



24 April 2003

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

Dear Mr Hallahan

I am providing this submission to the inquiry into the provisions of the Australian Human Rights Commission Legislation Bill 2003 in my capacity as Pro Vice Chancellor for the Division of Education, Arts and Social Sciences the University of South Australia. Included within my portfolio is responsibility for the Indigenous education and research.

By virtue of its founding Act, the University of South Australia has a special responsibility to provide leadership in the areas of Indigenous research and education and to provide education opportunities to groups in society that have experienced educational disadvantage. The University was the first in the country to establish a faculty of Aboriginal and Islander Studies, plays a central national role in Indigenous higher education development and has made significant contributions to the process of reconciliation between Indigenous and non-Indigenous Australians. The University's statement of strategic intent confirms the value that the University places on quality, diversity, sustainability and equality. The University of South Australia actively encourages the participation of women, people with a disability and from diverse linguistic and cultural backgrounds in all areas of study and employment.

The University has a strong commitment to provide employment and career opportunities for women, people with a disability and those from diverse linguistic and cultural backgrounds and has found that the position of Sex, Indigenous and Disability Discrimination Commissioners have a high degree of community recognition and acceptance. I do not believe that there is a good reason to rename or restructure those positions.

It is my 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.

I am concerned that the Bill appears to significantly undermine the Commission's independence in the exercise of its intervention powers and that the Bill as proposed could lead to a conflict of interest arising where the Attorney General's Department exercising of a 'gate-keeper' function may also be a party to a dispute. This has been the case in the Commission's intervention cases to date, i.e. the Tampa litigation, the enquiry into children in detention centres and in the recent Full Family Court case regarding the rights of transgender people to marry. The proposed changes place the Commission's role as an independent body, responsible for monitoring and promoting at odds with Australia's compliance with its human rights obligations. The effect of being subject to the control of the reigning government of the day does much to alter community perceptions about impartiality and fairness.

I am not in support of the proposal for the Bill to alter 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 generalist "Human Rights Commissioners". The specialist commissioners have made a focused contribution to community education in the area of their portfolios and this has provided the community with specific information and helpful and effective resources. The level of specific expertise involved in providing this focus is less likely to be achieved with generalist commissioners. The proposal would reduce the strong educational and advocacy role for individual Commissioners that has enabled them to undertake such initiatives as

- 1991 - national inquiry into Racist Violence recommending the introduction of racial vilification legislation and other measures
- 1994 - a report drawing attention to the lack of safe drinking water in remote Indigenous communities
- 1996 - Review of Aboriginal Deaths in Custody 1991 -1996
- 1996 - publication of Face the Facts, providing factual information to counter prevalent misinformation about refugees, immigration and Indigenous issues

I support the proposal that more prominence should be given to the public education function but hope 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. Education on specific areas of discrimination and working to combat particular prejudice would be general Commission functions and there would be competition for attention between race, sex and disability discrimination, human rights and Indigenous social justice.

The Commonwealth Government has made a number of recent statements reaffirming its commitment to human rights. I hope that this commitment will result in those provisions of the Bill which could be considered to be problematic to be 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, appearing to read 'Adrian', written in a cursive style.

**Associate Professor Adrian Vicary**  
Acting Pro Vice Chancellor:  
Education, Arts and Social Sciences