

26 April 2003

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



Dear Mr Hallahan,

Please find below a submission from the University of Technology Sydney in relation to the *Australian Human Rights Commission Legislation Bill 2003* to amend the legislation under which the Human Rights & Equal Opportunity Commission performs its functions.

UTS has a long history of engaging with initiatives both internal and external to the university which support social justice and human rights. It is in that context that I make this submission on behalf of the University.

Independence of the Commission

The University notes that the Government wishes to streamline HREOC's structure, and is supportive of measures which would enable HREOC to more effectively carry out its charter. We submit that the Commission's strength and credibility lies in its independence, which is crucial to its ability to uphold (and be seen to uphold) social justice in Australia. One of our main concerns is that the proposed restructuring would effectively strip the Commission of its independence.

In the legislation before Parliament, the Commission would lose its independent right to intervene in court cases. The Commission's intervention powers allow the Commission, with leave of the Court, to present written and oral argument in legal proceedings involving human rights and discrimination issues. The Commission has intervened in 35 cases before Australian courts and tribunals since its establishment in 1986. It has never been refused leave to intervene, indicating that the Commission's use of the power has been appropriate.

The new Bill would require the Commission to obtain the Attorney-General's consent prior to seeking leave to intervene in such Court proceedings. We are concerned that the Bill as proposed could lead to a conflict of interest arising where the entity exercising the 'gate-keeper' function may also be a party to a dispute. More fundamentally, we believe that such a proposal is at odds with the Commission's role as an independent body, responsible for monitoring and promoting Australia's compliance with its human rights obligations. We note that the Senate Legal and Constitutional Committee recommended a similar provision be removed from an earlier Bill introduced in 1998 by the Government.

Specialist Commissioners

Another issue of concern is that the Bill proposes to alter the structure of the Commission by replacing the identified portfolio Commissioners (who are currently responsible for the areas of Human Rights, Sex Discrimination, Race Discrimination, Disability Discrimination and the rights of Indigenous people) with three "Human Rights Commissioners". These three 'generalist' Human Rights Commissioners are to have overlapping responsibilities. While this could be an effective model, we are concerned that three generalist Commissioners may not have the background and specialist knowledge required to cover the areas of responsibility of the Commission.

For example, the new Bill removes the present requirement for the Commissioner hearing Indigenous Australian issues to have significant experience in community life of Aboriginal persons or Torres Strait Islanders. None of the proposed generalist Human Rights Commissioners would have to meet this requirement. The role was created in 1992 largely in response to the Royal Commission into Aboriginal Deaths in Custody and HREOC's National Inquiry into Racist Violence to ensure ongoing national monitoring of the human rights of Indigenous peoples. Current functions of the Aboriginal and Torres Strait Islander Social Justice Commissioner include

promoting discussion and awareness of Indigenous people's human rights, and undertaking research and educational programs. The new Bill proposes to maintain the annual Social Justice and Native title reports to federal Parliament and maintain the broad educational functions within 'generalist' Commissioner's portfolios. However, also competing for Commissioners' attention would be functions dealing with sex and disability discrimination, human rights and race discrimination.

We note that in 1999 the UN Committee on the Elimination of Racial Discrimination urged Australia to reconsider its attempt at that time to abolish the role of Aboriginal and Torres Strait Islander Social Justice Commissioner. The Committee wanted to ensure that the absence of a specialist commissioner did not adversely affect the ability of the Commission to address the full range of continuing political, economic and social issues affecting this group of people.

This need for specialist expertise also remains a priority in the other currently identified portfolios.

Education v. advocacy role

The current structure of the Commission provides a strong educational and advocacy role for each of the Commissioners in relation to their individual portfolios. This has received significant community support since 1986. We are of that view that changes like enhancing the public education function, while of undoubted potential benefit, need to be weighted against the overall effective operation of the Commission. The focus needs to be on the overall benefits across all functions of the Commission.

Commitment to human rights

We note that the Commonwealth Government has made a number of recent statements reaffirming its commitment to human rights. This commitment should guide the direction of any revisions to the role of the Commission in supporting human rights and social justice in Australia. We therefore urge the government to examine carefully how any provisions of the Bill, particularly those identified above, will improve the Commission's effectiveness and credibility within the Australian and international communities.

Yours sincerely,

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