

HREOC's responses to questions taken on notice

1. HREOC appeared before the Committee on 1 August 2006 and took two questions on notice. The questions and answers to those questions are set out below.

The first question taken on notice by HREOC

2. The first question taken on notice by HREOC was as follows:

CHAIR-Can you give us examples of any indicators of successes that may have been had as a result of that consultation and that formula, or is it just an ongoing process?

Ms Hemingway-A large part of it is an ongoing process. To be honest, I do not know off the top of my head what those successes are. I am happy to take that on notice and provide it to you.

CHAIR-That could be handy. Thank you.

Response to the first question taken on notice

3. The Chair's question was directed at HREOC's most recent consultations in the 'Unlocking Doors Project' and 'Muslim Women's Project'.
4. As HREOC indicated to the Committee, these projects build on and arise out of HREOC's 2003 national consultations with Australian Arabic and Muslim communities, which resulted in the report titled, *Ismaξ – Listen: National consultations on eliminating prejudice against Arab and Muslim Australians*. Over 1,400 people participated in 69 consultations in all States and Territories around Australia with the majority of participants reporting experiences of various forms of prejudice because of their race or religion.

Unlocking Doors Project

5. The Isma ξ Report found that most incidents of discrimination raised in the consultations were not reported to police or other government authorities due to fear of victimisation; lack of evidence and a general lack of trust in authority; lack of knowledge about the law and complaints processes; the perceived difficulty in making a complaint and the perception that outcomes were unsatisfactory.
6. The Ismaξ Report advised that mechanisms for building trust between Muslim communities and law enforcement agencies were required in order to reduce the risk of further marginalisation of Arab and Muslim communities, in particular, of young people and women.
7. The Unlocking Doors Project aims to bring together Arab and Muslim communities and the Police to share their knowledge and experiences and work on strategies to deal with racial and religious discrimination and vilification and build better police and community relations.
8. The objectives of the project are:

- work with, and develop resources for, law enforcement agencies to better enable them to assist victims of racial or religious hatred;
 - strengthen the Muslim communities' relationship with law enforcement agencies, and inform community members of the legal avenues and services available to them as victims of racial and or religious hatred including state and federal anti discrimination laws and complaints processes;
 - identify any particular issues for diverse Muslim groups including Muslims in regional areas, youth and women, in order to ensure that police take their needs into account;
 - assist in the development of strategies that will better enable law enforcement agencies to deal with acts of racial and religious discrimination and vilification against Muslim people; and
 - as a result of the above, improve the extent to which acts of racial and religious discrimination and vilification against Muslim people are being monitored and responded to by police.
9. The project has three components: extensive consultation with Police and Arab and Muslim communities in NSW and Victoria; conducting two forums, one in NSW and one in Victoria, and producing resources for police and community to meet needs identified during the consultation and forum process.

Consultations

10. Overall, the consultations have been well attended by members of both the Police and Muslim communities, and in HREOC's view, have already been successful in opening constructive dialogue between Muslim and Arab communities and police.
11. Between February and May 2006 HREOC staff consulted with 102 key stakeholders (from police and Muslim community organisations) in both Victoria (47 in total) and NSW (55 in total) between February and May.
12. Following from these consultations a roundtable meeting of key stakeholders was held in both NSW (27 April) and Victoria (26 April) in order to encourage a dialogue between them.
13. Following from key stakeholder meetings HREOC hosted thirteen local community forums throughout Victoria and New South Wales aimed at facilitating constructive dialogue between Muslim communities and the Police. Four of these forums were directed to assisting Muslim young people to identify their issues and understand police processes. Through the sharing of information and experiences, the forums aimed to build on the capacity of the police to respond to incidents of racial or religious hatred and abuse. The forums were conducted in an atmosphere of safe, free and open discussion. They included theatrical style scenarios and were supported by live music and performances from local television celebrities.
14. Information and material obtained from the consultation process will be put into a format suitable for informing participants at the forum of the issues and strategies identified in the consultations.

Forum

15. An open public forum will be held, first in Victoria on 7 September, and then in NSW on 18 September. The forums will bring together all participants (including police) from the initial consultations and community forums and any other participants identified during the process or interested in attending.

Resources

16. The audit, consultations and forums will help identify resources that would be useful in meeting the aims of the project. It will be targeted for use by police, community and other agencies. It is expected that the resources will be produced by the end of August and distributed in September.

Living Spirit: Muslim Women and Human Rights Project

17. With a focus on Muslim women, the Living Spirit Project is aimed at giving Muslim and non-Muslim women a forum in which they can identify and discuss the human rights issues facing Muslim women and explore the legal and community remedies for dealing with discrimination and vilification.
18. The project recognises that the position of Muslim women is complex because they often face discrimination only on the basis of their race or religion but also discrimination on the basis of their sex.
19. The objectives of the project are:
 - to increase an understanding among Muslim women about human rights principles and the domestic framework for promoting racial, religious, and cultural and gender equality in Australia, as well as existing legal protections against discrimination and vilification;
 - to identify Muslim women's human rights issues and knowledge of human rights and responsibilities;
 - to increase understanding among the non-Muslim community about Islam and what it is like to be a Muslim woman in Australia; and
 - to improve the capacity of Muslim women to access legal and community remedies for discrimination and vilification.
 - to identify further strategies to improve the capacity of individuals and communities, Muslim and non-Muslim to respond to discrimination and vilification, in particular racial and religious discrimination and vilification.

Background

20. The Isma ξ Report found that the impact of racial and religious discrimination against Arab and Muslim Australians is most acutely felt by women, in particular Muslim women wearing the hijab or other forms of religious dress.
21. The biggest impacts reported by consultation participants were a substantial increase in fear; a growing sense of alienation from the wider community; and an increase in distrust of authority.

Consultation stage

22. In planning for the project, HREOC has so far held meetings with over 30 key organisations and individuals in Victoria, and over 30 in NSW, to determine how the project could best address the problems identified above.

How the project will be run

23. The Project will consist of two phases:
- A one-day forum on Muslim women's human rights issues, to identify strategies to address racial and religious discrimination in particular, and to promote common goals of harmony and understanding between Muslim and non-Muslims in Australia. The forum will be held on 21 September 2006 in Victoria.
 - A series of workshops for Muslim women in Victoria to increase their understanding of existing legal protections against racial and religious discrimination and vilification.

The second question taken on notice by HREOC

24. The second question taken on notice by HREOC was as follows:

Senator ROBERT RAY-Can I take up the issue that we have debated here a few times. It appears that the government has said, 'That's it; we're not going to review all these sets of legislation again, except internally,' whereas Sheller recommended the British model or, at the very minimum, every three years a Sheller type review. What is your organisation's viewpoint on that?

Ms Hemingway-Our view is that there does need to be an independent review. Whether that is done by a Sheller like body every three years that is comprised of practitioners regarding various aspects that are touched by terrorism laws – for instance, privacy issues, human rights, security and intelligence – we do need that independent review at least every three to five years.

Senator ROBERT RAY-Looking at who was on the previous review, it was definitely a case of 'round up the usual suspects'. You seem to want to broaden it by talking about maybe having some intelligence agencies represented and also community groups.

Ms Hemingway-I would have to take that on notice.

Response to the second question taken on notice

25. HREOC reiterates its view that independent regular review of terrorism legislation is vital given:
- the far-reaching nature of much of the legislation and the potential of some of the mechanisms enacted to disproportionately curtail fundamental human rights, such as the right to liberty and the right to a fair trial; and
 - the general lack of adequate judicial review mechanisms in relation to various aspects of the terrorism regime; and

- limited ability for a person to test the laws against established principles of human rights law.
26. HREOC considers that future reviews should not be limited to focusing on one aspect of the legislative regime or particular pieces of legislation, but be mandated to consider the regime as a whole. Often, the effects of particular provisions cannot be fully appreciated unless they are considered in conjunction with other provisions or legislation.
 27. The Sheller report identified several independent review models that could be adopted by government to undertake ongoing reviews of security legislation.
 28. One such model is that used in the UK, the “Independent Reviewer” (see paragraphs 18.5 to 18.7 of the Sheller report). Every 12 months the Independent Reviewer must report to the Secretary of State on the implications of the UK’s terrorism laws and proposals for amendment, and the extent to which non-derogating control orders have been used by the Secretary of State.
 29. The Sheller report suggested that if the independent reviewer is adopted in Australia, it could be attached to the Office of the IBIS or the Office of the Commonwealth Ombudsman.
 30. HREOC supports the establishment of an Independent Reviewer who would be responsible for reporting to the federal Attorney-General on a 12 monthly basis about the operation and effectiveness of Part 5.3 of the Criminal Code **and** the *National Security Information (Criminal and Civil) Proceedings Act 2004*. That report should then be required to be tabled in the Parliament.
 31. In HREOC’s view, there is considerable benefit of having a permanent reviewer over appointing a series of differently constituted ad hoc committees. Namely, a permanent reviewer will over time build considerable institutional expertise and capacity in relation to the operation of terrorism laws, and should not have the time and resources constraints often faced by ad hoc committees made up of part-time members.
 32. HREOC considers that, the Independent Reviewer should:
 - be able to gather information from a wide range of sources, including our intelligence agencies;
 - have the power to obtain information from any agency or person that he or she considers is relevant to the review; and
 - be required to consider the human rights impacts of the laws.