applications.

Commission’s role in relation to the Prior Complaint

- There has been some inaccurate reporting about the Commission’s role in relation to the Prior complaint.
- When a complaint under the *Racial Discrimination Act 1975* (Cth) is made to the Commission, the Commission is required to inquire into the complaint and to attempt to conciliate it. If the complaint cannot be conciliated, the Commission will terminate the complaint. If a complaint is terminated, the complainant can decide to commence proceedings in the Federal Circuit Court or the Federal Court.
- Some media reports have said that the Commission gave a ‘green light’ to Ms Prior commencing court proceedings and suggested that the Commission supported or endorsed these proceedings being commenced. These reports are incorrect. Whether or not court proceedings are commenced in relation to a complaint that has been terminated is entirely a matter for the complainant.
- The Commission has had no role in the Federal Circuit Court proceedings.
- Some media reports have suggested that the Commission should have terminated Ms Prior’s complaint at an early stage on the basis that it was lacking in substance. These reports have suggested that such action by the Commission would have prevented Ms Prior commencing court proceedings. These reports are also inaccurate. The Commission has the power to terminate a complaint if it is satisfied that the alleged unlawful discrimination is not unlawful discrimination, or if the complaint is misconceived or lacking in substance. However, in those

circumstances a complainant may still decide to commence court proceedings. Again, whether or not court proceedings are commenced is entirely a matter for the complainant.

Complaints to the Australian Human Rights Commission

- Between 29 April 2016 and 8 July 2016, three of the students involved in the Federal Circuit Court proceedings made complaints to the Australian Human Rights Commission about the way in which the Commission conducted its inquiry into the complaint by Ms Prior.
- The students complained that the Commission had acted in a way that was inconsistent with their human rights. At least one of the students also complained that the Commission had discriminated against him contrary to the *Racial Discrimination Act 1975* (Cth).
- Because the complaints were made against the Commission, the President delegated her powers of inquiry to a senior member of the bar, Mr Angus Stewart SC. Mr Stewart is conducting inquiries into the complaints by each of the students.
- The Commission denies the allegations made by the students and has provided a detailed response to each of the claims that have been made. The Commission has also provided Mr Stewart and the students with a bundle of the relevant documents.
- While those inquiries are being conducted, it would not be appropriate for the Commission to make any further public comment about them.
- Mr Stewart has made a non-publication direction in relation to some of the documents produced to him because they contain personal information about the parties to the complaint by Ms Prior.
- The lawyer acting for two of the students has made a range of Freedom of Information requests both before and after making complaints to the Commission on behalf of his clients. The Commission has responded to each of those requests. The documents produced by the Commission in response to those FOI requests are not subject to the non-publication direction made by Mr Stewart.

Version: ^Number^	Cleared by: ^Division Head name^	Action officer: Julie O'Brien
Current at: 5 October 2016	Phone number:	Action officer number: _____