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A Single Equality Body

Lessons from abroad

Colm O'Cinneide

University College London

Women. Men. Different. Equal.
Equal Opportunities Commission

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Lessons from abroad

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CONTENTS

		Page
FOREWORD		iii
EXECUTIVE SUMMARY		v
1.	INTRODUCTION	1
1.1	Background	1
1.2	Methodology	2
1.3	Comparative practice	3
1.4	Report structure	5
2.	STRENGTHS AND WEAKNESSES	6
2.1	Existing unified commissions	6
2.2	Unified equality legislation	9
3.	VALUES AND APPROACH	11
3.1	Internal	11
3.2	External stakeholders	12
4.	FUNCTIONS AND POWERS	16
4.1	Enforcement and promotion	16
4.2	Strategic enforcement and dispute resolution	18
4.3	Investigations and inquiries	20
4.4	Flexibility of enforcement action	22
4.5	Positive duty and equality audits	23
4.6	Promotion and outreach	24
4.7	Alternative dispute resolution, conciliation and mediation	25
4.8	Promoting good relations	27
4.9	Resources	28
5.	STRUCTURE AND COMPOSITION	30
5.1	Structure	30
5.2	Comparing structural models	31
5.3	Possible models for Britain	34
5.4	Composition	35
6.	FURTHER ISSUES FOR CONSIDERATION	37
6.1	Devolution and the regions	37
6.2	Accessibility	40
6.3	Human rights and equality	42
6.4	Independence and accountability	47
6.5	Leadership	52
6.6	Transition	53

7. CONCLUSION 55

APPENDICES

A. Northern Ireland: The Equal Opportunities Commission 56
B. Republic of Ireland: The Equality Authority 62
C. Australia: The Human Rights and Equal Opportunities Commission 65
D. New Zealand: The Human Rights Commission 70
E. USA: The Equal Employment Opportunity Commission 74
F. Canada: The Human Rights Commission 77
G. The Paris Principles 80

ENDNOTES 84

FOREWORD

The three statutory bodies in Great Britain with mandates to work for the elimination of discrimination on the grounds of sex, race and disability and to promote equality of opportunity are the Equal Opportunities Commission (EOC), Commission for Racial Equality (CRE) and Disability Rights Commission (DRC). In 2001, the Government raised the possibility that, in the long term, a single equality commission might be the best way of supporting the existing and additional strands of age, religion and sexual orientation.

The three existing commissions wish to take a lead in stimulating debate around the proposed body and to be actively involved in discussions about equality in Britain. In view of this, they jointly commissioned this paper in the summer of 2002 to explore, using comparative information from other countries, how existing single equality commissions operate and what lessons may be learnt for the British context. An early draft of the paper was presented by the author at two seminars in London on 23rd September 2002.

This paper was commissioned as an independent contribution to the debate around the single equality body and the views expressed are those of the author. They do not necessarily reflect the views of any one or all three of the commissions involved.

EXECUTIVE SUMMARY

This paper was commissioned by the CRE, DRC and EOC in the summer of 2002 as an independent contribution to the debate around the single equality body. It does not aim to set out a case for a single equality commission, nor does it propose a definitive structure for such a body. The aims of the paper are to:

- Use comparative information from other countries with relevant equality bodies to identify the different models and explore in detail how they operate.
- Describe and examine the types of single equality institution which may be most suitable for delivering equality in Britain.
- Consider the implications for the delivery of equality in Britain of a single equality commission.

It focuses on countries whose equality enforcement and promotion bodies are broadly analogous to the existing GB commissions and which have similar social, cultural and political systems. These are the Australian Human Rights and Equal Opportunities Commission, The Canadian Human Rights Commission, the Irish Equality Authority, the New Zealand Human Rights Commission, the Northern Ireland Equality Commission, and the US Equal Employment Opportunity Commission.

It is important to maintain some caution when drawing conclusions from comparative material. The legal, constitutional, political and social contexts in which equality commissions operate vary considerably from state to state, as does the role of commissions within each country's equality structure. In addition, many bodies are at different stages of development. Despite this, they provide valuable comparative material for Britain.

Strengths and weaknesses

Comparative experience demonstrates that single commissions can offer clear advantages in terms of developing effective cross-strand strategies, addressing overlapping and multiple forms of discrimination and emphasising the core principle of diversity that underpins all of the equality grounds. (p.6)

If established badly, however, a single commission could constitute a step backwards, diluting levels of expertise, creating a hierarchy of grounds and serving as an excuse for watered down resources. If established well, it will be capable of developing a cross-strand approach and delivering strand specific needs whilst avoiding the establishment of a hierarchy of interests (p.9).

This requires identification of a clear set of values to shape the commission's approach to implementing the equality agenda. The challenge is to establish a commission with the values, structure and functions necessary to deliver this agenda, where the separate strands of age, disability, race, religion, sex and sexual orientation mutually reinforce rather than detract from each other.

Comprehensive single equality legislation would be invaluable in minimising hierarchical differences between the strands, and maximising the efficacy of a single commission. While not an absolute precondition to the establishment of an effective single commission, its introduction is strongly encouraged. For example, the myriad nature of US anti-discrimination law has been clearly identified as a major factor impeding the efficacy of the EEOC and employers' understanding of the law (p.10).

Values

To enable a single commission to operate strategically and proactively across all the strands, it needs a clear set of values to underpin its activities. These should include the recognition that the equality agenda cannot deal with single issues in isolation and that the particular needs of specific strands and stakeholder groups have to be accommodated (p.11).

A single commission should aim to combine individual-centred, group justice and ‘holistic’ approaches in its dealings with external stakeholders. It should be directed towards achieving cultural change in society as a whole, while also acting as a public body with a role to promote change and to assist victims of discrimination (p.13).

Functions and powers

It is essential that the commission balance the two goals of enforcement and promotion, as well as achieving a balance in the use of different enforcement and promotional tools. A single commission can never represent all those people who approach it with a complaint. Consequently, it must aim to bring about a better overall environment by combining strategic enforcement with promotion – the bridge between prevention and treatment. Strategic enforcement is an integral part of this. Similarly, employers, service providers, public authorities and complainants in general want one authority to talk to. They prefer a 'one-stop shop' where promotional advice will reflect enforcement policy (p.16).

A single commission should not be restrained in its ability to function as an independent body. Comparative experience shows that removing artificial and unnecessary restraints on the ability of a single commission to have standing in its own right, to carry out investigations and inquiries and to use other enforcement tools is effective in freeing up possibilities for effective cross-strand enforcement (p.20). It

also shows that single commissions are particularly effective in bringing about social change through cross-strand approaches in equality audits with employers and in working with public authorities to implement statutory duty requirements in the public sector (p.23).

A single commission must have the funding and resources to be proactive and to operate strategically. A balance needs to be struck between a transparent process for allocating funds within the commission and the need to retain strategic flexibility. The totality of the equality agenda has to be prioritised, and developing a cross-strand approach that does justice to each strand may require a more flexible approach than locking funding into strand-specific allocations (p.28).

Structure and composition

The structure of a single commission needs to reflect the core values of diversity and openness, while also delivering in terms of effectiveness and credibility. There are two distinct groups of commissions: those with functional structures and those with mixed functional and specialist units, with specialist-strand commissioners (p.30).

- Functional structures prevent duplication of resources, permit the development of a cross-strand agenda and prevent the development of strand-specific closed approaches. However, the UK has become accustomed to specialist units with a high degree of strand-specific expertise, and stakeholders will need reassurance that functional units can deliver the same quality of service. Also, functional structures carry with them the possibility of a dilution of focus on specific needs, with disability being a particular area of concern.

- Strand-specialist units ensure that a focus is kept on the core concerns of each strand and act as very effective points of access and contact for stakeholder groups. However, their effectiveness can be very dependent on the personality and strengths of individual specialist commissioners. They can also institutionalise separate approaches between strands and potentially lead to damaging competition between the specialist units.

In addition to the functional model, options for Britain could include separate autonomous strand-specific 'mini' commissions with generalist commissioners and a central policy unit acting as a co-ordinating body. This would ensure a strong strand-specific focus and reassure stakeholders. This could also, however, make cross-strand action and delivery difficult, resulting in the loss of some of the key benefits that a single equality body could provide. Much would depend upon the ability and willingness of the different units to co-operate, and the effectiveness and powers of the central co-ordinating body. The co-ordinating body would also have to be capable

of resolving potential disputes between the various strands. Considerable problems could also arise in establishing mini-commissions for particular strands, with religion posing particular difficulty. An alternative would be to have separate policy units for each strand (similar to the gender reference team in Northern Ireland) but with a functional structure putting the policy into effect. South Africa's use of 'Section 5' committees offers another attractive option (p.34).

A single commission needs both functional, cross-strand expertise and a degree of strand-specific focus. However, which forms the structural pillars of a commission or the cross-layered beams is not important. What is crucial is good leadership, a clear chain of command and effective co-ordination (p.35).

Further issues for consideration

Devolution

A single commission will need to be 'devolution sensitive' by being able to develop and apply its policy in the specific context of the devolved regions, as well as being capable of adjusting to future devolution and regional arrangements. It is especially important that the special circumstances of Scotland and Wales be reflected in any new structures. Both offer considerable opportunities for implementing a cross-strand equality agenda, and have developed a broad approach to equality issues within their devolved responsibilities. A single commission should allow for leeway for autonomous regional action in the devolved regions within an overall British-wide approach, and make sure that the lessons and successes from devolved regions are incorporated into policy formation throughout Britain (p.37).

Possible structures could include autonomous, devolved commissions reporting to the Scottish Parliament and the National Assembly of Wales, with their Chief Commissioners part of the British single commission. Alternatively, specialist offices similar in structure, autonomy and functions to the existing devolved Commission offices could be established. If equal opportunities become devolved, then serious consideration needs to be given to whether a system of independent commissions for the devolved regions are needed, and what authority a central co-ordinating body should have to ensure uniformity of approach (p.38).

Consideration also needs to be given to the appropriate structures for future regional structures, as well as the non-devolved regions. Institutional arrangements for exchanging information and developing common approaches between a single British commission, the devolved units and both Irish Commissions should also be established (p.38).

Human rights

The core principle of respect for the autonomy and diversity of each individual underlies all human rights, including equality. Combining human rights and equality in a single commission would prevent duplication of functions and resources, and allow a holistic approach to both that recognises their common concerns. Australia, Canada and New Zealand all have combined human rights and equality commissions, and regard them as inseparable (p.42).

There is a potential danger that by incorporating all human rights work in one body, the new commission will be overstretched. This could result in a dilution of focus and a loss of effectiveness in respect of the equality functions. It may also have to deal with controversial issues because of its human rights function, which may detract attention and resources away from equality work (p.45).

The question is not a simple matter of either/or. It would be possible and potentially desirable for an equality body without an overall human rights function to be given responsibility for promoting adherence to anti-discrimination strands in international human rights law. If no human rights commission is established, then it is arguably essential that an equality commission have wide-ranging powers and functions that enable it to address human rights issues such as anti-terrorist measures and asylum laws which have a major impact on particular ethnic or religious groups. The approach and values of any equality commission (whether combined with a human rights commission, separate from such a commission or having human rights functions in the absence of a human rights commission), has to be infused with human rights values (p.45).

If separate human rights and equality commissions are established, then the relationship and allocation of functions between those commissions will have to be clearly delineated. Similarly, if a Scottish Human Rights Commission is established as proposed or special children's commissioners are appointed (as in Wales), then the relationship between the equality commission and any other equality structures will need to be carefully considered (p.47).

Independence and accountability

A single equality commission will require considerable safeguards against political interference which may impact upon its size, amount and sphere of influence and its ability to promote equality in an effective manner. In comparative experience, challenges to independence tend to come in two forms: drastic funding cuts; and interference in the appointment of commissioners. Consideration needs to be given to the adoption of the Paris Principles to guide the relationship between the commission and the state (p.47).

The link between the commission and government needs to be clearly defined. It may be an advantage to retain a particular sponsoring department, but a single commission currently lacks a natural home in the UK departmental structure. It should be clear that the commission has the ability to publicly challenge government and departmental policy, while maintaining constructive engagement with public authorities in general (p.49).

Consideration should also be given to enhancing the relationship between Parliament and a single commission, by opening up the reporting powers of the commission and enhancing the link between it and the relevant select committees (in particular the Joint Select Committee on Human Rights) as recommended by the Corder report in South Africa (p.50).

A single commission must also be accountable, subject to public scrutiny in its finance and performance and open to stakeholder concerns. Accountability mechanisms are currently underdeveloped and additional tools are necessary. A new body will have to treat consultation and monitoring as a high priority, making use of adequate tracking measures to identify and measure success (p.51).

Leadership and Transition

The success or failure of a single equality body is frequently dependent on the level of leadership shown by the commissioners, irrespective of their role. If commission leadership is open to the different perspectives of the strands, to stakeholders in general and to the public, this can generate considerable good will and contribute enormously in making the commission a success (p.52).

A long time scale for setting up a single commission is essential. It is imperative that its structure and functions are fixed, operational and understood before it commences its role, and that the concerns and perspectives of staff and stakeholders are adequately addressed. Comparative experience demonstrates that the importance of a clear transitional programme cannot be underestimated (p.53).

1 INTRODUCTION

1.1 Background

This paper was commissioned by the CRE, DRC and EOC in the summer of 2002 as an independent contribution to the debate around the single equality body. It does not aim to set out a case for a single equality commission, nor does it propose a single definitive structure for such a commission. It instead uses comparative experience to analyse the issues that surround the potential creation of such a commission, and attempts to identify the necessary ingredients for a single commission to be able to work effectively.

Establishing a single equality commission for Great Britain will obviously give rise to a considerable array of structural and transition issues, and involve a major alteration in the structure of Britain's equality machinery. It is important however that debate on the setting up of such a commission is not confined to functional issues and the question of institutional machinery. Nor should it be dictated only by the need to provide promotion and enforcement machinery for the age, sexual orientation and religion strands as part of the implementation timetable for the EC Framework Equality Directive. Any institutional machinery designed to promote equality and diversity needs to be effective, inclusive, accessible and credible. If any of these props are knocked away, then delivering equality for disadvantaged individuals and groups becomes much harder. The debate on what a single commission should look like must therefore be open to all those potentially affected, and has to look beyond the question of institutional arrangements to the deeper question of what values, functions and tasks should shape the role of a single commission.

There are numerous and contrasting views on what a single commission should look like, how it should vary from the practice of existing commissions, and what role should it play. Some of the differing views concern issues that are common to all forms of equality commissions, including the existing British Commissions. Other issues are specific to the establishment of a single equality commission, arising in particular from the possible complexities involved in incorporating the existing commissions into a common institutional framework. The 'new' equality strands of age, religion and sexual orientation will also have to be nurtured into life while being similarly incorporated in a way that does not crush their development.

Questions of scale also arise: a single commission for Britain will be an organisation of considerable size. It will have to earn its spurs as a credible advocate for equality in the eyes of stakeholders, public opinion at large, the media and the government, especially given the immense potential for it to be caricatured as a bureaucratic behemoth. This will require efficient internal structures, a clear strategic approach

and a firm grasp of the values that should underpin any such commission. In addition, issues surround how such a commission should fit into the rapidly changing legal and constitutional landscape of the UK. In particular, within a single commission, what arrangements should be made in respect of the devolved regions? What role should a single commission play in respect of the UK's international human rights obligations and enforcement of the Human Rights Act, given that the right to equality is a keystone of international human rights instruments? Difficult issues therefore surround the creation of a single commission, and there exists little clear idea as yet of how a single commission would be structured, or what values should guide the exercise of its functions and powers.

1.2 Methodology

The objective of this paper is to analyse the values, roles, powers, structures and functioning of existing single commissions in countries with a similar cultural, social, and legal system as the UK. The aim is to provide a comparative analysis of these bodies, to identify lessons from their experience that can assist in identifying the key elements of a successful commission and what mistakes should be avoided.

Evaluating the success or otherwise of equality commissions in the execution of their various functions is difficult. Various quantitative auditing and evaluation mechanisms and reports exist, whose primary focus is generally on assessing the commissions' performance in handling complaints or in providing information to enquirers. While this information is valuable, quantitative data gives a very restricted picture of the full extent and efficacy of the work of equality commissions. There is a lack of qualitative analysis assessing how commissions are performing in terms of their enforcement and promotional roles. There is also comparatively little analysis of levels of stakeholder satisfaction, the term 'stakeholder' being used throughout this report to denote disadvantaged groups and individuals, public authorities, trade unions, service providers, employers and other groups who can be considered 'customers', 'consumers' or 'participants' in the work of commissions. There is also extremely little data on general public perception of commissions.[1]

The lack of firm data makes it impossible to rank commissions in terms of success or failure, especially as different commissions may carry out certain functions very well and yet generate dissatisfaction in how they handle others. It is also impossible to point at some commissions as definitively outperforming other commissions in terms of particular functions, given the lack of data and the different conditions in which they operate. Instead, this report examines the history, functions and practice of the commissions analysed, and aims to identify particular activities, practices, types of ethos and approaches of the various bodies that have proved notably successful or problematic from the perspective of relevant stakeholders, practitioners,

commentators and the commission staff themselves. It also incorporates the conclusions from the very limited quantitative data that does exist, as well as the perspectives of UK stakeholders and commission staff.[2]

The qualitative analysis is therefore based upon the following wide variety of sources:

- Parliamentary debates, inquiries and committee hearings;
- Academic literature
- National reviews of equality machinery
- Reports and publications from the commissions themselves
- Individual personal or telephone interviews, which were generally conducted in confidence to enable a full and frank exchange of information: comments are attributed only where the interviewees indicated that they were happy for this to happen.
- Research papers

1.3 Comparative practice

This paper primarily focuses on the comparative experiences of equality bodies in those countries whose equality enforcement and promotion bodies are broadly analogous to the existing UK commissions and which have similar social, cultural and political systems. In the main, the institutions examined are the Australian Human Rights and Equal Opportunities Commission (HREOC), the Canadian Human Rights Commission, the Irish Equality Authority, the New Zealand Human Rights Commission, the Equality Commission for Northern Ireland, and the US Equal Employment Opportunity Commission (EEOC). (Background information on all these commissions can be found in Appendices A to F). References will be made to the experiences of other equality bodies as appropriate, including the provincial and state commissions in Australia and Canada, and to the South African Human Rights Commission and the Commission for Gender Equality.[3]

It should be noted that many EU states have equality bodies of some form, but these vary greatly in terms of structure, function, size, scope and culture. Many are essentially government-funded NGOs or semi-autonomous government equality liaison units, who carry out extensive promotional work but have little or no experience of litigating cases. Others, such as the Swedish Ombudsmen system or the Dutch Equal Treatment Commission, are quasi-judicial in function and mix promotion with fact-finding. All generally differ considerably from the UK and Irish model in terms of scale, functions and powers, as well as stakeholder expectations and the role they play in enforcing legislation. Reference will be made to the other EU bodies where appropriate, but for more information the reader is directed to the PLS Ramboll Management Final Report, *Specialised Bodies to Promote Equality and/or Combat Discrimination* recently prepared for the European Commission.[4] In contrast,

the commissions surveyed in detail here are, as with the UK and Irish commissions, originally based on the models of the US EEOC and the Ontario Human Rights Commission. They share a relatively similar history and a set of functions and powers, as well as being designed to serve similar proposes.

However, a note of caution has to be sounded from the beginning about drawing conclusions from comparative material, even where similar backgrounds exist, without taking into account the particular political and legal contexts specific to each country.[5] The legal, constitutional, social and political contexts in which equality commissions operate vary considerably from state to state. The role of commissions within each country's equality structures varies considerably as well. The Australian, Canadian and New Zealand commissions (at both state and provincial level in the case of Canada and Australia) combine human rights and equality functions in a single commission, seeing the two areas as inseparable.[6] The Northern Irish Equality Commission and the Irish Equality Authority, in contrast, do not have human rights functions, as separate human rights commissions exist in both areas.

Also, the Canadian, US, Australian and New Zealand commissions play key roles in resolving complaints of discrimination: they are in general the required first port of call for all complaints and initially investigate and, if possible, attempt to conciliate the complaint themselves, before taking a decision on whether to provide legal support for the complainant. This function differs considerably from the UK/Irish models, where complainants are assisted to bring cases but the commissions themselves are not required to process a complaint initially. It also imposes significant resource drains on those commissions that are required to exercise this function, and has had a considerable negative impact upon their ability to develop an effective and strategic litigation policy. These commissions are increasingly beginning to place greater emphasis on strategic enforcement and promotion, but their complaint resolution function remains central to their activities.

Many commissions are also at different stages of development: the Northern Irish Equality Commission is three years old, in contrast with the US Equal Employment and Opportunities Commission (EEOC), which has been in existence since 1964. The circumstances of their establishment can differ greatly: the process of establishing a single equality commissions in Canada and Ireland was comparatively uncontroversial in contrast to the establishment of a single commission in Northern Ireland, but both were established as part of a "Big Bang", whereby comprehensive equality legislation across multiple strands was largely introduced from the beginning as a complete package. In the absence of previously established funding and staffing ratios and expectations across the strands, these commissions were given breathing space to develop their own cross-strand strategies.

Finally, the difference in scale needs to be particularly emphasized: all of the equality commissions surveyed, with the exception of the US EEOC, are concerned with considerably smaller population groups than in the UK. (Note that the Australian and Canadian Commissions operate on the federal level, with separate state commissions handling the majority of complaints: the EEOC also is a federal commission, but handles a considerably greater proportion of discrimination claims than the Australian and Canadian Commissions). The South African Human Rights Commission operates nationally, but has similar staffing levels to the CRE while operating in considerably more fraught social circumstances. Size can be very important: the Irish Equality Authority has attracted very high levels of stakeholder support and generated considerable cultural changes in its limited period of existence, but the size of Ireland (allied to a supportive political cultural at present) makes generating that change considerably easier than in Australia or the UK.

Allowing for these caveats, all of these commissions promote and enforce equality legislation very similar to that of the UK, in political and social contexts that are again similar to that of the UK. All attempt to work on a cross-strand basis, using the same basic set of promotional and enforcement tools, and thereby provide valuable comparative material for Britain.

1.4 Report structure

This report is structured thematically, looking initially at the strengths and weaknesses of single commissions, including the question of the importance of single equality legislation. It examines the values that should guide a single commission, its functions and powers, its structure, devolution issues, accessibility, its relationship with human rights, independence and accountability and transition issues.

2 STRENGTHS AND WEAKNESSES

2.1 Existing unified commissions

Much of the debate surrounding the setting up of a single commission has concentrated upon the potential problems inherent in such a project, and the fears that parts of the equality agenda will become submerged or diluted. Strong concern exists that particular strands may dominate or dictate the agenda of a single commission, or that all the separate strands will become diluted within a common organisation that is unable to give a focused commitment across all its areas of responsibility, in particular with respect to less-well established grounds like disability. Similar fears exist that setting up a single commission will be an excuse for the provision of inadequate resources disguised as 'cost savings': experience from the USA, Australia and elsewhere indicates that resource allocation from governments to single commissions all too frequently lags behind the expansion of their responsibilities.[7]

Nevertheless, it would be limiting to view the process of establishing a single commission solely in negative terms. The establishment of a single commission is an invaluable opportunity to develop an institutional framework for advancing an integrated equality agenda which is capable of handling overlapping and multiple ground issues, while also being open to the diversity and specific needs of all the equality strands.

Comparative experience in all the countries surveyed demonstrates that single commissions, if given effective legal powers and with due awareness of the specific needs of the different grounds, can considerably advance the equality agenda by bringing an integrated cross-strand approach to bear that is seen by stakeholders as delivering good results across the different grounds. With the expansion of the equality grounds, it is increasingly difficult to deal adequately with the scope of the equality agenda by implementing a patchwork of strand-specific policies in isolation from each other. The general (if not universal) consensus among stakeholders in every country surveyed is that single bodies are essential to provide the required co-ordinated approach in both enforcing and promoting equality. In addition, certain stakeholder groups, in particular employers, tend in all the countries surveyed to express a clear preference for a single unified commission giving a single definite set of advice.

All the single commissions examined have found that their media and political clout tends to be considerably enhanced, and that emphasising a common equality approach has proved valuable in educating the population at large. A group that may be antagonistic or sceptical to one strand may be open to another, and through

engagement with a broad equality approach become aware of the compelling case for diversity across all the strands.[8] Within a common agenda, the different strands mutually reinforce one other. The core principle of achieving equality through the recognition of diversity is reinforced in both public perception and institutional practice. The single commissions surveyed all find that they are harder to dismiss as just representatives of sectional and special interests, due to their range and scope.

The Irish Equality Authority, for example, in devising equality schemes to remove obstacles to equal opportunities in conjunction with businesses and public authorities, has found that the ability to address discriminatory structures across all the grounds has been invaluable. The Authority has actively targeted outreach initiatives at groups with overlapping identities such as Traveller women and older gay and lesbians, with considerable success. This both helps combat discrimination within identity groups, and reinforces the concept of equality as diversity, as well as empowering groups whose needs had been neglected or simply ignored. Considerable success (and consequential controversy) has been achieved in promoting and enforcing the rights of travellers, by carrying over legal rules and an emphasis on the core principle of diversity from the well-established grounds of sex and race to the neglected and politically unpopular area of travellers' rights. [9]

The Ontario Human Rights Commission has similarly attracted general stakeholder approval for its performance across the strands. New Zealand has recently merged its existing separate equality units in order to achieve the same results, despite considerable concern about the possible dilution of the race agenda. The office of the Race Relations Conciliator has been merged with the Human Rights Commission to ensure a greater cross-strand, intersectional and holistic approach to the equality agenda.

There are nevertheless, recurrent potential difficulties that stakeholders identify as pertaining to single commissions. Concerns are expressed about the dilution of particular strands within single structures, such as disability within the New Zealand Commission. Certain stakeholder groups find that single commissions can lack specialist units that represent their perspective. Others see single commissions as spreading themselves too thinly across a wide variety of grounds. Difficulties in developing strategic enforcement policies and a lack of focus on culture-wide change on the part of the Canadian, New Zealand, Australian and US commissions have been cited as examples of this. Concern is also expressed that single commissions are easier to target for resource cuts, with the slashing of the budget of the Australian HREOC by 40 per cent in recent years cited as an example.[10] Single commissions are also seen as vulnerable to infighting and resource competitions between the strands, with the inter-strand tensions that have plagued the Australian HREOC

again being cited. The highly praised work of the South Africa Gender Equality Commission has been used as an example of what separate commissions can achieve with a specific focus.

The single Northern Irish Commission has had a troubled gestation, partially due to the fact that the inevitable challenge of establishing a single commission was amplified by the comparatively recent extension of the race relations legislation to Northern Ireland, and the newness of the Disability Discrimination Act. This meant that the Northern Ireland CRE was just beginning to establish itself, while no body apart from the advisory National Disability Council was exercising commission-style functions in respect of disability. In addition to this, the timetable for establishing the Equality Commission was excessively rushed.[11] As a result, the Commission was set up in difficult circumstances, with a high level of initial scepticism reflected in the consultation exercise[12] and considerable discontent generated by the government-imposed speed of the transition process. Fears were expressed in particular that the size, culture and political importance of the Fair Employment Commission would overshadow the other strands, especially the fledging race and disability strands. In addition, the lack of single equality legislation was identified as a major stumbling block.

However, the benefits of a cross-strand approach are beginning to be reflected in the Commission's work, despite the transition difficulties. In media, political and access terms, a single commission provides a definite access point, enhanced influence and clout and a clearly identifiable agency: the less the degree of multiplicity of equality agencies, the greater the profile of equality within the population at large. In the context of Northern Ireland, its cross-strand, inclusive agenda also makes the concepts of equality and diversity easier to convey and promote across the different political and religious communities, where specific strands such as fair employment are frequently seen as 'loaded' in favour of one community over the other.

Providing integrated, cross-strand advice and support to individual complainants, public authorities and employers is also proving to be easier and more effective with a single commission, and inevitably allows more effective use of resources in enforcing the section 75 public sector equality duty and in encouraging effective public sector mainstreaming. General information and questionnaires are easier to prepare and circulate, and the cross-strand approach also has benefits in encouraging employers to extend their required monitoring (and positive action mechanisms) under the fair employment legislation across the other equality strands, even without a legislative requirement.

The Commission has however experienced certain problems with a perceived loss of focus on gender, which has lead to immediate corrective steps, and disquiet still exists as to its structure. However, like the problems of the other commissions identified above, many of these difficulties do not relate to the unified nature of the commission itself, but to structural and functional issues relating to how such a commission is established. Stakeholder opinion in all the countries surveyed remains strongly supportive of single commissions, and sees their benefits as considerably outweighing the drawbacks.

The basic lesson from comparative experience is that if established badly, a single commission could constitute a step backwards, diluting existing levels of expertise, creating an internal hierarchy of grounds and serving as an excuse for watered down resources. If established well, however, a single commission will be capable of developing the increasingly necessary cross-strand approach, while also delivering in terms of the specific needs of the diverse strands and avoiding the establishment of a hierarchy of approaches. In so delivering, equality of outcome must be key, not the size of the pie seized by each strand. This in turn will require the identification of a clear set of values to shape the approach of the commission, as well as appropriate functions and powers, adequate stakeholder consultation mechanisms, and an institutional structure that will allow for multiple and cross-strand work while providing for the specific needs of specific strands.

2.2 Unified equality legislation

Comprehensive single equality legislation would be invaluable in minimising hierarchical differences between the grounds, as shown by the experiences of Canada, Australia and the Republic of Ireland. All have comprehensive legislation extending to goods and services. Consequently, legal differences between the strands are reduced to a minimum, resulting in greater equality of treatment for complainants across the strands, as well as enhanced understanding and appreciation of the underlying principle of equality and of anti-discrimination law. In the absence of unified legislation, individual complaints will be inevitably treated differently depending on which strand(s) are involved. The effectiveness of the great strength of single commissions, the ability to offer a cross-strand, one-stop shop, will be hampered by the inevitable confusion between the requirements imposed in respect of each strand, and the loss of transparency of legal rights.

In particular, if age, sexual orientation and religion anti-discrimination legislation is confined in scope to employment, this will create considerable differences in respect of enforcement and promotion, and will raise difficult questions of funding allocation. The same applies if a positive duty to promote equality is confined in its current application in Britain to race, or even if it is extended to disability and gender. This

will create an immediate hierarchy of equalities, which Northern Ireland has been able to avoid with its section 75 general equality duty. The EEOC Task Force Report on Best EEOC Practice published in December 1997 clearly identified the myriad nature of US anti-discrimination law as being a major factor impeding the efficacy of the Commission and employers' understanding of the law.[13]

Nevertheless, the experience of NI and other comparator countries with variegated equality legislation such as the US shows that a single commission can operate without a single act, if necessary. It should also be borne in mind that single legislation, while closing the more egregious gaps between the different strands, will be unable to establish a fully uniform equality code, given the different exceptions that come into play across the different strands. There is a danger that single legislation will be seen as a panacea for any future strand differences and tensions, whereas in comparative experience promoting and enforcing the different strands invariably requires a number of different approaches. The Australian legislation is unified in a single act, yet different approaches across the strands persist. Similarly, in the Irish, Australian, New Zealand and Canadian combined legislation, political and social factors invariably result in greater funding and attention being focused on particular issues, such as race in New Zealand.

Nevertheless, unified legislation, while perhaps not a necessary precondition for a single commission to work, is still necessary if it is to fulfil its potential and to achieve consistency of approach and fairness across the strands. Its absence may not hole a single commission below the waterline, but it will hinder its plain sailing.

3 VALUES AND APPROACH

3.1 Internal

A single commission presents inevitable problems in that it must both operate in a manner that addresses the specific needs and requirements of specific strands, and avoid being damaged by tension between those strands, while still effectively implementing a cross-strand agenda. This is the tightrope on which it must balance, while still retaining its external credibility and effectiveness.

To enable a single commission to operate strategically and proactively, it therefore needs a clear set of values to underpin its activities. The Northern Ireland Commission has identified three key aspirations that underpin its work: the delivery of high-quality public services; the development of an integrated equality agenda in both its policy and service delivery; and the development of expertise across all the equality strands while avoiding the creation of a hierarchy of grounds. Similarly, the Irish Authority has recognised three ways of approaching discrimination: the ground-specific approach; a theme–based approach (housing, policing and so on); and a multiple-identities approach. All three are considered relevant and applicable, and of equal value.

Common to both approaches is the recognition that the core principle of diversity applies and underpins all the different grounds, that progress in one ground can impact positively on another, the equality agenda cannot be separated out into component parts, and overlapping grounds add value to each other in a mutually reinforcing process.[14] However, the approach of any single commission has to also accommodate self-critique and openness, and recognition of the particular needs of specific strands that are often not understood by equality practitioners in other areas. The Northern Ireland Commission has emphasised the need for constant vigilance and stakeholder consultation in assessing its treatment of the different strands, and the need also to be willing to respond to criticism. This is demonstrated by the recent identification of a perceived lack of focus on gender following the merger of the existing commissions, and the Commission's subsequent steps to address this in its internal structure[15] and in its business plan for 2002.[16] The South African Human Rights Commission, while obviously placing particular emphasis on race discrimination, has emphasised that progress across all of the equality grounds is important, and has in particular taken care that disability is not perceived and treated as a less immediate concern, but rather as a core element of the human rights agenda.

As part of this internal diversity approach, the existence of different approaches across strands should not be overlooked or downplayed. In particular, the

perspectives of stakeholders intimately concerned with a specific strand should not be disregarded. For example, across all the commissions surveyed, promoting disability requires a strong focus on promoting and advising on reasonable adjustment that is quite specific to this strand. Disability stakeholders emphasise that a commission with responsibility for disability needs to act as an exemplar of good practice in respect of reasonable accommodation and disability rights, as well as requiring participation of disabled persons in decision-making that affects the disabled.[17]

In noting the elements specific to the disability strand, it should also be noted that disability presents particular problems, given that across the countries surveyed it constitutes a relatively recent ground with considerable differences in promotional practice in contrast to some the other grounds. However, similar concerns exist in respect of every other equality ground, each one of which involves particular stakeholder expectations, promotional priorities and enforcement problems.

The values that underpin a single commission need arguably, therefore, to recognise the common principle of diversity that underpins all the equality grounds, while also recognising their individual diversity by means of appropriate consultation and openness. To make a single commission work, representatives of the separate strands need also to adopt these core values. The Australian experience illustrates clearly the damage in effectiveness and popular perception that can be inflicted if the separate strands overemphasise mutual competition at the expense of the core agenda.

3.2 External stakeholders

Identifying the values that should guide a single commission's approach to external stakeholders, in particular employers, public authorities and disadvantaged groups, is also crucial. A common theme in the experience of all the commissions surveyed here, which is very familiar in the UK context, is that they perennially find themselves caught in a tension between meeting stakeholder expectations, in particular by representing disadvantaged groups and individual complainants and implementing strong enforcement measures, while functioning as an agency of the state and acting as a go-between with other public authorities and employers.[18] Striking the balance within a single commission also becomes more complex, as different strands may require different approaches.

The different commissions surveyed here tend to strike this balance in different ways. The Australian Commission, in particular in its relationship with the government, tends to emphasise its role as representative of the disadvantaged groups. Its comments and reports on proposed or existing legislation and government policy in

the areas of asylum and Aboriginal rights have been very hard-hitting, which has been very effective and popular with disadvantaged groups, but has produced a political backlash reflected in the funding cuts. The Canadian, US and New Zealand commissions have in contrast maintained a more constructive if frequently critical relationship with other state organs, which has however lead to accusations from NGOs of not being critical or activist enough. All four commissions have tended to have an arms-length relationship with employers, and are consequently often perceived as antagonistic or at best detached by the business community.

Both Irish Commissions appear to have struck a reasonably well-received balance in being constructive yet critical, keeping lines of communication and advice open with public authorities and employers while also representing NGO views. The Irish Equality Authority has received considerable stakeholder approval for its combination of constructive engagement with employers and public authorities in providing advice, guidance and in devising equality schemes, while at the same time pursuing a vigorous and effective enforcement strategy across the nine equality grounds covered by the Irish legislation. For both Irish commissions, striking this balance may be made easier by a degree of positive political support for the equality agenda, and by the comparatively small scale of the relevant populations.

No commission has opted for strong positions at either end of the spectrum, neither opting for a purely representative role (community groups and NGOs tend to fill this role) nor for a purely administrative, non-critical role. An acceptance of the need for constructive engagement and of both the limitations and strengths of the commission's role as a state authority is common across all the commissions, echoing the view of the Hepple Report that a single commission's main role is to "act as an organ of government promoting change…and where appropriate helping individuals to assert their rights", while the NGO and community sectors are the more appropriate vehicles for direct representation of disadvantaged groups.[19]

Equally, there exist differing views as to the approach a single commission should adopt. This can be an individual-centred approach, placing its strategic emphasis on assisting and empowering individuals; a group justice approach, focusing on representing disadvantaged groups and combating systemic discrimination; or a combination of the two. In contrast, it can adopt what Claire Collins has described as a 'holistic' approach, whereby the emphasis is on achieving cultural change in society as a whole by combining tough enforcement measures with promotion across all the stakeholder groups, and where the 'audience' for the commission's work is the population at large.[20]

The US EEOC has oscillated between the individual and group justice approaches. It adopted a group approach in the 1970s in emphasising large-scale resource-intensive projects combating systemic discrimination, then shifted to an individual-orientated approach in the early 1980s with a new political make-up, placing great emphasis on providing remedies for individual victims and promotional work rather than large-scale systemic investigations. It now attempts to implement a median approach, incorporating both approaches. Its focus on individual and group remedies, arising to a degree from its confined role focusing on employment, has however arguably resulted in a lack of society-wide initiatives. This has led to stakeholder perception that the EEOC overly emphasises complaint-handling and lacks focus on achieving large-scale cultural change.[21]

The Canadian, New Zealand and Australian commissions by virtue of their dispute resolution functions, inevitably are committed to an individual-centred approach, but all have in recent years placed much greater emphasis on the 'holistic' approach by enhanced outreach and promotional activities. The Australian HREOC, as noted above, also emphasises group representation. The funding and dispute resolution constraints imposed upon these commissions have, however, stunted the development of the group and holistic approaches, but the increased emphasis across all three commissions on promotion and strategic enforcement as distinct from individual dispute resolution is intended to alter this position. Again, stakeholder perception appears to identify these three with an excessive individual and group emphasis, at the expense of the holistic wider approach through litigation and outreach. A lack of strategic focus and a failure to engage with employers, authorities and the wider population is a constant theme of stakeholder complaint, though the strong emphasis of the Australian HREOC on group rights is highly praised by disadvantaged groups.[22]

The Irish commissions, having greater room to manoeuvre in the absence of a dispute resolution function, are engaged in balancing individual, group and 'holistic' approaches, with an overall emphasis on achieving cultural change through strong enforcement against violators and intensive promotional and outreach work. Stakeholder opinion north and south of the border, but particularly in the Republic, again seems to generally approve of this combination of approaches, even if it is early days. The advantage of this approach is that it mixes the provision of real remedies for individual and group victims of discrimination with a strategic focus on culture change. For a single commission, it appears imperative that a mixture of all three approaches be adopted. Protecting individuals ensures effective personal support for victims while being a politically popular role; asserting group rights (including those of groups with multiple identities) combats systemic discrimination while reinforcing the principle of group diversity; the holistic cultural-wide approach

represents the long-term objective and requires appropriate strategic steps in both enforcement and promotion. All three must be balanced and reflected in the functions and powers of a single commission, and how they are used.[23]

4 FUNCTIONS AND POWERS

4.1 Enforcement and promotion

All the commissions surveyed here have enforcement and promotional functions. A consensus exists that the two mutually reinforce and are inseparable from each other, and that the establishment of separate enforcement and promotional bodies would lead to confusion, lack of valuable mutual input and feedback, and the detachment of legal enforcement from outreach and educative initiatives to mutual detriment. Employers, service providers, public authorities and complainants in general want one authority to talk to: potential respondents in particular are generally happy to have a one-stop shop, where promotional advice will reflect and mirror enforcement policy. The common perception across all the comparator commissions is that it is essential for maximum effectiveness that a single commission balance the two goals of enforcement and promotion, as well as achieving a balance in the use of different enforcement and promotional tools.

Given the comparatively large population size of the UK (allowing for the federal dimension in the US, Canada and Australia), a single commission will never effectively be able to represent fully all individual complainants. It consequently has to aim to bring about a better overall environment by combining strategic enforcement with promotion, the bridge between prevention and treatment. Promoting diversity and the use of positive action measures has to play a key part of this process of culture change. However, assisting individual litigants via effective enforcement contributes to creating useful precedent, assists in rooting out patterns of discrimination and ensuring individual justice, delivering tangible and concrete benefits for individuals who have suffered discrimination. The stick of strong and directed enforcement measures has to be combined with the carrot of promotion. In the opinions of stakeholders in all the countries surveyed, balancing enforcement and promotion are not regarded as competing priorities: effective promotion can assist targeted, strategic enforcement, and vice versa.[24]

Balancing resource allocation between enforcement and promotion in a single commission does require due consideration of the different developmental stages of the legislation, and what promotional and enforcement activities are relevant to each specific strand. Well-established strands with a body of precedent and best practice already in place have less immediate need of enforcement proceedings serving to build-up case law rapidly than ‘new’ strands such as disability, age, religion and sexual orientation, and a strategic approach to enforcement may need to reflect this in terms of resource priorities. Also, in all the commissions surveyed, enforcing disability rights frequently involves less emphasis on litigation and more on conciliation and promotion than other grounds. The GB Disability Rights Commission

emphasises (in order of priority) advice, conciliation, and finally litigation when necessary. Intensive use of litigation may be less appropriate in the context of disability than elsewhere, particularly if disability legislation, as is frequently the case, is loosely worded and riddled with exceptions.

Balancing enforcement and promotion in a single commission requires sensitivity to the need for such different approaches across the strands: a ‘one-size fits all’ approach may be inappropriate. Equally however, some common standards need to be developed to ensure complainants are treated equally (if not identically) irrespective of the grounds of their complaint. The Northern Ireland Commission initially experienced cost over-run difficulties in its legal work, as well as a degree of differential treatment across the strands. This was due to different approaches being adopted in respect of different strands within its legal unit as to what criteria to apply when taking decisions to support cases, and when to make use of external legal resources as opposed to using the Commission's own legal staff.[25] A common protocol for handling cases has now been adopted following a report by an external consultant.

Some separation of enforcement and promotion does take place at the structural level within single commissions in almost all of the comparator countries, in particular where commissions have investigative, conciliation and mediation functions as part of their dispute resolution responsibilities. Keeping litigation decisions apart from advice, investigation and alternative dispute resolution (ADR) is seen as a necessary confidence-building measure. From its inception, the New Zealand Commission has separated enforcement decisions from its advice, promotional and mediation functions. A specialist Proceedings Commissioner previously had responsibility for enforcement decision-making, after the Commission had attempted mediation in a dispute. Concerns that this Commissioner was excessively influenced by the earlier investigative and conciliatory stages has resulted in this role now being performed by the Office for Proceedings. Although part of the overall structure of the Commission, this Office is required under statute to act with total independence from the Commission in deciding which cases to support in litigation.[26]

The other commissions surveyed rely on their internal arrangements to keep litigation, advice and ADR apart at an organisational level. The Canadian Auditor-General’s report on the Canadian Commission recommended the separation of enforcement and conciliation functions, due to perceptions of institutional bias, which the Commission has now done internally. Similarly, the EEOC, HREOC and the Irish Commissions make intelligent and appropriate use of ‘Chinese walls’ in separating employer advice and conciliation functions from litigation management. This seems

to be more than adequate to achieve the objective of reassuring employers, while keeping the enforcement and promotion roles distinct where necessary.

4.2 Strategic enforcement and dispute resolution

Developing a coherent and effective strategic enforcement role has proved problematic for many of the commissions surveyed. In particular, the dispute resolution role of the North American, Australian and New Zealand Commissions has tended to drain resources away from selective strategic initiatives towards a reactive, complaint-orientated approach, criticised in all three of the reviews into the equality enforcement machinery carried out in Canada, New Zealand and Australia over the last five years. The requirement to assist all complainants imposed on these commissions, plus the fact that complainants in the US, Canada (until very recently), Australia and New Zealand are generally required to approach the commissions before commencing enforcement proceedings elsewhere, has resulted in all these bodies suffering from repeated patterns of huge case backlogs and delay. The US EEOC hit a high of 111,000 backlog cases in 1995, while between 1988 and 1997 the Canadian Commission took on average from 23 to 27 months to decide whether to send a compliant forward for conciliation or to the human rights tribunal, causing intense discontent across the stakeholder groups.[27] These delays, repeated to a lesser extent in Australia and New Zealand, and the resource demands inherent in handling a large volume of complaints have tended to result in a high complaint rejection rate[28] and a low use of litigation and the strategic enforcement powers of the commissions.[29]

Stakeholder criticism of these commissions has in general focused on concerns that they are inevitably reactive rather than proactive in their enforcement and promotion strategies, due to the resource drain of the dispute resolution process. With a compulsory dispute resolution function, the approach of a commission inevitably has to prioritise handling these individual complaints rather than developing strategic enforcement. This not only makes the commissions reactive rather than proactive, it also may conceal systemic patterns of discrimination. The 2000 Canadian Review Panel Report argued that most excluded and disadvantaged groups may be those least likely to avail of a time-consuming dispute resolution process, especially if the process is handicapped by the delays and legal requirements that have bedevilled these procedures.

The delays and reactive approaches engendered by these functions has resulted in an increased emphasis on promotion in the North American and Southern Hemisphere commissions in recent years. The Australian HREOC in particular is developing new litigation strategies, as well as making increased and effective use of its intervention and new *amicus curiae* (friend of the court) powers which allow the

HREOC to intervene more effectively in relevant cases (see Appendix C). Nevertheless, the UK and Irish Commissions are able to operate in a more proactive manner than their equivalents in North America, the Netherlands, Australia and New Zealand. The experience of the Race Relations Board in the UK indicates that conferring similar dispute resolution functions on a single commission in the UK without massive resource investment and a considerable alteration in the expectations of stakeholders is an absolute non-starter.

Even with a dispute resolution function, however, the goal of an effective strategic enforcement policy can be attained. A model for vigorous and strategic enforcement action, clearly demonstrating its possibilities, was provided by the US EEOC's large-scale, targeted litigation policy of the early 1970s. This had considerable effect in identifying and breaking down patterns of systemic race and sex discrimination, and shaping much of the core legal concepts in discrimination law. However, the EEOC's backlog of individual complaints and the shift to an individual-centred approach in the early 1980s considerably eroded its strategic approach.

The Australian HREOC has recently begun, as noted above, to use its intervention powers to good effect in attempting to shape a coherent body of precedent governing the application of international human rights standards to equality (and in particular asylum and Aboriginal issues). This is despite being hindered by its dispute resolution function and savage budget cuts, which has made it very difficult to develop a strategic enforcement policy. The Irish Equality Authority has combined strategic enforcement and intensive use of promotion and outreach schemes to rapidly establish clear case law and best practice across the nine grounds of the Irish legislation. High profile cases, for example against Ryanair for age discrimination and bars for discrimination against travellers, have had considerable public impact. This in turn has encouraged employers to work proactively with the Authority in developing equality schemes and equal opportunity programmes, and has generated a high degree of stakeholder support for the Authority (and a political backlash from publican groups aggravated at the rigorous application of the anti-discrimination code to travellers). This demonstrates both the benefits of linking promotion and enforcement, and how strong enforcement policies if backed by public education and outreach to employers need not result in a state of mutual antagonism.

As part of their enforcement and capacity-building functions, many of the commissions surveyed place a considerable emphasis on equipping groups to become advocates in their own cause. Due to the large volume of travellers' cases in Ireland, the Equality Authority has initiated a community advocacy project, training representatives from the travelling community to take forward complaints and then providing a back-up support service. Results so far have been promising, and have

contributed to an increasing self-confidence within the travelling community. Given that single commissions have considerable obstacles in adequately representing all individual complaints, any single commission should arguably place a high priority on empowering community groups, advocacy organisations and local networks to take cases and represent complainants. The Canadian, Australian and Northern Irish Commissions all actively aim to provide support for community groups and networks, which has the effect of empowering these groups and taking some of the advocacy and enforcement load off the shoulders of the Commissions. Capacity-building has also to engage the traditional support networks for discrimination cases: 30 per cent of all cases before the Director of Equality Investigations in Ireland are conducted by trade unions on behalf of complainants.[30]

4.3 Investigations and inquiries

The use of investigation powers by the commissions surveyed has frequently run into the same pattern of legal difficulties familiar in the UK context. The Canadian Commission's power to initiate investigations has been largely unused, because previous attempts had been judicially challenged on the grounds of bias and want of natural justice. The key appears to lie in the ability of a single commission to make use of these, and for them to be used as part of an effective strategy in combination with litigation.

Single commissions should have wide-ranging powers to conduct investigations, including the power to compel the production of evidence in accordance with the Paris Principles[31], even if the choice is made to exercise them with caution, as with the Irish Equality Authority. In contrast, the South African Human Rights Commission has made extensive use of its investigatory powers, in both large-scale and smaller cases involving violation of human rights. Nor has it hesitated to issue subpoenas to compel the production of evidence or relevant material, as well as to require government authorities, public servants and private individuals to appear before the Commission.[32] The willingness of the South African commission to use its investigatory and compulsion powers demonstrates that these functions can be used aggressively and with success, and that their use can survive challenge if given sufficient support in law. Nevertheless, the South African experience also counsels against high-handedness: the use of the subpoena power against newspaper editors as part of the Commission's highly controversial 'racism in the media' campaign generated a very hostile media response, claims of abuse of free speech and considerable controversy.

The inquiry powers available to the Australian HREOC and the New Zealand Commission have been used to good effect, despite the resource constraints under which they labour. The HREOC has the power to carry out wide-ranging inquiries

across the field of human rights, and has used this to produce reports that have made a considerable media and political impact in promoting diversity and equality in Australian society. In particular, its Stolen Children Inquiry generated intense public debate on the treatment of aboriginal children over several decades. The early inquiries such as the Stolen Children Inquiry did divert considerable resources from the performance of other functions, which contributed to cross-strand tensions, but they had an immense impact in terms of both dramatically increasing the public profile of the Commission and of the importance of the equality agenda in general. Despite the consequent drain on the HREOC's resources, these inquiries were seen as a successful strategic use of limited resources to achieve considerable impact.

Subsequent Australian inquiries have however been conducted within the resource allocation to the specific strand involved in the inquiry. Unlike the Stolen Children Inquiry, which was initiated by a reference from the government[33], the Commission's recent inquiries have been self-initiated: the two current ones concern paid maternity leave and children in immigration detention. Both are highly controversial, involve direct conflict with government policy, and have generated immense media and parliamentary attention, putting neglected and pressing equality issues firmly into the heart of political debate. The HREOC's ability to make special reports to Parliament on human rights matters has in comparison proved much less effective at generating a political response.

Not all inquiries have been so controversial. A previous inquiry into age discrimination by banks into making facilities and special offers available to older and younger persons, was conducted via the Internet. It involved comparatively little expenditure within the age equality budget allocation and consisted of extensive close consultation with both disadvantaged groups and the banking industry, with the HREOC acting as mediator in bringing together the two sides. This succeeded in bringing about wide-ranging voluntary changes of practice within the banking sector, as well as greatly enhancing awareness and understanding of age equality.[34] The same approach was taken by the New Zealand Commission in its inquiries into the treatment of children in care and other matters in the 1980s: the Race Relations Office prior to its merger with the Commission similarly made effective use of its inquiry powers to push proactively for greater social justice for the Maori community via high profile inquiries which frequently challenged government positions.

The Australian experience offers valuable experience in how a single commission might use inquiry powers. In particular, how an effective inquiry has to be strategically focused and well-directed, be capable of being effectively carried through by a commission, be conducted by suitable expert opinion (outsourced if

necessary) and steer clear of becoming a witch-hunt, while still ensuring accurate fact-finding by wide consultation and fair consideration of all perspectives.

4.4 Flexibility of enforcement action

For a small, under-resourced commission, the HREOC has been able to make a considerable impact across the equality strands by the focused use and a broad application of its inquiry and investigative powers. This indicates a key element of comparative experience that stakeholder opinions have frequently emphasised: artificial and unnecessary legislative restraints on how commissions operate should, if possible, be abandoned.

For example, recurrent experience has shown that the need for approval by commissioners of every enforcement decision needs to be explicitly capable of being delegated to appropriate legal officers operating in accordance with an agreed legal and enforcement strategy. This has been done for example in the US, where this authority is now vested in the EEOC General Counsel: commissioner approval of enforcement decisions had been previously required, which contributed to the immense time delays in processing cases and unnecessarily exposed the EEOC to legal challenge. The recent re-shaping of the New Zealand Commission similarly removed commissioner oversight of the day-to-day enforcement and mediation processes, in line with the recommendations of the re-evaluation review. Given the inevitable size and scale of any British single commission, it may be the case that commissioners must aim to set strategic parameters and to monitor their implementation, but have to disengage from excessive micro-management. Indeed, the DRC already functions in this way in that commissioners, having set the strategic priorities, can and do delegate case selection powers to staff.

Other commissions also have wider ranging powers than the UK commissions, which are effective in opening up possibilities for strategic enforcement which might otherwise be excessively narrowed. The US EEOC, and the Canadian, New Zealand and Australian commissions can all bring litigation in their own name, as can the Belgian CECLR and the Dutch anti-discrimination bureaux, which is especially valuable where victims are unwilling to come forward or where class actions cannot be brought. The US EEOC has used the right to bring litigation in its own name to great effect in the past to enhance its strategic enforcement, and to litigate class actions involving large-scale patterns of discrimination.[35] Much of the ground-breaking precedents in the US that fleshed out and gave legal shape to the concept of indirect discrimination stemmed directly from the EEOC’s ability to take litigation in its own name.[36]

The specialist commissioners of the Australian HREOC have recently been given the power to act as *amicus curiae* with the approval of the relevant court in discrimination cases, where broad human rights and policy issues are involved: this allows the relevant Commissioner to assist the court in taking these broader considerations into account without arguing for one side or the other.[37] The HREOC is placing considerable emphasis on developing this role, to enable it to assist in framing the development of case-law and integrating considerations of human rights and equality into judicial-making. Giving a single commission a similar role in Britain might supplement its ability to intervene in cases, by allowing it to provide a broader policy perspective outside of the constraints of the adversarial system.

The experience of the Northern Irish, US and Canadian Commissions also shows the utility of a single commission having the power to enter into binding anti-discrimination schemes with employers and service providers and to approve positive action schemes if permissible under the relevant legislation. This permits effective combinations of enforcement and promotion, and encourages employers to interact positively with the commission.

Comparative experience shows clearly that removing restraints on the ability of a single commission to have standing in its own right, to carry out investigations and inquiries and to use other enforcement tools needs to be a priority, especially to free up possibilities for effective cross-strand enforcement. It also repeatedly highlights a need for the functions of any commission to be framed in broad terms, to again maximise freedom of movement, as well as clearly setting out its ability to perform roles such as commenting on proposed legislative changes or international agreements. A good model of framing a single commission's functions is the New Zealand legislation. The primary functions of the New Zealand Commission are now expressed to be twofold: advocating and promoting respect and understanding of human rights in New Zealand, and encouraging the maintenance and development of harmonious relations between individuals and among the diverse groups in New Zealand society.[38] These primary functions are supplemented by a very extensive list of secondary functions that give broad strategic leeway to the Commission. [39]

4.5 Positive duties and equality audits

In many ways, single commissions come into their own when enforcing positive duties, or when conducting equality audits. Being able as a single body to adopt a cross-strand approach that also can deal with overlapping forms of discrimination means that maximum returns can be obtained. The Canadian Commission has the power to conduct audits under the Employment Equity Act, while the Northern Irish Commission can require positive action under the fair employment legislation, as well as being required to approve public authority equality schemes under the positive

duty introduced by s. 75 of the Northern Ireland 1998. The Irish Authority can carry out “equality audits” of the levels of equal opportunity across all nine strands of the Irish legislation in particular businesses, groups of businesses or industrial sectors, either by invitation or on its own volition (unless a business has less than 50 employees, when consent is required). The Authority is given considerable powers to compel the production of evidence in completing an audit, but prefers to encourage voluntary uptake, with the carrot of a reduced chance of losing a discrimination claim proving effective in bringing businesses on board. It should be noted, however, that these audits can only take place in the sphere of employment, not in service provision.

The Northern Irish Commission, while dealing with the large workload imposed by its obligation to approve equality schemes, has similarly found that the statutory duty is an extremely effective tool in bringing about change in the public sector. Much of its work in respect of the duty has involved supporting authorities in devising schemes, bringing together representative groups and public authorities, and acting as a go-between in finding common ground on problematic issues. The ability to provide expert advice and link stakeholders and public authorities across the strands has proved invaluable.

Comparative experience thereby demonstrates the real possibilities for effecting cultural change through audits and positive duties, and the particular value of a single commission in implementing these. The commissions surveyed here all consider that the cross-strand approach made possible by having a single equality body considerably enhances the effectiveness and reach of audits and statutory duties. Equality audits and positive duties tailored to suit the different equality grounds are regarded by stakeholders as major motors of cultural change. Giving a single commission similar audit powers to the Irish Equality Authority as well as responsibility for working with public authorities to implement statutory duties across the strands would maximise its usefulness and ability to generate a real cross-strand approach.

4.6 Promotion and outreach

The Australian, New Zealand, Canadian and US commissions are all increasingly emphasising promotion as the most efficient manner of spreading education and awareness of diversity. Similarly, the Irish Authority places emphasis on outreach to businesses and public authorities, in combination with enforcement where required: spreading best practice and promoting effective positive action is seen as key in developing equal opportunities.

All of the commissions surveyed are attempting to implement outreach initiatives to employers and businesses, with the EEOC for example having developed a special small business scheme that has been viewed as successful.[40] The emphasis is on co-operation and partnership, and on remedying previous gaps between employers and the commissions that has considerably hindered effective promotional work. A similar emphasis in promotional strategies is placed on providing an effective service across all the strands, with due emphasis on the different needs of each strand. Training activities, dissemination of best practice and the circulation of codes of practice are all standard activities. In this context, the successful work of the New Zealand Equal Employment Opportunities Trust should be mentioned. The Trust is a joint business-civil society initiative to highlight best practice in gender equal opportunity, and operating on a shoe-string budget has attracted considerable stakeholder praise for its outreach and educational activities.[41] This perhaps indicates that joint initiatives operating at arms-length from a single commission may be very valuable, as similar experience in the UK with the Employers Forum on Disability has shown.

In the context of the promotional activity of single commissions in the political sphere, a clear statutory right to comment on relevant legislation in line with the current ability of the existing commissions appears to be useful, as noted above. The Irish legislation only gives a formal statutory role to the Equality Authority to be included in the review of the equality legislation itself, which has caused concern due to its potential restrictiveness. In contrast, the South African Human Rights Commission is given a formal role in drafting human rights and equality-related legislation. The Australian HREOC can make special reports to Parliament if it deems it necessary, as can individual commissioners such as the Aboriginal Commissioner if this function is specifically conferred upon them. This has proved valuable in highlighting pressing issues, but has had limited utility in generating parliamentary and public debate if parties are not willing to take up the issues in question.

4.7 Alternative dispute resolution (ADR), conciliation and mediation

To complement outreach initiatives, alternative dispute resolution is widely used by the North American, Australian and New Zealand Commissions. Conciliation and mediation functions are built into their dispute resolution mechanisms, to be used as appropriate.[42] In Australia, the use of conciliation by the HREOC is seen as unproblematic, effective and useful in providing an individual remedy that is less time-wasting and costly, in particular for the complainant. The Canadian Commission can play a role in reconciling complaints, but has found investigation and negotiation an “uneasy mix”.[43] However, in response to recommendations in the Auditor-General’s critical report of the same year,[44] it introduced a pilot programme in 1998 of impartial mediation services prior to investigation, in contrast to conciliation, which is

offered after the initial investigation in its dispute resolution system. The pilot programme proved a partial success, with a 60 per cent participation rate of those to whom it was offered, and a 56 per cent success rate, and is being extended. The EEOC now settles 50 per cent of complaints submitted to it via its national mediation scheme.

Due to concerns about the credibility of combining enforcement functions and ADR in the same organisation, some of the countries surveyed have placed mediation functions in the hands of an independent unit within the Commission, or in a separate body. Following the recent reform of the commission In New Zealand, its ADR unit provides impartial mediation if complainant and respondent agree to participate. In Ireland, the Office of the Director of Equality Investigations (the investigatory tribunal that makes the first instance decision in discrimination cases) rather than the Equality Authority offers a formal mediation process to the parties in a discrimination dispute.

Concerns were initially expressed that mediation would allow individuals to achieve personal remedies without securing overall systemic change in the behaviour that led to their complaint. Results to date have, however, shown that mediated settlements can result in broader remedies, such as anti-discrimination training, a review of staff structures and pay scales, or modifying an internship programme to accommodate people with disabilities.[45] This process has been assisted by the role the different commissions play in the process, ensuring both complainant and respondent have parity. Commission support for ADR mechanisms needs to recognise the potentially great inequality in resources between complaint and respondent,[46] as well as the importance of combining individual justice with the ‘ripple-effect’ of equality cases, which can establish precedent and good practice across wide sectors without requiring multiple litigation. A single commission with a cross-strand approach can make a particular contribution here.

Nevertheless, the real possibility exists that extensive use of mediation could reduce systemic enforcement, by focusing on individual remedies at the expense of systemic ones and preventing the establishment in case-law of clear precedent. Strong views exist that ADR mechanisms should be seen as an alternative, but never as a replacement, for effective enforcement through the legal system. The Irish trade unions in particular have urged extreme caution about excessive reliance on mediation. The argument is made that a commission has to retain a strong focus on enforcement, and care has to be taken that a mediation role does not undermine that focus. A strong case could be made in the British context for the functions of any single equality body not to include ADR, but for this to be handled by a strengthened and expanded ACAS.

Caution must also be observed about dressing up an enforcement process as ADR. Employers in New Zealand lost faith in the New Zealand Commission's ADR process, viewing it as intertwined with enforcement strategy, prior to the establishment of a new impartial mediation service. Alternatively, replacing meaningful enforcement with conciliation and mediation could remove the sting of the legislation: ADR will always work better against the background threat of litigation. It is also necessary that the ADR mechanisms that are used should reflect the special context of equality complaints, and of the different strands. In Britain, the DRC makes greater use of conciliation processes than do the other commissions, in particular in the area of access to goods and services. A one-size fits all ADR process may not be suitable or appropriate.

4.8 Promoting good relations

Promoting good relations is a function of several of the Commissions surveyed that has received comparatively little attention beyond general educative initiatives in most countries. However, the strong emphasis in the New Zealand legislation on the promotion of good inter-community relations has been responsible for the emphasis placed by the New Zealand Commission since its inception on education, outreach, providing information, mainstreaming equality in the public sector and mediation. This approach has stemmed directly from an emphasis on good relations and education with 90 per cent of complaints made to the Commission being settled by mediation by 2001. The Irish Authority considers that drawing attention to overlapping identities and bringing together diverse groups is a core function, and has initiated several multiple identity initiatives and seminars, as well as bringing together diverse groups such as Islamic and gay, lesbian and transsexual organisations in common fora.

Cross-strand advisory stakeholder councils are common and can play a considerable role in promoting cross-strand relations, which has to be seen as a priority. The possibility of conflicts between disadvantaged groups needs to be recognised, as does the possibility of additional protection of disadvantaged groups generating real resentment among economically disenfranchised groups which may not come within the umbrella of equality legislation. This is an area where the equality commissions surveyed tend to underplay their promotional and outreach work. Effective promotion of cross-strand and community relations at large may be achieved by extending the current network of Race Equality Councils into an adequately funded and resourced cross-strand network with outreach to groups not covered by the legislation. The term 'Community Relations Councils' could even be resurrected, to emphasise that the purpose of these councils is to bring together both the equality groups and the wider community. Similar limited initiatives in Australia, Canada and New Zealand have proved successful. The French *Commissions Departementales d'Accès à la Citoyenneté* (CODAC) places considerable emphasis on linking community groups

with public authorities, and establishing networks involving both authorities and NGOs in regular working groups dealing with education, housing, labour market integration and access to justice.[47]

A related issue is whether the commission's strategic remit should extend to promoting social cohesion and social justice for disadvantaged groups. This role, which would overlap but be considerably broader than responsibility for promoting good relations, could enable the commission to launch cross-strand initiatives designed to promote social and economic integration of disadvantaged groups. The Australian HREOC's Aboriginal and Torres Strait Islander Social Justice Commissioner has a similar function. This includes reporting annually to the Attorney-General and Parliament on the enjoyment of human rights (including socio-economic rights) and social justice by the Aboriginal population, and the power to make special reports on the implications of any legislation on that community including any necessary recommendations. In contrast, New Zealand does not give such a function to its Commission, instead relying upon a specialist Ministry for Maori Affairs and a network of Maori and community groups to implement a social cohesion agenda.

A broad function to promote social cohesion could again give valuable leeway for the commission to launch wide-ranging initiatives designed to combat the marginalisation faced by many disadvantaged groups. However, the question is whether such a function could dilute the focus of the commission, involve it in issues where it can only make a limited contribution, and whether the commission's credibility in respect of this function with grass-root organisations and public authorities can be sustained. A separate national community relations council may be a more appropriate body for playing such a role, and again there may be a danger of the commission playing a role more suited to pressure groups, NGOs and community networks.

4.9 Resources

A single commission must have the funding and resources to be proactive and to operate strategically. The experience in Northern Ireland shows clearly that merging commissions in actuality produces little or no cost savings or economies of scale, given transition costs and the requirement to develop a comprehensive cross-strand approach. The resources available across strands need to be broadly complementary, and large-scale additional expenditure on particular strands (such as expenditure in Britain on enforcing the positive race duty) need to be flagged, explicit and clearly justified, with the clear understanding that this expenditure will be subject to regular review, is not locked in stone and is open to change.

Following the recent severe budget cuts imposed on the Australian HREOC, each strand is now allocated equal amounts of money (see above). Introduced in response to requirements for considerable cuts across each strand's budget, this equal allocation arrangement did substantially reduce cross-strand tension. Arguably however, in the British context this would be an impractical approach to adopt here, in the absence of massively substantial funding increases to raise the new equality strands to the level of funding that exists and is anticipated by stakeholder groups in the race context. Section 74 of the Northern Ireland Act 1998 requires the Equality Commission to specify publicly in its annual accounts its levels of expenditure broken down across the separate grounds: this provision was inserted to ensure transparency in funding allocation.

However, great caution has to be exercised about placing restraints on the ability of a single commission to use its funding resources strategically. The Australian and Northern Ireland funding approaches, by potentially locking in a rigid allocation of resources between the strands or, in the case of Northern Ireland, making it difficult to alter existing allocations, run the risk of contributing to institutional sclerosis. If a single commission is to maximise its ability to act strategically, then it is arguable that funding in respect of the separate strands has to be able to be adjusted from year to year to reflect changing priorities and new conditions. Also, breaking down cross-strand and functional activities into strand-specific expenditure may be constraining and artificial. Achieving the totality of the entire equality agenda has to be prioritised, and developing a cross-strand approach that does justice to each separate strand may require a more flexible approach than locking funding into specific strand allocations. The Irish Equality Authority does not allocate funding on this basis, for example, but instead funds specific strand projects as required. A similar approach may not be feasible in the British context, with the size and amount of any single commission's projects across the strands requiring some strand-specific allocation. The values of transparency and strategic flexibility need to guide any such funding allocation.

5 STRUCTURE AND COMPOSITION

5.1 Structure

The structure of a single commission needs to reflect the core values of diversity and openness, while also delivering in terms of effectiveness and credibility. The comparative models essentially fall into two distinct groups: the commissions in the Republic of Ireland, the United States and Canada have functional structures, with separate legal, corporate services, promotion and policy and other departments, varying with the commission and the extent and nature of its responsibilities. Their commissioners do not in theory represent specific groups, although in practice there are strong links between particular strands and particular individuals. Where specialist units exist, they are function-specific, not strand specific.

The Northern Ireland Equality Commission is now structured along functional lines, with the functional organisation of the Commission consisting of three units, policy and publicity (including responsibility for the s. 75 duty), legal and corporate services/operations. There are however two transitional specialist units devoted to disability and race relations, designed to enable these 'new' grounds (in the Northern Ireland legal context) to get off the ground. Both specialist units have proved effective in developing the comparatively new disability and race relations agendas, but are gradually being merged, not without some discontent, into the functional structure, the process to be complete by the end of 2003.[48] In contrast, the Australian HREOC has a mixed functional and specialist structure, with full-time specialist strand-specific commissioners under the overall direction of a Chief Commissioner supervising, with a considerable degree of autonomy, the development of policy, promotion and legal enforcement strategy in respect of their specific strand. Functional units provide legal, public relations and corporate services support.

The mixed functional/specialist structure of the New Zealand Commission is largely the product of political compromise and the disparate development of its human rights bodies: specialist units exist for race relations and equal opportunities (gender), while not for the other strands.[49] The NZ Commission now has a structure that combines functional communications, services, dispute resolution (mediation) and legal teams with specialist units. The Human Rights team handles promotional, outreach and policy work in respect of New Zealand's international human rights obligations, the Race and Ethnic Relations team deal with race equality policy, and smaller units are devoted to equal opportunities and the national human rights plan of action.

The Race Relations and Equal Employment Commissioners are given specific responsibilities and functions, including leading commission discussions on matters

within their specific fields of responsibility, and supervising jointly with the Chief Commissioner the Commission's activities in their areas, with both backed by a separate policy unit.[50] It is, however, very unclear what exactly is meant by responsibility for "leading" or "supervising jointly", and much is dependent upon good leadership. [51]

5.2 Comparing structural models

The advantages of functional structures are that they prevent duplication of resources, allow for learning and knowledge-sharing across the equality grounds, permit the development of a cross-strand agenda across all functions of a single commission, and prevent the strands from operating in isolation.[52] Stakeholders do not have to work with different actors on different issues and consistency of approach and treatment across the strands can be more easily attained. The functional structure is also seen as reinforcing the overall institutional corporate image of the commission, both internally and externally.

The Northern Irish working group set up to advise on the shape of a single commission recommended a functional structure for precisely these reasons. Its report also cited the Australian experience of considerable tensions between strand-specific commissioners and units. In addition, given that they wished to include representative commissioners from the trade unions and other stakeholders, the working group also cited the advice of a former commissioner for public appointments for Northern Ireland, Sir Len Peach, that this could create internal hierarchies between specialist and non-specialist or representative commissioners.[53]

The EEOC, Canadian Commission and the Irish Equality Authority have had a functional structure from their inception, and their structures have caused little debate. The Irish experience has been that the expertise gained in one area can be transferred across to other areas, leading to fresh perspectives and greater ease in handling cases involving multiple grounds. Functional separation has also delivered benefits in terms of separating advice, promotion and enforcement internally, as discussed above, especially in handling the large number of cases that involve multiple grounds of discrimination.[54] New Zealand recently decided to merge its separate Office of Race Relations with its Human Rights Commission precisely to achieve these benefits: see Appendix D below.

New Zealand recently decided to merge its separate Office of the Race Relations Conciliator with its Human Rights Commission precisely to achieve these benefits: see Appendix D below. Some concern was expressed as to whether what the Commission itself described as the "transcendent importance" of race relations in New Zealand would be given appropriate priority in a single commission. The New

Zealand Federation of Ethnic Councils strongly opposed this merger, fearing it would result in less emphasis on race relations. Nevertheless, there was broad support for the proposal, which followed the recommendations of an independent report on the *Re-evaluation of Human Rights Protections in New Zealand* in 2000, which found that the absence of a single unified commission had contributed to a fragmentation of equality initiatives and a resulting confusion in the minds of complainants and those seeking advice.[55] The separate equality authorities were seen as having a natural desire to focus on their “brand”, but this has been identified as being achieved at the price of unnecessary duplication of resources, a lack of a single point of entry for users and a perception that certain interest groups were better served than others. The specific responsibilities and functions given to the Race Relations Commissioner and noted above, are the result of a desire to ensure race issues were not marginalised and to reassure opponents of the merger.

The functional model is, in a sense, the tried and tested model for single commissions. However, there is a need for caution before automatically applying it to the UK. Unlike the Republic of Ireland, where the predecessor equality agency was only concerned with gender equality, stakeholders in the UK have become accustomed to specialist units with a high level of strand-specific expertise and focus, and will require considerable reassurance that functional units can deliver the same level of service. There may be a strong demand for specialist units and personnel to provide an access point to the potentially monolithic structure of a single commission. The size and geographical spread of a British single commission may require strand-specialist units to retain focus on the specific needs and requirements of the individual strands. In the absence of units ensuring that focus is retained on the core concerns of each equality ground, there is a real possibility that particular strands will be left behind, or that a general dilution of all the strands will occur across the board. Particular concern exists with regard to disability, which requires a very specific focus. The size of Britain also means that some specialist staff teams will be needed for each strand, given the inevitable volume of strand-specific problems and litigation.

In contrast, the strengths of the strand-specialist Australian model are that the specialist full-time commissioners (and their supporting policy units) ensure that a focus is kept on the core concerns of each strand. Specialist commissioners also have considerable ‘advocacy power’ in the Australian experience, providing a focal point for media interest and seen by the media and stakeholder groups as representative of stakeholder opinion within that strand. Professor Hilary Charlesworth in Australia has argued that the specialist commissioners, in particular the Disability and Aboriginal Justice Commissioners, have been vital in bringing these strands to the fore.[56] The current Australian government is committed to replacing the Australian specialist commissioners with three generalist

commissioners, and introduced a Human Rights Commission (No. 2) Bill in 1998 to make this change. The bill was dropped in the face of strong stakeholder opposition to what was seen as a measure directed towards reducing the influence and authority of the specialist commissioners. The impact of the disability and race relations units in Northern Ireland in getting these strands off the ground should also be noted.[57]

A similar structure could be suitable for Britain, and commissioners strongly affiliated with particular strands supported by strand-specific support units may do much to reassure stakeholders concerned about the merger process. However, the record from the Australian experience is mixed. The difficulty with the Australian model is that strand-specific policies and cross-strand co-ordination is very dependant on the personality and strengths of the individual commissioners, and tends to lead to competition between commissioners obliged to be seen fighting their strand's 'corner'. Prioritising strategic cross-strand objectives over specific strand objectives becomes difficult. The difficulties raised by the Northern Ireland working group in respect of specialist and non-specialist commissioners are relevant here as well. There would be considerable stakeholder expectation in Britain as in Northern Ireland that the commissioners would be representative of the trade unions and other non-specific stakeholder groups as well as of the individual equality grounds themselves.

In addition, the lines of responsibility and control between commissioners can be very difficult to ascertain and this can produce tensions: the New Zealand requirement for the Race Relations and Equal Opportunities Commissioners to "lead" discussion on matters within their specialist areas of responsibility and for joint decision-making with the Chief Commissioner could be a recipe for chaos. As noted above, the internal friction generated between the strands in the Australian model and the functioning of the strand-specific policy units as virtually separate fiefdoms, caused considerable difficulties prior to the recent restructuring of the HREC which gave final say to the Commission President. Cross-strand tension can become a self-fulfilling prophecy in these circumstances, with the autonomy of the strands resulting in disputes about financial and other resource allocation, which in turn becomes a reason for separate departments to 'protect' the different strands. A clear chain of command as now implemented in Australia is increasingly seen by stakeholders and staff as overcoming these difficulties, but the possibility exists that this could generate discontent within stakeholder groups if 'their' commissioner is seen as being held back by the Chief Commissioner or by the other commissioners as a whole.

In Northern Ireland, the functional structure appears to be delivering positive results. As noted above again, internal assessments of the transition process identified a

perceived initial loss of focus on gender, which the Commission has moved to remedy by establishing a gender reference group, designed to co-ordinate and maintain coherence in gender policy and practice across the separate functional units. A similar reference group is planned for the religion and political opinion strands, and others may be introduced if appropriate and necessary. Real concern, however, exists within disability groups at the coming integration of the specialist disability unit within the functional structure. This gives rise to the concern that disability will not receive the degree of special targeting and specific legal, promotional and policy focus that it requires as a ‘’new’ strand, given the inevitable transfer of specific attention to age and sexual orientation. The perception is that diverting staff from a specific focus on disability will reduce the deeper quality of work that a specialist unit can provide. The counter-argument could also be made, however, that separation from the functional structure could isolate disability.

5.3 Possible models for Britain

Structuring a single commission on functional or strand-specific lines therefore presents difficulties whichever route is chosen. There are numerous possible combinations of the two that Britain could adopt: regarding the choice as an either/or is excessively limiting. One possibility in addition to the standard functional model and the Australian model could be to have separate autonomous strand-specific ‘mini’ commissions, with perhaps a central set of generalist commissioners with an oversight role and a central policy unit acting as a co-ordinating body. This would ensure a strong strand-specific focus and reassure stakeholders. This could also, however, make cross-strand action and delivery difficult, resulting in the loss of some of the key benefits that a single equality body could provide. Much would depend upon the ability and willingness of the different units to co-operate, and the effectiveness and powers of the central co-ordinating body. The co-ordinating body would also have to be capable of resolving potential disputes between the various strands. Considerable problems could also arise in establishing mini-commissions for particular strands: religion poses a particular difficulty, as any strand-specific religious equality commission will have to balance the views of not only the different religious groups but also of atheists, humanists and secularists.

Another alternative could be to set up policy units in respect of each strand, similar to the gender reference team in Northern Ireland, with a functional structure putting policy into effect. A generalist, if representative, team of commissioners would have strategic oversight over the work of the Commission. The challenge here would be to set out clearly the role of the specialist units and their place in the overall structure of the Commission. This could have the advantage of incorporating a strand-specific perspective with representative executive officers setting policy in respect of that

strand, while also retaining the benefits of cross-strand delivery and overall co-ordination.

A very interesting alternative model along these lines is the use of 'Section 5 committees' by the South African Human Rights Commission, which is structured along functional lines but has commissioners assigned to particular areas of human rights responsibility.[58] This involves the establishment of standing or *ad hoc* committees to advise the Commission on policy development and implementation in specific areas, which consist of one or more Commission members, staff and outside experts. Several Section 5 committees have been established for disability, government and parliamentary liaison, NGO liaison and other areas. Establishing similar standing committees for each strand with designated commissioners specialising in that strand acting as chairs, and retaining the same mix of experts, staff and commissioners, could provide both the necessary degree of strand-specific policy co-ordination, while also providing groups with a definite point of access. The various chairs could be designated "disability commissioner", "race commissioner" and so on, but formally sit on the commission as general commissioners, alongside additional commissioners who do not act as committee chairs.

Other models exist. A commission could have a functional structure, but be divided into specialist units according to area of expertise i.e. in terms of labour market, goods and services, policing, public authorities and so on. This could create artificial barriers between areas of speciality, but concentrate specific expertise in a single unit. In any case, it is apparent from comparative experience that both functional and strand-specialist structures can deliver from a stakeholder perspective, and have strengths and weakness. A single commission needs both functional, cross-strand expertise, and a degree of strand-specific focus: whether one forms the structural pillar of a commission, and the other the cross-layered beams, or vice versa, is not crucial. What appears to be important from comparative experience is good leadership, a clear chain of command and effective co-ordination, rather than an excessive concern with structural blueprints. A specific UK-tailored approach appears to be the suitable. Consideration also has to be given to whether, as in Northern Ireland, a single commission will initially need specialist transition units.

5.4 Composition

The composition of any governing body will obviously be, to a large extent, dictated by the structural model adopted. It should be capable of representing stakeholder groups while retaining sufficient autonomy to reflect the commission's role as mediator between the state and disadvantaged groups and as a promoter of equality in society at large. The "commissioner" model to which we have become accustomed is by no means the only possible governing body: the office of the Parliamentary

Commissioner for Administration in the UK (the ombudsman), for example, represents the interests of citizens but does not make use of a commissioner structure.[59] However, all the commissions surveyed here do make use of the commissioner structure.

With the exception of Australia with its five (currently three appointed) full-time specialist commissioners, and New Zealand with its mixture of part-time generalist and full-time specialist commissioners, the general model is based upon a full-time Chief Commissioner (with possibly a full-time deputy chief) and part-time commissioners representative of the equality strands and stakeholders (including trade unions and employers) as a body. Some are inevitably associated or linked formally or informally with specific strands, but are expected to take a multi-strand perspective. The Irish Equality Authority is required to have a minimum of five women and five men on its Board of 12, and similar requirements have been introduced in US and other commissions in respect of other grounds such as age, with Florida requiring one member at a minimum of its commission to be above the age of 65. The Irish Equality Authority Board also contains a set number of representatives of specific organisations and networks, to ensure NGO representation, but who have been instructed by the authority's chair that when on the Board they solely represent the Authority.[60]

6 FURTHER ISSUES FOR CONSIDERATION

6.1 Devolution and the regions

The devolution of powers in Scotland and Wales, combined with the establishment of the Greater London Authority and the possibility of future devolution arrangements in the English regions, will have consequences for the creation of any new equality body or bodies. If a single commission is set up with responsibility for all of Britain, then it will have to be "devolution-sensitive", in the sense of being able to develop and apply its policy in the specific contexts of the devolved regions, as well as being capable of adjusting its structure and institutional practices to future devolved and regional arrangements. Its institutional structure and practice also must give leeway for a degree of autonomous regional action in non-devolved regions, if it wishes to reflect genuinely the principles of subsidiary and de-centralisation of power. This is particularly important given the potential scale and overall set of responsibilities of a single commission: a recurring theme in the US and Canada is concern about the Canadian and US federal commissions being isolated from stakeholders and concerned groups.

It is especially important that the special circumstances of Scotland and Wales be reflected in any new structures. Both offer considerable opportunities for implementing and giving effect to a cross-strand equality agenda that has greater scope than the more limited approach possible in the rest of the country. The "absolute duty" to promote equality of opportunity imposed upon the Welsh Assembly by section 120 of the Government of Wales Act 1998, and the consequent developments in Wales designed to implement that duty have resulted in the rapid emergence of a distinctive equality agenda in Wales. Among other developments, this is reflected in pay audit and contract compliance initiatives, mainstreaming of equality in policy-making and in the Assembly's procedures, the establishment of an Assembly equality committee and initiatives to encourage greater diversity in public appointments.[61]

Similarly in Scotland, while equal opportunities are a reserved matter under Schedule 5 of the Scottish Act, the duty to promote equality of opportunity imposed on the Parliament and the ability of the Parliament and the Scottish Executive to implement mainstreaming in their devolved functions has produced very concrete results, with equal opportunity duties being imposed in the recent Housing Act and in the current Local Government bill. The Scottish Parliament has also established an Equal Opportunities Committee. In both devolved regions, a favourable political climate currently exists in respect of equality issues. In addition, both regions are developing new forms of institutional machinery for the protection of human rights, with the

appointment of a Children's Commissioner for Wales and the commitment to appoint a Human Rights Commissioner for Scotland.

Devolution therefore requires that any single British commission be able to develop, promote and enforce a specialist cross-strand agenda in the devolved regions that takes account of the separate developments, and the likelihood of increasing variations between the devolved regions in legislation and policy. It is also very important that the wealth of experience and lessons from the devolved regions is fed into policy-making at the UK and regional level. This has be combined with ensuring that an autonomous approach is possible for whatever devolved equality authorities are established in the new structure. This will allow these authorities to formulate appropriate policies for their regions and to provide devolved and local authorities, as well as stakeholders, within the devolved regions with a direct point of contact with a decision-making authority. Specialist devolved authorities with policy, PR and legal teams will be necessary, possessing considerable autonomy and the ability to develop policy on their own initiative. The key structural question here is what degree of autonomy is required, with the possibilities ranging from limited policy-making in respect of devolved functions to total independence.

There are a range of possible structural models. This could include the setting up of largely autonomous and separate devolved commissions reporting to the Scottish and Welsh Offices or to the devolved assemblies with their Chief Commissioners sitting on the British single commission. This would require amendments to be made to the devolution legislation, which may be politically problematic. Only overall policy at a very general level for Britain would be set by the single commission. Alternatively, specialist Scottish and Welsh offices similar in structure, autonomy and functions to the existing devolved CRE, DRC and EOC offices could be established, with the national commission ultimately responsible for setting policy, albeit with considerable leeway given to the regional offices. If regional assemblies are established, then similar units may need to be established for each region under either option, with potentially varying degrees of autonomy depending on the range of functions devolved in each case.

Alternatively, separate and entirely independent commissions for the devolved regions may be a possibility. These could work alongside a quasi-federal national commission with responsibility for England and national legislation, or be matched by another separate commission with responsibility for England and the Northern Irish Commission, with a national central co-ordinating commission responsible for linking these separate commissions. Canada, the US and Australia, being federal states, all have separate federal and state commissions, and co-ordination between the two levels of commissions has proved to be generally unproblematic. Separate

commissions would ensure the required degree of autonomy and allow for the development of specifically Welsh, Scottish and English approaches in the special context of the devolved regions, just as the existence of the separate Northern Irish commission does. They could also permit the development of a closer relationship with the devolved and local authorities, especially the devolved representative bodies, as well as local stakeholders than might be possible for a British-wide commission, even if that single commission did establish autonomous devolved units.

However, the federal/state constitutional arrangements in the US, Canada and Australia are much more distinct and clear-cut than in Britain, making it much more difficult to establish entirely separate national and regional commissions. The retention of equal opportunities as a reserved function for Scotland (and the inability of the Welsh Assembly to pass primary legislation) means that under the current devolved settlement, a single co-ordinating commission for Britain will have to be retained to ensure an adequate overall national perspective and point of contact. Even if the devolved settlement were to be altered and equal opportunities made a devolved function (similar to the position in Northern Ireland), the increasing role played by EC legislation in the field of equality, and the inevitable need for the central government to retain certain functions of vital concern to the equality agenda such as immigration, will inevitably require, at a minimum, a central co-ordinating national commission.

A danger exists that if the role of this central commission is excessively watered-down, then this will result in a lack of policy co-ordination and the absence of a common voice. This could lead to disparate development in the separate regions and a draining of credibility and authority from the central body, which will lessen the chances of a strong, cohesive and authoritative nation-wide equality message being projected. There is also a danger that separate commissions will reduce mutual sharing of experiences and lessons learnt in the different regions: even within the existing equality structures, there appears to be a lack of engagement and knowledge of development in the devolved regions that separate commissions may accentuate. In addition, some concern exists among stakeholder groups underrepresented in the devolved regions that separate devolved commissions will find it difficult to focus adequately upon their particular concerns and perspectives, and on national issues that impact in particular upon them. However, with strong leadership and a clear commitment to co-ordinating policy, separate commissions may be able to overcome these potential obstacles.

Nevertheless, pending clarification or alteration of the devolved settlement, devolved units or commissions with strong and wide-ranging autonomy, close links with their regional stakeholders, direct links with the appropriate executive bodies and

representation at national level seems to be the appropriate solution. Any new constitutional arrangements will obviously re-open the issue. Any agreed structure will also have to be flexible enough to accommodate future regionalisation in England, and provide for appropriate levels of autonomy for regional units.

Co-ordination and cross-exchange of information between national, devolved and regional authorities will be necessary in any of the above models, and similar exchanges of information and co-operation with the Northern Irish Commission and the Irish Equality Authority would be of benefit. This could be modelled upon some of the institutional frameworks being developed as part of the Council of the Isles framework established under the Good Friday agreement. A comparative model can be found in Canada, where the federal and state commissions have established the Canadian Association of Statutory Human Rights Agencies (CASHRA). CASHRA helps facilitate co-ordination between the different commissions, and regularly produces policy resolutions expressing the collective opinion of the Commission representatives where a general consensus exists. CASHRA is funded by fees levied on each of the participating commissions, but this has generally only constituted a very basic and inadequate level of funding. The Canadian Senate Report in December 2001 recommended government support for CASHRA, in light of the valuable function it performs.[62] A similar informal structure could be established to promote interaction between the devolved and national British commissions in the UK and the two Irish commissions.

Consideration also needs to be given to the relationship between the central offices and local units: again, an emphasis on autonomy, mutual exchange of information and flexibility in the strategic use of resources is necessary, with clear internal chains of responsibility and codes of practice. Useful lessons can be learnt from how the US EEOC co-ordinates a common approach across its 50 field offices by means of clear guidance on best practices and litigation strategy, while allowing the offices sufficient autonomy to enable suitable approaches to be developed in their regional contexts.

6.2 Accessibility

Any single commission has to be seen to listen to, and consult with, local and regional stakeholders. It should not to be dominated by an agenda and mindset that concentrates excessively on the higher levels of government or of the legal system, which has arguably been a problem in the past for the North American commissions. The Irish commissions have developed useful outreach programmes to consult with regional stakeholders, ranging from public meetings and “road-shows” to monthly legal clinics and extensive use of the regional press. Similar methods have been used with some success in Australian, New Zealand and some of the Canadian state

commissions to consult with the Aboriginal, Maori and Native American communities, and with stakeholder groups outside the main urban areas.

For all these commissions, consulting with local communities and acting upon that input is seen as an integral function and considerable emphasis is placed upon facilitating such consultation, developing best practice and reporting both upon the consultation and any outcomes. Accessibility strategies must also be capable of engaging with individuals and groups that are socially excluded or without access to networks and funding support. Local outreach activities as described above helps, as does the strategy devised by the Northern Irish Commission as part of the New Targeting Social Need Plan which makes specific provision for special outreach initiatives directed towards socially excluded groups. [63]

A similar approach should be a key priority of any single commission in Britain, but the reach of any consultation has to also accommodate the views and perspectives of trade unions, employers and public authorities as well as community groups. The Australian, Canadian, US and New Zealand commissions have all faced criticism that their feedback and consultation mechanisms neglect institutional stakeholders, in particular employers. This tends not only to deprive commissions of valuable input, it also establishes barriers of mistrust and antagonism between employer and commission that substantially impair constructive outreach and dialogue.[64]

In addition, providing points of contact for stakeholders concerned mainly with a single strand is important. Stakeholder groups may not always be interested in cross-strand generalist experts, but instead want strand-specific points of contact. The Australian and New Zealand experience of the effectiveness of strand-specific commissioners in providing access points for the concerns of strand-specific stakeholders is interesting in this regard, as is the interim use of specialist units in Northern Ireland. The high regard among equality groups in the Republic of Ireland for the openness of the Irish Authority demonstrates though, that with strong and visible leadership, functional commission structures can also deliver well in terms of stakeholder accessibility.

In consulting with the full range of stakeholders, various commissions have adopted different approaches towards the question of whether formal advisory councils should supplement informal *ad hoc* routes. The Northern Ireland legislation provides for the possibility of establishing consultative councils which are not yet in place: interestingly, there is an unwillingness on the part of the Commission to separate consultation into different, strand-specific issues, resulting in a potential narrowing of focus. The recent draft Australian legislation provided for the abolishment of the permanent advisory committees and the Community Relations Council that had been

previously provided for in the Australian legislation, on the grounds that *ad hoc* committees and consultation mechanisms were more effective, more flexible and less costly. This proposal, while part of the coalition government's cost-cutting measures aimed at the HREOC, was comparatively uncontroversial, though fears were expressed that this might hinder community input into the work of the Commission. However, there was also a degree of agreement that formal consultative structures may be excessively rigid.

The Justice and Electoral Committee of the New Zealand Parliament called for the establishment of a standing advisory committee of experts and community representatives from the various strands.[65] It was argued that it would be useful as a source of advice and feedback and would supplement the appointed commissioners by giving a stakeholder perspective on the work of the Commission while being detached from day-to-day decision-making. Several of the EU equality bodies have similar fixed advisory boards providing specialist knowledge and input.[66] Such standing advisory committees may be useful in the British context to provide expert and stakeholder input, particularly in the transition process, as long as they do not become pressure groups for particular strand-specific issues or an alternative commission. Their role, if utilised, must remain purely advisory. In order to receive strand-specific and cross-strand input from those most affected by the policies and approach of a single commission, consultative flexible networks involving unions, employers and public authorities supplementing the scheme of community relations councils discussed earlier, will be essential.

6.3 Human rights and equality

A central issue in the comparative experience of single commissions has been how to combine institutional support for human rights and equality. New Zealand and Australia see the protection of equality and human rights as inseparable, and combine them both in their single commissions, at both federal and state level in the case of Australia. The Canadian federal and state commissions are based upon the same principle, but the functions of the Canadian Commissions do not extend to consideration of human rights matters outside the range of the Canadian human rights legislation. This means that the functions of the Canadian Commissions are essentially confined to equality matters, with the exception of a general educative function in respect of human rights in general. In contrast, Northern Ireland and the Republic of Ireland have recently established separate equality and human rights commissions, and the Scottish Executive is committed to setting up a human rights commission that will not duplicate the functions of the British equality bodies.

Separating human rights and equality is conceptually problematic, given that equality is a fundamental and integral human right in itself. Members of the Joint Select

Committee on Human Rights in receiving evidence from the Lord Chancellor on 22 April 2002 noted that particular areas such as domestic abuse, forced marriages, and children's rights involved considerable overlap between human rights and equality.[67] The core principle of respect for the autonomy and diversity of each individual underlies the spectrum of all human rights, just as it does equality. This principle underpins the combined Australian and New Zealand commissions, along with an emphasis on their states' commitments in international human rights law.

A considerable range of human rights involve issues of equality and non-discrimination, and combining both human rights and equality in a single commission allows for a holistic approach to both, as well as preventing duplication of functions and resources. The southern hemisphere commissions have found that their combined human rights and equality functions have allowed them to take a multi-faceted and comprehensive approach to the treatment of the Aboriginal and Maori communities in both states, as well as infusing their equality work with human rights values. Many of the pressing concerns for disadvantaged groups in the UK, in particular disabled persons and members of the Muslim community, are human rights issues rather than mainstream 'equality' issues. These include, for example, due process, differential application of anti-terrorist legislation, abuse of the rights of asylum-seekers, and neglect of the right to life, dignity and bodily integrity. Many stakeholders insist that any single equality commission will only be capable of delivering adequately if it can deliver on these issues.

A combined commission would also have the scope of action to protect individuals and groups against discrimination in areas such as due process and bioethics, where equality commissions have frequently lacked the expertise and authority to intervene effectively. It could also promote and encourage the mainstreaming of human rights and equality in the public sector, redressing the legalistic orientation of much human rights activism in the UK by the active promotion of the importance of rights. This could in particular emphasise socio-economic rights, and their immense relevance to equality issues. The Australian and New Zealand commissions engage in active promotional and educational work in the area of human rights in addition to equality. The New Zealand Commission has responsibility for developing a National Action Plan to promote human rights and ensure mainstreaming of rights and equality across the entire public sector.

In addition, by emphasising the interconnectedness of human rights and equality, a combined commission could contribute to breaking down distinctions and hierarchies between strands. In the combined commissions considered here, the treatment of the equality grounds as subsets of the spectrum of human rights has helped to erode distinctions between the strands. In contrast, much criticism has been directed at the

Irish Human Rights Commission, which is required to be chaired by a member of the judiciary and whose functions emphasise legal scrutiny rather than active promotion of human rights.

Having responsibility for the promotion of human rights has allowed the Australian HREOC to devote considerable resources and energy to tackling issues that involve an overlap between what in the UK are seen as artificially separate 'equality' and 'human rights' issues. These include aboriginal land title, the treatment of asylum seekers, children's rights and police brutality directed towards prisoners in general and aboriginal suspects in particular.

A different approach has been taken in the Republic of Ireland and Northern Ireland: the requirement in the Good Friday agreement that both establish a human rights commission has resulted in both setting up separate equality and human rights commissions. The separation of the Northern Ireland Human Rights Commission from the Equality Commission is widely supported by stakeholder groups and academic experts within Northern Ireland. It has been justified on a number of grounds: the potential emphasis in a human rights commission on civil and political rights (in particular given the importance of the ECHR) rather than equality rights; the possible loss of focus on the specifics of the equality agenda in favour of broader and potentially more diffuse human rights issues; and the necessity for different legal, promotional and outreach approaches in the equality field than in the broader human rights field. Similar arguments have been made in the Republic.

The Northern Irish Human Rights Commission's work on a bill of rights, policing practices and alleged political killings has drawn predictably intense political flak: it consequently is seen by certain communities as pushing a particular agenda associated with certain political positions. The Equality Commission in contrast has drawn comparatively little negative criticism or challenges, despite pushing for substantial changes to equality law and incorporating the politically charged fair employment strand. In general, it has found it considerably easier to work with the different communities and their political representatives.

This illustrates a potential difficulty in combining human rights and equality in a single institution, in that a combined commission could by virtue of its human rights functions be dragged into controversial terrain such as surveillance powers, family law and bioethical issues. This could not only divert resources and energy away from the equality functions of a combined commission, but also result in those functions suffering a negative backlash by association. However, political controversies are inevitable in the course of a single commission's work in promoting equality and the

argument could be made that almost all the elements of the Northern Ireland situation are specific to the province.

There is a concern that incorporating the entire human rights spectrum within the remit of a single commission will over-stretch the new body, resulting in a dilution of focus and effectiveness and the subsuming of the well-developed and specialist equality functions within the broader human rights agenda. Whereas this has not been seen as a major problem for the combined commissions considered here, the dispute resolution function imposed on these bodies has been seen as 'locking in' a certain level of attention to equality: this might not be the case in a commission without these dispute resolution functions.[68] Some concern has been expressed about the legal focus of much of the human rights agenda. The obligations imposed by international human rights law also gives rise to concerns that a combined commission will inevitably have an overly legalistic emphasis. However, incorporation in a single commission may be exactly what is required to broaden the focus of human rights.

Whether to combine human rights and equality functions within a single commission therefore remains a difficult choice. There should be careful consideration of the impact which human rights functions may have on the specialist core equality agenda of any single commission, and whether this would actually strengthen that core. However, the question is not a simple matter of either/or. In the eyes of many stakeholders, any single equality commission that is set up without having human rights functions, or in the absence of a human rights commission, should be given responsibility for promoting adherence to international human rights standards in how they apply to disadvantaged groups and anti-discrimination norms. This is especially, but not only, with respect to the ECHR (including but not confined to the narrowly-framed anti-discrimination guarantee in Article 14), the UN Covenant on Civil and Political Rights (especially the equality guarantee in Article 26), the Convention for the Elimination of Racial Discrimination (CERD), and the Convention for the Elimination of Discrimination Against Women (CEDAW). If the emphasis is on giving the commission maximum strategic leeway, then giving it such functions should be a priority. If the UK signs and ratifies Protocol 12 to the ECHR, then promoting adherence to the Protocol provisions could also come within the commission's remit, as could the International Labour Organisation's Discrimination (Employment) Convention (ILO No. 111). This becomes extremely important if no separate or combined human rights commission is established.

A single commission should also consider adopting lessons from the use of international human rights enforcement machinery by many of the commissions here surveyed, particularly the reporting mechanisms provided for under the European

Social Charter and the UN Covenants. The Australian HREOC has actively engaged in this process, and the South African Human Rights Commission has been given a constitutional role in monitoring domestic adherence to socio-economic rights. The Canadian Human Rights Act Review Panel recommended in 2000 that the Canadian Commission be given an explicit role in monitoring Canada's obligations under international human rights legislation.[69] This included the ability to make special reports to Parliament and for Canadian equality legislation to be amended to provide for this explicit role and to refer to the relevant international human rights instruments.[70]

If a combined commission is established, or a single equality commission is given some functions in respect of human rights instruments, then further questions arise. Should these human rights functions be confined to promotion and education, as in New Zealand, or should it consider human rights complaints and provide appropriate representation if necessary? The Australian HREOC can handle complaints by conciliation in respect of violations of the major international human rights conventions that Australia has ratified, including ILO No. 111, the UN Covenant on Civil and Political Rights, and the Convention on the Rights of the Child.[71] It cannot provide representation as they do not have legally enforceable status, though the receipt of complaints and their progress can be reported to Parliament.[72] It does, however, have the authority to make interventions and apply for *amicus curiae* status in human rights cases in general.

Ensuring that a combined commission can provide representation could enable individuals and organisations to challenge violations of human rights that are not covered by anti-discrimination legislation, such as the right to life of disabled persons or restrictions on due process which may have particular relevance for certain groups, for example, the Muslim community in the wake of September 11. However, a variety of advocacy groups already exist to assist in human rights litigation and a single commission may prefer to sub-contract this function to these groups. There appears to be a strong case to give a single commission a wide remit to make interventions and potentially to act as *amicus curiae* in human rights cases which have a bearing on equality issues.

If a combined commission is established, then the extent to which it has authority in respect of children's rights or privacy rights will have to be considered. In particular, its relationship to the Data Protection Commissioner and any Children's Commissioners that may be appointed in addition to the Welsh Children's Commissioner. In New Zealand, until the recent re-organisation of the commission, the Privacy Commissioner had sole authority for adjudicating on privacy complaints, while also being a full-time member of the Commission. Now, the office of the

commissioner is entirely separate from the Human Rights Commission, as is the office of the new Children's Commissioner. There are proposals in the Australian Parliament to create a special office of a children's commission as well, but given that the HREOC can hear complaints under the Convention on the Rights of the Child, any children's commissioner may yet be incorporated as another specialist commissioner within the HREOC. However, the Australian Privacy Act 1998 (which was previously administered by the HREOC) is now handled by the new statutory office of the Federal Privacy Commissioner, mirroring the New Zealand trend to "spin-off" these areas of human rights responsibilities from the over-stretched human rights commissions. The Privacy Commissioner is no longer a member of the HREOC.

If a single commission is confined in its functions to responsibility for equality, then the relationship and allocation of functions between the commission and any human rights commissions or specialist rights commissioners that may be established (either at national level or in the devolved regions) will have to be clearly delineated. There is considerable room for conflict, both in terms of potential clashes on issues such as free speech and family law, and in terms of receipt of complaints. In Northern Ireland, the two commissions have developed a strong working relationship, and have agreed a memorandum of understanding clearly delineating their relationship and approach to overlapping complaints.[73]

6.4 Independence and accountability

As state institutions which are expected and generally required by statute to act independently, equality commissions are everywhere caught between stakeholder demands and the need to retain open lines of constructive communication with the government of the day and other public authorities. Comparative experience shows that the adoption of a coherent set of values to guide the external relations of a single commission with both stakeholders and other public authorities is a very important part of this balancing process (see above). The Northern Irish Commission, the Irish Authority and the Canadian commissions have had a generally positive experience in this respect. They show that to help ensure independent yet effective interaction with other public authorities, due emphasis should be placed on constructive (and courteous) communication on the part of both government departments and the commission.

The legislation establishing the various commissions provides formal guarantees of independence with, for example, an explicit statement of independence incorporated into the recent New Zealand legislation. Commissioners are generally appointed by the government of the day for fixed staggered terms by means of a formal appointment process, with the EEOC Commissioners requiring confirmation by the

US Senate. The South African Commissioners are appointed by Parliament, a process for ensuring democratic control that has however raised some concern about the appointment process being excessively politicised.

Challenges to the independence of commissions occur frequently in the countries surveyed. Comparative experience shows that the larger the size and consequent clout of a single commission, making it less easy to ignore, the more that it requires a matching degree of protection against political interference. The Australian experience certainly shows that the more effective and vocal a commission becomes in challenging discriminatory policies in the public and private sectors, the more that strong guarantees of independence are required to avert potential political interference.

Challenges to independence tend to come in two forms: drastic funding cuts to indicate government disapproval, as practised in Australia, British Columbia and elsewhere; and interference in the appointment of commissioners. This can be either by the failure to fill vacancies (Australia and British Columbia again), the failure to make appropriate transition arrangements when commission structures are being altered (Australia again) or by the selection of unrepresentative commissioners to ‘reform’ the commission. The US EEOC has undergone considerable shifts in approach, in particular due to the appointment of Republican commissioners in the early 1980s, who were also generally unrepresentative of disadvantaged groups.

This has led to calls by many of the commissions surveyed for the Paris Principles, adopted by the UN General Assembly in 1992, to be recognised by national governments as binding guidelines governing the relationship between commission and government.[74] A single equality commission, even if possessed of limited human rights functions, should on account of its functions and role be treated as a body to which the Principles apply.[75] In Canada, the Report of the Standing Senate Committee on Human Rights in December 2001 addressed the issue of independence in the context of the applicability of the Paris Principles. It strongly recommended that the federal and state human rights commissions be made directly answerable to the appropriate federal or state legislature, rather than through a government minister, in line with the process for the federal Auditor General and Chief Electoral Officer.

The Australian HREOC has called for the Paris Principles to be the basis for the independence of human rights commissions. The original Australian bill proposing the replacement of the five specialist commissioners of the HREOC with three full-time generalist commissioners contained no provision for transitional arrangements for the existing commissioners after the legislation came into force, which would have

curtailed their term of office. This received strong criticism as a violation of the Paris Principles.[76] In response, the Attorney General accepted that the Paris Principles, though not binding, were “a very considerable, persuasive force”, but that the lack of transitional arrangements did not violate the Principles. The resulting controversy played a role in the delay of the legislation, which remains on the backburner. In the interim, the government has partially achieved its goal to reduce the number of commissioners by failing to appoint new commissioners to fill the vacancies of Aboriginal Justice and Disability Commissioners. As a result, these roles have been filled by the other specialist commissioners in addition to their own functions: see Appendix C.

The proposed legislation also originally provided for a requirement for the Attorney General’s consent before the HREOC could bring litigation in its own name or intervene in cases. This was extensively attacked as a direct attack on the Commission’s independence and has been abandoned. In New Zealand, the current Labour government had included in its manifesto in 1999 a commitment to “place the Paris Principles…at the heart of our attitude towards the operation of the HRC”. However, despite inserting a guarantee of independence in the recent legislation setting up the reformed Human Rights Commission in New Zealand, the government failed crucially to enshrine all of the guarantees of independence in the Paris Principles in the legislation.

When establishing a single commission in Britain, serious consideration should be given to ensure that its independence and necessary powers are in line with the Principles. Consideration also needs to be given to the question of the link between the commission and the government. Retaining a particular sponsoring department has definite advantages, such as ensuring a definite ministerial link, tested points of interaction and a familiar working relationship. The general pattern of reporting and accountability for the commissions surveyed is for a commission to be sponsored by a particular department, and also to make an annual report to Parliament.

Particular problems arise in the UK in this context however, due to the far-flung dispersal of responsibility for the various strands across Whitehall. A single commission lacks a natural home. In Northern Ireland, the sponsoring department is the Office of the First Minister and the Deputy First Minister. In other countries the equivalents of the Home Office or the Lord Chancellor’s Department tend to be the sponsors, with the interesting exception of Ontario, whose Commission is sponsored by the Ministry of Citizenship where the focus is on equality, citizen’s rights and law reform. From comparative experience, the key to the relationship is that a sponsoring department must agree the corporate plan, not approve it, and that a commission

must be seen to clearly have the ability to publicly challenge government and departmental policy.

The departmental link in the countries surveyed has proved unproblematic, with the significant exception of South Africa (see below). Interestingly, whereas the Canadian Commission previously submitted its reports to the Minister for Justice, who tabled them in Parliament, the Commission now reports directly to Parliament through the Speakers of both Houses to enhance its independence.

Consideration also needs to be given to heightening the relationship between Parliament and a single commission, to enhance democratic scrutiny and to provide a public platform for the Commission. This has been extensively considered and argued for in South Africa, where the South African Commissions are known as Chapter 9 institutions, as their status is recognised and protected by Chapter 9 of the South African Constitution. Nevertheless, all the Commissions and in particular the Human Rights Commission have expressed strong concern about the treatment of its reports by the South African Parliament, notably the lack of a specific committee to receive and review Commission reports and the absence of a “portal” in parliamentary procedures that would allow the reports to be subject to meaningful examination. On the request of the Speaker of Parliament, Professor Hugh Corder prepared a report *Parliamentary Oversight and Accountability*, published in July 1999, on improving the oversight role of Parliament vis-à-vis the Chapter 9 institutions.[77] The Corder report called for prescribed standards, content and format for reporting, with a clear procedure for receiving reports; the establishment in Parliament of a Standing Committee on Constitutional Institutions; the imposition of a formal duty to respond to parliamentary recommendations and the establishment of a procedure for follow-up action by committees. No action has been taken so far on these proposals. [78]

The Corder Report guidelines, if implemented in the UK, would suggest that the Joint Select Human Rights Committee should exercise a scrutiny role over the equality agenda in general. Specific commitments to timetable commission reports for a debate of both Houses of Parliament could be made by the relevant minister. If a single commission wished to retain the advantages of a departmental link, yet supplement it with the independence guarantees contained in the Corder Report, this parliamentary scrutiny could be additional to the link and constitute a check on ministerial interference.

The South African Human Rights Commission has again expressed grave disquiet about the lack of a statutory funding framework that adequately secures financial stability and independence for the Commission, and the absence of specific statutory

guarantees of independence in general, despite their constitutional status. In particular, since its creation in 1996 there has been no proper assessment of the Commission's mandate and resource requirements, a lack of consultation by the National Treasury with the Commission in respect of its grant and no structured funding framework or assessment of the appropriate salary scales for commissioners or staff. This has resulted in wholly inadequate funding and a serious lag in salary levels far behind comparable civil service ranks. The Commission has refused to take up its statutory functions in respect of freedom of information and the Promotion of Equality Act 2000.[79] All the Chapter 9 commissions in South Africa have argued that the allocation of their funding by departments is problematic, especially since their needs are infrequently prioritised.

The Corder Report echoed this concern, arguing that the:

> *Constitutional provisions relating to the independence of the Chapter 9 institutions make it imperative that steps be taken to guarantee their institutional independence….both financial and administrative independence are required for the effective performance of their functions.*

The Report recommended that the Chapter 9 commissions should not receive their funding via the budget vote of departments of state, or that the funding of any of the commissions be linked to the particular Departmental budget.[80] It went on to recommend that legislation in the form of an Accountability Standards Act and an Accountability and Independence of Constitutional Institutions Act should be enacted. The proposed Parliamentary Standing Committee on Constitutional Institutions should make recommendations on Commission budgets to Parliament, which in turn should allocate funding to the Chapter 9 Commissions by a special block vote. Similar funding concerns have been common in the countries surveyed, and the argument could be made in the UK for a single commission to be funded on the same basis as the Parliamentary Commissioners for Administration and for Standards in Public Office. It should be remembered, however, that such funding mechanisms are no proof against hostile parliamentary majorities.

It is similarly essential that a single commission is accountable and subject to public scrutiny in its finances and performance of its functions. As noted above, accountability mechanisms in respect of equality commissions are underdeveloped. Auditing mechanisms in Australia, Canada, the US and New Zealand focus on assessing the commissions' quantitative performance in handling complaints under their complaint resolution function, or their performance in providing information to enquirers. Such quantitative criteria are necessary and valuable, but they have in Australia been used as a tool to justify slashing cuts in the HREOC's budget. They

can also encourage a defensive approach that concentrates on the number of cases processed rather than real qualitative outcomes. This has certainly been a factor in the work of the Canadian Commission, which has been particularly criticised for its emphasis on clearing its backlog rather than developing good case-law via precedent and strategic use of litigation.

As for qualitative criteria, all the commissions surveyed use corporate plans to identify achievement targets and to report on their progress. Aside from this, there is a lack of auditing mechanisms for qualitative analysis, in particular for tracing stakeholder satisfaction. This makes genuine assessment of the quality of work of equality commissions difficult and shows up the need for innovative thinking in the UK for how constructive accountability mechanisms can be established. Consultation with stakeholder networks provides one route, but additional tools need to be developed, and a single commission itself should be prepared to take the lead in developing them.

The Irish Authority has a customer services manager, charged with monitoring customer and stakeholder feedback. The Authority makes provision for annual reviews of stakeholder and customer opinion, in particular in respect of the adequacy of coverage of the various strands. A single British commission needs to take similar steps. The South African Human Rights Commission has established an internal audit unit, and established various self-evaluation mechanisms, which could provide useful models. In addition, a single commission should consider itself bound by a statutory equality duty covering all the strands. It should introduce monitoring, consultation and policy impact procedures as appropriate, and maintain an approach of constructive self-criticism and active engagement with stakeholder groups and society at large.

6.5 Leadership

The comparative experience of the commissions surveyed shows with great clarity that the success or failure of commissions frequently is dependent on the level of leadership shown by the commissioners, irrespective of their role in the structural unit. If commissioners are excessively protective of strand-specific interests, this can be very damaging and generate ill will, as has happened in Australia. Alternatively, if commission leadership is open to the particular perspectives of the different strands, to stakeholders in general and the public at large, then this can generate considerable good will and contribute enormously to making a single commission succeed. Stakeholder opinion in the Republic of Ireland has repeatedly cited good leadership as a central reason for the perceived initial success of the Equality Authority, while lamenting occasional errors in the presentation of the case for equality to the public at large. Naturally, stakeholders have also emphasised that

good leadership is not sufficient, and that the necessary structures, values, functions and powers must be in place, but comparative experience has shown that it can make a considerable difference.

6.6 Transition

The Northern Ireland experience shows the need for a clear transitional agenda, and for the final structure of the new commission to be in place as far as possible when the commission is finally up and running. Deferring the major transitional process for the first year of the Commission's existence, an inevitable step due to the narrow time-scale of the process, allowed old patterns of behaviour to reproduce and duplicate within the new organisation. The key senior personnel – the Chief Commissioner (s), CEO and other senior appointments – need to be appointed and in place well before this. Consideration also needs to be given to having a common, agreed and adequately flexible complaint-handling template in place before start-up.

The long time-scale envisaged for setting up a single commission in the UK is essential, and has to be utilised effectively to make sure that its structures and functions will be fixed, operational and understood before it commences its role. Existing commission staff have to be extensively involved in the consultation and transition process, as well as being kept informed and reassured as to their future employment, duties and responsibilities. Clear lines of staff communication need to be maintained. The bulk of the Northern Ireland Commission's staff were in favour of integration in the functional structure and of a broad equality approach in general, but the absence of a clear transitional timetable, tensions within management and the lack of a definite final structure caused a degree of discontent and frustration during the process.

Clear direction and structures are therefore necessary from the beginning and the time available in Britain has to be used well. Excessive haste in the consultation and implementation process has the potential to rebound by unnecessarily antagonising participants. External consultants and preliminary training should be utilised to minimise cross-strand tensions.

In Northern Ireland, different units have integrated into the functional framework at different rates. Most difficulties arose within the legal unit, as noted above, producing a substantial cost overrun, which the Commission was obliged to address promptly, using a common cross-strand enforcement template that is been currently implemented.[81]

Transitional arrangements will obviously have to be introduced in respect of the 'new' strands prior to the setting up of a single commission. Combining the functions of the

CRE with responsibility for religious discrimination and those of the EOC with responsibility for sexual orientation is a possible option. In contrast, combining the DRC's functions with responsibility for age, given that both strands are effectively 'new' grounds, may be problematic. It may also send confused messages, potentially reinforcing the stereotype which affects both groups of inevitable linkage between age and disability. Consideration should arguably be given to establishing a temporary age-centred body, with the necessary enforcement and promotion powers to initiate the development of case-law and the promotion of age equality. Similar specialist units could be set up for sexual orientation and religion, but the difficulties mentioned above that could arise with a specialist religion unit constitute a real difficulty. If separate transitional units or specialist teams are required within the structure of a single commission, then any transitional units could be merged as a unit within the new structure.

The Hepple Report recommended that the Disability Rights Commission be given an extra 5-year lease of life before merger within a single commission.[82] The potential drawback with this is that separating disability from the initial structure of whatever commission is established may mean that the disability perspective is not fully incorporated, emphasised and mainstreamed from the beginning. This could also add to the all-too common perception of disability as a separate ground of discrimination to which the normal principles of diversity and equality do not fully apply.

7 CONCLUSION

Single commissions have the potential to deliver an effective cross-strand agenda emphasising the core principle of equality, but certain conditions have to be in place. These include: a clear set of values; awareness of the needs of its component strands; flexible enforcement and promotion powers; an awareness of the implications of devolution; a clear understanding of its relationship with the broader human rights spectrum; a strong emphasis on independence; and a clear transitional agenda that will not poison the process of its birth. If done well, comparative experience shows that a single commission can deliver a mutually reinforcing equality agenda. If done badly, then a considerable opportunity will have been lost.

APPENDIX A

Northern Ireland: The Equal Opportunities Commission

The process of integration in Northern Ireland involved the merger of the NI Equal Opportunities Commission (with approximately 30 staff, a budget of approximately £1.5 million), the NI Commission for Racial Equality (with approximately 7 staff, a budget of approximately 0.5 million), the considerably larger Fair Employment Commission (with approximately 80 staff and a budget of £3.5 million) as well as the absorption of some of the functions of the Northern Ireland Disability Council. Relatively little contact and co-ordination existed between these commissions, and they had very different institutional cultures and approaches. The challenges of establishing a single commission were also amplified by the comparatively recent application of the race relations and disability legislation to Northern Ireland. This meant that the Northern Ireland CRE was just beginning to establish itself, while only the advisory Northern Ireland Disability Council was exercising commission-style functions in respect of disability.

Following the recommendations of the report of the Standing Advisory Committee on Human Rights in June 1997[83], the White Paper *Partnership for Equality* was brought out in March 1998, proposing the merger of the existing commissions.[84] Momentum was given to the process by the Good Friday Agreement and the agreed introduction of a wide-ranging equality duty upon public authorities in Northern Ireland (introduced by s. 75 of the Northern Ireland 1998). The public sector duty was in many ways the primary motor driving the establishment of a single commission, as effective enforcement of the cross-strand duty would require a single equality body of some sort. Nevertheless, 85 per cent of responses to the consultation were opposed to the setting-up of a single commission, at least on the grounds of the pace and timing of the process. Fears were expressed that the size, culture and political importance of the Fair Employment Commission would overshadow the other strands, in particular the fledging race and disability strands. In addition, the lack of single equality legislation was identified as a major stumbling block, building in hierarchies of equality from the beginning.

Despite this level of opposition, in July 1998 the political decision to proceed with establishing the single commission was made.[85] A working group of the chairs of the existing commission and trade union representatives was established in October 1998, headed by Joan Stringer. The group was given the extremely short deadline of the end of January 1999 to prepare its report on the framework for a single commission, with the proposed date for the establishment of the single commission initially set as March 1999.[86] Following consultation with the stakeholder groups and

staff (which was inevitably rushed due to the timetable, leading to a considerable degree of discontent and uncertainty), the working group published its report in March 1999. [87]

The working group recommended that the Commission consist of one full-time chief commissioner, a part-time deputy, and between 14 and 16 part-time commissioners representing disadvantaged groups and stakeholders, including the trade unions. The report advised against the appointment of specialist commissioners or strand-specific units. Instead, the working group recommended the establishment of a functional structure, which would deliver the joined-up approach required to achieve the new Commission's strategic priorities as well as contributing to the development internally and externally of a strong institutional corporate image. It recommended that the transition to this functional structure should be achieved by retaining specialist strand-specific directorates combined with functional corporate services and statutory duty units for a brief transition period after the merger of the existing commissions.

The Secretary of State for Northern Ireland appointed the new commissioners in August 1999, with the single commission itself being set up finally in October 1999. The existing commissions merged into the interim structure of the new body over the next few months. This merger process had to be combined with the extensive cross-strand work necessary for the preparation of the s. 75 statutory duty guidelines (launched in early April 2000) and the recruitment and establishment of a disability rights unit to enforce the disability legislation as it was extended to Northern Ireland. From May to October 2000, following the intense initial period, extensive internal consultation was carried out on the transition from the specialist directorates to the current functional structure, which was progressively implemented over the following few months. The directorate structure was important as a transition step, because cross-strand expertise was simply not there initially.

The functional organisation of the Commission now consists of three units, policy and publicity (including responsibility for the s.75 duty), legal and corporate services/ operations. The separate specialist race development and disability units are being gradually merged into the functional structure, the process to be complete by the end of 2003.[88] Both specialist units have proved very effective in getting the comparatively new disability and race relations agendas off the ground. As a result, similar specialist units may be introduced for sexual orientation and age strands. The Northern Ireland Commissioners (originally twenty in number, now sixteen) began by supervising the work of the interim directorates by means of specific directorate committees. Now, separate policy, legal and corporate policy committees have been

established on which the Commissioners sit, along with a separate statutory duty committee to supervise the crucial process of implementing the s. 75 duty.

Different units have integrated into the functional framework at different rates, with the development of a culture of functional integration taking time but slowly gathering pace. Trade union support and external facilitators played a considerable role in this process, with the willingness of staff to gell and integrate within the functional units frequently driving the process. Most difficulties arose within the legal unit. The previously existing commissions had very different methods of handling cases and making case funding decisions with, for example, the Northern Irish EOC making extensive use of external expertise, whereas the Fair Employment Commission relied mainly on internal legal advice by FEC lawyers. When the Equality Commission was established, the legal teams continued to handle cases according to their own normal practice. As the different teams, which initially remained specialised, utilized different strategies, this produced different levels of support for cases coming under the different strands. It also resulted in a “levelling-up” tendency, where the treatment of cases in general was ratcheted up in cost terms across the board to match practice in other strands. This produced a substantial cost overrun, which the Commission was obliged to address promptly.

An external report on an integrated legal strategy was commissioned and its recommendations were adopted in November 2000, giving rise to a common cross-strand enforcement template that is been currently implemented. This concentrates on the use of internal expertise where possible, and makes appropriate provision for the pressing specialist needs of the ‘new’ race relations and disability strands for case-law precedent to clarify the legislation. It also affords due recognition of the diversity of complainants and the need for a clear horizontal focus and good diagnostic techniques across the strands in general.

The establishment of the functional structure also resulted to a degree in a perceived loss of focus and a lack of “added value” in relation to gender, due to a lack of strand-specific co-ordination across the different functional units. The Commission has again quickly addressed this on a structural level by the establishment of a gender reference group, designed to co-ordinate and maintain coherence in gender policy and practice across the separate functional units. A similar reference group is planned for the religion and political opinion strands, and others may be introduced if appropriate and necessary.

The perceived lack of focus on gender has been seen by some critics of the functional structure as part of an ongoing broader lack of exchange of information and perspectives between the different functional units and between strand

specialists within the different units. To what extent these problems are integral to a functional structure, or alternatively inevitable teething difficulties, remediable by appropriate vigilance and remedial action such as the use of reference units, remains to be seen. The Commission was set up in difficult circumstances, with a high level of initial scepticism reflected in the consultation exercise and considerable discontent generated by the government-imposed speed of the transition process. This discontent has been reflected in a certain level of personnel and stakeholder resistance to a single commission and to its functional structure. However, it is notable that much of the initial discontent resulted to a large extent from the circumstances of its creation, rather than from the Commission’s structure and policies *per se*.

There exists however broad (if by no means unanimous) agreement that the benefits of a cross-strand approach within functional units are considerable, and are beginning to be reflected in the Commission’s work despite the transition difficulties. The size of the Commission, which is much larger than its predecessors, has given it considerably greater political and media clout. In media and access terms, a single commission provides a definite access point and a clearly identifiable agency: the less the degree of multiplicity of equality agencies, the greater the profile of equality within the population at large. Its cross-strand, inclusive agenda makes the concepts of equality and diversity easier to convey and promote across the different political and religious communities, where specific strands such as fair employment are frequently seen as ‘loaded’ in favour of one community over the other. The diversity of strands ensures that some aspects of the equality agenda have a potential application to everyone, allowing a single commission to circumvent hostility to particular strands by emphasising the core principles of equal treatment that underpin them all.

Providing integrated, cross-strand advice and support to individual complainants, public authorities and employers is also proving to be easier and more effective with a single commission. Inevitably, it allows more effective use of resources in enforcing the section 75 public sector equality duty and in encouraging effective public sector mainstreaming. General information and questionnaires are easier to prepare and circulate, encouraging cross-strand approaches. It also has benefits in encouraging employers to extend their required monitoring (and positive action mechanisms) under the fair employment legislation across the other equality strands, even without a legislative requirement.

The challenge is to maximise these benefits, while maintaining an adequate and appropriate focus within the Commission’s structural arrangements on the different requirements of the strands. Disability presents a specific challenge in this context.

There is a perception within disability groups in Northern Ireland that the merger of the disability unit within the functional structure of the Commission may mean that it will not receive the degree of special targeting and specific legal, promotional and policy focus that it requires as a ''new' strand.

The inevitable transfer of specific attention to age and sexual orientation gives rise to the fear that disability within a single commission has had its limited moment in the sun, and that its brief period of special attention has come to an end with the progressive merging of the disability unit within the functional units. In addition, considerable emphasis has traditionally been placed on litigation in the context of fair employment, and this emphasis is seen as being carried forward in the cross-strand legal strategy of the new Commission. However, the importance of advice and conciliation in promoting disability rights requires a different approach with less focus on litigation, and concern has been expressed that the Commission may not be capable of accommodating this.

As a consequence, the argument is made that diverting staff from a specific focus on disability will reduce the deeper quality of work that a specialist unit can provide in respect of disability. The concern among disability stakeholder groups is not so much that a single Commission is problematic, or that a functional structure is necessarily flawed, but that strand-specific policy teams similar to the existing disability unit are necessary. The Disability Unit is composed of specialist policy, research, legal and promotional staff, and is directly funded by the Office of the First and Deputy First Minister to develop promotion and enforcement of the new legislation. The Unit has acted as a champion for disability within the commission structure, and has had considerable success in promoting disability rights, handling over 100 calls a month from employers and individuals and more than 170 individual complaints in total so far, a considerably greater proportion per head of population than generated in Britain under the Disability Discrimination Act so far. The Unit has also made use of road-shows and training seminars specifically focusing on disability to provide outreach to both employers and disabled groups. The Race Relations Unit, while merging at a quicker pace, performed a similar role. The possible drawback with these specialist structures is that their separation from the functional structure meant that their specialist staff were not involved in the setting up of the functional units from the beginning, and that staff within the functional units were not 'educated' in handling race and disability issues. The ongoing merger requires both a loss of specialist disability personnel, and a learning curve for the functional units.

The challenge for the Northern Ireland Commission, and for any single commission, is to deliver a similar level of service within the functional structure, and to be seen in the eyes of stakeholder groups to be delivering that level of service. There may be an

argument in the Northern Irish and British contexts for extending strand-specific reference groups across all the equality strands to act as ‘champions’, ensuring that the concerns of specific strands are reflected across the functional units.

APPENDIX B

Republic of Ireland: The Equality Authority

The Irish Equality Authority was established in October 1999, following the enactment of comprehensive equality legislation prohibiting discrimination on nine separate grounds[89] in employment, education, housing and access to goods and services.[90] Its functions are to work towards the elimination of discrimination across all the grounds, to promote equality of opportunity in employment, to monitor and keep the legislation under review, to provide information on paternal rights[91] and to promote equal status. The Authority may also prepare Codes of Practice under the legislation, and has extensive powers to carry out formal investigations (including strong powers in relation to compelling the production of evidence) and “equality reviews”, where the Authority can audit the equality situation in a public or private sector organisation and set out an action plan if necessary to enhance diversity and equality within that organisation.

The Authority’s functions and powers are framed broadly, to maximise its freedom of action and are designed to make possible a proactive, cross-strand agenda that combines effective enforcement with strong promotion. The Authority can also receive complaints, provide legal advice and information, communicate with employers on behalf of complainants, and represent the complainant if they wish to take the matter to the Director of Equality Investigations.[92] The Authority can bring actions in its own name in relation to discriminatory advertising.

The Authority has identified the five principles of trust, professionalism, openness, fairness and partnership as its core values. Its customer service plan emphasises that it aims to deliver services that recognise the diversity of the nine strands and of individuals and groups seeking the assistance of the Authority, and that it will be open to stakeholder input.[93] Partnership with employers, NGOs, the trade unions and other stakeholder groups is emphasised, in particular when framing the codes of practice. As part of its commitment to a cross-strand agency that recognises the diversity of the strands the Authority, like the Northern Ireland Commission, has built in monitoring and tracking of the grounds on which complaints and queries are raised, and publishes the data. In addition, it has a commitment to act as an exemplar in its treatment of staff in terms of reasonable accommodation, part-time work, and other grounds. The Irish Authority is made up of four functional units: the Legal; Communications; Development; and Administration Sections, with a chief executive responsible for managerial functions. Budget allocation is along functional lines.

Despite its extensive investigatory powers, the Authority has been slow to use them, relying instead with considerable success on encouraging employers to submit their organisations to equality reviews and to adopt voluntary action plans. The basis for this success is essentially an emphasis on proactive partnership backed by the potential threat of litigation. The Authority makes use of independent panels of auditors to assess with employers and the relevant trade unions how to frame a cross-strand action plan: employers benefit by the co-operative procedure and the reduced possibility of successful litigation. By providing the necessary encouragement and resources, the Authority has had considerable success in encouraging the use of reviews, even without a legislative requirement. In this and other promotional work, the possibility of conflicts between the enforcement and promotional functions are sidestepped simply by the basic division of functions within the Authority: different personnel handle legal enforcement and legal advice and promotion in respect of any respondent.

As noted above, the Equality Authority in devising equality schemes has found that the ability to address discriminatory structures across all the grounds has been invaluable, both to disadvantaged groups and to employers. Also, the Authority has actively targeted outreach initiatives at groups with overlapping identities such as Traveller women and older gays and lesbians, with considerable success. This both helps combat discrimination within identity groups, and reinforces the concept of equality as diversity, as well as empowering groups whose needs had been neglected or simply ignored. Some of the Authority's most significant successes in encouraging the implementation of action plans have come in the 'new' strands. Industry campaigns against age-based insurance premiums and age limits in pubs and night-clubs have been very successful, and the Authority was partially successful in joining with disability groups to pressurise the government to produce a general and far-reaching Disability Action Plan and new disability legislation.[94]

The Equal Opportunities Agency that predated the establishment of the Authority had approximately 13 staff: the current authority has a budget of £3 million, with close on 50 staff. This has ensured considerably greater political and media clout, as in Northern Ireland. The provisions of the Equal Status Act prohibiting discrimination in access to goods have caused considerable political controversy, centred round the refusal of publicans to serve members of the travelling community.[95] Demands for the legislation to be re-written and threats of a nationwide pub ban on travellers have been strongly and successfully resisted by the Authority.

It should be noted that the initial success of the Authority has been helped by a relatively strong pro-equality political climate in Ireland, reflected in all the major political parties. However, much of the Authority's success has arisen precisely from

the broad concept of equality and diversity enshrined in the legislation which it implements in its promotional and enforcement work. Popular support for the disability and gender grounds has largely been carried over into the potentially problematic grounds of sexual orientation, race and travelling community. The emerging acceptance that a common principle of equality and diversity applies to the latter ground is a significant achievement. The extensive scope of the Authority's powers stems partially from the unified platform agreed by stakeholder groups across the equality strands during the consultation period before the introduction of the legislation establishing the Authority. This not only ensured considerable support was put upon the Irish government to give the Authority effective functions and powers, it also served to unify the different groups behind the new Authority: this perhaps is however an easier process in a country the size of Ireland than will be the case in Britain.

APPENDIX C

Australia: The Human Rights And Equal Opportunities Commission

The current Australian Human Rights and Equal Opportunities Commission was established in 1986, with its functions essentially consisting of the promotion of human rights and the enforcement of anti-discrimination legislation by dispute resolution. The Australian HREOC is composed of a President and up to five specialist full-time commissioners, who each have responsibility for specific strands. These are human rights, sex discrimination, disability, race and a Aboriginal and Torres Strait Islanders commissioner concerned with social justice. Each specialist commissioner is supported by autonomous policy units, which devise litigation strategies and promotional initiatives for each strand. These strategies and policies are in turn implemented by functional non-specific general units.

Subject to the overriding authority of the Commission President, the commissioners have complete autonomy in how they allocate their budgets, hire extra staff, what promotional activities they support and how the advocacy programmes guiding the litigation strategies for their specific strand are drawn up and implemented. Several of the specialist commissioners are given additional reporting and support functions by legislation: the Native Title Act 1993 requires the Aborginial Rights Commissioner to report annually to parliament on native title claims, while the Sex Discrimination Commissioner has similar functions under the Workplace Relations Act 1996. The functional units within the Commission, such as the Legal Division, support and implement the work of the policy units, including their advocacy and promotional programmes. The Commission’s Chief Executive Officer oversees the day-to-day managerial running of the Commission and its staff.

The existence of these specialist commissioners with their strand-specific titles such as “Disability Commissioner”, “Sex Discrimination Commissioner” and so on is regarded as very effective in providing a visible access point for stakeholders, complainants (in particular from very disadvantaged groups) and NGOs concerned with particular strands. They also provide a mechanism for ensuring that the needs and requirements of particular strands are not internally glossed over and are a focal point for media interest and attention in respect of strand-specific issues, giving them considerable “advocacy power”. This has been considerably emphasised by the Commission and NGOs in arguing in favour of retaining specialist commissioners. Comments by a specialist, government-appointed “Disability Commissioner” are seen by the media and stakeholder groups as carrying more weight and being more representative than the comments of a generalist commissioner who lacks affiliation with a particular disadvantaged group.

The Australian Commission has, however, experienced considerable difficulties in establishing an internal structure that allows the specialist commissioners and their policy units to act in an autonomous manner while retaining a clear organisational focus and ethos. Up to four structural variations have been attempted in the last decade, with varying results. The original structure gave the specialist commissioners total autonomy and authority for policy and practice within their respective areas of competence and over the staff within their policy units. One commissioner was given a chief executive function as well as responsibility for co-ordination and allocating budget expenditure.[96] This gave rise to considerable cross-stand tensions centring round funding allocation, in particular the allocation of large resources to particular projects. This structure was replaced in 1995 by one involving the seven commissioners sitting as a single body and making collective decisions, with a chief executive officer handling overall management functions. This new format proved unwieldy and lacked any clear chain of responsibility. Internal tensions continued, with complaint-handling practice, staff functions and outreach policy varying considerably across the different strands.

The HREOC's original dispute resolution function was similar to the New Zealand model in all key aspects, including investigative, conciliation and dispute determining roles, with the difference that each specialist commissioner had ultimate responsibility for complaints arising within their specific strands. Like in New Zealand and Canada, the dispute resolution function has had considerable problems with delays and inadequate government funding. It constituted a major resource drain, as well as hindering to a degree the development of strategic promotion and enforcement. In addition, the vesting of responsibility in each specialist commissioner resulted in different approaches being taken across the strands and contributed to tension between them. These tensions, combined with the draining effect of the HREOC's tribunal function, gave considerable ammunition to political critics of the Commission.

The current Australian Coalition government, having pledged in its *Fightback!* Manifesto in 1991 to cut back on funding for human rights and equality, has reduced the HREOC's budget between 1997 and 2002 by 55 per cent on alleged efficiency grounds. This has resulted in the Commission being required to make 60 of its 180 staff redundant, and massive cut-backs being made to its litigation, promotion, educational, and inquiry budgets.[97] In addition, the Australian High Court in *Brandy v HREOC*[98] held that the Commission's power to make determinations in respect of complaints, violated the separation of powers doctrine of the Australian Constitution as the Commission, in making such decisions, could be regarded as making judicial decisions. This was followed by a tripartite review of the Commission's functions and structure, carried out by the HREOC, Attorney-General's Department and the

Finance Department, which recommended extensive changes in the structure and function of the Commission. [99]

This structure has been modified by the Human Rights Commission Act 1998. The Commission President is now given final authority over complaint-handling and overall functioning of the Commission, with the chief executive officer handling the day-to-day management and all staffing decisions. The specialist commissioners retain responsibility for promotion, education and setting Commission policy in respect of their areas of responsibility, subject to the final authority of the President. Their role in complaint handling has been essentially transferred to the President, to separate promotional and policy functions from dispute resolution. This legislative change has been broadly welcomed as it allows a clear management structure, greater consistency and co-ordination, less internal friction, and a clearer chain of control and responsibility, while still retaining the role and titles of the specialist commissioners and their "advocacy power" as a focal point for media attention and for stakeholder access.[100] Proposed restrictions on the ability of the President to delegate have, however, been heavily criticised. Certain stakeholder groups have been less welcoming of the reform, disability groups in particular tending to favour retention of the previous system with its high degree of autonomy for the specialist commissioners.

The current Australian government questions the continuing utility of specialist commissioners, arguing it leads to excessive duplication of functions, a top-heavy commission and both internal and external politicking. It therefore advocates replacing the specialist commissioner positions with three generalist "deputy presidents" supporting the Commission President and playing the same cross-strand supervisory role as commissioners in the Northern Ireland, US and Canadian Commissions, but with specialist responsibility for a group of strands. At present, the necessary legislation, originally introduced in 1998, would not pass the Senate (the second chamber of the Australian parliament which lacks a government majority) and the proposed changes remain on the backburner. The HREOC, the Parliamentary opposition and NGOs have been united in opposition to this move, seeing it as an attempt to reduce the advocacy power of the specialist commissioners. In addition, they have emphasised the representative and symbolic roles of specialist commissioners and the loss of expertise and focus if they are replaced with generalists. Disability groups have, in particular, stressed the importance of having disabled representation at the highest level in the Commission.

In pursuit of its policy the government has refused to fill two vacant commissioner posts pending a final decision on the commission structure, despite considerable criticism. A stalemate continues in respect of these vacancies, with two out of the

three current commissioners taking responsibility in the interim for their specialist roles as well as sharing acting responsibility for those of the ‘missing’ commissioners.[101] A compromise that retains the advocacy power of titles like the Disability Commissioner while meeting the government demands for a more generalist structure is being sought, but no clear solution is in sight.

The funding crisis caused by the savage cuts in the HREOC’s budget has been used creatively to reduce cross-strand resource tensions. The specialist commissioners are now allocated equal staff numbers and administrative expenses, except where specific extra responsibilities are conferred on specific commissioners by other legislation, such as those conferred upon the Aboriginal Rights Commissioner by the Native Title Act. Extra staff are allocated specially for these extra functions. The slashing budget cuts which necessitated drastic cutbacks across all the strands resulted in a decision that the various strand-specific policy units should be allocated equal sums of money, with each commissioner having discretion how to use the sum allocated to their unit.[102] This was done to avoid a brutal cross-strand battle for ever decreasing funds, and means that the different equality strands all now receive equal funding, an unusual arrangement born out of funding poverty and prolonged internal tensions. This has reduced cross-strand tension, as has the one-for-all attitude generated by the cuts. In the absence of a central pool of money to be fought over, the specialist strand units must now co-ordinate and share funding if embarking on cross-strand initiatives, which again has contributed to the closing of the previous gaps.

In the wake of the *Brandy* decision and the conclusions of the tripartite review, the HREOC is just completing a detailed review of the legislative changes, and the general consensus exists that the new court process is working well. The removal of its tribunal function has generally been welcomed as a considerable benefit. As an internal function, its existence contributed to a blurring of the Commission’s impartiality in the minds of respondents in discrimination claims, irrespective of the independent manner in which the tribunal members had been appointed.[103] This impacted on both the external perception of the Commission, and the willingness of employers and public authorities to approach the Commission for assistance, as well as draining resources away from the Commission’s outreach and promotional activities.

With its new flexibility, the Commission has been able to concentrate on more strategic and focused court intervention work than was the case previously, and is developing its new *amicus curiae* role. The removal of the tribunal function combined with new outsourced training programmes and clear and co-ordinated dispute handling procedures has enabled the Commission to increase its percentage of

concluded complaints from 30 per cent to between 60 and 70 per cent per annum, with the Commission adopting the approach of the UK Commissions in only litigating those complaints which are strategically appropriate.[104] Community advocacy networks are supported, and encouraged via close co-operation and assistance to take cases forward, easing the burden on the Commission while enhancing community activism.

APPENDIX D

New Zealand: The Human Rights Commission

The New Zealand Human Rights Commission was established in 1977 as part of New Zealand's ratification process of the International Covenant of Civil and Political Rights, in order to uphold and promote human rights in general and to enforce the legislative prohibition in the Human Rights Commission Act 1977 on discrimination on grounds of sex, martial status and religious or ethical belief.[105] Equality was, therefore, seen as a sub-set of the overall human rights agenda, with the Commission given general promotional duties in respect of the whole spectrum of New Zealand's human rights obligations, while also given special enforcement responsibility for equality. A similar approach was adopted in Canada and Australia at the same time.

A separate office of the Race Relations Conciliator had been previously established in 1971 to enforce and promote racial equality. The powers and functions of the Conciliator were vested in the Commission in 1977 but continued to be separately exercised by the Conciliator and his office, with the Conciliator sitting as a commissioner to ensure a degree of co-ordination with the work of the Commission: however, the Conciliator continued to act as an entirely separate and independent officer. Responsibility for race relations was kept separate and vested in the Conciliator on the grounds that the particular problems of racial discrimination involving the Maori required an autonomous specialist unit. Other specialist units were established over the next few years, resulting in separate offices of the Commissioner for Children, the Health and Disability Commissioner (with responsibility for accommodation and access, while enforcement of the disability legislation was vested in the Commission) and the Privacy Commissioner. Of these commissioners, only the Race Relations Conciliator had a role in the Human Rights Commission.

The 1977 legislation provided for the human rights commissioners to include a chief commissioner, the Race Relations Conciliator, a proceedings commissioner who would have exclusive responsibility for decisions to provide legal representation for complainants processed by the Commission's dispute resolution mechanism, and three other full-time commissioners who were appointed in a mixture of functional and strand-specific specialist roles. All commissioners are appointed by the Governor-General on the recommendation of the Minister for Justice. The Commission was also given a complaint-handling function, being made responsible for mediating and investigating complaints. If unresolved, a complaints division consisting of specified commissioners would pass an opinion on the merits of a

complaint. If this was insufficient to settle the case, the dispute would then be passed to the Proceedings Commissioner for a determination whether to bring the case to court for a legal decision.[106]

As with Australia, this investigative function placed huge demands upon the time and resources of the Commission, leading to a tendency for it to be demand-led rather than proactive. From the beginning, the Commission regarded its primary function as the promotion of human rights, education and publicity. It has made extensive use of its powers to conduct broad inquiries and make special reports on human rights issues with considerable success. It concluded a major inquiry into the treatment of children (especially Maori children) in children’s homes and published reports into age discrimination in the health insurance industry, maternity leave and the All-Black South African tour of 1985 amongst many others. Nevertheless, the extent of time and resources devoted to complaint-handling and the massive dehabilitating delays associated with this attracted considerable stakeholder criticism, as well as an increasing loss of focus on promotion.

This also lead to a perception noted in an independent report on the *Re-evaluation of Human Rights Protections in New Zealand* in 2000 that the Commission was frequently perceived as acting as conciliator, judge and prosecutor, and consequently alienating respondents.[107] The Report also considered that the requirement that commissioners personally determine whether complaints had substance had “lent the complaints process a quasi-judicial character”, and ensured that commissioners had become too involved in micro-management. It also commented that the overwhelming stakeholder view of the Commission was that its primary function was confined to dealing with individual complaints, and that this emphasis was diverting resources away from the promotional and educational functions of the Commission. Additionally, it found that the absence of a single unified commission had contributed to a fragmentation of equality initiatives and a resulting confusion in the minds of complainants and those seeking advice. The plethora of separate equality authorities were seen as having a natural desire to focus on their “brand”, but this was seen as being achieved at a price, resulting in unnecessary duplication of resources, a lack of a single point of entry for users and a perception that certain interest groups were better served than others. The Report concluded by calling for a new national human rights institute to be established, combining the existing Commission and the Race Relations Office with a primary focus on strategic promotion and education.

The Report’s proposed changes to the Commission’s structures and functions were largely introduced by the current Labour government in the Human Rights (Amendment) Act 2001. The intention underpinning the legislation was to encourage an enhanced cross-strand approach to equality and human rights and a greater focus

on education and advocacy, rather than on the individual compliant-handling, in line with the Report's conclusions. The office of the Race Relations Conciliator was merged with the Commission to reduce duplication of resources and to ensure a greater cross-strand, intersectional and holistic approach to the equality agenda.[108] This merger was generally welcomed, but some concern was expressed as to whether what the Commission itself described as the "transcendent importance" of race relations in New Zealand would be given appropriate priority in a single commission. The New Zealand Federation of Ethnic Councils strongly opposed this merger, fearing it would result in less emphasis on race relations. Opposition parties argued that it would result in a loss of independence within the overall structure of the Commission, as well as depriving the race relations office of the reputation for proactive and independent action it had acquired.

In response to this concern, the legislation gives the Race Relations Commissioner specific responsibilities and functions, including leading commission discussions on race matters and supervising jointly with the Chief Commissioner the Commission's activities in respect of matters concerning race relations. This interesting arrangement essentially makes the Race Relations Commissioner the Commission's focal point for developing race policy. An Equal Employment Opportunities Commissioner has also been appointed, with the equivalent function of providing leadership and policy direction on equal employment, and again backed by a separate policy unit. The opposition argued against this appointment, arguing that if specialist commissioners were to be introduced, then there was a considerably greater case for a specialist disability commissioner, given the volume of disability-related complaints the commission was receiving (23 per cent of the total).[109] The continuing separate existence of the office of the Health and Disability Commissioner was cited to justify the absence of a disability commissioner within the Commission's structure, despite its responsibilities for disability complaints under the legislation. It is also very unclear what exactly is meant by responsibility for "leading" or "supervising jointly".

The legislation also replaced the three full-time specialist commissioners with five part-time non-specialist commissioners. The commissioners are now responsible for strategic direction but removed from day-to-day supervision, with managerial responsibility vested in a chief executive officer and overall functional responsibility vested in the Chief Commissioner. The commissioners were also removed from their role in making determinations in respect of complaints, and the dispute resolution function of the commission was substantially altered. Its role is now to provide neutral, impartial, confidential mediation service in disputes. If a settlement cannot be reached, then a complainant can apply for legal representation to the Office of Human Rights Proceedings. This fills the role previously played by the Proceedings

Commissioner and is fully independent and self-contained, with its Director required to act independently from the Commission in deciding whether or not to give representation, but responsible to the Chief Commissioner for the administration of the Office.

In their response to the report and the legislation, the Commission and many stakeholders were critical of the alterations to the dispute resolution process and to the roles of the commissioners.[110] Responses argued that the complaint backlog had been brought under control, that it should be entitled to give an opinion on the merits which would in turn assist mediation, and that part-time commissioners would lack the required independence, day-to-day involvement and cross-strand experience necessary to properly fulfil their role. The Commission did welcome the introduction of the Office of Human Rights Proceedings, and also the wide range of explicit new functions formally conferred upon it. A key function is also the responsibility for the development of a National Plan of Action for human rights, which will involve the mainstreaming of equality and human rights throughout the public sector.[111]

Following the recent legislation, the Commission has now a structure that combines functional communications, services, dispute resolution (mediation) and legal teams with specialist units. The Human Rights team handles promotional, outreach and policy work in respect of New Zealand's international human rights obligations, the Race and Ethnic Relations team deals with race equality policy, legal strategy and education and specialist units are devoted to equal opportunities and the National Plan of Action.[112]

APPENDIX E

USA: The Equal Employment Opportunity Commission

The US Equal Employment Opportunity Commission (EEOC) was established in 1964 by the US Civil Rights Act, to promote race and gender equality and to process complaints of discrimination in employment. It was the 'original' equality commission, inspiring the establishment of many of the other commissions discussed here throughout the 1970s. It now has responsibility for promoting and enforcing race, gender, age and disability equality in employment. A federal agency, the EEOC has 50 field offices throughout the US, and works closely with the various state commissions that exist in almost all US states.

The EEOC's workload has since the early 1970s been largely dominated and frequently swamped by its complaint-handling function. All employment discrimination cases brought under US federal law must commence by the filing of a complaint with the Commission, who are required to investigate the complaint. If they find 'reasonable cause' to believe that discrimination exists, then the complaint can be referred for conciliation. Failing this the EEOC can then take up the lawsuit itself before the courts. Complaints that are not processed within the relevant timeframe or which the EEOC decides not to proceed with may be brought to the courts by the individuals concerned. The compulsory requirement to file suit initially with the EEOC was the product of the optimistic belief in 1964 that the vast majority of discrimination complaints could be rapidly dealt with through the EEOC, and only a trickle would require the attention of the courts. This proved erroneous: the EEOC currently receives 80,000 private sector complaints annually.[113]

Initially, the EEOC was criticised as a 'toothless tiger' due to its inability to bring legal action on behalf of complainants or in its own name.[114] This was rectified in 1972 by allowing it to bring actions against respondents, file pattern or practice lawsuits and also to file amicus curiae briefs. Nevertheless, the EEOC has never been allocated the resources it requires to perform the complaint-handling function it was allocated, and the process became noted for excessive delay, culminating in a backlog of 94,700 unresolved charges by 1977. Rapid processing systems introduced in the late 1970s reduced this backlog, but the EEOC has continued to struggle, hitting a backlog of 111,000 in 1995. The burden on the EEOC was enhanced by the added responsibilities for age and gender, and in 1990, disability, as well as being allocated the administrative role of adjudicating complaints by federal employees. The introduction of a national enforcement plan in 1996 and a comprehensive enforcement programme in 1999 has helped, but the ongoing burden of the complaints process has made it difficult for the EEOC to give due weight to its

promotional and strategic enforcement functions. By the late 1970s, for example, outreach activities had been massively scaled-back.

The EEOC has in its enforcement functions, been pulled between the poles of an individual-centred approach and a systematic approach. Its litigation strategy in the 1970s emphasised group-directed systematic discrimination, whereas under the Chairmanship of Clarence Thomas in the early 1980s the EEOC adopted a much more individual-focused approach, redefining its role as providing effective remedies to individual victims of discrimination rather than targeting systematic patterns of group discrimination.[115] In the 1990s, the pendulum has swung slightly back the other way. The Commission has also been the target of funding neglect, with repeated failures to allocate more funds to match new responsibilities, and also was subject to sweeping budget cuts following the Gramm-Rudman Act in the late 1980s.

Despite these obstacles, the EEOC developed a very effective litigation strategy from the early 1970s on, in particular in its initial work on systematic discrimination and in its precedent-establishing intensive litigation brought under each new strand as it took responsibility for them. The current National Enforcement Plan clearly identifies the criteria to be used nationwide in selecting cases to be litigated, and emphasis is placed across the strands on key strand-specific and intersectional issues.[116] The use of interventions remains rare.

In the 1990s, the EEOC's outreach initiatives (numbering 2,550 in 1999), played a considerable role in promoting equality and the use of positive action to achieve diversity in the public and private sectors. These include its recent small business initiative launched in 1999, its best practice in the private sector guide, and the dissemination of its guidelines for public authorities and employers on the interpretation and application of anti-discrimination law. A considerable part of its activities consist of employer-directed outreach and education programmes. Since 1992, outreach initiatives have been largely funded by a revolving fund supported by payments received for technical assistance training by the EEOC, thereby insulating promotional funding from the vagaries of the budget process and the resource drain of the complaints process. The EEOC is now making extensive use of mediation in its dispute-resolution functions, with 50 per cent of all cases settled via alternative dispute resolution, while placing emphasis on the role of the Commission in securing a just outcome and, where appropriate, publicising settlement schemes if they are of wider relevance. On the other hand, EEOC outreach to stakeholder groups has often been criticised, and the perception remains that it is largely an administrative complaints-processing agency removed from stakeholder concerns.

The EEOC has five commissioners and a General Counsel appointed for five-year staggered terms by the president and confirmed by the Senate, with the Chair of the Commission acting as CEO. The Commission has a strategic oversight role, and also approves litigation, though much of this role has interestingly been delegated to the General Counsel to reduce unnecessary day-to-day management by commissioners. The commissioners do not have specialist functions, although several state commissioners with similar structures to the EEOC provide for a representative commission by requiring that a certain amount of commissioners be over 60, be disabled, or be female. The EEOC has a functional structure, with offices of Research and Planning, Field Programs, Community and Legislative Affairs, Special Projects, Voluntary Assistance (for employer assistance) and the Office of the General Counsel.

APPENDIX F

Canada: The Human Rights Commission

The Canadian Human Rights Commission was established in 1977, and like its equivalents in Australia and New Zealand is charged with promoting human rights and enforcing anti-discrimination law via a complaints process conducted by the Commission. It is also a federal commission, with complementary human rights commissions existing in all of Canada's provinces.

As with its equivalents, the dispute resolution process has dominated the Commission's workload, ensuring that it has been criticised for being essentially reactive and demand-lead rather than proactive and strategic. Until recently, the Canadian process required that all discrimination complaints were required to be submitted to the Commission[117], which would investigate, conciliate if possible as a second stage and ultimately decide whether the case should be referred to a Human Rights Tribunal. The Commission therefore acted as a doorkeeper for any enforcement action, meaning that the inevitable longs delays in the system acted to deny remedies to complainants. Between 1988 and 1997, the Commission took from 23 to 27 months to decide whether to send a complaint forward for conciliation or to the tribunal (these further stages also involved considerable delays), causing intense discontent across the stakeholder groups.[118]

A high complaint rejection rate (two-thirds of all complaints were not proceeded with between 1988 and 1997, even to the conciliation stage) and a very low referral rate to the tribunal (only 6 per cent of all cases) led to the perception that the Commission's handling of complaints was driven by an administrative desire to reduce the considerable backlog, and gave rise to serious credibility issues. In response to this, and following a critical report by the Auditor-General[119] in 1998 and the 2000 Report of the Canadian Human Rights Act Review Panel[120], recent legislation has allowed greater use of mediation in the dispute process and permitted complaints to be brought directly to the tribunals. Both the Review and the Report of the Standing Senate Committee on Human Rights[121] in December 2000 criticised the need for both the federal and the state commissions to give priority to individual complaint-handling at the expense of promotional and policy work. The Review emphasised that the focus of the Commission had to be on preventing discrimination rather than mopping up its aftermath, calling for greater resource allocation to enable the Commission to carry out more internal audits, inquiries and investigations, as well as research and promotion. A staff review in 2001 showed very low levels of morale, arising from the considerable discontent with the dispute resolution process.[122]

This recent legislation was also designed to allow the Commission to engage in more promotional activity, by reducing its enforcement obligations. The Commission has complied valuable research reports, and played an active role in providing outreach and guidance on anti-discrimination law. In particular, it has emphasised outreach to community groups across Canada in conjunction with the state commissions. However, the dominance of its enforcement responsibilities has considerably hampered its ability to engage in promotional work. Useful research and policy work has been done in response to government references of particular human rights issues to the Commission, which brings special funding lines, but in the main the priority given to funding complaints has restricted the Commission. Recent alterations in its internal arrangements has allowed it to process complaints more quickly, freeing up increased resources for a three-year programme of promotional work which commenced in 2000 which emphasises the development of partnerships with community groups. In addition, the Commission makes increasing use of internal mediation services, with considerable success in dispute resolution.

The Commission also has enforcement responsibilities in respect of the Employment Equity Act 1995. This involves auditing federal authorities and federally-regulated private sector employers for compliance with the requirements imposed by the Act for monitoring and taking positive action (if necessary) to improve representation of women, aboriginal peoples, ‘visible’ minorities and persons with disabilities. If the Commission considers authorities or employers are not complying, then after negotiation the Commission can issue a direction requiring specific action, which can then be confirmed or challenged at a tribunal. The Commission has placed a high priority in its audit work, which has been reflected in the number of employers and authorities audited and who are now in compliance. Over 80 per cent of employees covered by the Act now work in environments where equal employment opportunities have been audited.[123]

Up to eight persons can be appointed as commissioners, with a Chief Commissioner and a Deputy Chief serving full-time for seven years, the others being part-time. There are no specialist commissioners, but a regional and strand spread is maintained, along with a balance between men and women. A Secretary-General serves as chief executive officer, and the Commission is structured into a Legal Services branch, the Employment Equity branch responsible for the employment equity audits, and two overarching sectors, Operations and Corporate Management. The operations sector includes the Standards and ADR, Investigations, and the Pay Equity and Settlement branches, which handle dispute resolution, and the Human Rights promotion branch. The Corporate Management sector includes the Policy and International Program (which has responsibility for international links as well as for reporting on or proposing legislation) and Planning branches, amongst others. The

Commission's structure is therefore highly functional, as are the provincial commission structures.

The individual province and territory commissions have similar functions and structures as the federal commission, and like the federal commission they have experienced difficulties arising from the resource drain of their dispute resolution functions. The consequent discontent of stakeholder groups and the public at large contributed to several provincial commissions experiencing severe funding cuts, with the British Columbia Commission experiencing a reduction of 32 per cent in its budget for 2002/2003. In common with the federal commission, all suffer to a greater or lesser extent from severe funding shortages, and there is some discontent with the commission structure as it currently exists.[124]

APPENDIX G

The Paris Principles

Competence and responsibilities:

1. A national institution shall be vested with competence to promote and protect human rights.
2. A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence.
3. A national institution shall, inter alia, have the following responsibilities:
    a. To submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights; the national institution may decide to publicize them; these opinions, recommendations, proposals and reports, as well as any prerogative of the national institution, shall relate to the following areas:

        i. Any legislative or administrative provisions, as well as provisions relating to judicial organizations, intended to preserve and extend the protection of human rights; in that connection, the national institution shall examine the legislation and administrative provisions in force, as well as bills and proposals, and shall make such recommendations as it deems appropriate in order to ensure that these provisions conform to the fundamental principles of human rights; it shall, if necessary, recommend the adoption of new legislation, the amendment of legislation in force and the adoption or amendment of administrative measures;

        ii. Any situation of violation of human rights which it decides to take up;

        iii. The preparation of reports on the national situation with regard to human rights in general, and on more specific matters;

        iv. Drawing the attention of the Government to situations in any part of the country where human rights are violated and making proposals to it for initiatives to put an end to such situations and,

where necessary, expressing an opinion on the positions and reactions of the Government;

b. To promote and ensure the harmonisation of national legislation regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation;

c. To encourage ratification of the above-mentioned instruments or accession to those instruments, and to ensure their implementation;

d. To contribute to the reports which States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty obligations and, where necessary, to express an opinion on the subject, with due respect for their independence;

e. To co-operate with the United Nations and any other organisation in the United Nations system, the regional institutions and the national institutions of other countries that are competent in the areas of the promotion and protection of human rights;

f. To assist in the formulation of programmes for the teaching of, and research into, human rights and to take part in their execution in schools, universities and professional circles;

g. To publicise human rights and efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness, especially through information and education and by making use of all press organs.

Composition and guarantees of independence and pluralism:

1. The composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the promotion and protection of human rights, particularly by powers which will enable effective cooperation to be established with, or through the presence of, representatives of:

   a. Non-governmental organisations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organisations, for example, associations of lawyers, doctors, journalists and eminent scientists;

   b. Trends in philosophical or religious thought;

c. Universities and qualified experts;

a. Parliament;

b. Government departments (if these are included, their representatives should participate in the deliberations only in an advisory capacity).

2. The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence.
3. In order to ensure a stable mandate for the members of the national institution, without which there can be no real independence, their appointment shall be effected by an official act which shall establish the specific duration of the mandate. This mandate may be renewable, provided that the pluralism of the institution's membership is ensured.

Methods of operation:

Within the framework of its operation, the national institution shall:

a. Freely consider any questions falling within its competence, whether they are submitted by the Government or taken up by it without referral to a higher authority, on the proposal of its members or of any petitioner;
b. Hear any person and obtain any information and any documents necessary for assessing situations falling within its competence;
c. Address public opinion directly or through any press organ, particularly in order to publicize its opinions and recommendations;
d. Meet on a regular basis and whenever necessary in the presence of all its members after they have been duly convened;
e. Establish working groups from among its members as necessary, and set up local or regional sections to assist it in discharging its functions;
f. Maintain consultation with the other bodies, whether jurisdictional or otherwise, responsible for the promotion and protection of human rights (in particular ombudsmen, mediators and similar institutions);
g. In view of the fundamental role played by the non-governmental organizations in expanding the work of the national institutions, develop relations with the non-governmental organizations devoted to promoting and protecting human rights, to economic and social development, to combating racism, to protecting particularly vulnerable groups (especially children, migrant workers, refugees, physically and mentally disabled persons) or to specialized areas.

Additional principles concerning the status of commissions with quasi-jurisdictional competence:

A national institution may be authorized to hear and consider complaints and petitions concerning individual situations. Cases may be brought before it by individuals, their representatives, third parties, non-governmental organizations, associations of trade unions or any other representative organizations. In such circumstances, and without prejudice to the principles stated above concerning the other powers of the commissions, the functions entrusted to them may be based on the following principles:

a. Seeking an amicable settlement through conciliation or, within the limits prescribed by the law, through binding decisions or, where necessary, on the basis of confidentiality;
b. Informing the party who filed the petition of his rights, in particular the remedies available to him, and promoting his access to them;
c. Hearing any complaints or petitions or transmitting them to any other competent authority within the limits prescribed by the law;
d. Making recommendations to the competent authorities, especially by proposing amendments or reforms of the laws, regulations and administrative practices, especially if they have created the difficulties encountered by the persons filing the petitions in order to assert their rights.

ENDNOTES

[1] General indicators of levels of prejudice or awareness in society can contribute little to a meaningful assessment of the impact of equality bodies. Given the amount of factors that contribute to forming social attitudes in general, there is little possibility of identifying the particular contribution of equality commissions, and in any case the various commissions surveyed here operate in different social and cultural circumstances and play different roles.

[2] This methodology is similar to that utilised in the New Zealand Review of its equality and human rights legislation and institutions, "Re-Evaluation of the Human Rights Protections in New Zealand", available at http://www.justice.govt.nz/pubs/reports/2000/hr_reevaluation/index.html (last accessed 12 November 2002), and the PLS Rambol Management final report, *Specialised Bodies to Promote Equality and/or Combat Discrimination*, May 2002, produced for the European Commission and available at http://europa.eu.int/comm/employment_social/fundamental_rights/prog/studies_en.htm (last accessed 12 November 2002)

[3] The particular context of South Africa inevitably requires the Commissions there to place special emphasis on issues of race equality, and the Human Rights Commission has not yet taken up its functions under the Promotion of Equality and Prevention of Unfair Discrimination Act 2000, citing inadequate funding. However, the South African experience is particularly relevant in the context of the independence of commissions, as well as their relationship with human rights issues: see below.

[4] See n. 2 above.

[5] See B. Markesinis, *Foreign Law and Comparative Methodology* (Hart Publishing, 1997).

[6] The South African Human Rights Commission does likewise, with the exception of gender equality issues that are the responsibility of the Commission for Gender Equality.

[7] See Appendices C and E.

[8] Disability and age have been described as especially effective "icebreakers" in this context, reaching as they do vast amounts of the population that may otherwise be comparatively disengaged from other equality grounds.

[9] Some of the Authority's most significant successes in encouraging the implementation of action plans have come in the 'new' strands: successful industry campaigns against age-based insurance premiums and age limits in pubs and night-clubs have been very successful, for example, as has some of its disability rights campaigns.

[10] See Appendix C.

[11] The pace of the process was driven by the Good Friday Agreement and the impending introduction of a wide-ranging cross-strand equality duty upon public authorities in Northern Ireland (introduced by s. 75 of the Northern Ireland 1998).

[12] 85 per cent of responses to the initial government consultation were opposed to the setting-up of a single commission.

[13] EEOC Task Force Report *"Best" Equal Employment Opportunity Policies, Programs, and Practices in the Private Sector*, available at http://www.eeoc.gov/practice.html (last accessed 12 November 2002).

[14] For an excellent analysis of the necessary coherent value framework for cross-strand approaches, see Katherine Zappone, *Charting the Equality Agenda: A Coherent Framework for Equality Strategies in Ireland, North and South*, June 2001, Equality Authority and Equality Commission for Northern Ireland available at http://www.equalityni.org/uploads/pdf/kzreport.pdf (last accessed 14 November 2002).

[15] A gender reference unit has been established to co-ordinate gender policy across the functional units: see Appendix A.

[16] The business plan provides for gender-focused campaigns on equal pay and in promoting equality in the business community, to be implemented in the current year.

[17] The DRC delivers this level of participation with the requirement that over 50 per cent of its commissioners be members of disabled groups. This level will obviously diluted in any single commission, with for example only two out of sixteen commissioners being disabled persons in Northern Ireland.

[18] This tension tends to be accentuated where the commission has a dispute resolution function, which in the US, Canadian and Australian systems requires the commissions to act as a conciliator between complainant and respondent.

[19] Hepple, Coussey and Choudhury, *Equality: A New Framework*, the Report of the Independent Review of the Enforcement of UK Anti-Discrimination Legislation, para. 2.90, at p. 53.

[20] See Clare Collins, *A Single Equality Body: Issues Paper*, prepared for the Equality and Diversity Forum, October 2002.

[21] See Appendix E.

[22] See Appendix C.

[23] See the Canadian Human Rights Act Review, *Promoting Equality: A New Vision*, June 23 2000, available at http://canada.justice.gc.ca/chra/en/ (last accessed 13 November 2002.

[24] As an example, in New Zealand a range of cases involving sex harassment in the army were submitted to the Commission, which brought these collectively to the attention of the armed forces and resulted in an effective joint anti-harassment project.

[25] These different approaches were the product of those used in its predecessor commissions, and were made worse by a ‘levelling-up’ effect whereby the intense use of external legal support in one area resulted in other areas increasingly also making use of this support to avoid differential treatment. See Appendix A.

[26] See Appendix D. The Commission’s mediation function now has to be carried out impartially, for the same reason.

[27] S. Day and G. Brodsky, “Screening and Carriage: Reconsidering the Commission’s Functions”, Canadian Human Rights Act Review 2000 available at http://canada.justice.gc.ca/chra/en/research.html (last accessed 13 November 2002).

[28] Two-thirds of all complaints to the Canadian commission were not proceeded with between 1988 and 1997, even to the conciliation stage: see Appendix F.

[29] Only 6 per cent of all cases were referred to the Canadian tribunals by the federal commission in the years above: see Appendix F.

[30] See PLS Final Report, para. 5.4, p. 87.

[31] The Paris Principles were adopted by the UN General Assembly in 1992 and are set out in Appendix G. They list the minimum standards necessary to ensure genuine independence for a national human rights commission.

[32] See the Commission's Annual Reports, available at www.sahrc.org.za/

[33] The Australian government has, as a result, allocated extra funding which is specially earmarked for this inquiry.

[34] Diana Temby, the Chief Executive of the Australian Commission, has described these inquiries as "the most effective advocacy tool there is if the topic is right and captures the public imagination": interview with the author, August 2002.

[35] See http://www.eeoc.gov/35th/1970s/focusing.html (last accessed 13 November 2002) for an overview of the EEOC litigation strategy and considerable achievements in the early 1970s.

[36] The Belgian Centre pour l'Egalite des chances et la Lutte contre le Racisme (CECLR) has an even stronger mandate, permitting it to bring court cases even where there is no direct victim of discrimination. The CECLR for example in the early 1990s acted as complainant on behalf of unidentified Somali nationals who had suffered from racist acts by Belgian peace-keeping soldiers during the intervention in Somalia. See the PLS Final Report, para. 1.2.4, p. 12.

[37] See s. 46PV of the Human Rights and Equal Opportunities Commission Act 1986 as amended by the Human Rights Legislation (Amendment) Act 1998. For the HREOC's guide to when and how it will exercise this function, see http://www.hreoc.gov.au/legal/amicus_discussion.html "(last accessed 12 October 2002).

[38] Human Rights Act 1993, s. 5.

[39] These specifically include amongst others the powers to publish guidelines on compliance with the human rights legislation, to inquire into "any matter…if it appears to the Commission that the matter involves, or may involve, the infringement of human rights", to intervene with court approval and to bring actions in its own name to seek a declaratory judgment, to report to the Prime Minister on any matter relating to human rights, including the desirability of New Zealand becoming bound by an international agreement and to "make public statements in relation to any group of persons in, or who may be coming to, New Zealand who are or may be subject to hostility [and] against whom discrimination is unlawful".

[40] See the EEOC "Information for Small Employers", available at http://www.eeoc.gov/small/index.html (last accessed 13 November 2002).

[41] See http://www.eeotrust.org.nz/

[42] Similar reliance on ADR mechanisms is common in EU bodies: see the PLS Final Report, papra. 5.3.1.

[43] Similar concern has been expressed by members of the Dutch Equal Treatment Tribunal: see PLS Final Report, para.5.3.1, p. 80.

[44] See Chapter 10 of the 1998 Report of the Auditor-General of Canada, available at http://www.oag-bvg.gc.ca/domino/reports.nsf/html/9810me.html (last accessed 13 November 2002)."

[45] See the Annual report of the Canadian Human Rights Commission 1997 at www.chrc-ccdp.ca/

[46] For an excellent discussion of the potential pitfalls in failing to recognise in developing ADR mechanisms the difference in position and resources of the parties in discrimination cases, see Anna Chapman, "Discrimination Complaint-Handling in New South Wales: The Paradox of Informal Dispute Resolution", 22 Sydney Law Review (2000) 321. See also Rosemary Hunter and Alice Leonard, "Sex Discrimination and Alternative Dispute Resolution: British Proposals in the Light of International Experience", [1997] Public Law 298, Owen Fiss, "Against Settlement", (1984) 93 Yale Law Journal 1073, Tina Grillo, "The Mediation Alternative: Process Dangers for Women" (1991) 100 Yale Law Journal 1545, Margaret Thornton, *The Liberal Promise: Anti-Discrimination Legislation in Australia* (Oxford University Press: 1990).

[47] PLS Final Report, para. 7.4.1, p. 123. The Portuguese High Commissioner for Immigrants and Minorities plays a similar role.

[48] The race development unit has largely been incorporated since April 2002: the head of the disability unit now reports to the head of the policy and development unit, and their legal team have been merged into the legal unit (while still focusing on disability), but their information and advice staff remain separate until December 2003.

[49] This structure largely resulted from the recent merger of the office of the Race Relations Conciliator with the Human Rights Commission, when considerable concern was expressed as to how an adequate focus could be maintained upon race issues within a single commission: see below.

[50] The opposition argued against this appointment, arguing that if specialist commissioners were to be introduced, then there was a considerably greater case for a specialist disability commissioner, given the volume of disability-related complaints the commission was receiving (23 per cent of the total). The continuing separate existence of the office of the Health and Disability Commissioner was cited to justify the absence of a disability commissioner within the Commission's structure, despite its responsibilities for disability complaints under the legislation and the narrow scope of the Health and Disability Commissioner's functions, which essentially only extend to reasonable accommodation.

[51] Another mixed functional/specialist structure is proposed for adoption in Belgium. The Centre for Equal Opportunities and the Fight Against Racism (CECLR) has primarily worked in the field of racism, but with the proposed extension of its remit to include the other grounds of discrimination (except for gender) prohibited in EC law, concerns have been raised that its strong profile in the area of racism will be diluted: consequently, a decision has been taken to establish two operational pillars, one dealing with racism and one with the other grounds, at the least for a two-year transition period. See PLS Final Report, para. 4.1.2, p. 64.

[52] See PLS Final Report, para. 4.1.2, p. 65.

[53] The Working Group Report also indicated that strand specialists could have roles within each functional unit: see p. 36.

[54] The quasi-judicial Dutch Equal Treatment Commission was previously divided into three strand-specialist chambers, but has decided to adopt a functional structure on account of the number of multiple strand cases.

[55] See *Re-Evaluation of the Human Rights Protections in New Zealand*, Ministry of Justice, October 2000, available at http://www.justice.govt.nz/pubs/reports/2000/hr_reevaluation/index.html (last accessed 14 November 2002).

[56] Evidence to the Senate Legal and Constitutional Affairs Committee, 5 August 1998, available at www.aph.gov.au/hansard

[57] Note that similar fears have been expressed in Denmark and Belgium by specialist-strand units: see the PLS Final Report, para. 4.1.2 at p. 65, while discussions in Sweden about merging the different ombudsmen concerned with equality issues have tended to favour retention of specialist sub-units or specialist commissioners along the Australian model.

[58] They acquire their name from Section 5 of the Human Rights Commission Act 1994.

[59] Sweden uses an ombudsman system to enforce equality norms: see the PLS Final Report, para. 2.2, p. 33.

[60] PLS Final Report, para. 3.1.3, p. 40. Several EU bodies have similar arrangements for their boards: see *ibid*.

[61] See Paul Chaney and Ralph Fevre, *An Absolute Duty: Equal Opportunities and the National Assembly for Wales*, available at www.eoc.org.uk/cseng/abouteoc/an_absolute_duty.asp

[62] See the report by the Standing Canadian Senate Human Rights Committee, *Promises to Keep: Implementing Canada's Human Rights Obligations,* December 2001, available at http://www.parl.gc.ca/37/1/parlbus/commbus/senate/com-e/huma-e/rep-e/rep02dec01-e.htm (last accessed 13 November 2002).

[63] See *New Targeting Social Need Action Plan Draft for Consultation*, available at http://www.equalityni.org/publications/recentpubdetails.cfm?id=6 (last accessed 13 November 2002).

[64] Interestingly, the Swedish Disability Ombudsman is required by statute to maintain contacts with businesses and to encourage the private sector to engage with disability issues. See PLS Final Report, para. 7.4.1, p. 123.

[65] See the report by the Justice and Electoral Committee on the Human Rights Amendment Bill, November 2001, available at http://www.clerk.parliament.govt.nz/content/51/152bar2.pdf (last accessed 13 November 2002).

[66] See PLS Final Report, para. 3.1.5, p. 43.

[67] See the Committee's Twenty-Second Report, *The Case for a Human Rights Commission: An Interim Report* HL 160/HC 1142, ISBN 0 10 413602 2, and available at http://www.publications.parliament.uk/pa/jt/jtrights.htm (last accessed 13 November 2002).

[68] The difference in scale of responsibilities of a British single commission and the combined commissions considered here (with the Australian commission confined to federal matters) is

relevant, perhaps making the possibility of over-stretch and dilution much greater in the British context.

[69] See the Canadian Human Rights Act Review, *Promoting Equality: A New Vision*, June 23 2000, available at http://canada.justice.gc.ca/chra/en/ (last accessed 13 November 2002).

[70] The Danish Advisory and Documentation Centre on Racial Discrimination (DRC-DK) has made good use of the CRED protocol as part of its litigation strategy PLS Final Report, para. 6.2.1, p. 100.

[71] Interestingly, it cannot receive complaints in respect of the International Covenant on Social, Economic and Cultural Rights.

[72] Prior to *Brandy*, the Commission could investigate the complaint and make a non-enforceable finding.

[73] See the *memorandum of Understanding Between the Northern Ireland Human Rights Commission and the Equality Commission for Northern Ireland*, 23 October 2000, available at http://www.nihrc.org/ (last accessed 13 November 2002).

[74] See n. 31 above.

[75] Note that the EU Race Directive 2000/43/EC requires the establishment of an "independent" body to promote equal treatment on racial grounds, ensuring that EC law may provide a remedy for breaches of independence in the context of race issues.

[76] Evidence from Professor Hilary Charlesworth to the Senate Legal and Constitutional Committee described it as "constructive dismissal of fixed term statutory appointments" due to their political success in pushing the human rights agenda, and calling for the outgoing specialist commissioners to serve their full term in the new structure. See n. 56 above.

[77] Available at http://www.pmg.org.za/bills/oversight&account.htm

[78] In Sweden, there were suggestions that accountability to Parliament instead of to the executive would enhance the independence of the three Swedish Ombudsmen with equality responsibilities, whose independence is only guaranteed by convention, were countered by the fear that this might result in the Ombudsmen becoming a political football, and that clear legislative guarantees of independence were a more effective route of securing genuine independence. See the PLS Final Report, para. 1.1.1, p. 3

[79] Statutory restrictions on the Commission's ability to enter into monetary contracts have also contributed to the erosion of independence, as these restrictions bar the Commission from renting or purchasing property in its own name, among other restraints. See Fifth Annual Report, available at www.sahrc.org.za, at p. 4.

[80] The Report cited also the case of *New National Party of South Africa v Government of the Republic of South Africa* 1999 (5) BCLR 489 (CC), where the Constitutional Court held that making the Chapter 9 Independent Electoral Commission accountable to a government department violated the Constitution, and that Parliament was the appropriate institute for allocating funding.

[81] This concentrates on the use of internal expertise where possible, and makes appropriate provision for the pressing specialist needs of the 'new' race relations and disability strands for case-law precedent to clarify the legislation, as well as due recognition of the diversity of

complainants and the need for a clear horizontal focus and good diagnostic techniques across the strands in general.

[82] Hepple, *op cit*, para. Recommendation 23, at p. 55.

[83] See Standing Advisory Committee on Human Rights, *Employment Equity: Building for the Future*, June 1997 (HMSO, Cm 3684).

[84] See *Partnership for Equality*, March 1998, (HMSO, Cm 3890), available at http://www.dfpni.gov.uk/ccru/bigccru.pdf (last accessed 13 November 2002).

[85]For the Northern Ireland Office's conclusions, see http://www.nio.gov.uk/press/1998/jul/980710e-nio.htm (last accessed 13 November 2002).

[86] The speed of the transition process was largely seen to be driven by the Northern Ireland Office's desire to have a single commission in place to handle the enforcement of the section 75 duty.

[87] See *Report of the Equality Commission Working Group*, March 1999, available form the Equality Commission for Northern Ireland.

[88] The race development unit has largely been incorporated since April 2002: the head of the disability unit now reports to the head of the policy and development unit, and their legal team has been merged into the legal unit (while still focusing on disability). Their information and advice staff remain separate until December 2003.

[89] The nine grounds being race, sexual orientation, gender, religion, gender, family status, disability, membership of the travelling community and age.

[90] The legislation consists of two separate Acts, the Employment Equality Act 1998 dealing with employment and the Equal Status Act 2000 dealing with goods and services. Both apply across all nine grounds.

[91] The Authority is not given powers in respect of paternal rights beyond the provision of information, which is seen as the biggest defect in the Authority's powers and functions.

[92] The Director is separate and independent of the Authority, and is responsible for investigating complaints under the legislation. The Director may refer a complaint for mediation, and can make a final determination if necessary and recommend remedies and a course of remedial action. An appeal lies from the decision of the Director to the courts.

[93] See the Customer Service Action Plan", available at http://www.equality.ie/stored-files/PDF/csap.pdf (last accessed 13 November 2002).

[94] The Plan, while ambitious, lacks enforceable duties or deadlines, contrary to the Authority's position.

[95] See Irish Times, 13 August 2002.

[96] This function was given to the human rights commissioner on account of the broad scope of the human rights mandate.

[97] See the HREOC Annual Reports 1996-7, 1997-8, 1998-9, available at http://www.humanrights.gov.au/ann_rep/index.html (last accessed 13 November 2002).

[98] 183 CLR 245

[99] See the HREOC Annual Report, 1995-6.

[100] Interview with Diana Temby, executive director of the Australian Human Rights Commission, August 2002.

[101] A well known disability activist and lawyer has been hired as a consultant to assist the acting disability commissioner.

[102] Any unused money can be carried forward to the following year and kept within the unit, and each unit's advocacy programme, travel, promotional activities, extra staff, publicity if desired must be funded from its specific sum. Special projects such as an inquiry in respect of a particular strand now must be funded from the sum allocated to that strand.

[103] Interview with Diana Temby, executive director of the Australian Human Rights Commission, August 2002.

[104] Complainants whose cases are not taken up by the HREOC can still bring the case to the new magistrates courts themselves, once the HREOC complaint process has been completed.

[105] These grounds were progressively extended to include disability, sexual orientation and age.

[106] Race discrimination complaints would be handled by the Race Relations Conciliator, and then referred to the Proceedings Commissioner as with the non-race cases.

[107] See *Re-Evaluation of the Human Rights Protections in New Zealand*, Ministry of Justice, October 2000, available at http://www.justice.govt.nz/pubs/reports/2000/hr_reevaluation/index.html (last accessed 14 November 2002).

[108] The Report had debated whether to merge the Privacy, Children's and Health and Disability Commissioners within the Commission, but felt that it would be more effective for these separate offices to continue to operate outside the commission structure, at least in the medium-term.

[109] See New Zealand Human Rights Commission Annual Report 2002, available at http://www.hrc.co.nz/hrc/pdfdocs/Annual%20Report%202002.pdf (last accessed 14 November 2002).

[110] *See Re-Evaluation of Human Rights Protections in New Zealand: Summary of Public Submissions*, Ministry of Justice, May 2001, available at http://www.justice.govt.nz/pubs/reports/2001/hr_submissions/index.html (last accessed 14 November 2002)

[111] This National Plan of action was recommended by the Re-Evaluation Report: see *Re-Evaluation Report*, above, at Part Seven.

[112] Kaiwhakarite or specialist officers provide specialist advice throughout the Commission's units on Maori issues, ensuring the mainstreaming of Maori perspectives within the Commission's own structures.

[113] See the *EEOC Overview*, available at http://www.eeoc.gov/overview.html (last accessed 14 November 2002).

[114] See *35 Years of Ensuring the Promise of Opportunity (1965-2000)*, EEOC, available at http://www.eeoc.gov/35th/index.html (last accessed on 14 November 2002).

[115] The appointment of a set of Republican commissioners in addition to Clarence Thomas played a major role in this shift, as they were critical of the perceived waste of resources devoted to systematic discrimination.

[116] See the EEOC *National Enforcement Plan*, available at http://www.eeoc.gov/nep.html (last accessed 14 November 2002).

[117] Confirmed in *Seneca College of Applied Arts and Technology v Bhadauria* [1981] 124 DLR (3d) 193 SCC.

[118] S. Day and G. Brodsky, “Screening and Carriage: Reconsidering the Commission’s Functions”, Canadian Human Rights Act Review 2000 available at http://canada.justice.gc.ca/chra/en/research.html (last accessed 13 November 2002).

[119] See n.44 above.

[120] See n. 23 above.

[121] See n. 62 above.

[122] See the Canadian Human Rights Commission Annual Report 2001, available at http://www.chrc-ccdp.ca/ar-ra/RapportAnnuel2001/AR2001index.asp?l=e (last accessed 14 November 2002

[123] See Canadian Human Rights Commission Report on the Employment Equity Act 1995, 2001, at www.chrc-ccdp.ca/ar-ra/_AR2001RA/EE01EME/EER_05_RSEME.asp?1=e (last accessed 14 November 2002).

[124] See R.B. Howe and D. Johnston, *Restraining Equality: Human Rights Commissions in Canada* (Uni. Of Toronto Press, 2000)