



## The United Nations Association of Australia Tasmanian Branch

*Patron:* His Excellency the Honourable Sir Guy Green, AC, KBE, CVO, Governor of Tasmania

### **Submission to the Senate Legal and Constitutional Legislation Committee – Inquiry into the provisions of the Australian Human Rights Commission Legislation Bill 2003.**

The UNAA (Tasmanian Branch) is opposed to the *Australian Human Rights Commission Legislation Bill 2003*, recently introduced into Parliament by the Federal Government. The Branch's main opposition to the bill can be divided into two parts:

1. The bill seeks to limit the power of the Commission to intervene in court matters with possible effects on human rights issues, by requiring the Commission to seek the permission of the Attorney General before intervening.
2. The bill seeks to restructure the Commission by abolishing the current portfolio specific commissioners in the areas of Human Rights, Sex Discrimination, Race Discrimination, Disability Discrimination and the rights of Indigenous people, with three 'Human Rights Commissioners' who will have overlapping expertise and areas of responsibility.

The Branch feels that despite the massive funding cuts endured since the current government came to power in 1996, the Commission has continued to play a fundamental role in promoting issues of human rights. The changes proposed in this bill (many of which were proposed in an earlier bill in 1998) run the risk of severely threatening the independence of the Commission. This is an issue about which the Tasmanian Branch of the UNAA feels significant concern.

### **Issue 1 – The power of the Commission to intervene in court matters**

#### **Background**

Since the 1980s, the Commission has sought and been granted leave to 'intervene' in several matters before the courts having a potential impact on human rights issues. The Commission has intervened in cases before the High Court, the Federal Court, the Family Court as well as state courts. Some of the most noteworthy cases in which the Commission has intervened are *Minister of State for Immigration and Ethnic Affairs v Teoh*<sup>1</sup>, a case which dealt with the best

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<sup>1</sup> (1995) 183 CLR 273

interests of a child whose father faced deportation from Australia; *Lange v The Commonwealth*<sup>2</sup>, a case dealing with political free speech; and more recently action surrounding the *Tampa* legislation.

### **What the bill seeks to do**

The amendments proposed in the current bill, if successful, would require the Commission to gain the consent of the Attorney General before they could seek leave to intervene in any court proceedings.

The UNAA (Tasmanian Branch) feels that requiring the Commission to gain the Attorney General's approval before intervening in matters before courts raises serious issues of conflict of interest for the Commonwealth. Giving the Commonwealth (which would in most cases be a party to the action in which the Commission wishes to intervene) the power to refuse the Commission that right raises a serious concern that the Commission may in fact be subject to more political control than an organisation of its kind should be.

The amendment also seems to usurp the power of the courts to themselves grant leave to the Commission to intervene in cases they feel appropriate. It is possible that, through this new requirement, the Commission could be refused the right to intervene in cases of vital importance to human rights, simply because the Government may not be of the same political view as the Commission on a particular issue of human rights, or want public comment made on any particular case before the courts.

Also of significant concern is that placing this limitation on the Commission's ability to intervene in court matters contravenes the *Paris Principles*<sup>3</sup>, which provide minimum standards by which human rights protection agencies are expected to operate. The *Paris Principles* require national human rights institutions to 'have the independence and mandate essential for [them] to perform [their] functions effectively and operate in an unfettered and uncompromised manner.'<sup>4</sup> It is extremely alarming that after having played an important part in the establishment of the *Paris Principles*, that Australia could then contravene them with legislation such as that proposed in this bill.

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<sup>2</sup> (1996) 186 CLR 302

<sup>3</sup> *The Principles Relating to the Status of National Institutions*.

<sup>4</sup> Submission of the Human Rights and Equal Opportunities Commission to the Senate Legal and Constitutional Legislation Committee on Human Rights Legislation Bill (No.2) 1998. (<http://www.humanrights.gov.au/legal/submissions/hrla98.html>)

## **Issue 2 – The structure of the Commission**

### **Background**

The Commission is currently comprised of a President and five Commissioners, in the areas of Human Rights, Race, Sex, Disability and Aboriginal and Torres Strait Islander Social Justice Discrimination. The Commissioners inquire into infringements of human rights under the *Human Rights and Equal Opportunity Commission Act 1986*, the *Racial Discrimination Act 1975*, the *Sex Discrimination Act 1984* and the *Disability Discrimination Act 1992*. The Commission can investigate issues of discrimination occurring under a whole range of grounds including sex, race, disability etc.

### **What the bill seeks to do**

The Bill seeks to drastically alter the structure of the Commission by abolishing the specific portfolio commissioner positions mentioned above, replacing them with three 'Human Rights Commissioners'. The new Commissioners would have overlapping qualifications and areas of responsibility.

In its Explanatory Memorandum to the bill, The Government claimed that the new structure would 'provide the Commission with greater flexibility to deal with current human rights issues which cut across boundaries of the existing specialisations (eg women with disabilities). Emerging human rights areas, such as age discrimination, will also be able to be dealt with without the need to appoint new specialist commissioners as each area develops.'<sup>5</sup>

The UNAA (Tasmanian Branch) submits that the current division of responsibility within the Commission has provided an effective and successful way of dealing with all kinds of human rights issues. Discrimination has always manifested itself in different ways depending on the circumstances and nature of the discrimination. It is a fallacy to believe that discrimination which cuts across boundaries is a newly occurring phenomenon. It seems a convenient excuse to in fact reduce the resources and thereby the capabilities of the Commission.

There have been suggestions made by many groups for a number of years that in fact further specialist commissioners should be added to the structure of the Commission to deal with emerging areas of discrimination. It is at least arguable that reducing the number of Commissioners so drastically and amalgamating the areas of discrimination they can investigate will significantly diminish the Commission's effectiveness in dealing with the specialist areas of responsibility and dilute its focus on the various areas, and possibly undermine the educative role of the Commission. The UNAA (Tasmanian Branch) would like to see the Commission retain the current issue specific Commissioners and would like to see

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<sup>5</sup> *Australian Human Rights Commission Legislation Bill 2003* Explanatory Memorandum, paragraph 20 (page 6).

further such positions established in other areas of discrimination.

## **Conclusion**

As outlined in this brief submission, the UNAA (Tasmanian Branch) is opposed to this bill. The provisions proposed in the legislation would if successful, drastically alter the operation of the Commission, removing a significant amount of its power and resources and making it generally more difficult for the Commission to continue providing the valuable work it performs.

Amongst other things, the bill seeks to require the Commission to seek approval from the Attorney-General before intervening in court matters; reduce the number of Commissioners and also remove the right of the Commission to recommend paying compensation to a person who has suffered loss or damage as a result of discrimination. Together with the persistent reduction in funding to the Commission over the term of the current federal government, these things would compromise the effectiveness of the Commission.

Yours sincerely



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**PRESIDENT**

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