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Committee Secretary

**Parliamentary Joint Committee on Human Rights**

PO Box 6100,

Parliament House

Canberra ACT 2600

Dear Committee Members

### **Submission to enquiry on Freedom of Speech in Australia**

**LibertyWorks** is a registered not-for-profit organisation headquartered in Queensland. We advocate for a reduction in government control over citizens liberty and have since our inception held grave concerns over the limitations that the Racial Discrimination Act and the procedures of the Australian Human Rights Commission ("AHRC") places on free speech in Australia.

**We refer to the Terms of Reference of the enquiry and call for the full repeal of Sections 18C and 18D of the Racial Discrimination Act ("the Act"). Our rationale is as follows:**

#### **1. The Act reduces liberty**

Freedom of speech is a fundamental right owned by all citizens and that the ability to exercise that right is crucial to intellectual discovery, learning, enlightenment, science, law, free trade and most aspects of a free society. The exercise of free speech breaches no individual's common law rights nor can it be said to breach anyone else's "natural rights"; their right to life, liberty and property.

In a free society, speech is moderated by custom, peer pressure, cultural norms and a variety of other social factors. In contrast, placing legislative limits on speech is a hallmark of socialist, marxist, theocratic or fascist states that seek control over citizens. The Act does not expand anyone's rights, it only diminishes a fundamental rights owned by all, the right to speak freely, and repeal would return those rights to all of us.

#### **2. Seeks to protect what does not exist**

There is no right to not feel offended, insulted, humiliated or intimidated. Those feelings are in the learned control of all of us yet the Act seeks to shield us from them. Because the Act seeks to protect us from those feelings, to stop us from feeling offended, insulted, humiliated or intimidated, it is actually an attempt to take away something else that rightly belongs to all of us; our right to hear uncomfortable things, to feel those

specific emotions when we choose and to learn and grow from them.

### **3. Seeks to control the uncontrollable**

The Act seeks to control feelings that arise in entirely unpredictable ways. No one comment is guaranteed to offend everyone and no one comment is guaranteed to offend no-one. What is offensive, insulting, humiliating or intimidating to one person may not be so to another. And what is so today, may not be so tomorrow. The feelings of others can be influenced by the environment and circumstances far beyond the control of legislators. In an era of global and instant communications, of “fake” news and terrorist Twitter posts, predicting the feelings of others based on what is spoken, written or observed is not a precise science. The Act can not possibly be successful in controlling feelings in people, something that observably is simply not controllable.

### **4. It's ineffective**

There is no evidence to suggest that the legislation is effective. The Australian Human Rights Commission's (“AHRC”) own report “Freedom from Discrimination: Report on the 40th anniversary of the Racial Discrimination Act NATIONAL CONSULTATION REPORT • 2015” cites rising incidents and feelings of discrimination. Many of the incidents described in the report relate to “silent” discrimination, where “Racism need not involve overt expression. The potency of racial prejudice may in fact lie in its subtlety and insidiousness”.

As there is no clear evidence that the legislation has reduced discrimination it would appear the Act has failed to achieve its original objective. Why then do we should keep legislation that takes away everybody's right to free speech yet fails to reduce discrimination? The answer of course is we should not.

### **5. It reduces our collective strength**

The Act and dispute resolution procedures of the AGRC offers remedies and financial rewards to people who complain of feeling offended, insulted, humiliated or intimidated. As feelings are in the control and domain of all of us, it follows that some people will rationally respond to the inducements and lodge complaints in the hope of obtaining a financial benefit.

The Act actively discourages people from learning, through experience, about how to deal with uncomfortable feelings. The Act encourages us to hold on to hurt feelings, to use them as a weapon against those that have caused our pain, rather than to learn and grow from them. The Act encourages a reduction in the maturity level and ability to deal with adversity of many individuals which in turn diminishes our collective national strength.

### **6. The process becomes the punishment**

The process of handling of complaints made to the AHRC under the Australian Human Rights Commission Act 1986 (Cth) is flawed. Although the Commissioner has the power to terminate vexatious complaints, the *Prior v QUT* case and the complaint

accepted by the Commission against cartoonist Bill Leak, illustrate that they are accepting complaints that are vexatious and have no legal standing, resulting in the accused parties suffering considerable legal expenses and lengthy processes that becomes the punishment in itself.

According to the AHRC, only three percent of complaints handled ever make it to the courts. The 97 percent of claims that are handled internally are conducted in secret and no details of these cases are made public. This is concerning, as the public has no way of assessing how 18c complaints are handled. We ask that the Committee conduct an audit of all AHRC complaints received in order to fully determine whether the process up until this point has been appropriate.

We believe that freedom of speech is a fundamental liberty granted to all people and that the ability to exercise that right is crucial to discovery, learning, enlightenment science, law, free trade and practically all aspects of a free society. In short, freedom of speech is important for human progress. We urge the Committee to support free speech by recommending the repeal of Sections 18C and 18D and the reform of how the Australian Human Rights Commission handles human rights complaints.

Yours faithfully

*Andrew Cooper*

President

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