

22 April 2003



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

Dear Sir,

Re: Amendments to the Human Rights and Equal Opportunity Act and Associated Legislation.

I write this letter by way of submission to the Committee. I would be happy to further assist the Committee by way of direct testimony should it so require.

There are two aspects of the proposed legislation I wish to address.

- 1. Introduction of a requirement for permission from the Attorney General to intervene in Court cases.*

The proposal to require permission of the Attorney General prior to intervention in Court cases goes to the heart of the independence of the Commission.

As I understand the legislation, the Commission has always had the ability to intervene with leave by its own motion. The use of this power has enabled the Commission to appear before the High Court, the Australian Industrial Relations Commission and other bodies to argue for the integration of Human Rights into all aspects of the Australian body politic. Notable examples have involved the rights of children with disabilities, the introduction of Family Leave provisions into awards, and freedom of speech issues.

The loss of the power to independently intervene would mean that only those cases supported by the Government of the day would be open for comment from an independent human rights perspective. Based on my experience as a Commissioner, governments of all political persuasions would, in my view, have found it irresistible to prevent such interventions from time to time. The loss of the ability to

independently intervene would seriously undermine the progressive implementation of Australia's national and international obligations in the area of human rights.

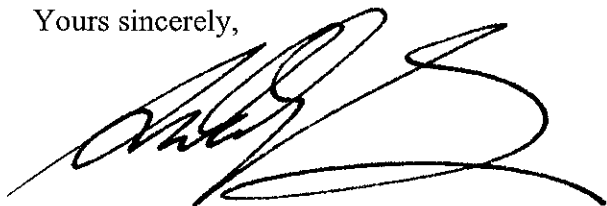
Since the introduction of changes consequent to the Brandy Case, the right to intervene has become even more significant. Having lost its power to determine cases consequent to Brandy, the Commission and Commissioners were given the power to intervene as an amicus in individual cases **arising from complaints** under the relevant Acts in the Federal Court or before Federal Magistrates. The prospect of having to seek case-by-case permission in the area of individual complaints raises a spectre that no reasonable person would contemplate in any other area of civil law. It would leave the implementation of domestically legislated human rights in the hands of those most in need of them and least likely to have the resources to attain them. Removal of the general right to intervene must raise this issue.

2. Abolition of the Sex, Race and Disability Commissioner positions.

Given the vicissitudes of Australia's federal system, States and Territories are the most active arena for the resolution of individual complaints of breaches of human rights. All States and Territories have adopted an approach of integrated human rights legislation. Within this environment the Commonwealth approach of specific commissioners for the areas most commonly complained of has been a real "value add" for the overall system in Australia. It has enabled a focus of analysis, action and results to be developed with solutions specific to the issues raised. Thus most of the work of the various Sex Discrimination Commissioners has concentrated on employment related issues as this is where most complaints have arisen. In the area of disability the concentration has tended to be on systemic issues of access including public transport, education and health. Again this has been as a result of the ability for specialisation under the current arrangements. The specialisation has been public and acknowledged.

What is being proposed is a Clayton's capacity to undertake this valuable work. In reality what the Government proposal appears to want to achieve is a cynical abolition of the positions that have created the public focus for issues it is uncomfortable with.

Yours sincerely,

A handwritten signature in dark ink, appearing to be 'Sue Walpole', written in a cursive, flowing style.

SUE WALPOLE
Former Sex Discrimination Commissioner
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St Kilda 3182
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