

Australian government attacks Human Rights and Equal Opportunity Commission

Rick Kelly
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In a move that has passed with little comment from the Australian media, the Howard government tabled legislation in the federal parliament on March 27 that aims to destroy the limited powers of the Human Rights and Equal Opportunity Commission (HREOC).

Federal Attorney General Daryl Williams presented the Human Rights Commission Legislation Bill 2003, declaring that the measures would “better equip” HREOC to “take on new areas of responsibility” and “strengthen” human rights protection in Australia.

These fraudulent claims mask the real aim of the legislation, which is to muzzle HREOC by bringing its activities under the direct control of the Attorney General and the government.

The Human Rights and Equal Opportunity Commission was created in 1986 to act as an independent statutory body. It has the power to inquire into potential infringements of human rights under the racial, sex and disability discrimination acts and can also intervene in court cases concerning the Human Rights and Equal Opportunity Commission Act.

While the strictly limited powers of HREOC make it a somewhat toothless entity, the Commission has nevertheless incurred the wrath of the Howard government in a number of high profile human rights cases.

It has challenged the government’s socially conservative programme in areas such as transsexual marriage and IVF access for single and lesbian mothers and condemned attempts to expand the powers of Australia’s security apparatus and the Australian Security and Intelligence Organisation (ASIO).

The Commission has also played a particularly prominent role in challenging the legality of the government’s attacks on refugees and asylum seekers and monitored the status of those incarcerated in

Australia’s immigration “detention centres”. For more than a year, HREOC has been running an inquiry into the conditions of children in these centres and heard damning evidence against the country’s repressive and discriminatory immigration policies.

HREOC intervened in the notorious Tampa refugee incident when, in 2001, the Howard government refused entry to hundreds of asylum seekers rescued off the north Australian coast by a Norwegian merchant ship. In the subsequent legal challenge against this exclusion, the Commission submitted a report severely criticising the government’s breach of human rights and refugee conventions.

While Attorney General Daryl Williams has made no secret of his anger with HREOC, it is a telling indication of the Howard government’s disdain for human rights and civil liberties that it cannot tolerate the limited independence of the organisation.

The main “reform” contained in the new legislation will force the Commission to secure permission from the Attorney General’s office before it can submit any statement in a court case involving human rights. This measure, according to Daryl Williams, “will ensure that the wider interests of the Australian community are taken into account in the exercise of the intervention function”.

But these “wider interests” will inevitably coincide with the government’s immediate political agenda. In fact, if the Senate approves the new legislation, the government will be able to prevent HREOC intervention in any future human rights case, including those brought against the government itself.

Under the proposed changes, “equal opportunity” will be removed from HREOC’s title and the organisation renamed as the Australian Human Rights Commission. HREOC’s five specialist commissioners

(sex, race, disability, human rights and Aboriginal and Torres Strait Islander Social Justice) will be replaced by part-time “complaints commissioners”. These commissioners will be appointed by the Attorney General and hear human rights cases alongside the president of the Commission. The legislation leaves the precise role of these new commissioners deliberately vague, as they are intended to dilute the powers of the Commission’s president, and effectively act as government representatives within HREOC.

The Howard government previously attempted to nobble HREOC with similar legislation in 1998 but this failed to win majority Senate support. The current proposals are being introduced in the context of the US-led “war against terrorism” and the occupation of Iraq, in the hope that this will deflect attention from their undemocratic character.

Nor is it coincidental that the legislation was tabled at the same time as Professor Alice Tay’s five-year term as HREOC president expired, severely compromising the organisation’s ability to defend itself.

Despite this, Professor Tay said she would “fight to the death”, warning that the legislation constituted a political attack on HREOC. “It’s not for me to read the minds of the government, the cabinet, the Attorney General and the department of the Attorney General, but there’s no doubt that [HREOC] intervention in the last couple of years on detention issues have been an irritant to the government,” she said.

A press release issued by HREOC said the proposals were “at odds with the Commission’s role as an independent body, responsible for monitoring and promoting Australia’s compliance with its human rights obligations”. It condemned requirements for HREOC to secure Attorney General approval when intervening in legal disputes involving human rights, declaring: “It is inappropriate that a party to the litigation should also have a ‘gatekeeper function’ in relation to potential interveners.”

The proposed legislation has been widely opposed by other human rights bodies and civil rights lawyers. The Australian Council of Human Rights Agencies chair, Dr. Diane Sisely, described the government moves as a “dangerous violation of HREOC’s role” which would “lead to a serious erosion of human rights protection” in Australia.

Eithne Mills, a family law lecturer at Deakin

University, said that the government was “tightening the noose” on human rights protections in order to punish HREOC for its interventions against the government in human rights cases. Mills claimed that the legislation would “disable the commission” and give the Attorney General “a considerable amount of power”. Prominent lawyer and journalist Richard Ackland derided government claims that its measures would strengthen human rights in Australia as a “graphic piece of Orwellian double talk”.

The government’s complete disregard for these criticisms was demonstrated on April 11 at the Standing Committee of Attorneys General Conference in Melbourne. When the Victorian Attorney General forwarded a motion condemning the changes, Daryl Williams walked out of the conference, refusing to permit a debate on the new measures.

It is not clear whether the government, which does not have majority in the Senate, will be able to muster enough upper house votes to pass the legislation. While senators from the Australian Labor Party, Democrats and Greens have made mild criticisms; it is likely the government will offer superficial concessions to secure opposition support.

Whether the Human Rights Commission Legislation Bill becomes law, the very fact that the Howard government can introduce such legislation is a revealing indicator of Labor’s complicity in the government’s attacks. On a raft of human rights issues, from the expansion of the powers of ASIO, to immigration and refugee issues, the Labor Party has offered only the mildest tactical criticisms of the government’s policies. This has allowed Howard and his ministers to press ahead unchallenged with their ongoing assault on basic democratic rights.



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