

Mr Bill Leak

8 December 2016

**Submission to the Parliamentary Joint Committee on Human Rights
into the Freedom of Speech in Australia**

I am the editorial cartoonist on The Australian. As someone who has recently had personal experience of the way in which Section 18C of the Racial Discrimination Act can be used as a blunt instrument to silence the voices of people whose views differ from those of those I regard as the enemies of free speech, I am very grateful to the committee for the opportunity to make a submission to the Parliamentary Joint Committee on Human Rights into Freedom of Speech in Australia.

As a cartoonist, I run the risk of 'offending' someone, somewhere, every day. For example, a cartoon I drew in response to the Charlie Hebdo massacre in January, 2015, that featured an image of Mohammed so 'offended' the delicate sensitivities of certain terrorists fighting for Islamic State in Syria that they issued a fatwa against me, calling on 'fellow mujahideen' in Australia to hunt me down and kill me. As a result, I had to move house and start getting used to living within the constraints of extreme security measures in order to ensure the safety of not only myself but also my family.

The extraordinary consequences I've had to endure as a direct result of having drawn a cartoon published in The Australian on August 4, this year provide another graphic example.

The cartoon in question was drawn in the context of a raging debate about aboriginal issues that had been triggered by a Four Corners Program about conditions inside a juvenile detention centre in the

Northern Territory. My intention was to try to draw attention to the fact that the high level of parental neglect and abuse of children in many Aboriginal communities is one of the underlying reasons why the disproportionately high number of 97% of the inmates in the detention centre were indigenous. It depicted an Aboriginal police officer, presenting a wayward child to his father, saying, "You'll have to sit down and talk to your son about personal responsibility," to which the father replies, "Yeah righto, what's his name then?"

Someone, somewhere, claimed to have been 'offended' by my cartoon and submitted a complaint to the Australian Human Rights Commission. This was hardly surprising given that, on the same day the cartoon was published, the federal Race Discrimination Commissioner himself had urged people to lodge complaints about it with the very same organisation that employed him, via a message posted on social media.

That organisation, the AHRC, then proceeded to put in train a process, the intention of which was not only to punish me for having made an entirely valid contribution to an extremely important public debate, but to serve as a warning to anyone else still naïve enough to believe they lived in a free society in which they have the same right to express their opinions as anyone else.

While less murderous than the tactics deployed by Islamist terrorists, the actions taken by the AHRC were no less authoritarian and they sprang from the same impulse: to use whatever means they have at their disposal to silence those with whom they disagree. Section 18C of the Racial Discrimination Act was just the ticket. It provided them with the blunt and brutal weapon they were looking for.

I believe my own case clearly demonstrates why Section 18C should be repealed. Not amended, not 'overhauled': repealed.

Being made to live in fear and being forced out of my home by terrorists gave me first-hand experience of what it's like to be subjected to the rules that obtain in jurisdictions where there is no freedom of speech. Coming

as I do from a country that enjoys the privileges of hard-won freedoms and boasts one of the world's longest-running democracies, it's perhaps unsurprising that, at first, I found it difficult to believe it possible that I could find myself in such a predicament. That abruptly changed when I was provided with access to Islamic State websites and 'chat rooms' that featured exhortations from Middle East-based jihadists to their Australian counterparts to kill me, clues to my whereabouts for those trying to find me, and photos that would enable them to recognise me if they did.

Eighteen months later, I found it just as difficult to believe a complaint under 18C had been filed against me and I was subject to an investigation by the Australian Human Rights Commission because a cartoon I had drawn was deemed likely to 'offend' on the basis of race. Far from seeking to malign indigenous people on the basis of their race, my cartoon aimed to expose the truth about the appalling levels of violence endured by Aboriginal women and children. It was nothing more, and nothing less than an entirely reasonable, and considered, expression of a view on a subject of intense public interest and yet, incredibly, it resulted in me not only being publicly vilified as a racist by anonymous 'social justice warriors' on social media but also being persecuted by an agency of the state.

The parallels between the situation I found myself in after 'offending' Islamist terrorists by drawing a cartoon featuring an image of the prophet Mohammed and the situation I subsequently found myself in after 'offending' someone whose views differed from my own are as obvious as they are bizarre. It should never have even been possible for someone like me to be subjected to such illiberal persecution in Australia and if we, as Australians, are to continue to take pride in proclaiming ourselves to be citizens of a free country, I believe we will have to take steps to ensure it never happens to anyone else, ever again.

In my view, Section 18C of the Racial Discrimination Act undermines freedom of speech in Australia and must be repealed.

I firmly believe the most effective means of combatting the enemies of freedom of speech is by exercising our freedom to speak and to express our views through any medium we choose, whether it be journalism, activism, comments on social media, performance art, conceptual art, satirical cartoons, or whatever other form of expression you can think of. Freedom of speech is the principle that enables everyone to contribute to the marketplace of ideas, where bad ideas are challenged and replaced by better ones in an ongoing process, the purpose of which is eventually to arrive at the truth. It is not only essential for the maintenance of a free and civil society; it is the thing that *created* our free and civil society.

In making this submission, I wish to address all the points (1, 2, 3 and 4) in the terms of reference.

Terms of reference (1)

Point (1) of the Inquiry's terms of reference refers to whether the operation of Part IIA of the Racial Discrimination Act imposes unreasonable restrictions upon freedom of speech, and in particular whether, and if so how, ss 18C and 18D should be reformed.

Given that an individual claiming to have been 'offended' was able to lodge a complaint to the Human Rights Commission against my cartoon, it is problematic for a law such as 18C to codify a subjective notion such as 'offend' given that it means different things to different people. Like beauty, 'offence' is very much in the eye of the beholder. It is unlike beauty, however, in that beauty is incontrovertible while offensiveness is not. Offence can never be given; it can only be taken. This is because in order to be offended one must first choose to do so. As a cartoonist I deploy the weapon of humour to make my points. It is my intention to amuse and, usually, thousands of people find my cartoons amusing. I am simply not responsible if one of my cartoons fails to amuse someone, somewhere who chooses to be offended by it instead.

Cartooning, by its very nature, is always a controversial business and I realise that some members of the public may find them disagreeable or even choose to take offence at them. This, after all, is what a good cartoonist does. The cartoonist highlights topics of debate, such as family dysfunction in indigenous communities, through confronting, hard-hitting and pointed imagery. Those who claim to have been offended, of course have an equal right to write, or draw, opposing ideas. The hallmark of a robust liberal democracy is the freedom for its citizens to frankly exchange and debate opposing ideas. As Paul Kelly of *The Australian* argued, ‘Australians, as a sovereign people, should have the right to discuss issues concerning race, ethnicity and borders even though some people might be offended or insulted’.¹ The attempt of 18C to make some opinions on these matters unlawful is therefore authoritarian and illiberal.

I have found that a major problem exists when discussion turns to freedom of speech, and that is that most people have no idea of what it means. Please understand that, in saying this, I am not making any claims to being a highly educated man. Indeed, my academic attainments stopped at being awarded an HSC in 1973. Since then I have, however, attempted to educate myself and so, while my involvement with politics and society in general only extends to working as a cartoonist, at least I have made it my business to read the works of the great thinkers whose ideas were instrumental in creating the free society in which we now live. Because I have done this myself simply because I believe it’s necessary that I know enough of what I’m talking about in order to be able to draw well-informed cartoons, I have always assumed, perhaps naively, that people aspiring to high office in the federal government would be far better educated and more well-versed in the works of, say, John Stuart Mill, than I am.

If I believed, like so many of the people I speak to on the subject believe, that freedom of speech amounts to nothing more than the legal right to verbally abuse complete strangers on the bus, then perhaps I, like them,

¹ Paul Kelly, ‘Turnbull can combine 18C revision with new race hate law’, *The Australian*, 26 October 2016.

would believe Section 18C was quite a reasonable restriction and see no harm in it.

On the other hand, if I were a highly educated man in the position of, say, the prime minister, I most certainly wouldn't say, as Malcolm Turnbull PM said while speaking to Neil Mitchell on Melbourne's 3AW on August 19: "With all due respects to the very worthy arguments surrounding it [the overhaul of 18C], it is not going to create an extra job, it is not going to ... build an extra road."

Similarly, if I were the leader of the opposition and an aspiring prime minister I would not have said, as Bill Shorten did when asked questions on November 13 about those seeking the repeal of Section 18C: "What hurtful words and phrases do they feel are missing from the national lexicon? What offensive and humiliating vitriol do they think the government of Australia should be encouraging?"

Statements like these, especially when coming from our own political leaders, only serve to reinforce a misinterpretation of the concept of freedom of speech and a complete misunderstanding of why it's so fundamentally important to the maintenance and continuing development of the free society.

I am thankful that this committee has been convened and hope that public awareness and understanding of the subject will be greatly enhanced through your deliberations.

Terms of reference (2)

I would also like to address point (2) of the Inquiry's terms of reference, which considers whether the handling of complaints made to the Australian Human Rights Commission should be reformed.

When it comes to investigations before the Commission, the handling of my case was by no means unique. A freedom-of-information request by

the Institute of Public Affairs earlier this year discovered that there are currently 18 such investigations, all related to 18C.² As the Institute noted, the complaints reported in the news are ‘just the tip of the iceberg’. Almost all of the complaints are investigated behind closed doors and, as happened in the case of the Queensland University of Technology students, the investigations can go on for months (or years) without the accused ever being told.

In my own case, I was put through two months of incredible stress by the Commission’s investigation. The first complainant (there have been three) had never met me and didn’t have to justify anything she did. No one asked her any questions and it didn’t cost her a cent. While the Commission eventually dropped the investigation after the complainant withdrew her complaint, the tortuous process had thrown my life into a state of utter chaos, and it’s not over yet. Three months after the cartoon was published, two more complaints were received and accepted by the Commission. It appears clear that these complaints were prepared by the Aboriginal Legal Service, WA, and presented for signing to two Aboriginal men in the Kimberly region of Western Australia. One of the complaints has since been withdrawn. The other is, in lawyers’ parlance, still ‘on foot’. So now, two months after being notified of the first complaint and four months after the publication of the cartoon, the possibility that I may yet be required to defend myself in court still hovers, like a dark cloud, over my life.

This in itself is just another part of the punishment I’ve been subjected to for daring to shine the spotlight on the truth of family dysfunction in indigenous communities. It also graphically demonstrates just how opaque the processes of the AHRC are and how indifferent the commissioners are to the wellbeing of those they choose to persecute with the authoritarian powers granted to them by Section 18C. Also, the punishment is not restricted to the imposition of stress and disruption but can be of a financial nature as well. As Eric Abetz remarked, “the punishment has been in the process which has seen people fork out tens

² Matthew Lesh, ‘Je suis Bill Leak’, *Spiked*, 20 October 2016.

of thousands of dollars and have their reputation trashed while the Human Rights Commission bumbles along denying Australians natural justice”.³ I was fortunate enough to have News Corp backing me legally. If I had had to pay the legal bills myself, the investigation would have left me financially ruined.

With these high personal and financial costs, the lack of transparency and undue delay in the resolution of cases, I submit that the current operation of the Commission is unsatisfactory. I recommend that if complaints are to be referred to the Commission, they must be resolved as expeditiously as possible with the accused parties made privy to the outcomes of the Committee at the earliest convenience. Furthermore, persons subject to investigations by the Commission should not incur unreasonable costs and must, in all cases, be afforded natural justice.

I would like to go now to Section 2(a) of the Inquiry’s terms of reference which are concerned with the appropriate treatment by the Commission of:

- i. trivial or vexatious complaints; and
- ii. complaints which have no reasonable prospect of ultimate success.

First, I believe that the complaint from Ms Melissa Dinnison, was both trivial and vexatious. This was made clear on the complaint form where, in answer to the question, “How do you think this complaint could be resolved?” Ms Dinnison wrote, “yes”.

This, however, did not deter the commissioners from pursuing the matter. Neither did Ms Dinnison’s subsequent behaviour, despite the fact she left Australia soon after lodging the complaint to go on a holiday to Germany, refused all requests from The Australian’s journalists to discuss the matter with them, and then announced she would remain in Germany out of fear of being racially discriminated against were she to return home.

³ Adam Gartrell, ‘Racial discrimination complaint against cartoonist Bill Leak dropped’, *Sydney Morning Herald*,
12 November 2016.

I would also submit that Ms Dinnison's complaint against me would have had no reasonable prospect of ultimate success, thanks to the provisions in Section 18D, every one of which was applicable in my case. I would argue the commissioners must have known the chances of success for Ms Dinnison's complaint were remote.

Terms of Reference (3)

I would also like to address point (3) of the Inquiry's terms of reference, which considers 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.

The adverse impact the Commission's conduct in relation to my case has had on freedom of speech is entirely obvious. Because I am the editorial cartoonist on Australia's only national broadsheet newspaper, the Commission would have known that any case against me would be widely reported on and attract a great deal of publicity. Just as the fact I was threatened with murder by terrorists when I drew a cartoon that 'offended' them led directly to other cartoonists thinking of their own safety first before committing to drawing a cartoon that could, potentially, put them in a similar situation, the publicity given to the Commission's treatment of me has had a chilling effect on anyone considering making public statements about the levels of violence and neglect suffered by Aboriginal Australian children.

This isn't only an abuse of the powers and functions of the Commission; it's a full-frontal assault on freedom of speech. By taking seriously a trivial complaint by a vexatious litigant while ignoring the substance of the cartoon being complained about, the Commission has demonstrated it is more concerned with the imaginary right of people to not be offended than it is with the real human rights of Australia's most marginalised and vulnerable people.

Terms of reference (4)

I would also like to address point (4) of the Inquiry's terms of reference, which considers whether the operation of the Commission should be

reformed to better protect freedom of speech, and if so, what those reforms should be.

Much of the cause for the unsatisfactory operation of the Australian Human Rights Commission is of course to be found in the existing provision of 18C. The vague and ambiguous meaning of the terms 'offend', 'insult' and even 'humiliate', have given the Commission far too broad a scope in which to investigate complaints made under the provision. As the former Prime Minister John Howard remarked, 'the use of section 18C of the *Racial Discrimination Act* was out of control'. While I believe it is doubtful that I would have ever been under investigation by the Commission if 18C had been drafted to better safeguard freedom of speech, I now believe anything short of its complete repeal will not be enough to prevent further abuses by authoritarian organisations like the Commission.

The repeal of 18C would rein in the powers of the Commission to investigate frivolous race-based complaints lodged by people motivated by nothing more than hurt feelings. As can be seen by my own case, in which the sum total of the complainant's involvement came to nothing more than the five or so minutes it took for her to fill out the form but resulted in two extremely stressful months for me and would have sent me broke had I not had News Corp paying the bills, 18C as it stands is an abomination that has no place in a free society.

It is being wielded as a weapon against freedom of speech by a 'Human Rights' Commission that should, in fact, be doing all it can to safeguard the rights of ordinary members of the public, including politicians, journalists, authors, artists and cartoonists to speak their minds. This is a non-negotiable liberty that Australia must guarantee for all its citizens if it is to remain a healthy democracy.

Conclusion

My own personal experience, and that of many fellow Australians, underscores the need for the Federal government to urgently consider

repealing section 18C of the *Racial Discrimination Act*. In the words of former Keating Government Minister, Gary Johns, section 18C is “not compatible with representative and responsible government”. This is because the Australian people, in whom the parliament derives its sovereignty, “must be able to fully, frankly and robustly discuss controversial government and political matters, including those involving race, colour, ethnicity or nationality”.

As the supreme alternative to the 18C provision of the *Racial Discrimination Act* (1975), Australians from all side of politics must continue to draw on the nation’s common law system and liberal democratic heritage to defend the right for individuals to freely speak their minds on all matters, including those involving race and ethnicity, while at the same time employing these very same mechanisms to challenge racist speech where it arises.

I wish the Joint Parliamentary Committee well in its deliberations on this critically important issue of ‘Freedom of Speech in Australia’.

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