



24 April 2003



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The Secretariat
Senate Legal and Constitutional Committee
Room S1.61 Parliament House
CANBERRA ACT 2600

By Email: legcon.sen@aph.gov.au

Dear Senate Committee,

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

The Law Institute of Victoria ("LIV") welcomes the opportunity to comment on the Australian Human Rights Commission Legislation Bill 2003 ("the Bill").

The LIV is grateful that the Committee has agreed to extend the deadline for the Institute's submission to 5 May 2003 and we hope to be in a position to forward a detailed submission by 30 April 2003.

In the meantime, this letter summarises the key concerns that the LIV has regarding the Bill. The detailed submissions of the LIV are yet to be considered by the LIV Executive Committee or Council, and thus this summary is provided on that basis as an interim indication of the areas of concern.

The LIV objects to this Bill, and believes that it is not in compliance with the Government's stated policy of promoting and protecting human rights in Australia.

The LIV's main areas of concern, to be detailed further in the forthcoming submission, include:

the restriction of the Commission's power to intervene in Court proceedings unless first obtaining the approval of the Attorney-General, and the way in which this impacts upon the independence of the Commission;

the restructuring of the Commission and the removal of special purpose Commissioners, with the subsequent risk of devaluing particular areas of focus such as discrimination and human rights issues faced by particular groups;

- the removal of the power to recommend an award of compensation in discrimination matters and the way in which this impacts upon the effectiveness of the Commission; and

the shift in focus onto education and responsibility, which may distract the Commission from its compliance and individual complaint handling functions.

A particular focus of the LIV's submission will be the restriction on the Commission's independent right to seek leave of the Court to intervene in proceedings. The LIV believes that the reasons provided for justifying this restriction are inadequate, given the "gatekeeper" role already played by the Court in determining whether leave will be granted, and the Commission's adherence to its' *Guidelines for Intervention*.

Expanding the role of the Attorney-General in the intervention process raises issues of conflict of interest, and potentially restricts the circumstances in which the Commission may be able to exercise its role in promoting and protecting human rights by providing expert assistance to the Courts. This is especially of concern in matters where the Commonwealth Government is already a party to the proceedings. Further, this restriction affects Australia's compliance with the *Paris Principles* regarding the role of National Human Rights Institutions, which have been endorsed and supported by Australia for many years.

The above points will be detailed further in the LIV's full submission to the Committee.

The LIV would also welcome the opportunity for its representatives to appear before the Committee to speak to this submission, preferably in Melbourne.

Yours sincerely,



BILL O'SHEA
PRESIDENT