



fax transmission

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To: Peter Hallahan

From: Peter Legzdins

Date: 22 April 2003

Your Fax: 6277 5794

Pages (including cover): 3

Message:

Dear Mr Hallahan,

Please find attached the Ethnic Communities' Council of NSW Submission on the Australian Human rights Commission Legislation Bill 2003.

Peter Legzdins

Executive Officer

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JL/AP/LETS058/H300

Mr Peter Hallahan
Secretary
Senate Legal and Constitutional Committee
Rm S1.61
Parliament House
CANBERRA ACT 2600



17 April 2003

SUBMISSION BY THE ETHNIC COMMUNITIES' COUNCIL OF NSW TO THE INQUIRY INTO THE AUSTRALIAN HUMAN RIGHTS COMMISSION LEGISLATION BILL 2003

This submission to the Senate Legal and Constitutional Committee is made by the Ethnic Communities Council of NSW, which is the officially recognised peak body of ethnic communities in NSW, representing 285 affiliated community organisations.

Functions of the Commission

The Council is committed to the Australian Government's policy of promoting community harmony and combating all manifestations of racism in our society. We therefore strongly endorse the proposal in the Bill that education, information and assistance should be central features of the work of the new Commission.

The Office of Race Discrimination Commissioner

We submit that it is essential that there should be one person who is publicly designated as the Commissioner responsible for protecting the right of all Australians to live in freedom from discrimination and vilification on the ground of ethnicity or race. There should, in our view, be an official representative who, by his or her action in the areas of education, information and assistance, asserts the Government's commitment to the preservation of Australia's harmonious multicultural society.

We would therefore submit that the Bill should be amended to preserve the distinctive office of Race Discrimination Commissioner. In our view the Commissioner should have a special expertise in the area of race relations. Also, in addition to educational and information functions, the Commissioner should have the power to receive complaints, and to provide information to complainants about the remedies provided by the Federal Court, and the associated procedures.

Conciliation

We note that at present the procedures associated with requirement for compulsory conciliation result in lengthy delays, and that these delays often reduce the effectiveness of the remedies provided under the Racial Discrimination Act. This is particularly the case in vilification proceedings.

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Another difficulty is that the activities of the Commission in public advocacy and in providing assistance to complainants may not be considered to be consistent with the conciliation function.

Also, in the area of vilification by committed racists, the conciliation procedure is often useless, demeaning and counter-productive.

We would therefore submit that the conciliation functions of the Commission should be transferred to the Federal Court, to be exercised by a Registrar in accordance with the procedures of that Court.

In that context it would follow that conciliation would no longer be a condition precedent for the institution of proceedings in the Federal Court. In our view compulsory conciliation should be ordered by the Court if either party so requests, or the Court determines that conciliation would be appropriate.

Commissioner's right to intervene

In our view the Commissioner should have the right to intervene in court proceedings without the need to obtain the Attorney-general's consent. We submit that it is essential that the Commission should have the status of an independent agency for the protection of human rights, and that this requires a capacity to promote those rights independently of government policy.

Summary of Recommendations

Our submissions are as follows:

1. We endorse the proposal that the central functions of the Commission should be in the areas of advocacy, education, information and assistance to the public.
2. We submit that the office of Race Discrimination Commissioner should be retained. We believe that this is absolutely essential.
3. Conciliation procedures should no longer be a condition precedent for action in the Federal Court.
4. Conciliation facilities should be provided by the Federal Court, where requested by either party or ordered by the Court.
5. The Commission should have an independent right to intervene in court proceedings without the requirement of Attorney-General's consent.

We hope that these submissions will be of assistance to the Committee. We would of course be happy to provide further information and give evidence if required.


Tony Pim OAM
Chairperson
ECC of NSW

Josic Lacey, O.A.M.
Convenor
Anti-racism Sub-committee