

Clifford, Julia (SEN)

From: Carlo Canteri [sheppartonccad@connexus.net.au]
Sent: Wednesday, 23 April 2003 4:55 PM
To: Legal and Constitutional, Committee (SEN)
Cc: Macklin, Jennifer (MP); Brown, Bob (Senator); Faulkner, John (Senator); Crean, Simon (MP)
Subject: changes: Human Rights Commission [muzzling]



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Dear Peter Hallahan

Secretary
Legal and Constitutional Committee
Room S1.House
Canberra ACT 260061

Subject: [native_title] FW: HREOC : Federal Government proposes to abolish position of Aboriginal and Torres Strait Islander Social Justice commissioner etc.

I believe the changes proposed will lead to the demise of the effectiveness of the HRC (Human Rights Commission), by reducing the number of commissioners and generalising their work.

The HRC is effectively turned into a Government hostage by forcing it to seek the AG's permission BEFORE it can investigate any issue - (eg. refugees, indigenous people, people with mental health or other issues would never get this government's approval.

I would appreciate opportunity to appear before the Senate C'tee to speak to my letter but - not enough time has been allowed for proper written submissions to be written.

The proposal is to restructure the Human Rights and Equal Opportunity Commission by creating three generalist Human Rights Commissioners to replace the existing specialist commissioners (Aboriginal and Torres Strait Islander Social Justice, Race Discrimination, Sex Discrimination, Disability Discrimination and Human Rights Commissioner. Therefore no commissioner can become a master of knowledge in a particular area - they are destined to become cream-puffs: ineffective in what they do.

Under the Bill, none of the three Human Rights Commissioners would have specific responsibility for Aboriginal and Torres Strait Islander social justice issues. The allocation of specific responsibilities would be at the discretion of the President. The Commission as a whole, however, would still be required to submit the annual Social Justice and Native Title reports to federal Parliament.

The Bill removes the present requirement that the person appointed to the position of Aboriginal and Torres Strait Islander Social Justice Commissioner be required to have significant experience in community life of Aboriginal persons or Torres Strait Islanders. One presumes their major qualification will be to wear the White Armband of history in their deliberations.

Current functions of the Social Justice Commissioner to promote discussion and awareness of Indigenous peoples' human rights, and to undertake research and educational programs for the purpose of promoting respect for Indigenous peoples' human rights will be maintained only as general Commission functions. They would compete for attention with the functions dealing with sex and disability discrimination, human rights and race discrimination. There is no guarantee that a future Commission will always devote resources and attention to these issues.

The current position of Aboriginal and Torres Strait Islander Social Justice Commissioner was created in 1992 largely in response to the Royal Commission into Aboriginal Deaths in Custody and HREOC's National Inquiry into Racist Violence. The role was created to ensure an ongoing national monitoring mechanism for the human rights situation of Indigenous peoples.

In 1999, the UN Committee on the Elimination of Racial Discrimination urged Australia to reconsider its attempt at that time to abolish the Social Justice Commissioner position to ensure that the absence of a specialist commissioner does not adversely affect the ability of the Commission to address in an adequate manner the full range of issues regarding indigenous peoples that warrant attention given the continuing political, economic and social marginalization faced by the indigenous community of Australia (UN Doc: A/54/18,para.21(2)).

Recent Census and other data does not suggest that there has been sufficient progress in addressing the marginalisation of Indigenous peoples since the need for a specialist Social Justice Commissioner was identified in 1992. In fact, the situation in many respects - such as contact with criminal justice processes, contact with care and protection systems, life expectancy and significant measures of health - has actually declined.

Achievements of the Social Justice Commissioner to date include:

- Annual Social Justice Report to the federal Parliament (1993 - ongoing);
2. Annual Native Title Report to the federal Parliament (1994 - ongoing);
3. Social Justice package proposals (1995);
4. Review of Aboriginal Deaths in Custody 1991 -1996 (1996)
5. Co-Chair of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families and co-author of Bringing them home report (1997);
6. National Indigenous Legal Studies Curriculum (1998); revised 2002-03;
7. Member of the Indigenous negotiation team for Native Title Act amendments (1997-1998);
8. Tracking Your Rights community training packages (1998);
9. National Indigenous Youth Forum Convenor (1999);
10. Briefed the UN Committee on the Elimination of Racial Discrimination about native title and racial discrimination (1999);
11. Briefed UN treaty committees about indigenous issues in Australia(2000);
12. Co-convened Moving Forward - national conference on stolen generations (2001);
13. Intervention in High Court Miriuwung Gajerrong case (2001
14. Intervention in High Court Yorta Yorta case (2002);
15. Workshop on corporate responsibility and native title (2002);
16. Workshop on benchmarking reconciliation and measuring Indigenous disadvantage (2002).

The legislation proposes changing the name of the Commission to the 'Australian Human Rights Commission' and giving more prominence to the public education functions the Commission already exercises.

Another amendment threatens the Commission's independence as well as its potential to defend human rights effectively. The Commission will need the Attorney-General's permission to apply to intervene in a court case raising human rights principles. At present, the Commission may only intervene with the permission of the relevant Court. In 35 such interventions to date, leave to appear has been granted in every case indicating that the Commission's use of the power has been appropriate.

The proposed change would mean that the Attorney-General would be the gatekeeper of this function even in cases where the government is a party to the litigation and in circumstances reflection a direct conflict of political interests. THEREFORE THESE CHANGES SEEK TO MUZZLE THE COMMISSION.

There are too many threats to human rights currently & it is often a series of small steps that leads to a destruction of the liberal-democratic system that we all value so highly as a precious achievement of Australia's diverse culture & peoples. Please do not present these changes to the parliament

We can see clearly what this Government is trying to do and oppose these changes which will undermine the very positive progress made in the area of human rights over the past 2 decades.

Sincerely

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