

Australian Human Rights Commission Legislation Bill



**A Submission to the
Senate Legal and Constitutional Legislation Committee Inquiry**

by FTM Australia

April 2003



FTM Australia

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Dear Senators,

Senate Legal and Constitutional Legislation Committee Inquiry into the provisions of the Australian Human Rights Commission Legislation Bill 2003

Summary

RECOMMENDATION 1

The Senate must reject the proposal that the Commission be required to seek the Attorney-General's permission before intervening in court proceedings.

RECOMMENDATION 2

The Senate must reject the proposal to remove specialist Commissioners, along with their specialist knowledge and expertise to Australian men and women.

RECOMMENDATION 3

The Senate must reject the proposal to remove the commission's power to recommend damages.

RECOMMENDATION 4

The Senate must reject the proposal to change any part of the name of the *Human Rights and Equal Opportunity Commission*.

FTM Australia

FTM Australia (FTMA), is a nationwide support and information network, and national representative body, to provide information and support to the broad community of men of physical difference requiring medical treatment as well as other male-identified individuals and those affirming their masculine identity, their partners and families and the wider community.

FTM Australia represents men of physical variation whom nevertheless lead typical lives of Australian men with families, children, careers and who seek to maintain their rights and responsibilities as any other Australian men with quiet dignity.

Introduction

On 27 March 2003, the Attorney-General introduced the *Australian Human Rights Commission Legislation Bill 2003* (the Bill) which FTM Australia submits proposes a significant erosion of human rights protection in Australia.

The men whom FTM Australia represents, and indirectly their families, are vulnerable to systemic human right abuses due to their physical variation particularly by the current government.

The Commission as Australia's peak human rights organization stands to suffer significant detrimental impact by the provisions of the *Australian Human Rights Commission Legislation Bill 2003*, due to substantial reform of the Human Rights and Equal Opportunity Commission, including:

1. requiring the Commission to obtain approval of the Attorney-General before intervening in court proceedings;
2. loss of specialised commissioners;
3. removal of the commission's power to recommend damages or compensation;
4. and renaming as the Australian Human Rights Commission.

Each of these proposals is addressed below.

Approval by the Attorney-General of commission intervention in court proceedings

RESPONSE

The Attorney-General's recent appeal against one of our members ("Kevin") and his right to marry a woman ("Jennifer") (see: *The Attorney-General for the Commonwealth and "Kevin and Jennifer" and Human Rights and Equal Opportunity Commission [2003] FamCA 94*) demonstrates how the provisions of the *Australian Human Rights Commission Legislation Bill 2003* stood to have undermined the human rights of not only one of our members "Kevin", but the human rights of his wife "Jennifer", as well as his two young children especially if an unforeseen tragedy were to occur in this family.

Additionally, we submit that in cases such as the above, where the Commonwealth is a party to proceedings, the Attorney-General clearly would have had a conflict of interest and equal opportunity for this family could have been in serious jeopardy.

The court already assumes an appropriately central and proficient role when determining what it needs in terms of independent views and in our view, the court is sufficiently appropriate as a gatekeeper in terms of potential interveners. In the above example, the Family Court of Australia invited the intervention of the Human Rights and Equal Opportunity Commission.

We submit that the proposal for the Attorney-General to approve any intervention by the Commission in court proceedings, will perceived by the community as a serious erosion of human rights protection.

We respectfully remind the Committee that the Senate Legal and Constitutional Committee has already recommended a similar provision be removed from an earlier bill introduced by the Government.

RECOMMENDATION 1

The Senate must reject the proposal that the Commission be required to seek the Attorney-General's permission before intervening in court proceedings.

Loss of specialised commissioners

RESPONSE

The Bill significantly alters the structure of the *Human Rights and Equal Opportunity Commission* from five Commissioners to three Commissioners resulting in overlapping responsibilities, which are not clearly identified.

We believe that the reduction of specialist Commissioners will result in the Commission becoming less efficient and less effective to Australians who require specialist policy advice and assistance from the Commission. We respectfully submit that reducing the vital expertise of the Commission from five to three Commissioners only demonstrates an ignorance of the needs of modern Australia accurately assess and action complaints.

In our modern Australian society, with increasing complexities of gender, ethnicities, sex, disabilities, technologies, employment opportunities, cultures and population within community, government and business sectors, there is no value in *reducing the vital expertise* of the Commission and reducing its scope and resources. The issues involved in direct, indirect and systemic discrimination are complex and often require specialist knowledge and critical expertise in the determination and investigation of human rights matters.

RECOMMENDATION 2

The Senate must reject the proposal to remove specialist Commissioners, along with their specialist knowledge and expertise to Australian men and women who require specialist policy advice and assistance from the Commission.

Removal of the Commission's power to recommend damages or compensation

RESPONSE

The proposal to remove the power of the Commission to recommend damages causes us great concern. We respectfully submit that to leave Australians who have experienced violation of their human rights only with recourse to the federal court system whose formal structure is foreign to many ordinary Australians and substantially beyond the financial reach of the ordinary Australians, works against the principle of 'equal opportunity' in Australian society.

While it would appear to us that while the power of the Commission's is simply that of recommendation and not enforceable, its symbolic power is still of value to the community.

RECOMMENDATION 3

The Senate must reject the proposal to remove the commission's power to recommend damages.

Renaming as the Australian Human Rights Commission

RESPONSE

We submit that by renaming the *Human Rights and Equal Opportunity Commission* to the *Australian Human Rights Commission* significantly waters down not only the international reputation of the Commission but also the importance of the Commission's in promoting both equality and equality of opportunity.

We believe that by removing the words "equal opportunity" from the name of the Commission, implies that many of the rights of a democratic society protected under the Human Rights and Equal Opportunity Commission Act are no longer available as 'equal opportunities' to ordinary Australians such as ourselves.

We respectfully submit that the proposed new title emphasizes to us, that the Government desires to emasculate whatever limited legislative protections there are already for disadvantaged Australians in the *Human Rights and Equal Opportunity Commission*.

RECOMMENDATION 4

The Senate must reject the proposal to change any part of the name of the *Human Rights and Equal Opportunity Commission*.

Conclusion

Many of the Bill's proposals are at odds with the *Human Rights and Equal Opportunity Commission's* role as an independent body and the peak human rights organization in Australia responsible for monitoring and promoting (and to be seen as promoting) Australia's compliance with its human rights obligations with impartiality and effectiveness.

FTMA submits that the Bill significantly undermines the Commission's independence in the exercise of its "intervention powers" and in its resourceful and expert specialist knowledge to effectively exercise valuable commitment to principles of equal opportunity, proficient application of specialist knowledge and the empowerment of human rights in the Australian community.

FTMA submits that the Bill proposes a significant erosion of human rights protection in Australia, especially upon members of Australian society who, by their difference or variation, may require the engagement of HREOC.

FTMA calls upon the Commonwealth parliament to reconsider this bill and maintain the independence of the HREOC and portfolio Commissioners.

Yours sincerely

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