



Castan Centre for Human Rights Law

Newsletter

Volume 2, Issue 1

February 2003

Inside this Issue

- 1** Director's Notes
- 2** Letter from Geneva
- 3** Letter from America
- 4** Events & News
- 5** Teaching, Internships, Student Placements & Scholarships
- 6** Publications, Reports & Submissions
- 7** Conference Papers, Public Speeches, Project & Grants
- 8** Centre Personnel & Member Profile

Having established a solid foundation over the past 2 years or so, I feel that the Centre is now gaining a greater sense of security, direction and confidence. Its spread of activities has not lessened any and the enthusiasm, energy and invention of all involved in the Centre's work has not waned. However, we are now, collectively, a little clearer on what we want to achieve and how we want to go about achieving it.

Our range and depth of research publications, speeches and conference papers, public submissions and commentary remain top priorities and the Castan staff members can be rightly proud of what they continue to achieve in this respect. The variety of attractive human rights units offered by Centre members continues to grow with units in refugee law, practising in the public interest, and human rights and the global economy being recent additions to the list. There are now also plans to establish an LLM in Human Rights Law in the near future.

The Centre continues to win competitive research grants and consultancy contracts for human rights work in Australia and overseas. Recently and notably amongst these, the Centre has just secured a 3-year contract with AusAID to deliver a range of activities under Phase II of AusAID's Human Rights Initiative in Burma.

Since the last Newsletter, the Centre has hosted a number of public speeches and events, including the Annual Castan Centre Lecture delivered by Senator Aden Ridgeway, and has been delighted to have assisted in the establishment and projects of the Victorian Branch of the Australian Lawyers for Human Rights.

Of particular note has been the role that the Centre has played in the development of a number of internship and student placement programs.

The students who undertake these placements with such organisations as the Australian Red Cross in Melbourne, the death penalty internship program in New Orleans run through Reprieve Australia, and the Australian Delegation to the Commission on Human Rights in Geneva, invariably do themselves proud (and by reflected glory, the Centre as well!) by 'putting in' enormously, and squeezing the very last drop out of their experiences (on which, for example, see Vanessa Szabo's letter on page 2 herein).

I hope that the further details of all of these activities contained in this Newsletter are of interest to you and that you continue your support for the activities of the Centre; for it is upon you that we are ultimately dependent.

Professor David Kinley, Director



Senator Aden Ridgeway delivering the Annual Castan Centre Lecture on the 10th Anniversary of the Mabo decision.



<http://www.law.monash.edu.au/castancentre/index.html>

Letter from Geneva ...

*Vanessa Szabo*¹ dual intern with the Australian Delegation to the UN Commission on Human Rights and the Indigenous Projects Team at the UN OHCHR

Most people have a love/hate relationship with Geneva. They complain that the city is too expensive, the people too unfriendly and the nightlife is simply non-existent. Yet, the city's international flavour is addictive and many thrive on the ability to participate in international politics, the biggest game of all.

During the five months I spent in Geneva, from March to July 2002, I went through all of the above emotions, and emerged a loyal Genevois! Sure, the shop keepers barely acknowledge your existence (especially if like me, your French accent is abysmal), the entire population hibernates in winter and the diplomats can be bureaucratic and guarded. Yet, the city is also incredibly beautiful (surrounded by postcard perfect mountains and an enormous lake) political discussions are certain to be eye-opening if not inspiring and best of all, most of western Europe is right at your doorstep!

I arrived in Geneva in March 2002, with the help of a Dean's Travel Scholarship from the Law Faculty and the Castan Centre, to begin an internship with the Australian Delegation to the Commission on Human Rights. Sitting in Australia's seat at the United Nations while states and non-governmental organisations (NGOs) debated human rights issues was an incredible experience. It was also a sobering experience which revealed the international system's imperfections.

I remember one occasion where the Israeli representative outlined Iraq's support for Palestinian suicide bombers, saying that Iraq gave US\$15,000 to every bomber's family. The Iraqi representative responded that Iraq pays US\$25,000 to each family, not US\$15,000. For me, this interchange highlighted the fact that international politics



Vanessa and Douglas at Australia's desk at the Commission on Human Rights.

is a game - where the players are states who often continue to play even if the referee hands them a red card. However, just as cynicism would take over, I would have other experiences that convinced me that international human rights mechanisms are not perfect but they are better than nothing, and are certainly worth maintaining.

For example, I was sitting at Australia's seat when a diplomat from a country Australia was about to criticise asked me if Australia would reconsider criticising her nation in front of the Commission.² I realised then that the "mobilisation of shame" is a powerful force, and that while endless debate about human rights may seem pointless, most countries do not want to be the subject of that debate.

On a lighter note, the internship provided me with the opportunity to meet fellow interns from all over the world, eat sushi and Swiss cheese at a reception at the Japanese mission and watch high level diplomats sashay to "Dancing Queen" at an "end of Commission" bash. The experience was also strengthened by the fact that my fellow Australian intern, Douglas Stewart, and I were treated as "real" members of the delegation by the other Australian diplomats. We were both able to lobby for Australian drafted resolutions and represent Australia in meetings, and Doug had all of the interns cheering when he addressed the Commission on behalf of Australia.

In April I began my second internship, this time with the Indigenous Projects Team at the Office of the High Commissioner for Human Rights (OHCHR). The Team is a mixed bunch, with people from New Zealand, Denmark, South Korea, Australia, England and France. As well as working with the members of the Team, I was also fortunate to meet five indigenous fellows. The fellows came to Geneva for five months to learn about human rights law and promote their communities. The fellows were an invaluable source of information and gave me the opportunity to learn about the day to day struggles of indigenous people around the world.

As the UN has limited funds for administrative staff, interns can often be researching one day and packing boxes the next!! Still, all of the administrative chores provide a great way to get to know other interns and the way the OHCHR operates. Fortunately, my administrative stint was limited to faxing Indigenous communities their approval letters for visiting the inaugural Permanent Forum on Indigenous Issues, which actually helped me familiarise myself with the many Indigenous communities and NGOs around the world.

I also assisted in writing an OHCHR report for the Working Group on Minorities and wrote a research paper for the Special Rapporteur on the situation of human rights

¹ Articled Clerk, Mallesons Stephen Jaques

² Australia always hands out its statements to the countries it is going to criticise before presenting to the Commission

and fundamental freedoms of Indigenous Peoples concerning the human rights ramifications of major projects, such as dams, on Indigenous communities.

I often received strange, almost suspicious looks when I explained to people that I had worked for the Australian Government before starting my OHCHR internship. Although many states actually provide staff for the OHCHR, there can be an “us/them” mentality as OHCHR employees often feel their work is frustrated by states’ procrastination. The existence of this tension meant that by working for both the OHCHR and the Australian Delegation, I was able to understand the challenges faced by both Governments and International Organisations. I would therefore highly recommend working for varied actors within the international system in order to obtain a more varied picture of its complexities.

If you’re interested in human rights law, completing an internship with either the Government, a UN body or an NGO provides a wonderful opportunity to see the international system in action. You might not always like what you see, but you will meet people working tirelessly to promote human rights, even if they only manage to help one person or one cause at a time. And, by being in Geneva, you can eat white chocolate croissants for breakfast, have a picnic lunch in the Alps and dinner in France. Perfect.

Letter from America...

Dr Sarah Joseph, Associate Director, Castan Centre

Greetings from my sabbatical! It has been a wonderful time, enjoying (from August to December) the hospitality of the Law Faculty at the University of Minnesota in Minneapolis and, in January, the Human Rights Centre at the University of Nottingham.

So, having spent five months there, what can I say about the US of A? First, politics. It was an election year, with the November 5 result delivering control of the Congress to the Republicans. So the liberals (in a country where ‘liberal’ means ... well, liberal!) are fearing, amongst other things, the demise of abortion laws and gun control (on which, you MUST see Bowling for Columbine). The federal judiciary is a particular worry – with the floodgates of conservative judges set to open now that the Democrats no longer control the Senate. The Senate result was particularly traumatic in Minnesota, where mega-liberal Senator Paul Wellstone (who had been feted for his bravery in voting, in the midst of his re-election campaign, against the grant of unilateral power to the President to attack Iraq) died in a plane crash ten days before the election. The last-minute drafting of former Vice-President Walter Mondale to run in Wellstone’s place failed by a few thousand votes to fend off the Republican surge. The overall result was a vindication for George W Bush, who was finally elected president.

Terrorism dominates the political landscape. ‘Red alerts’ are common (quite a few up to November 5 now that I think about it), though I don’t know what they are for – I mean what do you do during a red alert, beyond getting scared and rallying around the President? To be fair, Americans are waking up fast to the idea that “9-11” is not a blank cheque for presidential policies. While the war on Iraq was a popular idea when I left, support is waning and there is a significant and growing anti-war movement.

The story that epitomised American mainstream media at work was the Washington Sniper. For two weeks the rest of the world did not exist as profiler after profiler (after profiler) gave their expert opinions – and got it wrong! Upon their capture, there was then an unseemly battle as to who got to try them first. Washington DC was never a starter – no death penalty. Maryland has a moratorium, but offered to lift it especially for these guys. But Virginia was never going to be beaten – they execute kids!

US impressions of Australia: well, the usual – kangaroos etc, and they like our accents (‘sort of British – but better’). A LOT of people were also aware that we had ‘some issue with a boat and refugees’ not so long ago. On the other hand, almost no one is aware of the Australian government’s virtually unquestioning support for US military policies since September 11, despite us being one of the very few countries in that position.

Enough! America is often portrayed (especially right now, I see, in Europe) as arrogantly unilateralist (think ICC, Kyoto, small arms treaty) and determined to throw some superpower weight around. But it does not speak with one voice. It is important not to confuse America with Americans – with the latter including some of the most talented, exciting, and warm people you will ever meet.

To conclude, I can say a few words about my time there. I managed to get around to some wonderful places, including San Francisco, New York City, and N’awleans (where the Reprieve Interns are doing just fine and took good care of me!), and caught up with some of the Monash diaspora (former colleagues Jacqui Lipton, Nick Pongelley, David Wiseman, Christian Witting). Of course, sabbatical is not all fun and games – some research was done. I have finished an article on access to pharmaceuticals and human rights (which was also the subject matter of a paper delivered at a few universities, including Osgoode Hall (Toronto), Case Western (Cleveland), and the Urban Morgan Center for Human Rights (Cincinnati)), and have written a paper on transnational human rights litigation against corporations (eg the Unocal Alien Tort Claims case and its progeny, the South African health and safety cases in Britain). Research for the latter paper included meetings with some of the relevant public interest lawyers (eg Center for Constitutional Rights (New York); International Labor Right Fund and Earthrights International (Washington)) who have managed to put shivers up the spine of big business - so much so that the new year has brought a concerted campaign by industry groups to lobby Congress to amend and weaken the Alien Tort Claims Act. ... yet another thing for the liberals to worry about!

2002

- **Second Annual Lecture:** ‘Mabo Ten Years On: Small Step or Giant Leap?’ given by **Senator Aden Ridgeway** on the 10th anniversary of the handing down of the landmark High Court judgement, 3 June.
- **Lecture:** ‘Holding Multinational Corporations Responsible for Human Rights Abuses’ given by **Justine Nolan**, former Director of the Workers Rights Program at the Lawyers’ Committee for Human Rights, New York, 5 September.
- **Seminar:** ‘International Human Rights Law: Its Relevance to Australian Practice’ given as part of the Victorian launch of the **Australian Lawyers for Human Rights (ALHR)**, chaired by **Simon Rice** of ALHR Sydney at the Monash Conference Centre. Speakers covering this topic were **Julie Debeljak** - Castan Centre; **Chris Maxwell** - Barrister; and **Simone Elias** - Federation of Community Legal Centres, 21 November.

2003

- **Public Lecture:** ‘Corporations, Human Rights and Transnational Litigation’ by **Richard Meeran** Chair of the UK Solicitors’ Human Rights Group and winner of the 2002 Liberty/Justice ‘Human Rights Lawyer of the Year’ award. 29 January 2003, 6pm at the Monash University Law Chambers, 472 Bourke St.
- **Public Lecture:** ‘Human Rights and Indigenous Populations’ by **Professor Erica-Irene Daes** honorary lifetime member of the United Nations Indigenous Populations Working Group and former Special Rapporteur of the UN Sub-Commission on the Promotion and Protection of Human Rights, 24 Feb 2003, 6pm, Kaleide Theatre, RMIT, Building 8, Swanston St, Melbourne.
- **Public Lecture:** ‘People Without States, People Without Protection: How Humanitarian is Australia’s Humanitarian Program?’ by **Hoi Trinh** (refugee worker with stateless Vietnamese in the Philippines) **Associate Professor Susan Kneebone**, and **Julian Burnside QC**, 12 March 2003, 6pm at the Monash University Law Chambers, 472 Bourke St.

New Addition to the Centre



Tom Davis arrives at the Castan Centre from the University of Melbourne where he has been teaching at the Centre for Public Policy and completing a PhD entitled ‘The Public Policy of Foreign Aid: Australia’s Bilateral Aid Program with Papua New Guinea’. Tom’s role at the Castan Centre is that of Project Manager. This gives him a roving brief as coordinator of the Centre’s aid-related projects and activities. He will also be responsible for coordinating the Centre’s Strategic Plan as well as carrying out ongoing research into the relationship between Western foreign aid activities and human rights.

Holding Redlich Distinguished Visiting Fellow



We are delighted that **Richard Meeran**, partner at Leigh, Day & Co, leading public interest firm of solicitors in London is the Centre’s first Holding Redlich Distinguished Visiting Fellow for 2003.

Human Rights Law Courses

<http://www.law.monash.edu.au/castancentre/units.html>

Undergraduate:

Citizenship and Migration Law

Comparative Constitutions and Rights

Human Rights and Australian Law

Indigenous Peoples and the Law

International Human Rights

International Organisations

International Refugee Law and Practice

Law and Discrimination

Law, Gender and Feminism

Graduate:

Current Issues in International Human Rights law

Human Rights in the Global Economy

Human Rights Litigation

Indigenous Rights and International Law

International Humanitarian Law

Law, Gender and Feminism

Migration Law

Native Title and Land Rights

Practising in the Public Interest

** Not all courses are offered by the Law Faculty each year.*

Student Internships

The Castan Centre has helped to facilitate human rights related international internships for Monash Law students.

David Goldberg and **Simone Cusack** have been selected to intern with the **Australian Delegation to the Commission on Human Rights**. More information on human rights internships is available online at:

<http://www.law.monash.edu.au/castancentre/internships/internships.html>

Students who participated in the **Reprieve** internships and the Castan Centre were extremely grateful for the financial support provided by Monash Abroad, and by the Dean of Law's Travel fund. These grants significantly eased the financial burden of the self funded students who work voluntarily in the US. Another group of Monash law students have now started internships in the USA, located in Louisiana; Houston, Texas; and other centres affiliated with the Louisiana Crisis Assistance Centre. A further group will depart in March. Feedback from students has been very positive, as has the response from the Louisiana Crisis Assistance Centre.

For more information on the reprieve program see:

<http://www.law.monash.edu.au/castancentre/internships/reprieve.html>

Student Placements

Through the Student Placement Program, **Simone Cusack** and **Melissa Rudd** were placed with the International Humanitarian Law Department, **Australian Red Cross Victoria**.

For more information on student placements available through the Castan Centre see:

<http://www.law.monash.edu.au/castancentre/internships/studentplace.html>

Indigenous Scholarship

Arnold Bloch Leibler, Lawyers and Advisers, have committed to provide a scholarship to assist an Australian Indigenous person to enter or continue studies with the Law Faculty of Monash University. The successful recipient will have their Higher Education Contribution Scheme debt discharged up-front each year for a maximum period of 5 years, or until their course of study is complete, whichever is earliest. Applications close 14 February 2003. See online for more information.

<http://www.law.monash.edu.au/castancentre/scholarships/arnoldindigschol.html>

Publications by Centre Members

Books

Kneebone, S., *The Refugees Convention at 50: Globalisation and International Law* Dartmouth \ Ashgate UK 2003.

Book Chapters & Articles

Bill of Rights

Debeljak, J., 'Rights Protection without Judicial Supremacy: A Review of the Canadian and British Models of Bills of Rights', *Melbourne University Law Review* Vol 26 No 2, 2002.

Discrimination Law

Gaze, B., 'Context and Interpretation in Anti-Discrimination Law', *Melbourne University Law Review* Vol 26 No 2, 2002.

Globalisation and Human Rights

Kinley, D., 'Human Rights, Globalization and the Rule of Law: Friends, Foes or Family?' *University California Los Angeles Journal of International Law and Foreign Affairs* Vol 7 No 2, 2002-2003.

International Covenant on Civil and Political Rights

Joseph, S., 'Human Rights Committee: General Comment 29', (2002) 2, *Human Rights Law Review*, 81-98.

Joseph, S., 'Human Rights Committee: Latest Cases', (2002) 2 *Human Rights Law Review*, 287-300.

Job Security Rights

Pittard, M., 'Unfair dismissal laws: the problem of application to small businesses' (2002) 15(2) *Australian Journal of Labour Law*, 154-169.

Privatisation of Human Rights

McBeth, A., & Kinley, D., 'After Johannesburg: can human rights be privatised too?' *Alternative Law Journal* 27(6) 2002.

Refugees

Kneebone, S., 'Natural Justice and Non-Citizens: A Matter of Integrity?' *Melbourne University Law Review* Vol 26 No 2, 2002.

Relationship between International Human Rights Law and Domestic Law

Kinley, D., & Martin, P., 'International Human Rights Law at Home: Addressing the Politics of Denial' *Melbourne University Law Review* Vol 26 No 2, 2002.

Reports/Submissions

Environment

Potts, H., Submission to the *Water Resources Strategy Committee* on the Strategy Directions Report '21st Century Melbourne: a Water Smart City'.

Environment and Indigenous Rights

Kwame Mfodwo has undertaken work with New Zealand government organisations as follows:

Te Puni Kokiri/Ministry of Maori Development:

i. 'Options for Maori & Crown Co-Management of Water, Lakes and River-Bed Resources – Cross-cutting Issues'.

ii. 'Options for Maori & Crown Co-Management of Water, Lakes and River-Bed Resources – The RMA 1991'.

iii. 'Options for Maori & Crown Co-Management of Water, Lakes and River-Bed Resources – Treaty Settlement Instruments'.

iv. 'Options for Maori & Crown Co-Management of Water, Lakes and River-Bed Resources – The Conservation Act 1987'.

Local Government New Zealand:

'Treaty Settlements & the New Local Government Act 2001 (NZ) – A Review of the Issues'.

The Local Government Act 2001 (NZ) - An Implementation Guide for regional and district councillors.

Human Rights in the UK

Kinley, D., Submission to the *UK Joint Committee on Human Rights* 'The Case for a Human Rights Commission'.

Human Rights in Asia

Kinley, D., Davis, T., and McBeth, A. Submission to the *Joint Standing Committee on Foreign Affairs, Defence and Trade, Human Rights Sub-Committee*, 'Inquiry into Human Rights and Good Governance Education in the Asia-Pacific Region'.

International Trade & Human Rights

Kinley, D., & McBeth, A., 'Human rights, multinational corporations and the international trade system: present and future', discussion paper *DFAT-NGO consultations on human rights*, 4 September 2002.

Refugees

Kneebone, S., Submission to the *Legal and Constitutional References Committee* regarding 'Inquiry into Migration Zone Excision'.

Conference Papers & Public Speeches

Bill of Rights

Debeljak, J., 'The British Perspective on Bills of Rights: the Human Rights Act 1998 (UK)' presented at the 2002 *Bill of Rights Conference* held jointly by the Australian Human Rights Centre and the Gilbert and Tobin Centre of Public Law, Sydney.

Corporations and Human Rights

Joseph, S., 'Access to Essential Drugs and Human Rights' seminars presented to: *University of Minnesota; University of Western Ontario; Osgoode Hall Law School, Toronto; Case Western Law School, Cleveland; University of Windsor Law School; and Urban Morgan Institute for Human Rights, University of Cincinnati.*

Kinley, D., 'Multinational Corporations and Human Rights Law' seminar presented at the *Centre for Applied Legal Studies, University of the Witwatersrand, South Africa.*

Discrimination Law

Gaze, B., 'Using Federal Discrimination Law' presentation to the *National Conference of the Federation of Community Legal Centres.*

Gaze, B., 'Context and Interpretation in Australian Anti-Discrimination Law' presented at the *International Sociological Association Congress, Brisbane* and at joint meetings of the *American and Canadian Law and Society Associations, Vancouver.*

Globalisation and Human Rights

Kinley, D., 'International Law and the Global Economy' seminar presented at the *Centre for Human Rights, University of Pretoria, South Africa.*

International Human Rights Law

Debeljak, J., 'International Human Rights Law: Its Relevance to Australian Practice' presented at the Inaugural Seminar of the *Victorian Branch of Australian Lawyers for Human Rights (ALHR).*

Kinley, D., 'Viet Nam and International Human Rights Laws' presented at the *Australia-Viet Nam Human Rights Committee's Annual General Meeting, 6 December 2002.*

Prisons

Naylor, B., 'Prison Disciplinary Systems: Process and Proof' paper presented at the *International Institute of Forensic Studies Conference, Prato.*

Naylor, B., 'Doing Justice in Prison: Process, Protection and Proof in Prison Disciplinary Systems' paper presented at *ANZ Society of Criminology Conference, Brisbane.*

Refugees

Kneebone, S., 'Fairness in Tribunals – Issues Relating to the RRT- Bias in Tribunals' presented to the *Law Society of South Australia.*

Kneebone, S., 'Is the Australian Refugee Review Tribunal Institutionally Biased?' presented at the 8th Conference of the *International Association for Studies of Forced Migration in Chiang Mai Thailand.*

Work and Family

Gaze, B., 'Flexible Work and the Law – some themes and issues' presented to *Work/Life Association Roundtable* seminar 'Keeping an Eye on the Law'.

Gaze, B., 'Managing Diversity: Legal Approaches to Part Time Work' presentation to *Department of Education and Training (Vic) Managing Diversity Forum.*

Projects & Grants

Academic Grants

PostGraduate Scholarship – Following last year's successful bid for a one year PostGraduate Scholarship from the University pool of such scholarships, the Castan Centre again secured another Scholarship for 2003.

Research Unit on Cultures and Technologies in Asia (RUCTA) – The Castan Centre is one of seven Centres throughout the University who have jointly won a RUCTA grant.

Australian Government

The Centre won a tender to develop and deliver six human rights training workshops during 2002 and 2003 to Officers in the Department of Foreign Affairs & Trade in Canberra.

Burma

A series of Human Rights and Responsibilities workshops were delivered in Rangoon during July, August and October 2002 under the auspices of AusAID.

Three workshops on the Convention on the Rights of the Child were delivered in Rangoon during October/November 2002 under the auspices of AusAID.

A workshop on the Convention on the Elimination of All Forms of Discrimination against Women was delivered in Rangoon in January 2003.

A contract to deliver a three year AusAID project 'Human Rights Initiative in Burma – Phase II' has been won by the Castan Centre and will be delivered in 2003-2005.

Indonesia

In country mid-term review of the work of the Human Rights Adviser appointed to assist the Government of Indonesia's Directorate General of Human Rights, under the Indonesia/Australia Law Reform Program.

Castan Centre Members

Director: Prof David Kinley

Associate Directors: Dr Sarah Joseph and Julie Debeljak

Project Manager: Tom Davis

Administrator: Kay Magnani

Monash Law Faculty Staff:

Melissa Castan

Associate Prof Beth Gaze

Associate Prof Susan Kneebone

Kwame Mfodwo

Dr Bronwyn Naylor

Pam O'Connor

Prof Stephen Parker

Moira Paterson

Prof Marilyn Pittard

Jenny Schultz

Prof Francis Trindade

Dr Eric Wilson

PhD Students: Becky Batagol, Nicole Bieske, Adam McBeth, Helen Potts, Marnie Wilson, Sean Sexton.

Professional Associate

Chris Sidoti, Human Rights Consultant, Former Federal Human Rights Commissioner

Research Assistant/Newsletter Editor:

Anne McCasland-Pexton

All the members of the Castan Centre would like to thank Anne for her enormous contribution to the research efforts of the Centre and for her piloting of the first and second editions of the newsletter. We wish her well in her future endeavours with Phillips Fox.

Contact details:

Castan Centre for Human Rights Law

Monash University

Victoria, Australia 3800

Ph: (+61 3) 9905 3327

or email us at castan.centre@law.monash.edu

Member Profile: Assoc Prof Beth Gaze *“Enforcing Human Rights – An Evaluation of the New Regime”*

Assoc. Prof Beth Gaze has been conducting a research project with Professor Rosemary Hunter of Griffith University into the effect of the changes in enforcement of federal anti-discrimination law brought in by the Human Rights Legislation Amendment Act 1999. The research was funded and assisted by the NSW Law and Justice Foundation, and the Australian Research Council, and is reaching the final stages of writing up.

Previously claims under the Racial Discrimination Act 1975, Sex Discrimination Act 1984 and Disability Discrimination Act 1992 which were not settled at conciliation could be referred for adjudication before a Hearing Commissioner of the Human Rights and Equal Opportunity Commission, where each part bore their own costs and proceedings were relatively informal. However, HREOC determinations were not directly enforceable, and any action taken in the Federal Court to enforce them involved a de novo rehearing of the matter. From April 2000, HREOC's role as a tribunal to hear and decide disputes was abolished, and any discrimination claim under federal law can be adjudicated by bringing proceedings in the Federal Court or Federal Magistrates' Court. Concern was expressed that this change, involving a formal, generalist court in which costs normally are awarded to the winner, would deter many discrimination complainants from proceeding, or even bringing claims.

The project aimed to find out what the effects of the change have been. It involved interviewing parties to discrimination claims both before and after the changes, as well as lawyers, and collecting information from many other sources.

Statistics on usage of the federal anti-discrimination system show that the number of claims in the system has fallen since the new procedures were introduced and continues to fall, while usage of state systems rises. This suggests that complainants are preferring to use state anti-discrimination systems. Preliminary results of lawyer interviews suggest some party groups are pleased with the federal courts as a venue, while lawyer representing specific plaintiff groups, in particular those with disabilities, regard it a serious disadvantage. The final report will be produced by the Law and Justice Foundation later this year.

<http://www.law.monash.edu.au/castancentre/index.html>

