

AGREEMENT BETWEEN THE COMMONWEALTH OF AUSTRALIA
AND THE AUSTRALIAN CAPITAL TERRITORY CONCERNING
THE ADMINISTRATION OF THE AUSTRALIAN CAPITAL
TERRITORY HUMAN RIGHTS OFFICE

THIS AGREEMENT is made the *20th* day of *December* 1991

BETWEEN:

THE COMMONWEALTH OF AUSTRALIA (in this Agreement called
"the Commonwealth")

AND:

THE AUSTRALIAN CAPITAL TERRITORY (in this Agreement called "the ACT")

WHEREAS:

- A** The Commonwealth has established the Human Rights and Equal Opportunity Commission to perform certain functions including the investigation and conciliation of complaints of discrimination as prescribed under the Sex Discrimination Act 1984, the Racial Discrimination Act 1975 and the Human Rights and Equal Opportunity Commission Act 1986;
- B** The ACT is establishing the ACT Human Rights Office to administer the Discrimination Act 1991, having certain functions including the investigation and conciliation of complaints of discrimination as prescribed under the Discrimination Act 1991;



- C. Pursuant to section 16(1)(c) of the Human Rights and Equal Opportunity Commission Act 1986, and section 124 of the ACT Discrimination Act 1991 the parties wish to enter into an arrangement whereby the Human Rights and Equal Opportunity Commission will undertake certain functions, on behalf of the ACT under the ACT Discrimination Act; and
- D. In consideration of the Commonwealth undertaking the functions as specified in paragraph C, the ACT will contribute certain sums.

IT IS AGREED AS FOLLOWS:

1. Interpretation

- 1.1 In this Agreement unless the context otherwise requires or the contrary intention appears:

"ACT" means the Australian Capital Territory, a body politic established pursuant to Section 7 of the Self Government Act 1988 (Cmth);

"ACT Act" means the Discrimination Act 1991;

"ACT DC" means the ACT Discrimination Commissioner appointed under the Discrimination Act 1991;

"Agreement" means this document together with any Annexures hereto;



"Attorney-General" means the Attorney-General for the Australian Capital Territory or such other Minister as shall have the responsibility for the matters to which this Agreement relates;

"Office of Community Advocate" means the Office established to administer the ACT Community Advocate Act 1991;

"Commonwealth Acts" means the Sex Discrimination Act 1984, the Racial Discrimination Act 1975 and the Human Rights and Equal Opportunity Commission Act 1986;

"HREOC" means the Human Rights and Equal Opportunity Commission established under section 7 of the Human Rights and Equal Opportunity Commission Act 1986;

"Human Rights Office" means an office established pursuant to this Agreement for the administration of the functions of the ACT DC and HREOC; and

"Promotional Material" includes all print and electronic literature, publications, letterhead, forms, notices and signs used by HREOC to promote the services provided by HREOC under the Commonwealth Acts or the ACT Act.



1.2 In this Agreement, unless the context otherwise requires or a contrary intention appears:-

- (a) a reference to a person includes a reference to corporations and other entities recognised by law; and
- (b) the singular includes the plural and vice versa.

1.3 The headings to the clauses herein have been inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of any of the terms and conditions of this Agreement.

1.4 In the case of any inconsistency between the Annexures and a clause contained in this document, the provisions of the clause shall prevail to the extent of any inconsistency.

2. Objectives

2.1 The objectives of the arrangement provided for under this Agreement are:-

- (a) to provide one point of contact for advice and for the handling of complaints under both the Commonwealth Acts and the ACT Act;
- (b) to facilitate the efficient and economic handling of complaints by ensuring that available remedies are used in an effective and co-ordinated way;



(c) to make the experience and expertise of the Commonwealth and the ACT instrumentalities mutually available; and

(d) to promote the activities of the Human Rights Office administering the Commonwealth Acts and the ACT Act.

2.2 The Commonwealth agrees that it is responsible for the performance by HREOC of the terms and conditions of this Agreement, and agrees to make every endeavour to ensure that HREOC complies with the terms and conditions of this Agreement.

3. Term

3.1 This Agreement shall commence on the date of execution of this Agreement and continue for a term of 5 years from that date, unless sooner terminated pursuant to the terms of this Agreement.

4. Functions to be Performed by HREOC

4.1 HREOC is authorised to perform the functions of the ACT DC in respect of:

(a) the provision to members of the public of information and advice on the ACT Act;



(b) the receipt, investigation and conciliation where appropriate of complaints lodged under the ACT Act; and

(c) assisting in the other functions of the ACT DC under the ACT Act.

4.2 A person shall be selected and appointed by the ACT Executive to the position of ACT DC after consultation with the Commonwealth.

4.3 The ACT shall -

(a) arrange and subject to the approval of the Commonwealth secure suitable premises for the location of the Human Rights Office which shall be collocated with the Office of Community Advocate; and

(b) arrange for appropriate venues for hearings which are conducted by the ACT DC.

4.4 HREOC shall arrange for sufficient staffing for the Human Rights Office established pursuant to this Agreement in order that HREOC may perform the functions required of it under this Agreement and in particular shall comply with the requirements specified in Annexure A.



5. Procedure

5.1 HREOC shall perform the functions of the ACT DC in relation to the handling of complaints as specified in the ACT Act.

5.2 Subject to any legislation to the contrary, HREOC shall promptly notify the Attorney-General of the receipt of any complaint where:-

(a) the outcome of the complaint is likely to require changes in any aspect of the operations of the administration of any Department or Agency of the ACT or to legislation;

(b) a significant point of ACT law is involved;

(c) an issue relating to the policies of the ACT is raised; or

(d) the operations of any Department or Agency of the ACT is involved.

5.3 Subject to the any legislation to the contrary, HREOC shall promptly advise the Attorney-General where there is a possibility of controversy or public sensitivity in relation to any complaint made under the ACT Act.

5.4 Where HREOC requires advice of a legal or policy nature concerning the ACT Act HREOC shall refer the matter to the Attorney-General.



5.5 Subject to the confidentiality requirements of the ACT Act and the Commonwealth Acts the ACT may have observers at HREOC's management meetings held in respect of the Human Rights Office, and for this purpose HREOC shall notify the Attorney-General not less than two working days in advance of the time and venue for each internal management meeting.

6. Promotional Material

6.1 The Commonwealth shall use its best endeavours to ensure that the public is informed that HREOC acts on behalf of the ACT in relation to the functions specified in clause 4, and shall generally promote the ACT DC's programs, projects and activities.

6.2 Unless otherwise agreed in writing no Promotional Material (other than material associated with the Privacy Act 1988) shall be used by HREOC in the ACT which does not identify the Human Rights Office as administering functions under both the Commonwealth Acts and the ACT Act.

6.3 All Promotional Material shall contain the logo, and shall be produced in the format, agreed upon by the parties.



7. Reporting

7.1 HREOC shall in respect of the operation of the Human Rights Office provide the Attorney-General with:-

- (a) a monthly report from the Human Rights Office containing at least the information specified in Annexure B;
- (b) a quarterly report from the Human Rights Office within 14 days of the end of each quarter, the first quarter ending on 31 March 1992 containing at least the information specified in Annexure B;
- (c) an annual operational plan and a three yearly corporate plan in a form approved by the Attorney-General;
- (d) a copy of HREOC's draft annual report within two months of the end of the financial year, and three copies of the final report promptly upon it being available for tabling; and
- (e) an authorised financial statement of expenditure of the Human Rights Office in respect of both the administration of the ACT Act and the Commonwealth Acts promptly after the end of the financial year.

7.2 The draft annual report referred to in subclause 1(d) shall contain a separate division exclusively reporting in relation to



the performance by HREOC of the functions of the ACT DC under this Agreement.

7.3 The division of the annual report referred to in subclause 7.2 shall accurately reflect the position of the Human Rights Office and accord with any ACT legislation or ACT Government policy direction as to the manner in which annual reports are to be presented.

7.4 For the purposes of statistical reporting in respect of the operation of the Human Rights Office:-

(a) only matters which are accepted as complaints under the ACT Act are to be recorded as such and matters which are found to fall outside the jurisdiction of the ACT Act are to be recorded separately; and

(b) no complaint shall be accepted and registered as a complaint under both the ACT Act and the Commonwealth Acts.

7.5 The Attorney-General shall table the whole of the annual report provided by HREOC in the ACT Legislative Assembly. HREOC shall provide to the Attorney-General upon request and at no cost 200 copies of the whole annual report for use at the Attorney-General's discretion and such further copies as the Attorney-General may require for tabling and parliamentary requirements.



8. Recurrent Funding

8.1 The estimated full year cost of the Human Rights Office for 1991-92 is \$251,000.00 as set out in Annexure E. The ACT will make a 50% pro rata payment for 1991-92 calculated from the date of signing this Agreement.

8.2 Subject to this clause the amount payable by the ACT in each subsequent year in the term of the Agreement, shall be calculated in accordance with the formula specified in Annexure C, and shall be paid to the Commonwealth quarterly in advance.

8.3 An amount to cover the annual additional costs associated with hearings under the ACT Act will be negotiated between the Commonwealth and the ACT prior to the beginning of the 1992-93 financial year. This amount will be added to the amount payable by the ACT under subclause 2.

8.4 Funding to be provided by the ACT in each financial year of the term of this Agreement shall -

- (a) unless otherwise agreed exclude any and all expenditure associated with inquiries held by HREOC under Part III Division 3 of the Racial Discrimination Act 1975, Part III Division 3 of the Sex Discrimination Act 1984 and under sub section 11(1) of the Human Rights and Equal Opportunity Commission Act 1986:
and



- (b) exclude all expenditure associated with the conduct of hearings under the Commonwealth Acts.

8.5 In the event that the amount paid by the ACT in any financial year -

- (a) exceeds the amount specified in subclause 2; or
- (b) the amount paid by the ACT pursuant to subclause 2 is not fully expended by HREOC on costs associated with the performance of the obligations under this Agreement.

a reduction corresponding to the excess amount paid shall be made to the amount payable by the ACT in the following financial year. Where there will be no following year the excess amount paid shall be refunded by the Commonwealth to the ACT.

8.6 The Commonwealth agrees that its contribution to the funding of the Human Rights Office shall also be adjusted each year during the term of the Agreement in accordance with the formula specified in Annexure C.



9. Establishment and Other Costs

- 9.1** The Commonwealth shall make a one off payment to the ACT for part of the costs incurred in the fitout and establishment of the Human Rights Office and associated Commonwealth offices collocated with it in the GIO Building. The capital costs of fitout and establishment for those offices in North Building will be paid by the ACT.
- 9.2** The Commonwealth shall be responsible for 100% of the costs of any of its functions other than those performed by HREOC under this Agreement.
- 9.3** HREOC and the ACT agree to collocate the Office of Community Advocate with the Human Rights Office.
- 9.4** Except as provided in this Agreement, the ACT shall not be liable for the payment of any further costs, expenses or charges in relation to or in connection with the performance by HREOC of the functions and duties specified in this Agreement.
- 9.5** In the event that there is an extra-ordinary increase in any costs associated with the operation of the Human Rights Office or any additional costs arise of a one-off nature, which are not accounted for in the calculation of any monies payable by the ACT under this Agreement (which costs could include rent and employee costs), the Commonwealth may notify the ACT of the nature and extent of the increase in costs, and the



ACT will consider increasing the funding payable under this Agreement.

10. Extension of Services

10.1 Should the ACT amend or enact legislation requiring any variation of services provided by HREOC on behalf of the ACT any variation of services will not be undertaken without further negotiation and any necessary adjustment of funding.

11. Consultation and Co-operation

11.1 Each party agrees to consult with the other party on matters of mutual interest and concern.

11.2 HREOC agrees to permit an officer of the ACT Government Service to work in association with HREOC in the performance of the provisions of this Agreement, in order that the officer may become familiar with the procedures associated with the administration of the ACT Act. An officer in such a position shall observe the confidentiality requirements of HREOC and any Commonwealth legislation in relation to information obtained in the course of the officer's work with HREOC.

12. Conflict of Interest

12.1 Consistent with the provisions of this Agreement, it shall be part of the functions of the Human Rights Office to promote in



the ACT the objects of both the ACT Act and the Commonwealth Acts.

12.2 In the event of a conflict of interest arising in the performance of the Human Rights Office functions, HREOC shall immediately inform the Attorney-General of the fact and those parties shall convene a meeting with a view to resolving the issue.

13. Dispute Resolution

13.1 Where either party to this Agreement considers that there is a dispute over the terms and conditions or operation of this Agreement, that party may give notice to the other party specifying the nature of the matter in dispute.

13.2 Upon notice being given in accordance with this clause, the Attorneys-General for the ACT and the Commonwealth or their duly authorised delegates will meet to discuss the matter and endeavour to resolve the dispute.

14. Termination

14.1 Either party may terminate this Agreement at any time by giving notice in writing to the other party of not less than twelve months from the date on which notice is given.

14.2 If this Agreement is terminated by either party under this clause and the other party is affected by the termination then



the terminating party will pay to the other party such sum of money as both parties agree upon as adequate compensation for the other party.

14.3 Upon termination by either party of this Agreement HREOC shall take all reasonable steps to facilitate an efficient transfer to the ACT of the functions undertaken by HREOC under this Agreement, and in particular HREOC shall -

- (a) promptly provide on request by the ACT all documentation in its possession which is necessary to allow the ACT to immediately take over outstanding complaints made to HREOC under the ACT Act;
- (b) train officers nominated by the ACT in the procedures associated with the administration of the ACT Act; and
- (c) negotiate in good faith for the transfer of such staff, materials and premises to the ACT as are necessary to enable the ACT to resume the administration of the ACT Act.

15. Employees

15.1 No personnel assigned by HREOC to perform any of the functions associated with the administration of the ACT Act under this Agreement shall be or become employees of the ACT unless they are on temporary transfer from the ACT to HREOC.



15.2 The Commonwealth shall be responsible for effecting all insurances and for all other such action required of an employer in relation to personnel assigned by HREOC to perform functions associated with the administration of the ACT Act under this Agreement.

16. Governing Law

16.1 This Agreement will be governed by and construed according to the laws of the ACT.

17. Justiciability

17.1 It is expressly agreed that it is intended by this Agreement to create a legally binding relationship between the parties.

18. Waiver

18.1 No right under this Agreement shall be deemed to be waived except by notice in writing signed by each party.

19. Variation of Agreement

19.1 This Agreement may be varied at any time by an agreement in writing executed by both parties.

19.2 It shall be sufficient evidence of an agreement to vary an Annexure to this Agreement, if the Attorneys-General for the



ACT and the Commonwealth execute and date a document purporting to be a substitute Annexure.

20. Severability

20.1 In the event that any or any part of the terms or conditions of this Agreement shall be determined as being invalid unlawful or unenforceable wholly or to any lesser extent, such term or condition to the extent that it is invalid unlawful or unenforceable shall be severed from the remaining terms and conditions and the remaining terms and conditions shall continue to be valid and enforceable to the fullest extent permitted by law.

21. Notices

21.1 Notices under this Agreement may be delivered by hand, by registered mail, by telex or by facsimile to the addresses specified in Annexure D.

21.2 Notice will be deemed to be given:-

(a) two (2) days after deposit in the mail with postage prepaid;

(b) when delivered by hand; or

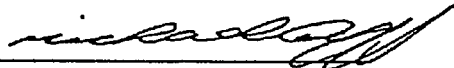


(c) if sent by facsimile transmission, upon an apparently successful transmission being noted by the sender's facsimile machine,

as the case may be.

IN WITNESS WHEREOF this Agreement is executed

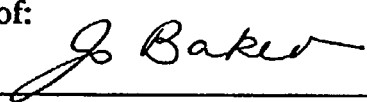
SIGNED for and on behalf of the
COMMONWEALTH OF AUSTRALIA
this 21st day of December 1991
by **MICHAEL DUFFY** Attorney-General
of the Commonwealth of Australia
in the presence of:

)
)
) 
)
)
)



SIGNED for and on behalf of the
AUSTRALIAN CAPITAL TERRITORY
this 19th day of December 1991
by **TERENCE CONNOLLY** Attorney General
of the Australian Capital Territory
in the presence of:

)
)
) 
)
)
)



ANNEXURE A

STAFF

1. The ACT Executive shall appoint the ACT Discrimination Commissioner after consultation with the Commonwealth.

2. Staff will be employed by HREOC in the Human Rights Office. Permanent staff levels should be reviewed annually and jointly agreed.

ANNEXURE B

REPORTING REQUIREMENTS

Monthly Report [Clause 7.1(a)]

The monthly report to be prepared by the Human Rights Office shall contain information, including statistics relating to written enquiries and complaints on hand at the commencement of the month, those received during the month and those closed (including information as to the outcome of the complaint) during the month under both the ACT Act and the Commonwealth Acts.

Quarterly Report [Clause 7.1.(b)]

Unless otherwise agreed by the ACT, the quarterly report to be prepared by HREOC shall contain information, including statistics concerning the administration of complaints under both the ACT Act and the Commonwealth Acts including:-

- (a) all information provided by the Human Rights Office to HREOC's head office;
- (b) all reports and information relevant to the Human Rights Office or the ACT Act provided by HREOC to the Commonwealth Attorney-General;

- (c) details of the amount of time that elapses from the date of receipt of complaints to the finalisation of matters;
- (d) finance reports in respect of the Human Rights Office detailing the total operating cost of the office; and
- (e) such other information requested by the ACT and agreed upon by the Commonwealth.

ANNEXURE C**FUNDING FORMULAE****ACT Funding Formula**

$$B + (B \times Y) + A_n + (A_n \times Y_n) - Z = C$$

Where

B = the full year cost of the amount contributed by the ACT for the first year of the term of the Agreement.

Y = the percentage increase in the Consumer Price Index (Canberra) All Groups issued by the Australian Bureau of Statistics between the date of commencement of this Agreement and the June quarter immediately preceding the relevant financial year of the term of the Agreement.

A_n = any budgetary enhancement for operational activity as determined by the ACT where 'n' is the relevant financial year of the budgetary enhancement.

Y_n = the percentage increase in the Consumer Price Index (Canberra) All Groups issued by the Australian Bureau of Statistics between the June quarter immediately preceding the financial year of the budgetary

enhancement and the June quarter immediately preceding the relevant financial year of the term of the Agreement and where 'n' is the relevant financial year of the budgetary enhancement.

Z = the Territory Budgetary Savings to the ACT Public Sector as determined by the ACT.

C = the amount of funding to be provided by the ACT for the relevant financial year of the term of the Agreement.

Commonwealth Funding Formula

$$B + (B \times Y) + A_n + (A_n \times Y_n) - Z = C$$

Where

B = the full year cost of the amount contributed by the Commonwealth for the first year of the term of the Agreement.

Y = the percentage increase in the Consumer Price Index (Canberra) All Groups issued by the Australian Bureau of Statistics between the date of commencement of this Agreement and the June quarter immediately preceding the relevant financial year of the term of the Agreement.

A_n = any budgetary enhancement for operational activity, as determined by the Commonwealth where 'n' is the relevant financial year of the budgetary enhancement.

Y_n = the percentage increase in the Consumer Price Index (Canberra) All Groups issued by the Australian Bureau of Statistics between the June quarter immediately preceding the financial year of the budgetary enhancement and the June quarter immediately preceding the relevant financial year of the term of the Agreement and where 'n' is the relevant financial year of the budgetary enhancement.

Z = the Commonwealth Efficiency Dividend to the Commonwealth Public Sector as determined by the Commonwealth Department of Finance.

C = the amount of funding to be provided by the Commonwealth for the relevant financial year of the term of the Agreement.

ANNEXURE D

NOTICES

The address for service of the ACT is:

The Secretary
Attorney-General's Department
GPO Box 158
CANBERRA ACT 2601

Facsimile Number: 2744357

Contact Person: Mr C. Hunt

Telephone Number: 2744301

The address for service of the Commonwealth is:

The Secretary
The Human Rights and Equal Opportunity Commission
American Express Building
388 George Street
SYDNEY NSW 2000

GPO Box 5218
SYDNEY NSW 2001

Facsimile Number: (02) 229 7611

Contact Person: The Secretary

Telephone Number: (02) 229 7605

ANNEXURE E**FULL YEAR COST OF THE OFFICE FOR 1991-92**

Salaries	\$ 130,800.00
Salary - on - costs (12%)	\$ 15,696.00
Administrative/operational expenses*	\$ 64,092.00
Rent	\$ 28,056.00
Car parking space	\$ 2,000.00
Car leasing	\$ 5,214.00
Commissioner's Travel	\$ <u>5,000.00</u>
	\$ 250,858.00
TOTAL (rounded)	\$ <u>251,000.00</u>

*Administrative/operational expenses are calculated as 49% of salary costs. This amount includes provision for travel, post, telephone, office equipment and stores, furniture and fittings, computer services, fuel, light, power, consultants, Comcare premia, superannuation and incidental expenses. This amount also includes provision for partial reimbursement to HREOC of monies expended at the head office of HREOC in Sydney for the benefit of the ACT to a maximum of 3% of the total operating budget of the Human Rights Office.