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1 May 2003

The Secretary
Senate Legal and Constitutional Committee
Rom S1.61, Parliament House
Canberra ACT 2600

By email: legon.sen@aph.gov.au

Dear Secretary,

**Inquiry into the provisions of the Australian Human Rights Commission
Legislation Bill 2003**

Please find attached a brief submission to the Inquiry into the current Bill to amend the structure, powers and composition of the Human Rights and Equal Opportunity Commission.

The Union is strongly opposed to the proposed amendments and at its recent Council meeting, unanimously endorsed the following resolution:

“That Federal Council receive and note the report on the continued attacks by the Federal Government intended to undermine and diminish the role of a number of important institutions concerned with the legal rights of Australian citizens, and to weaken the legislation governing the operation of these institutions including the Human Rights and Equal Opportunity Commission and the Australian Industrial Relations Commission. Within the context of September 11, Tampa and Bali attacks, the Federal Government has progressively sought to undermine the human rights protections of Australian citizens, and to subject refugees and asylum seekers, who are the most vulnerable within the community to inhumane living conditions, and in so doing is contravening its obligations under international laws and covenants.

Federal Council deplores the current attempts of the federal government to abolish the posts of Race Discrimination Commissioner, Sex Discrimination Commissioner, Human Rights Commissioner and Aboriginal and Torres Strait Islander Commissioner and Social Justice Commissioner.

These Commissioner positions have ensured that a body of knowledge and expertise have developed in the important areas for which they have responsibility and the Federal Acts which they administer.

The Independent Education Union of Australia has a particular interest in ensuring that the vital work of these Commissioners continues. The majority of our members are women and they have benefited greatly from the work of the Sex Discrimination Commissioner. We have many members working in aboriginal schools as well as Islamic and Jewish schools. The work of the Commissioner here has been pivotal in assisting reconciliation, racial harmony and the continuance of a strong multi-cultural society in Australia. The Disability Commissioner has done invaluable work in ensuring access to education for students with disabilities and to highlighting the important resourcing and policy needs in this area for schools and teachers.

Federal Council calls on the federal office and branches to publicly campaign against this retrograde decision and to meet with and lobby federal parliamentarians and political parties to ensure that this legislation does not proceed.”

My apologies for the lateness of this submission. The short time-frame with intervening school and public holiday periods has meant difficulty in the necessary consultation process within our organisation.

Yours sincerely,

A handwritten signature in cursive script, appearing to read 'Lynne Rolley', followed by a period.

Lynne Rolley
Federal Secretary



INDEPENDENT EDUCATION UNION
OF AUSTRALIA

SUBMISSION TO

The Inquiry into the Provisions of the
Australian Human Rights Commission
Legislation Bill 2003

April, 2003

INTRODUCTION

1. The IEU is the federally registered union representing teachers, principals and support staff in approximately 2600 non government schools across Australia. 31.2% of students attend non government schools and approximately 85,000 teachers and support staff work in the sector across all states and territories, of whom about 55,000 are members of the Union.

Over 70% of its membership are women and our coverage also goes to community schools which have a majority of students and staff who are indigenous or who are from other ethnic and/or religious cultures. For example, over 90% of non government schools have a religious affiliation across mainstream religious faiths such as Catholic, Anglican, Lutheran, Greek Orthodox and others of the Christian faith, as well as Jewish, Muslim and other minority groups.

2. The IEU's Interest

- 2.1 In the absence of a Bill of Rights, the IEU is strongly supportive of an appropriate legislative regime being in place to ensure that the fundamental human rights of all Australians can be addressed through legal means. Over the past 25 years, a raft of anti-discrimination legislation has been put in place by Federal, State and Territory governments to make it illegal to discriminate on the basis of race, sex, age, religion, disability, sexuality, pregnancy, family responsibilities, social origin, and other areas. The Racial Discrimination Act of 1975, the Sex Discrimination Act of 1984, the Human Rights and Equal Opportunity Commission Act of 1986, the Privacy Act of 1988 and the Disability Discrimination Act of 1991 provide the framework for the protection of the human rights of Australian citizens.

The Union believes that this anti-discrimination legislation has been a powerful change agent in achieving a more open, tolerant and plural society. Moreover, such legislative frameworks are a signal to the international community that the Australian government is proactive in its determination to ensure that it complies with its human rights obligations.

A strong and independent national human rights organisation is central to ensuring that the mandate provided by such legislation is carried through – that is to promote and defend the fundamental values and human rights which are contained in a number of International Covenants and Conventions to which Australia is a signatory. These include the Conventions on the Rights of the Child, the International Covenant on Civil and Political Rights, the Declaration on the Rights of Disabled Persons, the Convention on the Elimination of All Forms of Racial Discrimination (CERD), and the International Covenant on Economic, Social and Cultural Rights to name but a few.

- 2.2 Over the last twenty years, the IEU has agitated to have federal and state anti-discrimination, human rights and industrial legislation provide the same level of protection for our members as for all in the Australian community. This work is based on the belief that the fundamental purpose of anti-discrimination legislation is that it be beneficial to the human rights of the citizens of the Australian community and that it prohibits discrimination on a range of grounds

of attribute and areas of activity. However, it is important to note that in all jurisdictions, exemptions exist within anti-discrimination law for religious based education institutions.

The following range of work by the Union gives an indication of the high level of proactivity on these issues. It is an indication of the Union's position that HREOC and the legislation which underpins it and which it has carriage of, should be strengthened rather than weakened, which is clearly not the intention of the current proposed legislation.

- IEU branches have been involved in dismissal cases involving issues of discrimination on the part of religiously based employing authorities since the early 1980's. In most cases, the union's attempts to rely on the relevant state or federal legislation were impeded by the scope and effect of the exemptions in various legislation across all jurisdictions. In May 1987 the Union wrote to Justice Einfeld seeking an inquiry by the Human Rights and Equal Opportunity Commission into certain practices in non-government schools in Australia and into the exemptions contained in Section 38 of the Sex Discrimination Act.
- This request was also given impetus by the outcome of an extensive inquiry conducted by the NSW Anti-Discrimination Board in 1984 and to which the IEU gave evidence. The Report, entitled Discrimination and Religious Conviction dealt with a wide range of matters including the employment conditions of teachers in religiously-based schools. Chapter 7, which dealt with Employment, contained a section on Religious Organisations and the role of religious belief in an educational organisation or institution, teachers' religious beliefs, and teachers' private lives.

The following passages from the Report are worth noting:

“7.191 In our view, the cases [of discrimination] that reach us may only be a fraction of those that occur, such is the pressure in the Catholic school system to stifle knowledge of such dismissals. We suspect that this pressure has successfully deterred teachers from trying to gain redress for dismissal through taking industrial action. The silence and stigma that surround these cases isolate the teachers concerned and promote a sense of guilt that effectively ensures that secrecy will be observed ...”

“7.201 We consider that teachers should be able to bring a complaint under the Anti-Discrimination Act for disciplinary action concerned with religion or orthodoxy in religious practice that is irrelevant to their job. It is no longer tenable for religious educational institutions to claim that their discriminating on religious grounds can be justified simply because they are religious organisations. Exceptions to the employment provisions of the Anti-Discrimination Act should cover positions in which discrimination on religious grounds may be justifiable, but these exceptions should be firmly related to

occupational qualification.”

- In 1990 the union forwarded a submission to the House of Representatives Standing Committee on Legal and Constitutional Affairs Inquiry into Equal Opportunity and Equal Status for Australia’s Women.
- In 1991, the federal union made a submission on the Review of the Exemption under Section 38 of the Sex Discrimination Act 1984. In that submission, we stated that it is a matter of great concern to our members that the protection of the Act afforded to the majority of citizens is denied to employees in non-government schools. This is magnified because non-government schools are also exempted from the various State anti-discrimination laws and the Affirmative Action legislation.
- The Queensland and Victorian branches have made submissions and interventions during the 1990’s in relation to anti-discrimination legislation introduced in Queensland and amendments to the Victorian legislation. These submissions were consistent with IEU policy to achieve protection from discrimination for staff employed in religious based schools. More recently in 2001 and 2002, the relevant IEU branches and the federal union made submissions in Tasmania and Queensland in relation to proposed government amendments to the Anti Discrimination Acts in those states.
- The NSW branch has made submissions and strongly lobbied the NSW government in relation to the Law Reform Commission’s Review of the NSW Anti-Discrimination Act 1977. This Act has even broader exemptions in that it allows discrimination by “private educational authorities” (not just those religiously based) and also allows discrimination on a broader range of grounds. Strong agitation on the part of the Union and other parties has meant that in regard to new areas of coverage such as sexual harassment and carers’ responsibilities, the NSW Act does not provide exemptions for “private educational authorities.” [Note that the final report of the Law Reform Commission in NSW took account of the IEU’s submissions and recommended the further limiting of those exemptions which existed.]
- As well as seeking redress for members through the complaints processes of the Commission, the Union has also made submissions to a number of Inquiries initiated by HREOC. These have broad ramifications in terms of raising awareness of human rights principles and also strongly serve the public interest . These include:
 - The Inquiry into Pregnancy and Work
 - HREOC's discussion paper on age discrimination "Age Matters?"
 - The Inquiry into the Catholic Education Office, Archdiocese of Sydney’s application seeking temporary exemption under the Sex Discrimination Act, Section 44, to offer teacher training scholarships to male students only.
 - The Inquiry into Rural and Remote Education
 - The Inquiry into Children in Detention

- 2.3 All of this work has been very significant for our organisation and for the members we represent, not only in relation to the particular rights of a member or group of members we have been seeking to defend but also because such action provides an opportunity to educate our community about the vitally important work of HREOC. It has served to inform teachers and students about their human rights as workers, as children, as women, as gay, lesbian and transgender members of the community, as Indigenous, as disabled, and as older citizens.

We reiterate that it is vital that the body charged with the oversight, defense and promotion of the human rights of Australian citizens is strengthened not weakened and to that end, the Union strongly supports the submissions of HREOC to this Inquiry.

- 2.4 The Union is very disturbed that the proposed legislation will weaken HREOC and it is of greater concern that this is the express intention of the federal government. With increasing confidence and cynicism, the government has made attacks on the judiciary, the AIRC, the United Nations and other human rights institutions and has introduced legislation which represents serious contraventions of our international obligations under various UN Conventions. This has particularly been the case in relation to the rights of refugees and asylum seekers, but also in relation to legislative amendments which undermine the civil rights of citizens as a response to possible terrorist attacks.

In relation to this Bill, the IEU is particularly concerned about the following:

- **The loss of intervention power and the politicisation of the Commission.**

This arises from the amendment allowing the Commission's intervention in legal cases only with the approval of the Attorney General (unless the Commission President is or was a federal judge). By acting as the gate-keeper, the fundamental democratic principle of the separation of powers is compromised by essentially pre-empting the authority of the court as to whether it will grant the Commission leave to intervene in a case. It also represents a conflict of interest and denial of natural justice for those seeking redress from discrimination (particularly if the Commonwealth is a party to the case) and their being able to rely on the assistance of the Commission responsible for the protection of the human rights of Australians.

- **The abolition of specialist commissioners and the changed role and structure of the Commission**

At present, the Commission is comprised of the President and five specialist Commissioners – the Aboriginal and Torres Strait Islander Social Justice Commissioner; the Disability Discrimination Commissioner; the Human Rights Commissioner; the Race Discrimination Commissioner; and the Sex Discrimination Commissioner. It is a body which is held in high regard internationally and has provided the model for development of similar bodies in other countries. This legislation will diminish and undermine the capacity of the Commission to pursue its mandate.

The Bill proposes a President and three Human Rights Commissioners.

This represents a significant diminishing of the resources of the Commission at a time when there is an increased need to ensure that the human rights of the most disadvantaged and vulnerable are protected. This is a loss which will be keenly felt by the constituent groups whom these Commissioners represent. This is the case for Indigenous Australians, for refugees and asylum seekers, and for minority cultural and ethnic groups within the community, particularly so when the level of racial vilification continues to grow within the Australian community.

Students and staff in a number of non government community Moslem schools experienced serious harassment following September 11, the Tampa incident and the “children overboard” incident. The Union supported these communities and commissioned the development of a comprehensive IEU policy on refugees and asylum seekers to inform our response to the HREOC Inquiry on Children in Detention. This was an Inquiry initiated by the Commission. The proposed amendments, removing the President’s delegation powers, would mean that such an Inquiry would not have taken place

The loss of the specialist Aboriginal and Torres Strait Islander Social Justice Commissioner is a matter of deep concern to the Union. There is a heavy silence from the present federal government about the reconciliation agenda, the continuing terrible disadvantage experienced by Indigenous Australians in relation to their human rights – in terms of their health, their educational outcomes, their levels of employment, their over-representation in the justice system – and the failure of the government to redress this state of affairs. The Union believes that it is imperative that there be a specialist Commissioner who is Indigenous, who continues to raise these matters to ensure that the human rights of Indigenous Australians remain in the public arena for attention and resolution – given the government has so clearly abrogated its responsibilities.

- **Amendments which limit the inquiry powers of the Commission**

The Union’s industrial files in all states and territories show that the incidence of discrimination is common and the activities of employers in a considerable number of cases are capricious indeed. The exemptions make it all too easy for narrow prejudice to masquerade as religious conviction or for a small vocal minority in a school to use the protection of the legislation to discriminate against, for example, a single mother or a gay or lesbian teacher, where the overall school community is really much more tolerant of these issues.

While discrimination is quite common, the majority of those affected choose not to pursue the issue because of the personal cost emotionally and career wise. Nevertheless the Union has taken such cases to HREOC to seek redress and has been successful both in the legal argument and in gaining compensation for its members. It is therefore very significant that this proposed amendment will remove the capacity for the Commission to recommend financial compensation when inquiring into such complaints. It further reduces the likelihood that a member will seek the assistance of the Commission to settle a complaint. The Union strongly opposes this amendment.

3. Conclusion

The IEU urges the Committee to reject the proposed Bill and to recommend the government's ongoing strong commitment to the Commission as an independent body, unfettered by political interference and with the resource capacity to defend the human rights of Australian citizens.