DNR-LEG SERV MIN HSE
The Ethnic Communities Council of Queensland Ltd.
ABN 55 010 151 256

Ms Louise Gell
A/g Secretary
Australian Senate
Legal and Constitutional Committee
Parliament House
CANBERRA ACT 2600

Re : Provisions of the Australian Human Rights Commission Legislation Bill 2003

Dear Ms Gell

Please find enclosed the formal submission of the Ethnic Communities Council Queensland in relation to the above Bill currently under consideration by the Senate.

The Queensland Council considered this Bill raised so many issues of concern for the continued independence of the national human rights watchdog that it was important for us to lodge a separate submission from our national body – the Federation of Ethnic Communities Council (FECCA). Nevertheless, we have collaborated with our national body and contributed to that submission as well

Should the Committee seek further exploration of the issues raised in our submission, the contact person is Ms Karen Walters, on (07) 3844 9166 or 0417 751 605.

Yours sincerely

SERGE VOLOSCHENKO
Chairman

◆ ECCQ House, 253 Boundary Street, West End Qld. 4101 ◆ (Post Office Box 5916, West End Qld. 4101)
◆ Phone:(07) 3844 9166 ◆ Fax:(07) 3846 4453 ◆ Email: administration@eccq.com.au ◆ Web: www.eccq.com.au

SUBMISSION

TO

SENATE LEGAL AND CONSTITUTIONAL COMMITTEE

ON

PROVISIONS OF THE AUSTRALIAN HUMAN RIGHTS COMMISSION LEGISLATION BILL 2003

Preliminary

At the outset, Council wishes to place on the record our objection tothe extremely tight time frame for consultation on such an important Bill.

It seems that the current Commonwealth Government is quite prepared to run an extensive consultation process whenever an expansion of the human rights agenda is under contemplation through the United Nations Treaty-making process. Indeed, the reforms introduced whenever Australia is contemplating ratification or adoption of an international instrument maximizes the diversity and level of community input.

However, the same does not appear to occur when an initiative involves the reduction or 'winding back' of the human rights agenda, as is the case with the current Bill. It places a great burden on community sector organizations, with limited resources, to respond appropriately. In the short time frame available for the lodgement of submissions, ECCQ has two major concerns with the proposed Bill – firstly, the restrictions placed on the intervention power of the Human Rights and Equal Opportunity Commission and secondly, the abolition of specialists Commissioners, (particularly from our perspective, the Race Discrimination Commissioner) and replacing them with three generic "Human Rights Commissioners".

HREOC's Intervention power

The Bill mandates HREOC's current unfettered power of intervention (subject only to the leave of the Court or Tribunal in question) exercisable only with the consent of the Commonwealth Attorney-General. In Council's view, this is a major retrograde step for both the perceived independence of the Commission and the efficacy of the intervention power.

To date, the Commission has sought leave in 35 cases and has been granted leave in all cases. This clearly indicates that traditionally the Commission has kept a consistent record of intervening onlywhen a significant human rights issue is in question. As the Committee appreciates, litigious matters invariable involve two opponents arguing from different perspectives – often not necessarily guarding the broader question of human rights. It is imperative to continue to have an independent and impartial voice to protect and defend the human rights implications in a democratic system of Government.

Council is fearful of three trends occurring by making the intervention power subject to the Attorney's consent. First, there is the very serious risk that the power is at the ultimate political whim of the Government of the day. To this extent, there is the potential to politicize what was and should remain an independent and 'at-arms-length' function. This fear is not simply speculative or academic. The current Attorney-General, the Honourable Darryl Williams, has in

the recent past demonstrated his preparedness to bestow standing on third parties in such an extraordinary way as to jeopardize the longstanding perception of the role of the Attorney-General as the first law officer of the Crown over and above his function as a member of the Cabinet and therefore a politician. Reference is made to the criticism directed at the Attorney-General by the High Court for his unprecedented conferral of gratis standing to intervene to the Catholic Archdiocese in the Victorian IVF access case involving a single woman.

Whether intentional or inadvertent, the fact remains that the action of the Attorney was interpreted as extending in-kind support to the subjective position of the Churches over a matter that required judicial determination of the highest Court in the country. Indeed the action of the Attorney received considerable rebuke by the Justices of the High Court in that case. It seriously undermined the doctrine of the separation of powers so fundamental in our Westminster system of Government. There is little confidence, from our organisation's point of view, that the power will not become politicized.

Secondly, it is worth noting that approximately 1 out of every 5 complaints before State and federal human rights agencies involve a government instrumentality. Often when it has been exercised in the past, HREOC has intervened in cases where one of the parties to the dispute is the Government of the day – for example, most recently in the Tampa case. To make HREOC's power subject to the Attorney of the day invariably raises a clear perception of a conflict of interest. On the one hand, the Chief Law Officer, through the Government Solicitor, will be agitating for a particular subjective position. On the other hand, is it unrealistic and impractical to expect that the very same person *can* exercise clarity of independent judgement to grant consent to HREOC to intervene.

Thirdly, and most importantly from this organisation's point of view, we are concerned that consent will be granted rarely, if at all. Certainly this is the situation in relation to criminal defamation, where prosecutions can only be taken in some States with the consent of the Attorney-General. The only time it has been exercised in the recent past is in the '80's in the Grasby case. In the same way, the Council predicts that the intervention power, if subject to the Attorney's consent, will be rarely invoked. This means that responsibility for mounting and running a public interest argument purely from a human rights perspective, will over time fall to the community sector – like the Public Interest Advocacy (PIA) Group which exists in New South Wales and is emerging in other States. To place such a burden on community sector organsiations, the majority of which are already stretched for funds, is unreasonable to say the least. Most community sector advocacy groups, like ECCQ, would simply be squeezed out of the agenda for fear of incurring enormous court costs.

In summary, ECCQ has strong objections to placing the intervention power of HREOC ultimately in the determinative hands of the Attorney-General.

Abolition of Specialist Commissioners

ECCQ reserves the strongest objection to abolishing the specialist stream of Commissioner's – and from our point of view, particularly the abolition of the Race Discrimination Commissioner. It is through that post that the acceptance and implementation of multiculturalism and diversity has found voice and momentum. It has been comforting for our core clients– people from linguistic and culturally diverse backgrounds – to know that Australia has an independent voice to speak on their behalf to promote harmonious race relations. From time to time, various groups have been the butt of violence and hostility, causing unnecessary fear.

Often this involves individuals who have left their country of origin under threat to life and liberty – and they harbour that fear all their lives. To speak out with confidence is often difficult when tensions are high. The most recent example is the unwarranted and irrational attacks against the Muslim community in recent times. Anecdotal evidence certainly indicates that the Queensland Muslim community was fearful of repercussions if they spoke out in defense. It was, however, comforting to see the defense proffered by the Race Discrimination Commissioner.

The loss of that specialist office loses the impact of commentary. It is particularly unwise at the present time where race relations in the global community is tense and strained. Moreover, it jeopardizes our international reputation when we, as a nation, so vigilantly defended the human rights of citizens in other countries yet we are remiss in making sure our own house is kept in order by continuing the office of Race Discrimination Commissioner.

To replace specialist Commissioner's with three generic Commissioner's will over time lose expertise, portfolio dedication, and invariably consistency of approach. Australia has been criticized in the past 18 months before numerous United Nations Committee's on race related issues. One of the most strongest criticism came from the UN Committee under the Convention on the Elimination of All Forms of Race Discrimination (CERD). The message we will be sending to our international neighbours by abolishing the Race Commissioner is that we simply neither care nor heed the advice of the international community. In other words, we as a nation will use the human rights agenda to justify military action but we will not proactively defend that agenda in our homeland.

Finally, it should be recalled that the Committee under the Convention on the Elimination of Discrimination Against Women strongly criticized the Australian Government for leaving the specialist position of Sex Discrimination Commissioner vacant for a period of 18 months between the expiration of Commissioner Walpole's term and the appointment ofCommissioner Halliday. It is clear that the international human rights peak body supports the continuation of specialist Commissioner's in a country so demographically vast as Australia.