



**Uniya**

JESUIT SOCIAL JUSTICE CENTRE

Submission



24 April 2003

Senate Legal and Constitutional Committee  
By email: legcon.sen@aph.gov.au

**Re: Submission to the Senate Legal and Constitutional Committee Inquiry into the Provisions of the *Australian Human Rights Commission Legislation Bill 2003***

**1. Approval by Attorney-General of commission intervention in court proceedings**

The Bill's requirement that the new commission seek the approval of the Attorney-General before exercising its power to seek leave to intervene in court proceedings severely undermines the commission's independence. This is fundamentally at odds with the commission's role in monitoring the Government's compliance to international human rights obligations. The recent *Al Masri*<sup>1</sup> decision of the Full Federal Court in which the commission's submission had assisted the Court's determination of Australia's international obligations is a clear example of why the proposed changes must be rejected. The commission's submission in *Al Masri* differed from that of the Government and in such a case it would be inappropriate for the commission to seek approval from executive government in the exercise of its intervention power.

We refer to recommendation 2 of the Senate Legal and Constitutional Committee inquiry into the *Human Rights Legislation Amendment Bill (No. 2) 1998* in which a similar provision was rejected. The reasons cited for the current provision is to ensure the commission acts in the best interests of the community as a whole and that duplication and waste of resources are prevented.<sup>2</sup> But the Committee's suggestion regarding the provision in the 1998 Bill remains valid: "[the] potential difficulties may be avoided by more effective communication systems between the commission and the Attorney-General."

**2. Reorganisation of the Commission's executive structure into President and 3 Human Rights Commissioner positions**

We note the proposed changes would entrust the new Human Rights Commissioners with generalist responsibility but ensuring they "have the expertise to undertake the variety of matters likely to come before the commission."<sup>3</sup> While we recognise the educational benefits of linking various human rights areas as a holistic issue, we note the greater danger of marginalising areas that require continual special attention, especially the continuing social, economic and political disadvantages of ATSI peoples.

<sup>1</sup> *Minister for Immigration & Multicultural & Indigenous Affairs v Al Masri* [2003] FCAFC 70.

<sup>2</sup> *Australian Human Rights Commission Legislation Bill 2003*, Second Reading, House Hansard no.5, 27 March 2003, 13766.

<sup>3</sup> *Australian Human Rights Commission Legislation Bill 2003*, Explanatory Memorandum.

We refer to the opinion of the UN Committee on the Elimination of Racial Discrimination (CERD) in which it specifically addressed an earlier attempt to streamline the operation and structure of the HREOC under the aforementioned 1998 Bill.<sup>4</sup> Noting the benefits of an appropriately qualified specialist position, the CERD expressed concern that a generalist position may not be able to afford “sufficient opportunity to address in an adequate manner the full range of issues regarding indigenous peoples that warrant attention.”

### **About Uniya**

*Uniya* is a social justice research centre which seeks to respond to regional and global justice challenges. *Uniya* has constantly aimed to develop well-researched strategies in response to structural injustice within Australia and beyond.

**Signed and authorised by:**



Sr Patty Fawkner  
Director

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<sup>4</sup> UN CERD. “Decision 2 (54) on Australia,” UN Doc: A/54/18,para.21(2), 18 March 1999.