



**A SUBMISSION BY THE  
AUSTRALIAN EDUCATION UNION  
TO THE SENATE LEGAL AND  
CONSTITUTIONAL LEGISLATION COMMITTEE  
INQUIRY INTO THE PROVISIONS OF THE  
AUSTRALIAN HUMAN RIGHTS COMMISSION  
LEGISLATION BILL 2003**

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The Australian Education Union (AEU) thanks the Senate Legal and Constitutional Legislation Committee for the opportunity to make this submission on the above-mentioned inquiry. As a Trade Union which represents approximately 155, 000 teachers and educators across Australia, the AEU is strongly supportive of the independent role of the current Human Rights and Equal Opportunity Commission (HREOC), and is opposed to any changes which will diminish the independence of the Commission. It concerns the AEU that, in an era when the human rights of the most vulnerable in our society (in particular Indigenous Australians and refugees) are being violated, the Australian Government is proposing to lessen the powers of the legislated independent scrutineer of human rights in Australia.

## **1. The Fundamental Importance of an Independent Commission**

The AEU believes that the independence of the HREOC is fundamental to safeguarding the democratic and human rights of individuals against infringements by Governments, companies, individuals or other agencies. The Human Rights Commission Bill (2003) serves to erode the crucial, independent nature of the existing Commission. The Bill outlines that the new Australian Human Rights Commission would be required to apply to the Federal Attorney General for prior consent to intervene in relevant matters, rather than use the current procedure of applying to the appropriate court.

There is no evidence to support the need for this change. The existing HREOC has been a strong and independent advocate of human rights and scrutineer of human rights abuses, and has exercised its powers of intervention prudently. The restrictions the new Bill seeks to impose by requiring the Commission to apply to the Attorney General cannot be justified within the scope of the Commission's current and historical practices. The Commission's exercising of careful judgment has been substantiated by the fact that in the 35 applications for intervention since 1996, not one has been rejected by the courts. The AEU believes that these statistics validate the rigour of the current *Guidelines on applications for interventions in Court proceedings*, which HREOC is required to follow.

Further, it concerns the AEU that in areas where the Government may be a party to a case, or government policy brought into question, the Attorney General may be placed in an actual or perceived conflict of interest. As an organisation which represents teachers and educators working in public education systems across Australia, we are well aware, and supportive of, the codes of conduct created to ensure that Government employees are exercising their authority ethically and are not compromised in their decision-making capacities by conflicts of interest (or perceptions of them). We find it ironic that Federal Government policy in other areas (for example the creation of the new ATSIC financial structure) has been implemented in order to stem the wave of public perceptions of conflicts of interest, when the Australian Human Rights Commission Legislation Bill 2003 proposes to emulate this very situation by placing the Attorney General in a situation where there is potentially a requirement to be both a "gatekeeper" and a party to a case. The AEU does not support any proposed changes which would serve to undermine HREOC's current capacity to question Government and other parties in an independent manner which is consistent with Australia's obligations under Australian and International law.

## 2. Roles of the Commissioners

The Bill proposes to restructure the Commission by abolishing the 5 existing Commissioner's specialist portfolio areas (Race Discrimination Commissioner, Aboriginal and Torres Strait Islander Social Justice Commissioner, Disability Discrimination Commissioner, Sex Discrimination Commissioner and the Human Rights Commissioner), and creating 3 generalist Human Rights Commissioners, with no apparent division of portfolio responsibilities.

The specialisation of Commissioners has enabled them to develop detailed expertise and to claim appropriate authority in relation to their portfolio areas. It assists those dealing with the Commission in identifying the proper avenue for complaints or other communication, and enables social partners to develop ongoing working relationships with Commissioners in relation to particular issues.

The AEU maintains within our own structure specialist positions with responsibility for women and girls, and for Aboriginal and Torres Strait Islander Education. Although these officers have clear portfolio responsibilities, it is necessary for them to work in close cooperation with each other and with other AEU officers to ensure that issues of concern to women and girls, and to Aboriginal and Torres Strait Islander peoples are properly addressed within the work of the Union. Nevertheless, the specificity of their roles gives the Union's members and the education community more broadly, a clear point of contact in relation to the issues they deal with, and enables the officers themselves to develop and maintain sufficient specialist expertise to perform their roles at a high level.

We believe that the same principles hold true of the HREOC Commissioner positions. The areas of discrimination for which portfolio areas currently exist are major fields of concern which should be named, and each of which merits the dedicated attention of an anti-discrimination Commissioner with specialist expertise in that field. In our experience, both in dealing with HREOC over a range of matters and in relation to our internal operations, this level of specialisation significantly enhances the capacity for effective and informed collaboration across portfolio areas where such collaboration is appropriate.

The AEU believes that the existing specialist Commissioners are viewed by Australian society, and in particular, the marginalised groups they hold portfolio responsibility for, as having status and standing in the community in their particular areas of expertise. Given this, we would see the proposed changes as having the potential to diminish the leadership and authority of the Commission. We also believe that the ascription of generic portfolio responsibilities to Commissioners would serve to diminish the accountabilities which exist under the current structure of the Commission.

Rather than moving to generic Commissioner positions, whether or not such a change is really driven by budgetary concerns, the AEU submits that a more appropriate step would be to immediately move to fill the portfolio positions which are currently vacant or have only been filled on an interim basis. A strong and ongoing commitment to the five existing Commissioner positions would be a clear signal to the community that the government is serious about maintaining an effective, expert and independent watchdog on Human Rights issues across the board.

If additional specialist work (for example in the area of age discrimination) is required, the AEU believes that this should be filled with the appointment of additional Commissioners.

### **3. Aboriginal and Torres Strait Islander Social Justice Commissioner**

The AEU is committed to the principles of self-determination and self-management for Aboriginal and Torres Strait Islander peoples, and asserts the fundamental democratic right of Aboriginal and Torres Strait Islander peoples to be involved in decision making. We are deeply opposed to the fact that the Bill does not ensure that a specialist Aboriginal and Torres Strait Islander Social Justice Commissioner's position is retained.

The current legislation requires the person filling the role of Social Justice Commissioner to have experience in the community life of Aboriginal and Torres Strait Islander peoples. The AEU believes that the current legislation is inadequate in this area, as it does not require the Commissioner to be an Aboriginal and/or Torres Strait Islander person. Nevertheless, the proposed Bill is even more inadequate, as it makes no attempt to ensure that Indigenous issues are represented in any specialist way, by Indigenous peoples, or people with experience in the area.

In fact, the limited requirement of "experience in community life" has been removed in this Bill, potentially diminishing the voices of Indigenous peoples within the Commission. The AEU believes that this is unacceptable.

Further, the position of Aboriginal and Torres Strait Islander Social Justice Commissioner, created largely in response to the Royal Commission into Aboriginal Deaths in Custody, is accepted and respected in both the Indigenous and broader communities as a position of leadership. The current and previous Commissioners, as members of the Indigenous community, have been able to provide a unique Indigenous perspective on human rights and social justice issues within the Commission. This, in turn has served to strengthen the credibility of the Commission in the eyes of the Indigenous community.

It is inarguable that addressing Indigenous disadvantage remains the greatest challenge of Australia as a nation. Whilst there have been some marginal improvements in Indigenous social indicators in some areas (some aspects of education and health), there has also been a deterioration of these indicators in others (life expectancy, incarceration rates of women and juveniles). It remains that in comparison to non-Indigenous Australians, Indigenous disadvantage is immense. The AEU believes that this alone is a compelling reason for maintaining the position of Aboriginal and Torres Strait Islander Social Justice Commissioner.

### **4. Educational functions of the Commission**

The new Bill proposes to make education the central focus of the new Commission. As a Union of educators, the AEU is committed to ensuring that adequate and effective human rights education programs are delivered in public schools and TAFE colleges across Australia. We have found over years of various work with the existing Commission, a high level of commitment to, and proficiency in, human rights education. The Commission's educative functions have been both direct, with the production of materials such as the National Indigenous Legal Studies curriculum, the Face the Facts, Pregnancy Guidelines, Annual

Reports, Human Rights Education for Teachers and Students kit, Stolen Generations Report and educational materials; and indirect, through mechanisms such as Public Inquiries, which have an educative function, along with an investigative function.

The AEU therefore questions the rationale behind the proposed changes in the new Bill, which appear to be based on the assumption that the existing Commission is not fulfilling its responsibilities in the area of education. The AEU rejects this apparent assumption, and supports the Commission's existing philosophy that human rights education is most effective when delivered in a context which is applicable and relevant.

The AEU supports the proposition that additional human rights education is needed in our schools and TAFE colleges, but believes that this is best done with the allocation of additional resources, rather than the redistribution of existing ones.

## **5. Changing of Name from Human Rights and Equal Opportunities Commission to Human Rights Commission**

The AEU is opposed to the change of name from the Human Rights and Equal Opportunity Commission to simply the Human Rights Commission. The removal of the words Equal Opportunities from the title de-emphasises the important role of the Commission in promoting both equality and equal opportunity.

## **6. Recommendations:**

The Australian Education Union recommends:

1. That the Bill be rejected in its entirety.
2. That no measures be taken to reduce the independence of HREOC. In particular, any requirement for consent from the Attorney General (or any other government officer) prior to intervention in court proceedings should be absolutely rejected.
3. That the current arrangement of HREOC Commissioners with identified areas of portfolio responsibility should be retained, and where appropriate, expanded.
4. That instead of altering the structure and reducing the authority of HREOC, immediate measures should be put in place to ensure existing vacancies are filled, and that funding levels for the Commission are increased.

Thank you for the opportunity to submit this information to the inquiry.