

**Clifford, Julia (SEN)**

From:  
Sent:  
To:  
Subject:

Saint George's Paddington [saintg@tpg.com.au]  
Thursday, 24 April 2003 2:02 PM  
Legal and Constitutional, Committee (SEN)  
Australian Human Rights Commission Legislation Bill 2003



I write to express my concern about this proposed legislation. As I understand it 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). In addition the legislation requires the Commission to obtain the Attorney-General's consent before exercising its power to seek leave to intervene in court proceedings (unless the President was a federal Judge immediately before appointment, in which case the Attorney-General must be notified). Both these aspects of this Bill I see as retrograde steps and would urge the committee to strongly oppose these changes to the HREOC.

I have a particular concern about the potential for these changes to erode the progress made towards Reconciliation with Indigenous Australians. 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 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. None of the proposed generalist Human Rights Commissioners will have to meet this requirement. If the position of specialist commissioners is not retained (my preferred option and I would urge amendments to the Bill along those lines) then as a bare minimum the above requirement needs to be inserted as for at least one of the Commissioners.

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 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. Reconciliation with Indigenous Australians is of such ongoing importance for this nation that to even allow this possibility should be unthinkable. There is the very real danger that this Bill, if passed in its current form, will be perceived as a lessening of legislative support for the indigenous peoples of this country, such a perception (valid or otherwise) will set back the process of Reconciliation to the detriment of all Australians. I would submit that this makes this bad legislation.

A similar argument could be mounted about the removal of the other specialist Commissioners. There is the potential for specific focus being lost and particular groups of people or individuals as a consequence suffering disadvantage. Again making for bad legislation. A way needs to be found to guarantee that the current specialized foci are preserved. Each deserve priority and the legislation needs to have some mechanism to prevent any one of them being neglected because of focus on other issues. The current system of specialized Commissioners seems like an appropriate way of achieving this. "If the system ain't broke why change it?" The provision requiring the Attorney General's approval before seeking to intervene in court proceedings makes a mockery of the notion of the separation of powers, which I see to be a fundamental principle of our Westminster system of Government. This provision threatens the Commission's independence as well as its potential to defend human rights effectively. 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 where they oppose the Commission's submissions. This is absolutely inappropriate. 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. I would therefore suggest that this particular provision be deleted from the Bill.

I wish the committee well in their deliberations over this legislation and urge you to

make changes to accommodate the issues I have raised

Chris Albany  
Rector St George's Anglican Church  
245 Glenmore Rd  
Paddington 2021  
Ph/Fax 93606356