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TO: Mr Peter Hallahan 28 APR 2003

FAX: 02 6277 5794

FROM: Beverley Hill

SUBJECT: EOPHEA submission regarding the HREOC Bill

DATE: 24<sup>th</sup> April 2003

3 pages including cover sheet

Please find attached a submission from EOPHEA (Equal Opportunity Practitioners in Higher Education Australasia), regarding the current Inquiry into the provisions of the Australian Human Rights Commission Legislation Bill 2003.

A copy of this submission has also been sent by email.

regards

on behalf of EOPHEA

Beverley Hill  
Manager, Equity and Diversity

61 8 9380 1046

Mr Peter Hallahan

Secretary

Senate Legal and Constitutional Committee

Room S1.61, Parliament House

Canberra ACT 2600

Dear Mr Hallahan,

Please find below a submission from the Equal Opportunity Practitioners in Higher Education Australasia (EOPHEA) in relation to the *Australian Human Rights Commission Legislation Bill 2003* to amend the legislation under which the Human Rights and Equal Opportunity Commission performs its functions.

EOPHEA acts as a coordinating body for equity and diversity practitioners in higher education institutions across Australia and New Zealand and has significant collective experience in managing matters of unlawful discrimination and harassment. Its members are also highly experienced in developing and conducting education programs aimed at ensuring best practice work and study environments which value and promote diversity, social justice and human rights.

It is our belief that the independence of the Human Rights and Equal Opportunity Commission and its potential to defend human rights effectively is crucial to upholding social justice in Australia and, as importantly, being *seen* to uphold social justice in Australia.

We are concerned that the Bill significantly undermines the Commission's independence in the exercise of its 'intervention powers'. The Commission's intervention powers allow the Commission, with the leave of the Court, to present written and oral argument in legal proceedings involving human rights and discrimination issues. The Commission has used those powers in approximately 35 cases before Australian courts and tribunals and has never been refused leave to intervene. The Bill would require the Commission to obtain the Attorney-General's consent prior to seeking leave to intervene in such Court proceedings. We are concerned that the Bill as proposed could lead to a conflict of interest arising where the entity exercising the 'gate-keeper' function may also be a party to a dispute. It should be noted that in a number of the Commission's intervention cases to date, the Commonwealth has been a party to the litigation including the recent Full Family Court case regarding the rights of transgendered people to marry.

More fundamentally, we believe that such a proposal is at odds with the Commission's role as an independent body, responsible for monitoring and promoting Australia's compliance with its human rights obligations. We note that the Senate Legal and Constitutional Committee recommended a similar provision be removed from an earlier Bill introduced by the Government in 1998.

It is our understanding that the Bill also alters the structure of the Commission, to replace the identified portfolio Commissioners (who are currently responsible for the areas of Human Rights, Sex Discrimination, Race Discrimination, Disability Discrimination and the rights to social justice of Indigenous Australians) with three 'Human Rights Commissioners'. These three Human Rights Commissioners are to have overlapping responsibilities, but we are concerned that these are not

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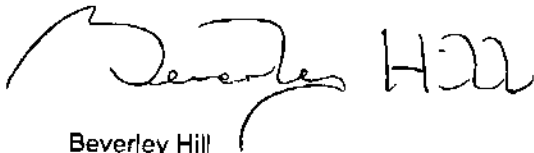
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clearly identified. The current structure of the Commission provides a strong educational and advocacy role for individual Commissioners and has received significant community support since 1986. Moreover, the current structure of specialist Commissioners serves to 'name' the priority areas that are the main focus of the Commission's work and, in so doing, sends a clear message that Australia is seeking to redress the social inequities that exist in this country. We are of the view that the justification of any changes proposed to this structure would need to demonstrate clear benefits.

We note that the Bill proposes restoring prominence to HREOC's public education function which it was forced to reduce almost to the point of elimination by reduction of government funding. We support this renewed emphasis on education provided that such a refocusing is not made at the cost of other functions currently carried out by the Commission, including advocacy and the monitoring of Australia's compliance with its human rights obligations.

In closing we note that the Commonwealth Government has made a number of recent statements reaffirming its commitment to human rights. We hope that this commitment will result in those provisions of the Bill which we consider to be problematic being re-examined to ensure that the Commission is empowered in a way that best positions it to support human rights and social justice in Australia.

Yours sincerely,



Beverley Hill

Manager, Equity and Diversity

University of Western Australia

on behalf of the EOPHEA National Convener

24<sup>th</sup> April, 2003