

United Nations Association of Australia



Incorporated

Member World Federation of UN Associations

Patron: Rt Rev Dr Peter Hollingsworth AC OBE, Governor-General of the Commonwealth of Australia

Vice-Patrons: Mr Phillip Adams AO DUniv FRSA; Ms Stephanie Alexander OAM; Hon Gareth Evans;

Mr Andrew Gaze; Sir Gustav Nossal AC CBE FAA FRS; Sister Patricia Pak Poy RSM AM; Hon Andrew Peacock AC



P.O. Box 21

O'Connor ACT 2602

Tel 02 6257 4609

23 April, 2003

Secretary,

Inquiry into Australian Human Rights Commission Bill

Senate Legal & Constitutional Committee,

Room S1.61, Parliament House,

ACT 2600

Dear Sir/Madam,

I send herewith a submission from UNAA to the Inquiry. I am also sending it in electronic form. I hope the submission will assist the Committee.

Yours sincerely,

David Purnell OAM

National Administrator

UNITED NATIONS ASSOCIATION OF AUSTRALIA

SUBMISSION TO SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE CONCERNING THE PROPOSED LEGISLATION ON THE HUMAN RIGHTS AND EQUAL OPPORTUNITY COMMISSION

Part 1 Introduction

1.1 This submission is presented on behalf of the Executive Committee of the United Nations Association of Australia (UNAA). It is in line with the agreed policies of the UNAA adopted from time to time by its Federal Council. UNAA has around 2000 members around Australia.

1.2 UNAA has always supported the existence of the Human Rights and Equal Opportunity Commission (HREOC) as an expression of the community's commitment to accepted human rights standards, as outlined in international instruments and as included in Australian legislation. UNAA is impressed by the range of activity undertaken by HREOC over the years, and believes it has had a positive impact on Australians' awareness of human rights.

1.3 For example, UNAA made a detailed submission to an Enquiry by the Human Rights and Equal Opportunity Commission in 2002 on the subject of Children In Detention. The report of that Enquiry raised many concerns familiar to UNAA and other NGOs, and urged action by the Government to review its policies to protect children more effectively.

1.4 Internationally, HREOC has a vital role in supporting the work of the Department of Foreign Affairs and Trade in promoting human rights dialogues with a number of countries - China, Iran, Vietnam. UNAA believes HREOC's contribution to this work needs to be maintained and strengthened.

Part 2 Proposed Legislation

2.1 The legislation, now before Parliament, provides for (a) restructuring HREOC and renaming it the Australian Human Rights Commission, (b) creating a structure of a president and three commissioners, (c) giving education and information a central role, (d) requiring the Commission to obtain the Attorney-General's consent before seeking leave to intervene in court proceedings, and (d) removing HREOC's power to recommend payment of damages of compensation for certain complaints.

2.2 In its present form the legislation will eliminate the positions of separate Commissioners (Human Rights, Sex Discrimination, Race Discrimination, Disability Discrimination, and Aboriginal and Torres Strait Islander Social Justice). The proposals appear to reinforce action already taken by the present Government to reduce the financial and human resources available to HREOC to fulfil its functions.

2.3 UNAA is deeply concerned that these proposed changes will impair the effectiveness of the Commission to protect human rights in Australia. If the Commissioners are 'generalist' in focus, there is a real likelihood that the attention given to, and expertise in, areas like racial discrimination and Indigenous justice will be diluted.

2.4 UNAA considers that the proposed changes will also compromise the independence of the Commission. It is our understanding that the proposed requirement for the Commission to seek the Attorney-General's permission to intervene in legal cases runs counter to the Paris Principles on which national human rights institutions are based and on which their status with the United Nations is based. (UN General Assembly, A/RES/48/134, 85th plenary meeting, 20 Dec. 1993). In addition, the Commonwealth has been involved in cases in which HREOC has intervened, and it would be inappropriate for the Commonwealth to be both a litigant and gatekeeper. The proposed requirement undermines the Commission's responsibility for monitoring and promoting Australia's compliance with its human rights obligations under international

instruments.

2.5 Given the Government's strong support for human rights institutions in our Asia-Pacific region, UNAA believes the proposed changes will send a negative signal to the region about the importance of national institutions.

2.6 UNAA supports the continuation and enhancing of the Commission's role in human rights education, which involves such elements as – basic philosophy and principles of human rights; international human rights instruments; Australia's human rights institution; and civil society and the rule of law

Part 3 Specialist Commissioners

3.1 UNAA believes that the Specialist Commissioners have been vital in achieving greater justice for those suffering human rights abuses. The Commissioners have not only been chosen for their familiarity with the different areas of concern, but have gradually obtained the confidence of people working in those areas.

3.2 Some examples of this contribution can be identified. In race discrimination, the work done since 1986 by a series of Commissioners has effectively promoted equality in the political, economic, social and cultural fields. In particular, there have been national inquiries (eg racist violence), legislation (eg racial vilification), publications (eg refugees), state of the nation reports, and conferences and seminars involving a wide range of Australians.

3.3 In the area of Indigenous rights, the Aboriginal and Torres Strait Islander Social Justice Commissioner has maintained national focus on such issues as native title, deaths in custody, the separation of families, education, disadvantage and discrimination. The Commissioner has also briefed UN bodies on these and related issues.

3.4 The proposed change in the structure of the Commission would put