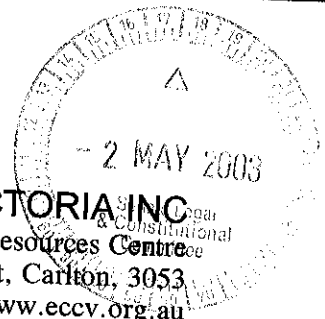




ETHNIC COMMUNITIES' COUNCIL OF VICTORIA INC

Statewide Resources Centre
150 Palmerston Street, Carlton, 3053
Homepage: www.eccv.org.au
Telephone: (03) 9349 4122
Facsimile: (03) 9349 4967
E-mail: eccv@eccv.org.au
ABN: 65 071 572 705



Submission of the Ethnic Communities' Council of Victoria on Federal Attorney General's March 2003 proposals for Australian Human Rights Commission Legislation Bill 2003 – HREOC Changes.

The Ethnic Communities' Council of Victoria (ECCV) is a voluntary, non-government community-based statewide umbrella organisation through which common concerns of non-English speaking background (NESB) communities are discussed, consultation and liaison is carried out with and amongst ethnic communities and issues are brought to the attention of all levels of government.

As a peak advocacy body, the ECCV has a role and responsibility to assist NESB Victorians, the wider community and the three tiers of Government in their endeavours to ensure both harmonious community relations and the provision of equitable and accessible services to all people in Victoria and nationally. The ECCV works with a range of human rights advocacy and community agencies in Australia towards achieving these common goals. All of these agencies are very much aware of the importance of community campaigning and education but rely on judicial mechanisms when the limits of their roles, power and influence are reached.

Recent world events have added to a growing local climate of distrust, and both covert and overt racism which has been increasingly experienced by diverse members of our multicultural community. Legislative protection to guarantee the full participation of all in Australian life is required now as much as at any time in Australia's history: an increased focus on the educative role of an Australian Human Rights Commission must not come at the expense of either its investigative or judicial functions.

ECCV therefore is extremely concerned that the mooted changes to the structure and powers of the Human Rights and Equal Opportunity Commission will have deleterious effects on the strength of the existing anti-discrimination framework across the Federal jurisdiction, and gaps in its scope and powers may not be able to be bridged by complementary state-based legislation. The ECCV also considers that there should be a uniform set of national laws with sanctions to support these, providing common protection to all Australian residents.

ECCV welcomes the inquiry initiated by this Senate Committee, however it is to be regretted that short time and lack of information available on the proposed changes to the structure and powers of the Human Rights and Equal Opportunities Commission have limited opportunities for community consultation and the prospect of more wide ranging

feedback on this occasion. Nevertheless, it is also notable that the proposals contained in this Bill are similar in many respects to those made in the *Human Rights Legislative Amendment Bill (No2) 1998*, which was rejected following an earlier inquiry conducted by this very Senate Committee as then constituted.

Recommendation 1:

Human Rights and Anti-discrimination Legislation should include reference to the relevant international law and covenants.

ECCV considers that the legislation should include specific reference to the underpinning commitment of the Australian Government to comply with international conventions proclaiming the equality and human rights of all persons, as enshrined in the United Nations Charter and as outlined in such instruments as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (1966) and the International Covenant on Economic, Social and Cultural Rights (1966).

Recommendation 2:

Retain Specialist Full-time Commissioners

The legislation must be effectively policed and relief from any breaches must be available through ready access of the community to a low cost, well resourced jurisdiction which has judicial muscle and adequate resourcing including by specialist Commissioners, in addition to rather than replaced by a community education arm able to develop and provide a comprehensive community education program.

The Human Rights and Equal Opportunity Commission, however titled, if it is the agency to monitor, administer and achieve compliance with the existing legislation and the proposed Age Discrimination Legislation, and indeed with other areas of discrimination as they come to be better acknowledged, will require additional resources to deliver such additional judicial process and educational roles. An increase in the acknowledgement of different forms of discrimination supports the argument for an increase in the Commission's resources, rather than of itself justifying the abolition of the current specialist Commissioners holding particular portfolios in their area of expertise. Since late 1997, the HREOC has effectively contracted with the Federal Government's disappointing failure to appoint replacements for the Race Discrimination and Disability Discrimination Commissioners: these positions should be reinstated as full-time Commissioners of HREOC.

Recommendation 3:

The proposal to remove the Commission's power to recommend the payment of compensation and damages should be rejected and opposed.

The ECCV is particularly concerned that the impact of all anti-discrimination legislation would be significantly undermined by the inability of the Agency to recommend payment of damages or compensation following inquiries into certain types of complaints. This step must reduce the consequences following breaches of the legislation, and therefore its deterrent effects, and in conjunction with other proposed changes, will render it a paper tiger unable to afford any genuine protection against the breach of law within its brief.

The provision of information on the legislation and available remedies in formats which ensure access to all, including in community languages, and the reaffirmation of the Commission's Community Education and Information role must supplement and reinforce an agency which has genuine investigative powers and real teeth to prosecute offences where appropriate.

Recommendation 4:

The requirement for leave to intervene in legal proceedings to be obtained from the Attorney General should be rejected.

Such a significant increase in the engagement of the Attorney General, a member of the Government, in the work of the Commission potentially compromises the Westminster separation of powers, held as a critical pillar of parliamentary democracy upheld by the Australian system of government and the Australian Constitution. The Westminster system of separation of powers indeed provides an important role for the judicature in the implementation and review of legislation, at clear arms length from government.

The Courts themselves should surely decide any argument for intervention put by the HREOC. To allow decisions of this nature to be made by the Government of the day would suggest political interference in judicial processes, whether or not the Commonwealth was or was not a party to such matters.

Recommendation 5:

Investigative powers and the power to intervene as currently exercised by the Commission must be retained and strengthened.

All legislation including provisions of legislation which allow positive discrimination aimed at addressing particular needs or redressing particular disadvantage must be open to the scrutiny of the Human Rights and Equal Opportunity Commission. The ability of the Commission to scrutinise the actual or proposed actions and processes of government and its administration, and to monitor, administer and achieve compliance with any legislation when enacted, will be compromised if inquiry powers cannot be delegated by

the President to any particular specialist Commissioner and if there is no ability for the Commission to recommend financial compensation when inquiring into complaints.

Recommendation 6:

The appointment of legally qualified Complaints Commissioners on a part-time basis and as less than "members" of the Commission should be rejected.

The part-time notion may mean that such Commissioners are working in another capacity, which may prejudice their ability to act as independent members of this judicial body.

Part-time status for such appointments will also militate against the ongoing development of expertise by and within the Commission. Part-time status is also likely to result in a significant turnover of such Commissioners as they look for and take up ongoing full-time work.