



Federation of Community Legal Centres (Vic) Inc

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(Incorporation Reg. No. A0013713H)

April 24, 2003

**The Secretariat
Senate Legal and Constitutional Legislation Committee
Parliament House
Canberra 2600**

Email legcon.sen@aph.gov.au

Federation of Community Legal Centres (Vic.) Submission to the Senate Legal and Constitutional Legislation Committee Inquiry

Australian Human Rights Commission Legislation Bill 2003

Background to the Federation of Community Legal Centres and the Human Rights Working Group

The Federation of Community Legal Centres (Vic.) Inc ("the Federation") comprises forty-six legal centres across Victoria. The Federation is comprised of generalist community legal centres, which provide services to the most disadvantaged people in their local geographical catchments areas, as well as specialist community legal centres which exist for particular groups of vulnerable people (including women, Indigenous people and young people) or for particular issues (including disability, mental health, employment, welfare rights, consumer and tenancy). Community Legal Centres provide free legal advice and assistance, advocacy, and community legal education, and initiate law reform to enhance access to justice.

Community Legal Centres (CLC's) assist in excess of 40,000 people each year. Overwhelmingly, the people who use CLC are on low incomes, with most receiving some form of pension or benefit. CLC's also see a considerable number of people from culturally and linguistically diverse communities.

A number of working groups operate within the Federation, made up of interested workers and volunteers. These groups focus on specific issues such as Corrections, Violence Against Women and Children; and Refugees and Immigration. One such working group is the Human Rights working group. The purpose of the Human Rights working group is to communicate, develop greater understanding and encourage the practical use of the principles and laws relating to fundamental human rights and

freedoms, as expressed in international Conventions, Covenants and Declarations, in order to advance the cause of social justice.

The Human Rights Working Group has produced a report, *Right Off: The Attack on Human Rights in Australia*. (A copy of this report has been sent under separate cover.) This report documents the very mixed record of successive Australian governments since the early 1990s in terms of respecting, implementing and protecting human rights and fundamental human freedoms. The report outlines treaty body reports and human rights violations in relations to six major human rights treaties to which Australia is a party. The report gives an historical overview of Australia's involvement in the UN treaty system and discusses the ramifications of the increased disengagement from the UN system in the context of increasing and flagrant human rights abuses in this country. The report argues that taking rights off the agenda has had significant consequences:

- it denies historical and current human rights violations in Australia
- it denies the foundational and ongoing racism of the Australian legal system
- it perpetuates the practice of denying the humanity of people in Australia, which began with the dispossession of Indigenous Australians, continued through foundational racism of the Constitution and the White Australia policy, and is given expression in current times with the detention without charge of non-citizens in Immigration Detention Centres and of citizens David Hicks and Mamdouh Habib in Guantanamo Bay
- it denies the failure of successive Australian governments to incorporate human rights into Australia or provide comprehensive legal protection of human rights in Australia
- it challenges the legitimacy of the universal system of human rights by creating a hierarchy of "real" human rights violators and unfairly maligned Western countries which, in words of Daryl Williams have human rights breaches which are "minor, marginal issues"
- it marginalises the domestic and international voices who speak out against human rights violations (Human Rights Working Group, 2002:i).

The Human Rights Working Group on behalf of the Federation of Community Legal Centres has prepared this submission.

Response to the Australian Human Rights Commission Bill 2003

The Federation of Community Legal Centres has serious concerns about the proposed changes to the Human Rights and Equal Opportunity Commission (HREOC) under the Australian Human Rights Commission Bill. We note that this is the third bill proposed by the Federal Government to make changes to HREOC. On each previous occasion various organisations, including ourselves, have expressed concern and argued against changes that would essentially weaken HREOC.

Significant budget cuts to HREOC over previous years together with successive attempts to introduce legislative amendments that weaken HREOC's powers, clearly indicate a political agenda to undermine the peak Human Rights body in Australia. If Human Rights are to be taken seriously we require an independent body to monitor and act upon infringements by governments and others.

The areas of which we are most concerned are the following:

1. Changes to HREOC's power to seek leave to intervene in court proceedings

We oppose the proposed changes which will require the commission to seek permission from the Office of the Attorney General to intervene in court cases. Such a requirement is untenable. Firstly, it creates a conflict of interest in cases where the government is also a party to the proceedings, such as the Tampa case. Secondly, it requires HREOC to provide information about what they intend to submit to the court

prior to the hearing commencing. This may be a disadvantage, particularly in cases where the government is also a party.

The Attorney-General's interests and agenda are very different to HREOC's and may not accord with the promotion and protection of human rights in Australia. The proposed changes would politicise decisions about matters for judicial consideration and constitute a breach of the principle of the separation of powers.

The objective of having an independent human rights institution is clearly negated by such a proposal. HREOC comprises a body of experts in human rights, whereas the Attorney General is not a human rights specialist; and it should therefore remain HREOC's decision which cases necessitate intervention. There is no evidence to show that HREOC have misused this power to date. The Court currently has the power to determine if HREOC is permitted to intervene in cases and this should remain their role. It is not appropriate for the Attorney-General to do this; to usurp the role of the Court. To ensure protection of human rights in Australia in the future it is crucial that HREOC's power to seek leave of the court to intervene in proceedings remains intact.

2. Changes to the structure of the executive and Human Rights Commissioners

The current structure of HREOC which involves specific commissioners for the areas of Aboriginal and Torres Strait Islander peoples, Human Rights, Race Discrimination, Sex Discrimination and Disability Discrimination should be maintained. The proposal to replace these Commissioners with 3 part-time Commissioners would further weaken HREOC.

The areas assigned to the current Commissioners are areas highly impacted by disadvantage. These groups are at particular risk of human rights violations. It is crucial that Commissioners focus on these areas and are experts on the issues relevant to each portfolio. While we undoubtedly support the protection and promotion of the human rights of 'all Australians' as outlined by The Attorney General, Daryl Williams, we consider that there are particular groups of people whose human rights are more commonly infringed upon and therefore require specific attention.

3. Removal of power to recommend payment of damages or compensation

The removal of the power to recommend payment of compensation or damages in disputes would further weaken HREOC. If human rights violations are to be taken seriously then it is necessary to have a range of remedies. Furthermore, we would like to see these remedies enforceable.

Concluding comments

Daryl William states in his Press release (27 March, 2003)

The Government is proud that Australia has a human rights record that is among the best in the world and that our national human rights institution is recognised as a leader in our region.

It is disturbing that the Attorney General makes this statement in a media release announcing amendments that will undermine the effectiveness of that very institution. We question the Government's ability to continue to make these statements in the future if the proposed amendments are implemented. At both a national and international level continuing to weaken HREOC and undermine its independence makes questionable Australia's commitment to human rights.

The Federation of Community Legal Centres is deeply concerned that the proposed changes will seriously impact on HREOC's capacity as an effective advocate for human rights. Human rights

discourse and the protection and promotion of human rights are crucial. We should be further resourcing and strengthening human rights organisations rather than dismantling them.

Comment re timelines for submissions.

We received the information package for submissions to this inquiry one week prior to the due date for submissions. That particular week also included the public holidays of Easter. While we see this inquiry and the proposed bill as extremely important, such a tight timeline creates significant difficulties for organisations such as ours which operate on very limited resources. We are however, grateful to the committee for providing us with an extension.

Dr Debbie Kirkwood
Policy Officer
Federation of Community Legal Centres
On Behalf of the Human Rights Working Group

Clifford, Julia (SEN)

From: Deborah Kirkwood [Deborah_Kirkwood@fcl.fl.asn.au]
Sent: Wednesday, 30 April 2003 11:42 AM
To: Legal and Constitutional, Committee (SEN)
Subject: Submission on Australian Human Rights Commission Bill



humanrightssub.doc
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Dear Committtee Secretary,

Please find attached the submission of the Federation of Community Legal Centres (Vic) on the Austrlian Human Rights Commission Bill 2003. I will also forward under separate cover a copy of our report 'Right Off: The Attack on Human Rights in Australia'.

Should you have any queries please contact me on (03) 9602 4949.

regards,

Dr Debbie Kirkwood
Policy Officer
Federation of Community Legal Centres