

**SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
ATTORNEY-GENERAL'S PORTFOLIO**

Program: Australian Human Rights Commission

Question No. AE17/095

Senator Di Natale asked the following questions at the hearing on 28 February 2017:

1. There seems to be a discrepancy between the increased reporting of racial discrimination (as indicated in the Scanlon Social Cohesion Surveys) and the reduced reporting of complaints to the Commission. In the view of the Commissioner(s), what explains this discrepancy?
2. Does the Commission keep any information / statistics / data on levels of under-reporting of racial discrimination?
3. Does the Commission have a responsibility to promote its existence, promote the complaints mechanism, etc?
4. Are there particular groups/sections of the community which the Commission knows or suspects may under-report racial discrimination under section 18C.
5. Are there any barriers to the reporting of racial discrimination under section 18C.
6. Is the resourcing of the Commission sufficient for it to overcome these barriers?

The answers to the honourable senator's questions are as follows:

1. It is generally understood that complaint-handling processes do not directly correlate to the overall rate of discrimination in the community. This is due to the nature of these processes, that they require individuals who are usually in vulnerable situations to assert their rights in circumstances where they may not have sufficient knowledge, resources or support to do so.

The Commission seeks to address such issues through the conduct of its independent complaint handling role, combined with advocacy, research and awareness raising measures that can promote other mechanisms for promoting community cohesion.

2. The Commission's Investigation and Conciliation Service only maintains data on use of the discrimination laws. It does not have any data on levels of under-reporting.
3. One of the functions of the Race Discrimination Commissioner is to promote an understanding and acceptance of, and compliance with, the RDA¹. In the course of performing this function, it is appropriate for the Commissioner to make people aware of the complaints mechanisms available under the RDA.

The Commissioner's advocacy role is in accordance with the Paris Principles that apply to national human rights institutions (NHRIs) such as the Commission. The Paris Principle address a number of aspects of the work of NHRIs including their competence and responsibilities, their composition and guarantees of independence and pluralism, and their methods of operation.

¹ *Racial Discrimination Act 1975* (Cth) section 20.

The responsibilities of NHRIs include publicising efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness, especially through information and education and the media.

4. In the Commission's experience newly arrived migrant communities and also members of remote Indigenous communities in particular may under report racial discrimination. For example, members of very newly arrived migrant communities or members of remote Indigenous communities may have very limited familiarity with the work of the Commission and, therefore, are not aware that they can avail their rights under the Racial Discrimination Act.
5. There may be under-reporting of racial discrimination for a number of reasons, including that some people in the community may be unaware of the mechanism for making a complaint with the Human Rights Commission. Based on the Commission's consultations in the past, it has been reported to us that young people, particularly those of a culturally diverse background, may not be familiar with the law and the protections that are afforded by the law concerning racial discrimination and hatred. It is also noted that there may be a general reluctance among those who experience racial discrimination to make a complaint, very simply because it requires effort, time and resilience for some people who experience discrimination to come forward. People may also be concerned about any negative repercussions from making a complaint, especially in employment situations where the conduct complained of is that of a senior co-worker.

Ensuring that all members of the Australian community are aware of their rights and obligations under the law is pivotal in this regard.

6. Regarding resourcing of the Commission, please see the answer to Question on Notice BE17-077 Budget Constraints.