

Clifford, Julia (SEN)

From: Geoff Fisher [g.fisher@qut.edu.au]
Sent: Wednesday, 23 April 2003 5:58 PM
To: Legal and Constitutional, Committee (SEN)
Subject: Inquiry into the provisions of the Australian Human Rights Commission Legislation Bill 2003

23 April 2003

The Secretary
Senate Legal and Constitutional Committee
Parliament House
Canberra ACT 2600



Dear Secretary

AUSTRALIAN HUMAN RIGHTS COMMISSION LEGISLATION BILL 2003

Thank you for the opportunity to make a submission on this bill. I wish to comment briefly on the most contentious aspects of the bill viz the requirement that the Human Rights and Equal Opportunity Commission (' the Commission ') have the approval of the Attorney-General to intervene in court proceedings; and the replacement of specialist commissioners with three Human Rights Commissioners. Similar proposals were of course included in the Human Rights Legislation Amendment Bill (No. 2) 1998 (' the 1998 bill '), which was the subject of a report by the Senate Legal and Constitutional Committee. As the relevant arguments were canvassed in that report, I do not intend to rehearse them in any detailed manner.

I turn now to address the proposals.

Approval of Attorney-General to intervene in court proceedings

In its report on the 1998 bill, the Committee in Chapter 2 identified four main arguments against this proposal :

- * there is no evidence of abuse by the Commission of its power;
- * the proposal threatens the Commission's independence and may constitute a conflict of interest for the Attorney-General;
- * the Commission's intervention in court proceedings is of assistance to the courts; and
- * it is the courts' role to determine who may intervene.

The Committee examined various submissions advancing these arguments, and agreed that the Commission's intervention power should remain free of the need for approval by the Attorney-General. I strongly support this conclusion and the supporting arguments as identified and discussed by the Committee, and submit that they are just as cogent in regard to the present bill.

There are no changed circumstances since the report on the 1998 bill such as to detract in any relevant way from the continuing force of the case against this proposal.

Loss of specialist Commissioners

I disagree with the proposal to replace specialist Commissioners, though I note that the Committee in its report on the 1998 bill supported such a change.

Specialist Commissioners gain more recognition and profile in the community, and so enhance awareness of human rights issues and the initiatives of the Commission. Specialisation allows Commissioners to develop necessary knowledge and expertise in areas of much complexity. The existing Commission structure is surely sufficiently collegial to respond to the fact that human rights issues may sometimes cross over portfolio specific boundaries. And if new areas of Commission responsibility (such as age discrimination) emerge, the appropriate response may be to increase

the number of specialist Commissioners. The Commission itself in a media release of 27 March 2003 maintains that its current structure provides a strong educational and advocacy role for individual Commissioners and has received significant community support.

I hope the above comments will be of some assistance to the Committee in its deliberations.

Yours sincerely

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