

## Inquiry into Freedom of Speech in Australia

1. Whether the operation of Part IIA of the Racial Discrimination Act 1975 (Cth) imposes unreasonable restrictions upon freedom of speech, and in particular whether, and if so how, ss. 18C and 18D should be reformed.

Freedom of speech arises out of the notion of human equality, or human rights. 'Freedom' does not give one person the right to do whatever they want to somebody else- whether it be by word or deed. And when we are considering speech in detail, then speech becomes very much a deed. Words have the power of actions.

Sections 18C and 18D didn't appear out of thin air. They arose because of very serious violence – both individual and systematic- being experienced by Aboriginal people, and by migrants. This was violence and racism being imposed by the dominant, white, pre-dominantly Anglo-Saxon culture.

But irrespective of race, there is a fundamental truth that racial hatred and its expression in racist speech can cause immense harm to both the subject, and to society.

The firm message, ensconced in 18C and 18D, that there are limits to race hatred, is helpful in making people think twice before they come out with racist remarks. Its not different to other campaigns that target discrimination against women for instance, or people with disabilities.

It is a section that is valued by local councils. When changes to this law were proposed last year, **over 70 local councils around Australia moved motions urging the Federal Government to retain legislation as it stands.**

2. Whether the handling of complaints made to the Australian Human Rights Commission ("the Commission") under the Australian Human Rights Commission Act 1986 (Cth) should be reformed, in particular, in relation to:
  - a. the appropriate treatment of:
    - i. trivial or vexatious complaints; and

In my experience, as a child of migrant parents, growing up in Sydney in the 1950s and 60s I experienced racist taunts every day just walking down the street. That sort of nonsense doesn't affect everyone the same way- but it affected me deeply. Even thoughtless 'in fun' racism, that the dominant majority might think is trivial- is not trivial, to the person who experiences it.

Given that only 15 or so claims by Indigenous Australians Racial Discrimination Act have reached court since the Act began – and given the intense discrimination they face at all levels in society- then I don't think the Commission is being overwhelmed by trivial or vexatious complaints.

- ii. complaints which have no reasonable prospect of ultimate success;

Just what does this mean? It is important that there are avenues for complaints being investigated- the "no reasonable prospect of ultimate success" is not a reasonable principle. It means giving up on rights because they are too hard. Fighting racism is not something that can be given up, just like fighting for freedom is not something that can be given up.

- b. ensuring that persons who are the subject of such complaints are afforded natural justice;

The Commission exists to ensure both complainant and complainer are afforded natural justice.

- c. ensuring that such complaints are dealt with in an open and transparent manner;

? That's what Commission's mandate ensure, seems pretty clear to me

- d. ensuring that such complaints are dealt with without unreasonable delay;
    - e. ensuring that such complaints are dealt with fairly and without unreasonable cost being incurred either by the Commission or by persons who are the subject of such complaints;

Both the above two points are not about the legislation, they're a matter of resources and funding- if you want to investigate what the Commission actually does then that's an entirely separate matter.

- f.

- g. the relationship between the Commission's complaint handling processes and applications to the Court arising from the same facts.
3. Whether the practice of soliciting complaints to the Commission (whether by officers of the Commission or by third parties) has had an adverse impact upon freedom of speech or constituted an abuse of the powers and functions of the Commission, and whether any such practice should be prohibited or limited.

This is too vague- do you mean the Commission should not advise people of their rights? There is not much point in having laws if you want to keep them secret I'm inclined to think. Should we have secret speed limits applied? To educate our society for the good requires that we should be proactive. Racial Discrimination legislation is progressive- which means it has to tackle the rather sad (as revealed by continuing racism ) statistics. If anything, we need more advertising of rights, not less.

4. Whether the operation of the Commission should be otherwise reformed in order better to protect freedom of speech and, if so, what those reforms should be.

Again, this is not a matter of freedom of speech, but of how the Commission operates. I think it is quite dangerous to use a freedom of speech inquiry as a way of examining how the Commission currently operates. If it is necessary to see how the Commission itself operates, then that should be a separate inquiry really.

The use of the word 'reformed' in this context is negative- as if there is something wrong with the Commission, as if in some Orwellian way it is subverting freedom of speech. Again: Freedom of speech is not some naïve, unqualified right to insult offend and express racial hatred. Freedom of speech entails the responsibility to respect human rights.

The Committee is asked, in particular, to consider the recommendations of the Australian Law Reform Commission in its *Final Report on Traditional Rights and Freedoms – Encroachments by Commonwealth Laws* [ALRC Report 129 – December 2015], in particular Chapter 4 – "Freedom of Speech".

There are many laws that limit freedom of speech and in doing so are not in the best interests of the country.

I refer to the restrictions that have been applied to the relations between employees and unions- particularly with regard to safe work practices.

It applies even more so in the Border Force Act . Employees, persons with knowledge, and journalists should be protected in exercising their adult right to express and share information if it is for the benefit of those imprisoned in Australia's immigration detention facilities. The veil of secrecy drawn over these facilities hides a festering evil that will one day be exposed and shame our nation.

Conclusion.

Rather than waste valuable time tinkering with something that is already working, I suggest the Inquiry leave well enough alone. If you can find ways to strengthen and extend human rights with attendant freedom of speech, then that is even better.

Dr Niko Leka for Hunter Asylum Seeker Advocacy