Reflection on the Experience of the Australian Human Rights Commission

Sir Ronald Wilson

1. Introduction

Australia has as independent national human rights institution, known as the Human Rights and Equal Opportunity Commission (HREOC). It was established by an Act of the national parliament in 1986 (“the HREOC Act”). I was the President of the Commission from February 1990 until August 1997. However, I have continued since 1997 to be familiar with its continuing work.

2. The Structure

The Commission was originally constituted by a President and five Commissioners, each with a distinctive portfolio responsibility. Thus there was a Human Rights Commissioner, a Race Discrimination Commissioner, a Sex Discrimination Commissioner was added, but the office was recently separated from the commission and now operates quite Independently. In 1992, the office of Aboriginal Social Justice Commissioner was created within the Commission.

The Human Rights Commissioner was made responsible for monitoring within Australia the following United Nations Human Rights instruments, all of which are
set out in the Schedule to the HREOC Act.

Intentional Covenant on Civil and political Rights

Discrimination (Employment and Occupation) Convention (ILOIII)

Convention on the Rights of the Child

Declaration on the Rights of Disabled Persons

Declaration on the Rights of Mentally Retarded Persons

Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.

The Race Discrimination Commissioner administers the Racial Discrimination Act 1975, which gives effect within Australia to the International Convention on the Elimination of All Forms of Racial Discrimination. In September 1999, the office fell vacant and has since been filled in an acting capacity by the Aboriginal Social Justice Commissioner.

The Sex Discrimination Commissioner administers the Sex Discrimination Act 1984, which likewise gives effect to the Convention on the Elimination of All Forms of discrimination against Women. This Commissioner also fills the office of Disability Discrimination Commissioner in an acting capacity.

3. Functions

Its principal functions have included the following:

(a) It has operated an extensive complaints system in order to enforce legislative bans on discrimination on the grounds of sex, race or disability in the
political, social, cultural or any other field of public life. The legislation adopts an educative and persuasive approach rather than a coercive or punitive one. Hence the receipt of a valid complaint is followed by a process of conciliation involving the complainant and respondent with a view to its amicable resolution. If conciliation fails, then the complainant has 28 days in which to initiate an action in the Federal Court or the Federal Magistrates’ Court. There is no limit to the damages that may be awarded.

The Human Rights Commission is also authorized to receive complaints, or to act at the request of the Minister or on its own initiative,

*in respect of an act or practice engaged in by or on behalf of the Commonwealth or an authority of the Commonwealth alleging conduct contrary to the provisions of the instruments annexed to the HREOC Act. However, in these cases, if the Commission is unable to achieve, or chooses not to pursue, a conciliated outcome, the complainant has no access to the Federal Courts. The only sanction on observance of the human rights in question is by way of a report by the Commissioner to the Attorney-General for tabling in the Parliament;

*in respect of an act or practice engaged in by or on behalf of a State or an authority of a State in relation to equal opportunity in employment.

(b) Community education in order to promote an understanding and acceptance, and the public discussion, of human rights in Australia is a core function of the Commission. The Commission therefore undertakes and coordinates research and educational programs to achieve this end. Recent examples follow:
*The Youth Challenge program brings together high school students in different regions of Australia for a one day event which explores how human rights principles and practices impact on social change and upon the students’ own lives and the lives of other in the community.

*A Community Information program was initiated, targeted towards peak community sector organizations, government departments, employers and legal and service providers. The information deals with human rights and anti-discrimination law, the complaints and conciliation process and the conduct of public inquiries. Over 500 people representing senior and middle management in government, legal and community groups have attended the presentations, information packs have been dispatched to over 100 organizations.

*The commission’s internet Website is a major educative tool by which human rights information is made available to anyone who wishes to access the site. In the past year, there were 231, 126 hits on the commission’s home page.

*During the last financial year, the Commission distributed over 101,000 hard copy publications. They were sent all around Australia as well as overseas. Recipients included companies, primary and secondary schools, religious organizations, individuals, government departments, community organizations, universities and students.

*Constant use of the media and media releases.

*Sexual harassment workshops conducted in the workplace.
(c) The Commission has a wide power of Inquiry, into any act or practice that may be inconsistent with or contrary to any human right. Over the years, following widespread community consultation, it has produced major reports on subjects of national importance, including the plight of the homeless, issues relating to mental illness, the forced removal of Aboriginal children from their families, pregnancy discrimination in the workplace, and the quality of education services in remote areas. These reports invariably present a significant challenge to the Commonwealth and State governments to review and update their practices in the relevant areas.

(d) The Commission may, with the leave of the Court, intervene in any legal proceeding that involves human rights issues.

(e) The presentation by the Aboriginal social Justice Commissioner of an annual Report to the Parliament on progress towards social justice for Indigenous Australians.

(f) The Commission has an extensive role as an adviser to the Commonwealth Government. In this regard, it may.

* Examine Acts of the Parliament for inconsistencies with any human right, and report to the Minister;

* On its own initiative or when requested by the minister, report to the Minister as to the laws that should be made by the Parliament, or action that should be taken by the Commonwealth, on matters relating to human right contained in the annexed instruments.

4. Challenges
These include the following—

*The problem of access. It rakes courage to complain.

*equal opportunity does not necessarily guarantee equity in outcomes. There may be a need for affirmative action to redress the situation of disadvantaged persons.

*preserving the independence of the human rights institution. Diminished resources can erode independence.

*growing a culture that is comfortable with respect for human rights.

*pursing effective reconciliation with Indigenous peoples.

*becoming a good member of the family of nations.

5. Evaluation

Generally speaking, I believe Australia has a reasonably good record in the promotion and protection of human rights. The year 2000 has seen the development of a strong Peoples’ Movement for Reconciliation and a Journey of Healing the Stolen Generation, with a million Australian participating in walks for Reconciliation across the country climaxed by an Olympic Games which reflected goodwill and tolerance towards diversity of all kinds. The Human Rights and Equal Opportunity Commission and the State Equal Opportunity Commissions have been effective instruments in developing a culture that recognizes human rights.

However, the present conservative national government has failed to respect the independence of the Commission or heed its recommendations.

My major criticisms are as follows:
*The Government’s demonizing of refugees and asylum seekers, evidenced by the inhumanity of its mandatory detention policies and its grant of only temporary visas to genuine refugees.

*The unfairness to Aboriginal traditional owners of its native title legislation, evidenced in the 1998 amendments.

*The refusal of the commonwealth Government to apologize to the members of the Stolen Generations and to provide meaningful reparations.

*The failure of the Commonwealth Government to establish a negotiating commission to draft a treaty settling the “unfinished business” of the British occupation of Australia without consultation with or compensation to the Indigenous peoples’.

*The refusal of the Commonwealth Government to overrule the mandatory sentencing laws for property offences maintained by Western Australia and the Northern Territory. These laws are wrong in principle and discriminatory of Aboriginal people.

*The arrogant and petulant rejection of the criticisms of united Nations Committees.

6. Conclusion

A major contributor to the respect for human fights in Australia is the democratic process, which provides for orderly representative government and the development of a strong civil society.

A fundamental bulwark is the freedom of speech accorded to individual citizens and the media..

This includes freedom to criticize the Government