

## Letter to the Editor

Dear Sir/Madam,

### Re: High Court Decision — Brandy v Human Rights and Equal Opportunity Commission (HREOC)

Some concern has been expressed regarding the above decision and its possible impact on the NT Anti-Discrimination Commission and its procedures.

In Brandy v HREOC the High Court found that this enforcement mechanism was invalid, as it breached the doctrine of "separation powers".

The separation of powers is derived from Chapter Three of the Australian Constitution.

In a long string of High Court decisions, it has held that a Commonwealth non-court body cannot exercise judicial powers.

Here HREOC was effectively exercising judicial powers, despite not being established as a court.

Therefore the exercise of those powers (dealing with enforcement of orders) was illegal.

This decision does not affect the Northern Territory Anti-Discrimination Commission, even though the commission's enforcement mechanism is very similar to HREOC's, on two grounds:

- \* There is no doctrine of separation of powers at state level as there is at the Commonwealth level; and
- \* The courts of the Northern Territory are not established under Chapter Three of the Constitution, they are creations of the legislative power of the Legislative

Assembly, through the Commonwealth's legislative power, given in the Northern Territory (Self-Government Act 1978). Therefore the issue of judicial power does not arise.

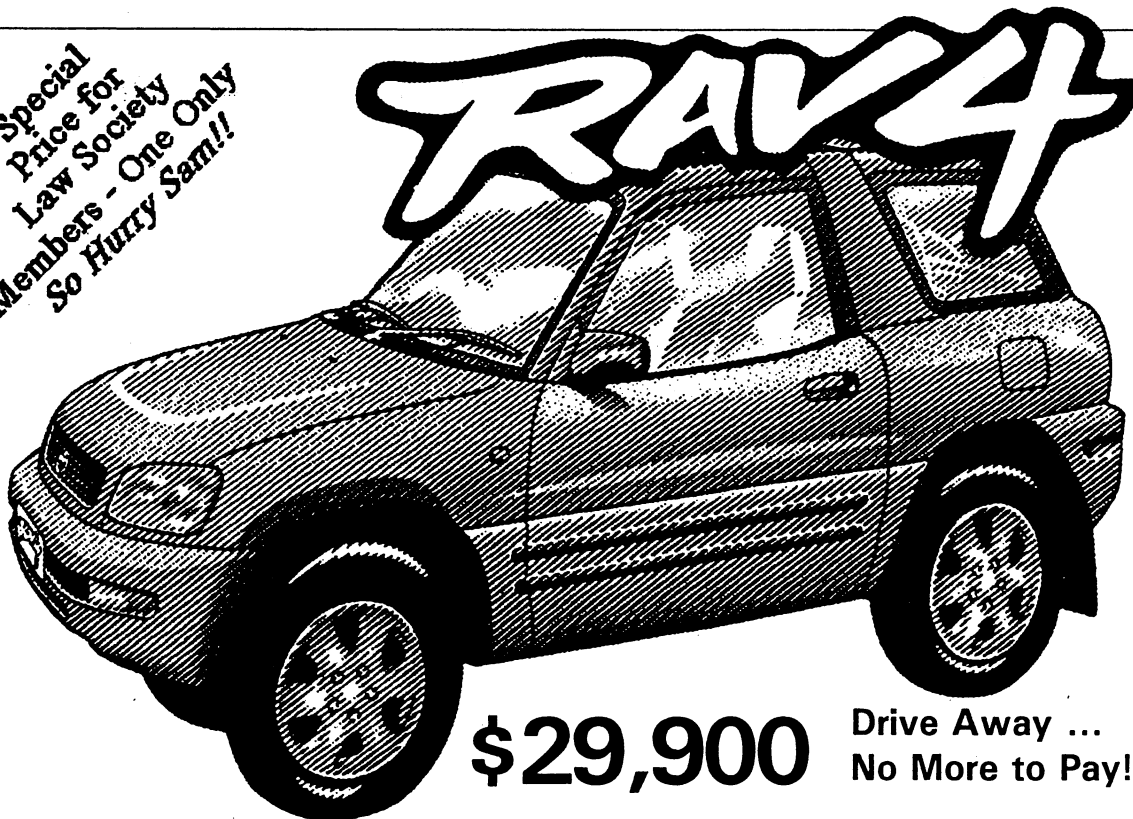
In summary, if matters before the Anti-Discrimination Commission cannot be conciliated and go to formal Hearing, any orders made by the Hearing Commissioner pursuant to s.88 of the NT Anti-Discrimination Act can be enforced through the local court.

As this office has already received a number of enquiries regarding the enforcement of orders, it may be useful for you to advise officers of your organisation, through your own procedures, that the enforcement provisions of the NT Anti-Discrimination Act 1992 are not at risk.

*Dawn Lawrie  
Commissioner*

*Anti-Discrimination Commission  
Northern Territory*

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