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Wednesday, 23 April 2003

The Hon Senators
Senate Legal and Constitutional Committee
Room S1.61, Parliament House
Canberra ACT 2600
AUSTRALIA

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Dear Senators

HUMAN RIGHTS COMMISSION LEGISLATION BILL 2003

The Management Committee and Membership of The Australian WOMAN Network respectfully submit that the *Human Rights Commission Legislation Bill 2003* represents a serious threat to this country's human rights record and a retrograde step which will do nothing but diminish the already limited legislative protection currently available to assist the most vulnerable in our society.

Indeed, in our view, the Federal Government should instead be putting forward amendments to the relevant Acts in order to strengthen and broaden their provisions so they encompass all of the areas of obligation found in the United Nations Conventions. We ask, for example, why it is that no protection is given to those in the community who are different by virtue of their gender identity under the *Sex Discrimination Act*?

The European Court of Human Rights recently found against the United Kingdom in the matters of *Goodwin* and *I*, and that country is now legislating to provide full legal status to those of its citizens diagnosed with, and treated for, the intersexual condition described as transsexualism; including rights to a corrected Birth Registration, marriage and social security benefits in their affirmed sex. The governments of Ireland, South Korea, Japan and Africa have also recently announced their intentions to so legislate. They join with 33 other members of the European Union, all but three of the States of the United States of America, Canada, New Zealand and Singapore in recognising the inherent justice in such a decision. Australian human rights initiatives are taking us backwards, instead.

The power of the Commission to act as intervener

It is, we submit, a singularly essential feature of any national human rights advocate that it be independent of government and political persuasion. The Human Rights & Equal Opportunity Commission has a proud record of intervening in litigation involving governments and government agencies. It has applied this aspect of its powers with discretion and great effect and, in a number of instances, the Commonwealth has itself been a party to the litigation before the courts. We particularly appreciated the Commission's intervention in the Attorney-General's appeal of the Family Court decision in *Re Kevin and Jennifer* during 2001 which

upheld the validity of the marriage of a man of transsexual background to his wife, and indirectly, assured that their children continued to enjoy the legitimacy provided by that marriage. It is totally inappropriate, in our view, that the Commonwealth have any role whatsoever in deciding when such intervention should occur.

We respectfully request the Committee to disallow the provision in the Bill that would render the intervention power subject to the approval of the Attorney-General.

Removal of the specific roles for Commissioners

One of the features of the existing Commission has been the degree of expertise each of the functional areas has developed. This has been largely a result of the specific focus that each of the Commissioners has in their particular jurisdictions. It would be detrimental to the persons served by the Commission if the five specialists were replaced with three generalists who had substantially overlapping responsibilities. For example, matters of "race" are significantly different to those involving the "sex" attribute where the exceptionally personal nature of many complaints, particularly those involving molestation of the victim, demand a Commissioner and support staff with particular knowledge and sensitivities of the relevant issues. The quantity and complexity of the matters dealt with demand a full complement of Commissioners who can discharge the statutory functions effectively and efficiently. The Commissioners already engage in education and advocacy roles and the Australian WOMAN Network supports their continued involvement in this important aspect of their statutory functions.

We respectfully request the Committee to disallow provisions which seek to replace the specific roles with generalist ones, reduce the number of Commissioners or interfere with their current functions, including those relating to education, information and assistance.

Removal of existing Commissioners

Under the Bill, persons who were the Commissioners of the old Commission at the commencement of this item become Human Rights Commissioners of the new Commission, provided that at that time there are no more than three such Commissioners. This allows the Attorney-General to remove those Commissioners who have most seriously offended them politically and is to be deplored.

We respectfully request the Committee to disallow provisions which seek to remove some of the existing Commissioners, a move which threatens the independence of the Commission at its roots.

Removal of power to recommend pecuniary compensation

The Bill seeks to remove the current power to recommend pecuniary compensation and leaves the Commission with only a minor ADR role. This constitutes a huge reduction in the coercive powers of the Commission and, in the view of the Australian WOMAN Network, effectively emasculates it. It leaves damaged litigants with no option than an action in the federal court system which operates under a far more formal structure and is substantially more expensive for the complainant in consequence.

We respectfully request the Committee to disallow provisions which would remove from the Commission its powers to recommend pecuniary compensation.

Investigations role

We note the proposal that investigations by the Commission will be carried out by lawyers appointed by the Attorney-General. This offends against the principle of independence from government in the same manner as the intervention proposals and is abhorrent to free-thinking citizens. Staff on the Commission are public sector employees, part of administrative government, and their appointment and tenure should be free of political influence.

We respectfully request the Committee to disallow provisions which would allow the Attorney-General to appoint investigators to the Commission or remove the responsibility for investigations from the principal Commissioners.

Thank you for the opportunity to present our views to you and for your careful oversight of this legislative instrument.

Yours sincerely

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Karen\TS Law\Human Rights\Senate submission re HREOC 2003