



European Monitoring Centre on Racism and Xenophobia

Mr Peter Hallahan
Secretary
Senate Legal and Constitutional Committee
Room S1.61, Parliament House
Canberra ACT 2600



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Dear Mr Hallahan,

I would be grateful if you would accept my following comments on the Australian Human Rights Commission Legislation Bill 2003 as a submission to the Senate Legal and Constitutional Committee. As this Bill is, of course, an internal matter for the Australian Government and Parliament, please do not consider my submission an intervention in internal Australian affairs, but a perspective from Europe based on our past learning from good practice in Australia.

As the Chairman of the European Monitoring Centre on Racism and Xenophobia (EUMC), I am very concerned about the provisions of this Bill. The Committee may be interested to note that European Union Member States are currently in the process of introducing common minimum standards of protection from racial discrimination, which include the establishment of specialised bodies to promote and enforce equal treatment provisions. By 19 July 03, each EU Member State is required by law to have such a body in place, and this body must carry out its functions independently. These new EU-wide legal provisions have been partly influenced by experiences in the UK, which has had an independent Commission for Racial Equality in place since 1976 (based on the Race Relations Act 1976), of which I used to be a Commissioner. At the same time, it is important to note that these EU initiatives have also learned from the positive example set by Australia. Like the UK, Australia has had legislation against racial discrimination in place for over a quarter century, and has been seen as a beacon in the struggle for race equality by other parts of the world, including Europe.

Moreover, over the past year, the UK in particular has paid much attention to the work and functioning of the Australian Human Rights and Equal Opportunities Commission (HREOC), as considerations are underway to merge the existing UK equality commissioners (Commission for Racial Equality, Equal Opportunities Commission and Disability Rights Commission) into a single equality body, based on Australian and also Canadian models. In this context, the HREOC has been regarded as a particularly relevant and positive example, as it retains specialist commissioners for each equality strand, while benefiting from a unified structure. This feature is seen by many in the UK as good practice to follow.

Therefore, I am extremely concerned about the proposed abolition of the specialist commissioners of the HREOC, particularly the Race Commissioner. Such restructuring is most likely to have a detrimental effect on maintaining and developing expertise in the field of race discrimination and threatens the continuation of dedicated programmes that educate about race discrimination, promote

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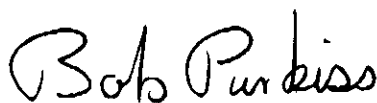
understanding and cohesion among ethnic groups and work to combat racial prejudice and inequalities. In the UK, the power to conduct national inquiries on race discrimination has been seen as a particularly useful example and it would be regrettable if the specific responsibility for this would be diluted or lost in the process of restructuring. Most importantly, the fight for racial equality requires someone at the top to take ownership of this goal and assume responsibility for actively promoting race equality. The pursuit of this key objective should not be left to the discretion of the Commission's President, subject to competition with other organisational objectives. Rather, it must be built into the structure of the Commission through a clear allocation of responsibility to a dedicated, specialist Commissioner, who can present a strong individual voice for equality. The HREOC must be able to guarantee that adequate attention and resources are devoted to race equality. The Race Commissioners have done important work in the past, which has been recognised internationally. In the context of increasing ethnic tensions, nationally and internationally, the Race Commissioner's work is now more significant than ever. It is essential that Australia continues to show leadership in promoting equality in the political, economic, social and cultural fields for everyone regardless of race, colour, descent, national origin or ethnic origin. Therefore, I urge the Senate not to accept the proposed changes to the structure of the HREOC.

I am also seriously concerned about the proposal to remove the Commission's power to independently intervene in court proceedings. This clearly threatens the Commission's independence, as well as creating a conflict of interest for the Attorney-General whenever the government is a party to the litigation. In the EU, the new anti-discrimination legislation requires the specialised bodies to exercise their powers independently, as an essential prerequisite to defending the right to equal treatment effectively. Strong independent enforcement powers must be at the heart of the proper functioning of any human rights commission. It would be a cause for great regret among many of us in the EU if Australia were to fall behind in this crucial area, where it has led for so long.

In my capacity as the Chairman of the EUMC, I urge the Senate to seriously consider these concerns in the course of its inquiry into the proposed Bill. I am of course aware that this Bill is an ~~external intervention into national matters~~ and that my submission is not conceived as an external intervention into national matters, but merely as an appeal to the Parliament to ensure that Australia is able to continue its global leadership on race equality.

Thank you for your time and consideration.

Sincerely,



Bob Purkiss MBE
EUMC Chairman