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From: Jan Barnett [janbarnettrs@hotmai.com]

Sent: Monday, 28 April 2003 9:42 AM

To: Legal and Constitutional, Committee (SEN)

Subject: Inquiry into the provisions of the Australian Human Rights commission Legislatio

Josephite Justice Network
5 Alexandra Ave
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24 April 2003

Mr Peter Hallahan
Secretary
Senate Legal and Constitutional Committee
Room S1.61, Parliament House
Canberra ACT 2600

Dear Mr. Hallahan ,

Please find attached a submission from the Josephite Justice Network regarding the provisions of the Australian Human Rights Commission Legislation Bill 2003.

This is a significant proposal and it is our sincere hope that the Government will consider the implications of the proposed Bill very carefully before embarking on a course which clearly has significant implications for the whole of the Australian community.

Yours sincerely,

Jan Barnett rsj

(for the Committee)

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28/04/2003

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9 Mount St
North Sydney NSW 2060

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SUBMISSION TO THE REFERENCE COMMITTEE
ON THE INQUIRY INTO THE PROVISIONS OF THE AUSTRALIAN
HUMAN RIGHTS COMMISSION LEGISLATION BILL 2003

Submitted by
Josephite Justice Network
9 Mount St
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24 April 2003

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**SUBMISSION TO THE REFERENCE COMMITTEE
ON THE *INQUIRY INTO THE PROVISIONS OF THE
AUSTRALIAN HUMAN RIGHTS COMMISSION
LEGISLATION BILL 2003***

INTRODUCTION

This submission is presented on behalf of the Josephite Justice Network, a group established by the Sisters of St Joseph. The five congregations of the Sisters of St Joseph (numbering fourteen hundred religious women) were founded in the mid- nineteenth century by Mary MacKillop and Julian Tenison Woods, to work with those suffering from poverty and social disadvantage in our society. The congregations have a long history of involvement with those most marginalised in the community (particularly families and children) in the areas of education, health and welfare.

FOCUS OF THIS SUBMISSION

This submission will focus both on the general restructuring of the Commission and more specifically on the proposed abolition of the role of the Aboriginal and Torres Strait Islander Commissioner. The abolition of such a key position would have detrimental effects on the human rights of Indigenous Australians, and in so doing would undermine the dignity of all Australians.

RESTRUCTURING OF THE COMMISSION

The Bill under discussion, which seeks to restructure the Human Rights and Equal Opportunity Commission, proposes to create three generalist Human Rights Commissioners to replace the existing Specialist Commissioners. If passed, the legislation would replace the HREOC function of hearing complaints under specific laws the prohibit stated acts or areas of discrimination with a generalist function of education

and dissemination of information. This new Commission would need in addition the permission of the Attorney General if it were to intervene in any court proceedings. The general restructuring of the Commissions is of concern because the replacement of the current Commission by three generalist Commissioners would inevitably undermine the impact of particular issues of human rights currently dealt with by specialists in specific areas. It would weaken the power of the Commission. It would effectively curb the independence of the new body. The removal of 'Equal Opportunity' from its title indicates the undermining of the current and very important function of the present Commission – to work for equal opportunity for all, but especially for those whose rights are undermined in contemporary Australian Society.

To appoint three generalist commissioners with responsibility for such diverse and demanding areas as Aboriginal and Torres Strait Islander Social Justice, Race Discrimination, Sex Discrimination, Disability Discrimination and Human Rights, would not only undermine the importance of each of these areas, but would also set up for failure even the most competent of generalist Commissioners.

ABORIGINAL AND TORRES STRAIT ISLANDER SOCIAL JUSTICE COMMISSIONER

Specifically, under this Bill, none of the three Human Rights Commissioners would have particular responsibility for Aboriginal and Torres Strait Islander social justice issues. All the more remarkably, the Bill removes the present (and essential) obligation that the person appointed to the position of Aboriginal and Torres Strait Islander Social Justice Commissioner be required to have significant experience in the community life of Aboriginal people or Torres Strait Islanders. None of the proposed generalist Human Rights Commissioners would be obliged to meet this requirement.

An understanding of, and commitment to, the needs and rights of Indigenous Australians is essential if long-term mandated objectives and strategies, supported by monitoring powers and real accountability are to occur. The work of a specific Commissioner,

promoting the human rights of Indigenous Australians is critical to improvements in health, employment, housing, education and rates of imprisonment. Substantive, rather than 'formal', equality, led and supported by an involved and committed Aboriginal and Torres Strait Islander Commissioner, would promote increased opportunities for families, and especially for young people, who embody our hopes for a united and vibrantly diverse Australia.

It was distressingly clear from the *Senate Hearings on the Progress of Reconciliation* that the abolition of this position would be both short-sighted and detrimental to any progress in the areas outlined above - areas essential to Reconciliation. The breakdown of Reconciliation ('practical' and otherwise) has been exacerbated by the abolition in the ministry of the Federal Government of a separate portfolio of Indigenous Affairs. The further deterioration that would be caused by the abolition of the role of Aboriginal and Torres Strait Islander Commissioner would undermine significantly the national structure established to monitor Indigenous human rights.

HISTORY AND ACHIEVEMENTS

The position of Aboriginal and Torres Strait Islander Social Justice Commissioner was created in 1992, largely in response to the Royal Commission into Aboriginal Deaths in Custody and HREOC's National Inquiry into Racist Violence. The role was created specifically to ensure an ongoing national monitoring mechanism for the human rights situation of Indigenous peoples.

During a difficult period for the progress of Reconciliation, its successes have been many.

Its recorded achievements include:

1. Annual Social Justice Report to the federal Parliament (1993 - ongoing);
2. Annual Native Title Report to the federal Parliament (1994 - ongoing);
3. Social Justice package proposals (1995);
4. Review of Aboriginal Deaths in Custody 1991 -1996 (1996);
5. Co-Chair of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families and co-author of
7. Bringing Them Home Report (1997);
8. National Indigenous Legal Studies Curriculum (1998); revised 2002-03;

9. Member of the Indigenous negotiation team for Native Title Act Amendments
10. (1997-1998);
11. Tracking Your Rights community training packages (1998);
12. National Indigenous Youth Forum (1999);
13. Briefing of the UN Committee on the Elimination of Racial Discrimination about native title and racial discrimination (1999);
14. Briefing of UN treaty committees about indigenous issues in Australia (2000);
15. Co-convener of Moving Forward - national conference on stolen generations (2001);
16. Intervention in High Court Miriuwung Gajerrong case (2001);
17. Intervention in High Court Yorta Yorta case (2002);
18. Workshop on corporate responsibility and native title (2002);
19. Workshop on benchmarking reconciliation and measuring Indigenous disadvantage (2002).
20. Presentation at the Senate Hearing on the Progress of Reconciliation

Currently the Social Justice Commissioner promotes discussion and awareness of the rights of Indigenous peoples, and undertakes research and educational programs for the purposes of promoting respect for these rights. Under the proposed new Bill, these functions would be modified and simply maintained as general Commission functions, with the inevitable result that they would compete for attention with other functions dealing with sex and disability discrimination, human rights and race discrimination. In addition, the Bill gives no guarantees that a future Commission will be able to devote resources and attention to necessary Indigenous issues.

RECOMMENDATIONS FROM THE UN COMMITTEE

In 1999, the United Nations Committee on the Elimination of Racial Discrimination urged Australia to reconsider its proposal to abolish the Social Justice Commissioner's position. This was done in order to ensure that the absence of a specialist commissioner would not adversely affect the ability of the Commission to address in an adequate manner the full range of issues regarding indigenous peoples. These clearly warrant attention given the continuing political, economic and social marginalisation faced by the indigenous community of Australia (UN Doc: A/54/18,para.21(2)).

Recent Census and other data (especially that presented to the Hearing into the Progress of Reconciliation), indicate that there has been insufficient progress in addressing the needs of Indigenous Australians since 1992 when the need for a specialist Social Justice Commissioner was identified. In fact, the situation in many areas (e.g. contact with criminal justice processes, contact with care and protection systems, life expectancy and significant measures of health) has actually declined during the terms of office of this Government.

CONCLUSION

It is difficult to see how the new arrangements proposed by the Government will lead to greater justice for Indigenous Australians. Under current Government policies, the political and cultural climate have been characterised by injustice, poor relationships and an undermining of Indigenous law and culture. The lack of a separate portfolio for Aboriginal Affairs, and the subsequent minimisation of the Reconciliation process have rendered Aboriginal issues and rights either unimportant or simply invisible in the eyes of non-indigenous Australia.

The impetus towards Reconciliation has stalled at the national level, and the resultant conflict and polarisation in community debate has led to increasingly negative attitudes and prejudices in the broader community. National leadership has failed to sustain the process, or to initiate any long-term strategies, targets, benchmarks or monitoring procedures. Without such leadership, there is little chance that enduring reconciliation can be achieved. It is essential that the role of Aboriginal and Torres Strait Islander Commissioner be retained in order that the human rights of Indigenous Australians, not only be prevented from being further undermined, but be promoted wholeheartedly and with real determination.

The Sisters of St Joseph support the repeated calls for justice in all of these areas, and commit themselves to a continuation of support for Aboriginal families and their children as they navigate this difficult path into the Twenty-first Century.