

**Racial and Religious Tolerance Legislation:
A response to the
discussion paper and model bill.**

**Prepared by Liz de Rome
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A response to the discussion paper and model bill.

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A. Criminal sanctions

My experience working with police in Australia and overseas leads me to believe that it is essential that criminal sanctions should be included in the Act, but that they should go beyond that suggested in the model.

The model focuses on the use of language to express racial hatred, contempt, ridicule etc. The criminal offence as proposed would essentially focus on threats and incitement (ie. verbal behaviour) and would entail a maximum sanction of 6 months imprisonment.

1. This approach assumes that existing criminal law caters adequately where such threats are actually carried out, ie crimes against person or property.

- ❖ This is not the experience of victims in Australia - as reported in the National Inquiry into Racist Violence nor other research programs overseas.
- ❖ Nor is it the experience of the operational police from all states and territories with whom I have worked over the past two years on the Dealing With Racial Violence Project.
- ❖ Other countries, (UK, USA, Canada) recognise that crimes motivated by prejudice are qualitatively different and this is recognised in their legislation.

There is a substantial difference between being assaulted as a by-product of being robbed, compared to being assaulted as an expression of the assailant's hatred. Recent research in the USA compared two groups of victims of aggravated assault. The group whose assaults were motivated by bias was found to have significantly worse psychological after effects than the non-bias victims¹.

2. There are also a number of problems associated with assumptions that police are able to provide adequate protection in cases where a situation does not allow for arrest or other intervention to prevent escalation. During my work with police from all States and Territories, it has been apparent that police frequently feel unable to act when called to incidents which appear to be motivated by prejudice.

Recent consultations with the Victoria Police suggest that the law is particularly deficient in this State. Police have reported using stalking legislation as a last resort in some cases because even the application of restraining orders is so restrictive.

The lack of appropriate legal tools for the police is a serious problem. If they are called to a scene but are unable to act, the victims and their community will feel abandoned by the dominant community. The more serious consequence of such lack of police action can be to send an implicit message of endorsement and encouragement to the perpetrators.

¹ Luis Garcia & Jack McDevitt (1999) The psychological and behavioural effects of bias- and non bias-motivated assault, Final report submitted to the National Institute of Justice, US Department of Justice and City of Boston Police Department.

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3. There is substantial evidence that such crimes are significantly under reported in Australia and overseas (5% -10% reported UK, USA) due to a complex range of perceptions by victims including embarrassment and fear of repercussions².

- ❖ In the USA, the rate of reporting has significantly increased in states where the police are pro-active in establishing whether incidents were prejudice related.
- ❖ The NSW Police have recently introduced a mandatory question in police crime reports (COPS) as to whether an incident may have been prejudice related. The results of the first year of collection indicated a far higher incidence than had previously been believed. NSW is the only state with mandatory collection of this information.
- ❖ QLD crime reports provide an optional question as to whether the incident may have been “racially related” but, being optional, it is not used consistently.
- ❖ Other states, including Victoria, are currently looking at the inclusion of such questions in their crime reports, as a part of the strategy for the implementation of the Dealing with Racial Violence training program.

If the new law in Victoria is to be effective in preventing prejudice related crime and social disorder, then the Victoria Police must have a role that empowers them to act quickly at the local level. Police are the front line in the management of community disorders.

A summary of some of the legal models used overseas is attached.

² Racist Violence: Report of the National Inquiry into Racist Violence in Australia, Human Rights and Equal Opportunity Commission, AGPS, Canberra 1991

B. Use of term “Vilification”

The use of the term “vilification” necessarily implies verbal or written communication, even if the law is intended to include coverage of physical conduct.

My concern is that the term vilification does not adequately encompass the experience of intimidation, assault and property damage and may be seen to diminish the victim’s experience.

There is ample precedent in Australia for use of other terms with WA, QLD, Tasmania and the Federal legislation all referring to acts of “racial/ religious hatred” rather than “vilification”. The term used in the USA and Canada is ‘hate crime’ whereas in UK the term is “prejudice related crime”.

The problem associated with all of these terms is that they fail to encompass the wide range of incidents that are not “crimes” but which are motivated by prejudice, do cause great harm and may escalate into crimes if not addressed.

Racial violence is the term most commonly used in Australia, and does encompass both crimes and non-criminal behaviours. The question then arises as to whether we wish to be more generic in the forms of prejudice that we specifically make unlawful.

The term **Prejudice related violence** does allow us to encompass verbal and physical violence against people because of their race, religion, or other grounds such as sexual preference or disability. It would make the law more readily amendable should the community subsequently require other forms of prejudice to be included. It is already well established that where hate crime statistics are kept, gay hate and race hate are the most common forms of hate crime reported.

C. Response to questions in the discussion paper

Response to Question on Page 11.

I support the need for legislation to recognise a series of communications to be unlawful, where an individual act may not be. This is recognised in anti-harassment law, which allows in some cases for a single incident to be passed over, where as repeated incidents are considered unlawful. In California, a single hate act may be determined a misdemeanour, whereas a repetition of the same act renders it a felony (see attached).

Response to Question on page 13

One of the most common situations for expression of prejudice is within neighbourhoods and multi-dwelling buildings, where people are living at close quarters. I would support the adoption of Option 3 as it provides remedies for abuse that takes place on private property but, perhaps deliberately, within the hearing of neighbours either through shared walls or over fences. The test of reasonableness would still need to apply.

Response to Question on page 15

Workplaces are another very common location for the expression of unlawful prejudice. Employers are held vicariously liable for sexual harassment under the current Equal Opportunity Act, but not for racial or other forms of harassment. This Act should comprehensively cover all forms of workplace harassment of identified groups (ie race, religion, sexual preference etc).

Response to Question on page 16

I agree with the proposition that hate web sites should be unlawful. While I am aware that many people consider this to be futile as such web sites cannot be controlled off shore; it does establish a standard. The issue of placing controls on web sites is a new technological challenge, but that does not mean it will not be resolved at some time in the future. We can work towards global acceptance of such standards.

Recommendations

- A. Establish criminal offences for threats or actual violence against a person or their property that is motivated by prejudice.
- These offences should be handled directly by the police, without any additional decision making levels such as obtaining the permission of the DPP as is the case in NSW and SA. The additional process has presented a barrier for police such that they will use other law if applicable which does not take account of the prejudice motivation. The criminal law relating to vilification has never been applied in either State.
- B. Make provision for the application of Restraining Orders for immediate relief from abuse or threatening situations. These restraining orders should be able to be sought by the police as well as by victims following similar models to that used for domestic violence situations. There is an excellent model for this law in the statutes of Massachusetts (see attached).
- C. Establish civil remedies through the Victorian Equal Opportunity Commission for:
- ❖ Vilification - non-violent use of language to express hatred, contempt, ridicule etc and
 - ❖ Serious vilification which would include incitement to hatred, contempt, ridicule etc but not incitement to violence.
 - ❖ Harassment based on race, religion, sexual orientation, disability etc.
- The essential difference between the civil and criminal remedies should be to ensure that immediate relief and protection from violent or intimidating behaviour can be provided through the criminal justice system. Victims may opt to have matters dealt with through the civil processes and support system of the Equal Opportunity Commission.
- D. Do not use the term “Vilification” to encompass physical conduct. Its association with verbal behaviour cannot adequately incorporate the experience of hate inspired violence involving intimidation, assault, and/ or property damage. Other possible terms could be “prejudice related violence”, “acts of prejudice”, “acts motivated by unlawful prejudice”.
- E. Community education campaigns to promote awareness of the new law should include strategies for community organisations to maintain records of incidents, and support/ encourage reporting of incidents to police.
- F. Community/ Police relationships should be developed with the objective of working together to identify and prevent hate incidents and crimes. There is scope for this in the Dealing with Racial Violence training program recently developed for the Victoria Police.
- G. The new legislation should encompass the major forms of prejudice related violence including race, religion, sexual orientation and disability (note some US jurisdictions include gender).

Legal Models

Legal options for the prevention and prosecution of prejudice related violence and abuse.

	Type	Example
1.	Restraining orders	Eg Massachusetts General Laws, Chapter 12, S 11H Civil Rights Injunction. Only require “Probably cause” not ‘Beyond reasonable doubt’ Police or individuals can apply to court. Burden is on the offender to have it removed by proving to the court that they are no longer a threat.
2.	Specific hate crime law	ACT, NSW, SA, QLD and WA (see summary attached) Massachusetts Chapter 265, S 37 Violations of constitutional rights Chapter 266, S 39 Assault or battery for purpose of intimidation because of race etc. California Penal Code S 422.6 use or threat of force to injure, intimidate, interfere with, oppress or threaten because of actual or perceived membership in a protected class. Any second or subsequent hate misdemeanour is automatically a felony.
3.	Enhanced penalties for existing offences	Eg Most US States (41) in USA, British Colombia and UK
4.	Civil law	Handled by Equal Opportunity/ Anti-discrimination authority
5.	Civil law	Private civil action (eg SA)

Summary of Australian Law

	Civil	Criminal
Federal	S 18C Any act likely to offend, insult, humiliate or intimidate.	None
NSW	S 20 C incite hatred, serious contempt or severe ridicule	S 20 D incite hatred, serious contempt or severe ridicule by threaten or inciting physical harm –50 units or 6 months. Prosecution only by DPP Never used
SA	S 7 Incite hatred, serious contempt or severe ridicule. Up to \$40,000 compensation but only through private civil action.	S 4 Incite hatred, serious contempt, or severe ridicule by threatening harm. (3 years). Requires DPP written approval to commence prosecution. Never used
QLD	None	S 126 Advocate racial/religious hatred and incite breach of Anti-discrimination Act.
ACT	S 66 Incite hatred, serious contempt or severe ridicule.	S 67 Incite hatred, serious contempt or severe ridicule by threatening harm (50 penalty points – 1 years) Never used
WA	None	S 76-80 Racist harassment and incitement to racial hatred. Possession, publication, display of materials. (\$1000 or up to 2 years)
Tas	S 19 Incite hatred, contempt or ridicule.	None

About Liz de Rome

Liz de Rome is an education and communications consultant with over 20 years experience. She has a particular interest in training/ community education programs that focus on attitudes and behaviour in relation to social issues.

Liz has an academic background and worked at the Tertiary Education Research Centre, University of NSW for five years. She has since held a number of senior positions in the State and Federal public service including: Manager of Trainer Training for the NSW State Public Service Board, Manager, National Adult Literacy Program at the Technical and Further Education Commission and finally National Manager, Community Relations, Human Rights and Equal Opportunity Commission.

Liz established her consulting practice, LdeR Consulting, in 1993.

In 1996, Liz initiated a pilot project to develop a training program for police on **Dealing with Racial Violence**. The project was funded by the NSW Police Service and the Human Rights and Equal Opportunity Commission.

The success of this project led to it being endorsed by the National Police Ethnic Advisory Bureau, who obtained funding from DIMA (under the auspices of the Conference of Commissioners of Police) to develop training programs on **Dealing with Racial Violence** for police in each state and territory. This involved tailoring the pilot project to meet the procedural needs and local law for each Police Service. This involved working for two years with operational police on the development of best practice responses to incidents motivated by prejudice.

As a part of her own professional development, Liz recently attended the **Massachusetts Police Hate Crimes Training Program** including a session with the FBI on hate crime offender profiles. She spent a week with the Boston Police Community Disorders Unit (hate crime unit) and also visited the San Francisco Police Department, Hate Crimes Unit.

Other projects include:

- ❖ **Monitoring Hate Crimes: A Report on the Community Relations Strategy Data Project. (1993).** This was a research project to examine the incidence of prejudice-related crime in three NSW Police patrol areas and two WA Police patrols in 1991/92. The questions used were subsequently incorporated into the NSW COPS system. Human Rights and Equal Opportunity Commission.
- ❖ **Dealing with Racist Violence**, a video-based training program for police on attending incidents of racist violence. It was produced as a joint project between the Human Rights and Equal Opportunity Commission and the NSW Police Service.
- ❖ **No Story to Tell** and **The Difference Racism Makes**. two videos for the Victoria Police and the National Police Ethnic Advisory Bureau on working with victims of racist violence.
- ❖ The design and management of the national **Different Colours, One People** youth program for the Human Rights and Equal Opportunity Commission. The campaign, aimed at giving young people the skills and courage to stand up to racism, was repeated for 3 years due to the overwhelming success of the first year.

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- ❖ **Burringilling - Walking Together** - An educational video and teaching package on issues of identity and the influence of cultural diversity for senior school students. This package has been purchased and distributed to all schools in NSW by the state Department of School Education.

Liz has a particular interest in the design of educational videos and has won a number of awards for her innovative work. These include an International Literacy Year Award, a commendation in the National Training Film Awards and a Churchill Fellowship to further her work in the design of trigger videos for use in training.

She is an occasional lecturer in the Psychological Basis of Training Lecture Series, Masters Program in Applied Psychology, University of NSW, in the Masters Program in the School of Behavioural Sciences at Macquarie University and the Graduate Diploma of Adult Education (Community), University of Technology (Sydney).

Liz has a Masters degree in Educational Administration and the Mass Media, an Honours degree in Psychology and a Diploma of Education.

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The Company

LdeR Consulting is a small company specialising in the project management of research and development projects relating to social attitudes and behaviour.

Established in 1993, the company operates with a loose consortium of other consultants with specialties including training package development, video and print materials design, production and distribution, and media campaigns. Teams are brought together according to the specific needs of individual projects.

The members of the team bring together substantial experience of working within different levels of government and creative production services. This wealth of experience combines into a powerful force technically, creatively and strategically.

The consultants are familiar with the corporate and government working environments and with the requirements of working within large organisations. They will ensure that the final product is of exceptional quality and in keeping with the overall aims and objectives of the specification.

LdeR Consulting offer an outstanding team who can provide the following benefits:

- ❖ awareness of privacy and human rights issues
- ❖ experience in the development of human rights related training packages
- ❖ familiarity with the public sector environment
- ❖ innovative, detailed and user-friendly support materials
- ❖ deadline conscious project management and cost minimisation

The members of the team have substantial experience of working with all levels of government. They are familiar with the requirements of working with public sector organisations. They undertake to liaise at all times with relevant members of the Steering Committee and other appropriate staff, to ensure that the final package is of exceptional quality and in keeping with the overall aims and objectives of the specification.

Our philosophy is based in an understanding of the principles of adult learning and human communications, and how these can be applied effectively to influence attitudes or change behaviour.

Our approach to each project involves comprehensive needs analyses and consultations with target groups and other stakeholders to ensure products that are relevant and effective.

Our strength lies in our ability to tailor projects for the diverse communities, which form contemporary Australian society. We will ensure your products and programs are effective and take account of issues such as cultural diversity, literacy and language and other special interest needs.

LdeR Consulting have established links in a wide range of community networks as well as substantial experience of working with Local, State and Commonwealth government agencies.

Our Services

Research and Stakeholder Consultations

Research including literature reviews, community and other stakeholder liaison, interviews, surveys and *focus* groups.

Establishing and servicing consultative committees and reference groups

Training needs analysis

Organisational climate assessments

Training and Education Programs

Designing educational strategies to achieve project objectives

Writing educational material, articles, reports and submissions

Design and production of tailored in-house training programs including videos and workshop manuals

Design of community education programs using a range of techniques including videos, print materials, advertisements and media campaigns

Video Production

Management of video projects on behalf of clients

Script research and writing

Production of videos

Development of distribution strategies

Project Management services include:

Production of client specifications for tender processes including initial research and preparation of brief, co-ordination of the tendering and selection process, and supervision of contractors on your behalf

Planning and management of project budgets

Securing corporate sponsorship and funding for projects

Social Justice Publications & Products

Act Against Racism: A Guide for Advocates. 18pp, Produced for the Human Rights and Equal Opportunity Commission, 1992. (Supervising editor, co-writer)

Australian Anti-Racism Resources. 4pp. An annotated list produced for high schools by the Human Rights and Equal Opportunity Commission, 1992. (Editor)

Between the Lines Workbook, Produced for the Adult Literacy Through Video Project, Adult Literacy Information Office, 1990. (Project co-ordinator)

Burringilling - Walking Together: Video and Teachers Notes, (1995). A teaching resource aimed at senior school students on issues of identity and the influence of cultural diversity. Including a 15-minute educational video. Produced for International Year for the World's Indigenous Peoples, for OMA, Canberra. Liz de Rome & Debbie Stothard.

Chris Cuneen & Liz de Rome, (1993) *Monitoring Hate Crimes: Report on a Pilot Project in New South Wales, Current Issues in Criminal Justice* Vol. 5, No 6, Institute of Criminology, The University of Sydney.

Community Health Councils: An Introductory Training Program (1995) A training program for community based members on the function and role of community health councils in NSW. Lynne Wenig & Liz de Rome.

de Rome E. A. (1986) **Magic Lantern Shows: The Development and Use of Film in Anti-discrimination Education Programs in the USA, Canada and England,** Report to the Winston Churchill Memorial Trust of Australia and the Public Service Board of New South Wales, Winston Memorial Trust, Canberra.

de Rome, E. A. (1984) **Space Invaders: Sexual Harassment at Work, A Workshop Manual,** Women in Education & Employment Project, Tertiary Education Research Centre, University of NSW, Kensington.

de Rome, E. A. (1986) **Strained Relations: The Human Factor in Repetition Strain Injury, A Workshop Manual,** Unisearch Ltd, University of NSW, Kensington.

de Rome, E. A. (1986) **The Majority Retreat: Facing Racism at Work, A Workshop Manual,** Unisearch Ltd, University of NSW, Kensington.

Dealing with Hate Crimes: A Training Package for the Australian Federal Police Service. (2000) An in-service training program for police officers on identifying and dealing with hate crimes. National Police Ethnic Advisory Bureau for the Australian Federal Police Service.

Dealing with Hate Crimes: A Training Package for the Victoria Police Service. (2000) An in-service training program for police officers on identifying and dealing with hate crimes. National Police Ethnic Advisory Bureau for the Victoria Police Service.

Dealing with Racial Vilification: A Training Package for the South Australian Police Service. (2000) An in-service training program for police officers on identifying and dealing with racial vilification. National Police Ethnic Advisory Bureau for the South Australia Police Service.

Dealing with Racist Violence: A Training Package for the Northern Territory Police Service. (2000) An in-service training program for police officers on identifying and dealing with racist violence. National Police Ethnic Advisory Bureau for the Northern Territory Police Service.

Dealing with Racist Violence: A Training Package for the Queensland Police Service. (2000) An in-service training program for police officers on identifying and dealing with racist violence. National Police Ethnic Advisory Bureau for the Queensland Police Service.

Dealing with Racist Violence: A Training Package for the Tasmania Police Service. (1999) An in-service training program for police officers on identifying and dealing with racist violence. National Police Ethnic Advisory Bureau for the Tasmania Police Service.

Dealing with Racist Violence: A Training Package for the West Australian Police Service. (2000) An in-service training program for police officers on identifying and dealing with hate crimes with a focus on racist violence. National Police Ethnic Advisory Bureau for the Western Australia Police Service.

Dealing with Racist Violence: A Training Package. (1999) An in-service training program on the legal and social responsibilities of police officers when attending incidents of hate crimes. A joint venture between the NSW Police Academy and Human Rights & Equal Opportunity Commission.

Different Colours, One People, 4pp. A campaign newsletter produced for the Human Rights and Equal Opportunity Commission, 1992. (Writer/ Editor)

Different Colours, One People: You can make a difference, 8pp. Insert for **Music 92** produced for the Human Rights and Equal Opportunity Commission, 1992. (Editor)

Liz de Rome, (1990) **Between the Lines: Adult Literacy Through Video Project Report,** Adult Literacy Information Office, Redfern, NSW

Making a Difference - Road Safety Campaigns: A Student Resource (1997) A package on the design of road safety public education campaigns, for study and research by students of public health promotion, community education and social change. The package is intended to be used together with information available on the RTA's Internet site <http://www.rta.nsw.gov.au>.

The Majority Retreat: Facing racism at work. A training package on dealing with conflict and managing cultural diversity in the workplace. University of NSW.

The Privacy and Personal Information Protection Act, 1998: Training Program. (1999). A training package on PPIP Act and the development of Privacy Management Plans and Privacy Codes of Practice. Developed for the NSW Privacy Commissioner.

Track'n Your Rights: A National Training Package (1996) A 20 minute training package and video on legal and community action for Aboriginal and Torres Strait Islander community workers. Produced for the Human Rights and Equal Opportunity Commission.

Tracking Your Rights: Tools for Survival and Change, (1992). A handbook for Aboriginal and Torres Strait Islander peoples in Queensland. Produced for the HREOC and Queensland Anti-Discrimination Commission. Liz de Rome - Project Manager and editor.

Unlocking the System: Strategies for Community Workers in Victoria, (1992). Produced for the Human Rights and Equal Opportunity Commission and the Equal Opportunity Commission of Victoria. Liz de Rome - Project Manager and editor.

Video Productions

Between the Lines * - A series of eight adult literacy motivational and self help learning videos with accompanying workbook. Drama/ documentary. Script concept and design, International Literacy Year Secretariat. Executive Producer - Liz de Rome. * *The series won an International Literacy Year Award 1990.*

Burringilling - Walking Together - A 15 minute educational video for senior school students. Discussion of issue of identity and the influence of cultural diversity. International Year of the World's Indigenous Peoples, Office of Multi-cultural Affairs. Documentary. Writer and producer Liz de Rome. Director - Pru Colville.

Getting It Right - A 20 minute series of trigger videos for a suicide prevention training program for health workers. For the Central Coast Area Health Service. Drama. Writer and educational design consultant - Liz de Rome

Making a Difference - Road Safety Campaigns: A Student Resource (1997) A video compilation of road safety public education campaign for use by students of public health promotion, community education and social change. The package is intended to be used together with information available on the RTAs internet site <http://www.rta.nsw.gov.au>.

Moments of Choice - A series of 19 trigger videos as part of a customer service training package for the NSW RTA. Drama. Executive Producer/ writer - Liz de Rome.

Not Just Looking at The Pictures - A video produced for NSW TAFE to promote innovative community based programs to help people with literacy problems. Documentary. Project consultant Liz de Rome. Writer /producer by Pru Colville.

Seatbelts without Tears - A video produced for the NSW RTA to help parents overcome their children's resistance to the use of seatbelts. Drama. Project consultant - Liz de Rome.

Space Invaders: Sexual Harassment at Work * - A series of trigger films.. Unisearch. Drama. Writer and producer - Liz de Rome. * *Commended in the National Training Film Awards for breaking new ground in training film design.*

The First Time * - A 20 minute educational video to help pre-operative patients identify and defuse their fears about surgery. Produced for the Central Coast Area Health Service. Drama. Writer - Liz de Rome, Director by Pru Colville.

The Majority Retreat: Facing Racism at Work - A series of trigger films designed to cause people to examine the underlying assumptions in a range of everyday work situation. Unisearch. Drama. Writer and director - Liz de Rome.

Track'n Your Rights - A 20 minute video and training package on legal and community action for Aboriginal and Torres Strait Islander community workers. Drama.. Produced for the Human Rights & Equal Opportunity Commission. Project consultant Liz de Rome

No Story to Tell - Documentary about peoples experience of reporting racist violence to police. Produced for the Human Rights and Equal Opportunity Commission and Victoria Police Service. Script consultant Liz de Rome.

Working with a Disability- (1991) A training video for people in service industries on relating appropriately to clients and employees with disabilities. Drama. Script design consultant to the NSW Film and Television Office.

Clients

Anti-Discrimination Board of NSW	Qantas Australia
Australian Federal Police Service	Queensland Police Service
Australian Federation of AIDS Organisations	Queanbeyan City Council
Bankstown City Council	Rockdale City Council
Central Coast Area Health Service	School of Behavioural Sciences, Macquarie University
Coffs Harbour City Council	SHOROC Regional Organisation of Councils
Commonwealth Office of Multicultural Affairs	South Australian Police Service
Equal Opportunity Directorate of Western Australia	Sydney City Council
Federated Ironworkers Association	Tasmania Police Service
Goulburn City Council	Transport Services Australia (Division of Mayne Nickless)
Human Rights and Equal Opportunity Commission	University of NSW
IBM Australia	Victoria Police Service
Institute of Municipal Engineering Australia (NSW Division)	West Australian Police Service
Ku-ring-gai Municipal Council	Willoughby City Council
Leichhardt Municipal Council	Wingecarribee Shire Council
Marrickville Council	Wollondilly Shire Council
Mayne Nickless	
Mount Newman Mining Company	
Motor Accident Authority of NSW	
National Ethnic Police Advisory Bureau	
Northern Territory Police Service	
NSW Health	
NSW Education and Training Foundation	
NSW Film and Television Office	
NSW Police Academy	
NSW Road Safety Bureau	
NSW Roads and Traffic Authority	
OTEN (Open Training and Education Network)	

