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28 April 2003

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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 Curtin University of Technology in relation to the *Australian Human Rights Commission Legislation Bill 2003* to amend the legislation under which the Human Rights & Equal Opportunity Commission performs its functions.

Curtin's commitment to ethical behaviour and social justice is embedded in its mission statement. The University is committed to the application of ethical principles and socially just practices throughout all aspects of University life.

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 in the Tampa litigation and in the recent Full Family Court case regarding the rights of transgender 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.

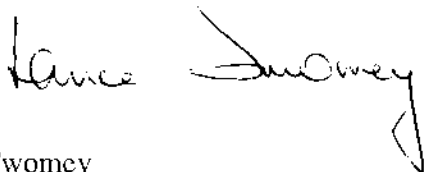
We note that the Senate Legal and Constitutional Committee recommended a similar provision be removed from an earlier Bill introduced by the Government.

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 of Indigenous people) with three "Human Rights Commissioners". Those three Human Rights Commissioners are to have overlapping responsibilities, but we are concerned that these are not 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. We are of that view that any changes proposed to this structure would need to demonstrate clear benefits for them to be justified.

We note that the Bill proposes giving more prominence to the public education function and we support this 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

A handwritten signature in black ink that reads "Lance Twomey". The signature is written in a cursive style with a large, sweeping "L" and a long, trailing "y".

Lance Twomey
VICE-CHANCELLOR