



NSW Ecumenical Council  
Incorporated

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**Submission to the Senate Legal and  
Constitutional Affairs Committee  
Inquiry into the Australian Human  
Rights Commission Bill 2003**

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Submitted by:

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# Submission to the Senate Legal and Constitutional Committee on the Human Rights Commission Bill 2003

## Background

### **The New South Wales Ecumenical Council Incorporated (NSWEC)**

The New South Wales Ecumenical Council Incorporated (NSWEC) welcomes the opportunity to submit its views on the Australian Human Rights Commission Legislation Bill 2003 to the Senate Legal and Constitutional Affairs Committee.

The NSWEC is comprised of fifteen major Christian churches working together to strengthen relationships and understanding of each other and to fulfil common witness, mission and service. Through the NSWEC, member churches come together to break down the structures that create and perpetuate poverty, oppression, injustice and division. The NSWEC is affiliated with the National Council of Churches in Australia (NCCA), and the two councils work closely together.

This submission is based on consideration of the issues by the Social Issues Committee of the NSWEC as well work done by NCCA staff, especially those working in the National Aboriginal and Torres Strait Islander Ecumenical Commission and the National Programme on Refugees and Displaced People.

The NSWEC has a full-time staff person working with Refugees and Asylum Seekers, and is highly involved with issues that are relevant to that work.

The NSWEC has also addressed matters relating to the situation of Indigenous peoples in Australia, and has done so in close collaboration with the Aboriginal and Torres Strait Islander Ecumenical Commission (NATSIEC), formerly the Aboriginal and Islander Commission of the NCCA.

During the past twelve months, the NSWEC has been raising issues relating to integrity in public life. This has been done particularly because of the deep concern in the member churches about the nature of the 2001 national election campaign. As an expression of this concern, the NSWEC issued a statement, "Integrity in Public Life", in which it said

Australia has long enjoyed freedom and stability of government. Freedom is intimately connected with truth and justice.

Australians have a right to expect that those, whose task it is to attend to the affairs of the nation and of its several states, will do so with a high degree of moral integrity.

Sovereign nations and states commit themselves to the promotion of the common good. Evasion of the truth and manipulation of the facts are destructive of the common good of society. Trust is thereby undermined, that trust which is the basis of all relationships including those between governments and the people who have elected them.

Therefore, this submission is based on a conviction that the Human Rights and Equal Opportunity Commission is an important instrument for the preservation of the common good of society.

## Introduction

The NSWEC, through the work of many of its committees and working groups, has a strong concern with the upholding of human rights in our community. The Human Rights and Equal Opportunity Commission (HREOC) has proven a crucial body in keeping important and often uncomfortable issues, such as the treatment of detained asylum seekers and the defence of indigenous rights, before us all. It is important that government, church and society can be challenged by an informed, competent, well-resourced and independent body.

The NSWEC, in consultation with the NCCA, has identified the following areas for consideration:

### **1. Proposed Removal of the Commission's Independent Power to Intervene in Legal Proceedings**

The present ability of the Commission to seek leave to intervene in legal proceedings involving human rights and discrimination issues is an important power. HREOC has used this power in about 35 cases before Australian courts and tribunals and has never been refused leave to intervene.

If passed, the Australian Human Rights Commission Legislation Bill 2003 would see the newly-named Australian Human Rights Commission have to seek leave from the Attorney General to intervene in court proceedings that raise human rights issues. The Attorney General argues this change is in the interests of balancing overall community views before permitting an intervention by the Commission. However, there is a strong case to retain the present arrangement of independent decision-making by the Commissioners. Intervention in controversial issues, in which the Federal Government may be a party in the legal proceedings, must be decided by the relevant court or tribunal. The NCCA believes the present arrangement better maintains Australia's commitment to uphold the rights contained within the International Covenant on Civil and Political Rights (ICCPR), notably under Article 2 (3 A-C) which supports an effective remedy for individuals whose rights or freedoms may have been violated. The present arrangement is also crucial if Australia wants to maintain the principles essential to the Westminster system of democracy.

Very recent proof of the importance of maintaining HREOC's independent power to intervene in legal proceedings is demonstrated in the April 15, 2003 Federal Court full bench decision in the Al Masri case. The court ruled that it was unconstitutional for asylum seekers found not to be refugees but who could not be sent home to continue to be held in immigration detention centres. The Federal Court ruled that this practice is in breach of the fundamental right to personal liberty and contravenes the International Covenant on Civil and Political Rights. If HREOC had been required to seek the permission of the Attorney-General to make a submission on this case, it is highly unlikely that such permission would have been given.

To remove HREOC's power to intervene would seriously endanger standards of integrity in public life.

## **2. Impact on human rights work of the proposed restructuring of positions**

The Bill, while retaining the position of President, alters the structure of the Commission to replace the identified portfolio Commissioners, currently responsible for the areas of Human Rights, Sex Discrimination, Race Discrimination, Disability Discrimination and Indigenous Rights, with three Human Rights Commissioners who will have overlapping responsibilities.

The NSWEC understands that the proposed changes are envisioned to give the Commission a strong educational role on human rights. The Memorandum to the Bill explains the new Commission would; educate Australians about human rights and discrimination and their responsibilities in these matters, undertake research and educational programmes on behalf of the Commonwealth and publish guidelines on appropriate acts or practices.

The NSWEC welcomes any efforts that assist in human rights education in the community. The government could consider increasing funding for such education, e.g., in schools and by civil society groups, while acknowledging that much human rights education is already effectively done by HREOC through the inquiries, reports, publications and legal interventions of the existing identified portfolio commissioners and the media coverage such initiatives receive.

The danger of replacing portfolio-specific Commissioners with three non-specific commissioners is that important specialised areas of work will not be adequately covered with the accumulative expertise that grows with specialist functions. Specialized expertise allows recognition of sometimes subtle differences that are more likely to achieve a successful human rights outcome. Also, retaining specialist commissioners would allow the community more clearly to know specifically whom to approach to lodge complaints or to appeal for the holding of specific inquiries or educational efforts by the Human Rights Commission.

## **3. NCCA's appreciation of Specialist Human Rights Commissioners**

The importance of retaining specialist portfolio commissioners in benefiting the work and concerns of the NSWEC can be demonstrated by highlighting the importance of the work of some Commissioners in two areas of work of the NSWEC – namely, relating to Indigenous People and Refugees / Asylum Seekers.

### **a) Race Discrimination Commissioner**

The individuals filling the Race Discrimination Commissioner position since 1986 have overseen a range of reports and initiatives that have highlighted needs and strategies to address racial discrimination issues facing indigenous, non-English Speaking Background and Arab and Muslim Australians. Community information provision, awareness raising and education via the media and publications have been important strategies in these efforts. Indigenous Australians and refugees and asylum seekers have been amongst those who have benefited from this effort to combat discrimination and vilification based on race.

The NSWEC is very concerned about the loss of momentum in recent years on reconciliation between Indigenous and non-Indigenous Australians and the polarising of Australian community attitudes towards asylum seekers and refugees - notably highlighted by the controversies around "The Tampa" and government policies and disturbances relating to immigration detention centres. Such controversies are used by sections of the media -and indeed by some

politicians- to heighten community prejudice and fear. Such strategies further diminish the sense of integrity in the Australian society.

#### **b) Aboriginal and Torres Strait Islander Social Justice Commissioner**

The Indigenous Rights Commissioner continually places before us the importance of our Indigenous brothers and sisters and the responsibilities that we as a nation have towards them. Governments, but also other sections of the community, including the church, are reminded of what we should be doing to help bring about a better situation for Indigenous Australia. Abolishing the specific position of Indigenous Rights Commissioner would allow all of us to place priorities on other issues. Therefore, Indigenous peoples could miss out on the attention they duly deserve. Surely the Royal Commission into Aboriginal Deaths in Custody and the "Bringing Them Home" report, as well as the annual reports on Native Title and Reconciliation have shown us the need for such a designated person full time. Someone continually has to track the recommendations from all these inquiries and ask questions as to why recommendations have not been implemented and also to highlight positive strategies that show results.

#### **4. Dealing best with emerging and existing human rights issues**

The NSWEC appreciates the argument in the proposed Bill that having generalist commissioners allows flexibility to address emerging issues (such as age discrimination) or presently unanticipated human rights issues and areas. However, under the existing HREOC structure, could not the President do this broader surveying of the human rights landscape and highlight emerging issues and needs with government and community? Also, the Bill's proposal to abolish the Community Relations Council and advisory committees may weaken the Commission's present ability to detect and address emerging human rights issues in a comprehensive way. The NSWEC is concerned that the Bill's alternative approach of allowing the President to appoint part-time Complaints Commissioners may see a narrower, legal approach to issues and also reduce the resources available to the Commission.

The Bill suggests that having generalist commissioners would also allow greater flexibility to deal with current human rights issues, which cut across boundaries of the existing specialist commissioners, e.g., women with disabilities. A counter view is that the expertise developed by the existing specialist commissioners can be better developed and then shared to deal with such cross-boundary areas.

Presumably one of the specialist commissioners could then decide to host a community investigation, educational campaign or legal intervention on the human rights area of concern.

#### **5. Proposed removal of the power to recommend compensation**

The Bill would remove the power to recommend compensation in cases under the HREOC Act. This change will impact most significantly in areas relating to immigration and employment. Other areas of discrimination are covered by their own Acts. While the existing power is only one of recommendation, not enforcement, it has a valuable educational role in highlighting HREOC's view of the gravity of the human rights breach. As such, there is value in this power being retained.

## **6. Maintaining a strong human rights model in our region**

HREOC is considered a model "National Human Rights Institution" for regional human rights workers. The Australian Government has for many years promoted human rights institutions in the Asia Pacific region. Weakening HREOC will erode its demonstration effect, undermining its attraction as a standard-setting model for regional governments to emulate and reducing the credibility of Australia's human rights lobbying.

## **7. Conclusion**

While welcoming the Bill's emphasis on strengthening community education and awareness of human rights issues and all our responsibilities to uphold them, it is vital that such efforts are adequately resourced so they go beyond well-intentioned slogans. The NSWEC believes the existing HREOC structure of the President and Specialist Commissioners, the Community Relations Council and advisory committees is more likely to provide a strong, more specialist and also broader-based approach to educational, investigative and legal efforts to promote and uphold human rights in Australian society. Accordingly, the NSWEC recommends that the present HREOC powers and structures be retained.

Increased government funding to also assist human rights education in schools and by civil society would help achieve the government's intention of strengthening human rights in our community.