YOUNG LIBERAL MOVEMENT OF AUSTRALIA

Federal President
Aiden Depiazzi

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26 March 2017

Senator the Hon. Ian Macdonald
Chair
Senate Legal and Constitutional Affairs Legislation Committee
Parliament House
CANBERRA ACT 2600

Dear Senator Macdonald

Human Rights Legislation Amendment Bill 2017

Please accept this correspondence as a submission to the Senate Legal and Constitutional Affairs Legislation Committee for its inquiry into the *Human Rights Legislation Amendment Bill 2017* (the Bill).

The Young Liberal Movement is a federation of State and Territory Young Liberal Divisions that come together as Australia's largest centre-right youth movement. We are the elected Federal Office bearers of the Movement.

Since its inception, the Movement has held a strong policy position on all freedoms, particularly freedom of speech. It is the long-held position of the Young Liberal Movement, as passed by its Federal Council and reaffirmed in January 2017, that section 18C of the Racial Discrimination Act 1975 (Cth) (the Act) is an anathema to freedom of speech and should be repealed. While we are disappointed that the Government did not choose to adopt Young Liberal policy, we believe this legislation makes sensible amendments that should be supported by the Senate to section 18C, its operation and the workings of the Australian Human Rights Commission (the Commission).

The issues

As evidenced in the QUT case[1], right now in Australia, young Australians can be dragged through court, have their reputations smeared, incur upwards of $30,000 in legal fees in relation to a Facebook post - just to be found innocent. We believe this is wrong and unjust. Yet under section 18C and the poor administration by the Commission, this is exactly what can and has happened.

Our submission (attached) to the Joint Standing Committee on Human Rights' inquiry into Freedom of Speech in Australia examined the QUT case in detail and we would draw the Committee's attention to that submission.

We are also deeply perturbed by the conduct of the inquiry into the late Bill Leak, a cartoonist at *The Australian* where the Race Discrimination Commissioner actively solicited 18C complaints to be

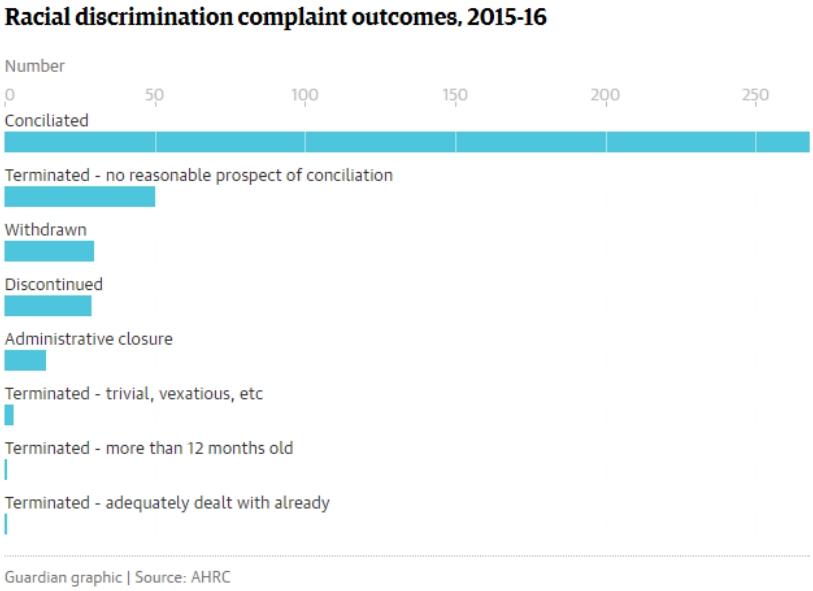
[1] Prior v Queensland University of Technology & Ors (No. 2) [2016] FCCA 2853 [30]

made to the Commission[2]. While the complaint that was lodged was eventually dropped, significant legal fees were incurred and great stress was placed on Mr Leak for no good reason. Again, we believe this oppression of a free press is wrong. Despite there being clear exemptions in section 18D, the Commission still encouraged complaints and dragged Mr Leak through the process. We are somewhat perplexed by statements from the President of the Commission, Professor Triggs, that the complaint wasn't dismissed because Mr Leak's lawyer didn't make it clear that Mr Leak was a member of the press and that the cartoon was drawn in good faith:

> *Had he responded by making a good faith point, we would almost certainly have ended the matter precisely at that moment.*[3]

Given that the cartoon appeared in a newspaper and a simple Google search reveals that Mr Leak was the editorial cartoonist for *The Australian* – a fact clearly known by the Commission when the Race Discrimination Commissioner solicited the complaints. This bizarre claim demonstrates the 'work to rule' mentality that the Commission has adopted.

More broadly, data published by *The Guardian*[4] from the Commission reveals that the vast bulk of 18C complaints are conciliated, withdrawn or discontinued, meaning that many of these complaints could have been settled and large amounts of 'go-away' money may have changed hands, as was the case with one of the four QUT students. In that case, while three students have now been found innocent whereas one student was coaxed into the paying a sum. We believe that the full extent of the problems with 18C is unknown because of the potential for similar injustices being settled to avoid large legal bills.



The Bill

The legislation currently before the Committee includes a number of key measures:

[2] http://www.theaustralian.com.au/national-affairs/bill-leak-complaint-prejudged-by-race-discrimination-commissioner/news-story/f34bfd7bcd3216df054fef4c05ff8a1a

[3] Professor Gillian Triggs, Senate Estimates, 28 February 2017

[4] https://www.theguardian.com/news/datablog/2017/mar/02/the-18c-debate-how-frequent-are-racial-discrimination-complaints

- Removing "offend", "insult" and "humiliate" from section 18C, replacing those words with "harass";
- Inserts a new reasonable person test to determine whether any alleged breach of 18C reaches a certain standard;
- Require the Commission to observe the rules of natural justice;
- Raise the threshold required for the Commission to accept a complaint;
- Provide additional powers to the Commission to dismiss unmeritorious complaints;
- Limit access to judicial review of unsuccessful complaints; and
- Provide disincentives against making unmeritorious appeals to the court by allowing costs to be awarded.

The Bill faithfully implements the majority of the recommendations from the Joint Standing Committee on Human Rights' inquiry into Freedom of Speech in Australia in relation to the operation of the Commission and the way that complaints are handled which is welcome.

We are particularly pleased that this Bill would require the Commission to observe the rules of natural justice, which will overcome the significant issue in the QUT case whereby students weren't told for some time that there was a complaint against them. Further, while we contend that the Commission has always had the power to dismiss vexatious complaints, we are pleased that there are amendments to ensure that the Commission can no longer hide behind the lack of specific wording as an excuse for poor management.

While that Committee did not reach a conclusion on amendments to section 18C, we are pleased that the Government has decided to progress amendments to remove the subjective terms of "offend", "insult" and "humiliate" and replace them with the word "harass". These amendments will assist in drawing back the professional victimhood industry and remove the government from regulating hurt feelings. This is a positive step.

We note that the President of the Commission, Professor Gillian Triggs, has previously said[5]:

> *There's always ambiguity about what you mean by offending and insulting.*

And when asked if she thought the clause could be made stronger by replacing "offend" and "insult" with "vilify", Professor Triggs said:

> *I would see that as a strengthening, it could be a very useful thing to do.*

While the Government has opted not to insert the term "vilify", we believe the term "harass" will similarly strengthen the Act in line with Professor Triggs' reasoning. It is somewhat disappointing that Professor Triggs has since altered her position on this matter. We are somewhat baffled by the Commission's submission to this Committee where Professor Triggs appears to have completely reversed her position on "offend" and "insult" – we can only conclude that someone who would provide misleading evidence to your Committee[6], as Professor Triggs has, may again be delivering different lines to different audiences. Given Professor Triggs' track record in providing evidence, we

[5] http://www.theaustralian.com.au/national-affairs/gillian-triggs-backs-calls-to-reform-section-18c-of-racial-discrimination-act/news-story/425568d374f82b48e63c24ee2e0844a0
[6] http://www.theaustralian.com.au/national-affairs/triggs-misled-senate-with-blast-over-journalists-use-of-quotes/news-story/3170e65252909af6b5592071f8d36e93

respectfully submit that Professor Triggs may not be a credible witness despite her exorbitant taxpayer funded salary.

Conclusion

While as a Movement we support further reform, we believe that this Bill strikes a sensible balance in ensuring free speech while protecting Australians from racially motivated harassment and humiliation. We are particularly pleased that the Bill seeks to address some of the very serious issues identified in the operation of the Commission but have reservations about whether those changes can be positively implemented under the current President and Race Discrimination Commissioner.

Nonetheless, we strongly support this Bill and urge the Senate to pass it.

We trust this submission will assist the Committee and the Senate in their deliberations.

Yours sincerely

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YOUNG LIBERAL MOVEMENT OF AUSTRALIA

SUBMISSION TO JOINT STANDING COMMITTEE ON HUMAN RIGHTS INQUIRY INTO FREEDOM OF SPEECH IN AUSTRALIA

DECEMBER 2016

AUSTRALIAN YOUNG LIBERALS

SUBMISSION TO THE JOINT STANDING COMMITTEE ON HUMAN RIGHTS INQUIRY INTO FREEDOM OF SPEECH IN AUSTRALIA

The Young Liberal Movement is a federation of State and Territory Young Liberal Divisions that come together as Australia's largest centre-right youth movement. Since its inception, the Movement has held a strong policy position on all freedoms, particularly freedom of speech.

It is the long-held position of the Young Liberal Movement[1] that section 18C of the *Racial Discrimination Act 1975 (Cth)* (the Act) is an inhibitor against freedom of speech. Worse still, the poor administration of the law by the Australian Human Rights Commission (AHRC) has resulted in young Australians being dragged through extensive court proceedings for social media posts – a matter which has taken more than three and a half years to resolve.

The Act was amended by the then Keating Government in 1995 to include section 18C, making it an offence to offend, insult, humiliate or intimidate another person or a group of people on the basis of their race, colour or national or ethnic origin. When the addition of 18C to the Act was considered by the Parliament, it was highly controversial. Indeed, the then Australian Greens Senator for Western Australia, Christabel Chamarette said at the time:

> *If this legislation is passed it will create a crime of words. This will take the legislation across a certain threshold into the realm of thought police—the most commonly voiced concern in the community and one which I share.*[2]

Federal Patron of the Young Liberal Movement and Liberal Senator for Tasmania Eric Abetz also contributed to the debate:

> *Dealing first of all with the civil side, essentially the effect of that legislation will be to protect people from hurt feelings. The legislation is designed specifically, and in terms, to protect people from offence and insults. No other legislation or principle of law that we are aware of in this country, has that effect. No other legislation or principle of the law that we are aware of seeks to protect people from hurt feelings. We say the government has no role as the guardian of hurt feelings.*
>
> *This legislation is far too broad, because the law tries to make unlawful practices which are merely socially unacceptable. Uncertainty of meaning means uncertainty in the law. And a fundamental for the rule of law to function effectively, is that there be certainty. This legislation does not provide that type of certainty. Indeed, the only certainty it provides is, that it will be a bonanza for my profession, but on its way it will create heartache and hurt to countless people who will be inappropriately taken through the processes of this legislation.*[3]

Regrettably, history has demonstrated both Senators to be accurate predictors of the future. While section 18C has been criticised widely over the last five years through cases involving commentators Andrew Bolt and Bill Leak, the Young Liberal Movement holds the view that the recent case involving students at the Queensland University of Technology (QUT) brought under this same

[1] As passed by the Federal Council of the Young Liberal Movement
[2] Page 314, Senate Hansard, 24 August 1995
[3] Page 227, Senate Hansard, 23 August 1995

section has demonstrated a direct adverse effect on young Australians. It is evident from the QUT case that the issues raised by Senators Chamarette and Abetz in 1995 are still relevant criticisms of the legislation today.

On 28 May 2013, three young university students, Alex Wood, Jackson Powell and Callum Thwaites entered the largely unoccupied computer lab named the Oodgeroo Unit at QUT. They were approached by Cindy Prior, an administrative officer in the Oodgeroo Unit, who asked them "whether they were indigenous" and then informed them that they were in "an indigenous space for Aboriginal and Torres Strait students" and demanded they leave.

An hour later, Mr Wood posted on the Facebook group QUT Stalkerspace:

> *Just got kicked out of the unsigned indigenous computer room. QUT (is) stopping segregation with segregation.*

Mr Powell wrote on the page:

> *I wonder where the white supremacist lab is.*

A Facebook account in the name of Mr Thwaites posted the comment *"ITT Niggers"*. It was found by the court that there is no evidence to prove that Mr Thwaites posted this himself and was accepted that it was a fake account. Another student, Kyran Findlater, posted:

> *"My Student and Amenity fees are going to furbish rooms in the university where inequality reigns supreme? I believe if we have to pay to support these sorts of places, there should at least be more created for general purpose use, but again, how do these sorts of facilities support interaction- and community within QUT? All this does is encourage separation and inequality."*

In May 2014, Ms Prior lodged a complaint with the AHRC on the basis that these posts were reasonably likely to offend, insult and intimidate her. More than a year later, some two years after the Facebook posts were made, the students were informed of the AHRC complaint against them – a complete denial of natural justice.

While the Federal Circuit Court found – three and a half years after the initial interaction in the Oodgeroo Unit – that the students had no case to answer, the punishment and expense of legal fees have been crippling on the students and indeed, one of them reached an early settlement with Ms Prior to avoid further costs. The additional reputational damage and impact on these students' lives in a situation where they have done no wrong cannot be overstated.

While this case highlights the need for reform, of particular concern is the AHRC's repeated refusal to examine the internal processes and issues associated with their own handling of the case. A key example of this is AHRC President Gillian Triggs' rebuffing of an offer from highly respected former High Court Justice Ian Callinan QC to investigate the handling of the case[4] and her urging Angus Stewart SC to cease investigating complaints against the AHRC, labelling the claims as "purely

[4] The Australian, *Triggs rejects Callinan offer to role in uni race case,* June 20, 2016, http://www.theaustralian.com.au/national-affairs/indigenous/triggs-rejects-callinan-offer-to-role-in-uni-race-case/news-story/6306b02c8118e1841c4267d462efe23c

speculative", "lacking in substance" and "misconceived"[5]. This conduct, along with the revelation that Professor Triggs made misleading statements to a Senate Committee while under oath[6] is of great concern to us as it highlights the urgent need for the AHRC to review its administrative processes so that similar injustices do not occur in the future.

This case has highlighted the very real risk that young people across Australia could face of having their reputation smeared and huge legal costs incurred as a result of section 18C and the bungled handling of cases by the AHRC. In a time where most young people have access to multiple social media platforms such as Facebook, Twitter, Instagram and Snapchat amongst others, it is a cause of great alarm that comments like those posted by the QUT students could lead to major court action.

This sets a dangerous precedent that actions under 18C can be brought against people for relatively innocuous comments on a pubic Facebook forum. Particularly for young people, who utilise various forms of social media to express and explore opinions and ideas, a heavy-handed approach to actions under 18C by the AHRC is particularly concerning. We believe that the most effective way to ensure that people are free to articulate their opinions free from litigious threat, is to repeal the section of the Act in its entirety.

We are pleased that it is now accepted that the laws need to change, with a recent contribution from Professor Triggs that she is supportive of the removal of the terms "offend" and "insult" and instead inserting "vilify". While our view remains that section 18C as a whole should be removed, we would be supportive of such an amendment as a common-sense step in the right direction.

Unless the law is amended to either remove section 18C as a whole and a whole-sale reform of the administration of the AHRC, we are concerned that other young Australians will face a similar fate to those QUT students mentioned in this submission. It is vital that people are allowed the freedom to express themselves on Facebook and other social media and to accept personal responsibility for their actions rather than face significant legal processes.

We respectfully submit that urgent reform is needed, so that more young Australians are not put at risk of vexatious litigation facilitated by the taxpayer-funded, bungle-prone AHRC.

ENDS

[5] The Australian , *Triggs, HRC accused of 'shameful conduct' in 18c students case*¸ June 28, 2016, http://www.theaustralian.com.au/news/nation/triggs-hrc-accused-of-shameful-conduct-in-18c-students-case/news-story/54565410fa226b60b076ed25e8c62571

[6] The Australian, *Triggs misled Senate with blast over journalist's use of quotes*, 20 October 2016, http://www.theaustralian.com.au/national-affairs/triggs-misled-senate-with-blast-over-journalists-use-of-quotes/news-story/3170e65252909af6b5592071f8d36e93