

ANTaR SA



Australians for Native Title and Reconciliation, SA Inc.

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24 April, 2003

To: Senate Legal and Constitutional Legislation Committee

Re: Inquiry into the provisions of the Australian Human Rights Commission Legislation Bill 2003

Submission to inquiry

I write on behalf of ANTaR SA, (as its Co-ordinator) to express deep concern about the proposed Australian Human Rights Commission Legislation Bill 2003.

This is a very brief submission, in which I am unable to provide substantial supporting argument at this stage. I will list some major concerns for your committee's consideration.

1 - Proposal for 'generalist' Human Rights Commissioners

The proposal in the Bill to dis-establish the existing specialist Commissioners is a measure of great concern. We believe that given the continuing difficulties and inequities faced by Indigenous Australians, and other 'non-mainstream' Australians, it is most apt to retain professionals with specialist knowledge to try to keep Australian governments, and the wider 'mainstream' society, accountable to groups and individuals who find that they are treated inhumanely in Australia.

In a sense, our particular interest is with Indigenous Australians. Given that Indigenous Australians continue to be the most marginalised group in Australia, and given that the realities of Indigenous people remain invisible to too many Australians (including very highly placed Australians) it is necessary that an appropriately qualified person (or people) be empowered to undertake the functions performed by the current Aboriginal and Torres Strait Islander Social Justice Commissioner at the Human Rights and Equal Opportunities Commission. We think that a 'generalist' commissioner, as per proposed in the Bill, would not be able to perform the current functions (which ought to remain as a minimum in our view) effectively. Such an arrangement would most likely result in work of an inferior quality to that presently conducted.

The person who is to carry out the functions of the present Aboriginal and Torres Strait Islander Social Justice Commissioner needs to have a deep knowledge of the situation of the Indigenous peoples of Australia. The person should be an Indigenous Australian.

We are concerned that the proposals are motivated by a desire by Government to reduce the level of scrutiny currently enabled by the present structure and arrangements.

2 - Proposal to make education, dissemination of information and assistance central functions of the new Commission.

To the extent that this proposal waters down and weakens the work of the current HREOC to maintain a brief of monitoring and reporting on the human rights enjoyed, or otherwise, by various identifiable minority groups in Australian society, it is a proposal of great concern. It seems to be part of the package to reduce critical scrutiny of the policies,

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legislation and operations of Government in this country. Given the nature of some major events, government policy and legislation in Australia over the past few years, it is critical that we maintain institutions for a healthy civic society. Having rigorous public debate about public issues is a fundamental mark of a healthy democracy. Moves to reduce the capacity for such debate are of deep concern (and of deep irony in the current international context).

3 - Proposal to require the Commission to obtain the Attorney-General's consent before exercising its power to seek leave to intervene in court proceedings (unless the President was a federal Judge immediately before appointment, in which case the Attorney-General must be notified)

This measure seems pretty clearly aimed at reducing the level of criticism and scrutiny of the Government. It seems to tamper with the reasonable and appropriate separation of powers in our system of Government by the Government of the day being able to reduce the capacity for critical analysis of particular issues involved in specific court proceedings. To the extent that the HREOC is an independent quasi-legal body it is of concern that there are proposals to enable the Government of the day to have greater determinative control over that body. It seems like another measure contrary to the qualities of a healthy, vibrant, modern democracy.

4 - Proposal to remove HREOC's power to recommend the payment of damages or compensation following inquiries into certain types of complaints.

As I understand it, the HREOC has quite limited powers at present. To the extent that HREOC's powers are quite limited, it is perhaps a little odd to be watering down its powers. However, unfortunately time has not permitted a more detailed look at this aspect of the Bill.

Overall, the nature of the proposed Bill seems to go against what might be considered qualities that characterise a healthy democracy. If Australia wishes to propound to the world the virtues of democracy, then we ought to practice what we preach, in practice as well as in rhetoric.

Yours sincerely,

Glenn Giles

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