



# ***SOUTH WEST SYDNEY LEGAL CENTRE***

**INCORPORATED**

April 24, 2003

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

Dear Mr Hallahan,



## **PROPOSED CHANGES TO THE HUMAN RIGHTS AND EQUAL OPPORTUNITY COMMISSION**

On 27 March 2003, the Federal Attorney General tabled a Bill to amend the Human Rights and Equal Opportunity Commission Act 1986, a reworking of previously tabled Bills dealing with the structure of the Commission, its powers and title.

Thank you for providing this Centre the opportunity to comment on this proposed legislation. Our Legal Centre is located in an area of high diversity in both the country of origin and financial means of our constituents. We assist many people in lodging complaints with the Human Rights and Equal Opportunity Commission (HREOC). We offer the following brief submissions in relation to the proposed legislation:

**1. We support the change of name to the Australian Human Rights Commission**

Under the Bill, the Commission would be renamed the Australian Human Rights Commission.

Our Legal Centre supports this change and the addition of the by-line "human rights – everyone's responsibility. The elimination of discrimination and harassment are prerequisites for the enjoyment of human rights by all Australians. All Australians should take responsibility for the elimination of discrimination and harassment.

**2. We seek clarification of the appointment of part-time complaint commissioners**

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2

The Bill empowers the Attorney-General to appoint part-time Complaints Commissioners to whom the President will be able to delegate complaint-handling functions.

Our Centre seeks clarification of the underlying rationale for this change.

**3. We do not support the abolition of the current specialist or portfolio commissioners**

Under the Bill the current Portfolio Commissioners in the areas of Race, Sex, Disability, Aboriginal and Torres Strait Islander Social Justice, and Human Rights, would be replaced with three non-Portfolio Commissioners.

While this would assist new and emerging areas of discrimination, it seems that many benefits would be lost which come with specialisation.

The South West Sydney Legal Centre undertakes extensive casework in this area of law. We note that discrimination law is extremely complex and we urge the Government to maintain the current commitment to the most vulnerable members of our community by retaining the present specialist commissioner portfolios in each ground of discrimination.

**4. We support the various changes to the Commission's educational function**

The Bill enhances the Commission's educational function. Our Centre supports the principle that for a person to be able to enjoy human rights, there is a corresponding responsibility for persons and organisations to respect those human rights.

The Commission, through educational programs aimed at the community, government and business sectors, plays a central role in contributing to the maintenance and improvement of a tolerant, equitable and democratic society.

These programs provide information and strategies to improve the enjoyment of human rights in Australia, and we support the formal acknowledgment of this function in legislation.

**5. We do not support the limits on the Commission's intervention power**

The Bill limits the Commission's ability to intervene in court proceedings that have a human rights element.

Under the proposed Bill, prior to seeking leave to intervene in court proceedings, the Commission will be required to obtain the approval of, or notify the Attorney-General of the proposed intervention.

The Commission is in a unique position in Australia of, not only being empowered to inquire into acts or practices that may infringe human

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3

rights or that may be discriminatory, but also being able to independently intervene in court proceedings that have a human rights element. We believe that this independent power is critical to the promotion and maintenance of human rights in Australia.

**6. We do not support the removal of the Commission's power to recommend compensation in human rights complaints**

Again, the Bill proposes the removal of a unique power of the Commission. Our Centre supports the retention of this important power as the recommendation of compensation often encourages resolution of the complaint to the satisfaction of both parties, without the matter proceeding to further litigation.

Our Centre believes that the protection of the above two powers of the Commission are critical elements of the law protecting human rights in Australia.

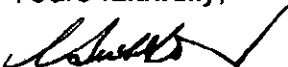
On entering into international human rights agreements, Australia has made solemn commitments to all its citizens to respect individual human rights and fundamental freedoms. Further, Australia undertakes to ensure that everyone in the jurisdiction can exercise these rights. If an individual's right is breached or his or her freedom is violated, Australia has promised to provide an effective remedy. This obligation operates regardless of who the violator is, even when it is the government itself. By limiting the independence of the Commission, in the ways proposed in this Bill, the Government is limiting its support of human rights in Australia.

Human rights impose obligations or responsibilities on everyone. We all - governments, private organisations, community groups and individuals - share the responsibility of respecting and protecting the human rights of other people. All human rights must be exercised in ways that do not impinge on the rights and freedoms of others.

We therefore recommend that the Bill be amended to provide for the protection of human rights in Australia by consideration of the above matters.

Should any member of your staff wish to discuss the matter raised above further, either by telephone or in person, please do not hesitate to contact Ms Christine Sutton on 02 96017777.

Yours faithfully,



Christine SUTTON  
Coordinator.