
Date: 11/06/20 9:32 AM


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2. THE RACIAL DISCRIMINATION ACT 1975: CURRENT PROBLEMS AND PROSPECTS

It is clear from this and past Annual Reports that the Racial Discrimination Act 1975 has proved an effective instrument for achieving greater equality of opportunity and enjoyment of human rights for all Australians, of all origins and backgrounds. Despite the minimal resources of finance and personnel that have been made available for the administration of the Act, improvements have nevertheless been registered in the climate of community relations throughout Australia.

The parliamentary debates in the past year over amendments to the Racial Discrimination Act 1975 and proposals associated with the Human Rights Commission Bill 1979 have engendered widespread confusion. Sections of the community have believed that my operations were ceasing and that the Government was withdrawing from the combat of racial discrimination. Many individuals and organisations have expressed strong support for the continuation in law of the Racial Discrimination Act 1975 and of my operations.

We have all been heartened by the warm response from the community confirming the value of our operations not only in combating outright discriminations but also in promoting a wider recognition of the multicultural society.

As far as the future administration of the Racial Discrimination Act 1975 and the operations of the Commissioner for Community Relations are concerned, I was invited to make a submission to the Senate Standing Committee on Finance and Government Operations, which is enquiring into Commonwealth Statutory Authorities.

It has been accepted widely in the community that a body of expertise has been built up in the past five years for the combat of racial discrimination. My Office has been the only authority operating Australia-wide in this field; in several of the States there is no comparable agency at all.

I am concerned to ensure that the experience and expertise is not lost to the community. The nature of my Office’s work inevitably involves from time to time facing hostility, confrontation and rejection. Bigotry and prejudice are easily conjured up in such an atmosphere and focussed on their chosen scapegoats. It cannot be expected that my Office will always operate in an environment of tranquillity and harmony. At times we operate in an atmosphere of actual violence. It is also inevitable that there will be resentment and criticism both by individuals and organisations, including Government Departments, because complaints are taken up.

I regard criticism of myself and my Office as a spur to reviewing our operations and to evaluating the principles on which they are based. I do not envisage that the job can be done without upsetting anyone at any time.

Above all there is a need for flexibility, mobility, independence and informality. I would hope that changes to the legislation would strengthen this approach rather than constrict it.

During the year my Office published a paper entitled The Racial Discrimination Act 1975 — An Information Paper. The paper deals with the opposition to the Racial Discrimination Act 1975 expressed by some State Governments and certain sections of
the community on the grounds that the legislation exceeds the constitutional powers of the Commonwealth. The paper is included in this Report as Appendix G.

This challenge has become even more relevant following the forthright statement made to me by the Hon. W.R. Hassell, M.L.A., Chief Secretary, Minister for Police and Traffic, and Community Welfare in Western Australia, on my administration of the Act in his State. His views bring into question the application of Commonwealth laws to the State of Western Australia.

There should be no doubt about the validity of legislation in the field of human rights, which is associated with the Commonwealth’s ratification of international conventions, applying equally to all States and Territories as laid down in section 6 of the Racial Discrimination Act 1975. That the Commonwealth Government does not doubt its powers is confirmed by the introduction into Parliament of the Human Rights Commission Bill 1979 and the Racial Discrimination Amendment Bill 1979 during the past year.

Both Queensland and Western Australia have, however, challenged the validity of this and other Commonwealth legislation.

I have sought a resolution of this matter by suggesting to the Commonwealth Attorney-General that he seek a declaratory opinion or judgment by the High Court of Australia. The opinion has been expressed that the High Court does not give such opinions or judgments. Nevertheless the Commonwealth Government should explore means of resolving the question of the application of its laws to the States in this field.

Though the Racial Discrimination Act 1975 in section 23 provides for Regulations to establish conciliation committees for the purpose of enquiring into and conciliating on discrimination complaints, such Regulations have not been promulgated. No finances are available to cover the work of the (voluntary) Consultative Committees which incur administrative expenses for postage, telephone costs, stationery, etc and additionally have to travel often over wide areas to investigate complaints. All such expenses must come from the pockets of private individuals.

Under the 1976 Race Relations Act in the United Kingdom (and in prior legislation) provision was made for the setting up of a large number of regional offices, not only to deal with problems of prejudice and discrimination, but also to conduct active campaigns of community education to reduce prejudice in the area.

Study of the English situation would suggest that these regional offices have been highly successful in defusing events which would otherwise have led to racial outbursts and violence. People on the spot who know the local situation are in an excellent position to take preventative measures, enlisting the support of local organisations and identities and ensuring the participation and involvement of the local community. On the English scene such a regional office would normally have a staff of two, funded by Government (executive officer and secretary or aide) and administered by a voluntary committee of concerned citizens in the area.

It is even more important in a country of the huge size of Australia to have strong regional support if we are to achieve a real lessening in racial and ethnic prejudices.

RECOMMENDATIONS

I would recommend an independent study of our initiative in establishing Consultative Committees and of the U.K. local initiatives with a view to strengthening means of on-the-spot resolution of discrimination and conflict.

Despite the value of the existing provisions of the Racial Discrimination Act 1975, other amendments are required in the light of the experience gained in five years’ administration of the Act. I have recorded the amendments desirable in my previous Annual Reports and list them again here briefly.
• Power of prosecution should be vested in an authority to pursue matters of racial discrimination which cannot be dealt with effectively by other means.
• The prohibition of racial discrimination should include the dissemination of ideas based upon racial superiority or racial hatred, as required by Article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination.
• Powers of delegation should be vested in the Commissioner for Community Relations to enable him to give legislative protection to persons in the community who assist him in his work.
• The Commissioner should be empowered to direct the production of documents, files etc. related to his enquiries.
• The concept of the establishment of conciliation committees, as presently provided for in the legislation, should be extended and the establishment of such committees should rest with the Commissioner.

I restate the recommendation that the challenge to the existing legislation by Queensland and Western Australia should be resolved as soon as possible.