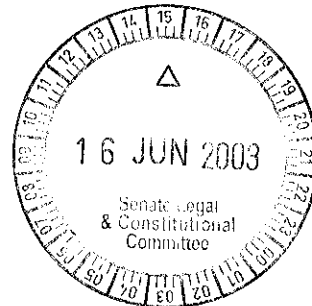




equal
opportunity
commission
victoria

The Secretary
Senate Legal and Constitutional Committee
Room S1.61
Parliament House
Canberra
ACT 2600



12 June 2003

Dear Ms Gell

Senate Legal and Constitutional Committee Inquiry into Progress towards National Reconciliation

The Equal Opportunity Commission Victoria ("**the Commission**") appeared at the Senate Legal and Constitutional Committee ("**Committee**") Inquiry into Progress towards National Reconciliation hearing in Melbourne on 19 May 2003 in relation to the Commission's submission to the Inquiry (number 56).

I refer to your letter dated 2 June 2003 and enclose a copy of the corrected copy of evidence, as requested.

The Committee put three questions to the Commission on notice. The further information requested is referred to below.

Complaint statistics – Questions on notice numbers 1 and 3

1. In summary, the total complaints received at the Commission from Aboriginal and Torres Strait Islander complainants in the 1996 – 2002 financial years was 328, or 1.68% of the total number of complaints lodged at the Commission in the same period (19,420). Further analysis of this data is provided in the annexures.
2. I wish to emphasise that the numbers of inquiries to the Commission and complaint statistics are an inadequate measure of the extent of racism and discrimination in Victoria. We know that, for a range of reasons, only an extremely small proportion of people who are subjected to discrimination are able to overcome the barriers and lodge complaints. Fewer still are prepared to face exposure to the greater formality, legalism and costs risk associated with pursuing a complaint through the court system if it does not resolve at conciliation.

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The EOCV complies with Victorian privacy laws and the confidentiality provisions of the *Equal Opportunity Act 1995*. For a copy of the EOCV's privacy policy, please go to www.eoc.vic.gov.au/privacy or contact the EOCV

In co-operation with the Human Rights and Equal Opportunity Commission (Commonwealth)

3/380 Lonsdale St
Melbourne
Victoria
3000
www.eoc.vic.gov.au

Telephone
(03) 9281 7111
Facsimile
(03) 9281 7171
email: eoc@vicnet.net.au

Country Calls
1800 134 142
TTY
(03) 9281 7110

3. The statistics compiled by the Commission also come with several caveats. Firstly, the Commission can only record statistical information about complaints lodged by Aboriginal and Torres Strait Islander people if that information was provided by the complainant and recorded. The statistics for enquiries made by Aboriginal and Torres Strait Islander people are not available because it is rare for that information to be provided at the enquiry stage.
4. In a departure from previous arrangements, from 1 March 2003, the Federal Human Rights and Equal Opportunity Commission required complaints under the Federal legislation, including the *Racial Discrimination Act* and the *Sex Discrimination Act*, to be lodged only with its office in Sydney. However, these complaint statistics are included in the data referred to in the annexed documents, to present a more accurate picture of the complaints lodged at the Commission over the period in question.
5. The Victorian *Racial and Religious Tolerance Act* only came into effect on 1 January 2002.

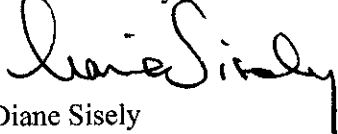
Compliance strategies – Question on notice number 2

6. When raising the lack of a comprehensive strategy in Australia to educate people about overcoming racism, I referred to strategies implemented by the UK, Sweden and the Netherlands. Senator Kirk sought further information on initiatives in the UK and Sweden in relation to human rights or racism education programmes.
7. I raised the issue of education on racism in the context of proactive approaches to addressing systemic discrimination. The Commission is actively engaged in education around issues of discrimination, including racism. However, in terms of mechanisms to address racism when it occurs, The Victorian *Equal Opportunity Act* and the Federal *Racial Discrimination Act* rely predominantly on an individual and reactive complaints model. The Commission considers that there are a number of problems associated with reliance on this approach and therefore encourages the development of stronger and more effective mechanisms for encouraging proactive compliance with equal opportunity legislation.
8. The complaints-based approach is ineffective in addressing the systemic nature of discrimination, including race discrimination. The process used can individualise acts of discrimination, and ignores the social and historical context of racism in Australia. Although the Commission considers that access to a confidential complaints resolution service is highly important for some complainants, exclusive use of such a system fails to achieve large-scale change or to prevent repeated instances of discrimination of the same type or by the same respondent. It is inappropriate and ineffective to place responsibility for instigating change upon those members of the community who have been affected by discrimination.
9. Various indicators suggest that most employers, service-providers, providers of education and others who are responsible under the legislation for taking steps to prevent race discrimination do not take this responsibility seriously. We need to move from a system that merely requires retrospective action on an individual complaint to

one which requires employers and others to proactively comply with the anti-racism legislation.

10. Several jurisdictions throughout the world have moved beyond the complaints-based model and have instituted a more proactive approach to requiring compliance with equal opportunity legislation. These include schemes targeted at ensuring employers take steps to ensure that their recruitment and management practices create a workforce that reflects the diversity of the community, as in the Canadian *Employment Equity Act 1996* and Northern Ireland's *Fair Employment and Treatment Order 1998*. Other schemes are directed at public bodies, and place a statutory duty on such bodies to address discrimination and promote equality in their various policy, program development and service delivery functions. Examples of this include the section 75 "equality duty" in the *Northern Ireland Act 1998*, and the United Kingdom's *Race Relations Act 1976*, as amended in 2000. The Government of the United Kingdom is currently proposing to impose a statutory compliance duty on employers and to extend the obligations of public bodies in respect to 10 forms of discrimination.
11. The Commission considers that to improve its current approach to addressing race discrimination and to progress national reconciliation it needs to develop a system that:
 - Shifts primary responsibility for enforcing equal opportunity laws and initiating change away from Indigenous people and onto other community, government and business stakeholders;
 - Imposes clear and positive duties upon public and private authorities to take action to address entrenched and systemic discrimination within their sphere of influence; and
 - Features strong mechanisms to ensure compliance.
12. As part of the activity leading to and resulting from the World Conference Against Racism in Durban in 2001, several countries have implemented or propose to implement a National Programme of Action Against Racism. These countries include Sweden, the United Kingdom, the Netherlands, Norway, Russia, the Republic of Ireland and the Czech Republic. With a vote of 153 in favour and 2 against, Australia abstained from voting to adopt the *Durban Declaration and Programme of Action on Racism, Racial Discrimination, Xenophobia and Related Intolerance* but expressed support for the conclusions of the Durban conference. However, Australia has yet to develop a National Programme of Action to combat racism, racial discrimination, xenophobia and related intolerance.

Yours sincerely



Diane Sisely
Chief Executive
Encl.

Annexure 1

**Race Complaints and Enquiries
as percentage of total Complaints and Enquiries at EOCV**

Year	Complaints	Enquiries
1990/1991	14.9	9.2
1991/1992	17.7	9.4
1992/1993	16.8	11.6
1993/1994	14.9	11.1
1994/1995	14.9	9.7
1995/1996	13.8	8.1
1996/1997	12.1	8.1
1997/1998	9.5	6.6
1998/1999	9.6	6.5
1999/2000	12.4	6.2
2000/2001	7.6	5.6
2001/2002	6.5	6.5

Annexure 2

**Summary of complaints lodged at EOCV
by Aboriginal and Torres Strait Islander complainants
1 July 1996 – 21 May 2003**

Act	Attribute	Total	
Racial Discrimination Act (Cth)	Colour / National origin	7	
	Race	40	
	Racial hatred	2	
	Victimisation	5	
	RDA total	54	
Sex Discrimination Act (Cth)	Sex discrimination	2	
	Sexual harassment	1	
	Victimisation	1	
	SDA total	4	
Racial and Religious Tolerance Act (Vic)	Authorising and Assisting	2	
	Vilification	13	
	RRTA Total	15	
Equal Opportunity Act (Vic) Aboriginal complainants	Age	7	
	Authorising and assisting	6	
	Disability	32	
	Lawful sexual activity	42	
	Marital status	6	
	Parental / carer status	9	
	Personal association	33	
	Physical features	2	
	Political belief or activity	8	
	Pregnancy	5	
	Race	127	
	Sex	18	
	Sexual harassment	12	
	Sexual orientation	2	
	Victimisation	16	
	Aboriginal complainants	Total	310
	Torres Strait Islander complainants	Age	1
Authorising and assisting		1	
Disability		6	
Gender identity		1	
Parental / carer status		2	
Parenthood		1	
Physical features		1	
Pregnancy		1	
Sex		4	
Sexual harassment		2	
Victimisation	2		
Torres Strait Islander complainants	Total	22	
Equal Opportunity Act (Vic)	TOTAL	332	
All Acts	GRAND TOTAL	405	

COMPLAINTS BY ATTRIBUTE, PERCENTAGE AND FINANCIAL YEAR: ALL ACTS

Complaints	1990/91		1991/92		1992/93		1993/94		1994/95	
	No.	%	No.	%	No.	%	No.	%	No.	%
Age*	*	*	*	*	*	*	*	*	*	*
Carer Status*	*	*	*	*	*	*	*	*	*	*
Disability	98	22.48	120	17.4	232	20.6	192	11.9	788	29.2
Discriminatory Questions+	+	+	+	+	+	+				
Industrial activity*	*	*	*	*	*	*	*	*	*	*
Lawful sexual activity*	*	*	*	*	*	*	*	*	*	*
Marital status	14	3.21	25	3.6	47	4.2	56	3.5	71	2.6
Parental status	5	1.15	19	2.8	27	2.4	23	1.4	40	1.5
Personal association*	*	*	*	*	*	*	*	*	*	*
Physical features*	*	*	*	*	*	*	*	*	*	*
Political belief	1	0.23	5	0.7	6	0.5	11	0.7	31	1.1
Pregnancy**	**	**	**	**	74	6.5	162	10	102	3.8
Race	65	14.91	122	17.7	189	16.8	242	14.9	404	14.9
Religious belief	5	1.5	11	1.6	11	1	10	0.6	60	2.2
Sex	**152	**34.85	**237	**34.4	305	27	395	24.4	463	17.1
Sexual harassment	79	18.12	131	19	180	16	430	26.6	527	19.4
Victimisation	17	3.90	19	2.9	57	5.0	69	4.4	216	8.0
Other+									26	1.7
Total	436	100%	689	100%	1128	100%	1616	100%	2708	100%

*introduced 1 Jan 1996 under Equal Opportunity Act 1995

+not listed as separate category

**sex and pregnancy combined

Complaints	1995/96		1996/97		1997/98		1998/99		1999/00	
	No.	%	No.	%	No.	%	No.	%	No.	%
Age	93	4.4	222	5.3	144	8.9	168	4.9	217	5.5
Carer Status	2	0.1	0	1.7	48	0	29	0.8	36	0.9
Disability	484	23.8	511	26.3	690	20.7	702	20.8	678	17.3
Discriminatory Questions	17	0.8	23	0.4	12	0.9	11	0.3	11	0.3
Industrial activity	31	1.5	60	1.9	52	2.4	120	3.5	143	3.7
Lawful sexual activity	44	2.1	42	2.2	61	1.6	75	2.2	112	2.9
Marital status	48	2.3	86	2.8	78	3.4	92	2.7	55	1.4
Parental status	36	1.7	62	2.9	79	2.5	69	1.9	131	3.3
Personal association	6	0.2	117	1	28	4.7	59	1.7	62	1.6
Physical features	20	0.8	36	1.1	32	1.4	74	2.1	128	3.3
Political belief	10	0.4	2	1.6	44	0.1	25	0.7	56	1.4
Pregnancy	66	3.1	49	2.6	70	1.9	71	2.0	81	2.1
Race	287	13.8	237	12.1	325	9.5	326	9.6	489	12.4
Religious belief	52	2.5	30	1.5	43	1.2	69	1.9	151	3.9
Sex	314	15.1	383	15.3	410	15.9	606	17.8	575	14.7
Sexual harassment	435	21.2	395	13.6	365	16.0	569	16.9	540	13.8
Victimisation	130	6.2	222	7.2	209	8.9	346	10.2	379	9.7
Total	2077	100	2477	100	2690	100	3411	100	3916	100

Complaints	2000/01		2001/02	
	No.	%	No.	%
Age	156	4.5	161	4.6
Carer Status	45	1.3	39	1.1
Disability	771	22.4	794	22.7
Discriminatory Questions	17	0.5	13	0.4
Gender Identity*	23	0.7	32	0.9
Industrial activity	70	2.0	86	2.5
Lawful sexual activity	131	3.8	170	4.9
Marital status	72	2.1	70	2.0
Parental status	108	3.2	127	3.6
Personal association	30	0.9	35	1.0
Physical features	104	3.0	131	3.7
Political belief	16	0.5	24	0.7
Pregnancy	98	3.0	102	2.9
Race	264	7.6	254	7.3
Racial vilification	NA	NA	25	0.7
Religious belief	52	1.5	72	2.1
Religious vilification	NA	NA	5	0.1
Sex	450	13.1	492	14.1
Sexual harassment	562	16.4	422	12.1
Victimisation	418	12.2	376	10.8
Total	3433	100	3493	100

ENQUIRIES BY ATTRIBUTE, PERCENTAGE AND FINANCIAL YEAR: ALL ACTS

Enquiries	1990/91		1991/92		1992/93		1993/94		1994/95	
	No.	%	No.	%	No.	%	No.	%	No.	%
Age	*	*	*	*	*	*	*	*	515	2.9
Carer Status	*	*	*	*	*	*	*	*	*	*
Disability	1021	11.2	1100	12	1635	12.2	1991	12.7	2237	12.4
Industrial activity	*	*	*	*	*	*	*	*	79	0.4
Lawful sexual activity+	*	*	*	*	*	*	*	*	*	*
Marital status	189	2.07	233	2.5	265	1.9	265	1.7	249	1.4
Parental status	148	1.62	144	1.6	205	1.5	276	1.8	271	1.5
Personal association*	*	*	*	*	*	*	*	*	*	*
Physical features*	*	*	*	*	*	*	*	*	*	*
Political belief	62	0.68	48	0.5	92	0.7	61	0.4	60	0.3
Pregnancy	383	4.2	384	4.2	482	3.6	554	3.5	487	2.7
Race	840	9.21	857	9.4	1543	11.6	1733	11.1	1746	9.7
Racial vilification*	*	*	*	*	*	*	*	*	*	*
Religious belief	74	0.81	92	1	140	1	134	0.9	163	0.9
Sex	1091	11.96	1374	15	2021	15.2	2641	16.9	2046	11.3
Sexual harassment	835	9.15	803	8.8	1413	10.6	1840	11.8	2467	13.7
Sexuality+	75	0.82	70	0.77	76	0.6	123	0.8	130	0.7
Victimisation	--	--	21	0.23	--	--	--	--	129	0.7
General enquiries	4403	48.28	3999	44%	5442	41.1	5987	38.4	7498	41.4
Total	9121	100	9125	100	13314	100	15605	100	18077	100

*introduced 1 Jan 1996 under Equal Opportunity Act 1995

+not listed as separate category

Enquiries	1995/96		1996/97		1997/98		1998/99		1999/00	
	No.	%	No.	%	No.	%	No.	%	No.	%
Age	786	3.8	1027	5.7	703	4.4	669	5.1	648	4.7
Carer Status	22	0.1	56	0.3	63	0.4	57	0.4	57	0.4
Disability	2486	12.1	2018	11.3	1955	12.1	1789	13.6	1845	13.4
Industrial activity	116	0.6	233	1.3	145	0.9	163	1.2	172	1.2
Marital status	306	1.5	294	1.6	183	1.1	184	1.4	177	1.3
Parental status	256	1.2	184	1.0	252	1.6	228	1.7	269	2.0
Personal association	15	0.1	29	0.2	26	0.2	26	0.2	24	0.2
Physical features	93	0.5	183	1.0	148	0.9	136	1.0	234	1.7
Political belief	52	0.2	27	0.2	36	0.2	33	0.3	43	0.3
Pregnancy	564	2.7	430	2.4	408	2.5	495	3.8	392	2.8
Race	1657	8.1	1439	8.1	1062	6.6	852	6.5	854	6.2
Racial vilification	25	0.1	95	0.5	109	0.7	83	0.6	64	0.5
Religious belief	178	0.8	139	0.8	123	0.8	109	0.8	154	1.1
Sex	1794	8.7	1341	7.5	1098	6.8	997	7.6	863	6.3
Sexual harassment	2400	11.7	1862	10.4	1322	8.2	1206	9.2	1071	7.8
Sexuality+	199	0.9	264	1.5	257	1.7	212	1.6	323	2.3
Victimisation	89	0.4	127	0.7	121	0.8	146	1.1	202	1.5
General enquiries	9409	46.5	8127	45.5	8097	50.1	5747	43.9	6402	46
Total	20509	100	20509	100	16126	100	13132	100	13794	100

