



Edmund Rice Centre

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

A Submission to the Inquiry into the provisions of the Australian Human Rights Commission Legislation Bill 2003.

Edmund Rice Centre for Justice and Community Education (ERC) was established by the Christian Brothers in 1996, with close links to Australian Catholic University, to promote social justice in Australian society and internationally. ERC's work has been primarily in the area of reconciliation and peace-building. The Centre is the Australian partner of the international youth reconciliation project Let's Talk, which emerged from the peace process in Northern Ireland. The Centre works in the area of reconciliation in Ireland, the Middle East, Southern Africa, South Asia as well as Australia.

One of the main tenets characterising democratic societies is the fundamental place of human rights in those societies. In many nations of the world, human rights of citizens can be overridden or ignored by governments. It is important for Australia that the guarantee of human rights is free of being eroded by government, or of the perception of being lessened by government. A commitment to human rights should not be diminished, particularly in light of recent events in history. The war in Iraq, the movement of refugees around the world, the threat of terrorism internationally, should call all members of civilised nations to deepen and strengthen their commitment to human rights. Edmund Rice Centre is deeply concerned that the proposed provisions of the Australian Human Rights Commission Legislation Bill 2003 will in fact do the opposite and will erode the foundations of human rights legislation in this country.

There are a number of specific concerns:

The restructure of the Human Rights Commission by creating three generalist Human Rights Commissioners to replace the existing specialist Commissioners – Aboriginal and Torres Strait Islander Social Justice, Race Discrimination, Sex Discrimination, Disability Discrimination and Human Rights Commissioners. This proposal constitutes a backward step in human rights services in Australia because it seeks to replace Commissioners with expertise in their fields with generalist Commissioners. The role of the Aboriginal and Torres Strait Social Justice Commissioner in particular requires specific expertise. Experience of the reality of life as it is lived by Aboriginal people, of community life of Aboriginal and Torres Strait Islander people is essential to role of Commissioner. A generalist Commissioner would by definition lack such expertise and experience.

The requirement that the Commission obtain the Attorney General's consent before seeking leave to intervene in court cases. Whenever the Government is involved in a case, the Attorney General would be faced with a major conflict of interest. The separation of powers is a fundamental tenet of a pluralist democracy like Australia. To make it a requirement that the Attorney-General should decide when and if the Commission could intervene in court cases is a diminution of the protection of human rights in Australia, reducing the independence of the

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Commission. Australia's record on human rights is internationally well regarded. This is because successive government's respect for the principle of the separation of powers meant that questions of scrutiny and protection of rights were not matters for decision by government alone. Previous governments were not afraid of the separation of power. The doctrine of the separation of powers is a fundamental freedom of democracy.

The change in name to the Australian Human Rights Commission. This seems to suggest that Australian human rights could be different to those set out in the international agreements such as the Universal Declaration of Human Rights. This Government recently has sought to observe international treaties and agreements on a selective basis. Given this reality such a name change sends the wrong message and could be seen as a movement away from a commitment to international human rights.

The removal of the Commission's power to recommend compensation in disputes would lead to a diminishing of the powers and protection afforded by the existing legislation.

The Attorney General has suggested the proposed changes will strengthen the protection of the human rights of all Australians. ERC strongly disagrees with this suggestion. The proposed changes will rather weaken and interfere with the work of our national human rights watchdog. The proposals diminish the expertise available to comment and advise on human rights issues. They create a perception of Government interference in the adjudication of claims of violation of human rights in our country. In particular, the rights of Indigenous Australians will suffer through the withdrawal of an expert Commissioner with a specific focus on the rights of Indigenous people.

If the government wants the Commission to take on new responsibilities such as age discrimination and to manage the increasing incidence of issues which cross human rights boundaries, it would seem more appropriate to add to, or modify, the existing structures without making the major changes being proposed. These changes open the possibility of politicising the Commission by making its involvement in court cases subject to the nation's leading law officer, the elected politician who is Attorney-General. Effectively this could silence a voice that might occasionally differ with the government of the day on a particular issue. However, the right to disagree with the government of the day is a basic freedom of Australians and one of the great traditions of Australian society. These changes would not be without significant cost to Australia as a nation.

Yours faithfully

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Director

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