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From: a.paul@pgrad.unimelb.edu.au
Sent: Wednesday, 23 April 2003 2:20 PM
To: Legal and Constitutional, Committee (SEN)
Subject: HREOC SUBMISSION FROM UMPA



HREOC.doc (35 KB)

The Secretariat
Senate Legal and Constitutional Committee
Room S1.61, Parliament House
Canberra ACT 2600
AUSTRALIA

Aron Paul, Queer Officer
University of Melbourne Postgraduate Association
University of Melbourne, Parkville

Dear Sir/Madam,

Attached is the submission to the senate inquiry into the proposed amendments to the HREOC on behalf of UMPA, prepared by the Policy and Research Committee working group and approved by the President of the Association, representing some 10,000 postgraduates at this university.

Please let me know if you have any problems opening the document. Future enquiries may be sent to me, convenor of the working group at Queer@umpa.unimelb.edu.au or directly to Lachlan Williams, President@umpa.uniemb.edu.au.

Yours Truly

Aron.Paul

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

Human Rights: Everyone else's responsibility?

University of Melbourne Postgraduate Association

The University of Melbourne Postgraduate Association is the representative body for postgraduates at the University of Melbourne. It represents and is responsible to approximately ten thousand students and is recognised by University statute as representing postgraduate concerns.

The University of Melbourne Postgraduate Association (UMPA) is opposed to the proposed changes to the Human Rights Equal Opportunity Commission (HREOC). UMPA supports the position of the HREOC in defending its independence and integrity, and its ability to submit to court proceedings without seeking the permission of any political person or body.

Central Importance of Human Rights.

Human Rights are of central importance to students, who come from a cross-section of society and include members of all social groups, individuals and concerns set out in the Universal Declaration of Human Rights. Furthermore, it cannot be underestimated how statements made by HREOC Commissioners and their actions have affected issues in the media and contributed to raising student awareness. Of immediate concern is their influence on issues of race and religion, especially pertaining to refugee and Islamic issues at a time when government bodies should be doing their utmost to bridge the gaps and misunderstandings between cultures in Australia. It is imperative at this difficult time that Australia should remain a leader in human rights legislation and fulfil to the maximum its obligations under international treaties, in particular article 26 of the International Covenant on Civil and Political Rights, to which Australia is a signatory.

This document states that:

'All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.'

A key component of this protection is the distinction between the rule of law and that of politics. UMPA believes that the HREOC can play an important role in enforcing the rule of law in accord with Australia's treaty obligations in regard to Human Rights, keeping these rights universal and above party politics. The proposed amendments however go in the opposite direction.

Proposed Veto of the Attorney-General

The HREOC's involvement in court cases upholding the right of transsexuals to marriage, and seeking fair treatment of asylum seekers are but two recent high-profile examples of the HREOC's effective advocacy. The HREOC has proven itself independent from social or political groups which may from time to time seek to deprive other groups of rights under law. Thus it is of particular concern that the bill before parliament includes a requirement for the Commission 'to seek the approval of the Attorney-General ... before exercising its power to seek leave to intervene in court proceedings'. While the Attorney-General states that it 'is not intended to

prevent court submissions that are contrary to the government's views', that is precisely the outcome which could reasonably be expected from such a change. Given the record of government and HREOC being involved on different sides of legal proceedings it is reasonable to expect that the temptation to use such a veto for political purposes may prove irresistible to the government in the future.

The Attorney-General's argument that the change is necessary 'to ensure that court submissions accord with the interests of the community as a whole' seems irrelevant given that it is already within the duties and powers of Parliament as a whole to act according to the 'order and welfare of society'. The role of HREOC is to consider Australia's obligations at law in terms of upholding human rights. UMPA cannot see how this could ever be at odds with the interests of whole community. An independent Commission which does not depend on the government's permission to intervene is the best way to do this. Order and general welfare are also not only guaranteed by Parliament, but also by the United Nations Universal Declaration of Human Rights which may act as a guide for the HREOC. The proposed changes are therefore unnecessary on every conceivable front.

Name and Motto of the Commission

UMPA also questions the necessity of a name change, particularly given the stated educational role of the HREOC. Equal Opportunity is, after all, a central component to human rights and of particular interest to UMPA's educational concerns. Human rights may be the end, but equal opportunity are arguably the best means to that end. Having Human Rights and Equal Opportunity placed side by side reinforces this perception in the community. UMPA was further bemused by the intention of the government to legislate in regard to the slogans and stationery of the HREOC. This is another ill-conceived and unnecessary act of over-legislation which infringes on the independence of the body. UMPA also feels that the fact that human rights are certainly 'everyone's responsibility' should not detract from the fact that some people may be particularly responsible from time to time. Not only does the slogan blur the lines of responsibility, but also could be misinterpreted to lay equal blame upon victims of discrimination.

Commissioner Portfolios

To make the Commissioners generalised in nature instead of with specific portfolios may lessen the prominence of these issues in the minds of the community and those in power. For instance it seems a great shame to lose the Aboriginal & Torres Strait Islander Commissioner, and the Sex Discrimination Commissioner, who have in past and current years made important differences to Australia. It is much easier for the HREOC to effectively publicly advocate and educate if there are dedicated Commissioners for Sex, Race, Aboriginal & Torres Strait Islanders, and Disability. This allows individual Commissioners to have deep expertise in one area instead of more casual knowledge across all discrimination areas. Of particular concern to UMPA is the impression that the removal of the titles and the formal reduction of the number of Commissioners will have a detrimental effect on the workload of the remaining Commissioners. UMPA has anecdotal evidence that a perceived backlog of cases is in fact deterring workers from involvement with the Commission.

Educative and Advocacy Roles of the Commission

It is already difficult for those who are discriminated against to report what is going on to an external body. The public needs to see examples where individuals, organisations, and governments are held accountable for their actions, and too much power has already been

removed from the Commission. To deprive groups that are already systemically disempowered of these routes of appeal, independent of government, would be adding even further to any infringements of their human rights. The essential role of HREOC is to advocate and to facilitate complaint handling, not only to educate and inform the public. UMPA feels that the educative and advocacy roles of the Commission are of equal and complementary value, and thus regards with concern rhetoric raising one against the other.

Examples of Commission's usefulness that are threatened by proposed amendments.

The issues surrounding racism and refugees as previously mentioned are highly politicised, and current government policy needs to be challenged especially in its application of some of its more draconian aspects. This will always be the case not only to uphold human rights but also the rights of the community to fair and democratic debate.

UMPA also believes, from anecdotal evidence from other universities, that overseas students may be unjustly targeted or threatened with detention due to current immigration laws and, making a strong and active Commission essential in the future.

The expression of political ideas and the application of the Racial Vilification Act (Victoria) and the Racial Discrimination Act (Federal) is another area where HREOC sets examples to the community. There have been ongoing issues on campus concerning the expression of ideas that incite racial hatred from student groups which are ethnic or religion based. Students need to hear that assigning blame to generalised communities is unacceptable both socially and at law. Having a dedicated Racial Discrimination Commissioner who is free to advocate as well as educate is vital.

UMPA is concerned that the new emphasis on education and providing guidelines is a sign of a continuing move away from the ability to provide enforceable standards. We have seen many instances of discrimination and harassment among our postgraduate students and believe that the prospect of penalties and enforceable standards is an important way of encouraging better systems of upholding human rights at the grass roots. The HREOC's role has been pivotal in encouraging universities to adopt better practices in dealing with discrimination and harassment. It also continues to be useful in encouraging Universities to commit funds to comply with the Disability Discrimination Act.

There are many other examples where members of the student community would be disadvantaged by the proposed amendments. The failure of part time research scholarships to be tax exempt for example indirectly discriminates against parents and carers and is one of those ongoing campaigns which could be adversely affected. Non-heterosexual students also continue to face discrimination in society and at law. Both Lesbian students and unmarried women have followed with interest the HREOC's actions in court on their behalf concerning their rights to IVF treatment. These rights, such as that of transsexuals to marry, ought to be debated and established as matters of human rights and law. The HREOC has proven a useful and effective forum in this respect and as such ought to remain free from partisan interference

Conclusion and Recommendation

While supporting the view expressed by the minister that 'education is the key to a society in which human rights are respected by all', the dilution of the Commission's powers, particularly that recommending the payment of compensation, sends a different message to the community. By the logic behind these changes education alone would render law enforcement unnecessary.

UMPA does not believe it to be in the interests of any students, nor does it serve any positive educative purpose, to make a toothless tiger of the Commission.

UMPA recommends that the suggested changes to the operation of HREOC currently before the Senate be dropped. Instead HREOC ought to be commended for its work and recognised for its contribution to the community.

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