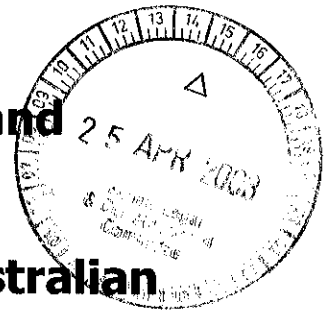


**Submission to the Senate Legal and
Constitutional Committee**



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

Prepared and Submitted by:

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**Authorised on behalf of the Children by Choice Management
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A handwritten signature in black ink, appearing to read "Cait Calcutt".

**Cait Calcutt
Coordinator**

Children by Choice has a number of concerns regarding the proposed provisions of the Australian Human Rights Commission Legislation Bill 2003.

1. Intervention Power by the Attorney General

We are opposed to the proposed provision that will require the Commission to obtain the Attorney General's approval prior to seeking leave from a court and/or tribunal to intervene in proceedings (unless the Commission President is a current or former High Court or Federal Court Judge and then written notice must be given with reasons for intervention within reasonable timelines).

This provision will allow the government to exercise direct political interference in the Commission's activities. This will undermine the Commission's role as an independent watchdog and the protector of the human rights of Australians. In many cases, the Commission has used this power to ensure the human rights of Australian citizens and residents in the face of government actions that may transgress these.

In the recent 'Al Masari' case in the Federal Court the Commission made submissions arguing for the application of international human rights principles with regard to Australia's immigration detention system. The Commission's submissions were contrary to those of the Commonwealth Government. The Federal Court largely accepted the Commission's arguments. This case highlights the importance of the independent right of the Commission to intervene in court cases. Under the proposed provision, it is possible that the Attorney General would have vetoed a request by HREOC to intervene in a case such as "Al Masari".

The Commission has used its intervention powers in 35 Cases before courts and Tribunals. No court has ever rejected an application by the Commission to intervene. This suggests that the commission has not overused its capacity to seek leave to intervene and therefore 'gate keeping' by the Attorney General is not required.

The Commonwealth Government has been a party in 18 of the 35 cases in which the Commission has intervened, and in 16 of these cases the Commission made submissions contrary to those of the Commonwealth. This illustrates clearly that there is a conflict of interest for the Attorney-General as First Law Officer of the Commonwealth in deciding who should be allowed to seek the court's leave to intervene in matters where the Commonwealth is a litigant (usually a respondent). Government actions are sometimes called into question from a human rights perspective and allowing the Attorney-General to veto the Commission's intervention capacity undermines the protection of human rights in Australia.

The proposed provision is contrary to the United Nations' Principles Relating to the Status of National Institutions, which set out international minimum standards

for national human rights institutions, which Australia assisted in developing (the Paris Principles, developed in October 1991 and endorsed by the General Assembly in 1993 – resolution 48/134). These principles provide that such institutions shall “Freely consider any questions falling within its competence, whether they are submitted by the Government or taken up by it without referral to a higher authority, on the proposal of its member or of any petitioner.” These principles also stress the importance of the independence of the National Human Rights Institutions from executive government.

2. New executive structure

Children by Choice is opposed to the replacement of the identified portfolio commissioners (Human Rights, Sex, Race, Aboriginal and Torres Strait Islander Social Justice and Disability) with three general Human Rights Commissioners who will have overlapping areas of responsibility which are not clearly defined.

We note the concerns that the current structure may not be able to take into account new areas of responsibility, such as age discrimination, but do not agree that the proposed structure will be able to do this effectively either. Instead, it is preferable that additional commissioners be added to the current structure, for example the addition of an Age Discrimination Commissioner, in line with new developments in government legislation and evolving social concerns.

The proposed restructure removes the focus on the portfolio areas and there is no guarantee about how the Commission’s resources will be allocated under the generalist commissioners or what areas will be the focus of the advocacy and educational work.

Children by Choice is particularly concerned about the removal of the Sex Discrimination Commissioner role. The Sex Discrimination Commissioner has been instrumental in raising and addressing important human rights issues for Australian women. The work undertaken by the Sex Discrimination Commissioner on issues relating to Pregnancy and Work, Paid Maternity Leave and Sexual Harassment has been significant in advancing the national debate and focusing government’s attention on these crucial equal opportunity issues in Australia. Under the new structure it is not clear whether such issues will continue to be properly resourced and prioritised, particularly given the reduced number of commissioners. Children by Choice believes that the Commission through the maintenance of a specialist Sex Discrimination Commissioner can best address issues affecting women’s equal opportunity and human rights. We also support the retention of the other current specialist commissioners.

3. Change in Functions of the Commission to ‘ education, dissemination of information and assistance’

Children by Choice is opposed to the reordering of the functions of the Commission. While we recognise the importance of education in promoting increased acceptance and understanding of human rights, the Commission must retain a strong mandate and emphasis on improving human rights and addressing discrimination through research, policy development and advocacy, legal intervention, complaint handling and conciliation.