15 February 2017

Committee Secretary
Parliamentary Joint Committee on Human Rights
Department of the Senate

By email: 18C Inquiry@aph.gov.au

Dear Committee Secretary,

The Law Institute of Victoria (LIV) is Victoria's peak body for lawyers and those who work with them in the legal sector, representing 19,000 members. We advocate on behalf of our profession and the wider community, lead the debate on law reform and policy, lobby and engage with government and provide informed and expert commentary. This submission is informed by contributions from the LIV's Administrative Law and Human Rights Section.

We thank the Parliamentary Joint Committee on Human Rights for the opportunity to provide a supplementary submission to the Inquiry into Freedom of Speech in Australia.

Question one

During LIV's appearance, Senator Paterson raised the following question which the LIV took on notice:

Is the LIV aware of any examples where a respondent in an 18C case has been represented by legal aid?

Specific information concerning the recipients of legal aid is outside the ambit of the LIV's role and function. We suggest that this question may fall outside the scope of this Inquiry. Eligibility for legal aid is determined by a range of guidelines and means tests set by state-based legal aid commissions. Only a small proportion of legal aid funding is allocated to civil matters, other than family law matters. The allocation of legal aid funding raises issues that are separate to the merits of Part IIA of the *Racial Discrimination Act.*

There is comprehensive evidence that the justice system is inaccessible to many Victorians. In March 2016 the LIV raised these concerns with the Victorian Department of Justice and Regulation in a comprehensive submission to the Access to Justice Review (found here p 6.). In this submission, the LIV supports the Productivity Commission's recommendation that an additional $200 million per year is required immediately for civil justice services across Australia.

Question two

Mr Leeser referred to the Tasmanian Equal Opportunity Commission's ("*Tasmanian Commission*") submission in which they describe their current process for assessing complaints. Mr Lesser was interested in the Tasmanian Commission's use of time limits by which the Commissioner needs to make an initial assessment.

Should the *Australian Human Rights Commission Act* be amended to include similar timeframes?

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As noted in our first submission to this Inquiry, the Australian Human Rights Commission's ("*the Commission*") statistics demonstrate that the majority of complaints are resolved in a timely manner, with 47% finalised within 3 months, 82% finalised within 6 months and 94% within 9 months.[1] The case of *Prior v Queensland University of Technology & Ors* [2016] FCCA 2853 is one of the 6% of cases that failed to resolve in a timely manner. The LIV does not support amending the law on the basis of an outlier racial vilification case.

The LIV has considered the Tasmanian Commission's submission and submits that setting time limits for the Commission to deal with complaints does not take into consideration that each case is different. There may be reasons (such as the complexity of a particular case) why some cases take longer to resolve than others. We note that the Commission's funding has recently been reduced. If there are concerns about the timeframes involved in the complaints process, the most effective way this could be addressed would be through increased resourcing.

If time limits are further considered by this Committee, the LIV strongly recommends that the Commission be consulted on this matter. As noted by our representative, Karly Warner, "there is a difference between aspirational time limits-times which you would like a matter to actually proceed for-versus what are the implications if you have a hard and fast time limit rule and a matter does not actually fall within that agreed time space." (Hansard, *Freedom of Speech in Australia,* 31 January 2017, p 44)

Question Three

The LIV was provided with Mr Leeser's submission to the Inquiry and asked to consider the merits of the following proposed reform:

Should the *Australian Human Rights Commission Act* be amended so that on receiving a complaint the Commission must initially determine whether the complaint has little prospect of success?

The LIV is not aware of any evidence that there are large numbers of unmeritorious complaints that are not adequately dealt with by the current powers and processes of the Commission.

The Commission already has the power to terminate complaints which are 'trivial, vexatious, misconceived or lacking in substance'. The LIV submits that if a complaint cannot be terminated on the grounds that it is either 'trivial, vexatious, misconceived or lacking in substance', it is undesirable for the Commission to terminate the complaint on the basis that it considers that the case has little prospect of success. The Commission's role is not to make binding determinations about the substance of unlawful discrimination complaints.

The LIV submits that granting additional powers to the Commission to dismiss cases may in fact add to delays, as complainants may decide to challenge the dismissal of their complaint. The

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[1] Australian Human Rights Commission, 2015-16 Complaint Statistics, available online: <https://www.humanrights.gov.au/sites/default/files/AHRC%202015%20-%202016%20Complaint%20Statistics.pdf>.

Commission's process for resolving disputes is much quicker and cheaper than resolving these disputes through the courts.

Yours Sincerely,

Belinda Wilson

President