



FECCA Submission to the Senate Committee on Legal and Constitutional Legislation Inquiry into the Australian Human Rights Commission Legislation Bill 2003

April 2003

The Federation of Ethnic Communities' Councils of Australia (FECCA) thanks the Senate Committee on Legal and Constitutional Legislation for the opportunity to comment on the *Australian Human Rights Commission Legislation Bill 2003*. It is only through avenues such as this Inquiry, that FECCA can advocate on behalf of its constituency on important matters of public policy such as the far reaching amendments to the structure and powers of the Human Rights and Equal Opportunity Commission (HREOC) that are envisaged in this Bill.

Statement of FECCA Principles

FECCA is the national peak body representing Australians from culturally and linguistically diverse backgrounds (CLDB). FECCA's role is to advocate, lobby and promote issues on behalf of its constituency to government, business and the broader community.

FECCA's organisational principles are: Access and Equity; Community Harmony; and Human Rights. FECCA believes these principles should be integrated into the core business of the nation because they have direct relevance and benefit to the entire community.

FECCA's policies are that:

- Australian Multiculturalism has been successful in fostering social harmony, inclusiveness and acceptance. This must continue to be the foundation upon which our society is built;
- all Australian citizens have the equal right to access services and information about government and non-government services that should not exclude on the grounds of language, culture, religion, disability and geographic proximity, and age; and
- all Australians should be protected from racial, sexual, religious and age-based discrimination or abuse.

General Comments

FECCA is concerned at the manifold amendments that are proposed in the *Australian Human Rights Commission Legislation Bill 2003* that seek to alter the structure and appear to diminish the powers and protection afforded by HREOC as it is presently constituted. These changes range from a superficial renaming of the Commission as the Human Rights Commission (HRC), to measures that will significantly impact on its ability to function as the principal advocate for human rights in Australia.

FECCA believes that the Commission fulfils a vital role within the Australian polity as a watchdog for human rights. It represents one of the checks and balances on the power of the executive in our robust democratic system of government.

Comments on Specific Issues

Power of the Commission to intervene in court proceedings, which involve human rights issues

FECCA is most concerned at the ramifications that will inevitably stem from the proposed requirement for the Commission to either obtain the approval of the Attorney-General for the exercise of its power to seek leave to intervene in court proceedings (if the President of the new Commission is not, and was not immediately before appointment as President a federal Judge), or notify the Attorney-General of the proposed intervention (if the President of the new Commission is, or was immediately before appointment as President, a federal Judge). This amendment, if passed, will effectively remove the Commission's independent status in the exercise of its intervention powers. It also has the capacity to politicise the commission, and to result in a potential for a conflict of interest if the Commonwealth is a party to court proceedings.

The Commission's intervention powers allow the Commission, with the leave of the court, to present written and oral arguments in court cases raising a human rights principle. It is our understanding the Commission has used these powers in some 35 cases before Australian courts and tribunals. The Commonwealth has been a party to proceedings in a number of those cases. These cases have included notably, the Tampa litigation, the IVF Case and more recently, the Full Family Court regarding the rights of transgender people to marry.

We are concerned at the obvious conflict of interest that will exist if the new Commission has to seek leave from the Attorney-General to intervene in future cases that involve issues of human rights or discrimination where the Commonwealth is also involved in proceedings. It is unacceptable that the Commonwealth as party to the litigation, should also have a "gatekeeper" function in relation to potential interveners.

We also question the rationale that is offered by the Government that requires the new Commission to seek the Attorney-General's approval for the exercise of its intervention powers. The Government seeks to ensure that the intervention function is only exercised after the interests of the community, in the Attorney-General's opinion, have been taken in account. We argue that this is arbitrary and highly subjective, and will have the effect of politicising the Commission and undermining its independence.

Executive Structure of the Commission and the Office of the Race Discrimination Commissioner

The executive structure of the Commission is to undergo significant changes as a consequence of amendments in the Bill. The Bill proposes that the existing positions of the specialist portfolio Commissioners be abolished and replaced by three generalist Commissioners, with the office of the President of the Commission to be retained. The Bill suggests that the new executive structure and educative priorities of the Commission will obviate the old positions. The proposed new "collegiate structure" is apparently intended to provide the Commission with a greater flexibility to deal with human rights issues which cut across the portfolio boundaries of the existing specialist Commissioners.

We maintain that altering the existing executive structure of the Commission in such a manner is a retrograde step. This measure is unnecessary and unproductive. In particular, FECCA contends that the proposal in the Bill to amend the *Race Discrimination Act 1975* to remove the existing position of Race Discrimination Commissioner is ill conceived. We submit it is essential that there should be one person who is publicly designated as the Commissioner responsible for protecting the right of all Australians to live in freedom from discrimination and vilification on the ground of ethnicity or race.

We consider the Office of Race Discrimination Commissioner to be a crucial and irreplaceable strut of our multicultural society. We fear that by removing the office of Race Discrimination Commissioner the Commonwealth is sending the wrong message to the community.

We therefore submit that the Bill should be amended to preserve the distinctive office of Race Discrimination Commissioner. In our view the Commissioner should have a special expertise in the area of race relations and have strong linkages with CLDB communities. Also, in addition to educative function, the Commissioner should have the power to receive complaints, and to provide information to complainants about the remedies provided by the Federal Court, and the associated procedures.

Educative role of the new Commission

FECCA acknowledges and commends the commitment by the Commonwealth to human rights education. The adoption of the new Commission's by-line – *human rights – everyone's responsibility* – is an important symbolic measure. A sense of collective responsibility must play an

important role in advancing human rights. We believe human rights are best promoted by educating people to understand their responsibilities, as members of the Australian community, to respect other peoples' human rights, and in turn, have their own rights respected. It should be noted, however, that the educative role is already one of the major functions of HREOC.

Summary of Recommendations

Our submissions are as follows:

- The Commission should have an independent right to intervene in court proceedings without the requirement of the Attorney-General's consent.
- The Office of Race Discrimination Commissioner should be retained as an essential component of a new Human Rights Commission.
- We endorse the proposal to make education and dissemination of human rights the central focus of the new Commission's functions. However, this should not be at the expense of the Commission's role as a human rights watchdog.

We hope that this submission will of assistance to the Committee. We would of course be happy to provide further information and give evidence before the Committee if required.

Yours Sincerely,

Abd Malak
Chairperson
FECCA
24 April 2003