



NetAct

A Project of Catholic Social Justice, Welfare and Educational Agencies

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May 1, 2003
Mr Peter Hallahan
Secretary
Senate Legal and Constitutional Committee
Room S1. 61,
Parliament House
Canberra ACT 2600

Dear Sir,

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

Thank you for the opportunity to make a submission on the Australian Human Rights Commission Bill 2003. We appreciate the permission given by Louise Gel to John Collins from Centacare Sydney, on our behalf, to send this submission by May 2, 2003.

NetAct is a project of Catholic Social Justice, Welfare and Educational Agencies in NSW. Affiliated organisations include the following:

Mission Australia, Little Company of Mary Health Care, Caritas Australia, Catholic Education Office, Forbes, Catholic Education Sydney, Catholic Education Office, Newcastle, Catholic Education Office, Parramatta, Catholic Social Justice Commission, Canberra, Australian Catholic Social Justice Council, Edmund Rice Centre for Justice Education, Missionaries of the Sacred Heart Justice and Peace Centre, Pax Christi Australia [NSW], Acceptance Australia, Mercy Foundation, Centacare Sydney, Aboriginal Catholic Ministry, Mary McKillop Institute for East Timorese Studies, Catholics in Coalition with East Timor, Mercy Refugee Service, Archdiocese of Sydney Justice and Peace Promoter, Columban Centre for Peace, Ecology and Justice, Conference of Leaders of Religious Institutes [NSW], Australian Conference of Leaders of Religious Institutes, Marist Community Services, Justice and Peace Promoter Parramatta.

We wish to make submissions on the following issues:

Veto over the Commission's power to intervene in litigation

We consider the proposal to veto the Commission's power to intervene in litigation an inappropriate interference with the judicial process. When HREOC seeks to intervene in a case it should be for the court to determine and not an arm of Government such as the Attorney General. It is important to note that the record of human rights in Australia is attributable respect for the principle of separation of powers by successive governments. The Commission has so far only made 35 interventions. (Media Release, HREOC, 27 March 2003). This suggests that HREOC has not made inappropriate interventions throughout its period of operation. We note that the High Court of Australia and other courts and tribunals have permitted HREOC to make regular intervention in cases involving human rights issues.

We are deeply concerned that this Bill will interfere with the judicial process especially when the Commonwealth Government or one of its departments is subject to the litigation. The conflict of interest mentioned above would be evident if a Government department was able to veto HREOC's intervention in human rights cases would mean a denial of justice and undermine the system of rights protection from an independent body. This also undermines HREOC's independence by striking at one of its central functions and thus undermining the system of rights protection in Australia.

Removal of named Commissioners

Another HREOC responsibility is that of public awareness and education. The many organisations participating in this submission cannot overstate the importance of a commissioner with specific responsibility for the concerns of people and groups who are politically, economically or socially marginalised.

We acknowledge and appreciate the important achievements of the various specialist commissioners in generating awareness and discussion on human rights issues within the areas of their responsibility for example the Aboriginal and Torres Strait Islander Social Justice Commissioner the Sex Discrimination Commissioner, Race Discrimination Commissioner and the Disability Discrimination Commissioner.

The appointment of three generalist commissioners with responsibility for such demanding areas as those listed above would be a truly retrograde step in the area of human rights and dealing with discrimination against people who are marginalised. It would appear that the implementation of the Bill would diminish rather than enhance human rights protection. A more appropriate response would be increased support for the specialist commissioners rather than their abolition.

A further concern would be that three generalist commissioners proposed in the Bill would have no specialist experience or expertise in the areas of indigenous rights and concerns, race relations, sexual discrimination and the rights and needs of people living with disability.

A further consequence of the elimination of specialist commissioners would mean that HREOC's responsibilities to education, research, awareness raising and provision of information would not be fulfilled. We note the recommendations of the sex discrimination commissioner vis-à-vis paid maternity leave, the race discrimination commissioner vis-à-vis the elimination of prejudice against Australians of Arabic origin. The position of Aboriginal and Torres Strait Islander Commissioner was originally established in 1992 in response to the Royal Commission into Aboriginal Deaths in Custody and the Human Rights and Equal Opportunity Commission's National Inquiry into Racial Violence. Then there is the important Report of the National Inquiry into the Human Rights of People Living with Mental Illness published in 1993 which still has not been fully implemented. We fear that such Inquiries would not be readily undertaken by generalist commissioners.

According to reports from non-government organisations the issues of criminal justice procedures, health care and violence in Aboriginal communities have not diminished and need more specialist care. The situation of people living with mental illness and other disabilities has not progressed either.

In recent years human rights have been under threat in Australia particularly as the Federal Government has been using UN Treaties and Conventions selectively. If awareness of human rights education is to be a priority and to be the responsibility of all citizens, we fail to see how the implementation would do this. The specialist commissioners have fulfilled a wonderful role in this regard.

We also reiterate that the proposed legislation to veto the power of HREOC by the Attorney General intervene in cases where human rights abuses would undermine the educational value as well as limit the capacity of HREOC to condemn breaches of human rights. The recent Inquiry of HREOC into the Rights of Children in Detention is a case in point.

Yours sincerely,

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