

Office of the Aboriginal and Torres Strait Islander
Social Justice Commissioner

TRACKING YOUR RIGHTS

A SOCIAL JUSTICE
COMMUNITY INFORMATION RESOURCE

FOR THE
ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLES
OF WESTERN AUSTRALIA

December 1996

Human rights is the foundation on which social justice rests, encompassing virtually every sphere of life — social, cultural, economic, political and civil. Name any issue of concern to Aboriginal people, and it relates to human rights, because at the heart of social justice issues are the experiences and suffering of Aboriginal peoples and Torres Strait Islanders.

Mick Dodson, Social Justice Commissioner

Social Justice is what faces you when you get up in the morning. It is awakening in a house with an adequate water supply, cooking facilities and sanitation. It is the ability to nourish your children and send them to a school where their education not only equips them for employment but reinforces their knowledge and appreciation of their cultural inheritance. It is the prospect of genuine employment and good health: a life of choices and opportunity, free from discrimination.

For this Resource, **social justice** is about:

- **human rights** and everyday issues; what faces you when you get up in the morning
- **citizenship rights** and your rights as an equal member of Australian society
- **Indigenous rights** which are based on our peoples' Indigenous status and the consequences of colonisation and dispossession
- **rights of complaint and the complaints procedures** which can be used to translate the existence of human rights into the practical exercise of those human rights
- **community action and empowerment** or having the power to control your culture and destiny, to assert your rights and determine the manner in which they will be enjoyed.

Social Justice is a term that embraces a wide range of issues and rights (entitlements). Social justice includes the practical ability to exercise and enjoy your human rights. Human rights and anti-discrimination laws provide a means of protecting these rights. Aboriginal and Torres Strait Islander peoples are entitled to take advantage of all legal rights of redress that Australian society offers to all its citizens.

Speak Out and Fight Injustice

Everyone has a fair idea of what human rights means. Everyone knows you have the right to live a safe, healthy life free from fear of persecution, hunger, torture and homelessness. Human rights are about having the opportunity to live as we would choose to live, without gross interference or violation, and having reasonable means to do so.

The most basic of all rights is our right to life. It includes everything essential for human survival and security: the right to freedom from any form of genocide, the right to freedom from violence and the rights to adequate food, shelter and health care.

Human rights aren't something you have to earn. They are not something that some people have and others don't. We all have human rights by virtue of our birth and human dignity. They are not something governments give us or can take away from us.

But, unfortunately, as we know all too well, societies are not equal and not just. For many people human rights are no more than an abstract idea of what things should be like — you have them in your heart, but not in your life. And it's not much use having all these fine rights in theory if you can't actually enjoy them. Which is where human rights policies and laws come in — to protect the human rights of all citizens.

I'm talking about policies to ensure that the way governments do business and society works conform with human rights standards. Policies, for example, about how the nation's health care dollar is spent so all Australians benefit from the health care system, especially those most in need.

And I am talking about the laws you can use when your human rights are violated, like anti-discrimination laws. Laws that make it unlawful for people to treat other people differently and detrimentally because of their race, ethnicity, colour, descent, nationality, sex or disability.

Unfortunately, governments do not always fulfill their responsibility to translate 'human rights' into law and policy. They often do things which make it impossible for people to enjoy their rights. They may actively violate people's rights by passing laws which remove people from their land. Or they may just fail to ensure that everyone is guaranteed equal access to the basics they need to live.

We have to be clear about this. We are entitled, like all other human beings, to enjoy our human rights, to actually live them. And it is the responsibility of Australian governments to make and enforce laws and policies which protect the human rights of all Australians. Always.

Today, when most people in Western countries talk or think about human rights, they think first of the 'freedom from' rights. Freedom from persecution, interference, active oppression. These are referred to as civil and political rights — rights like freedom from torture and arbitrary arrest, the right to vote or to demonstrate.

But for most people these are not the most immediate issues. The urgent problems are clean water, decent housing, access to health care, education for the kids and having enough to eat.

...don't talk about short-term and long-term objectives to me, I'm living day-to-day – where is my next feed coming from or where can I get water for my kids?

Kununurra

These are the so-called 'social and economic' rights. It is obvious these rights are just as important as civil and political rights. However, many people still argue these are not 'real' human rights but merely 'needs' or 'aspirations' to aim for.

From its beginning, the United Nations (UN) has been clear that there is no 'pecking order' of rights. Some rights are not better, or more important, than other rights. Economic and social rights demand the same attention as civil and political rights. This was affirmed at the World Conference on Human Rights held in Vienna in 1993. The two categories are equal in status and you cannot truly enjoy one category of rights if you are deprived of the other. What is the use of a right to participate in public life if you're too sick to get anywhere? Or the right to form a trade union if you don't have the opportunity to get a job?

In 1948 the UN adopted the Universal Declaration of Human Rights which sets out the fundamental human rights for people to live in peace and with dignity. The member countries of the UN subsequently made other human rights agreements in the form of binding treaties called conventions and covenants.

Australia played a major role in developing these treaties and was a chief advocate of international human rights standards.

Governments, members of the United Nations, become 'parties' to UN agreements of their own free will, basically because they believe in peace and human rights. By signing and ratifying these agreements our Government is telling the world it will ensure its citizens can exercise and enjoy the human rights spelt out in them.

In precise terms, the Australian Government becomes bound to observe the terms of the human rights treaties which it ratifies.

Australia is a 'party' to many United Nations agreements including human rights treaties. If the Australian Government fails to fulfill its obligations under these treaties, action may be taken in the International Court of Justice by other countries which are also parties to the agreement. As we will see, in some circumstances, individuals within Australia may make complaints to certain United Nations committees.

I believe this resource will help Aboriginal and Torres Strait Islander peoples to protect our rights. It is my hope that by using this Resource we will be better able to speak out and fight injustice.

I would like to thank the many people from communities and from non-government and government agencies who have helped us to develop this material. I would especially like to thank the members of the Reference Committee who generously commented on developments and so willingly shared their own perspectives and experiences.

In particular, I would like to thank the people within my office responsible for the 'Tracking Your Rights' Resource: Nerida Blair, Co-ordinator of the NCEP, Debbie Adams and Ginny Muldowney.

I would also like to thank Charmaine Cole who illustrated this Resource and, as an Aboriginal artist, shared her perceptions of these issues so graphically.

The consultants travelled extensively while developing this Resource. I would like to thank and congratulate them for their commitment and resourcefulness.

The support and experience of staff from the Equal Opportunity Commission in Western Australia have also guided the development of this resource. I thank Commissioner June Williams for her personal support and her staff, particularly Cathy Hollander and Leslie Houston, for their enthusiasm and motivation in developing 'Tracking Your Rights'.

Mick Dodson
Aboriginal and Torres Strait Islander
Social Justice Commissioner

Aboriginal and Torres Strait Islander National Community Education Project

Resource

Queensland	1992
Western Australia	1996
Centralia	1997
South East	1997

Train the Trainer

Queensland	1997
Western Australia	1997
Centralia	1997
South East	1997

Video

- National Focus
- 15-20 Minutes
- Trigger Video
- Training Manual

Mediation

- National Focus
- Audio-cassette tapes
- Dispute Resolution

The Total Package

This Resource, entitled 'Tracking Your Rights: Western Australia', is one part of the community education package. The total package includes:

- **Resource**
- Resource Training Manual
- Video and Training Manual
- Audio Tapes on Mediation

Who the Resource is for

The Resource has been developed for people who live and work in their communities and are able, through community action, to advocate for the practical exercise of rights at a local level.

Introduction to the Resource

The Resource aims to assist Aboriginal and Torres Strait Islander peoples to use anti-discrimination laws and other mechanisms which can help to bring about improvements in social justice for community members.

The Resource:

- Shares some of the stories and concerns about social justice and human rights that people spoke with us about – these are their voices and perceptions – they have not been put through a bureaucratic filter.
- Provides information on Australian laws and international standards that exist to protect human rights.
- Explains how various human rights laws and processes work.
- Provides information on how to understand human rights and other entitlements and how to take advantage of them.
- Provides information on community action strategies to assist Aboriginal peoples and Torres Strait Islanders to sort out problems through community action.
- Lists contact phone numbers and addresses of people who might be able to help – CONTACTS.
- Explains some legal and policy terms – GLOSSARY.

We have chosen not to make value judgements about peoples' stories and concerns. We have chosen to reproduce sentiments that have been echoed around the State through the voices of the people themselves.

We do not wish to stereotype the service providers involved. There is no intention to offend the many teachers, health professionals family workers, police and other service providers who are fair and professional and who work to overcome the discrimination and racism described in the pages of this Resource.

Co-ordinator, NCEP

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GLOSSARY – WHAT DOES IT REALLY MEAN?



ALLEGE	to insist that something happened (whether it did or it didn't)
AMENDMENT	to change something
ARBITRARY	unfair, without consideration of all sides
BREACHES	breaks
CLAIMANT	a person or body who makes a claim against someone else
COMPLAINANT	a person or body who makes a complaint against someone else or who makes a claim that their rights have been violated
COMPLY	to act or do something in a way that meets certain requirements or conditions
CONCILIATION	a way to resolve a dispute between a number of parties or people
CONTRAVENE	to oppose or be in conflict
DETERMINATION	the decision regarding the settlement of a dispute
DOMESTIC	(implementation) within Australia
ELECTORAL BALLOT	voting paper
ENACT	to make into a law through legislation
ENTITLEMENT	a right that someone has
EXEMPTED	to be freed from a liability or obligation
FIDUCIARY DUTY	a special duty you owe to someone because of a trust relationship, eg. solicitor/client relationship
HUMAN RIGHTS INSTRUMENTS	all the international declarations, conventions, covenants, etc., which describe international human rights
IMPARTIAL	not biased, weighing-up all sides and all stories before making a fair decision
IMPLIED	to suggest something without saying it
INCONSISTENT	when one part does not agree with another part
INDETERMINATE	unclear
INHERENT	to be an inseparable part of something
JUDICIAL	relating to a judgment of a court of justice or to the administration of a judgment
LIABLE	open to something, to be responsible
LODGE	(a complaint) to put a complaint before the court or committee
NOTICE	a warning
PROHIBITING	to stop something from happening
PROSECUTION	carrying out of legal proceedings against a person
REDRESS	to set something right or compensate for something that is wrong
RESPONDENT	the defendant or person responding to a complaint made by a complainant
STATUTORY	(body) a government agency created by an Act of Parliament, with the legal status of a corporate body with an independent legal existence
UPHOLD	to support or maintain an agreement
VICARIOUS	taking the place of another person or thing
VIOLATED	the breaking of a law or agreement (violation)
WRIT	a formal order/document issued by a government or court

This material has been researched and drafted by David Higgins, Nina Boydell, David Saylor and Victoria Higgins of Higgins, Wood and Associates.

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Particular thanks are due to people of the communities of Albany, Balgo, Brookton, Bunbury, Broome, Collie, Cosmo Newberry, Derby, Fitzroy Crossing, Halls Creek, Irrungadji, Jigalong, Kanpa, Kununurra, Kalgoorlie, Kondinin, Leonora, Laverton, Mandurah, Moora, Narrogin, Northam, Mulga Queen, Patjarr, Perth, Port Hedland, Pinjarra, Roebourne, South Hedland, Tjirrkarli, Wannan, Warburton and Yiyili.

Thanks are also due to the ATSIC Commissioners, Councillors and staff who assisted the consultative team with their travels and with communication with communities.

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Artwork:	Charmaine Cole, Dumbartung Aboriginal Corporation Hugh Ryvers-Ellicott
Sponsorship:	Ansett Airlines Law Foundation of New South Wales <i>Mediation Project:</i> Council for Aboriginal Reconciliation

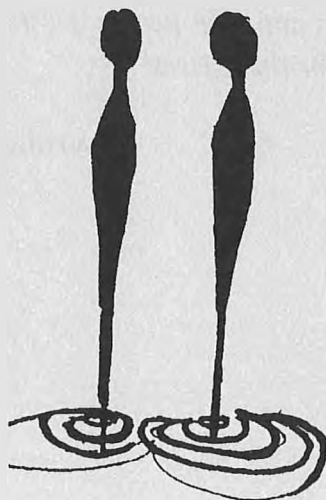
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Disclaimer

NOTE: This information has been compiled for the purposes of the National Aboriginal and Torres Strait Islander Community Education Project (NCEP) for Western Australia. It is intended only as a general guide and the content of the Resource is necessarily brief. The material is not intended to be legal advice. Some areas of the law may be more complex than this information suggests and it is recommended that in cases of doubt or difficulty professional legal advice should be sought.

The material is not exhaustive but covers the key issues found to be of concern in Western Australia.

The information contained in this Resource was current at the time of printing, December 1996. The Human Rights and Equal Opportunity Commission takes no responsibility for any inaccuracy in the material after that date.





"All we want is to keep our kids in the community with their families"

Tjirrkarli Community Meeting

"The family, the community, holding them together is what the NCEP is fundamentally about. For me, the consultations in Western Australia have reinforced peoples' desire – their right – to live in country, have access to country and in so doing be safe and comfortable. Our job is to develop a Resource that will facilitate safer lives and offer people the tools to create this environment for themselves"

Co-ordinator, NCEP



THE BIG PICTURE

PART 1: HUMAN RIGHTS

HUMAN RIGHTS AND SOCIAL JUSTICE
FOR THE
ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLES
OF WESTERN AUSTRALIA

- A COMMUNITY INFORMATION RESOURCE -

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4. Right of Complaint
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Parts 6 – 11 look at some “Key Rights” areas

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10. Housing and Essential Services
11. Police and the Justice System



Glossary – What Does It Really Mean?

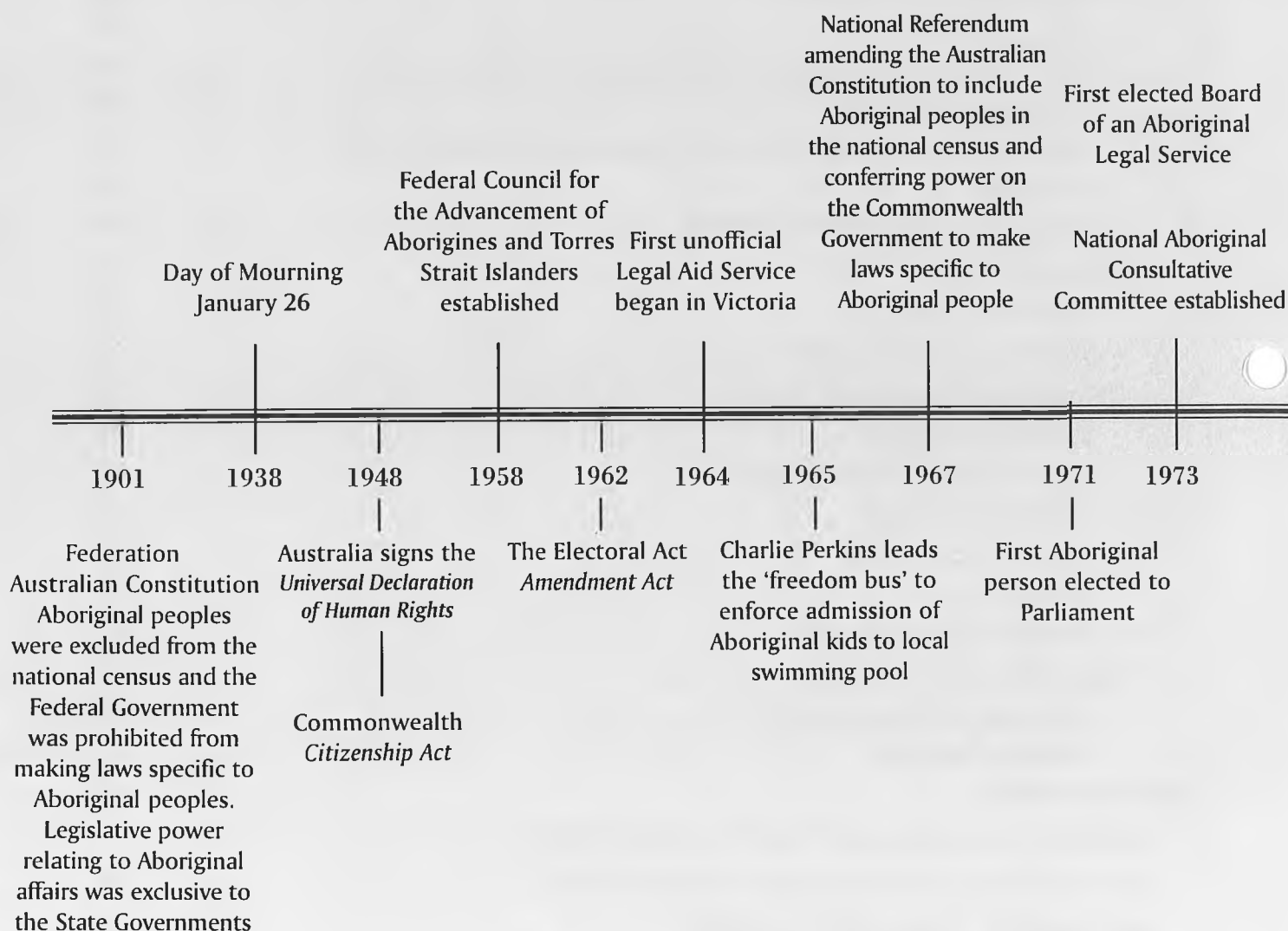
ALLEGE	to insist that something happened (whether it did or it didn't)
AMENDMENT	to change something
COMPLAINANT	a person or body who makes a claim against someone else or who makes a claim that their rights have been violated
CONCILIATION	a way to resolve a dispute between a number of parties or people
DOMESTIC	(implementation) within Australia
EXEMPTED	to be freed from a liability or obligation
INHERENT	to be an inseparable part of something
PROHIBITING	to stop something from happening
RESPONDENT	the defendant or person responding to a complaint made by a complainant
STATUTORY	(body) a government agency created by an Act of Parliament, with the legal status of a corporate body with an independent legal existence
UPHOLD	to support or maintain an agreement

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THE HUMAN RIGHTS MARCH IN AUSTRALIA

This time-line illustrates how human rights for Aboriginal and Torres Strait Islander peoples have come to be recognised in Australia. It shows how Indigenous peoples have influenced the recognition of their rights. It identifies some of the laws enacted to ensure that the human rights of Aboriginal and Torres Strait Islander peoples in Australia are protected.

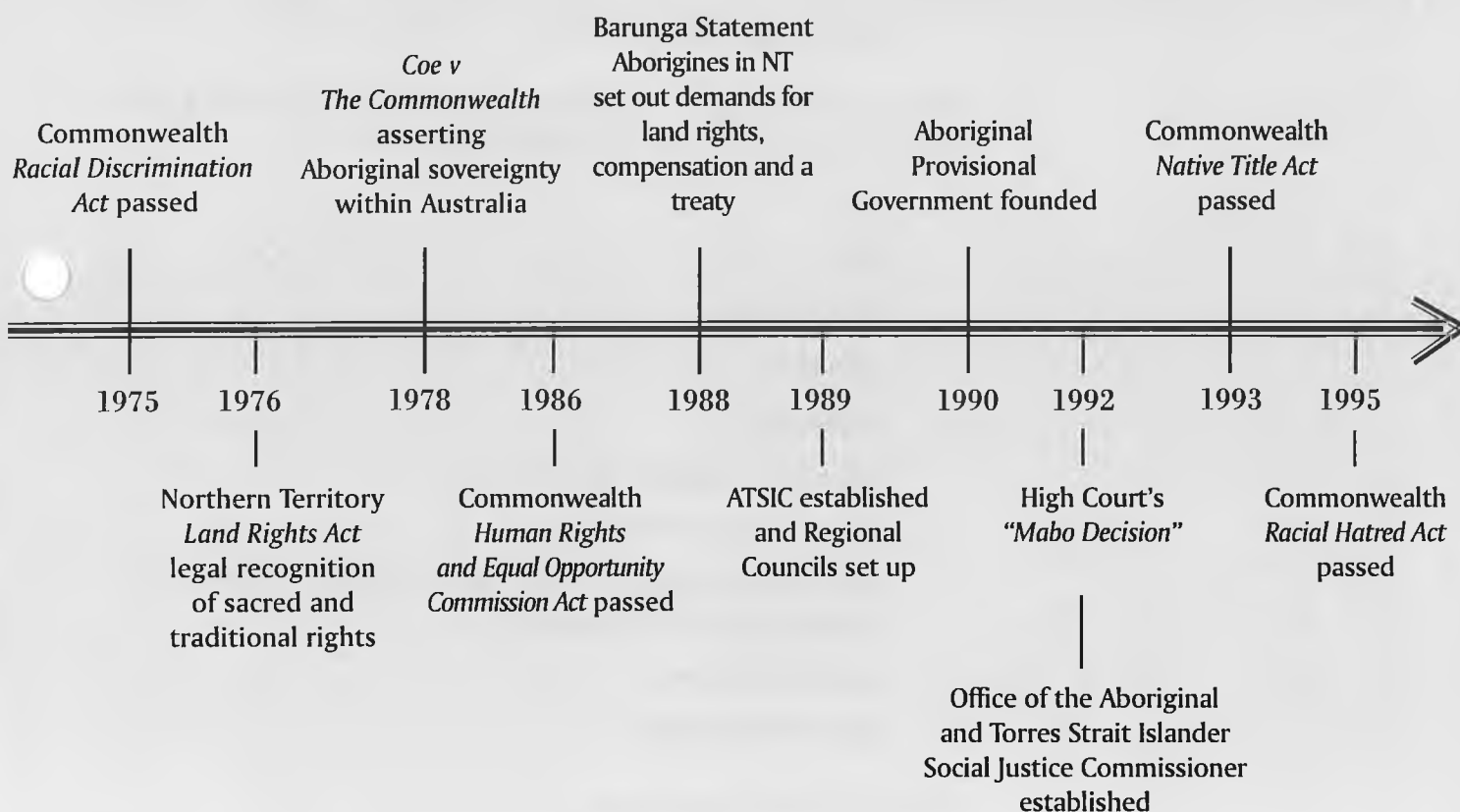


INDIGENOUS RESISTANCE

The "Human Rights March" since Federation was not the beginning of Indigenous Resistance or the assertion of our rights. Many people told us stories of resistance and massacres from the time of the establishment of the Swan River Colony in 1829, including:

1834 — Pinjarra Massacre

1890 — Tandamarra and the Bunuba Resistance



Case Study

An Aboriginal woman lodged a complaint of race discrimination against a hotel, its licensee and the Directors of the Company that owned the hotel. The complainant alleged that the respondent had a policy of charging the Aboriginal Community \$20 for a take-away cask of wine whereas non-Aboriginal people were charged only \$13.

Response

The matter was not conciliated and went before the Tribunal.

Outcome

The Tribunal found the complaint was proved. The respondent was ordered to:

- pay \$2000 compensation
- publish an apology in the local newspaper

HUMAN RIGHTS

WESTERN AUSTRALIAN LAWS

THE EQUAL OPPORTUNITY ACT 1984

The Western Australian Equal Opportunity Commission (EOC) has its own legislation to protect and promote equal opportunity and to ensure that people are treated fairly, without prejudice and are not harassed.

The Office of the Commissioner for Equal Opportunity is a statutory body set up under the Act to investigate and conciliate complaints of unlawful discrimination.

The Western Australian EOC can help you if you have a complaint under any of the following Commonwealth Acts:

Human Rights and Equal Opportunity Act

Racial Discrimination Act

Sex Discrimination Act

The *Equal Opportunity Act* makes it unlawful for a person to treat another person unfairly because of:

- race
- sex
- marital status
- pregnancy
- impairment
- religious or political conviction
- age (too old, too young)
- family responsibility or family status (only in the area of employment and education)
- racial harassment
- sexual harassment

These are called 'grounds'.

Under the *Equal Opportunity Act*, discrimination is only unlawful in certain areas of **public life**. These are called 'areas':

- work
- education (e.g. school, college or university)
- access to places (e.g. hotels, nightclubs, community halls)
- access to vehicles (e.g. taxis, buses, planes, ships)
- accommodation
- clubs
- application forms
- selling and buying land
- in providing goods, services and facilities (e.g. shops, banks, government departments, businesses)

RACIAL DISCRIMINATION

The *Equal Opportunity Act* defines racial discrimination as involving 'direct' discrimination and 'indirect' discrimination.

Direct Discrimination

Direct discrimination is any action which takes into account and involves treating a person, or their relations, or associates unfairly or less favourably than others, because of their race.

For example: telling an Aboriginal or Torres Strait Islander that the house they want to rent has already been rented, when in fact it has not.

Indirect Discrimination

Indirect discrimination is any policy or procedure or practice that can be shown to be detrimental or to have a discriminatory effect on Aboriginal and Torres Strait Islander peoples. It is when a rule that is the same for everyone, has an unequal and an unreasonable effect on one group of people as opposed to another.

For example: An employer asking all people who apply for a job to pass an English test, even though a good standard of English is not needed for the job. This test means people of a particular race whose English is not good will not get the job, even though it is not required.

Case Study

An Aboriginal man lodged a complaint alleging race discrimination when he was served by employees of a general store. The complainant alleged that when he was being served by two female employees he was subjected to embarrassing and demeaning comments which related to his race.

Response

The complainant later saw the store owner at a public meeting. The store owner approached him and apologised.

The complainant formally lodged a complaint.

The respondent admitted that the incident happened. A number of phone calls and face-to-face meetings took place.

Outcome

- a formal apology was made
 - a small monetary settlement for hurt and humiliation caused by the incident
 - the respondent employed a young Aboriginal salesperson.
-

Remember, whether the act is direct or indirect discrimination, it must detrimentally affect a person on one of the **grounds** listed and occur in one of the **areas** of public life: work, education, access to places and vehicles, accommodation, clubs, application forms, land and in providing goods and services.

Section 82 Review of Legislation

The Equal Opportunity Commissioner can undertake a 'Section 82' review of government policies and practices. The Commissioner is able to identify circumstances where discrimination on a ground referred to in this Act occurs against any person or class of person, and report the findings of the review to the Minister.

Racial Harassment

The *Equal Opportunity Amendment Act 1993* changed the *Equal Opportunity Act* to cover discrimination on the grounds of racial harassment in the areas of employment, education and accommodation. Racial Harassment is something said or written which threatens, abuses, insults or taunts someone because of their race, and you have actually suffered a disadvantage or because you have reasonable grounds to believe that if you do object you will be disadvantaged.

What if I am punished or victimised because I made a complaint?

It is against the law for someone to threaten or cause you trouble just because you have made a complaint. This protection includes anyone who has assisted you to make a complaint such as a witness. If anyone tries to make trouble for you because you made a complaint, or because they think you might make one, you should talk immediately to the Conciliation Officer who is dealing with your case.

The Criminal Code

The *Criminal Code Amendment (Racist Harassment and Incitement to Racial Hatred) Act 1990* changed the *Criminal Code* to cover racist harassment and racial hatred.

Racist harassment is defined under the *Criminal Code* as any unwelcome, offensive comment or action concerning a person's race. It can include behaviour towards another person which is intimidating or embarrassing.

This amendment also makes it a criminal offence to possess and/or publish material to incite racial hatred or harass a racial group.

Note: Part 4 on Right of Complaint explains how to make a complaint about allegations of discrimination.

For further information contact:

Inquiries Officer

The Equal Opportunity Commission

 **Level 2, Westralia Square**

141 St. George's Terrace

Perth WA 6850

Fax: 08-9264 1960

 **08-9264 1930**

Free call: 1800 198 149

NATIONAL LAWS

HUMAN RIGHTS AND EQUAL OPPORTUNITY COMMISSION

The Human Rights and Equal Opportunity Commission (HREOC) deals with the domestic implementation of Australia's international human rights obligations and applies to the laws and practices of the Commonwealth Government.

The HREOC handles complaints of discrimination on a range of grounds and administers the following national laws which all Australians can rely on.

- *Racial Discrimination Act 1975*
- *Sex Discrimination Act 1984*
- *Human Rights and Equal Opportunity Commission Act 1986*
- *Affirmative Action Act 1986*
- *Privacy Act 1988*
- *Disability Discrimination Act 1992*
- *Human Rights and Equal Opportunity Commission Amendment Act No. 2 1992* (which created the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner)
- *Racial Hatred Amendment Act 1995*

EXAMPLES OF RACE DISCRIMINATION:

- Being refused service in a shop or being treated badly by the shopkeeper because you are an Aboriginal or Torres Strait Islander person.
- Being unable to get medical help because you're an Aboriginal or Torres Strait Islander person.
- Being told that the house which you wanted to rent is now not available, because you are an Aboriginal or Torres Strait Islander person.
- Being unable to get the police to come out and help you because you live in an Aboriginal or Torres Strait Islander community.

RACIAL DISCRIMINATION ACT

The *Racial Discrimination Act* is based on the *Convention on the Elimination of All Forms of Racial Discrimination* (CERD).

The *Racial Discrimination Act* makes racial discrimination against the law.

It aims to ensure that everyone is treated equally, regardless of their race, colour, descent or national or ethnic origin.

Since the Act was passed in 1975, over 10,500 complaints have been received. Over 3,500 of these were from Aboriginal and Torres Strait Islander peoples.

What is Racial Discrimination?

Racial discrimination happens when someone is treated less fairly than someone else in a similar situation, because of their race, colour, descent or national or ethnic origin.

Racial discrimination can also happen when a policy or rule treats everyone in the same way, but has an unfair effect on more people of a particular race, colour, descent or national or ethnic origin than on others.

When can this law be used?

It is against the law to discriminate in areas such as:

Work: when looking for work, training, promotion, equal pay or conditions of employment.

Housing, Accommodation and Land: when renting a flat or house, or when buying a house or land.

Getting or Using Goods and Services: when

- buying something
- using banks
- applying for credit or finance
- seeking assistance from government departments, doctors, hospitals or lawyers
- going to a restaurant, pub, club, etc.

Getting into places and facilities for use by the public: when wanting to go to a hotel, library, government offices, parks, entertainment centres, places of worship or getting a taxi or hire car, etc.

Advertising: when publishing advertisements they should not show an intention to discriminate (unless exempted by law, for example, advertising an identified or designated position)

Joining a Trade Union: being able to join a Trade Union

The *Racial Discrimination Act* is also broader than the Western Australian Government's Equal Opportunity legislation. It is not restricted to the areas defined under the Western Australian legislation.

Racial Hatred Act

A law against offensive behaviour based on racial hatred was added to the *Racial Discrimination Act* in 1995 (the *Racial Hatred Amendment Act 1995*).

What Is Offensive Behaviour Based on Racial Hatred?

Behaviour based on racial hatred is generally any behaviour that:

- happens publicly as opposed to privately
- is reasonably likely, in all circumstances, to **offend, insult, humiliate or intimidate** another person, or group of peoples
- is done because of the race, colour, national or ethnic origin of the other person or some or all of the people in the group.

Did it happen publicly?

The offensive or abusive behaviour must have occurred:

- in a place to which the general public are invited or have access to, for example, in the street, on public transport, in the workplace, at a sporting arena, in a pub.
- in a place within sight and hearing of people in a public place, for example, a front yard which opens on to the street – other people don't have to be actually present at the time of the incident.

Offensive or Abusive Behaviour that may be seen as Racial Hatred

- writing racist graffiti in a public place
- wearing Nazi insignia in a public place

Imaginary Case Study

Ms. K. is an Aboriginal woman who regularly listens to her local radio station. Ms. K. makes a complaint to HREOC alleging that offensive comments were made about Aboriginal people during the course of a discussion about unemployment in Australia. She alleges that when reference was made to statistics concerning unemployment and the Aboriginal community, the radio commentator stated *"we all know that Abos are lazy and don't want to work anyway, wasting government money on dole bludging"*.

Response

The HREOC agreed to investigate the complaint and contacted the radio station and commentator. Statements were taken and a tape of the programme obtained. Based on this evidence, the HREOC agreed that the comments were not a fair and accurate report and were therefore unlawful.

Outcome

Following a conciliation conference the radio station agreed to the following:

- to make the radio commentator face disciplinary action
 - to broadcast a public apology
 - to issue guidelines to all station staff.
-

- making racist speeches at a public rally
- placing racist posters or stickers in a public place
- racist abuse in a public place
- offensive racist comments in a publication
- racially abusive material sent through the post, fax or phone

Exceptions

The Racial Hatred Act says that the following things are not unlawful if *"done reasonably and in good faith"*

- an artistic work or performance
- an academic publication, discussion or a debate on a matter of public interest, for example, discussions about Native Title
- a fair and accurate report on a matter of public interest
- a fair comment on a matter of public interest, if it is an expression of a person's genuine belief.

Taking action against Racial Hatred

If you have been the target of racially offensive behaviour there are a number of things you can do about it:

- talk directly to the person or organisation responsible for the behaviour;
- seek the assistance of an organisation which can represent you, for example, Aboriginal Legal Service or Resource Centre;
- for complaints about media stories or broadcasts, complain to the Australian Broadcasting Authority; the Australian Competition and Consumer Commission for advertisements; or the Press Council for newspaper stories. You can also complain to the Editor or Manager of the media organisation.
- for complaints about neighbours, approach the Community Justice Centres.
- if threatened with violence or violently attacked go to the police.

Making a Complaint

Who can make a complaint?

- one or more persons who believe they have been discriminated against because of their race, colour, descent, or national or ethnic origin on their own behalf or on behalf of other people who have been discriminated against in the same way;

- person(s) included in a class of people who believe they have been discriminated against, on behalf of that class.
- a trade union on behalf of its members

How do I make a complaint?

If you believe that you have been treated unfairly you can phone an Inquiries Officer at the HREOC for confidential information and advice. An Inquiries Officer can answer your questions over the telephone or in person.

If you decide to lodge a complaint it is not always easy, it can be stressful at times.

If you decide to lodge a formal complaint, it must be made in writing (see Part 4 – page 66 for more detail about how to write a letter and what happens next).

PRIVACY ACT

Keeping records about individual Australians is often necessary and important for providing better services – for instance in paying benefits, developing better housing or fighting crime. But there are also risks involved. Information may be entered wrongly, become out of date or even be confused with another person's details. Confidential and sometimes highly personal information may become available to unauthorised people. The consequences can be serious. Individuals may be refused jobs, housing, or benefits, or even be wrongly arrested.

Kevin O'Connor, Privacy Commissioner

The purpose of the *Privacy Act* is to:

- protect personal information collected by Commonwealth Government departments or agencies.
- limit the collection and use of Tax File Numbers to purposes related to taxation and the payment of Commonwealth assistance.
- control the information contained in consumer credit files held by credit reporting agencies
- control the way consumer credit information passes between organisations providing credit.

Privacy in Aboriginal life is very different and is bound by rules which are related to group concerns ...

There's stricter views about privacy in some settings. That's mainly to do with cultural knowledge within families. There are certain ways of invading someone's privacy. If someone is told something about a sister, as a brother he is obliged to do something about it ...

In the case of Aboriginal people there's a great chance that these things will be done collectively ...

The bureaucracy's notion of privacy puts individual rights above the rights of others who should be considered. Families and communities get short shift. If you're talking about the whole range of issues, these events are made to appear private ones. But an incident often involves everyone – like the Michael Long incident and the desecration of Mabo's grave.

*'Aboriginal People Talking',
Privacy Report 1995*

CRIMES ACT, PART V11C

An old minor criminal conviction can seriously disadvantage people in many ways – such as in applying for employment, insurance, credit or occupational licence.

In many circumstances, you do not have to tell other people about your old minor convictions. Since June 1990, a Commonwealth law:

- gives you the right not to tell people about an old minor conviction, under certain conditions; and
- prohibits individuals or organisations from taking into account certain old convictions or telling other people about the conviction.

When can this law be used?

Individuals can complain about breaches of the *Privacy Act* and spent conviction rules to the Privacy Commissioner. Telephone the Privacy Hotline on 1800 023 985.

DISABILITY DISCRIMINATION ACT

What is a disability?

The definition of 'disability' used in the *Disability Discrimination Act* is very broad. It includes some conditions not usually thought of as disabilities.

'Disability' includes:

- loss of physical or mental functions, for example, a person who has quadriplegia, brain injury, epilepsy or who has a vision or hearing impairment;
- loss of part of the body, for example, a person with an amputation or a woman who has had a hysterectomy;
- infectious and non-infectious diseases and illnesses, for example, a person with AIDS, hepatitis or TB, a person with allergies or who carries typhoid bacteria;
- the malfunction, malformation or disfigurement of a part of a person's body, for example, a person with diabetes or asthma or a person with a birthmark or scar;
- a condition which means a person learns differently from other people, for example, a person with autism, dyslexia, attention deficit disorder or an intellectual disability;

Case Study

Cec's teacher is arranging an overnight school camp. Cec has been told he will not be allowed to go because he has epilepsy and needs medication at night.

Cec has been discriminated against because he has epilepsy. He has been treated less favourably than other students who are allowed to go on the camp.

- any condition which affects a person's thought processes, understanding of reality, emotions or judgement or which results in disturbed behaviour, for example, a person with a mental illness, neurosis or personality disorder; and includes a disability that:
- is present; or
- once existed but doesn't any more, for example, a person who has had a back injury, a heart attack or an episode of mental illness; or
- may exist in the future, for example, a person with a genetic predisposition to a disease, such as Huntington's disease or heart disease or a person who is HIV positive; or
- someone thinks a person has, for example, assuming that a person living with someone with an infectious disease also has the disease or assuming that a gay man has AIDS.

What is disability discrimination?

To be against the law, discrimination must have happened because of a person's disability. Discrimination can be direct or indirect. It includes discriminatory questions and harassment.

Direct discrimination is less favourable treatment

Direct discrimination happens when a person is – or is about to be – treated less favourably than others because the person – or his or her *associate* – has a disability. Less favourable treatment means that the person is disadvantaged and doesn't have the same opportunity or choices as a person without a disability.

Indirect discrimination is about unfair exclusion

Indirect discrimination happens when a condition stops a person with a disability – or an associate of a person with a disability – from doing something. A condition includes, physical barriers, policies, procedures, practices, selection or admission criteria, rules or requirements. It must be a condition which:

- has to be complied with
- generally people without the disability can comply with
- the person can't comply with
- is unreasonable in the circumstances.

Case Study

Kylie and her friends aren't allowed into a restaurant because the waiter doesn't want to re-arrange the tables so Kylie can sit with her friends. Kylie uses a wheelchair.

Kylie and each of her friends have been discriminated against. They have been treated less favourably than other people who use the restaurant because Kylie uses a wheelchair. Having to make some adjustments so that Kylie's wheelchair can fit around a table is not unreasonable. Kylie and her friends should be treated like any other people who use the restaurant.

Case Study

A woman applied for a position with a large government agency. The position involved working in remote locations. The complainant alleges that she was discriminated against on the grounds of sex during the selection process. She alleged that questions asked of referees by members of the selection panel referred to her abilities to cope in certain situations based on her sex rather than her ability, skills and experience. For example, would she have the strength or skills to free a bogged vehicle or what was she going to do with her kids when she was working.

Response

The respondent agreed that the selection process had not been conducted following normal selection procedures. They further agreed that the panel members had made inappropriate comments about the gender of applicants.

Outcome

The respondent agreed, without any admission of liability, to provide the following to the complainant:

- an apology
- \$1000 for injury to feeling
- agreement to train branch managers and supervisors about EEO selection procedures
- to put consultants with special knowledge about EEO on all selection panels for 12 months.

Harassment

Disability discrimination also includes harassment in the following areas:

- employment
- education
- providing goods and services.

When can this law be used?

You can use the *Disability Discrimination Act* to get fair treatment in:

Work – getting a job, pay, training, promotion.

Education – at school or enrolling in a course at TAFE, university or other colleges.

Where you live – renting or buying a house or a flat.

Getting or using services – using shops, restaurants, banks, theatres, sports and social clubs, local swimming pools, public transport, dentists, doctors and services run by the government. This includes access to these and other places.

You can also use the *Disability Discrimination Act* if you are harassed (like being called names, laughed at or put down) because of your disability.

SEX DISCRIMINATION ACT

The Act means it is against the law to:

- discriminate against you because of your sex, marital status or pregnancy
- sexually harass you
- dismiss you from your job because of your family responsibilities.

When can this law be used?

The Act makes it unlawful to discriminate in many areas of public life. The most common include:

Work — not getting or losing a job, not getting proper training or a promotion because of your sex, because you're married or not married or because you're pregnant. Also not getting a job because of family reasons.

Awards and enterprise bargaining — when women receive lower wages and worse employment conditions than men or when awards and agreements treat them less favourably.

Insurance and superannuation

Education — not being able to enrol or study in a course at TAFE, university or other colleges because of your sex, because you're married or not, or because you're pregnant.

Getting or using goods, services or facilities — being treated less favourably because of your sex, because you're married or not, or because you're pregnant when using shops, banks, restaurants, public transport, doctors, sports and social clubs and services run by the government. This includes access to these and other places.

Where you live — not getting a lease because of your sex, because you're single or because you're pregnant.

Buying or selling land — when people refuse to sell you land because of your sex, because you're married or not, or because you're pregnant.

Commonwealth laws and programmes — when a programme that receives money from the Commonwealth treats you less favourably because of your sex, because you're married or not, or you're pregnant, eg the CES and CES training programmes.

Sexual harassment — you can also make a complaint if you are sexually harassed at work, in education, when getting goods, services and facilities, when getting accommodation or when involved in a Commonwealth programme like the CES.

You can also use the *Sex Discrimination Act* if you are harassed (like being called names, unwanted sexual advances or physical contact).

In many cases, employers can be held legally responsible for sex discrimination or sexual harassment by employees.

Sexual Harassment

Sexual harassment can take many different forms – it can be direct or indirect, physical or verbal. It includes behaviour which creates a sexually hostile or intimidating environment.

Case Study

A male teacher constantly asks a female student to go out with him. He constantly makes comments on how attractive she is. The student feels very uncomfortable and very intimidated. She is worried about whether she will do well in her class assessment.

For example:

- unwelcome touching
- staring or leering
- suggestive comments or jokes
- sexually explicit pictures or posters
- unwanted invitations to go out
- unwelcome requests for sex
- unnecessary familiarity, such as deliberately brushing up against you
- intrusive questions about your private life
- insults or taunts based on your sex

For more information about discrimination contact:


Inquiries Officer

Human Rights and Equal Opportunity Commission

 **GPO Box 5218**

Sydney NSW 1042

Fax: 02-9284 9611

 **02-9284 9600**

Free call: 1800 021 199

TTY: 1800 620 241

Privacy Hotline: 1800 023 985

EMAIL hreoc@hreoc.gov.au


**Specialist Legal Advice and Support for Disability
Discrimination**

Disability Discrimination Worker

Sussex Street Community Law Centre

 **Locked Bag 2**


East Victoria Park WA 6101 Fax: 08-9470 1805

 **089-470 2676**

EMAIL sscls@ozemail.com.au

or

People with Disabilities (WA) Inc

 **08-9386 6477**

Fax: 08-9386 6705

Free call: 1800 193 331

TTY: 08-9386 6451

INTERNATIONAL

THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

When the United Nations (UN) was created, one of the first significant steps it made was to proclaim a *Universal Declaration of Human Rights*. The Declaration makes a clear commitment to those rights inherent in our nature, to which we are entitled as human beings.

Human rights are the foundation of everything. It is about our common humanity and common existence. Human rights are about being able to develop fully as human beings, to use our human qualities, intelligence, talents, conscience and to satisfy our spiritual and other needs. All people are worthy and have the inherent right to be treated with dignity, regardless of their race, abilities or circumstances. This foundation provides the basis for the rights explained in this Resource.

Following the *Universal Declaration of Human Rights* in 1948, a range of human rights issues were put forward and during the 1970s and 1980s the following human rights instruments were introduced.

INTERNATIONAL CONVENTIONS AND COVENANTS

	<i>Ratified by Australia</i>
<i>Universal Declaration of Human Rights</i>	1948
<i>Convention on the Prevention and Punishment of the Crime of Genocide</i>	1949
<i>Convention on the Elimination of All Forms of Racial Discrimination (CERD)</i>	1975
<i>Convention on Economic, Social and Cultural Rights (ICESCR)</i>	1975
<i>Covenant on Civil and Political Rights (ICCPR)</i>	1980
<i>Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)</i>	1983
<i>Labour Organisation Convention III Concerning Discrimination in Respect of Employment and Occupation</i>	
<i>Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)</i>	1989
<i>Convention on the Rights of the Child (CROC)</i>	1989

In particular, the *Convention on the Elimination of all Forms of Racial Discrimination (CERD)* guarantees equal entitlement to a range of civil, political, economic, social and cultural rights such as:

- the right to public health, medical care, social security and social services
- the right to equal participation in cultural activities
- the right of access to any place or service intended for use by the general public, such as transport, hotels, restaurants, cafes, theatres and parks

Human rights must be defined from Aboriginal perspectives/ standards ...

...how can we give something about something that doesn't exist – human rights don't exist for us.

Kununurra

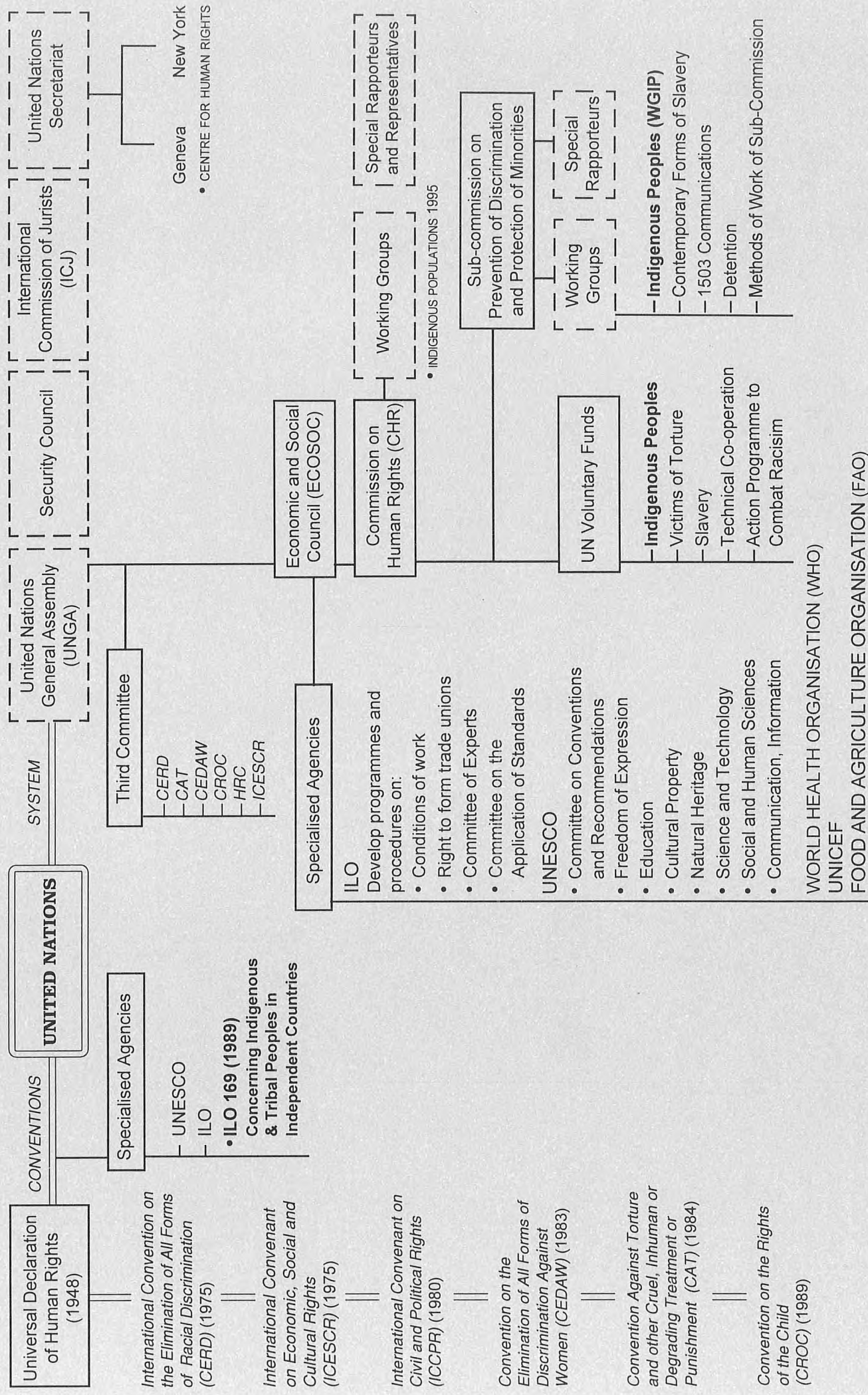
CERD gives greater emphasis to prohibiting racial discrimination than the *Universal Declaration*, ICESCR and ICCPR.

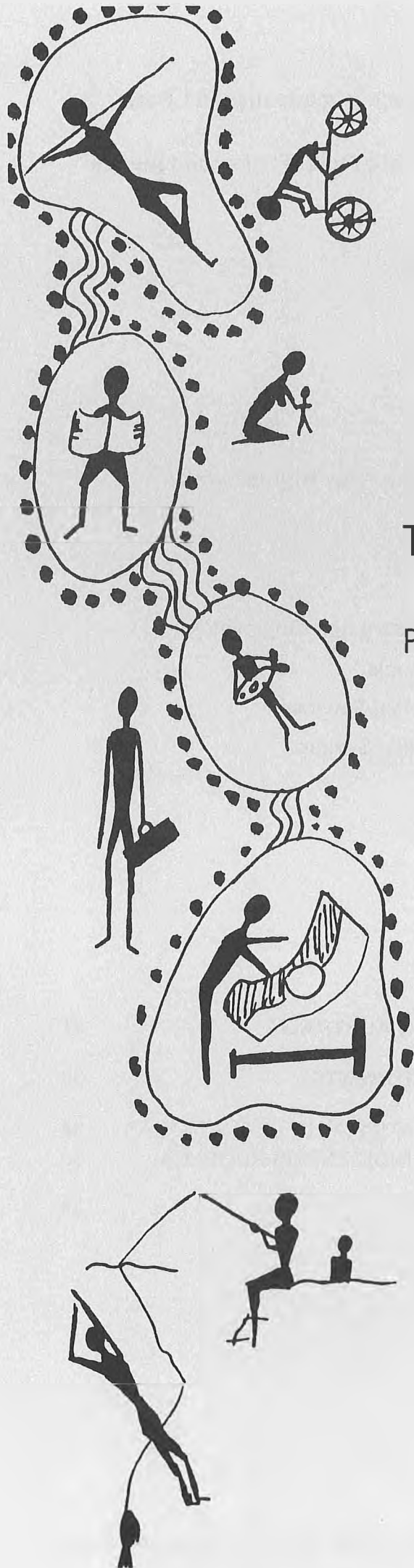
The international treaties, conventions and covenants Australia has signed have the effect of:

- asserting the importance of the rights and standards contained in these instruments
- committing the Commonwealth of Australia to undertake such measures as necessary to meet the standards

However, they are NOT legally enforceable by the UN. It is up to the Government of Australia to act 'in good faith'. Also, unless the Governments of Australia have introduced similar national or state legislation, individuals have no direct enforceable legal rights under international conventions.

A Walk Through Some of the Workings of the United Nations





THE BIG PICTURE

PART 2: INDIGENOUS RIGHTS

HUMAN RIGHTS AND SOCIAL JUSTICE
FOR THE
ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLES
OF WESTERN AUSTRALIA

- A COMMUNITY INFORMATION RESOURCE -

This Information Resource is made up of 11 Parts

Parts 1 – 5 look at the “Big Picture” of social justice

1. Human Rights
- 2. Indigenous Rights**
3. Citizen Rights
4. Right of Complaint
5. Community Action

Parts 6 – 11 look at some “Key Rights” areas

6. Consumer Rights
7. Cultural Heritage
8. Economic Development and Employment
9. Education and Schools
10. Housing and Essential Services
11. Police and the Justice System

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PROPOSED INTERNATIONAL DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES	38 38
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INDIGENOUS RIGHTS

INDIGENOUS RIGHTS IN AUSTRALIA

The High Court's 1992 *Mabo Decision* recognised that:

Native title has its origin in and is given its content by the traditional laws acknowledged by and the traditional customs observed by the indigenous inhabitants of a territory.

The common law can, by reference to the traditional laws and customs of the indigenous peoples, identify and protect the native rights and interests to which they give rise.

The *Native Title Act 1993* recognises and protects the native title identified by the High Court. It establishes procedures for proof of title and negotiations regarding the use of native title land.

In the *Mabo Decision* the High Court stated that the issue of the sovereign power of the Australian Government was not capable of consideration or challenge in Australian courts. Essentially, it is a political question. As a matter of politics, and law, successive Australian governments have denied that Aboriginal and Torres Strait Islander peoples hold the full right of self-determination as distinct peoples. What is generally recognized by Australian governments, as a matter of policy, is that:

- Aboriginal and Torres Strait Islander peoples have a special status as the original owners of the land and consequently, they are more than an ethnic minority group in multicultural Australia.
- The history of dispossession, intolerance and suffering of Aboriginal and Torres Strait Islander peoples is a direct and key factor in both the current disadvantages Aboriginal and Torres Strait Islander peoples experience and in developing effective solutions to this disadvantage.
- Aboriginal and Torres Strait Islander cultures, laws, heritage and values are a unique and significant part of the fabric of modern Australia.

Where do human rights and Indigenous rights begin and end. Sometimes traditional women's law and sex discrimination law conflict.

Derby

- Aboriginal and Torres Strait Islander peoples have a right to self-determination, in recognition of the different social conditions and social organisation of Aboriginal and Torres Strait Islander societies. This right extends to (limited) control over decision-making and the administration of Aboriginal and Torres Strait Islander affairs, through ATSIC and other representative bodies, at Commonwealth and State levels.

INTERNATIONAL INSTRUMENTS

Self-determination for all peoples is recognised under the *International Covenant on Civil and Political Rights* as an inherent right. Article 1 of this Covenant states that:

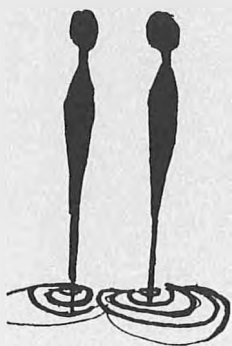
All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Article 27 of this Covenant recognises the rights of minorities to enjoy their own culture and specifies that:

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

Article 27 recognizes the rights of Indigenous peoples to their cultures, religions and languages as ethnic minorities. However, it does not refer specifically to Indigenous peoples.

PROPOSED INTERNATIONAL DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES



A United Nations (UN) working group, the 'Working Group on Indigenous Populations' (WGIP) has formulated a *Draft Declaration on the Rights of Indigenous Peoples*. The *Draft Declaration* affirms that Indigenous peoples are equal in dignity and rights to all other peoples. It expressly asserts the rights of Indigenous peoples to self-determination and to the ownership of their traditional lands and seas. It covers a full range of political, social, cultural and economic rights.

In 1995 the *Draft Declaration* started its progress from the WGIP to the United Nations General Assembly where it will be voted on by the representatives of national governments. Indigenous Peoples have had substantial input into the *Draft Declaration*, however, the final form of the *Declaration* is very likely to be reshaped by national governments before they are prepared to adopt it.

The *Draft Declaration on the Rights of Indigenous Peoples* will mark international recognition of the unique rights of Indigenous peoples.

COLLECTIVE RIGHTS

The right to self-determination... is a collective right. In respect of Indigenous Australians there is a distinct question as to whether any model of social justice based purely on individual rights, or individual citizenship rights, is adequate.

Aboriginal and Torres Strait Islander
Social Justice Commissioner
First Report 1993

*It is important to have
community and collective rights.*

*There are a lot of rights for
individuals but organisations
have responsibilities.*

Leonora

The current *Draft Declaration on the Rights of Indigenous Peoples* reflects a realisation that the collective rights of the world's Indigenous peoples require special recognition. It is justified on the basis of our unique identity. It is necessary for the preservation of our identity.

For further information contact:

Inquiries Officer

Human Rights and Equal Opportunity Commission

 **GPO Box 5218**

Sydney NSW 1042

Fax: 02-9284 9611

 **02-9284 9600**

Free call: 1800 021 199

TTY: 1800 620 241

EMAIL hreoc@hreoc.gov.au

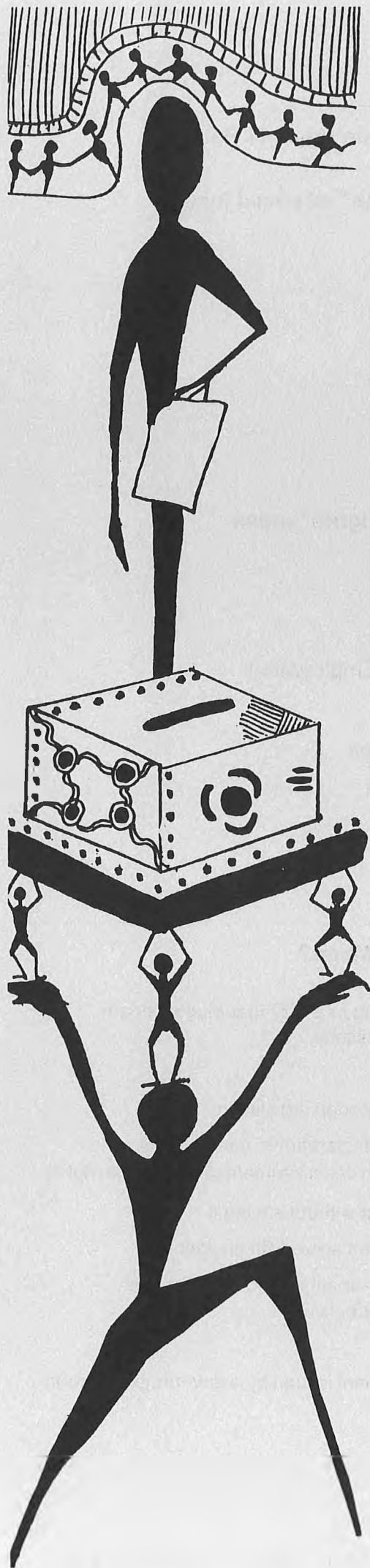
Aboriginal Charter Of Rights

*We want hope, not racialism,
Brotherhood, not ostracism,
Black advance, not white ascendance:
Make us equals, not dependants.
We need help, not exploitation,
We want freedom, not frustration;
Not control, but self-reliance,
Independence, not compliance,
Not rebuff, but education,
Self-respect, not resignation.
Free us from a mean subjection,
From a bureaucrat Protection.
Let's forget the old-time slavers:
Give us fellowship, not favours;
Encouragement, not prohibitions,
Homes, not settlements and missions.
We need love, not overlordship,
Grip of hand, not whip-hand wardship;
Opportunity that places
White and black on equal basis.
You dishearten, not defend us,
Circumscribe, who should befriend us.
Give us welcome, not aversion,
Give us choice, not cold coercion,
Status, not discrimination,
Human rights, not segregation.*

...

Oodgeroo of the tribe Noonuccal, 1962

(from 'My People', Jacaranda Press, 1970)



THE BIG PICTURE

PART 3: CITIZEN RIGHTS

HUMAN RIGHTS AND SOCIAL JUSTICE
FOR THE
ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLES
OF WESTERN AUSTRALIA

- A COMMUNITY INFORMATION RESOURCE -

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Glossary — What Does It Really Mean?

COMPLY	to act or do something in a way that meets certain requirements or conditions
ELECTORAL BALLOT	voting paper
ENACT	to make into a law through legislation
HUMAN RIGHTS INSTRUMENTS	all the international declarations, conventions, covenants, etc., which describe international human rights
IMPLIED	to suggest something without saying it
INCONSISTENT	when one part does not agree with another part
IMPARTIAL	not biased, weighing-up all sides and all stories before making a fair decision
NOTICE	a warning
WRIT	a formal order/document issued by a government or court

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CITIZENS RIGHTS

The will of the people shall be the basis of the authority of government...

Universal Declaration of Human Rights, Article 21,3.

Democratically elected governments exist to serve the people and to do the will of the people. That is the basis of parliamentary democracy in Australia.

LAWS OF GOVERNMENT

Under the Australian Constitution, which established the Commonwealth of Australia, there are basically two types of law to protect the rights of citizens and determine the role of government – statute law and common law.

STATUTE LAW

Statute law is made by the Government. This law is passed by the Parliament and each law or piece of 'legislation' is referred to as an Act of Parliament. The Commonwealth, State and Territory Governments have constitutional powers to make legislation. The Australian Constitution defines the areas in which the Commonwealth Government has law-making power.

COMMON LAW

Common law is law made by the courts or 'Judge made law'. This is law made by courts such as the Supreme Court or the High Court. The High Court is the final court of appeal which defines Australian common law.

'Judge made law' is called 'common law'. This is law which is made by the Courts over many years and followed by the judges. Common law is used where statute law does not address a certain area. The High Court of Australia relied on the common law to make the *Mabo Decision*. In other words, they recognized native title as part of the common law of Australia.

Australia's international obligations under human rights instruments do not automatically become part of Australian domestic law. They may influence the common law. Even if there is no specific statute, it is assumed that government decision-makers (administration) and governments will take into account human rights standards in going about their business.

When Australia enters into international human rights instruments, the implementation of these human rights standards through legislation is the responsibility of the Commonwealth Government. The policy is to encourage State and Territory Governments to implement human rights legislation in their own areas. However, the Commonwealth has the power to enact legislation which covers the whole country. The Commonwealth *Racial Discrimination Act* 1975 is an example of such national legislation.

A State or Territory Government cannot enact laws which are inconsistent with Commonwealth law. The *WA Land Titles and Traditional Usage Act* was held by the High Court to be inconsistent with the Commonwealth *Racial Discrimination Act*.

Natural Justice

The terms 'natural justice' and 'procedural fairness' mean much the same thing. These terms refer to the rights of citizens to minimum acceptable standards of government administration. Justice must be seen to occur in the procedures used by governments to make decisions.

There is a common law duty to observe fair procedures when making decisions which directly and individually affect a person's rights, interests or legitimate expectations.

Procedural fairness has two elements that should be observed by decision-making bodies:

- **The right to be heard.** A person whose interests will be affected by a decision should be given notice of the relevant matters and a reasonable opportunity to be heard and to present their case. This means a 'fair go' and equality of access.
- **Rule against bias.** Decision-makers should act impartially and without pre-judgment. Decision-makers should not have any personal interest in the matter to be decided.

The accepted rules of procedural fairness apply to most aspects of government decision-making. Some pieces of legislation may outline what procedure is to be followed. However, where the legislation does not state what procedure is to be followed, the common law standards of procedural fairness will apply.

If procedural fairness has not been available to a person they have a right to have a decision reviewed. Depending on the circumstances, a decision may be set-aside by a Court, Tribunal or an internal review body (such as the Social Security Appeals Tribunal (SSAT)).

The error in the decision may be pointed out by the Court and the decision-maker will make a fresh decision. In some cases, such as the SSAT, the review body may make the fresh decision.

THE GOVERNMENTS OF AUSTRALIA

Under our Federal system of government there are three levels of government, each with different powers and laws, the:

- Federal Government
- State/Territory Government
- Local Government

By having three different levels of government involved in the lives of Aboriginal and Torres Strait Islander peoples, confusion of responsibility and lack of co-ordination frequently arises. The Royal Commission into Aboriginal Deaths in Custody has dramatically shown this to be the case.

The governments of Australia have recognised this problem. They argue that they are trying to achieve a fair distribution of the country's resources and are trying to make the system of government more responsive to Aboriginal and Torres Strait Islander peoples' needs at a local level.

HEADS OF GOVERNMENT AGREEMENT

The 1992 national 'Heads of Government Agreement' made a commitment to fulfill the citizenship rights of Aboriginal and Torres Strait Islander peoples.

Bi-lateral Agreements

Certain governments of Australia have recently entered into *bi-lateral agreements* (affecting and involving two sides: Commonwealth and State or Territory Governments) to improve the situation. Basically these 'agreements' spell out the roles and responsibilities of each level of government. In the area of Indigenous Affairs such bi-lateral agreements include ATSIC. These agreements are a mechanism to achieve better co-ordination of effort and resources. The heads of government have agreed to ensure that Indigenous peoples receive no less a provision of services than other Australian citizens and in so doing aim to provide:

- improved access of Aboriginal and Torres Strait Islander peoples to mainstream programmes
- services which are adequate and culturally appropriate

Five different government regions service Kondinin for Social Security, Employment and Training, DSS is in Midland, CES is in Albany, TAFE is in Kellerberrin, DSS Case Manager is in Mandurah and the Health Worker is in Narrogin. This creates confusion.

Kondinin

The government's changing the goal posts all the time and a lot of people are getting confused

Kanpa

- appropriate information about rights to, and availability of services
- effective resourcing of services
- Aboriginal and Torres Strait Islander peoples and communities with the opportunity to negotiate, manage or provide their own services.

For more information about the planning and co-ordination of programmes and services contact:

Aboriginal Affairs Department

☎ Local Call Cost 13 18 15

VOTING RIGHTS

Elections are held to vote representatives into government. By law, every Aboriginal and Torres Strait Islander person over 18 years has to vote in State and Federal elections. All Australian citizens over 18 years of age must be on the Electoral Roll.

There are **four** different ways for Aboriginal and Torres Strait Islander peoples to represent their community in the political system: through ATSIC, Local Government, State Government and the Commonwealth Government.

PROCEDURES TO NOMINATE AS A REPRESENTATIVE FOR YOUR COMMUNITY

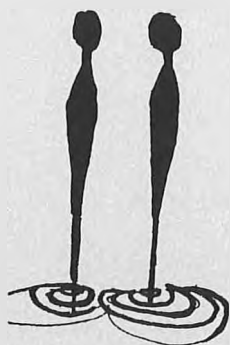
ATSIC ELECTIONS

Enrol to vote. All candidates must be on the Commonwealth Electoral Roll. You must live in the region you want to represent

Fill out a nomination form. Forms are available from the ATSIC office and the Australian Electoral Commission. You need two or more Aboriginal and Torres Strait Islander people to support your nomination and they must be on the Commonwealth Electoral Roll. Once your nomination is accepted your name will be put on a ballot slip with other candidates.

The voting system for ATSIC positions is the same as for the House of Representatives. It is a preferential voting system.

The preferential voting system means that a voter can vote for their first choice candidate, second choice candidate and so on. A winner is declared after they have won more than 50% of the formal votes. Sometimes the voters' preferences may help choose a winner if there is no clear winner after the first count of votes.



Aboriginal people can be a part of local decision-making: begin by sitting in on local council meetings.

Josie Farrer,
Shire President, Halls Creek

It is a problem that there are no Aboriginal people on the Shire Council ...

Mogumber, Moora,
Northam, Albany, Laverton

There are no Aboriginal workers at the Shire – vacancies exist but jobs are not advertised. There are no Aboriginal people on Council – people have tried but they were unsuccessful. The voting system is gerrymandered and racist.

Fitzroy Crossing

Tell the people in your area that you nominated for the ATSIC election and ask them to vote for you. You may show people how to vote for you but there are certain rules that candidates must comply with.

LOCAL GOVERNMENT ELECTIONS

If you are interested in getting into Local Government, enrol to vote. All candidates must be on the State Electoral Roll.

WA STATE GOVERNMENT ELECTIONS

State Parliament consists of two houses:

The Upper House (Legislative Counsel). The Upper House represents six different regions. There are either five or seven members elected from each region.

The Lower House (Legislative Assembly). The Lower House has 57 districts. One member from each district is elected.

Enrol to vote. All candidates for State Government elections must be on the State Electoral Roll. You must live in the district or region you want to represent.

Candidates who want to stand for State Parliament must submit their nomination to a District Returning Officer. The nomination form has to be accompanied with a fee. The nomination must be for either the Lower House or the Upper House.

Once you have been nominated you are put on the electoral ballot along with other candidates from your area. The successful person is elected on the preferential voting system.

Tell the people in your area that you nominated for the State election and ask them to vote for you. You may show people how to vote for you but there are certain rules that candidates must comply with and this information is in the *Candidates Manual*, available from the Western Australian Electoral Commission.

FEDERAL GOVERNMENT ELECTIONS

Federal Parliament has two Houses:

The House of Representatives. The House of Representatives is seen as the 'Peoples House' and the members are chosen directly by the people of Australia. This House determines which party will be the Government of Australia.

For example, the Coalition (Liberal Party and National Party) is in government (1996) because they have more members in this House than the total of the ALP and members of the other parties. The maximum term for this House is three years and at the end of a term a new election must be held. A person who wants to nominate as a candidate for a position in the House of Representatives can either join a registered political party and seek pre-selection for the area you are enrolled in or run as an Independent. Independent nominations must be lodged with the Divisional Returning Officer. Nominations must be accompanied with a fee.

The Senate. This House is seen as the 'States' House'. The purpose of the Senate is to allow each State and Territory to be represented equally. It also provides a means of reviewing the House of Representatives. Senators for the State are chosen by the people of that State. Each State has an equal number of representatives – 12 from each State and two from each Territory. Senators are elected for six years, however, half the Senators must face election every three years. The voting system is therefore different to the House of Representatives and is known as a proportional representation system. Senate candidates must lodge their nomination forms with the Australian Electoral Office in Perth.

Nominations are accepted after the writ for election is issued and nominations must be received by noon on the closing date for nominations.

For further information contact:

WA Electoral Commission

 GPO Box F316
Perth WA 6841 Fax: 08-9221 3205
 08-9221 4454
EMAIL waec@waec.wa.gov.au

Australian Electoral Commission

 GPO Box 718
Victoria Park WA 6979 Fax: 08-9472 3551
 08-9470 7299 Free call: 132 326

AUSTRALIAN ABORIGINES CONFERENCE

Sesqui-Centenary

DAY OF MOURNING & PROTEST

to be held in

THE AUSTRALIAN HALL, SYDNEY
(No. 148 Elizabeth Street)

on

WEDNESDAY, 26TH JANUARY, 1938
(*Australia Day*)

from

10 a.m. to 5 p.m.

THE FOLLOWING RESOLUTION WILL BE MOVED:

"WE representing THE ABORIGINES OF AUSTRALIA, assembled in Conference at the Australian Hall, Sydney, on the 26th day of January, 1938, this being the 150th Anniversary of the whitemen's seizure of our country, HEREBY MAKE PROTEST against the callous treatment of our people by the whitemen during the past 150 years, AND WE APPEAL to the Australian Nation of today to make new laws for the education and care of Aborigines, and we ask for a new policy which will raise our people to FULL CITIZEN STATUS and EQUALITY WITHIN THE COMMUNITY."

*Aborigines and Persons of Aboriginal Blood only are
invited to attend. Please come if you can!*

Signed for and on behalf of

THE ABORIGINES PROGRESSIVE ASSOCIATION

J. T. Patten President

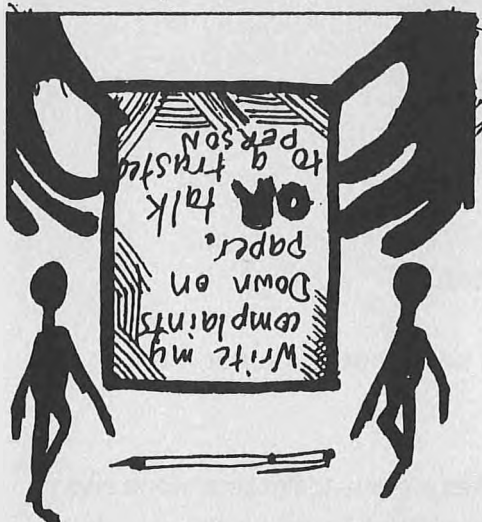
W. Ferguson, Organising Secretary

Address: c/o Box 1924 KK

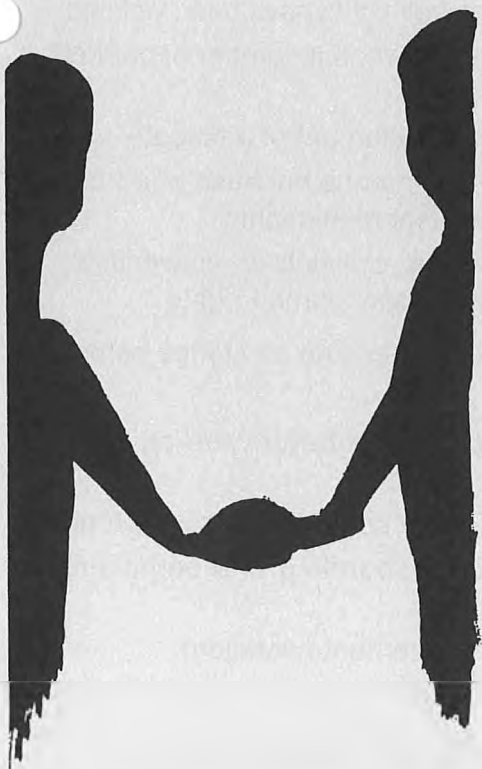
General Post Office, Sydney



THE BIG PICTURE



PART 4: RIGHT OF COMPLAINT



HUMAN RIGHTS AND SOCIAL JUSTICE
FOR THE
ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLES
OF WESTERN AUSTRALIA

- A COMMUNITY INFORMATION RESOURCE -

This Information Resource is made up of 11 Parts

Parts 1 – 5 look at the “Big Picture” of social justice

1. Human Rights
2. Indigenous Rights
3. Citizen Rights
- 4. Right of Complaint**
5. Community Action

Parts 6 – 11 look at some “Key Rights” areas

6. Consumer Rights
7. Cultural Heritage
8. Economic Development and Employment
9. Education and Schools
10. Housing and Essential Services
11. Police and the Justice System



Glossary — What Does It Really Mean?

ALLEGE	to insist that something happened (whether it did or it didn't)
BREACHES	breaks
CLAIMANT	a person or body who makes a claim against someone else
COMPLAINANT	a person who makes a complaint against someone else or who makes a claim that their rights have been violated
CONCILIATION	a way to resolve a dispute between a number of parties or people
DETERMINATION	the decision regarding the settlement of a dispute
FIDUCIARY DUTY	a special duty you owe to someone because of a trust relationship, eg. solicitor/client relationship
HUMAN RIGHTS INSTRUMENTS	all the international declarations, conventions, covenants, etc., which describe international human rights
IMPARTIAL	not biased, weighing-up all sides and all stories before making a fair decision
LODGE	(a complaint) to put a complaint before the court or committee
REDRESS	to set right or compensate for something that is wrong
RESPONDENT	the defendant or person responding to a complaint made by a complainant
VIOLATED	the breaking of a law or agreement (violation)

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RIGHT OF COMPLAINT

You have a right to make a complaint.

Making a complaint is one way you can handle a situation.

It is not the only way.

It will take time and may take an emotional and financial toll. Do not expect an immediate outcome.

Making a complaint and winning can change peoples attitudes and the way they do things.

There are a number of different bodies (government departments, independent bodies, unions and committees) that you have a right to make a complaint to, if you are:

- unhappy with a service;
- feel that your rights have been violated; or
- believe that you have been treated unfairly.

Following through a complaint can take a long time. There are generally several stages in making and processing a complaint:

- writing the letter
- someone receiving the letter and seeing if they are able to handle the issue raised in the letter
- researching all sides of the story
- getting all parties together to talk about the matter

To follow through a complaint successfully you've got to stick to it.

WESTERN AUSTRALIAN COMPLAINT PROCEDURES

WESTERN AUSTRALIAN EQUAL OPPORTUNITY COMMISSION

The Equal Opportunity Commission (EOC) is required to investigate a complaint, if it falls within its jurisdiction. Where possible the Commissioner tries to resolve the complaint through a meeting or other informal and non-legal means.

Complaints Process

If a person or group of people have a complaint they can:

1. Talk to the person or organisation who the complaint is made against about the complaint; it may have been unintentional discrimination.
2. Talk to the community adviser, employer or trade union representative or someone who has to look after rights, and try and get the complaint resolved by them.
3. If that fails, lodge a formal complaint with the Commission.

How to Lodge a Complaint

It may be best to contact an 'Inquiry Officer' at the EOC first, as they can help the person or group of people with the correct way of lodging the complaint. Aboriginal staff are available to help.

A complaint must:

- be in writing
- be signed and dated by the person making the complaint
- say what the person or organisation did to discriminate and in what way it was unlawful (this means knowing what part of the equal opportunity law was broken)
- provide facts – names, the time that it happened, witness statements, letter, or anything else that will help prove the case
- be made within 12 months of the matter occurring – any longer and the Commissioner must decide if there is “good cause” why the matter should be investigated.

Withdrawal and lapse of Complaints

- you can ask the Commissioner to stop dealing with your complaint at any time during the conciliation process, however you need to inform the Commission that you want your complaint withdrawn.
- if you have chosen to stop your complaint for whatever reason and do not inform the Commissioner, your complaint may lapse. In this case, the Commissioner will contact you and if a response is not received within 21 days after they have written to you, then your complaint will lapse. Always reply within 21 days if you don’t want your complaint to lapse.

What Happens if a Complaint is not Resolved?

If the complaint is not resolved and there is enough information to support your complaint, you can ask the Commissioner to refer the matter to the Equal Opportunity Tribunal.

THE EQUAL OPPORTUNITY TRIBUNAL

The **Equal Opportunity Tribunal** is an independent body. It is not under the control of the Commission. The Tribunal hears the complaint and can either dismiss it, seek a compromise or can make the respondent pay damages of up to \$40,000.

Complaints of unlawful discrimination arising under the Equal Opportunity Act 1984 are lodged initially with the Commissioner for Equal Opportunity. A matter will be referred to the Tribunal by the Commissioner in one of two ways:

- where the Commissioner has been unable to resolve the complaint by conciliation and she refers the complaint; or
- where she has been called upon to do so because a complaint has been declined.

WOMAN WINS APOLOGY FROM ROADHOUSE

An Aboriginal woman made a complaint of racial discrimination against the owners of a roadhouse.

The woman stated that she had stopped at a roadhouse to buy drinks and snacks. She also asked the person serving behind the counter for the key to the toilet. She was told the key was not available because someone was already using the toilet.

The complainant overheard another Aboriginal person ask for the key to the toilet and receive the same response. However, when a customer who was clearly not Aboriginal asked for the key, it was given to her.

When the complainant asked the person behind the counter why she had not been given the key she was told that “I am just doing what I was told to do”.

The woman wrote to the WA Equal Opportunity Commission. The WA EOC informed the owners of the roadhouse that a complaint of race discrimination had been lodged against them...

What Happens to a Complaint sent to the WA Equal Opportunity Commission?

The Commissioner receives your written complaint...

If the complaint is not covered by any of the Acts,

the Commissioner will write a letter and tell you so.

If the complaint appears to be covered by the Act,

the Commissioner will give the complaint to one of the Conciliation Officers to investigate further.

If the complaint is covered by more than one Act,

you will be asked to choose the Act you want to use. Commission Staff will give you the information you need to make a decision.

You can provide more information and re-submit the complaint or write requiring the Commissioner to refer the complaint to the Tribunal.

They ask the person you are complaining about what they think has happened and they may also ask other people about what happened.

If there is not enough proof to support your complaint,

the Commissioner will write to you telling you the complaint is dismissed.

If the complaint is dismissed by the Commissioner,

you can write to the Commissioner asking that the decision be reviewed. You must do this within 21 days of receiving the letter.

If the information from everyone involved shows unlawful discrimination,

the Conciliation Officer will try to resolve the complaint. They may talk to you and the other person separately or they may arrange a meeting (conciliation conference) between the two parties. First you need to work out what you want to happen to finish your complaint.

Some outcomes may be:

- the person or people making the complaint are satisfied with the explanation given by the respondent.
- the respondent apologises or makes an agreement not to repeat the discrimination or to pay compensation to those making the complaint.

If you and the other person cannot resolve the complaint and there is enough proof to support you,

the Commissioner will refer the complaint to the Equal Opportunity Tribunal for a hearing.

The Tribunal is entirely independent of the Commissioner and in conducting an inquiry forms its own impartial view about the matter on the basis of the evidence and materials placed before it.

The Tribunal consists of a President with legal qualifications and two other members appointed by the Governor. In certain cases the President may direct that the Tribunal be constituted by a Deputy President and two deputy members. A presidential member presides at a hearing of the Tribunal and has power to determine any questions relating to the admissibility of evidence and any other issue of law or procedure. A decision in which any two members of the Tribunal concur shall be a decision of the Tribunal.

The presence of community members fully involved in the judicial process contributes an element of community assessment to the outcome of any matter referred to the Tribunal. Members of the Tribunal are experienced in dealing with issues unique to the equal opportunity jurisdiction and this leads to consistency in decision-making.

Powers of the Tribunal

The Tribunal is required to conduct an inquiry into each matter by steps taken to effect an amicable settlement. The Tribunal is not bound by the rules of evidence and shall act according to equity, good conscience and the substantial merits of the case.

After holding an inquiry the Tribunal may dismiss the complaint or find the complaint substantiated and make a determination.

Tribunal hearings are open to the public and can be attended by the press.

Suppression Orders

The Tribunal is generally open to the public but it has the power to conduct a hearing in private or to make suppression orders which keep some parts of the hearing confidential.

The exercise of powers under the *Equal Opportunity Act* is intended to have an education function for the community as a whole. This is assisted by having hearings of complaints open to the public and to publicity.

In some cases, where it seems to the Tribunal that witnesses might be deterred from giving evidence, or for any other reason, fairness requires that the inquiry be held in private, the Tribunal can direct that evidence given to it shall not be published or that publication of certain details be restricted.

WOMAN WINS APOLOGY FROM ROADHOUSE

Response

The owners of the roadhouse in response to the complaint, stated that they had problems with drunk people and with people taking food off shelves and eating it in the toilet without paying for it.

The staff were therefore instructed to use their discretion in relation to people who were drunk or who had a previous history of theft. However, in this case the respondents agreed there had been an error of judgement.

Outcome

The respondents spoke directly with the complainant and provided a written apology for themselves and the person who served the complainant.

The respondents also stated that they would put a closed circuit television system in the shop so that they could monitor inappropriate behaviour by staff or customers and eliminate incidents of further racial discrimination.

For further information contact:

The Equal Opportunity Commission

 **P O Box 7370**

Cloisters Square

Perth WA 6850

 **089-264 1930**

Fax: 089-264 1960

Free call: 1800 198 149

NATIONAL COMPLAINT PROCEDURES

***RACIAL DISCRIMINATION ACT 1975,
SEX DISCRIMINATION ACT 1984,
DISABILITY DISCRIMINATION ACT 1992***

If an Aboriginal or Torres Strait Islander person or group has a complaint about racial discrimination, sex discrimination or disability discrimination then they can lodge a complaint with the Race Discrimination Commissioner, the Sex Discrimination Commissioner or the Disability Discrimination Commissioner.

Who can make a complaint?

- one or more persons who believe they have been discriminated against because of their race, colour, descent, or national or ethnic origin on their own behalf or on behalf of other people who have been discriminated against in the same way
- person(s) included in a class of people who believe they have been discriminated against, on behalf of that class
- a trade union on behalf of its members

How to Lodge a Complaint

- The complaint, in writing with all the details, is sent to the relevant Commissioner, Human Rights and Equal Opportunity Commission (see page 66).

If you are unable to put your complaint in writing or if you need assistance, staff at HREOC can help you. Your union, a friend, relative or anyone else can help you make a complaint but they cannot lodge it for you.

- The Commissioner will then decide if it is covered by the law that relates to the HREOC and whether there is enough information to investigate the complaint.
- If the Commissioner decides that it is not covered by the law that relates to the HREOC, the Commissioner cannot investigate. You will be sent a letter that explains this. The Commission may write to you asking for more information which will help in the investigation of the complaint.

- If the HREOC can investigate, one of its staff will discuss the details with you. They may also write to the other person or organisation ('respondent') to get their side of the story. The relevant officer may also interview witnesses to provide more background to the complaint.
- If the Commissioner decides that unlawful behaviour occurred, the Commissioner will help both parties to find a solution to the dispute by conciliation. The purpose of conciliation is to get both sides together to resolve the dispute by agreeing to settle the matter on terms acceptable to both parties. Conciliation is informal and confidential. You can have a friend, family member or other person with you if you wish. You do not need to have a solicitor, although you can hire one yourself if you wish.
- If the matter cannot be settled at the conciliation stage it may be referred to a Hearing. The Commission encourages conciliation but if an agreement cannot be reached then the Commission may make determinations based on the facts and the law of the case. A Hearing is a fairly formal and usually public process, although the Commission does have the ability to both conduct all or part of a Hearing in private, or to suppress all or part of the evidence. The Hearing is conducted by an external Hearing Commissioner. There is no automatic right to be legally represented at the Commission and parties must seek leave of the Commission to appear through a lawyer. During a Hearing, evidence is generally given from both sides through witnesses called by either party. Representatives of the media are generally allowed to attend and report on the Hearing. The Hearing Commissioner can make a determination and issue orders depending upon the circumstances of the complaint.
- If the Hearing Commissioner upholds the complaint the determination may include such orders as:
 - you get back what was taken from you, for example, the job, house to rent, and so on.
 - a person be employed, re-employed or promoted
 - damages be paid by compensation for loss or damage suffered
 - Aboriginal and Torres Strait Islander cultural awareness training occur
 - an apology to either yourself, your community, or both.
- To date the Human Rights and Equal Opportunity Commission has conducted these Hearings. However, the High Court handed down a decision which ruled that the Commission did not have the authority to make binding and enforceable determinations on complaints.

Case Study

An Aboriginal staff member alleged that he was racially discriminated against by his supervisor and his employer, a Commonwealth Government department.

He alleged that his supervisor's racially motivated opinion of him led to his failure to achieve promotion, despite having won a significant award for his contribution to the workplace. He alleged that his employer had not taken steps to ensure that the alleged discrimination ceased, even though he had reported it.

Outcome

Without admission, the employer agreed to the following:

- a promotion for the officer,
 - a transfer to a different posting, and,
 - consideration for nomination to attend officer training.
-

Case Study

Commonwealth Ombudsman

An Aboriginal man receiving Jobsearch Allowance found there was no money in his bank account on the usual benefit payment day.

The man telephoned his nearest DSS office. They informed him that they had not received his fortnightly form and therefore not paid his benefit. DSS told him to call the next day and he was again informed that the form had not been received.

The DSS officer told him that his only option was to come to the DSS office that day and complete a form, and he would receive a counter cheque. However, the man lived more than 200km from the DSS office and had no transport. He rang the Ombudsman for help.

Response

DSS immediately mailed a new form.

Outcome

- DSS immediately put one week's benefit into the man's account
 - DSS paid the remaining benefit once the form was received
 - DSS apologised to the man
 - DSS rang the man's landlord and explained that the delayed payment had caused his late rent payment.
-

It seems likely that in the near future all Hearings will be conducted by the Federal Court.

It is anticipated that the Hearings to be conducted by the Federal Court will be similar to those that were conducted by the Commission. Evidence will be given by both sides and other witnesses may be asked to give evidence. Also, representatives of the media will be allowed to attend and report on the Hearing and the parties are entitled to legal representation should they wish to arrange it for themselves. The judge will then make a determination and issue orders on the circumstances of the complaint.

Determinations of the Commission are not, of their own nature, legally binding and enforceable, excepting as against the Commonwealth. This means that if a respondent chooses to ignore the Hearing Commissioner's decision then the onus will be on the complainant to apply to the Federal Court of Australia for enforcement of that determination. In the Federal Court the issues that were before the Commission will have to be re-considered freshly by the Court.

HUMAN RIGHTS AND EQUAL OPPORTUNITY COMMISSION

The Human Rights and Equal Opportunity Commission (HREOC) can initiate general inquiries into alleged breaches, situations that break or contradict standards and principles of human rights and or discrimination. This can occur on the basis of:

- a complaint being lodged by an individual or group
- a request by the Attorney-General to inquire into a complaint
- a decision by HREOC to conduct an Inquiry.

The *National Inquiry into Separation of Aboriginal and Torres Strait Islander Children from Their Families* is a recent example.

For further information contact:

Human Rights and Equal Opportunity Commission

 **GPO Box 5218**

Sydney NSW 1042

Fax: 02-9284 9611

 **Free call: 1800 021 199**

Phone: 02-9284 9600

EMAIL hreoc@hreoc.gov.au

OMBUDSMAN

The Ombudsman is a person appointed by Parliament to investigate complaints by citizens against the government.

The Ombudsman is independent of government and is appointed to give people a 'free and fair' hearing of their complaint against the decisions of a government department or agency. There is an Ombudsman appointed by both the State and Commonwealth Governments.

State Ombudsman can investigate:

- Most State Government departments
- Local Councils
- Most statutory authorities (Homeswest)
- The WA Police Service

Commonwealth Ombudsman can investigate:

- Commonwealth Government departments (ATSIC, DEET, DSS, Australia Post)
- ATSIC Regional Councils
- Australian Federal Police

Rights to Complain

If a government authority does something wrong, which affects you personally, you can complain to the Ombudsman. The Ombudsman can investigate a complaint alleging a department's actions were illegal, unreasonable, unjust, oppressive, discriminatory or just plain unfair. For example, in the administration of grants or department procedures.

Note: It is important to try and sort out the problem/complaint before contacting the Ombudsman's office. The Ombudsman may not investigate the complaint if the problem has not been raised with the government department first.

The Ombudsman's Powers

The Ombudsman has wide powers to investigate a complaint. Public servants must produce written information or evidence and must answer, under oath, questions put to them by the Ombudsman during investigations. If the Ombudsman supports the complaint, a government authority may change a decision, change its rules or procedures, apologise to the complainant or in special cases pay compensation for losses caused.

Commonwealth Ombudsman

An Aboriginal woman with two children complained that her Supporting Parents Pension had been suspended.

Response

DSS told the Ombudsman that the woman had not responded to a number of communications, and had not returned a review form and it was therefore withholding further payments.

The complainant advised that she had given her parents' former address, but they had moved. She had been living in her car with her children, with an occasional night in a motel. She had applied for public housing and had received priority and she would be moving into a permanent home within weeks. However, in the meantime she had no mailing address and had not received the DSS forms.

DSS interviewed the woman.

Outcome

- The complainants pension was restored
- The complainant received an immediate counter cheque.

Case Study

State Ombudsman

A pregnant prisoner in Bandyup Women's Prison complained that because of her security rating, she had to be handcuffed to an officer during the physical examinations which were part of her antenatal care.

She claimed she found this degrading and felt 'shame' from talking to the medical staff about her condition. She stopped going to her antenatal appointments.

Response

- The Ombudsman got a report from the Ministry of Justice.
- The Superintendent issued instructions that:
 - the restraints were to be removed from the complainant during medical examination.
 - future examinations were to be conducted out of sight and hearing of the escorting officer.
- The complainant was paroled shortly after she wrote to the Ombudsman.

Outcome

The Ombudsman told the Ministry of Justice he would report on this matter within his report looking at the treatment of pregnant women.

State Ombudsman
Annual Report 1995, p 104.

The Ombudsman can write to the Minister in charge of the department and can write about the department in its annual report to Parliament. The Ombudsman can also recommend that a law be changed.

The Ombudsman is aware of the difficulties of distance and communication for Aboriginal communities. The Commonwealth Ombudsman employs a special liaison officer for Aboriginal and Torres Strait Islander peoples. This officer can be contacted in Canberra on the free call number which appears at the end of this section.

What the Ombudsman cannot do

By law, the Ombudsman cannot investigate:

- State and Commonwealth political matters
- Private individuals or companies
- Decisions of a court
- Judges or Government Ministers

The Ombudsman can make recommendations to departments and Ministers and report directly to Parliament. The Ombudsman cannot force a department to accept a recommendation.

Making a Complaint

To the State Ombudsman

- You must put the complaint in writing.
- The Ombudsman will assist in filling out a written complaint

To the Commonwealth Ombudsman

- You can complain to the Ombudsman by letter, by phone or in person.
- If you do not speak English very well, the Ombudsman's office will arrange for an interpreter or translator.
- Prisoners or people in custody can communicate with the Ombudsman in confidence.
- Other people can make a complaint on behalf of the person or group, with their permission.
- Complaints can be made without giving the name of the person or group.

For more information contact

State Ombudsman	Commonwealth Ombudsman
 GPO Box 25386	GPO Box 25386
St. George's Terrace	St. George's Terrace
Perth WA 6831	Perth WA 6831
Fax: 08-9325 1107	Fax: 08-9221 4381
 08-9220 7555	08-9220 7541
Free call: 1800 117 000	Free call: 1800 133 057

TELECOMMUNICATIONS INDUSTRY OMBUDSMAN

The Telecommunications Industry Ombudsman (TIO) was established to provide an independent, fair, quick way to resolve complaints and disputes regarding telecommunications services.

The TIO is independent of governments and carriers.

A revision of the *Telecommunications Act* in 1996 may change the way the TIO works.

Rights to Complain

- you can complain to TIO if you use one of the telecommunications services provided by Telstra, Optus, Vodafone
- you have made a complaint to Telstra, Optus or Vodafone and you remain unhappy with the service or outcome of your complaint.



For more information contact:

Investigation Officer
Telecommunications Industry Ombudsman

 **PO Box 18098**
Collins Street East
Melbourne Vic 3000 **Free fax 1800 630 614**

 **Free call 1800 062 058**

BANKING OMBUDSMAN

If you have a problem with a bank that you cannot sort out yourself, the Banking Ombudsman may be able to help. (See Part 6 – Consumer Rights)

State Ombudsman

A Homeswest tenant complained that she was being charged too much for water. The Water Authority handled the situation first. The complainant refused to pay the bill. The Water Authority transferred the debt to Homeswest who had to recover it.

The complainant was alleged to have used 2263 kl of water over a six month period, which means using seventy 44 gallon drums of water each and every day for six months – at a cost of \$885.80. The dispute was four years old by the time the complainant wrote to the Ombudsman

Response

The Ombudsman asked for several reports from Homeswest and the Water Authority. The Ombudsman was concerned that both agencies had been prepared to accept that such a large amount of water had actually been used, yet neither could explain how this had occurred or suggest what might have taken place

Outcome

- the charge for the use of water was reduced from \$884.91 to \$157.85.
- Homeswest agreed to waive the legal costs.

State Ombudsman
Annual Report 1994, pp 70-71.

YOUR MEMBER OF PARLIAMENT

One of the most useful people you can have on your side is your Member of Parliament (MP). He or she can also help with any difficulties you might have with government departments. MPs can put questions to Ministers in Parliament and approach departments and Ministers to reconsider decisions or fix problems in the way the department works.

Most MPs are willing to help you with appeals, freedom of information requests and other complaints. Sometimes their pressure on departments or Ministers will get the results you want.

Other times you may have to use the legal system and other complaint procedures to get your case sorted out.

REVIEW AND APPEAL BODIES

In a democracy administrative decisions by government departments should be open to review or appeal.

Under the Commonwealth Government system there are a number of bodies which can handle complaints and review decisions or procedures by other Commonwealth departments. These include:

The Administrative Appeals Tribunal — which can review and reverse decisions made by a Commonwealth department. (see also Part 6 – Consumer Rights)

The Commonwealth Ombudsman — who cannot reverse decisions but can investigate how a department has handled a case to see if the departmental officers have efficiently followed proper procedures.

Individual tribunals, such as the Social Security Appeals Tribunal — which may review and may reverse decisions. (see also Part 6 – Consumer Rights)

The Human Rights and Equal Opportunity Commission will handle discrimination complaints on a range of grounds. In addition, the Privacy Commissioner will investigate any cases where Commonwealth Government agencies have misused clients' personal information, such as health or social security records or tax file details.

TRADE UNIONS

Trade Unions provide a basis for collective activity and support for their members. In most jobs there is a union which covers the position. People should consider the advantages of joining a union and the protection unions provide. Unions negotiate pay conditions for their members and take up issues such as occupational health and safety and child care.

Some unions have initiated special structures within their union to make sure Aboriginal and Torres Strait Islander members get an adequate voice in their union. You should ask your union whether they have an Aboriginal Organiser or have set up these structures. Unions can provide assistance in re-organisations and dismissals and generally protect workers from harsh employment conditions. The Trades and Labour Council can tell you which union covers your job.

DEALING WITH GOVERNMENT DEPARTMENTS

A typical department structure

The Minister and Cabinet decide on policy, usually on the advice of public servants. Policy may be made into law as an Act by the Parliament. Policy may also be carried forward through regulations or policy statements. Departments administer the law and government policy. Public servants are required to protect people's rights and to administer the law fairly.

Many government departments have established complaints and appeals sections. If you believe you have been treated unfairly and your rights have been denied, the department is required to attend to your complaint and to make amends if you have been mistreated.

It is usually best to complain to a person who is high up in the system and has more authority, however this does not mean it is always best to go to the top — to the Minister or Director General. Generally it is best to go to someone who is still reasonably close to the field staff, such as their supervisor, because they will be able to act more quickly.

Minister

He or she is appointed by the Prime Minister (Commonwealth) or Premier (State) to be responsible to Parliament for a particular area, such as education or housing. The Minister presents policy recommendations to Cabinet and oversees the policy being made into new law and introduced into Parliament.

Director General or Head of a Department

The Head of the Department is responsible to the Minister for making sure that the law and policies are followed and all staff do their jobs properly.

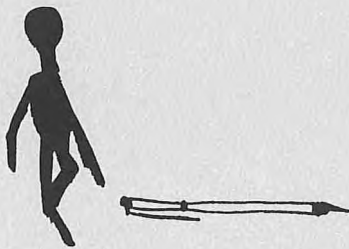
Regional Managers or Directors

In large departments there can be a regional manager or director, who is responsible for a number of offices in a region. They have to make sure that their staff provide an efficient service to the community in their region.

Local Field Staff

The public servants who provide the government service and with whom most people have contact are local field staff. It is always best to ask their name and job title, so that you know who to get back to if there is a problem.

WRITING A LETTER OF COMPLAINT



When you write a letter of complaint you can use the checklist below to make sure you cover all the most important points.

1. Your name, address and the date.
2. The name and address of the person or department you are writing to.
3. The person's name to whom you are writing.
4. A heading explaining what your letter is about.
5. Say who you are and why you are writing the letter.
6. Say what your complaint or problem is.
7. Explain the story behind your complaint.
8. Explain what you want done about your complaint and if you want it to happen quickly.
9. Say where and how you can be contacted to provide more information about your complaint.
10. Write: Yours faithfully.
11. Sign your name.

An example of a letter of complaint can be seen on the next page.

SAMPLE LETTER

Lucky Martin
25 Citizen Street
Midland WA 6056

Commissioner of Police
WA Police Service
Administration Headquarters
2 Adelaide Terrace
East Perth 6004

Dear Sir

COMPLAINT ABOUT POLICE BEHAVIOUR

My name is Lucky Martin. I am writing to complain about the Police who stopped and assaulted me last Thursday night February 23rd, 1996 at 8.30pm.

Constable John Doe of Midland Police stopped the car my wife was driving, without good reason. He dragged me out of the passenger side, abused me and my wife and assaulted me. They searched me and the car for no reason, claiming they were searching for drugs. There was no reason to suspect us of having or using drugs. The Police also threatened to continue to harass us.

This is the third time my wife, Marissa Martin, has been stopped by Constable Doe in three weeks. She does not drink and he knows that she is a teetotaler but he always gets her to blow in the bag. He is harassing her.

I think that the Police pick on my wife because we are Noongars.

I want the trouble and harassment to stop and I think the Police involved should be punished.

I can be contacted at my home or at work at the Aboriginal Housing Co-operative on 9332 2346.

Yours faithfully

Lucky Martin

Look for a step-by-step response to the problem or complaint.

Case Study

Ominayak, Chief of the Lubicon Lake Band v Canada (1984-1990)

The Lubicon Cree have occupied approximately 4,000 square miles in north central Alberta since time immemorial and with relatively little interference until 1979 when an all-weather road was built into their territory. As a result, over 100 companies began oil exploration and drilling and were soon earning C\$1.3 million per day on Lubicon land. The Lubicon hunting grounds, livelihood, health and culture were being devastated.

Argument

The Lubicon Lake Band argued that the Provincial government acted to appropriate Indian (Cree) Land for resource development, to irreparably damage the Band's land, to destroy their culture and to deprive them of an economic base and means of survival. They maintained the Canadian Government had constitutional responsibilities, treaty obligations and a fiduciary duty with respect to Indian peoples, which it was obliged to exercise where a Provincial government was violating their rights.

Response

The Canadian Government argued that the Lubicon Band had not exhausted all domestic remedies and therefore the communication was inadmissible.

The Canadian Government offered a settlement package.

INTERNATIONAL COMPLAINTS PROCEDURE

Individuals or groups have the right to put forward complaints to certain United Nations Committees if their rights in Australia, as set out in several human rights instruments, have been violated.

In 1991, the Australian Government agreed to allow individual citizens to make a complaint about violation of their rights under the First Optional Protocol to the *International Covenant on Civil and Political Rights (ICCPR)*. This includes such issues as the rights to freedom of speech, peaceful protest, a fair trial and the rights of prisoners.

In 1993 the Australian Government allowed individuals to make complaints under two other human rights treaties:

1. *Convention on the Elimination of all Forms of Racial Discrimination (CERD)*
2. *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)*

COMPLAINTS PROCEDURE:

First Optional Protocol – ICCPR, CERD and CAT

This procedure is only available when the complainant has used all the domestic avenues (eg Courts, Tribunals, Ombudsman etc) and has not had any success with their case or no Commonwealth, State or Territory Government body will hear the case.

- The complaint can be in the form of a written communication. The communication must include:
 - name, address, age and occupation or type of organisation.
 - name of the State party (country, eg: Australia) whom the complaint is made against.
 - the reason for the communication.
 - what provisions have been violated

Example: *ICCPR*

Breach of Article 26 – all persons are equal before the law and are entitled without any discrimination to the equal protection of the law.

Example: **CERD**

Breach of Article 5(e)(iv) – the right to public health, medical care, social security, and social services.

Example: **CAT**

Breach of Article 11 – systematic review of interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention

- the facts of the claim, what happened.
- what steps have been taken by the complainant. The complainant must show that all domestic avenues have been used and have proved unsuccessful, or that when action has been taken unnecessary delays have been faced, or that when someone else made a similar complaint it was unsuccessful.
- an outline of the extent to which the same complaint is being examined by any other international forum.
- The complaint must be submitted by the individual person or group (or a proper representative of that person or group) who claim to be the victims of a violation of their rights under the Convention.

What happens in response to your complaint?

First, the relevant UN Committee – the Human Rights Committee investigates complaints under *ICCPR*, the Committee on the Elimination of Racial Discrimination investigates complaints under *CERD* and the Committee Against Torture investigates complaints under *CAT* – decides whether the allegation is admissible or fits within the rules and can therefore be considered by the Committee, namely that:

- there appears to be a violation of an individual's rights (group complaints are not admissible, however, an individual complaint may be representative of the circumstances common to a group).
- the person (or the representative of a group of people) has tried to resolve it through Australian law that protects civil and political rights, and that the international covenant provides their last resort
- the UN will refer a confidential copy of the complaint to the Australian Government.

Outcome

The Human Rights Committee ruled that the Communication was admissible under article 27 and inadmissible under article 1 because although all domestic remedies had not been exhausted by the Cree, the Government had unacceptably delayed the process.

The Human Rights Committee found:

- a violation of article 27, that the historical inequities suffered by the Band and current developments threatened their way of life and culture.
- that under article 2 of the ICCPR the Canadian Government by offering settlement was providing effective remedies where rights under the Covenant are being violated.

The dispute remains unsettled.

For more detail see:

Aboriginal and Torres Strait Islander
Social Justice Commissioner
Third Report 1995, pp 69-73.

Case Study

Lovelace v Canada

Sandra Lovelace, a Maliseet Indian woman, complained to the UN Human Rights Committee alleging that the Canadian Government was in breach of Article 27 of the ICCPR.

Lovelace complained that:

- she had been deprived of her status as an Indian under the *Indian Act* when she married a non-Indian.
- this meant that she was not allowed to live on the Indian reserve where she was raised and so was separated from her community.
- she had been discriminated against as a woman because she lost her Indian status when she married a non-Indian man.

Response

It was argued that the restriction on an individual was necessary to:

- protect the group
- prevent its culture being 'watered-down' and overrun through intermarriage

Outcome

- The Human Rights Committee found that Lovelace's rights under article 27 of the ICCPR had been violated.
- The Canadian Government amended the *Indian Act* in 1985.
- Some other Indian groups within Canada lodged complaints against the amendments.

For more detail see:

Aboriginal and Torres Strait Islander Social Justice Commissioner
Third Report 1995, pp 67,68.


While a complaint is being considered by the UN it can:

- inform the Australian Government that temporary measures must be taken to avoid on-going damage being done to the victim of the alleged violation that will not be able to be fixed if the complaint is eventually up-held. This is a kind of 'first-aid' or 'staying device' designed to protect the individual during the consideration of a complaint. This is important as complaints take, on average, about three years to reach a conclusion.
- the Government is required to forward a written explanation clarifying the matter and the remedy, if any, to the UN within three months.
- the UN will consider the complaint once it has received all information from the Australian Government.
- at the conclusion of a complaint the appropriate UN Committee will report its findings to the complainant and the Australian Government. It can also put forward suggestions and recommendations to the complainant and the Government regarding remedies. Although these recommendations are not binding on Australia, if a claimant's case is successful it will put both international and domestic pressure on the Government to review its policies or change its laws

Note: International complaints procedures take on average a period of about three years to be finalised.

For more information about these or other avenues for complaint contact:


United Nations Information Centre

 46-48 York Street

GPO Box 4045

Sydney NSW 2001

Fax: 02-9262 5886

 Phone: 02-9262 5111

EMAIL sydney@ccmail.un.icc.org

Ask for Facts Sheet No 7 "Communications Procedures"

Case Study

Nicholas Toonen v Australia

Since Australia ratified the Optional Protocol to the ICCPR only one complaint has been lodged and deemed admissible by the UN Human Rights Committee

Nicholas Toonen, a leading member of the Tasmanian Gay Law Reform Group and HIV/AIDS worker complained to the UN Human Rights Committee alleging that he was a victim of violations by Australia of articles 2 paragraph 1, 17 and 21 of the ICCPR.

Toonen alleged that sections 122 and 123 of the *Tasmanian Criminal Code* violated his right to privacy and discriminated against homosexual males regarding the right to equal protection of the law. The offending sections punish male homosexual acts between consenting adults in private.

Response

The Australian Government did not challenge the admissibility of the complaint and on balance supported Toonen's claim that he is personally and actually affected by the Tasmanian laws. The Australian Government noted that the laws challenged by Toonen were laws that applied only in Tasmania. The Australian Government asserted that there is a general acceptance that no individual should be disadvantaged on the basis of his or her sexual orientation.

The Tasmanian Government maintained that it was important to keep sections 122 and 123 of the Tasmanian Criminal Code because these provisions have been partly motivated by a concern to protect Tasmania from the spread of HIV, and that the laws are justified on public health and moral grounds. The Australian Government did not accept the Tasmanian Government's argument. The Tasmanian Government asserted that Toonen's rights had not been violated under the ICCPR because this Covenant did not create a right to privacy, only freedom from arbitrary or unlawful interference with privacy. Many arguments were put forward.

Outcome

The Human Rights Committee found that Toonen's rights under article 17, paragraph 1 of the ICCPR had been violated and declared that sections 122 and 123 of the Tasmanian Criminal Code be repealed.

The Tasmanian Government did not repeal the offending provisions. Instead in January 1996 they proposed an increase in the maximum penalty for male homosexual acts between consenting adults in private from 21 to 25 years imprisonment.

The Australian Government passed the *Human Rights (Sexual Conduct) Act* 1994 which makes the Tasmanian law inconsistent with Commonwealth law.

This is currently the subject of a High Court challenge.

For more detail see:

Communication number 488/1992

Contact: United Nations Information Centre

A Guide to Some of the Legal Tracks You Can Take

Issue	Local	Regional	Departmental	State	Commonwealth	Other	International
<i>Italics: WAEOC Grounds</i>							
Race Discrimination or Harassment <i>Accommodation, Employment & Education</i>	p. 22 p. 68 p. 54			WAEOC WAEOC	HREOC HREOC		CERD
Racial Hatred	p. 23				HREOC		
Sex Discrimination or Sexual Harassment	p. 28 p. 54			WAEOC			
Disability Discrimination or Harassment <i>Impairment</i>	p. 26 p. 54			WAEOC	HREOC		
Privacy Spent Conviction	p. 25			WAEOC <i>Employment</i>	HREOC HREOC		
Civil & Political Rights	p. 68				HREOC		Human Rights Committee
Consumer Rights • customer service • hotels • clubs	p. 94 p. 98 p. 54	Manager		WAEOC Ministry of Fair Trading			
Advertising	p. 101				Aust Competition & Consumer Commission		
Bank Service	p. 99 p. 54 p. 98	Manager		Banking Ombudsman WAEOC Ministry of Fair Trading			
Commonwealth Departments	p. 64 p. 105 p. 106 p. 58 p. 61	MP Regional Manager			Minister AAT HREOC Ombudsman		

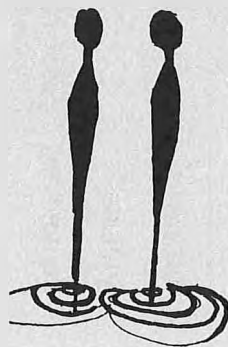
Copyright	p. 112					Australian Copyright Council	National Indigenous Arts Advocacy Association		
Cultural Heritage	p. 111						Heritage Branch Dept of Communication and Arts		
Employment	p. 124 p. 54					WA Industrial Tribunal WAEOC	Industrial Court Industrial Relations Commission HREOC	Trade Unions	
Essential Services <i>Provision of goods and Services</i>	p. 157 p. 54				MP	Ombudsman WAEOC	HREOC		
DSS	p. 105 p. 106						Ombudsman HREOC SSAT		
Health	p. 105 p. 85				General Manager Regional Area Health	Office of Health Review	WAEOC Ombudsman WA Nurses Board WA Medical Board		
Housing <i>Accommodation</i>	p. 54 p. 150 p. 61 p. 65				SECOND STAGE Regional Appeals Committee	THIRD STAGE Public Housing Review Panel	WAEOC Ombudsman Minister		
Schools <i>Education</i>	p. 138 p. 54 p. 61				District Aboriginal Liaison Officer	Principal	WAEOC Ombudsman Aboriginal Education and Training Council	HREOC Ombudsman	UNESCO
Transport <i>Access to places and vehicles</i>	p. 54 p. 101 p. 61						WAEOC Services Monitoring Manager Ombudsman	HREOC	

PROTECTION OF PEOPLE MAKING A COMPLAINT

Under State and Commonwealth anti-discrimination legislation it is unlawful to threaten, harass or in any way harm someone who has:

- made a complaint about unlawful discrimination or harassment
- intends to make a complaint
- given information regarding a complaint
- intends to give information regarding a complaint

However, it is important to point out that reprisals or victimisation of complainants are not uncommon – many Aboriginal and Torres Strait Islander people have expressed their fear and uncertainty about the effects of making a complaint. Determination and support is needed to carry through a complaint. Legislative protection against any reprisal can and should be taken at the first sign that it is necessary.



I (Aboriginal woman) applied to a real estate agent to rent a house. The real estate agent asked me for referees when I filled out the application form. One of my referees told me that the agent had phoned them and repeatedly asked if I kept a clean house. The agent did not want to listen to any other comments and told me the house was unavailable. I threatened to go to the WA EOC and argued my case. I eventually moved into this house. The agent treated me appallingly when I moved out and the final check of the house – which was clean and in the same condition as when I moved in – was unfair and unjust

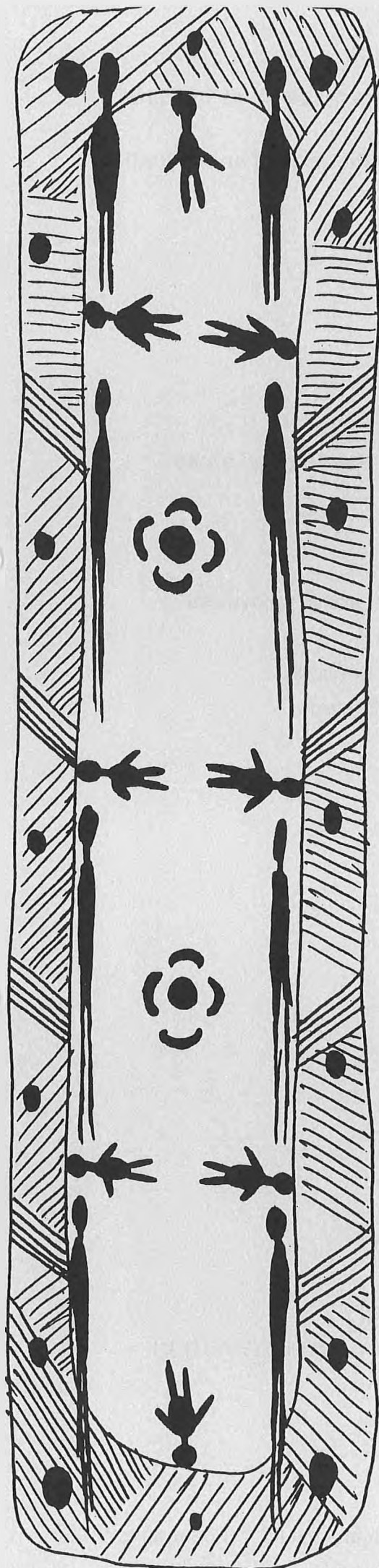
Bunbury

The smaller the town the greater the harassment — you lose your dog first, then the car because you park outside.

Kununurra

People have an idea of their rights but are unsure of the ways to go about something. If they are victimised, they just put up with it. This is because in the past people have been victimised for standing up for their rights.

Bunbury



THE BIG PICTURE

PART 5: COMMUNITY ACTION

HUMAN RIGHTS AND SOCIAL JUSTICE
FOR THE
ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLES
OF WESTERN AUSTRALIA

- A COMMUNITY INFORMATION RESOURCE -

This Information Resource is made up of 11 Parts

Parts 1 – 5 look at the “Big Picture” of social justice

1. Human Rights
2. Indigenous Rights
3. Citizen Rights
4. Right of Complaint
5. **Community Action**

Parts 6 – 11 look at some “Key Rights” areas

6. Consumer Rights
7. Cultural Heritage
8. Economic Development and Employment
9. Education and Schools
10. Housing and Essential Services
11. Police and the Justice System

This Part covers:

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A COMMUNITY ACTION PLAN	80
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COMMUNITY ACTION

This Resource has been developed to:

inform Aboriginal and Torres Strait Islander peoples in Western Australia that they have rights (as human beings, as citizens and as Indigenous peoples), and to

encourage people to look for solutions to discrimination and injustice that can be achieved at the local level.

The current emphasis in the human rights and anti-discrimination area is on conciliation at the local level. A formal complaint will generally not be accepted by the Equal Opportunity Commission (EOC) or the Human Rights and Equal Opportunity Commission (HREOC) or the United Nations (UN) unless there is evidence that attempts have been made to sort out the problem at a local level. The process really begins with community action.

CONFIDENCE

The Resource aims to encourage people to have the confidence and the self-esteem not to accept racism and discrimination: not to cop it. With the information contained in this Resource, groups and communities can speak up for their rights.

The starting point is **confidence**. If you genuinely believe that you or your community is being discriminated against, then you have the right to act on that belief. The first step is to assume **you have the right to act**.

ASSERTIVENESS

Community action by the Aboriginal and Torres Strait Islander peoples of WA on abuse of human rights and social injustice is difficult but crucial.

Unless you assert your rights, they are not necessarily going to be respected.

*"You and me we got rights ...
like the right to be treated fairly
– the right to schooling – the
right to health and the right
to justice..."*

*"If you know what your rights
are then you can look after them."*
Rosalie, NCEP Video

KNOWLEDGE

The more information you are able to get about your rights the easier it is to take action.

SOLIDARITY

"Community Action is a good way to go. If it doesn't work we can always take legal action later... the whole community would have to be involved or it won't work".

Silf, NCEP Video

Community (or collective) action can unite and strengthen Aboriginal and Torres Strait Islander peoples to combine their skills and determination into effective action.

It is important to seek support before taking action. Governments, Ministers, public servants, employers, companies or individuals will (generally) resist any allegation of illegal discrimination or injustice. Hostility and delays may be expected when those in authority, who have the responsibility to behave properly, are accused.

LOCAL ACTION

"...the personal approach can work but you must know your rights and what you want from that person ... and if it works it will make you feel stronger 'cause you worked it out one-to-one and don't forget to take along a friend as a bit of support".

Elsie, NCEP Video

Look for local solutions first before exercising legal or other remedies. Make contact with the person or organisation and ask for an explanation or an apology or whatever to try and resolve the problem. Even if you are upset, keep it calm and clear. Misunderstanding or miscommunication may be the source of the problem. Talk it through with someone not directly involved before you make contact.

Look for ways of preventing the situation from happening again – know the rules, constitution, meeting procedures for local boards of management, councils, committees, lobby groups or other key influence sectors of the community and ensure that the rules are followed.

Boycott or stop using services and businesses that are racist. This is an area where the spending power of the Aboriginal and Torres Strait Islander community, especially in rural and remote areas, can be used to bring about improvements. If people stop buying goods or using a service the business will suffer. The effectiveness of a boycott relies completely on solidarity, standing together. Community members can also petition to have the local hotel or night club's liquor licence revoked, if there is evidence of ongoing violence and discrimination against Aboriginal and Torres Strait Islander patrons.

LOCAL LEADERS

Look for local Aboriginal and Torres Strait Islander leaders or representatives who will take a stand on human rights and social justice issues on behalf of the community.

LOCAL COMMITTEES

Form a locally based 'human rights and social justice committee'. The Committee could help members to develop skills in forward planning, writing submissions, negotiating, mediating and lobbying. There could be representatives of government or community-based organisations on the Committee. People could bring issues forward and, using the Resource as a guide, solutions could be discussed and planned. The Committee could continually update information on changes to legislation or procedures and send this information out through the Committee members.

COLLECTING INFORMATION

Find out where you can get more information and advice. These days, more and more information is available through computer-based sources, such as the Internet, E-mail, CD-Rom. Your community might need to develop an information directory or the local Shire Council, library or school might get involved.

GATHERING EVIDENCE

It is important to make sure the 'case' or incident of alleged discrimination is written down in clear English and is signed by the person or people involved. The sooner this is done after the incident the better. Any witness should also make a written statement and sign it. Any letters, receipts or other papers should be kept. Anything at all which is important to proving what happened should be noted or kept. It can then be referred elsewhere for action by the community. (See part 4: Right of Complaint)

"Problems happen... but if you think things through and work as one mob you can sort it out.

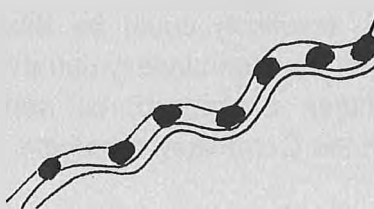
These fellas may not be nice to you but they do have to follow the law

So know your rights, stay strong and deadly."

Rosalie, NCEP Video

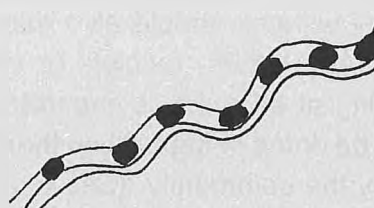
STEP 1 → WHAT IS THE PROBLEM OR COMPLAINT?

- What happened exactly – what was wrong about it?
- Who was involved – who saw, heard or decided something?
- What evidence have you got – letters, documents or witnesses to the alleged incident?



STEP 2 → WHAT DO YOU WANT TO HAPPEN?

- An apology from the person or organisation?
- Compensation from the person or organisation?
- The problem prevented from happening again?
- To have unfair treatment stopped?
- In short – the problem sorted out?

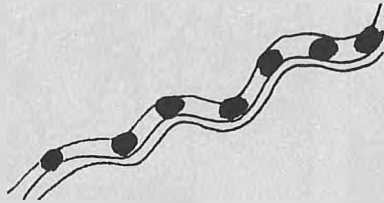


STEP 3 → WHAT HAS BEEN DONE SO FAR? WHAT COULD BE DONE?

- What strategies or solutions are there?
- Have you talked to the person or organisation?
- Have you contacted ALS?
- Have you registered a complaint with the police?
- Have you spoken or complained to anyone else?

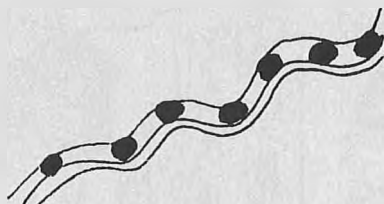
STEP 4 → WHAT TOOLS DO YOU HAVE TO SOLVE THE PROBLEM?

- Can you solve the problem yourself?
- Can you use Equal Opportunity legislation, the Ombudsman, other appeals mechanisms?
- What protection is provided by legislation?
- Can you put up with the consequences of taking action – what you may have to go through to get your complaint sorted out?



STEP 5 → WHAT TRACKS CAN YOU GO DOWN TO SORT IT OUT?

- **Personal**
You can take action yourself by talking to the person who caused the problem. You can write a letter of complaint or go through an internal departmental appeal system.
- **Legal**
You can take legal action through the Equal Opportunity Commission, HREOC or a court.
- **Community**
When people get together because they share common problems they can become a very powerful means of achieving change. You could organise a community meeting, use the media, hold a public demonstration, form a community action group.

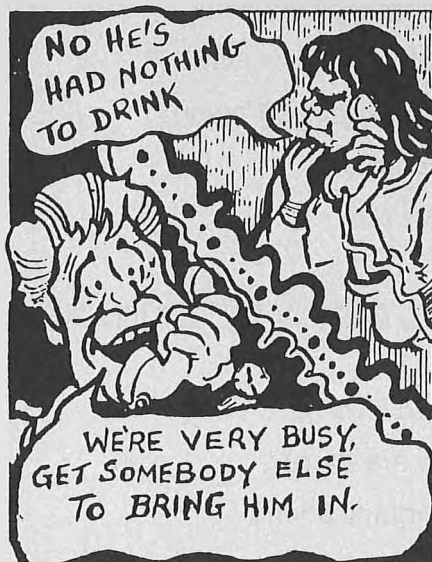


STEP 6 → KNOW YOUR RIGHTS

- It helps to know what your rights are
- Ask someone for help
- Legal advice may help identify exactly what paths are open to you.

COMMUNITY ACTION







STEP 1 → WHAT IS THE PROBLEM OR COMPLAINT?

- Wally is kept waiting too long and a non-Aboriginal person who arrived after Wally goes first.
- Doctor assumes he knows what is wrong with Wally without examining him.
- The ambulance will not come to Wally, and assume that his ill-health is a result of drinking.
- The casualty staff have not responded to Wally's needs.
- The combination of negligence and delay placed Wally in great risk of serious illness, even death.

STEP 2 → WHAT DO YOU WANT TO HAPPEN?

Wally must ask himself if he wants any of the following things to happen:

- An apology from the person or organisation?
- Compensation from the person or organisation?
- The problem prevented from happening again?
- To have unfair treatment stopped?
- In short – the problem sorted out?

STEP 3 → WHAT HAS BEEN DONE SO FAR? WHAT COULD BE DONE?

Wally must ask himself the following:

- What strategies or solutions are there?
- Can I talk to the person or organisation?
- Should I contact ALS?
- Can I register a complaint with the police?
- Can I speak or complain to anyone else?

STEP 4 → WHAT TOOLS DO YOU HAVE TO SOLVE THE PROBLEM?

Wally must ask himself the following:

- Can I solve the problem myself?
- Can I use Equal Opportunity legislation, the Ombudsman, other appeals mechanisms?
- What protection is provided by legislation?
- Can I put up with the consequences of taking action – what I might have to go through to get my complaint sorted out?

STEP 5 → WHAT TRACKS CAN YOU GO DOWN TO SORT IT OUT?

- ***At the Surgery***

Wally and Leenie can say it is an emergency and ask how long they will have to wait. They can ask for priority because Wally is in pain.

They can ask for more information from the Doctor. "Why haven't you carried out an examination. Are there other tests that should be done? What will happen to Wally? What alternatives are there to this treatment?"

- ***Go to another doctor***

They could go to another doctor to get a second opinion (if they are not living in a remote community).

They could go straight to the casualty department of the hospital. At a public hospital, all patients must be treated in order of medical priority. This includes outpatients.

- ***Complain about the medical services to the Office of Health Review***

They can complain to the Office of Health Review which oversees health services provided to the community and takes complaints against any medical practitioners. The complaint must be in writing. You can phone the Office first to see if the complaint comes under their guidelines and if they can then handle it.

They can complain about the Doctor's negligence, the discrimination of the ambulance officer and the lack of professional service provided by the nursing staff at the hospital.

A person can make a complaint to the Office of Health Review if they believe that:

A provider such as a doctor, a hospital, a nurse or an ambulance officer has not acted reasonably in the way they provided a health service or by refusing to provide a health service. The person complaining can be a user of the service or someone acting on behalf of the user.

They can also complain to the Nurses Registration Board for any complaint about a registered nurse. The Medical Registration Board will take complaints about doctors. Any complaint must be in writing and on a Statutory Declaration form signed by a Justice of the Peace or a Commissioner of Declarations.





- ***Complain about the services to the Western Australian Equal Opportunity Commission (EOC) or the Human Rights and Equal Opportunity Commission (HREOC)***

They can contact WA EOC or HREOC about the treatment they received at the surgery. They should ring the Commission first to get advice. The complaint should be in writing and should include – the date, time and people involved and what they thought was discriminatory.

- ***How can Leenie and Wally avoid the same problem happening again?***

They can contact the local Hospital Board and make a verbal and written complaint about the hospital administration.

They should continue to follow-up the complaint, both in writing and by phone. They should make sure they get a response to their letters and phone calls and keep a record of all contact made.

- ***How can the Aboriginal and Torres Strait Islander community avoid similar problems in the future?***

The local Aboriginal Health Centre

The local Aboriginal Health Centre could complain on behalf of the community about the problems that have been brought to them over a period of time. The local Health Centre should keep records on all the problems different people have had, this will provide a case to take to the various health bodies.

They can join the local Hospital Board.

Community Meetings

The people in Wally and Leenie's community can do something about this doctor and the health services they are receiving.

It doesn't matter where you live (urban, rural, remote community). People can call a community meeting to discuss their rights to proper treatment by health providers.

If a meeting were to be held, representatives from the following groups could be involved:

- the local Aboriginal Health Team
- the local women's group
- people interested in health issues
- the Aboriginal rehabilitation co-ordinator, councillors and community leaders

The General Manager for Regional Area Health and a representative of the local hospital could also be invited to inform the meeting about health services in the area.

The Commonwealth Government has a National Health Policy for Aboriginal Peoples and Torres Strait Islanders. A local group could work together to look at how this policy could be used to address specific health needs in the local community.

The community can develop guidelines on protocol for health workers giving a service in the community

A range of expected behaviour – protocols – can make sure a health worker is sensitive to the community's needs and that the community understands the role of the worker.

The protocols can be negotiated through a local health committee, a women's group or through the Aboriginal and Torres Strait Islander health workers.

For example: if a new health nurse arrives in an area, the community can use the guidelines to explain to them their expected role. They could say that the nurse should only go to homes if invited or only if an Aboriginal Health Worker is with them.

People sometimes get injured or sick when they have been drinking a lot of alcohol. It can be difficult for health staff to communicate with these patients. When a person is drunk or strongly affected by alcohol it is good practice for another person, preferably a relative, to attend the surgery or casualty department with the person seeking medical help. It may ensure the doctor gets a better medical history of the patient. It helps the medical staff to give a better service.



STEP 6 → KNOW YOUR RIGHTS

- **Health Services – general rights**

You have the right to an adequate standard of living, adequate for the health and well-being of yourself and your family including food, clothing, housing, medical care and necessary social services.

Mothers and children are entitled to special care and assistance. (Article 25, *United Nations Charter of Human Rights*)

Under the Commonwealth *Racial Discrimination Act 1975* and the *WA Equal Opportunity Act 1984* you cannot be refused treatment on the grounds of skin colour or race.

Under the *Sex Discrimination Act 1984* you cannot be refused treatment on the basis of your sex.

- **Patient rights – our rights to insist on when dealing with a doctor**

You have the right to be treated with respect at all times.

You have the right to have your condition explained in simple language.

You have the right to know why any tests are being done.

You have the right to know the results of any test.

You have the right to know the details of any medicines or treatment prescribed for you, especially tranquillisers.

You have the right to know the possible side-effects and risks of any treatment or medication you are receiving.

You have the right to know what choices you have for treatments.

You have the right to know the costs of services such as x-rays and other tests.

You have the right to refuse treatment.

You have the right to see another doctor to get another opinion or to change doctors entirely.

You have the right to confidentiality regarding your treatment and condition.

- **How should my doctor treat me?**

Doctors are registered by the Western Australian Medical Registration Board and are bound by the *Medical Act 1894*. How a doctor practices is covered by Ethics – which means good principles and rules of practice or conduct which are recognised as the way of treating patients in a professional and caring manner. It is a moral duty, which doctors are expected to live up to. All doctors owe a legal duty of care to their patients. Breach of this duty of care gives rise to a right to take court action for negligence.

- **Emergencies**

A registered doctor is required to provide any medical assistance necessary in an emergency where lives are at risk. In such an emergency, a doctor is required to provide medical assistance in the best interest of the patient, whether or not consent has been obtained. This covers situations where the patient is unconscious or otherwise unable to give his or her consent.

- **Public hospitals and clinics**

In a public hospital or outpatients clinic people are treated in order of greatest medical need. As you may not be treated in order of arrival, it is important to make sure that hospital staff are aware of your condition.

- **Right to accept or reject patients**

A doctor in private practice has the right to accept or reject patients, except in an emergency when they must provide medical assistance. A doctor cannot reject any patient because of the patient's race, colour or sex. A doctor in a public hospital or clinic does not have the right to choose which patients they will treat.

- **Respect**

A doctor is obliged to treat you with respect. This means showing courtesy and good manners. Equally, all medical staff are entitled to be treated with respect.

- **Explaining treatment**

A doctor must explain in clear language so a patient understands what treatment is being provided. The doctor should also include information about the effects of any drugs given to a patient.

- **Alternative treatment**

A doctor is obliged to provide a patient with information about alternatives for treatment.

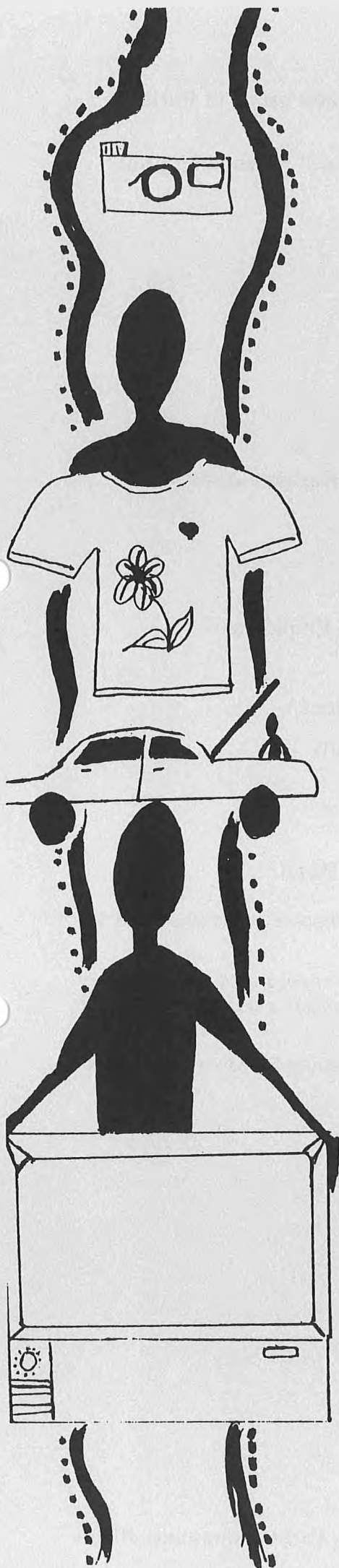
- **Patient information**

A doctor is not permitted to provide information about a patient to another person, except for a child under the age of 12 years if a child is in the care of an adult.

A doctor is responsible for providing a summary of a patient's history and treatment to another doctor.

WHERE TO GET ADVICE

			Free call
Aboriginal Legal Service	Perth	08-9265 6666	1800 109 900
	Albany	08-9841 7833	1800 016 715
	Bunbury	08-9791 2622	
	Broome	08-9192 1189	
	Carnarvon	08-9941 1534	
	Derby	08-9191 1407	
	Fitzroy Crossing	08-9191 5147	
	Geraldton	08-9921 4938	1800 016 786
	Halls Creek	08-9168 6156	
	Kalgoorlie	08-9021 3816	1800 016 791
	Kununurra	08-9168 1635	
	Laverton	08-9031 1156	
	Northam	08-9622 5933	
	Port Hedland	08-9173 1977	
	Roebourne	08-9182 1107	
Bunbury Community Legal Centre		08-9791 3206	
Citizens Advice Bureau		08-9221 5711	
Community Legal and Advocacy Centre	Fremantle	08-9430 2290	
Federation of Community Legal Centres		08-9221 9322	
Geraldton Resource Centre		08-9964 3533	
Gosnells District Information Centre		08-9398 1455	
Legal Aid Commission	Perth	08-9261 6222	1800 809 616
	Fremantle	08-9335 7108	
	Midland	08-9274 3327	
	Broome	08-9192 1888	
	South Hedland	08-9172 3733	
	Bunbury	08-9721 2277	1800 632 692
Lockridge Community Group		08-9279 1133	
Medical Registration Board		08-9481 1011	
North Perth Migrant Resource Centre		08-9328 2699	
Nurses Registration Board		08-9386 8656	
Office of Health Review		08-9222 4124	
People with Disabilities (WA) Inc		08-9386 6477	1800 193 331
Pilbara Community Legal Service	Newan	08-9177 8708	
	Port Hedland	08-9140 1613	
	Roebourne	08-9182 1169	
Sussex Street Community Law Centre		08-9470 2676	
Tenants Advice Service		08-9221 0088	
Welfare Rights and Advocacy Service		08-9328 1751	
Women's Legal Service		08-9221 5122	1800 625 122
Youth Legal Service		08-9328 9077	1800 199 006



INFORMATION ON KEY RIGHTS

PART 6: CONSUMER RIGHTS

HUMAN RIGHTS AND SOCIAL JUSTICE
FOR THE
ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLES
OF WESTERN AUSTRALIA

- A COMMUNITY INFORMATION RESOURCE -

This Information Resource is made up of 11 Parts

Parts 1 – 5 look at the “Big Picture” of social justice

1. Human Rights
2. Indigenous Rights
3. Citizen Rights
4. Right of Complaint
5. Community Action

Parts 6 – 11 look at some “Key Rights” areas

6. **Consumer Rights**
7. Cultural Heritage
8. Economic Development and Employment
9. Education and Schools
10. Housing and Essential Services
11. Police and the Justice System



Glossary — What Does it Really Mean?

ALLEGE	to insist that something happened (whether it did or it didn't)
COMPLAINANT	a person or body who makes a complaint against someone else or who makes a claim that their rights have been violated
CONCILIATION	a way to resolve a dispute between a number of parties or people

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CONSUMER RIGHTS

RIGHTS

'Consumer rights' means the right to equality of service in shops, banks, petrol stations, in government offices and in sports clubs; to have access to information held in documents/files; to have the right to complain and to seek compensation for unfair, discriminatory or unsafe practices. This includes the right of Aboriginal and Torres Strait Islander consumers to be served by properly trained and culturally aware staff working in service industries – staff who understand their responsibility to treat Aboriginal and Torres Strait Islander clients (consumers) with respect, and to take the time to explain or help consumers overcome any problems which may arise while providing a service.

Because government departments have been 'corporatised' (run along business lines) they treat the public as 'customers'. Most government departments (eg Homeswest) now have a 'Customer Charter' or 'Mission Statement'. This is a written document which grants the customer the right to proper service or treatment, spells out how this will be done and how complaints will be dealt with.

WESTERN AUSTRALIA

Equal Opportunity Act 1984

The Western Australian *Equal Opportunity Act* makes it an offence to discriminate against a person because of their race. Sections 47 and 48 of the Act cover discrimination in the areas of access to places and vehicles, goods, services and facilities, accommodation and clubs, and also application forms.

If an Aboriginal or Torres Strait Islander person believes that he or she is receiving unfavourable customer service because of their race, they are able to lodge a complaint with the EOC.

For example: Unfavourable customer service is where an Aboriginal or Torres Strait Islander person is refused service in a hotel bar where a non-Aboriginal person, in the same or similar circumstance, is being served.

Where an Aboriginal or Torres Strait Islander person has been refused accommodation because of their race.

Clubs

If a club has more than 30 members and exists for the purpose of social, literary, cultural, political, sporting or athletic activities or it sells or supplies alcohol for consumption on its premises, then it falls within the provisions of the *Equal Opportunity Act*.

It is unlawful for clubs to discriminate against a person on the ground of race.

Hotels

Hoteliers have a legal obligation not to discriminate unlawfully when they provide services such as bar, restaurant, dining room service or licensed accommodation.

Hoteliers can be accused of racial discrimination if, on the basis of race, they:

- refuse to admit a person or group to their licensed premises
- refuse service to a person or group of people
- apply different rules of behaviour or standards of dress to particular groups of people
- charge entry fees for one group only or charge Aboriginal and Torres Strait Islander people higher prices
- tell or allow anyone who works in a hotel to act in any of these ways

It is not illegal to refuse entry or service on the genuine basis of a person being drunk.

'Barring' Patrons

A hotelier can refuse entry and remove someone from the hotel if they disrupt the orderly conduct of the hotel business in particular ways. The hotelier can also 'bar' a person from coming back into the hotel.

A young Aboriginal man was waiting to be served at the local store. Many people [non-Aboriginal people] came in after him and were served. He eventually asked when he would be served. He was told by the shopkeeper to wait his turn. He explained that he had been waiting and that other people who had come in after him were being served. The shop assistant went and took the \$20 he was holding as he asked for what he wanted. The shop owner stated he would not serve him, the young man asked for his money back. The shop assistant threw the money back at him and then poured a jar of pickles over his head. He tried to stop this and moved his arm accordingly. Unfortunately, his arm knocked something on the counter and broke it. The police were called in and he was arrested.

Broome

The nightclub has two separate entry lines: one for white and one for black.

Broome

There are two standards of dress at the Lodge: one for whites and one for Aboriginal people.

Fitzroy Crossing

The period of time a person is 'barred' from the hotel should suit the offence. For example, to bar an Aboriginal or Torres Strait Islander person for five years the first time he or she causes trouble can be out of proportion, especially if, in the same circumstances a non-Aboriginal person would be turned out for the night.

Segregation

Segregation occurs when particular groups or categories of people are confined to particular parts of the hotel, or when the hotelier restricts the services the hotel will provide to them.

Acts of segregation and discrimination that are unlawful are restricting people to certain parts of the hotel by stating:

- "Blacks in the front bar only"
- "No alcohol to be served to blacks"

...when things are stolen from the pub, whether the theft is committed by an Aboriginal person or not, the publican puts up the price of moselle and beer for blacks –\$16 for a cask of moselle.

Laverton

Accommodation

It is unlawful for a hotelier to discriminate when providing licensed accommodation in a hotel or motel. A room cannot be refused to a person because they are an Aboriginal or Torres Strait Islander person.


Section 47 of the WA *Equal Opportunity Act* makes it unlawful to discriminate against people on the grounds of race in the area of accommodation, including housing. (See Part 10: Housing and Essential Services for more detail).


Non-Aboriginal people can 'yakkai' in the pub but Aboriginal people get thrown out ...

Kununurra

For more information contact:

Aboriginal EOC Officer, Equal Opportunity Commission

 **P O Box 7370
Cloister Square
Perth, WA 6000.**

 **08-9264 1930**

Freecall: 1800 198 149

...the dress codes are designed to prohibit Aboriginal people from entering.

Kununurra

NATIONAL

The following can be used to deal with a complaint about discrimination in the area of consumer rights:

- *Racial Discrimination Act (Commonwealth) 1975*
- *Sex Discrimination Act (Commonwealth) 1984*
- *Disability Discrimination Act (Commonwealth) 1992*

INTERNATIONAL

Convention on the Elimination of All Forms of Racial Discrimination

This Convention guarantees a range of civil, political, economic, social and cultural rights, including:

- the right to public health care, social security and social services
- the right to equal participation in cultural activities
- the right of access to any place or service intended for use by the general public, such as transport, hotels, restaurants, cafes, theatres and parks

Prices are higher at the Roadhouse and it closes too early. The people serving are bossy and rude ...

Warburton

CONSUMER RIGHTS APPEAL PROCESS

COMPLAINTS ABOUT UNCONSCIONABLE CONDUCT

The *Trade Practices Act* (Commonwealth) and the *Fair Trading Act* (WA) prohibit 'unconscionable conduct' by a supplier when engaging in commercial transactions. Unconscionable conduct is commercial conduct that is unfair or unreasonable. It is where the stronger bargaining party takes advantage of their position, or where the weaker party has had no real opportunity to come to a suitable agreement.

...there is one price for Aboriginal people and another for white people – especially for booze.


Laverton

For example: this is where a person needs to buy a new tyre and goes to the only garage in the area to buy the tyre and is charged \$200 when the usual value of the tyre is only \$100.


If a person believes they have entered into an unfair agreement they should contact the Ministry of Fair Trading or the Australian Competition and Consumer Commission for further advice.

For more information contact:

Ministry of Fair Trading

 4th Floor, 251 Hay Street

East Perth 6892

 08-9222 0666 Free call 1800 199 117

EMAIL record@gov.au/gov/mft

or

Australian Competition and Consumer Commission

 P O Box 6381

East Perth WA 6892 Fax 08-9325 5976

 08-9325 3622

...the local shops and those in Kalgoorlie charge Aboriginal people more for goods than other people – and in these towns things are already inflated.

Leonora

...A Nyungar woman applied for a personal loan at the local bank. She went with a friend to see a particular woman at the bank. The woman at the bank refused the loan application without a satisfactory explanation. Her friend told her to see the bank manager immediately. They both went to the Manager who approved the loan immediately. He couldn't understand why his staff member had refused the loan application.

Northam

Taking a Complaint to the Ministry of Fair Trading

The law provides for everyone to get a fair deal whether they are buying or selling goods or services. There is legislation to make sure people are not cheated or misled. There are severe penalties for traders and creditors who breach these laws.

The law says that everything sold must be of 'merchandisable quality' – it must actually work, and it must last for a reasonable time, otherwise you have the right to a refund, replacement or repairs.

A person who has a complaint about services provided by a trader or the goods sold by a trader is able to lodge a complaint with the Ministry of Fair Trading. Services means the doing of work, eg contracts for providing gas and electricity; providing facilities for amusement, entertainment and recreation; providing banking services and lending money.

However, the Ministry of Fair Trading suggests that before a person lodges a complaint they should try to resolve the matter with the trader. Explain the problem clearly and calmly and ask that the problem be sorted out. If this approach is not successful the next step is to contact the manager or head office of the company or someone in a position of authority within the organisation.

Explain your problem again and ask that the matter be resolved. If this is not successful, a formal complaint should be lodged outlining the nature of the complaint, details of the attempt to resolve the complaint, the date and time the event took place and the name and address of the trader. A complaint form is available from the Ministry of Fair Trading.

Taking a Complaint to the Small Claims Tribunal

The Small Claims Tribunal is set up to resolve disputes between consumers and traders. The Tribunal can hear disputes about goods and services to the value of \$6 000 and the complaint should be lodged within two years of the event taking place.

Complaints Procedure – Small Claims Tribunal

The first step is to fill out a Claim Form. This form must be accompanied by a fee of \$21.00 or \$7.00 if concession rates apply (ie if you receive a social security benefit). Country complainant's can lodge their Claim Form at the nearest Local Court or post it to the Perth Office. Once the Claim is lodged the Tribunal will tell the parties of the time and place for hearing the dispute.

The complainant should keep all relevant information such as dockets, bills, sale contracts and repair slips, receipts and letters. The complainant should also make a note of any witnesses who may be able to support their case. If a hearing goes ahead it will be in the presence of a Referee and, if both parties agree, no lawyers are involved. If both parties cannot come to a suitable agreement, the Referee will make an order, which he or she thinks is fair in the circumstances. The Referee's decision is final and an appeal is only allowed in certain circumstances.

If the Tribunal finds in favour of the complainant a legally binding order is made. If the order requires the return of money and the trader does not pay, a copy of the order and an affidavit can be filed at the Local Court who will then enforce the order. A further fee has to be paid if this process is followed.

For further information contact:

The Small Claims Tribunal Registry



3rd floor, 81 St George's Terrace

Perth WA 6000

Fax: 08-9426 8717



08-9426 8700

...the store charges Aboriginal organisations more for food and equipment. I bought a mop, bucket and cleaning products for our organisation and noticed the docket had an extra \$2 charge. When I questioned this I was told that it was a surcharge fee for organisations. I questioned this and the \$2 was deducted from the total bill. What if I hadn't checked the docket ...

The same family own the pub and Aboriginal people are served last, we have to wait for long periods of time, others are served before us, they ignore us when we want service but follow us around the store when we enter it ...

Laverton

COMPLAINTS ABOUT BANKING SERVICES AND CREDIT AND SOME HELPFUL INFORMATION

Banking Ombudsman

If you have a problem with a bank that you cannot sort out yourself, the Banking Ombudsman may be able to help. The Ombudsman is free of charge.

The Ombudsman cannot help you if you are complaining about a bank account of an incorporated body (Community Council or Association).

The Ombudsman can order the bank to take a particular action or pay you up to \$100,000 to cover your losses. The bank must do as the Ombudsman decides.

For more information contact:

Banking Ombudsman



PO Box 14240

Melbourne City Mail Centre

Melbourne Victoria 3001

Fax: 03-9613 7345



1800 337 444

Credit

If you are refused credit because the lending agency said you have a poor credit rating you can check that the information supplied to the agency was correct.

For information on your personal credit rating contact:

Credit Reference Association



P O Box 964

North Sydney NSW 2059 Fax: 1300 364 060



Free call: 1300 364 141

Credit Relief

Sometimes you may not be able to make the payments on a loan or credit card bill, because of some unexpected event, or illness.

If this happens, you should immediately contact the place that lent you the money. When you call, make sure you have a clear idea of how much you can still afford to pay and when you expect your financial situation to get back to normal.

Ask if you can **vary** your loan contract. For example, you might be able to have your repayments reduced, or postponed for a while. You might ask for impending legal action to be put off.

If the finance company from which you borrowed the money refuses to vary your repayments, you can apply to the Ministry of Fair Trading for credit relief. The Ministry will talk to the finance company and may negotiate a variation on your behalf.

They may arrange lower repayments over a longer term or a delay in your repayments for a certain time. Remember though, that credit relief is just a way of dealing with your short-term problem. It does not reduce your debt.



For more information contact:

Ministry of Fair Trading



P O Box 6355

East Perth 6892



08-9222 0666 Country callers 1800 199 117

EMAIL record@mft.a.gov.au

or

Consumer Credit Legal Service



08-9481 7662

Fax: 08-9481 7668

Credit Union Services Corporation

What is a Credit Union?

A credit union is a bit like a bank. It provides some of the same services, like deposits and loans. A credit union is also different from a bank. The main difference is that a bank is owned by and makes profit for its shareholders; a credit union benefits its members. A credit union is a bit like a community-run bank.

Indigenous Credit Unions

Many of the major banks are pulling out of country areas and people are being left without banking services. In other areas, local people are unhappy with the way they are treated by banks. Aboriginal and Torres Strait Islander people often feel that while banks profit from their accounts, those same banks do not serve their needs. Country people have begun to talk about forming their own Credit Unions. 'Creditcare' is a government funded project set up to help with this.

For more information contact:

**Manager
Aboriginal and Torres Strait Islander Section
Creditcare**

☎ 08-9320 7588 Fax: 08-9321 2921

...there are very simple but fundamental strategies for people to know when entering an agreement with Homeswest including:

- talk to the local accommodation officer
- arrange for direct debit of your rent
- re-negotiate rent payments if you are having difficulty...

**Aboriginal Housing Board,
HomesWest**

COMPLAINTS ABOUT TRANSPORT

If you have a complaint about Transperth (bus service), Westrail (train and bus service), or a private bus service then you can make a complaint.

For information contact:

**Services Monitoring Manager
Department of Transport**

**☎ 08-9231 2700 Info Line 13 22 13
TTY: 08-9485 0485**

COMPLAINTS ABOUT ADVERTISING

If you think an advertisement is misleading or offensive, you can phone an Inquires Officer at the Australian Competition and Consumer Commission and the Ministry of Fair Trading. So if you see an advertisement you think is not right, write to the advertiser concerned and/or the publisher or broadcaster and phone the Consumer Commission and Ministry of Fair Trading.

Case Study

An Aboriginal boy in year 10 at school alleged race discrimination against the bus driver of the school bus and Transperth. The boy was the only Aboriginal person on the bus among a large number of students. It was stated that the students were generally behaving badly, arguing and yelling, some were throwing paper planes at the front windscreen and the bus driver.

The complainant alleged the following:

- the bus driver stopped the bus and walked down to the back door which he had opened.
- the bus driver then said to the complainant (who was standing near the rear door) "off you get you blackbird, off you get black boy"
- the complainant was made to get off the bus but no one else was made to get off the bus.

The complainant stated that he did not throw anything at the driver but that a lot of other students did.

Once the complainant was off the bus he grabbed a rock and threw it at the bus, breaking the back window.

As a result of this the complainant had his student concession taken from him for a month and was banned from travelling on the bus for a month. Also, the bus did not travel that route for a month.

For further information contact:

Australian Competition and Consumer Commission

 P O Box 6381

East Perth WA 6892 Fax 08-9325 5976

 08-9325 3622

or

Ministry of Fair Trading

 4th Floor, 251 Hay Street

East Perth 6892

 08-9222 0666

Free call 1800 199 117

EMAIL record@gov.au/gov/mft

GOVERNMENT SERVICES AND CONSUMER RIGHTS

FREEDOM OF INFORMATION AND ACCESS TO INFORMATION FROM GOVERNMENTS

The Commonwealth and State Governments have Freedom of Information (FOI) legislation which enables people to view and obtain copies of certain documents or files that departments have about them. 'Documents' include records and copies of records, files, reports, computer printouts, maps, plans, photographs, tape recordings, films, video tapes or electronically stored information.

The purpose of FOI legislation is to let people find out more about what government authorities have on their files. However, it costs money to get the information, and some information (called 'exempt') is not legally available, that is, private information about people or business or commercial information. If a document is exempt then it will not be able to be released. FOI legislation cannot be used to obtain documents from non-government organisations.

If a person wishes to obtain certain documents from Commonwealth, State and Local Government departments they should contact the department and ask to speak with the FOI Co-ordinator. An FOI request must be in writing and sent to the FOI Co-ordinator of the appropriate department. The request must contain enough information to enable the documents to be identified, although the agency should help you identify the documents if you are unsure. A letter requesting to see documents should also state that the request is made pursuant to the relevant *Freedom of Information Act*.

Freedom of Information – Commonwealth Government

The Commonwealth *Freedom of Information Act* allows persons to:

- see documents held by Commonwealth Ministers and their departments and some statutory departments
- ask for information concerning the person to be changed if it is not correct or accurate
- appeal against a decision not to grant access to a document or change a personal record

The *Freedom of Information Act* also requires statutory authorities to make available detailed information about the:

- functions they have
- way they are organised
- kinds of decisions they make
- arrangements they have for public involvement in their work
- documents they hold and how they can be seen
- rules and practices which are used in making decisions that affect persons

If the request is successful the department will let the person view or copy the documents.

Appeals Process

If the department refuses a FOI request a number of appeal processes are available. Firstly, a formal written request for an internal review can be made to the department. If this is not successful, an appeal to the Administrative Appeals Tribunal may be available.

A complaint can also be made to the Commonwealth Ombudsman. In some cases the Federal Court will hear appeals by reviewing the original decision refusing the FOI request.

Although the *Freedom of Information Act* makes some documents exempt from FOI requests, if a formal request is made, the department must inform the person of their reasons for refusing the request and the rights of appeal.

For further information contact:

**Freedom of Information Co-ordinator
in the Commonwealth Government Department you are
dealing with.**

Response

- Transperth conducted an investigation
- Witnesses on the bus supported the allegation that the bus driver made some racist remarks to the complainant.
- The WAEOC met both parties and conciliated the complaint.

Outcome

The complainant received \$500 compensation for pain and suffering due to the manner in which he was put off the bus.

Freedom of Information – Western Australian Government

The Western Australian *Freedom of Information Act* (FOI) gives people a legal right of access to documents held by Government Ministers and their departments, Local Authorities and Statutory Authorities.

The *Freedom of Information Act* allows persons or organisations to:

- look at or buy copies of manuals or guidelines which different government organisations use in making decisions about a person or organisation
- look at information about the person or organisation
- change any information that is not correct or accurate

Appeals Process

If the government department refuses to hear the request or does not allow a person to see the requested documents, a number of appeals processes are available. First, ask the organisation to reconsider its decision or to conduct an internal review of the original decision. If this process fails or is not available, an appeal can be made to the Information Commissioner. Any decision of the Information Commissioner is final unless there is a point of law to be decided or if there has been some mistake in law in a decision by the Commissioner.

If this is the case, the appeal is heard in the Supreme Court and is the final step in the appeals process. If an appeal gets to this stage, legal advice and representation may be required. It is also possible to ask the State Ombudsman to investigate an FOI request that has been refused or if the department is too slow in responding to the request.

For more information contact:

Office of the Information Commissioner



Level 21, Exchange Plaza

2 The Esplanade,

Perth WA 6000 Fax: 08-9325 2152



08-9220 7888 Free Call: 1800 621 244

HEALTH SERVICES AND THE WESTERN AUSTRALIA GOVERNMENT

The *Health Services (Conciliation and Review) Act 1995* was established by the Health Department to provide for complaints by customers about the provision of health services to be reviewed, conciliated and dealt with in confidence.

The main areas covered by the Act refer to the quality of health care, respect for the privacy and dignity of patients, the provision of understandable information, and participation in decision-making about the patient's health care.

For further information contact:

**Co-ordinator, Information and Complaints
Public Relations Unit
Health Department of Western Australia
☎ 08-9222 4124**



COMPLAINTS ABOUT DECISIONS MADE BY COMMONWEALTH GOVERNMENT DEPARTMENTS

If you think a Commonwealth department's decision is wrong or if you do not fully understand the decision you can seek to have it looked at again. You can ask that a different, more senior officer look at the decision, and if you are still dissatisfied you can ask to have it reviewed through the departmental appeals process.

Department of Social Security and the Social Security Appeals Tribunal (SSAT)

When a person is unhappy about a decision made about their social security entitlement, there are several steps they can take.

First, the person should discuss the matter at the local regional office with the DSS Officer who made the original decision. If after that, the person is still unhappy with the decision, they can request a review by an Authorised Review Officer.

Authorised Review Officers are staff who work independently of the regional offices and look at disputed decisions. Following the review by the Authorised Review Officer, if the person still believes the decision is incorrect, they can appeal to the Social Security Appeals Tribunal (SSAT).

*The doctor and the sister
discuss peoples' illnesses in the
public waiting room and in the
halls of the hospital – this is
'shame' for people. There is no
Aboriginal person employed to
assist with interpretation...*

Laverton

*...the receptionist plays god
...she diagnoses peoples'
illnesses without looking at them
... sends people home for a
drink of water.*

Fitzroy Crossing

*...we have to wait too long at
the hospital, other people are
seen before us even though they
come after us.*

Moora

The SSAT is an independent authority established as the first tier of external review of social security decisions. A person may apply to the SSAT for a review of a decision by sending a written application to an office of the Tribunal or any Social Security regional office. Appeal forms are available from any Social Security office.

For further information contact:

Social Security Teleservice

☎ Free call: 13 24 68

or

Welfare Rights and Advocacy Service

☎ 08-9328 1751 TTY: 08-9328 6069

Administrative Appeals Tribunal (AAT)

The AAT is an independent body like a Court. If the AAT thinks a Commonwealth Government department decision was wrong, they can make an order that the decision be changed.

When reviewing a decision the AAT may exercise all the powers and discretions of the person who made the original decision, and is required to:

- affirm the decision
- vary the decision or
- set aside the decision and
 1. make its own decision or
 2. send the matter back to the original decision maker requesting them to reconsider the decision

For example: If ATSIC refused a person a loan to buy a house, a loan to set up a business or a guarantee of a loan for these purposes, then ATSIC must send the person a letter letting them know about their right to ask the Board of Commissioners to reconsider the decision. If the person asks ATSIC to reconsider and they are still unsuccessful, they can appeal against the decision to the AAT.

To lodge an appeal, contact the AAT and ask them to send you an 'appeal form'. Complete the form and send it back with a filing fee (usually \$500.00). You may not have to pay the fee if you are on social security or you can show you would suffer financial hardship if you had to pay.

You can do your own appeal but, as the government department will certainly have a lawyer, try to get help from the Aboriginal Legal Service/Legal Aid Commission as early as possible.

When you appeal, you can be sure a more senior person in ATSIC will look at your file. They may decide ATSIC was wrong because it didn't look at all the things in your favour or perhaps a person lower down made a mistake.

ATSIC must give you:

1. a copy of the papers on your file and any other papers it used to make its original decision
2. a statement setting out the facts on which it based its decision and the reasons for the decision

These documents will give you a very good idea of the strength of your case.

The AAT will call a conference between you and ATSIC. The conference will help decide what is the exact dispute between you and ATSIC. The AAT will then set a date for a hearing of your case. If you cannot afford to travel to Perth, it may conduct its conferences and hearings by telephone. Sometimes the AAT uses TV video conferences if necessary. Even if you lose your appeal, you only have to pay you own expenses (if any). ATSIC cannot make you pay its costs.

The AAT is a relatively cheap and efficient way you can get an independent review of your case. The staff cannot give you legal advice but can help explain the Tribunal's procedures so you know what to expect.

For further information contact:

Administration Appeals Tribunal



**Level 8, The Quadrant
1 William Street**



**Perth WA 6000
08-9327 7200**

**Fax: 08-9327 7299
Freecall: 1300 366700**

...a young Aboriginal girl was driven to face. The sister on duty told the mother emergency. The mother pushed the child child is ill and must be seen now.

hospital with severe burns to her to wait because there was an in front of the sister and said this The emergency referred to by the sister turned out to be putting stiches in a dog.

These hospitals don't allow the family to be the carer, they don't use the family enough to assist and support the patient.

Broome

I'd rather stay home and suffer than go the hospital.

Fitzroy Crossing

...a nurse from the clinic put the dead body of an Aboriginal man in the back of a ute with the spare tyre and the tools. She left him uncovered – not in a body bag – that way people were offended.

...the hospital/clinic opens at 9.00am and closes at 4.00pm – this is not always convenient for people who get sick...

Balgo

People who are taken to Perth hospital are not met by anyone – no liaison person, and they do not have money for a taxi and don't know where to go...

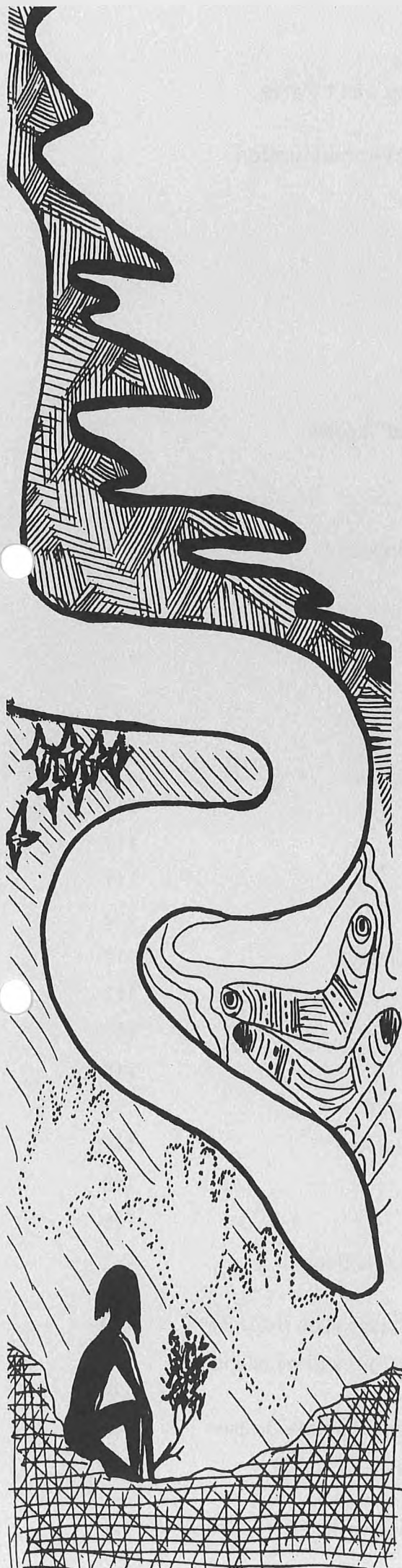
Fitzroy Crossing

... the hospital continually misdiagnoses people. There are a lot of policy stuff-ups too. There is no communication at the Heads of Department level, communities don't know and the result is misinformation ... there is a need for better communication.

Broome

...treatment at the clinic is less than adequate: often when people go to the clinic with a headache and vomiting – the sister tells them to go home and drink a lot of water instead of providing painkillers. Sister often gives wrong advice and does not give right medicine... the community reacts in ways that may be violent at times.

Patjarr



INFORMATION ON KEY RIGHTS

PART 7: CULTURAL HERITAGE

HUMAN RIGHTS AND SOCIAL JUSTICE
FOR THE
ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLES
OF WESTERN AUSTRALIA

- A COMMUNITY INFORMATION RESOURCE -

This Information Resource is made up of 11 Parts

Parts 1 – 5 look at the “Big Picture” of social justice

1. Human Rights
2. Indigenous Rights
3. Citizen Rights
4. Right of Complaint
5. Community Action

Parts 6 – 11 look at some “Key Rights” areas

6. Consumer Rights
7. **Cultural Heritage**
8. Economic Development and Employment
9. Education and Schools
10. Housing and Essential Services
11. Police and the Justice System

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CULTURAL HERITAGE

RIGHTS

Control and protection of cultural heritage is regarded as a basic human right.

WESTERN AUSTRALIA

Cultural Heritage Protection

Aboriginal Heritage Act 1972 and 1980

This Act has the purpose of protecting sites and the interests of the custodians of the sites. It is an offence under the Act to interfere with a site. The Act also provides for protection of cultural materials (utensils and weapons stored in the WA Museum). The Aboriginal Cultural Materials Committee (ACMC) is the State Government appointed advisory body regarding protection of sites. It manages sites on behalf of the community. It is the job of the Heritage and Culture Division of the Aboriginal Affairs Department to record, evaluate and preserve sites, using the ACMC as an advisory body.

The Minister for Aboriginal Affairs has the final say on sites and whether they can be disturbed/desecrated by mining or other developments. The custodians or other concerned Aboriginal or Torres Strait Islander people have no right of refusal over decisions affecting sites.

What is a Site?

Under the terms of the *Aboriginal Heritage Act*, a site is:

- Any place of importance and significance where persons of Aboriginal descent have, or appear to have, left any object natural or artificial, used or made or adapted for use, for any purpose connected with the traditional cultural life of the Aboriginal people, past or present.
- Any sacred, ritual or ceremonial site, which is of importance and special significance to persons of Aboriginal descent.

The local Shire Council will not acknowledge the Pinjarra Massacre and the associated sites.

Pinjarra

The ATSIC building in Perth is named after Septimus Rowe, the man who led the Pinjarra Massacre.

Pinjarra

Winjan, a Nungar fighter is buried under the town car park without a monument or recognition.

Pinjarra

Protection of cultural heritage is vitally important.

Mulga Queen

- Any place, which in the opinion of the Trustees, is or was associated with the Aboriginal people and which is of historical, anthropological, archaeological or ethnographical interest and should be preserved because of its importance and significance to the cultural heritage of the State.
- Any place where objects to which this Act applies are traditionally stored or to which, under provision of this Act, such objects have been taken or removed.

There is no recognition in the town of the part that Aboriginal people have played in its history...

Pinjarra

For further information contact:

**Heritage and Culture Division
Aboriginal Affairs Department**

 **P O Box 7770**

Cloister Square

Perth WA 6850

Fax:

08-9235 8044



08-9235 8000

Local call cost:

13 18 15

NATIONAL

- *Copyright Act 1968*
- *Racial Discrimination Act 1975*
- *Australian Heritage Commission Act 1975*
- *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*
- *Native Title Act 1993*

If people tell you a story, you should not use that story to make money and to give yourself public status.

Fitzroy Crossing

Cultural Heritage and Intellectual Property

The Commonwealth *Copyright Act 1968* provides protection for some aspects of Aboriginal and Torres Strait Islander arts and cultural expression. The *Copyright Act* makes laws about controlling how and when an original piece of work can be used.

The Act allows the creator (such as an artist or an author) to negotiate payment when other people wish to use that work.

Copyright law protects:

Too many people "chat away" their culture.

Mulga Queen

- **Artistic Works:** includes paintings, drawings, sculptures, craft, photographs, maps and plans

- **Musical Works:** including pop songs, opera and Aboriginal and Torres Strait Islander music
- **Literary Works:** short stories, novels, poems and song lyrics; computer programs are also given protection
- **Dramatic Works:** includes dance, plays and other work that is intended to be performed
- **Films:** documentaries and videos
- **Sound Recordings:** compact discs, tapes and cassettes
- **Broadcast Signals:** signals of sound or images transmitted by television or radio

Copyright law does **not** protect:

- ideas or themes
- artistic styles and techniques
- names and titles

This is why many 'Aboriginal' designs which were never actually produced by an Aboriginal or Torres Strait Islander artist are on sale. In some cases, the work is produced overseas, even though the label says it is 'authentic' or is 'Aboriginal inspired'.

Requirements for Copyright Protection

Many forms of Aboriginal and Torres Strait Islander cultural heritage are not adequately protected under the Act because the 'author' or owner of the artwork is unknown, or it was owned by the community or group not an individual, or the owner has passed away.

The area of copyright protection and its application to Indigenous cultural expressions is developing. It is an area where expert legal advice is essential.

A person's work is protected as soon as it is put in material form. For example, as soon as a person begins to create a painting and when it is completed. Certain aspects of Aboriginal and Torres Strait Islander culture such as stories, music and dance may not be protected if they are not put into material form. They will be protected if they are recorded.

...massacre history is still very recent in the Kimberley – the old people still remember. You know, one old woman was seen crawling through bushes when she saw a whitefella visit her community not so long ago. She said she thought he was going to shoot her.

Kununurra



...we lost our identity when the State and the Church changed our names and our birth dates.

Moora

Copyright is important for flora, fauna, art and blood samples.

Derby

...we should have copyright to bushtucker and bush medicines.

Albany

Rights of Copyright Owner

A person who creates an original piece of work is the owner in copyright and the owner has, therefore, exclusive rights over who may or may not use that work. It is not possible for any other person to use that work unless they have the permission of the owner.

Copyright protection lasts from the time the material is created and during the lifetime of the author or artist, and for 50 years after the death of the author or artist. When the copyright owner dies the rights can be left to another person or organisation in a will. If the owner does not have a will the rules of 'intestacy' apply. Intestacy means that the person dies without a will and usually the next of kin, such as a wife, son or daughter will inherit that person's property.



Ownership

Copyright ownership may be decided on by entering into an agreement (that is, a contract). For example, if an Aboriginal or Torres Strait Islander artist is approached by someone to do a painting for a commercial purpose (such as for the cover of a book or to print postcards, etc) both parties should enter into an agreement as to who owns the copyright in the work. If both parties do not enter an agreement the *Copyright Act* has certain rules which may apply as to who owns the rights in the work.

Purchasing Copyright

Copyright is personal property and can, by the terms of an agreement, be bought, sold or licensed from the owner. An author or artist's rights to something they have created can be dealt with by assignment, exclusive licence or non-exclusive licence.

1. Assignment

An assignment of a person's copyright means that they are selling or transferring the copyright. If the agreement is for an unlimited assignment, the purchaser acquires the entire copyright for the duration of copyright (that is, the life of the author or artist and fifty years after death).

A copyright owner does, however, have a right to enter an agreement which allows a limited assignment. For example, the copyright owner may wish to assign a right to reproduce their work on say the cover of a book.

Note: The Australian Copyright Council recommends that assignments of copyright are not necessary and advises that creators avoid assignment.

2. Exclusive Licence

An exclusive licence allows the person who is seeking permission to use the work (the licensee) to exercise the rights granted to that person alone. For example, if an artist grants exclusive rights to reproduce a painting for a commercial purpose (for example, for postcards) no one else, including the copyright owner, may reproduce the work.

3. Non-Exclusive Licence


This type of licence gives the licensee permission to use the work in a way which is controlled by the copyright owner.

Note: It is advisable that all copyright agreements or licences be in writing. Once an agreement or licence is in writing it is evidence of the terms and it allows parties to define its scope. These type of agreements or licences should be specific when defining the rights and obligations of the parties. Agreements that are too broad may give a purchaser more rights than what was originally intended by the copyright owner.

If an author or artist's work cannot be protected by copyright law there are other areas of the law which may be able to protect the work.


Further information and legal advice can be obtained from:

The Australian Copyright Council

 Suite 3/245 Chalmers Street


Redfern NSW 2016

Fax: 02-9698 3536

 02-9318 1788

EMAIL copyright@copyright.org.au

Aboriginal Arts Management Association (AAMA)

 Suite 401/ 4th floor

60-62 Foveaux Street

Surrey Hills NSW 2010

Fax: 02-9281 8920

 02-9281 2144

*...people forget that some
Aboriginal people cleared the
lands, made the roads and
contributed to the development
of contemporary towns.
Aboriginal participation in
community development and
evolution is often overlooked*
South Hedland

*Schools need to talk about
Aboriginal culture and heritage.*
Mogumber

*...there is a lack of recognition
of story, the contribution that
children in these facilities [homes
at Mogumber and New Norcia]
made to the communities
development.*

Moora

Australian Heritage Commission Act

The Australian Heritage Commission identifies the 'national estate' and advises the Commonwealth Government on the protection of Australia's 'national estate'. The 'national estate' comprises those places in the national, historic and Aboriginal and Torres Strait Islander environments that are significant. A register of places is kept by the Commission and entry on the register gives some protection under Section 30 of the Act. Nominations of places for entry in the Register can come from community groups and individuals as well as government. The Commission also provides grants for heritage work, which is administered by the WA Heritage Council.

For further information contact:

Aboriginal and Torres Strait Islander Section Australian Heritage Commission

 **GPO Box 1567
Canberra ACT 2601** **Fax: 06-217 2095**
 **06-217 2111**

Aboriginal and Torres Strait Islander Heritage Protection Act

Under this Act the Commonwealth Minister for Aboriginal and Torres Strait Islander Affairs can protect areas or objects which are significant to Aboriginal and Torres Strait Islander people. The Act has been designed as a 'safety net' law. This means, if a State Government Act is ineffective, an appeal may be made to the Commonwealth Minister for protection.

Protection of Traditional Sites

If a group believes that they do not have proper protection for a site or that they have not got any protection at all, they may apply to the Commonwealth Minister for Aboriginal and Torres Strait Islander Affairs to make a declaration for the protection and preservation of significant Aboriginal or Torres Strait Islander areas which may be injured or desecrated. An area is injured or desecrated if:

- the area is used or treated in a manner that is inconsistent with Aboriginal or Torres Strait Islander tradition
- something done in or near the area adversely affects Aboriginal or Torres Strait Islander tradition
- passage or entry to the area by any person occurs in a manner which is inconsistent with Aboriginal or Torres Strait Islander tradition.

Note: This Commonwealth Act was recently (1996) reviewed. It is expected that amendments will be made to the Act, however, debate on these amendments will not take place until 1997.

For further information contact:

ATSIC

☎	06-289 1222	Fax:	06-281 0772
	08-9220 3211	Free call	1800 193 352

Part of the negotiation on land needs to include not only traditional rights but also citizenship rights and the right to essential services.

Derby

Native Title Act

The *Native Title Act* provides an avenue for protection of cultural heritage. This can be achieved through Regional Agreements and the right to negotiate procedures of the Act.

How can we translate these cultural needs of ours into reality, if we don't have land.

Kununurra

INTERNATIONAL

The *International Convention on Civil and Political Rights* provides for the rights of people to the enjoyment of their culture practiced in community with others who share that culture.

Article 27 of the Convention states that people have:

the right ... to enjoy their own culture, to profess and practice their own religion, to use their own language...

Aboriginal people are denied access to sites, water is becoming contaminated, bush tucker is scarce.

Laverton

CULTURAL HERITAGE POLICY

The national commitment made by the heads of the governments of Australia when they signed the Heads of Government Agreement was to "empower Aboriginal peoples and Torres Strait Islanders to protect, preserve and promote their cultures and heritage, recognising that these unique cultures are Australia's indigenous heritage."

The Agreement reflects the fact that Aboriginal and Torres Strait Islander peoples have the right to decide about their cultural heritage, to manage sites and heritage places and to be involved in the ongoing management, planning, and decision-making at the local level.

The Commonwealth Department of Communication and the Arts has established a set of guidelines for heritage places called *Guidelines for the Protection, Management and Use of Aboriginal and Torres Strait Islander Cultural Heritage Places*.

CALM should be working with the community to preserve this site [Wave Rock] and to develop appropriate training programmes for Aboriginal rangers ...

Kondinin

For further information contact:

Heritage Branch

Department for Communication and the Arts

 **GPO Box 2154**

Canberra ACT 2601

Fax: 06-279 1901

 **06-279 1000**

EMAIL hgp@dea.gov.au

KEY ORGANISATIONS

WESTERN AUSTRALIAN GOVERNMENT

The return of skeletal remains and the protection of culture are important...

Derby

Western Australian Department for the Arts

The WA Arts Department has an Aboriginal Programs Section which can provide some funding for visual, performing or community arts projects. The Aboriginal Programs Section can also provide advice and referral for people.

For further information contact:

Department for the Arts

 **08-9427 1222**

Free call: 1800 199 090

EMAIL dept@artswa.wa.gov.au.

Dumbartung Aboriginal Corporation

Dumbartung acts as an advisory and support agency to artists involved in all forms of the arts such as visual artists, performing artists and writers. Support is offered in many ways, from preparation of submissions and budgets to the funding bodies for grants of assistance, to advice on such issues as copyright, contracts and exhibition co-ordination, as well as any other issues of importance to Aboriginal and Torres Strait Islander artists.

For further information contact:

The Project Officer

Dumbartung Aboriginal Corporation

 **295 Manning Road**

Waterford WA

Fax: 08-9356 1823

 **08-9451 4977**


COMMONWEALTH GOVERNMENT

Aboriginal and Torres Strait Islander Arts Board of the Australia Council

The Board is involved with performing arts, literature, visual arts and crafts. The Board can provide funding support and development for Aboriginal and Torres Strait Islander projects or organisations.

For further information contact:

**Aboriginal and Torres Strait Islander Arts Board
of the Australia Council**

 **02-9950 9000** **Freecall: 1800 226 912**

...artists are not paid cash and they are not given receipts for work sold so they could be seeing less money than what a work is sold for.

Balgo

We need young people to accompany the old people who travel far and wide to exhibit their work. This would help both the old people and the young people.

Balgo

National Indigenous Arts Advocacy Association (NIAAA)

NIAAA is a national advocacy organisation for Aboriginal and Torres Strait Islander artists. NIAAA is involved in the development of an "authenticity trade mark" to protect artists from exploitation of their work.

For further information contact:

National Indigenous Arts Advocacy Association Inc



 **Suite 401, 4th Floor
60-62 Foveaux Street
Surrey Hills NSW 2010** **Fax: 02-9281 8920**
 **02-9281 2144**

Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS)

AIATSIS houses one of the biggest collections in Australia of books, films, tapes and newspapers, language collections, slides and manuscripts on Aboriginal and Torres Strait Islander cultural heritage. The Institute also provides grants for research projects.

For further information contact:

AIATSIS


 **Acton House,
Marcus Clarke Street
Acton
GPO Box 553
Canberra ACT 2601** **Fax: 06-249 7310**
 **06-246 1111**

The Aboriginal Legal Service Land and Heritage Division

Land Councils and representative bodies can address cultural heritage as part of Native Title claims.

For further information contact:

Aboriginal Legal Service

 **Piccadilly Square
Nash Street
East Perth WA 6003**

 **08-9265 6666** **Free call: 1800 019 900**

EMAIL als@mail:enternet.com.au

ATSIC Heritage and Culture Section

This section funds broadcasting, language programmes, arts and culture, and heritage programmes.

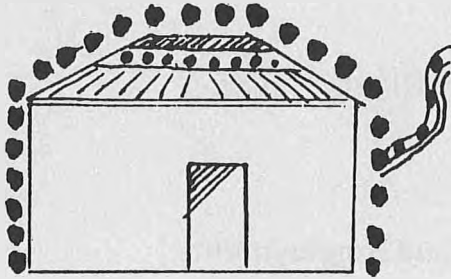
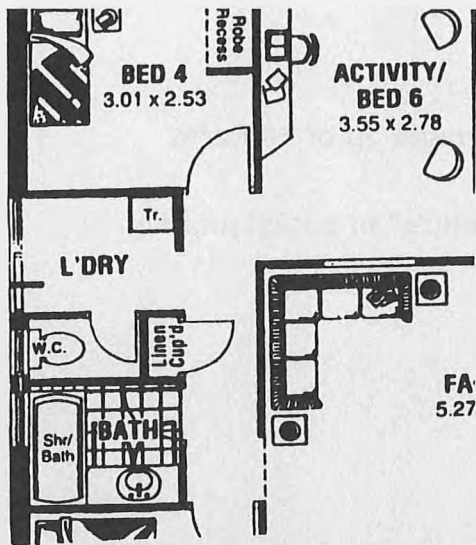
For further information contact:

ATSIC

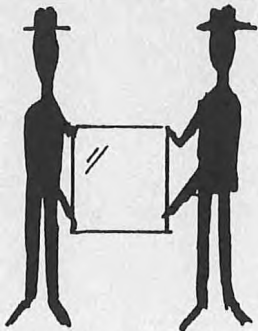
 **State Office 08-9220 3211
Canberra Office 06-289 1222**

EMAIL atsiwaso@iinet.net.au

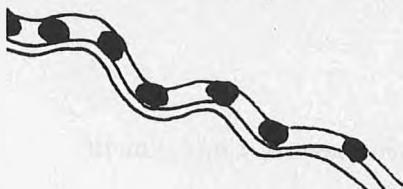
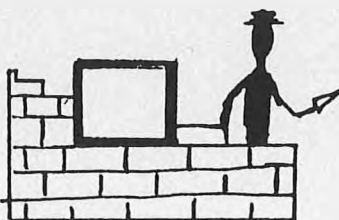
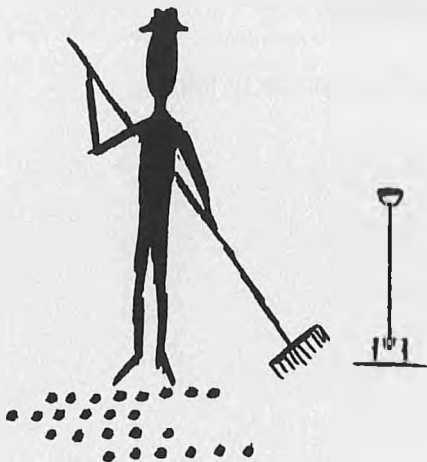




INFORMATION ON KEY RIGHTS



PART 8: ECONOMIC DEVELOPMENT AND EMPLOYMENT



HUMAN RIGHTS AND SOCIAL JUSTICE
FOR THE
ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLES
OF WESTERN AUSTRALIA

- A COMMUNITY INFORMATION RESOURCE -

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7. Cultural Heritage
- 8. Economic Development and Employment**
9. Education and Schools
10. Housing and Essential Services
11. Police and the Justice System



Glossary — What Does It Really Mean?

VICARIOUS taking the place of another person or thing

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ECONOMIC DEVELOPMENT AND EMPLOYMENT

RIGHTS

WESTERN AUSTRALIA

The WA *Equal Opportunity Act* specifically covers unlawful discrimination, including racial harassment, in areas of work, education and accommodation.

Section 37(1) of the Act says *"It is unlawful for an employer to discriminate against a person on the grounds of the race of that person"*.

The areas covered by the legislation include advertising, recruitment and selection, terms and conditions of employment, staff development, promotion, retrenchment and dismissal. The employer is responsible for ensuring that discrimination does not occur in any of these areas.

*Non-Aboriginal people are
employed to develop
employment programmes for
Aboriginal people at BHP...
We should be employed to
develop employment
programmes for our own mob.
We know what we want.*

Port Hedland

For example: racial harassment is where an employer insults, threatens, taunts, or abuses an employee because of the person's race or the race of a relative or associate of the person. The racial harassment may be done verbally or in writing.

Discrimination can be direct

For example: refusing to employ someone who is the best applicant because they are an Aboriginal or Torres Strait Islander person.

Discrimination can be indirect

For example: imposing unreasonable or unnecessary conditions on employment of Aboriginal or Torres Strait Islander people, like refusing to accept cultural/ceremonial obligations, or where a person has the same skills as other employees but is given 'dirty jobs' or where a person is singled out for criticism or other behaviour which puts a person at a disadvantage.



The 'vicarious liability' provisions of the legislation are particularly important as they hold an employer or principal, responsible for discriminatory acts committed by an employee or agent. The vicarious liability provisions do not operate where it can be shown that the employer or principal took all reasonable steps to ensure that equal opportunity legislation would not be breached.

NATIONAL

Discrimination in employment and occupation can be dealt with by the Human Rights and Equal Opportunity Commission (HREOC). Commonwealth, State, Local Government and private sector employees are protected by this legislation.

The *Racial Discrimination Act* makes it unlawful for an employer to discriminate against a person because of their race. HREOC may investigate discrimination in employment once a formal complaint has been lodged. (See Part 4: Right of Complaint p.66)

The *Sex Discrimination Act* makes it unlawful for an employer to discriminate against a person because of their sex or marital status. HREOC may investigate once a formal complaint has been lodged. (See Part 4: Right of Complaint p.66)

The *Disability Discrimination Act* makes it unlawful for an employer to discriminate against a person because of a disability. HREOC may investigate once a formal complaint has been lodged. (See Part 4: Right of Complaint p. 66)

INTERNATIONAL

All people may, for their own ends, freely dispose of their natural wealth and resources ...

International Covenant on Economic,
Social and Cultural Rights, Article 1, 2

International human rights standards also state:

Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

Universal Declaration of Human Rights, Article 23

Discrimination in employment and occupation is also covered under *International Labour Organisation (ILO) Convention 111* which is incorporated in Commonwealth law in the *Human Rights and Equal Opportunity Act*.

...Aboriginal employment is virtually non-existent in local business. Two Aboriginal men undertook training but once they had completed their training they were put in the back of the store to work ... you can't have Nyungars in the front of the shop having contact with customers... these fellas wanted more, they wanted to work in the front of the shop.

Northam

EMPLOYEE RIGHTS

Aboriginal and Torres Strait Islander peoples have the same rights as any other employee:

- the right to equal pay for the same work
- the right to decent working conditions
- the right to be treated with respect and consideration
- the right to join a union
- the right to negotiate the terms and conditions of employment with the employer

...one week an Aboriginal person asked for a job at the Shire and they said there was nothing. The next week there was a whitefella in the job.

Laverton

Unfair Dismissal

If an employee believes they are unfairly dismissed they may be able to receive some help from the Industrial Court of Australia or the Western Australian Industrial Tribunal. An employee does not have to be covered by an award or belong to a union to lodge a complaint with the Industrial Court.

EMPLOYER RIGHTS

Employers have the right to expect the employee to do a reasonable day's work and to act with reasonable care on the job. Employees also have a duty to the employer not to use information they have gained through working in the job for their own purposes.

Employers have the right to dismiss an employee. However, the employer must be able to show that there was fair reason for sacking the person.

INDUSTRIAL COURT OF AUSTRALIA

Before dismissing an employee, an employer should follow the rules set out by the Commonwealth *Industrial Relations Act*.

The employer must have a valid reason relating to the employee's capacity or conduct, or to the operational needs of the business.

Employers must not dismiss employees because they:

- are away temporarily because of illness or injury
- belong to a union or do not belong to a union

- act as an employee representative
- make a legal complaint against the employer
- are absent from work because of maternity or paternity leave

Employers cannot dismiss employees because of their:

- race, age or physical or mental disability
- marital status, family responsibilities or pregnancy
- sex or sexual preference
- religious or political opinion

There is not enough employment for Aboriginal people and institutional racism keeps people ineffective in positions and powerless in terms of change.

Bunbury

The employer must give the employee a chance to answer claims made about capacity, conduct and work performance.

The employer must give the employee reasonable notice of dismissal. The amount of notice depends on a variety of matters such as the terms of employment and the length of employment.

People wishing to inquire or make a claim about an unfair dismissal can contact the Industrial Court Registry, their union representative or a solicitor. The claim must be lodged within **14 days** of receiving written notice of termination of employment. If the dismissed person does not submit their claim within 14 days he or she can apply to the Court for an extension of time. If no written notice was given there is no time limit for lodging an application.

For further information contact:

The Industrial Court Registry

 **1 Victoria Avenue**

Perth WA 6000

Fax: 08-9221 9143

 **08-9268 7400**

or 1300 363 471 for information booklet and fact sheets on Workplace Relations Act

Note: Commonwealth laws relating to employer/employee rights were changed in 1996 (the *Workplace Relations and other Legislation Amendment Act 1996*, amending the former *Industrial Relations Act 1988*). It is anticipated that Australian Work Placement Agreements will be fully implemented by March 1997 with some award provisions taking effect in late 1996. You should contact the Industrial Court Registry or the Commonwealth Department of Industrial Relations for information on changes to industrial laws.

TRADE UNIONS AND AWARDS

A **trade union** is an association which looks after pay and working conditions for its members. Unions are formed to protect the interests of employees as a group.

The aims of a union are to:

- get fair and reasonable wages and working conditions for its members
- provide advice and assistance to members about their employment rights
- make sure that employers observe their responsibilities

Award wages should be paid to Aboriginal workers in Aboriginal organisations

Albany

Employees can join a union to get these services. The union can speak on their behalf to the employer but people can still talk directly to their employer.

Unions can also help workers with:

- workers' compensation matters
- occupational health and safety
- financial services

An **award** is a legal document which sets out the minimum terms and conditions of employment for employees covered under that award. It is actually the printed version of a decision about the terms and conditions made by an Industrial Tribunal or Commission, such as the Australian Industrial Relations Commission.

An award is legally binding on both the employer and employee. It cannot be changed except by the Tribunal or Commission. Changes do occur constantly with wage increases and the introduction of new conditions, such as award superannuation or reduced working hours. You should check what you are entitled to when you first start work.

Australian Council of Trade Unions

The Australian Council of Trade Unions (ACTU) has established an Aboriginal and Torres Strait Islander employment development strategy.

For further information contact:

The Trades and Labour Council

☎ 08-9328 7877

Fax: 08-9328 8132

EMPLOYMENT IN THE PUBLIC SERVICE – ACCESS AND EQUITY

The Hawke Government introduced the Aboriginal Employment Development Policy (AEDP) in 1987 in response to the findings of the Committee of Review of Aboriginal Employment and Training Programs. The AEDP recognises the fundamental importance of self-determination for Aboriginal and Torres Strait Islander peoples in all facets of our lives including the areas of employment and training. Aboriginal and Torres Strait Islander people should be employed at a level that will enable them to influence self-determination principles in the organisation.

The AEDP asserts that the number of Aboriginal and Torres Strait Islander people in government employment should be increased to a point at least equal to their representation in the community – in WA this is approximately 2.8%.

Jobs go to non-Aboriginal people and their partners... jobs are not advertised

Fitzroy Crossing

TENDERING OF GOVERNMENT CONTRACTS

The policy of tendering for government contracts aims to maximise employment opportunities for Aboriginal and Torres Strait Islander people by:

- making sure Aboriginal or Torres Strait Islander suppliers get the opportunity to tender for work
- making sure that non-Aboriginal suppliers provide employment for Aboriginal people and Torres Strait Islanders if they get the contract
- increasing Aboriginal and Torres Strait Islander participation in the decisions concerning contracts for construction and associated works within communities

...Noongars get into jobs and then turn white.

Collie

COMMONWEALTH PROGRAMMES FOR ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLES

The following organisations provide economic development and employment programmes for Aboriginal and Torres Strait Islander peoples.

The Aboriginal and Torres Strait Islander Commercial Development Corporation (CDC)

The CDC invests in and assists in the development of major commercial enterprises for Aboriginal and Torres Strait Islander groups.

They become bleached and turn white.

Port Hedland

ATSIC

Community Development Employment Program (CDEP)

CDEP provides employment opportunities for Aboriginal people and Torres Strait Islanders by pooling unemployment benefits. Employment is mainly in community projects and enterprises.

Aboriginal and Torres Strait Islander Business Funding Scheme (BFS)

Assistance is provided for the establishment, development or acquisition of income producing enterprises. BFS is a business support programme, which aims to help Aboriginal and Torres Strait Islander people to establish a working business. Money is made available through a loan from ATSIC for those people who can contribute 20% equity, adequate security and can provide a comprehensive business plan.

Employers may be subsidised to employ Aboriginal and Torres Strait Islander people under the BFS. This is known as Enterprise Employment Assistance (EEA).

Community Economic Initiatives Scheme (CEIS)

CEIS provides grants to Aboriginal and Torres Strait Islander communities for community projects and businesses which will provide an income to the community. The grant can provide for facilities, equipment, wages and recurrent costs, promotion, marketing, business advice and consultancy support.

You can get an application form from your ATSIC Regional Office and a leaflet called "How to Apply for a Grant".

Inwork Traineeship Program

Inwork is a programme for young Aboriginal and Torres Strait Islander people. The traineeship is designed to mix on-the-job training and work experience with some formal education.

Indigenous Land Corporation

The Aboriginal and Torres Strait Islander Land Fund and the Indigenous Land Corporation came into being on 1 June 1995.

The Land Fund is administered by ATSIC. It provides on-going funding to the Indigenous Land Corporation to assist Indigenous peoples to buy and manage land.

In the first ten years – until June 2004 – the Land Fund is funded by a fixed annual allocation from the Commonwealth Government.

Noongars are expected to be an expert on all matters concerning Noongars.

Perth

Aboriginal people are trained in Perth and when they return to Fitzroy Crossing they are put on CDEP wages – people lose their incentive to work.

Fitzroy Crossing

People in the community want some of the jobs that whitefellas have ... we try to talk to people about this but they think we don't have anything in our heads.

Warburton

A significant portion of this money is invested to build the capital base of the Land Fund. The other portion is for land acquisition and land management and is managed by the Indigenous Land Corporation. As a transitional measure (until June 1997) ATSIC also receives some monies from the Land Fund for land acquisition and management.

After June 2004 the Indigenous Land Corporation will continue to assist land acquisition and land management using the interest earned by the Land Fund.

The Land Fund and the Indigenous Land Corporation offer Indigenous communities the opportunity to reclaim some of their cultural heritage by regaining control over the land.

Regional Development Planning (RDP)

Funds are provided to enable communities to develop community plans.

CALM holds us up... even for the release of land for the development of the Centre's proposal... in particular the leasing of land to Aboriginal people.

Pinjarra

For more information contact:

ATSIC

☎ 06-289 1222 Free call: 1800 19 33 52
08-9220 3211

CDEP

☎ 06-289 3413

BFS & CEIS

☎ 06-289 3368

Indigenous Land Corporation

☎ 08-9407 5800 Free call: 1800 818 490

Australian Nature Conservation Agency

Contract Employment Program for Aboriginals in Natural and Cultural Resource Management (CEPANCRM)

This programme aims to get Aboriginal and Torres Strait Islander people employed on a contract basis in natural and cultural resource management.

For more information contact:

Indigenous Program Section

Biodiversity Group, Environment Australia

✉ GPO Box 636
Canberra ACT 2601 Fax: 06-250 0735
☎ 06-250 0324

Department of Employment, Education, Training and Youth Affairs (DEETYA)

Aboriginal and Torres Strait Islander Industry Training Company

...we want trained workers in the school, shop, workshop. There needs to be a good education for teenagers available on the community and good things for them to do. Sending kids away is no good ...

Tjirrkarli

Under the 'Working Nation' programme the Industry Training Company was established to provide structured entry level training and employment traineeships with government, private industry and local communities.

For more information contact:

The Traineeship Co-ordinator

☎ 08-9429 3886 Fax: 08-9429 4340
Free call: 1800 064 332

Remote Area Field Service

This field service to remote areas is being established by DEETYA with a significant focus on the needs of remote Aboriginal and Torres Strait Islander communities.

Programmes

DEETYA have a number of programmes designed specifically for Aboriginal and Torres Strait Islander peoples. Restructuring within the department, at the time of production of this resource, has meant that the exact nature and details of these programmes is unclear.

Apprenticeships are almost impossible for Aboriginal kids to get.

Kununurra

For more information contact:

Aboriginal Education Unit

DEETYA Office in your region, or the Perth Office

☎ 08-9429 3777 Fax: 08-9429 3771

WESTERN AUSTRALIAN GOVERNMENT

There must be proper training programmes with real long-term employment prospects at the end of the training.

Collie

The WA Government says it is committed to the rights of Aboriginal and Torres Strait Islander peoples and to being a responsive government. This means:

- creating more job opportunities – all government agencies should have Aboriginal and Torres Strait Islander employees to at least equal their representation in the community (2.8% approximately)
- providing career development plans and better training courses
- supporting commercial enterprise schemes

For more information contact:

Aboriginal Affairs Department

☎ Local Call Cost 13 18 15

Aboriginal Economic Development Officer (AEDO)

The AEDO provides business development, expertise and support, the Aboriginal Community Stores Program and Special Projects Support.

For more information contact:

AEDO

☎ 08-9327 5666

Fax: 08-9481 0672

Free call: 1800 628 767

EMAIL rigr@dct.wa.gov.au

Western Australian Department of Training

Aboriginal Services

The Department offers a range of vocational education and training programmes in partnership with community-based organisations and colleges.

The Department has established Aboriginal Education and Training Committees located in various regions throughout WA. These Committees can assist with and provide advice on vocational training for Aboriginal and Torres Strait Islander peoples.

Training and education opportunities are limited, and once something is developed or piloted and people become enthusiastic it gets taken away.

Collie

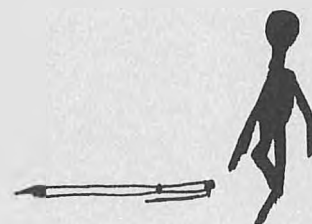
For further information contact:

The Manager, Aboriginal Services

Department of Training

☎ 08-9235 6222

Free call: 1800 199 106



Department of Commerce and Trade

This Department has prepared an Aboriginal Economic Development Strategy in conjunction with the Aboriginal Affairs Department.

In a town of 600 people there are no Aboriginal people employed in the service industry.

Collie

For further information contact:

Department of Commerce and Trade

☎ 08-9327 5672

Fax: 08-9481 0672

Free call: 1800 628 767

There are too many blockades and hurdles, we spend all our time preparing submissions and claims... how can we develop enterprise and tourism... always another hurdle.

Pinjarra

Western Australian Tourism Commission (WATC)

The WATC has employed a Project Co-ordinator for Aboriginal tourism.

For further information contact:

Project Co-ordinator

Western Australian Tourism Commission

☎ 08-9220 1700

or

the WA Tourism Commission Office in your region

Conservation and Land Management (CALM)

This Department has established an Aboriginal Tourism Education and Training Unit.

For further information contact:

Aboriginal Employment and Training Co-ordinator

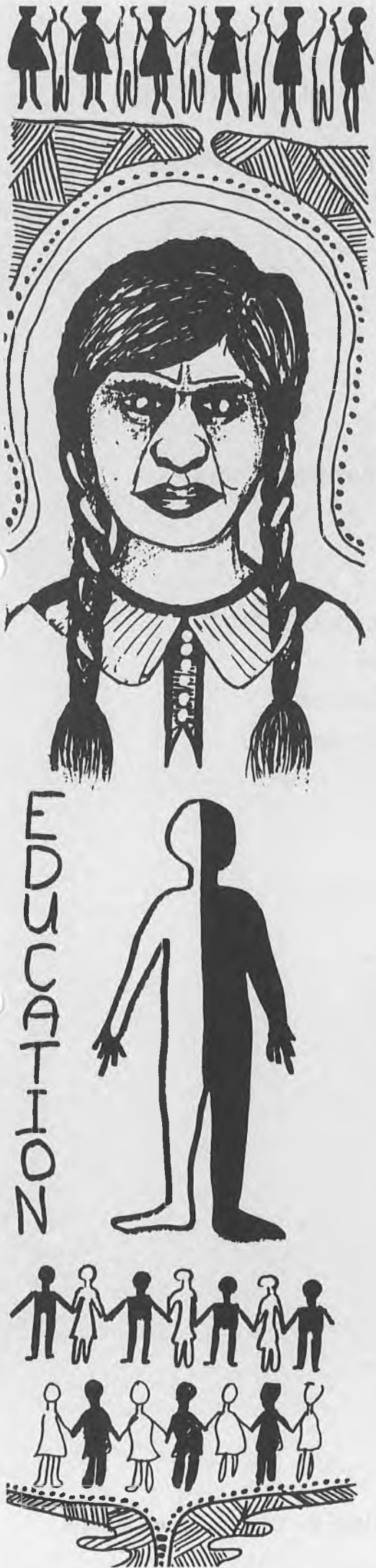
Department of Conservation and Land Management

☎ 08-9334 0333

Fax: 08-9334 0466

There will be a new Power Station here in a few months, employing at least 600 people. Today, there is nothing developed for Aboriginal people. Also the Worsley extension and potentially a \$5m pulp and paper mill... I'm on the Task Force and have to put up with indirect discrimination every time I raise an issue.

Collie



INFORMATION ON KEY RIGHTS

PART 9: EDUCATION AND SCHOOLS

HUMAN RIGHTS AND SOCIAL JUSTICE
FOR THE
ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLES
OF WESTERN AUSTRALIA

- A COMMUNITY INFORMATION RESOURCE -

This Information Resource is made up of 12 Parts

Parts 1 – 5 look at the “Big Picture” of social justice

1. Human Rights
2. Indigenous Rights
3. Citizen Rights
4. Right of Complaint
5. Community Action

Parts 6 – 11 look at some “Key Rights” areas

6. Consumer Rights
7. Cultural Heritage
8. Economic Development and Employment
- 9. Education and Schools**
10. Housing and Essential Services
11. Police and the Justice System

This Part Covers

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EDUCATION AND SCHOOLS

RIGHTS

Aboriginal peoples and Torres Strait Islanders are the First Nations of this continent and have inalienable rights as the Indigenous peoples of Australia. Education is one of these rights.

Mandawuy Yunupingu, Chairperson,
National Review of Education for
Aboriginal and Torres Strait Islander People

WESTERN AUSTRALIAN

- *Equal Opportunity Act 1984*
- *Education Act 1928 and 1960*

...suspensions occur every fortnight and there are very low retention rates.

Albany

MSB [Managing School Behaviour] rules are not being fairly applied to Aboriginal kids. Aboriginal kids are being unfairly suspended or expelled. At a local school of about 1,000 kids 43 are Aboriginal – 12 have been suspended and two expelled in the last few months.

Bunbury

The *Equal Opportunity Act* specifically covers discrimination in education. Parents/community groups can complain to the Equal Opportunity Commission if they think there is discrimination.

School children are protected by the law from racial harassment, threats or intimidation. Aboriginal and Torres Strait Islander children do not have to put up with this treatment from other students, teachers or other staff at school. Racist remarks and insults as well as physical violence are not on and students have the right to complain about it.

Section 44 of the Act allows for the possibility of individual or community action to be taken against an education authority.

Section 82(b) of the Act allows the Commissioner to review government policies and procedures to determine whether discrimination is occurring against a person or class of persons.

The Education Act

The *Education Act* is being reviewed during 1996.

School Attendance

Education is compulsory in Western Australia and it is an offence for a young person to not go to school without good reason.

Failure to go to school can result in the following:

- The Children's Court or the School Welfare Officer can issue a warning to parents about the child's attendance at school.
- Parents can be fined up to \$200 for keeping their children out of school (Section 16 of the *Education Act*).
- The Children's Court can take action against children for truancy (which is staying away from school without the parents knowing); the Children's Court can place children on probation or make other arrangements (Section 17(a) of the *Education Act*).
- The Children's Court can place a child in the hands of the Department of Family and Children's Services – can make them a ward of the State.

In most cases, schools and education authorities try to keep these matters out of the courts.

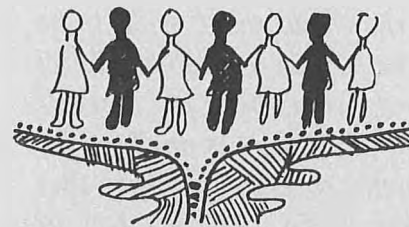
School Discipline Policy

Every Education Department run school in WA should have a set of guidelines for school discipline. It is the right of every student and their parents or guardians to know, and to have explained to them, what the guidelines say and why the student is being punished. Students and their parents or guardians also have the right to be treated with respect by the school.

The *Education Act* does give teachers the right to discipline a student if they break school rules. However, the punishment allowed is clearly set out in the Act. It must be fair and it must not take away the student's dignity. School discipline must be 'mild but firm'. Use of the cane, the strap or any other form of corporal (physical) punishment is forbidden. A teacher or any other person can be charged with assault or sued for damages if they hit a student.

Suspension

A school principal can suspend a student for up to 10 days, after all efforts to control the behaviour of the student have failed. Notice must be provided to the student and their parents or guardians and must give the reasons for the suspension and the length of time the student is going to be suspended.



An Aboriginal teacher found non-Aboriginal parents taking their children out of her class. She believes it was because she is Aboriginal.

Pinjarra

...when something is blatantly racist, the person who says it, is asking for a fight. I've taught my kids to stick up for themselves and to be strong about that. The hierarchy never stamps out the use of racist terms – and using racist terms is fight talk ... it's hard enough for adults not to lash out – how can kids deal with this, straight away they want to sort it out.

Perth

... an Aboriginal kid and a non-Aboriginal kid were arrested by police at school. The principal phoned the parent of the non-Aboriginal child but not for the Aboriginal child. There appears to be different rules for Aboriginal and non-Aboriginal people ...

Leonora

...the Department needs to be more flexible regarding cultural needs, time away for funerals and law. There is nowhere for parents to leave kids when they have to go away for law or funerals so kids go too, then teachers growl kids for missing school. They could do make up tests when they come back ... a hostel could be built for kids during these times.

Cosmo

...the pathway to get Aboriginal kids to secondary school is complex – Abstudy rules.

Tjirrkarli

There is no school here and the kids have to go away to Karralundi near Meekatharra. Kids from about four years old are taken away each term. We want a school, so that our kids can stay with their families, so that our kids get a good two-way bi-lingual schooling including the 3Rs and bush survival.

Patjarr

Exclusion

Exclusion means the student has to leave the school. The guidelines state that the students, and their parents or guardians, must be given the chance to attend a meeting of a 'Student Exclusion Review Panel'. The Panel is chaired by someone from the community who is not connected with the school and a representative from the Education Department. Only the Minister of Education can authorise the exclusion, not the school principal. Parents can meet with the Review Panel to argue their case.

EDUCATION POLICY

EQUALITY OF ACCESS

Education is an entitlement and the Government is obliged to provide equality of access to education. This means both the availability of schools (in rural and remote areas), as well as the quality of the education.

Equality of access to education should result in greater recognition by the school of the importance of kinship, family and community support. It should also improve the numbers of Aboriginal and Torres Strait Islander children who stay at school and achieve a better quality of education.

Equality of access to education should also result in the increased participation of Aboriginal and Torres Strait Islander peoples as teachers, Aboriginal Liaison Officers and Aboriginal Education Workers.

Parents and community groups should be involved in the education of Aboriginal and Torres Strait Islander children and should be arguing for improvements in the education system.

THE ABORIGINAL EDUCATION AND TRAINING COUNCIL

The AETC is the peak body for Aboriginal and Torres Strait Islander involvement in decision-making about education in WA. It advises the Minister for Education and the Education Department on all matters relating to education and training and represents the concerns of Aboriginal and Torres Strait Islander peoples, through the Chairperson and the seven Aboriginal and Torres Strait Islander community members from around the State who are on the Council. The Catholic Education Office, Association of Independent Schools and Aboriginal Affairs Department (AAD) are also represented on the Council.

Education Policy Reports:

Commonwealth Government

National Review of Education for Aboriginal and Torres Strait Islander People (1994)

Western Australian Government

Western Australian Aboriginal Education Strategic Plan (1995)

For more information contact:

Aboriginal Education and Training Council

☎ 08-9321 6800

*Racism invokes a loss of pride –
give us Aboriginal Studies and
we develop a sense of pride.*

Derby

*...there are a small group of
about six teachers who through
ignorance and racism create the
problems for Aboriginal children.*

Northam

NATIONAL

- *Racial Discrimination Act 1975*
- *Human Rights and Equal Opportunity Act 1986*
- *Disability Discrimination Act 1992*
- *Sex Discrimination Act 1984*

The international Convention on the Rights of the Child (CROC) is a 'declared instrument' under the national *Human Rights and Equal Opportunity Act*. This means the Human Rights and Equal Opportunity Commission can inquire into an alleged violation of CROC and report it to the Commonwealth Government. There is no international complaint mechanism under CROC. The power to take effective action rests with the governments of Australia.

The Human Rights and Equal Opportunity Commission can also inquire into alleged violations under the *Racial Discrimination Act*, *Sex Discrimination Act* and the *Disability Discrimination Act*.

INTERNATIONAL

- (1) *Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.*



One teacher called an Aboriginal kid a little black monkey, another teacher said to an Aboriginal student – “people like you, your people, should be locked up”...

Northam

There is a lot of racism in the playgrounds... it is always the Aboriginal kid that gets punished.

Bunbury, Mora, Port Hedland, Pinjarra, Northam

Schools often operate on a deficit model for Aboriginal kids the issues are often trivialised, parents are unsure about their rights and our kids lose their self-esteem.

Perth

In secondary school a large number of students are offended by the young female teachers who "have no shame" in the way that they dress, clothes are short and revealing. A lot of boys leave as a result – this conflicts with traditional teaching back home.

Tjirrkarli

- (2) *Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.*
- (3) *Parents have a prior right to choose the kind of education that shall be given to their children.*

Universal Declaration of Human Rights, Article 27

Article 13 of the *International Covenant on Economic, Social and Cultural Rights* also recognises the right of everyone to education.

UNESCO

UNESCO, the United Nations Educational, Scientific and Cultural Organisation is a specialised agency of the United Nations.

UNESCO sponsors a number of programmes including an education programme consisting of three interconnecting parts:

- basic education for all
- education for the 21st Century
- action for progress in education

UNESCO asserts the principle of non-discrimination and proclaims that every person has the right to education

Convention Against Discrimination in Education, UNESCO

For further information contact:

UNESCO Secretariat

Australian National Commission

 **R G Casey Building**

John McEwan Crescent

Barton ACT 2600

Fax: 06-261 2272

 **06-261 2289**

Convention on the Rights of the Child

The *Convention on the Rights of the Child 1989* (CROC) forbids discrimination against anyone under 18 years of age, on any ground. Students have a right to a decent education, to freedom from racial harassment, to professional and fair treatment by teachers, to feel safe at school and to be free of undue and unfair punishment.

How Aboriginal People and Torres Strait Islanders can become Involved in Schools

AWARENESS PROGRAM (ASSPA)

Parents of Aboriginal and Torres Strait Islander children can become involved with certain aspects of their children's school education by forming an ASSPA committee. The aim of the ASSPA programme is to encourage parents of Aboriginal and Torres Strait Islander school students to have a say in certain decisions that affect their children's schooling. Parents of Aboriginal and Torres Strait Islander students and teachers from the school can form an ASSPA committee and can apply to the Department of Employment, Education, Training and Youth Affairs (DEETYA) for funding. The funding is based on the number of Aboriginal and Torres Strait Islander students enrolled at the school and is used for various activities designed to improve educational opportunities for the Aboriginal and Torres Strait Islander students.

The objectives and benefits of setting up an ASSPA committee are to:

- encourage and allow Aboriginal and Torres Strait Islander parents to participate and become involved in school decisions and to be able to have some input into the types of courses taught
- encourage parents to have some involvement in the way certain subjects are taught
- create a support unit for Aboriginal and Torres Strait Islander students
- make parents aware of what is happening in the school and how it teaches Aboriginal and Torres Strait Islander students.

Parents who are interested in forming an ASSPA committee should organise a meeting between the Aboriginal Education Unit (AEU) Field Officer at DEETYA, the Principal of the school and other parents and community members.

It is important for the AEU Field Officer to be present at the first meeting so that he or she can fully explain the aims, objectives and funding guidelines of ASSPA. Further information on the ASSPA programme can be obtained from the Aboriginal Education Unit Managers of DEETYA.

...that ASSPA Committee is a good one – they have a good system with a bus to pick up kids and feed them breakfast at school.

Laverton

Local decision-making could improve – ASSPA Committees are a good start.

Mora

ASSPA is operating but is poorly resourced and as a result operates in a limited way ...

...local human rights committees could be formed and work through ASSPA Committees.



Northam

In ASSPA Committees the principal holds the power and controls the funds.



Albany

For more information contact: Manager


AEU Area North WA

 Fax: 08-9221 5850
 08-9425 4554

AEU Area South WA

 Fax: 08-9334 6279
 08-9334 6267

AEU Far North West WA

 08-9192 1501

...an Aboriginal man from a different community came here and raped a white teacher. The Department pulled all female teachers out of the school and issued an edict that female teachers would not be sent to [remote community] any more...

...why does the whole community get punished for something an outsider did?

...what would happen if someone from outside East Perth raped a teacher in a school in East Perth would all female teachers be removed from the school?

...the Department adopted a siege mentality.

PARENTS AND CITIZENS ASSOCIATIONS

The *Education Act* allows for the parents or guardians of children attending any government school and other interested persons (over 18 years of age) to form a Parents and Citizens Association. The objectives of a Parents and Citizens Association are to:

- encourage co-operation between parents or guardians, teachers and other citizens
- provide facilities and amenities for the school
- create community interest in educational matters

SCHOOL DECISION-MAKING GROUPS

Under the *Education Act* schools are required to establish School Decision-Making Groups. The purpose behind setting up these groups is to allow parents, local community members, school staff and students to participate in formulating educational objectives and priorities for the school. This can include discipline policies.

COMPLAINTS ABOUT THE EDUCATION DEPARTMENT

If you have a complaint about a school, a teacher or procedure that is alleged to be discriminatory, you should first see the school authorities. Depending on the seriousness of the allegation, the parents or guardians can also consider complaining to the following individuals or groups:

- Aboriginal Education Worker or District Aboriginal Liaison Officer
- ASSPA Committee
- Parents and Citizens Association or School Decision-Making Groups
- Aboriginal Education and Training Council
- WA Equal Opportunity Commission or the Human Rights and Equal Opportunity Commission
- Ombudsman

For further information contact:

**Aboriginal Education Branch
Education Department**

☎ 08-9264 4733

or Aboriginal Liaison Officers employed around the State

Vision of Diffusion

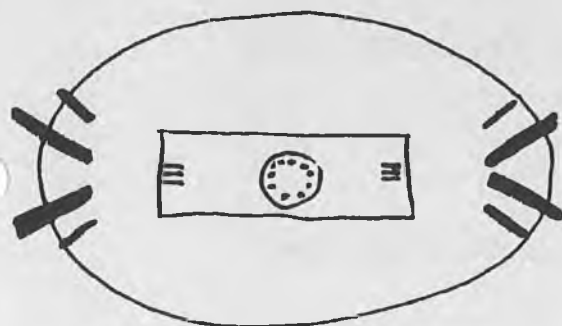
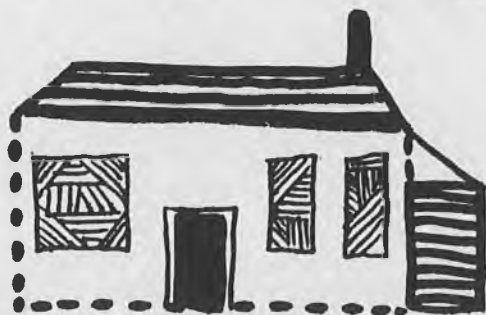
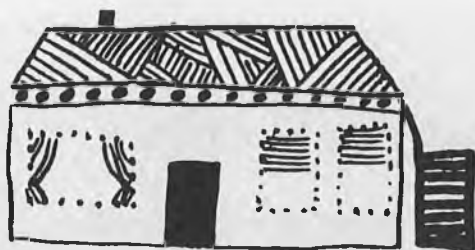
Oh the education system is a fiendish contradiction
that submerges little blackies in the night
Of foreign valued values and I'd really like to tell you
that it's wrong to make everybody white

They take wogs and dings and dagos
and people from tobago
and Micks and Prods and Yids and Slopes and Coons
Hoping that in education we may build a whiter nation
and that Persil is a nations GREATEST BOON

But God in all his glory in unfolding of the story
made the races to be all be known as Man
and thru fission and thru fusion and a vision of diffusion
the dominating colour will be tan

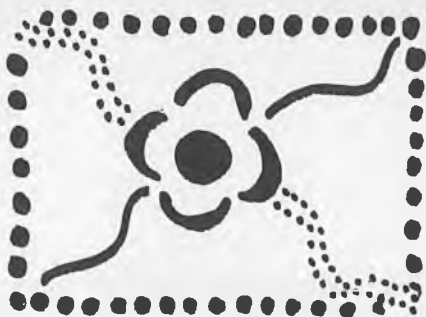
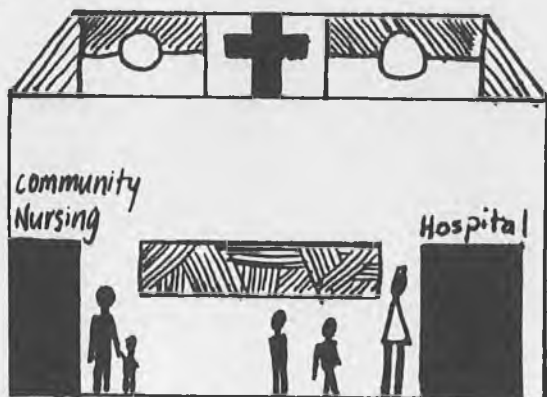
And the golden age is dawning and the night breaks into morning
and eternal peace will come upon the land
when we can love each other
and call each one our brother
and God's kingdom will come to every man

Bran Nue Dae
© J. Chi, C. Lim.



INFORMATION ON KEY RIGHTS

PART 10: HOUSING AND ESSENTIAL SERVICES



HUMAN RIGHTS AND SOCIAL JUSTICE
FOR THE
ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLES
OF WESTERN AUSTRALIA

- A COMMUNITY INFORMATION RESOURCE -

This Information Resource is made up of 11 Parts

Parts 1 – 5 look at the “Big Picture” of social justice

1. Human Rights
2. Citizen Rights
3. Indigenous Rights
4. Right of Complaint
5. Community Action

Parts 6 – 11 look at some “Key Rights” areas

6. Consumer Rights
7. Cultural Heritage
8. Economic Development and Employment
9. Education and Schools
- 10. Housing and Essential Services**
11. Police and the Justice System

HOUSING AND ESSENTIAL SERVICES

Aboriginal people have said that Homeswest housing is the big issue, so this Part mainly covers housing.

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HOUSING AND ESSENTIAL SERVICES

RIGHTS



Let them (the politicians) come and see how hard it is – live in a community – no running water, no toilet, having to use a shovel for the toilet, use sticks for toilet paper, get blisters and gastro ...they know how hard it is they just want to be blind.

Kununurra

WESTERN AUSTRALIA

- *Equal Opportunity Act 1984*
- *Residential Tenancies Act 1987*

Section 47 of the *Equal Opportunity Act* makes it unlawful to discriminate against people on the grounds of race in the area of accommodation (housing).

NATIONAL

The *Racial Discrimination Act* and the *Disability Discrimination Act* provide some protection against discrimination in the area of essential services and housing.

INTERNATIONAL

The *Universal Declaration of Human Rights*, Article 25.1 states:

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

The *International Convention on Economic, Social and Cultural Rights* Article 11, 1 declares:

...the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing and to the continuous improvement of living conditions.

The *Convention on the Elimination of all Forms of Discrimination Against Women* refers to the right of women to enjoy protection of health in the working environment and the rights of women in rural areas. Article 14(1) of the Convention provides that:

State Parties shall take into account the particular problems faced by rural women and the significant roles played by rural women in the economic survival of their families, including work in the non-monetised sectors of the economy, and shall take all appropriate measures to ensure the application of the present covenant to women in rural areas.

Article 14(2)(h) further provides that rural women are to be ensured the right:

...to enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

GOVERNMENT POLICY

All service providers (Commonwealth, State and Local Government) are responsible for providing a minimum standard of housing and essential services to citizens, regardless of their ability to pay for it or how remote their community may be. This means the right to access and equity in service provision.

COMMONWEALTH GOVERNMENT

The Commonwealth Government's responsibilities include defence, immigration and customs, telecommunications, aviation, postal services, finance and taxation and, in co-operation with the State Government, national parks, health, housing, community services and education.

The Commonwealth Government also has special responsibility for Aboriginal and Torres Strait Islander peoples arising from the development and implementation of national laws and policies, funding for programmes and services and, through the role of ATSIC, to integrate the activities of the governments of Australia.

WESTERN AUSTRALIAN GOVERNMENT

The State Government's responsibilities include power and water, health, housing, education, transport, police and prisons, agriculture, arts, the environment, fisheries, parks and tourism. According to the Hames Report (1995), the State Government is responsible for delivery of these services to all citizens and to ensure equality of access to all, including Aboriginal and Torres Strait Islander peoples.

LOCAL GOVERNMENT

Local Government is responsible for sewerage and drainage, waste disposal, footpaths, community services, libraries and sporting centres, caravan parks and beaches.

Local Government also has special responsibility for local area planning and the practical integration with other governments of Australia in providing services to Indigenous communities.

The State Government's pulling more and more services out of remote areas as the push for privatisation continues — ADA, telecommunications...

Warburton

All levels of Government share the responsibility to co-ordinate the provision of services and to ensure effective, on the ground delivery of these services.

They don't plan for us, they don't listen to us. They must come out and see us, do a proper town plan. We want to change things and live like other people.

Warburton

How many more wets do we have to go through without shelter? Too many government departments have made too many promises which are never carried out. We have been waiting for so long.

Halls Creek

There is no local maintenance team for working on the housing. They come from outside – even for basic things like drain blockages and broken windows

Warburton

STATE HOUSING

The Commonwealth and WA Governments operate under the *Commonwealth-State Housing Agreement* for improving the planning and delivery of Aboriginal and Torres Strait Islander housing. An agreement has also been made to improve Local Government services to Aboriginal and Torres Strait Islander people. ATSIC Regional Councils are also involved in providing housing and essential services.

WESTERN AUSTRALIAN GOVERNMENT

Homeswest

Homeswest is the biggest provider of housing accommodation for Aboriginal and Torres Strait Islander people in WA. This includes renting either Homeswest or Aboriginal Housing Board properties or home ownership schemes. Homeswest has produced a *Customer Charter*. The Charter says:

"Our Promise to You

Courteous and efficient service

Accurate information at all times

Fast counter services

Telephone calls answered within three rings

Telephone calls directed to the right place

A reply to your letters within five days

Prompt repairs to your rental home

Regular contact with tenants at home

Updates on changes affecting you"

Homeswest is supposed to provide a high level of service to Aboriginal and Torres Strait Islander customers. They have employed Supported Housing for Aboriginal People (SHAP) workers in some areas to work with Aboriginal and Torres Strait Islander customers.

Residential Tenancies Act

Homeswest operates like other landlords and is bound by the *Residential Tenancies Act*.

Tenants' Rights

Tenants have the right to privacy and the quiet enjoyment of their house. The landlord cannot just turn up and walk in. The landlord must let the tenant know in advance, and arrange to come at a reasonable time.

Standard of Accommodation

Homeswest tenants have a right to a good standard of accommodation. This means the premises should be as good as the average standard of other houses in the street or town. Standards of accommodation are also based on things like whether the premises are safe, in working order and are hygienic, but not whether the paint is new or the place looks pretty.

Repairs and Maintenance

Homeswest tenants have a right to expect repairs and maintenance of their premises. Homeswest states that they provide a statewide 24 hours a day service for **urgent** repairs to their premises. All Homeswest repairs and maintenance has been contracted out to private industry. If maintenance teams are doing a bad job, complain to Homeswest. All Homeswest contractors have to work to set specifications and if they do not, they should be dismissed. The tenant is obliged to maintain the premises to the same standard as when they moved in.

There is no charge against tenants for 'fair wear and tear' or 'accidental damage' but, if the premises are damaged by someone else, then the tenant may have to pay the costs. The main thing is to tell Homeswest (within 3 days) that there has been damage or that urgent repairs are needed. If someone deliberately damages the premises, it may be necessary to put in a complaint to the Police (and then provide the 'Complaint Number' to Homeswest) to protect the tenant from a bill for damages.

Tenants' Responsibilities

Homeswest tenants are the same as private tenants and are bound by the *Residential Tenancies Act*.

Tenants must:

- pay the rental and other charges
- keep the place clean and tidy
- live peaceably with neighbours

Landlords' Rights

Rental Charges

Homeswest now charges 'market rates'. This means Homeswest tenants have to pay higher rents than previously because rents are now charged according to the town or area the house is in. There is a rent limit of no more than 25% of income (or a maximum of \$180 in expensive places like the Goldfields or the Kimberley).

Rent rebates apply to most Homeswest tenants.

The Village with eight homes has been condemned, the Water Authority is suing for \$4,500 and a number of people are living in the condemned homes. The village is built on low-lying land on a 'Native Reserve' and it floods during the wet season. Electrical wires are exposed. People move to the local community organisation during the wet and sleep on the verandah... the homes are poorly designed... the quality and price of homes don't match – a 21 year old home made of tin and asbestos costs as much as the fibro homes...

Laverton

The houses are located on the flats, no sandbanks are built so they flood... poor design, the shower water runs into the kitchen... some work was done in 1991 by the Homemaker and some Aboriginal women on housing needs and plans... it sits in a cupboard.

Warburton

The houses are not designed properly and not built to adequate safety conditions before people move in, no hot water system in many houses, no air conditioning, no phones in houses, no stoves in many of the Aboriginal houses – we have to build fires in the house to cook dinner. Toilet and shower are outside. Only two rooms – not big enough for families so people sleep outside in the rain and get sick ... whitefellas move into fully furnished homes, finished homes, safe homes – this is different treatment.

Balgo

If you cannot pay your rent, contact the Homeswest Accommodation Manager. Homeswest has to try and sort out a way for you to pay the debt, even if it is a small amount. If you agree to pay a certain amount, stick to your promise, otherwise Homeswest has the right to evict you. If your rent falls behind by more than \$150 they can move you out.

Waiting Lists

Homeswest staff have the right to decide who gets a house, what sort of house, and when the applicant gets it. There are thousands of people in WA on Homeswest's waiting list. There is an average of 18 months wait before getting a house.

Aboriginal and Torres Strait Islander tenants may apply to live in a mainstream Homeswest house, although in rural and remote communities, Homeswest also builds community houses. Tenants have to accept the house that is offered, otherwise they may have to re-apply to join the waiting list.

Evictions

When you move into a Homeswest house you sign an agreement which details your responsibilities as a tenant and Homeswest's responsibilities as an agent. You can be evicted from your home by Homeswest if you do not live up to your part of the agreement.

Section 64 of the *Residential Tenancies Act* allows Homeswest to cancel a tenancy, giving not less than 60 days notice, without giving a reason. However, this Section can only be used for ongoing anti-social behaviour where there are no witnesses, or none are prepared to go to Court to appear against a tenant.

Homeswest are not supposed to use Section 64 unless all steps have been taken to resolve the problem. They must tell the tenant of the decision to take action and the reasons for their decision. They must give the tenant the opportunity to respond to the claims made against the tenant.

Section 62 (rental arrears, other debts) and Section 73 (intentional damage) of the *Residential Tenancies Act* can also be used to evict Homeswest tenants.

For further information contact:

Homeswest Central Office

☎ 08-9222 4666 Fax: 08-9221 1388

or

Regional Offices in WA

Welfare Rights and Advocacy Service

☎ 08-9328 1757 TTY 08-9328 6069

KEY ORGANISATIONS

THE ABORIGINAL HOUSING BOARD

For information on the Aboriginal Housing Board contact the Aboriginal Housing Directorate at Homeswest (Freecall 1800 621 626) OR The Aboriginal Housing Officer in your region.

SHELTER WA

Shelter WA is a peak organisation that seeks to represent the views of community groups and housing consumers on major housing issues with the aim of eliminating homelessness and housing related poverty, by:

- co-ordinating and representing community sector views to government
- developing policies and implementing programmes
- providing education and information
- promoting alternative housing models

The aim of the organisation is to provide a housing system which ensures that every person has access to affordable, appropriate, safe and secure housing and that housing provision is free from discrimination as to nationality or cultural background, language, income, age, gender, marital status, sexuality, religious, political or other circumstance.

Shelter WA is involved in the ongoing review of public housing policy (ie Homeswest), community education, liaising or networking between government and the housing sector and the provision of information to the housing consumer. This work includes involvement with changes to the Commonwealth-State Housing Agreement, State and Federal regulations and representation on various committees including the Housing Advisory Committee, which advises the Minister for Housing and Homeswest's Executive Director on all aspects of housing related policy and practices.

For further information contact:


Shelter WA

 **Claisebrook Lotteries House**

33 Moore Street

East Perth WA 6004

Fax: 08-9325 8113

 **08-9325 6600**

Homes are not designed to cater for people with disabilities. An officer from Homeswest told an Aboriginal person with a disability to use the shower with a commode to go to the toilet, because the toilet provided did not cater for the person with a disability, rather than making a minor adjustment. Let the person feel more shame. The corridors are too narrow and the bath too low...

Broome

A waiting list of three years is too long...

Kununurra

...five years.

Mandurah

People are having to declare bankruptcy ... people who are \$40 in arrears are being evicted and then not allowed to be put on a waiting list ever again...

Bunbury

ATSIC REGIONAL COUNCILS

Regional Councils are involved in decisions about certain areas of housing and essential services funding under the Community Housing and Infrastructure Program (CHIP).

ABORIGINAL AFFAIRS DEPARTMENT

The Aboriginal Affairs Department is responsible for housing and essential services in certain communities that were formerly 'native reserves' or missions.

The local Housing Committee has no power...

Northam

COMPLAINTS PROCEDURE

HOMESWEST

There are a set of standard procedures for making a complaint against Homeswest. The principles of '**natural justice**' and '**procedural fairness**' must be applied to your complaint.

Making a Complaint

Make sure that if you telephone Homeswest, or go to the Homeswest office, your complaint is recorded. It is best to have a witness to back up your complaints.

There are problems but the new manager is trying to start programmes like forming a housing committee.

Mora

You have a right to a clear explanation about the policy or procedure that relates to your complaint.

If the complaint is about the standard of housing or damage, get a Homeswest Accommodation Officer or Property Manager to come out and have a look at it.

The Appeal Process

The Homeswest appeal process is at three levels. You start off at the first and if you are not satisfied with the decision you can go to the next level of appeal. However, you only have twelve months from the time the decision was made to lodge an appeal.

People are so used to the system not being on their side ... knowledge of the complaints process is important.

Aboriginal Housing Board

The First Level

You may request a review of an adverse (gone against you) decision by an independent officer who was not involved in the first decision. You will be given notice of the decision in writing.

Note: You cannot take any decision to the Second or Third Levels if it is being reviewed by the Minister for Housing, the Ombudsman, WA Equal Opportunity Commission (EOC) or if it is subject to court action.

Second Level – Regional Appeals Committee

This is a committee with a senior Homeswest officer and a member of the community as committee members. You can come and tell this committee about your complaint. You will be advised of the result within 30 days of lodging the appeal.

Third Level – Public Housing Review Panel

This is a committee of three independent community members appointed by the Minister for Housing. You will be advised of the result within 30 days of lodging the appeal. However, not all appeals can be heard at this forum, for example, debt. Ask Homeswest to give you a pamphlet about this level.

Other ways you can appeal Homeswest decisions are by approaching the following agencies:

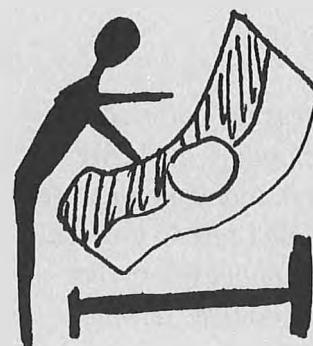
- WA Equal Opportunity Commission
- Human Rights and Equal Opportunity Commission
- State Ombudsman

ESSENTIAL SERVICES

State Cabinet endorses essential services plans for Aboriginal communities:

State Cabinet ministers have endorsed a working party report recommending the 'normalisation' of essential services to Western Australia's permanent Aboriginal communities and town reserves. The State Government also aims to co-ordinate efforts with the Federal Government by entering into a Memorandum of Understanding on service provision...

The Kimberley Echo, October 26, 1995, pp 1,3



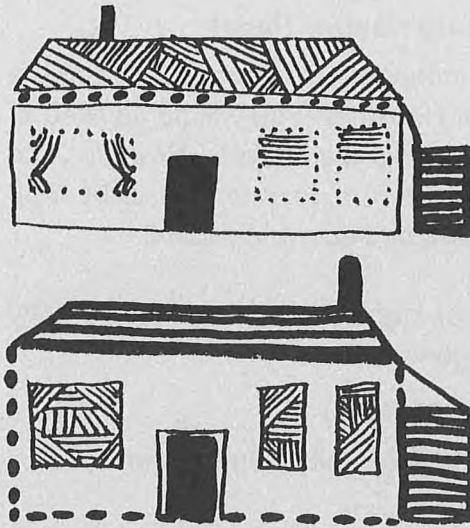
For further information contact:

**Shire Clerk
Local Shire Council Office
address and contact number will be in the front
pages of the phone book**

The Halls Creek Shire took legal action against the Aboriginal Lands Trust because basic essential services (toilet and bathing facilities) were not being provided to Mardiwah Loop Aboriginal community.

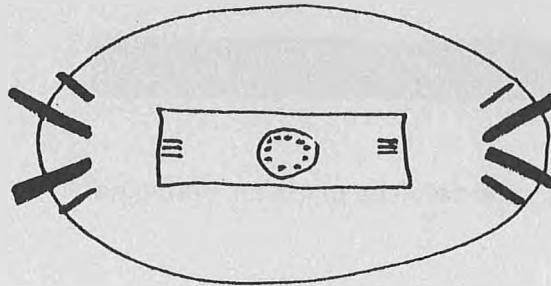
The judgement was against the shire because it found that the Aboriginal Land Trust could not be bound by section 99 of the Western Australian *Health Act* (1911). [For more information see Supreme Court, Perth File No CIV2059 of 1995, Lib No: 960685]

The provision of essential services to remote communities is confusing and inconsistent – some communities are running out of diesel fuel and closing down as a result because of the costs associated with supplying electricity and water. There is no consistency in the amount communities pay for diesel.
Kununurra



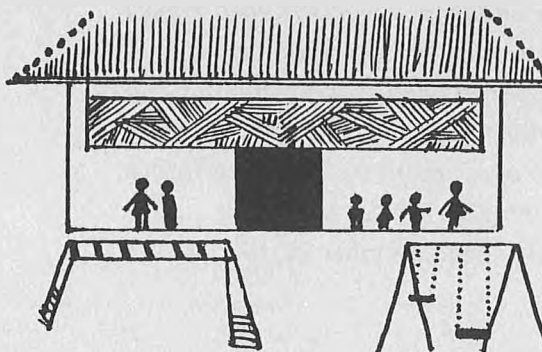
The school at Mulga Queen can only operate for two days each week when a teacher comes out from Laverton. This will not change until they get a bore and a proper house for the teacher.
Mulga Queen

Water is needed in this community...the WAWA came out looking for water but didn't talk to the local people about where they should do their testing.
Patjarr



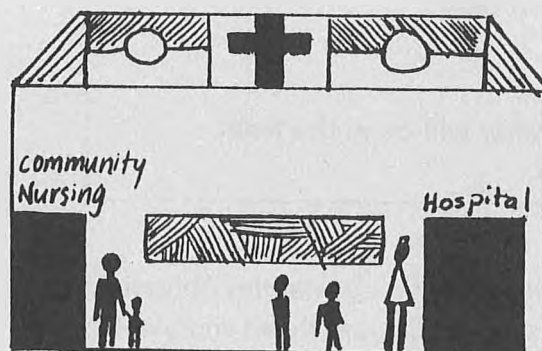
How do you define essential services... Who defines what is essential?
Port Hedland

The shire is not looking after the roads properly and food is getting damaged on the way out.
Cosmo

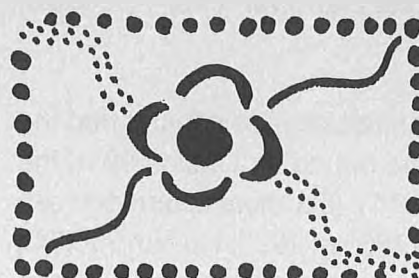


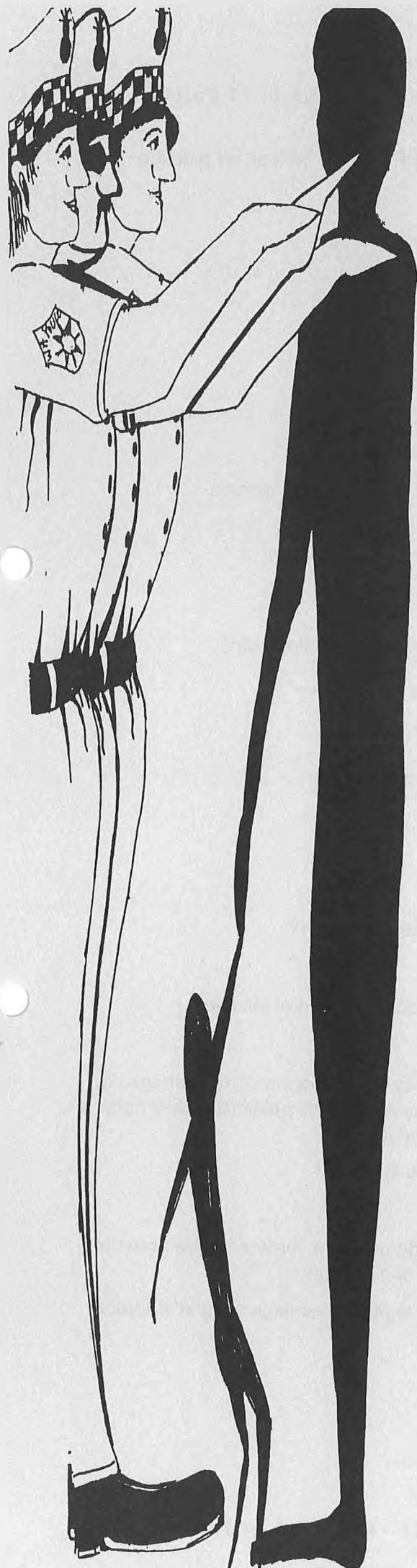
We have no power and public telephones and the road, which is classified as public by the Shire, floods every wet and people can't get into town.
Halls Creek

The people of Mardiwah Loop talked about their rights to basic services: There are no toilet blocks out Mardiwah Loop. AAD and the Shire are in dispute over the money for this. This issue is about the rights of people to proper health care.
Halls Creek



The roads are in poor condition, they are supposed to be graded every six months but they are not.
Mulga Queen





INFORMATION ON KEY RIGHTS

PART 11: POLICE AND THE JUSTICE SYSTEM

HUMAN RIGHTS AND SOCIAL JUSTICE
FOR THE
ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLES
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- 11. Police and the Justice System**



Glossary — What Does It Really Mean?

ARBITRARY	unfair, without consideration of all sides
BREACHES	breaks
COMPLAINANT	a person or body who makes a complaint against someone else or who makes a claim that their rights have been violated
CONTRAvene	to oppose or be in conflict
INDETERMINATE	unclear
JUDICIAL	relating to a judgment of a court of justice or to the administration of a judgment
PROSECUTION	carrying out of legal proceedings against a person

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POLICE AND THE JUSTICE SYSTEM

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POLICE AND THE JUSTICE SYSTEM

RIGHTS

Aboriginal and Torres Strait Islander people in WA have the same right to be treated, while in police custody or in the justice system, with the same respect and decency as are the wider community. Police officers and prison officers have a 'duty of care' responsibility – this means a duty to ensure the safety and welfare of any person arrested and held in custody.

Police regulations require police to treat people properly. Police are not allowed to harass (or rough handle) people or threaten them with harassment just because they do not like them or because of the colour of their skin.

Prison regulations require prison officers to treat people properly. Prison officers are not allowed to discriminate against people or carry out undue or unfair punishments.

WESTERN AUSTRALIA

Rights in Custody

Anyone arrested by police has entitlements which are found in lawful directions given to the police by the Police Commissioner. **Rights in custody** include the:

- Right to make a telephone call to family/friend and legal adviser
- Right to have bail upon reasonable conditions considered without delay
- Right to medical examination and hospital treatment where necessary
- Right (if detained in custody) to have safety and welfare needs determined by police at regular intervals
- Right to be treated in a dignified and humane way
- Right to complain about mistreatment to the Ombudsman and to be provided with material necessary to make the complaint. (See Part 4: Right of Complaint for further information)

Presumption of Innocence

When a person is charged with an offence, which the police suspect they have committed, the general principle is that the person is presumed innocent (that is, not guilty) until proven to be guilty.

The police (or the Crown) have to prove, beyond reasonable doubt, that the person charged is in fact guilty of the offence alleged against them.

Beyond reasonable doubt means exactly that. A magistrate or a jury must be satisfied that the evidence produced by the police (or the Crown) proves the offence beyond a reasonable doubt.

It must be remembered that the person charged has a right to bring their own evidence to prove their innocence or to raise a doubt as to guilt.

If the Crown is not able to prove their case beyond reasonable doubt the charged person must be acquitted of the charge.

INTERNATIONAL

No-one shall be subjected to torture or to cruel, inhuman or denigrating treatment or punishment...

Universal Declaration of Human Rights. Article 5

No-one shall be subjected to arbitrary arrest, detention or exile.

Universal Declaration of Human Rights, Article 9

No-one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence...

International Covenant on Civil and Political Rights,
Article 7, 1

*In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, **the best interests of the child shall be a primary consideration.***

Convention on the Rights of the Child, Article 3

Children should also have:

...protection from physical or mental violence, injury or abuse, neglect, or negligent treatment.

Convention on the Rights of the Child, Article 19

The *International Covenant on Civil and Political Rights* and the *Convention on the Rights of the Child* state that detention should be a sentence of last resort, and that:

- in any case, it should be for the shortest appropriate time
- it should not be arbitrary; it should be tailored to the individual circumstances
- it should not be indeterminate
- it should be capable of judicial review

WESTERN AUSTRALIA: JUVENILE JUSTICE

JUVENILES AND CRIMINAL RESPONSIBILITY

Under 10 Years of Age

A young person under the age of 10 years cannot be charged with a criminal offence because the law says a person of this age does not yet fully understand right and wrong in a criminal sense.

Over 10 Years of Age

A young person over the age of 10 years can be charged because the law says that a person of this age is responsible for what they do. However, it is up to the prosecution to prove the person knew that what they did was wrong.

A young person over the age of 14 years can be charged and it is legally accepted that a person of this age is responsible for their actions and knows the difference between right and wrong.

Serious and Repeat Offenders

The *Young Offenders Act 1994* contains a provision for dealing with a young person who repeatedly commits serious offences. The Director of Public Prosecutions can ask for a Special Order of the Court to add 18 months onto the sentence. The Act directs the court in its sentencing to give primary consideration to the protection of the community ahead of all other considerations. This contravenes Article 3 of the *Convention on the Rights of the Child*.

We need more community policing.

Mandurah and Broome

The police take young boys out to the bush, bash them and leave them there.

Mandurah

BEING QUESTIONED BY POLICE

The police have the power to ask for a young person's name and address if they suspect the person has committed or is about to commit a crime. The person must give their true name and address and does not have to answer any other questions.

BEING ARRESTED BY POLICE

When a young person under the age of 18 years is arrested the police officer must tell the person they are under arrest and why they have been arrested. The police should also tell a responsible adult (such as a parent or guardian) at the earliest opportunity – but the law in WA does not insist they do this. Section 20 of the *Young Offenders Act* requires police, in most cases, to ensure that a responsible adult (such as a parent or guardian) has been given notice of the intention to question the young person about an offence as soon as possible after being taken into custody.

The police must also inform the responsible adult as to:

- the whereabouts of the young person
- the nature of the alleged offence, and
- if possible, the next court date and the process by which the matter is to be brought to court

The police do not have to give notice:

- if they are unable to locate a responsible adult after reasonable inquiry
- where it is inappropriate to give a responsible adult notice

If the police decide not to give notice to the responsible adult, the Chief Executive Officer of the Ministry of Justice must be advised in writing that notice was not given and the reason why notice was not given.

The police may also search young people who are arrested, but a body search must be carried out by a police officer of the same sex. The police may also take fingerprints, organise a doctor to take body samples and take from the young person anything found on them.

The police may also use as much physical force as is reasonably necessary to arrest the young person.

A young person does not legally have to answer questions put by police (apart from giving their name and address), give a statement to police or sign a record of interview. It is generally best to speak with a lawyer before answering questions.

...there is no safe place for kids to go to enjoy themselves without being harassed by police or security guards. In Broome there are 28 liquor outlets and not one youth centre.

Broome

Harassment of Aboriginal kids on the street by police is too common... kids are afraid of dying in custody... they make kids say they are guilty when they are not – by sitting on them.

Broome

What are a parents rights when the police take your child away?

Northam

BAIL

If a young person is granted bail they are released from custody but agree to be released on certain terms. A responsible adult is required to make sure the young person sticks to the bail order. A responsible adult can be a relative or a court appointed worker from the Supervised Bail Program. A young person may also ask the police to arrange transport if they are released on bail after dark.

PUNISHMENT

If a young person is taken into custody, the police can decide what to do about the offence.

A Caution

This is usually a verbal warning and usually for minor, first time offences. A more formal caution is when the police record in writing the details of the offence and give a copy to the young person and his or her relative or responsible adult, either at the police station or at the young person's home.

If a young person receives a caution it is not a criminal conviction.

Referral to a Juvenile Justice Team

The police can also decide to send a young person to a Juvenile Justice Team (JJT). JJTs can decide on suitable punishment. This may be to apologise to the victim, do community work or to pay for the victim's damages or costs.

If the JJT is satisfied the matter is fixed and settled, the young person does not receive a criminal conviction.

Children's Court

A young person can be ordered to appear in the Children's Court to face a charge. The Court can:

- impose no punishment
- impose no punishment if certain conditions are met.
- place the young person and/or a responsible adult on a 'good behaviour bond' for up to 12 months
- place the young person on an 'Intensive Youth Community Based Order', with or without detention
- order the young person to pay a fine up to \$2,000.00 and/or Court costs or restitution
- order the young person to be placed in a Detention Centre, Prison or a Work Camp

Serious Offences

If a young person is charged with a very serious offence like murder, accidental killing (manslaughter) or sexual assault he or she can choose:

- to go before the Children's Court, or
- to have the case heard before a judge and jury in the Supreme Court or District Court as may be appropriate.

WESTERN AUSTRALIA: ADULTS AND THE POLICE

POLICE POWERS OF ARREST

Police officers have wide powers of arrest. Police may arrest in two ways:

1. arrest by obtaining a warrant from a magistrate, judge or justice of the peace – these types of warrants are usually issued when a person has to appear in court or is in breach of the terms of bail or probation; or
2. arrest without a warrant, which is used more often by the police.

Legislation such as the *Criminal Code* and the *Police Act* allow the police to arrest a person without a warrant. However, the law states that they must have good cause to do so.

Search Warrants

For police to search a person's house they must produce a properly signed search warrant. Police can, however, enter your house without a search warrant to make an arrest, if they suspect an offence has been committed, to stop a breach of the peace or if they suspect that illegal drugs are being sold or supplied.

Police can only detain you if you are under arrest. If a person is not under arrest they do not have to go with the police for any questioning.

Police should do three things when making an arrest:

1. tell the person or use words which indicate that the person is under arrest. For example, the police officer should use words such as "you are under arrest". If the arrest is made under a warrant the police should read the warrant aloud. The arrested person may also ask for the police officer to identify him or herself
2. touch (for example, take the arrested person by the arm) or they may instruct the arrested person to stay where they are

...police don't always act on restraining orders and once they took two feuding families out to the bush, blocked off the road and watched as the two groups fought it out. Why is there one rule for white people and another one for us?

Collie

Police walk into peoples homes without knocking and drag people out, and without a warrant...

Wanann, Warburton, Patjar, Irrungadji, Nullagine, Balgo

...they should wait outside peoples gates and show respect for peoples privacy.

Wanann

3. give a reason for the arrest or state the nature of the charge

Once a person is placed under arrest the person should do the following:

1. they should ask "on what charge am I being arrested?"
2. they should not resist an arrest or be abusive. If a person thinks they have been wrongfully arrested they should explain this to a solicitor and the arrest can be challenged in court. Police can use any force necessary to detain a person who resists arrest. It is also an offence to resist arrest.
3. they should ask if they can call relatives, a solicitor or the on-duty ALS Liaison or Field Officer.
4. If the police ask the person to make a statement the arrested person has two options. First, they may make a statement. Second, they may tell the police they do not want to give a statement until they have seen an ALS Liaison or Field Officer or a solicitor. The police have a duty to inform the arrested person that they have a right to remain silent. If the arrested person wishes to remain silent but the police continue to ask questions, the arrested person should answer questions by saying, "I wish to remain silent". If a person chooses to remain silent, the only information they should give is their name and address and nothing more.

It is important to remember that anything said or signed during police questioning may be used as evidence in court.

Note: If the arrested person cannot have an ALS Field Officer or solicitor present, it is not advisable to make statements to police no matter how much the police insist on a statement being given. The arrested person should not sign statements or other documents before they have a chance to get independent legal advice.

If the arrested person has property which is taken by the police, he or she may also request to make arrangements for that property to be left with someone else. Police may hold on to property if it is to be used as evidence of an offence.

BEING INJURED BY POLICE

If a person is injured during or after an arrest, the arrested person should:

- tell the officer in charge of the police station or lockup as soon as possible
- write down what actually happened

- seek medical attention and have a doctor examine the extent of the injury
- try and take some clear photographs of the injuries
- see a solicitor as soon as possible
- make a written complaint to the Commissioner of Police and the State Ombudsman

BAIL

Once a person is arrested they are entitled to have a bail application considered by the police. An arrested person can apply for bail in two situations. First, if they are taken to the police watch-house and second, if they appear before a magistrate.

Watch-house Bail

A person may be taken to the watch-house once they are arrested. The *Bail Act* gives certain police officers (usually the officer in charge) the discretion to release the arrested person on bail. Section 64 of the *Justice Act* states that a person who is arrested without a warrant must be brought before a court as soon as practicable after he or she is taken into custody. The arrested person has a right to have a bail application considered by the police if the offence is not very serious. Section 6(1) of the *Bail Act* states that the arrested person has this right even if they do not make an application for bail. However, Section 6(2) of the Act states that if a person (including a child) is held in custody for a more serious crime, such as wilful murder, only a Judge of the Supreme Court or Children's Court can hear and grant a bail application.

Section 16 of the *Bail Act* states that if a person is arrested under a warrant, he or she cannot apply for or be granted bail until he or she is brought before a court. Section 16(2) of the Act states that if a person has been arrested under a warrant because they are in breach of bail conditions he or she cannot have a further bail application considered.

Court Bail

If a person is not granted watch-house bail they may apply for bail when they appear before the court. The court will take into account a number of factors, including the seriousness of the offence, previous bail record, employment and family commitments.

If bail is granted it may be set in a number of ways:

Rapists and murderers go in to Kalgoorlie remand and are bailed – they walk out but we walk in and have to stay in for drinking charges.

Warburton

...people who ask for bail are told to be quiet because they are being too cheeky or else they get time added to their sentence

Irrungadji, Nullogine

...in the lock-up the mattresses are unclean, Aboriginal people have to share mattresses, non-Aboriginal people don't share – blankets are old and dirty, we have to share towels, the cell is full of cockroaches and mice, people have head lice... no privacy for men – we shower in the open hall where women can see, people have to stand up because it is too crowded...

Warburton

- **Cash Bail.** The police officer can request an amount of money from the person who was arrested. If the person does not have enough money they can ask someone else to pay the cash bail.
- **Released On Own Undertaking.** The police or court will have the person who was arrested sign an agreement (make a promise) that they will appear in court at a certain time, date and place.

If the person does not attend court the magistrate will issue a warrant for their arrest. If a cash amount was set for bail, the arrested person may forfeit that amount if they have breached the terms of the bail agreement.
- **Surety.** The court may require someone to go surety for the arrested person before they can be released. This means that someone else has agreed to pay the court the amount of bail set if the arrested person fails to appear in court.

If a person is granted bail, they must abide by the terms and conditions of the bail agreement. If the bail terms are breached, the person commits an offence and may be detained in custody. Further bail may be difficult to get.

WESTERN AUSTRALIAN: MINISTRY OF JUSTICE

The Ministry of Justice has been to some of the schools for a few hours to talk about school behaviour – there should be more.

Mandurah

PRISON POLICIES AND PROCEDURES

The Ministry of Justice Charter, in part, sets standards for dealing with the Aboriginal and Torres Strait Islander community:

...the Aboriginal community will be consulted about Ministry policies and will receive support from the Ministry to ensure they are not disadvantaged in accessing justice services... and

Through the Aboriginal Visitors Scheme, support will be provided to Aboriginal prisoners and juveniles in the metropolitan and most regional areas.

The new warden system may positively affect police/community relations.

Balgo

In general terms, this means that procedural fairness applies to people in prison and to prison discipline.

Under the *Prisons Act 1981* there are provisions for complaints by prisoners to be investigated. Sections 35, 55 and 67 of the *Prisons Act* apply. The Director-General's Corrective Services Rule 2G applies.

The *Child Welfare Act* has provisions for Visiting Magistrates to hear complaints. Executive Director Juveniles Justice Rule 205 applies.

In addition, each prison operates its own set of Standing Orders regarding prisoner rights and complaints procedures.

The Ministry of Justice has also made a commitment to the training of all Ministry staff in Aboriginal and Torres Strait Islander cultural matters.

For more information contact:

**The Senior Aboriginal Policy Officer
Ministry of Justice**



P O Box F317

Perth WA 6001



08-9426 8631

08-9426 8632

ABORIGINAL VISITORS SCHEME

The Aboriginal Visitors Scheme (AVS) is controlled by the Ministry of Justice. The AVS is a scheme where Aboriginal people visit detainees, whether sentenced or not, in police lock-ups, prisons and juvenile detention centres. The Scheme helps detainees who are at risk and provides them with support.

The AVS now operates in eight regions – Albany, Bunbury, Perth, Kalgoorlie, Geraldton, Meekatharra, Roebourne and Broome.

For further information contact:

Manager, Aboriginal Visitors Scheme



08-9325 9088

ABORIGINAL ALTERNATIVE DISPUTES RESOLUTION SERVICE

The Aboriginal Alternative Disputes Resolution Service (AADRS) is controlled by the Ministry of Justice. The AADRS provides an alternative to the courts for the resolution of disputes between Aboriginal people and Torres Strait Islanders. This includes mediation directed at helping people to reach settlements without the courts getting involved.

Mediation... lets us keep that ownership, it lets us keep that responsibility and that way when we walk away from something, we know that it's going to work or not because we were there, we decided what was going to happen so we have no one else to blame.

**Robin Thorne, WA
NCEP Mediation Tape**

...if you have something that dominates your life to the extent that feuding does you shouldn't let the other people speak for you. ...Mediation gives you an opportunity to sit down across from that other person... if you decide that that's the best way for you to resolve your problems, to sit down opposite this other person, find out what they really want and listen to what they are really saying... you can look at their eyes, you can look at their face, you can read their body language and you decide whether you believe they are telling the truth or not.

Robin Thorne, WA
NCEP Mediation Tape

For further information contact:

Aboriginal Alternative Disputes Resolution Service

☎ 08-9221 4599 Fax: 08-9325 9194

Mediation is not the solution for all the problems people experience. It gives people a chance to work things out and get things off their chest... really it is just people sitting down and having a yarn eh? and talking about things.

NCEP Mediation Tape

The NCEP has produced a radio documentary feature where people talk about experiences with different types of mediation. There is an audio-cassette tape called "Working It Out Locally" that you can use.

KEY ORGANISATIONS

ABORIGINAL JUSTICE COUNCIL

The Aboriginal Justice Council (AJC) has been established in WA, arising from recommendations of the *Royal Commission into Aboriginal Deaths in Custody* (RCIADIC).

The RCIADIC was established to look at the causes of the deaths of Aboriginal and Torres Strait Islander people in police lock-ups and prisons. The Royal Commission found that the main reason for the large number of Aboriginal and Torres Strait Islander deaths in custody was the unreasonable rate of arrest and imprisonment. The AJC role is to try and sort out this situation.

Regional AJCs are being formed around WA to provide assistance for grass-roots Aboriginal and Torres Strait Islander community justice initiatives and to negotiate resolution of conflicts at the local level. AJCs strongly support the community patrol scheme and the warden scheme which operates under the *Aboriginal Communities Act*.

For further information contact:

Aboriginal Justice Council Secretariat

Aboriginal Affairs Department

☎ 08-9235 8050 Fax: 08-9235 8088

Watch Committee

☎ 08-9328 5316

MINISTER'S COUNCIL ON ABORIGINAL/POLICE COMMUNITY RELATIONS

The Police Service in WA is currently changing its purpose and direction through a major restructuring and 'regionalising' of its operations, called the Delta Program. Aboriginal affairs is being integrated into the new structure to give police and community relations a higher profile in the regions.

The new Council will be the peak advisory body to the Minister and the Commissioner of Police on the most effective measures for improving relationships between the Police Service and the Aboriginal and Torres Strait Islander community. The new Council will replace the old Aboriginal/Police and Community Relations Committees which operated around the state.

For further information contact:

**The Executive Officer for the Secretariat
Minister's Council on Aboriginal Police Community
Relations**

☎ 08-9221 9777

COMPLAINTS PROCEDURE

COMPLAINTS ABOUT POLICE

Ombudsman

The Ombudsman can investigate complaints about the administration of the Police Service and the conduct of police officers.

However, when making a complaint about police, the Commissioner of Police will be the first person to investigate the complaint. This is usually carried out by the Internal Investigations Branch. A police officer will interview the person making the complaint. The investigation by police is usually completed within 42 days of receiving the complaint. The Ombudsman may, in some cases, assess the adequacy of the police investigation. Once the investigations are completed, the Commissioner of Police will notify the complainant in writing of the result. If a person is not satisfied with the outcome of the Police Commissioner's findings they may contact the Ombudsman who can require further inquiries to be made by the police or may conduct a separate investigation into the complaint. The Ombudsman can commence an investigation under the *Parliamentary Commissioners Act*.

*It should be done in a way which
uses facilitation and mediation.
It must be done in a way that
allows the community to talk
and it must be done by
Noongars. The work of Robin
Thorne and Leon is great.*

Bunbury

*...in the office of two separate
Sergeants we noticed a map of
the area with all of the
Aboriginal houses marked with
a red spot...*

Mandurah

*We are concerned about the role
of the Aboriginal police aide.*

Cosmo, Leonora

The police hassle people in town – asking them to move on after they have come to town for a funeral, they think you come for a day and then leave, they don't understand your obligations.

Leonora

The Laverton Police patrol covers an area of 3,200kms...police are trying to initiate pro-active activities like blue light discos—being a regular presence in communities not just people who breeze in and out with bad news and rough treatment; handling drivers licenses and firearms licences for example...

Warburton, Laverton

There is poor health care in prisons. Noongars are often given panadol for chest pain when the prisoner has a history of heart problems...

Northam

Commissioner of Police

A formal complaint against the police may be sent directly to the Commissioner of Police. The letter should contain:

- the name and address of the person making the complaint (the complainant)
- the nature of the complaint (eg the police officer's behaviour, the police officer's remarks, that an assault has taken place)
- the date, time, place and the names of the witnesses and other people involved
- the name or number, if possible, of the police officer involved.

The complainant should also **keep copies** of any letters or statements sent to the Police Commissioner in case they are needed as evidence later on.

Police Harassment

Although it is a serious disciplinary offence for a police officer to take any action against a complainant, police in WA do not have to answer questions about criminal conduct which may be self-incriminating.

There is a general procedure in WA that complaints against the police are handled by the ALS. Advice should be sought from the ALS in considering your best course of action. All complaints should be made as soon as possible after the incident.

COMPLAINTS ABOUT PRISONS

The Prisons Act

The *Prisons Act* (Section 67) allows any letter written by a prisoner and properly addressed to the Minister or the Chief Executive Officer or the Ombudsman not to be opened, and to be sent by the superintendent at the earliest opportunity.

Section 67(2) allows the superintendent or other authorised officers to open and read or inspect any other letters or parcels.

The letter should be sent to the person it is addressed to. However, if the superintendent is of the opinion that the letter or parcel:

1. may jeopardise the good order or security of a prison
2. contains a threat to person or property, or
3. contains a code

the letter may be returned to the prisoner or destroyed.

The Ombudsman

The Ombudsman can investigate complaints by prisoners. The normal procedure is for a complaint to first be put to the superintendent of the prison or the Chief Executive Officer of the Ministry of Justice, as outlined above. Section 17(A) of the *Parliamentary Commissioners Act 1971* provides for letters of complaint from a prisoner to be delivered to the Ombudsman in a sealed envelope, without unnecessary delay. A letter from the Ombudsman to a prisoner should be delivered in a sealed envelope without undue delay.

Aboriginal law is important and it should be listened to – for murders and other things – tribal punishment should be used first then other law if necessary.

Balgo

...the elder women told the magistrate that a number of Aboriginal women were preparing to go through law at the same time they were to appear before him. They said how can they go through your law if they haven't been through their own. The hearings were postponed

Kununurra