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Sent: Thursday, 24 April 2003 11:37 AM  
To: Legal and Constitutional, Committee (SEN)  
Subject: Submission



Submission re AHRC  
Legislation...

24 April 2003

The Secretary  
Senate Legal and Constitutional Legislation Committee Parliament House Canberra ACT  
2600

Dear Sir/Madam

Australian Human Rights Commission Legislation Bill 2003

Attached is a submission from the Centre for Human Rights Education at Curtin University of Technology, to the Inquiry into the Provisions of the Australian Human Rights Commission Legislation Bill 2003.

The Centre for Human Rights Education seeks to promote awareness of human rights, to encourage debate about human rights issues, to offer courses in human rights, and to undertake relevant research and consultancies. We therefore feel it important to make a submission to the Inquiry.

Please let me know if you require any further information

Yours sincerely

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**Submission from**

**The Centre for Human Rights Education  
Curtin University of Technology**

**to**

**The Senate Legal and Constitutional Legislation Committee**

**on**

**The Australian Human Rights Commission Bill 2003**

**24 April 2003**

## **1. Preamble**

The Centre for Human Rights Education supports a view of human rights that moves beyond purely legal definitions and processes, and involves the definition, realisation and protection of human rights within the day-to-day lives of families, social groups, work organisations, communities and civil society. Thus human rights are lived, not merely legislated. However this does not diminish the importance of legal structures and mechanisms for the protection and realisation of human rights. Indeed, a strong human rights legislative framework, and effective legal structures, provide the necessary guarantees and safeguards within which a human rights based society can flourish.

For this reason, the Centre for Human Rights Education takes the view that a strong, effective, well-resourced and independent Human Rights Commission is necessary for the protection and promotion of human rights. We endorse the work that the Human Rights and Equal Opportunities Commission has done in the past, and hope that any restructure will enhance the strength, effectiveness, resourcing and independence of the Commission.

This submission does not address the resourcing needs of the Commission. However we note the significant past reductions to the budget of the Commission, and we believe that the most significant way for the Commission's effectiveness to be improved would be for its budget to be increased, rather than for it to be restructured and its legislation changed. If it were better resourced, the Commission could achieve more, and the cause of human rights in Australia would be significantly advantaged.

The other three criteria mentioned above – strength, effectiveness and independence – will all be adversely affected by the legislative changes proposed, and this view forms the basis of the following submission.

## **2. Flexibility**

While any move toward increasing the Commission's flexibility is welcomed, the Centre for Human Rights Education is concerned that many of the proposed changes have the potential actually to reduce the Commission's flexibility, and thereby reduce its effectiveness. Flexibility can seldom be imposed by restructuring, as flexibility is ultimately achieved by people rather than by structures. The Commission has shown a significant ability to operate flexibly with its present structure and within existing legislation, and any move to legislate flexibility could in this case prove counter-productive. Some of the changes proposed in the new legislation, most particularly the withdrawal of the right to seek leave to intervene in court proceedings, will significantly inhibit the flexibility available to the Commissioners in seeking the protection of the rights of Australians.

### **3. Intervention in Court Proceedings**

The Commission currently has the right to seek leave to intervene in court proceedings raising human rights or discrimination issues. Intervention by the Commission has generally been welcomed by the courts. The High Court of Australia has noted that interveners play important functions in the judicial process including providing contextualizing perspectives that parties to the proceedings may overlook (due to their direct involvement in the proceedings), and gathering and presenting publicly available legal information relevant to the case, assisting the court in its consideration of the matter.

This is an important power of the Commission in protecting and promoting human rights in Australia. Should the Commission be required to seek permission from the Attorney General before seeking to intervene in a case this important protective role would be significantly undermined.

#### **3.1 Independence**

The right to seek leave to intervene is a key component of the Commission's independence. With this right, the Commission maintains a level of separation from the political process which is essential to both the perception and the reality of a truly independent human rights commission. Human rights commissions can only operate effectively if they are able to retain such a level of independence, and the proposed legislation will lead to at least a perception, and also a likely reality, of a body that is too readily controlled by the government of the day. This is not in the interests either of the furthering of human rights in Australia, or of Australia's reputation as a supporter of strong human rights structures and processes.

#### **3.2 Conflict of Interest**

It is understood that the Commission has intervened in 35 court proceedings since its inception in 1985. The Commonwealth has been a party to proceedings in 18 of these proceedings, and the Commission's submissions have been contrary to the Commonwealth's on 16 of the 18 occasions. To grant the Attorney General the power to refuse the Commission leave seek the right to intervene would create a clear conflict of interest for the Commonwealth.

#### **3.3 Authority of the Courts**

Granting the Attorney General power to decide when the Commission may intervene in court proceedings potentially undermines the authority of the courts. It is a matter for the courts to decide whether an intervener should be granted leave or not. The courts have the necessary expertise in making such decisions and are unfettered by constraints that may

affect elected officials. This proposal goes to the heart of the separation of powers of the legislature and judiciary.

## **4. Specialist Commissioners**

The proposed Australian Human Rights Commission Bill recommends that the Commission consist of a president and 3 human rights commissioners with no separation of portfolio responsibility. This submission opposes such a structure and strongly recommends retaining the current structure with specific portfolio areas. Issues concerning human rights are complex and require expertise. Specialised portfolio responsibility enables Commissioners to develop expertise in each area. This has many benefits for all parties involved in complaints, policy development, human rights promotion in the community, and the development of strong relationships between the Commission and community groups, government bodies and businesses.

### **4.1 Access**

Many instances of discrimination will go unreported, particularly when the victim is from a vulnerable group (women, children, refugees, Indigenous Australians). It is essential that the Commission's structure assist the Commission in its task of accessing and being accessible to members of vulnerable groups. Specifically identified Commissioners make this task easier, and will facilitate access to the Commission for those who need it most. This is in accordance with recommendations outlined in the Paris Principles.<sup>1</sup>

### **4.2 Highlighting the Needs of the Most Vulnerable**

The current portfolios of the Commissioners reflect the categories of people most vulnerable to human rights abuses in contemporary Australia. Maintaining these portfolios, reflected in the titles of the Commissioners, is an important public acknowledgement of this, and flags to the community their particular importance. This submission therefore strongly supports the retention of these specific titles for Commissioners, and further recommends that an additional Commissioner for Age Discrimination be appointed, to deal with complaints regarding the rights of children, seniors, and indeed anyone subject to discrimination on the basis of age.

### **4.3 Flexibility**

The proposal to replace the specialist Commissioners may appear to be justified on the grounds of increased flexibility. However this is not necessarily the case, as the Commission has shown in the past its ability to move across different areas of

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<sup>1</sup> United Nations High Commission for Human Rights (1992) (Resolution 1992/54) "Principles Relating to the Status and Functioning of National Institutions for Protection and Promotion of Human Rights."

discrimination and to consider the compounding impact of different forms of discrimination for those who are multiply disadvantaged. In this instance, flexibility is achieved because of the attitude and practices of the Commissioners themselves, rather than because of a particular structure.

## **5. Change of Name and By-Line**

The Centre for Human Rights Education has no particular view regarding the proposed change of name to the Australian Human Rights Commission, but opposes the proposed requirement that the Commission carry the by-line “Human rights – everyone’s responsibility.” The by-line itself is commendable and makes an important point about both the collective nature of human rights and the links between rights and responsibilities. But the Centre for Human Rights Education is opposed to the Commission being legislatively compelled to use this by-line on all occasions. The by-line seems to be an unnecessarily detailed prescription for incorporation into legislation. In line with the argument for flexibility in the Commission’s operation, it would be more appropriate for the Commission to adopt different by-lines as it sees fit, according to context, as is its current practice.

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