



amnesty international australia



Overview of the Submission to the

Senate Legal and Constitutional Legislation Committee

regarding the

**INQUIRY INTO THE PROVISIONS OF THE AUSTRALIAN HUMAN
RIGHTS COMMISSION LEGISLATION BILL 2003**

Submitted by

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***The global defender of human rights
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INTRODUCTION

Amnesty International is a worldwide campaigning movement that works to promote all the human rights enshrined in the *Universal Declaration of Human Rights* and other international standards. The organisation has around one million members and supporters in 162 countries and territories. Amnesty International is impartial and independent of any government, political persuasion or religious belief, and is financed largely by subscriptions and donations from its worldwide membership.

Amnesty International has been and continues to be closely involved in monitoring the development and activities of National Human Rights Institutions. Amnesty International is concerned that the *Australia Human Rights Commission Legislation Bill 2003* is a retrograde step in the development of Australia's National Human Rights Institution and sends a contrary message in relation to the strengthening of such bodies internationally.

In 1998, the Government introduced the *Human Rights Legislation Amendment Bill (No 2) 1998* ("the 1998 Bill") to Parliament. The 1998 Bill proposed various changes to the Human Rights and Equal Opportunity Commission (HREOC). The 1998 Bill was considered by the Senate Legal and Constitutional Legislation Committee in July and August of 1998. Amnesty International Australia made a submission to that inquiry.

The *Australia Human Rights Commission Legislation Bill 2003* ("the current Bill") was introduced to the House of Representatives on 27 March 2003. The current Bill was referred to the Senate Legal and Constitutional Legislation Committee on the same date. In many ways, the current Bill is very similar to the 1998 Bill. Given the similarities between the 1998 and the 2003, Amnesty International Australia reaffirms the concerns raised in its 1998 submission and now seeks to elaborate on those specific concerns.

Amnesty International wishes to be represented before the Committee to speak to this submission in Melbourne. The organisation can be contacted on (03) 8420 1216

SUMMARY

Amnesty International Australia's main concerns with the current Bill are:

- That the requirement that the Attorney-General approve any intervention by the Commission undermines the independence of the Commission, is contrary to international standards and sends a message to the international and domestic community that Australia lacks commitment to human rights; and
- That the restructuring of the Commission generally and in particular the removal of the particular reference to the Aboriginal and Torres Strait Islander Social Justice Commissioner is a backwards step in addressing human rights concerns.

While Amnesty International welcomes the reference of this legislation to the Committee, Amnesty International considers the exceedingly short period for public consultation to be completely inadequate. It is unreasonable to expect members of the public and community organisations with limited resources to prepare a full submission in such a short time period. This bill deserves more adequate scrutiny.

As a consequence of this short period for preparation of the submission, Amnesty International Australia has not yet been able to obtain final approval for the Amnesty International Australia submission from the International Secretariat of Amnesty International in London. Accordingly this is an overview of the submission. The full submission will be provided early next week.

Amnesty International is concerned that the Committee only plans to hold one day of public hearings in Sydney. Amnesty International welcomes the opportunity afforded by public hearings and is concerned that the work of the Committee will be impacted by the limited submission time and limited opportunity to hear public opinion. Amnesty International recommends that there be several public hearings and that they be held in other capital cities.

THE POWER TO INTERVENE AND INDEPENDENCE

The central concern Amnesty International has with the current Bill is that it undermines the independence of Australia's National Human Rights Institution. This is problematic in itself and also contrary to the aspirations of the *Paris Principles*.

The role of a National Human Rights Institution is not to support the policies of its national government but instead to ensure that human rights that are recognised nationally and internationally are safeguarded. Accordingly it is likely and clearly foreseeable that the government of Australia will continue to have an interest in legal proceedings in which the National Human Rights Institution may have a legitimate reason to intervene. The Attorney-General cannot be an independent arbiter of community interests in cases where the Government is a party to, or has any interest in, the proceedings. The best guarantee of HREOC's independence, and thereby of community interests, is to continue to allow HREOC to determine for itself when it will seek leave of courts to intervene and for the courts to retain the ability to determine for themselves whether HREOC has something valuable to contribute. Limiting the powers of HREOC to intervene will reduce its independence and therefore inhibit rather than promote broader community interests.

Relevant International Standards

Amnesty International remains concerned that the amendments proposed are contrary to international standards in undermining the independence of HREOC. The relevant international standards are set out below.

Paris Principles

The *Paris Principles* set out best practice standards for National Human Rights Institutions. The *Paris Principles* were adopted by the United Nations General Assembly in 1993.¹ They are guiding principles as to how National Human Rights Institutions should be established and maintained in order to protect their independence, integrity and effectiveness in the promotion and protection of human rights. The *Paris Principles* are minimum standards for National Human Rights Institutions.

Independence is central to the *Paris Principles* and cannot be over-emphasised. This is evident throughout the paragraphs of the *Paris Principles*. In their 2002 resolution on National Human Rights Institutions, the United Nations Commission on Human Rights noted, "with satisfaction, the efforts of those States that have provided their national institutions with more autonomy and independence."² The Office of the High Commissioner for Human Rights describes how National Human Rights Institutions are able to "take a leading role in the field of human rights" owing to their separation, "from the responsibilities of executive governance and judicial administration."

¹ Commission on Human Rights resolution E/CN.4/RES/1992/54 of 3 March 1992; annexed to General Assembly resolution 48/134 of 20 December 1993

² Commission on Human Rights resolution E/CN.4/RES/2002/83, para. 6

By maintaining real and perceived distance from the government of the day, such a body can make a unique contribution to a country's efforts to protect its citizens and to develop a culture respectful of human rights and fundamental freedoms.³

International Conferences and Standards

There have been various international conferences for National Human Rights Institutions. These conferences produce Declarations or Statements of Conclusions. These conferences include the International Conference for National Institutions for the Promotion and Protection of Human Rights;⁴ the Annual Meeting of the Asia Pacific Forum of National Human Rights Institutions⁵ and the Conference of African National Human Rights Institutions.⁶ In their Statement of Conclusions or Declarations, such conferences generally recognise and reaffirm the role of the *Paris Principles*.

The Office of the High Commissioner of Human Rights

In a recent report of the Secretary-General of the United Nations to the Commission on Human Rights entitled *Effective Functioning of Human Rights Mechanisms: National Institutions and Regional Arrangements*, the Secretary-General stated that

During 2003, OHCHR [the Office of the High Commissioner of Human Rights] will invite national institutions to devote attention to the importance of the "Paris Principles" adopted unanimously by the General Assembly in 1993, and to reaffirm their validity and the necessity to fully comply with them. Particular attention will also be paid to the role of national institutions in the pursuit of human dignity, including for persons with disabilities and others facing discrimination.⁷

The Australian Government

The Australian Government also works extensively with other governments, particularly those in the Asia-Pacific region, to encourage countries to establish their own National Human Rights Institutions. Australia has played a central role in the establishment and funding of the Asia Pacific Forum of National Human Rights Institutions. Full members of the Forum must comply with the *Paris Principles*. These are stated to be "minimum standards".⁸

Application of the International Standards to the Proposed Intervention Amendment

The current Bill leads to a retrograde step in terms of HREOC's compliance with the *Paris Principles*. The current Bill is a move away from fulfilling the norms to which the principles aspire.

³ Office of the High Commissioner for Human Rights *Fact Sheet No. 19 National Institutions for the Promotion and Protection of Human Rights* (www.unhchr.ch/html/menu6/2/fs19.htm, Geneva 1993)

⁴ The Sixth of these was held in Copenhagen and Lund from 10th to 13th April 2002 and produced *The Copenhagen Declaration*.

⁵ The Seventh of these was held in New Delhi, India from 11th to 13th November 2002 and produced a *Concluding Statement*.

⁶ The Third of these was held in Lome, Togo from 14th to the 16th of March 2001 and produced *The Lome Declaration*.

⁷ Report of the Secretary-General *Effective Functioning of Human Rights Mechanisms: National Institutions and Regional Arrangements National institutions for the promotion and protection of human rights* 31 December 2002 E/CN.4/2003/110 paragraph 59

⁸ See "About the Forum" at www.asiapacificforum.net

The relevant paragraphs of the *Paris Principles* appear under the headings "Competence and Responsibilities" and "Methods of operation". Great caution must be exercised in taking any action which may limit the mandate of the Commission, whether by obliging it to seek leave of the Attorney-General before intervening in legal proceedings, or by reducing the number of Commissioners. Any such action is certainly against the spirit, if not also the letter, of the *Paris Principles*.

It is the position of Amnesty International Australia that an independent and strong national human rights organisation is a fundamental and essential element in the recognition and safeguarding of human rights enshrined in the *Universal Declaration of Human Rights* and other international instruments. Independence is essential to the effective operation of such an organisation. The proposal that the Attorney-General be required to give approval before the Commission seeks leave to intervene undermines the independence of the Commission and decreases its opportunities to contribute to debate, discussion and jurisprudence around human rights issues.

Furthermore, removing any element of the independence of Australia's national human rights body sends a message to the international and domestic community that Australia lacks commitment to human rights.

RESTRUCTURING

The current Bill seeks to amend the *Human Rights and Equal Opportunity Commission Act* 1986 (the *HREOC Act*) to remove the portfolio-specific Commissioners. Amnesty International Australia is concerned that the removal of the portfolio specific Commissioners may detract from the Commission's effectiveness in this day and age of highly complex human rights controversies in Australia.

Amnesty International is specifically concerned at the proposal to remove the specific reference to the Aboriginal and Torres Strait Islander Social Justice Commissioner. The *HREOC Act* currently requires the Aboriginal and Torres Strait Islander Social Justice Commissioner to have significant experience in community life of Aboriginal persons or Torres Strait Islanders.⁹ There is no such requirement for any of the Commissioners under the current Bill.

In 2000 the United Nations Committee on the Elimination of Racial Discrimination (CERD) expressed concern about the Government's previous reform proposals in respect to the abolition of the role of the Aboriginal and Torres Strait Islander Social Justice Commissioner.¹⁰

FOCUS ON HUMAN RIGHTS EDUCATION

Amnesty International supports the emphasis in the current Bill on human rights education. Human rights education is also emphasised in paragraphs 3(f) and 3(g) of the *Paris Principles*.

Such a focus is especially important at this time given that it is currently the United Nations' Decade for Human Rights Education, 1995-2004. However such work must not be the sole focus of the Commission. The Commission already has a strong emphasis on human rights education and promotion as one of its core responsibilities.¹¹

⁹ Section 46B(2)

¹⁰ Committee on the Elimination of Racial Discrimination's *Concluding Observations* on Australia 2000, para. 11

¹¹ *Human Rights and Equal Opportunity Act* ss11(1)(g) & (h); *Racial Discrimination Act* ss20(1)(b) & (c); *Sex Discrimination Act* ss48(1)(b) & (e); and the *Disability Discrimination Act* s67(1)(g) & (h).