

Senate Legal and Constitutional Affairs Legislation Committee

Attorney-General's Department

Hearing date: 17 October 2022

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Senator Paul Scarr asked the following question:

There were concerns raised around what sort of consultation the commission should have with relevant stakeholders before it exercises its powers to conduct an inquiry, and whether perhaps there should be a requirement to consult with key stakeholders prior to launching an inquiry. I note there's nothing in the bill that says it can't, and presumably the commission may well do that anyway, but what's your view with respect to putting processes in place prior to the instigation of an inquiry, which no doubt will attract a lot of public attention and interest?

The response to the question is as follows:

The department notes that it would be open to the Australian Human Rights Commission under the Bill to consult with a person before commencing an inquiry into systemic unlawful discrimination.

However, notifying a person who is going to be subject to an inquiry is not a mandatory requirement under the Bill. The department's view is that it will be important for the Commission to have the power and independence to initiate an inquiry into systemic unlawful discrimination without notifying the person or persons subject to the inquiry.

The department notes that once an inquiry is underway, section 35P of the *Australian Human Rights Commission Act 1986* (as inserted by the Bill) requires the Commission to provide anyone who may be subject to an adverse finding as part of an inquiry with a reasonable opportunity to appear before, or make submissions to, the Commission.

The department has consulted with the Commission to prepare this response.