

PARLIAMENTARY JOINT COMMITTEE ON HUMAN RIGHTS

ATTORNEY-GENERAL'S DEPARTMENT

Senator Reynolds asked the following question at the hearing on 12 December 2016:

Senator REYNOLDS: I have one question, Mr Walter, in relation to some questions I asked the commission this morning and this afternoon. It relates to 18D. The commission very helpfully tabled this—you have probably seen it—to try and assist everybody to understand the process. But my question did not quite get a clear answer. It was in relation to section 18D. There have been a couple of cases that we have talked about, including the Bropho case where 18D clearly has to be a precursor consideration before a final decision of 18C. And then there was the Brandy case that we discussed that the commission said precluded it from making that determination. What I was trying to nut down was the merits of 18C and 18D because I think Bropho is still applicable in terms of precedent. In considering 18D, at what point, under the current process or the process the HRC is considering, does 18D actually get considered? Because it is not contained as a consideration of one of the nine points that the president can terminate under 46PH. It is not specifically mentioned as one of those reasons for termination. I was wondering if you can, in layman's language, tell us what responsibility if any does the Human Rights Commission have under the current framework to take any consideration of 18D?

Mr Walter: It has been a while since I looked at Bropho. I think the temporal element here is just slightly confusing. Essentially we have got two things happening. We have got a complaint procedure and then we have got to slot 18C and 18D into that. That is the procedure as well as for any other unlawful discrimination complaint provisions. I think what the legislation essentially contemplates is something that looks like that. My proviso on this is the legislation is both very specific and not very detailed and does not really set out much detail for the Human Rights Commission as to how it must run its processes. It provides a whole range of general provisions and then the commissioners need to shape their work around that, so I am not in any way suggesting that what they are doing is not compliant or something.

Senator REYNOLDS: Can I take ask you to take that on notice given the time.

Mr Walter: Yes.

The answer to the Senator's question is as follows:

Once a complaint has been lodged which satisfies the mandatory requirements of section 46P of the *Australian Human Rights Commission Act 1986* (the Act), the President or his or her delegate must inquire into and attempt to conciliate the complaint.

The President or his or her delegate may terminate a lodged complaint under section 46PH of the Act at any stage of the complaints handling process. Following receipt of a validly lodged complaint, the President or his or her delegate will review the complaint to determine whether any of the grounds for termination under section 46PH are applicable prior to contacting the person who is the subject of the complaint.

The President or his or her delegate has the power to terminate a complaint under paragraph 46PH(1)(a) when he or she is satisfied that the alleged unlawful discrimination is not unlawful discrimination. Accordingly, a complaint may be terminated under paragraph 46PH(1)(a) where an exemption under the *Age Discrimination Act 2004*, *Disability Discrimination Act 1992*, *Sex*

Discrimination Act 1984 or the *Racial Discrimination Act 1975* (the RDA) applies so that the conduct does not constitute unlawful discrimination,.

Accordingly, where a complaint is made under section 18C of the RDA, if the President or his or her delegate was satisfied that section 18D of the RDA applied, he or she may terminate the complaint under paragraph 46PH(1)(a) as the conduct would not constitute unlawful discrimination.

As section 18D only applies to specified conduct said or done 'reasonably and in good faith', it is normally necessary for the President or his or her delegate to obtain information from the respondent to be satisfied that the relevant conduct was said or done reasonably and in good faith. Therefore, in practice, it is unlikely that a complaint would be terminated prior to seeking submissions from the respondent to the complaint. Once submissions from the respondent are received, if the President or his or her delegate were satisfied that the exemption in section 18D applied, the President or his or her delegate may terminate the complaint under section 46PH(1)(a).

PARLIAMENTARY JOINT COMMITTEE ON HUMAN RIGHTS

ATTORNEY-GENERAL'S DEPARTMENT

The Parliamentary Joint Committee on Human Rights asked the Attorney-General's Department the following questions, upon notice, on 21 December 2016:

1. The Australian Human Rights Commission (AHRC) in their submission to this Inquiry said that resource constraints had led to a reduction in staff and an increased burden on the remaining staff.
 - a. What funding cuts have been imposed on the AHRC since 2014?
 - b. What specific impact have those cuts had to the Commission's work?
 - c. Has there been a reduction in the number of staff employed by the AHRC?
 - d. If so, in what areas of the AHRC have staff numbers reduced?
2. The President of the AHRC, Professor Triggs, in her evidence to the Inquiry said that the best approach would be to clarify what the meaning of section 18C is, based on the extensive and settled jurisprudence over the past 20 years.
 - a. Has any funding been allocated to raising awareness in the community of the scope and limitations of section 18C?
 - b. Has any funding been allocated to raising awareness of the AHRC complaints procedures within the multicultural community?
3. Senator Brandis said in 2014 that "people do have a right to be bigots".
 - a. What does the Department understand the Senator to mean by that statement?

The answer to the Committee's questions is as follows:

1a. The Australian Human Rights Commission has been subject to any efficiency savings applied to the Attorney-General's portfolio since 2014.

The Commission's budget has been subject to three specific savings measures since 2014:

- 2014-15 Budget - savings of \$1.65 million over four years by reducing the number of Commissioners from seven to six
- 2014-15 Budget – savings of \$0.958 million for the cessation of the Commission's project on the economic potential of senior Australians; and
- 2014-15 Additional Budget Estimates – reduction of \$5.0 million over four years allocated to fund the extension of the Royal Commission into Institutional Responses to Child Sexual Abuse. This measure will terminate in 2017-18.

1b. This question is better directed to the Australian Human Rights Commission. It is a matter for the Commission as an independent agency to determine how it will allocate its resources across its statutory functions.

1c. The Commission's average staffing level was 122.35 in 2013-14 and 119.3 in 2014-15. The Commission's average staffing level was 114 for 2015-16 and is 111 for 2016-17. Any further questions regarding the staffing of the Commission should be directed to the Commission.

1d. The distribution of staff within the Commission is a matter for the Commission.

2a. No funding has been allocated by the Attorney-General's Department.

One of the Commission's statutory functions is to promote an understanding and acceptance of, and compliance with, the *Racial Discrimination Act 1975* (subsection 20(b) of the Act). It is a matter for the Commission to determine how it allocates its resources across its statutory functions. Any questions regarding activities of the Commission should be directed to the Commission.

2b. No funding has been allocated by the Attorney-General's Department. Any questions regarding activities of the Commission should be directed to the Commission.

3a. That is a matter for the Attorney-General.