PARLIAMENTARY JOINT COMMITTEE ON HUMAN RIGHTS

ATTORNEY-GENERAL'S DEPARTMENT

Mr Leeser asked the following question at the hearing on 17 February 2017:

Mr LEESER: Would you take us back to the post-Brandy period. Obviously, the commission set up before the Brandy case had a range of different functions, and in the post-Brandy era it had to reassess itself given that it lost one of the key things it was supposed to have. Can you shed any light on what occurred in that period in terms of how the commission has maintained its conciliation function or why the conciliation function was thought to be a function that should continue with the commission rather than with other bodies? Can you provide us any historical information about that?

Mr Anderson: I might take that one on notice, if I may. The best I could do is say that Brandy did not just affect the Human Rights Commission, of course; it affected other bodies as well. The general principle with which the government of the day approached the issue was to say, 'What's the least that needs to be done to ensure that the body would continue with the functions that parliament set it up to deliver, taking the Brandy decision into account?' My recollection—but I am happy to check this on notice—is that the guiding principle was: do the least that is necessary to accommodate the Brandy decision while otherwise leaving the body free to continue to discharge the functions that parliament had bestowed upon it.

Mr LEESER: There was not any particular review of the commission in the post-Brandy era that looked at that?

Mr Anderson: We would have to take that on notice, I am sorry.

The answer to the honourable member's question is as follows:

On 27 February 1995, the then Keating Government announced a two-stage response to addressing the *Brandy* decision.

Firstly, the enforcement process for Commission determinations in place between 1986 and 1993 was substantively restored by the *Human Rights Legislation Amendment Act 1995*. This Act was regarded as an 'interim response to the decision in *Brandy's* case, pending further review and legislative response.'[1]

Secondly, the consideration of a permanent solution was referred to a tripartite review committee consisting of the Attorney-General's Department, the Department of Finance and the Commission. This committee had been constituted in August 1993 to conduct a joint review of the role, functions and management of the Commission, and had completed its Interim Report in September 1994. Following *Brandy*, the committee's scope was expanded to consider the enforcement of determinations of the Commission.

Upon completion of its report in 1995, the committee recommended a number of changes to the then *Human Rights and Equal Opportunity Act 1986*. The recommendations included the

[1] Senate Legal and Constitutional Legislation Committee, Parliament of Australia, *Report into the Human Rights Legislation Amendment Bill 1996* (1997) [1.30]

division of complaint handling into two stages whereby conciliation would be attempted by the Commission in the first instance, and if a matter was unable to be conciliated, proceedings de novo could be commenced in the Federal Court. The committee also recommended an emphasis on procedures which promoted access and equity, in terms of costs, evidence and procedures.

In January 1996, the then Attorney-General, the Hon Michael Lavarch MP, announced the Government would pursue reforms in accordance with these recommendations. However, no action was taken prior to the March 1996 Federal Election.

The Howard Government introduced a series of bills from1996 to amend the *Human Rights and Equal Opportunity Act 1986* to address the *Brandy* decision. All of these bills maintained the Commission's conciliation functions.

The Human Rights Legislation Amendment Bill 1996, which eventually lapsed in the Senate, was referred to the Senate Legal and Constitutional Legislation Committee for consideration. On 19 March 1997, the Chair of the Committee wrote to the Attorney-General's Department seeking advice on a number of issues raised in evidence and submissions. In a letter to the Committee on 22 April 1997, the Department discussed the Government's decision to maintain the Commission's conciliation mechanism:

> The requirement to proceed through the Commission before accessing the Court stems from a desire to provide an alternative mechanism for the resolution of complaints of discrimination that is both accessible and cost effective. As a matter of policy, the initial conciliation process undertaken by the Commission is to be retained. The requirement that parties participate in conciliation and seek to resolve disputes in a non-confrontational forum is consistent with the policy of successive governments.
>
> The Commission conciliation process fulfils this role by resolving a large number of complaints through conciliation. In 1995/96 for example, the Commission's annual report indicates that well over 80% of complaints were finalised before recourse to formal Commission hearings or subsequent Court proceedings.
>
> The Commission is a cost effective and efficient means of dealing with discrimination complaints in the initial stages. It is accessible, user friendly and avoids the need for recourse to the Courts and possibly lawyers until it is absolutely necessary.

The Human Rights Legislation Amendment Bill (No.1) 1999 contained the same substantive provisions as the Human Rights Legislation Amendment Bill 1996, as well as amendments in line with the Senate Committee's recommendations. In his Second Reading Speech on the Bill, the then Attorney-General, Mr Daryl Williams MP, stated that 'notably, the Bill maintains the Commission's role in conciliation, as this step in the process has proved most effective. Indeed, most complaints do not proceed past this stage.' The *Human Rights Legislation Amendment Act (No.1)1999* commenced on 13 April 2000.

PARLIAMENTARY JOINT COMMITTEE ON HUMAN RIGHTS

ATTORNEY-GENERAL'S DEPARTMENT

Senator McKim asked the following question at the hearing on 17 February 2017:

Senator McKIM: Thank you both for coming in. The committee has had some submissions that the Australian Human Rights Commission Act be amended to provide for rigid time frames that would apply to certain of the commission's processes. Obviously, the budget of any organisation would be relevant to whether or not that organisation would be able to comply with certain of its processes. I do not know if you have the information here, but I think it would be of value to the committee to get the funding of the Human Rights Commission, perhaps over its entire existence. I would be very happy if you wanted to take that on notice, or if you have it here you could provide it now.

Mr Anderson: If you wish the funding over its entire existence, we would have to take that on notice.

Senator McKIM: Do you have any details of funding back to a certain year with you here?

Mr Anderson: We could give you the current year funding. There is an approximately $14 million appropriation and then there is an additional $7 million or $8 million that they receive from other sources such as from Foreign Affairs for carrying out some functions.

Senator McKIM: I do not know if Ms Swinbourne wants to add to that.

Mr Anderson: There is $14.593 million appropriated funding for the 2016-17 year and an additional $7.885 million for provision of services to other entities such as the Department of Foreign Affairs and Trade and the Office of the Australian Information Commissioner. So the total income for 2016-17 is $22.529 million.

Senator McKIM: Do you have that for the budget out years?

Mr Anderson: We would have to take that on notice.

Senator McKIM: Could I get, in the frame that you have just given us the funding for the current year, figures right back from when the commission was established through till the end of the budget out years.

Mr Anderson: For the life of the commission and through to—

Senator McKIM: Yes, please.

Mr Anderson: Are you saying through the forward estimates?

Senator McKIM: Yes, please.

Mr Anderson: I will take that on notice.

Senator McKIM: Thank you.

The answer to the Senator's question is as follows:

AHRC appropriation history

Year	Departmental $'000	Administered $'000	Receipts (a) $'000	Total $'000
2019-20	16,978		7,885	24,863
2018-19	16,811		7,885	24,696
2017-18	14,720		7,885	22,605
2016-17	14,593		7,885	22,478
2015-16	15,515		6,570	22,085
2014-15	19,941	146	6,485	26,572
2013-14	18,302	144	6,300	24,746
2012-13	18,215	143	4,775	23,133
2011-12	16,499		4,775	21,274
2010-11	15,752		4,085	19,837
2009-10	13,711		4,085	17,796
2008-09	13,550		2,440	15,990
2007-08	15,500		3,549	19,049
2006-07	13,769		1,712	15,481
2005-06	12,093		1,712	13,805
2004-05	11,938		1,712	13,650
2003-04	11,857		1,712	13,569
2002-03	11,137		1,710	12,847
2001-02	10,730		1,747	12,477
2000-01	14,334		1,792	16,126
1999-00	14,396		1,558	15,954
1998-99	12,266		1,520	13,786
1997-98	16,830		1,020	17,850
1996-97	18,044		2,418	20,462
1995-96	20,584			20,584
1994-95	18,002			18,002
1993-94	18,104		1,264	19,368
1992-93	16,046			16,046
1991-92	13,424			13,424
1990-91	11,147			11,147
1989-90	9,330			9,330
1988-89	6,055			6,055
1987-88	5,891	309		6,200
1986-87	2,845	160		3,005
1985-86	4,771	318		5,089
1984-85	4,554	341		4,895
1983-84	2,280	286		2,566
1982-83	1,752	167		1,919
1981-82	717	113		830

(a) Receipts that weren't appropriated to the entity by an annual Appropriation Act or other Act.

Notes:

1. Estimated appropriation figures for financial years 2017-18 to 2019-20 were sourced from the Attorney-General's 2016-17 Portfolio Budget Statements.
2. Figures for financial years 1996-97 to 2016-17 were sourced from Commonwealth Budget Papers No. 4 - agency resourcing.
3. Figures for financial years 1988-89 to 1995-96 are estimates based on Detailed Statement of Transactions by Fund from annual reports.
4. Figures for financial years 1981-82 to 1987-88 are estimates based on historical Statements of Expenditure from archived annual reports.
5. The annual report for 1981-82 reports from December 1981 to June 1982.
6. The AHRC was called the Human Rights and Equal Opportunity Commission from 1986-7 until 2009-10.
7. The 2014-15 year includes $2.674m ordinary annual appropriation and $0.020m Department Capital Budget for transfer of Privacy Function - this funding was returned to the OAIC later in 2014-15.
8. The 2018-19 year includes the return of $1.7m from the Royal Commission into Institutional Responses to Child Sexual Abuse.

PARLIAMENTARY JOINT COMMITTEE ON HUMAN RIGHTS

ATTORNEY-GENERAL'S DEPARTMENT

Senator Moore asked the following question at the hearing on 17 February 2017:

Senator MOORE: I have only two questions. One is to do with the fact that a number of submitters had looked at the range of committees and organisations that are looking at human rights across the country—state commissions and federal commissions. I am wanting to know whether it has been an agenda item on any of the meetings of attorneys-general—the general ways that human rights are handled in Australia and whether it links in with any confusion or lack of understanding in the community.

Mr Anderson: My recollection is that it has not, that the agenda items have tended to be very specific issues, such as a particular proposal about a particular law or a particular issue, and I do not think there has been an agenda item that has been generally about these issues.

Senator MOORE: Was the issue raised in 2014? There had been previous discussion about changes to 18C. Was that discussed at the group of attorneys-general?

Mr Anderson: I would have to take that on notice.

Senator MOORE: That is fine.

Mr Anderson: I do not believe it was. It is possible it was discussed in the margins or—

Senator MOORE: I did not see any communiques, but I just wanted to check whether in fact it had been on there. So, if we could get that on notice, that would be good.

The answer to the Senator's question is as follows:

Neither section 18C of the *Racial Discrimination Act 1975* nor the broader issue of human rights were considered at the two meetings of the Law, Crime and Community Safety Council in 2014.