The Secretary
Parliamentary Joint Committee on Human Rights
PO Box 6100, Parliament House, Canberra ACT 2600
Ph 6277 3823, fax 5767, 18Cinquiry@aph.gov.au

Dear Secretary,
Thank you for opportunity to provide comment. I am on the electoral roll at the above address.

In regards to TERM OF REFERENCE 1 :-

I do consider that the operation of Part IIA of the Racial Discrimination Act 1975 (Cth) imposes unreasonable restrictions upon freedom of speech. It does unreasonably restrict, and the track record shows that it has unreasonably restricted, the ability of individuals in this wonderful Australian democracy of ours to engage in debating public issues.

I am appalled that the Racial Discrimination Act 1975 contains no section with title "Objects".
In my 46-years of working career, I have dealt with/ worked under/ enforced 16 pieces of legislation (mainly NSW, some Queensland, a few Commonwealth) and all of those pieces of legislation have had an "Objects" section, which lays out the Objectives as to what the legislation is intended to achieve. In my capacity as a senior Public Servant (often Branch Head) I have even re-written sections of a few of these Acts, and have written Regulations to give effect to some of these Acts.
In the Appendix below, I list the 16 pieces of legislation and THEY ALL HAVE AN OBJECTS SECTION.

As Alice in Wonderland said, "*If you don't know where you are aiming to get to, then any road will get you there*."
Without an "Objects" section, then it is no wonder that the implementation of the Act has been sloppy and frustrating, and has wasted taxpayers' moneys.

RACIAL DISCRIMINATION ACT 1975 - SECT 18C
Offensive behaviour because of race, colour or national or ethnic origin

(1) It is unlawful for a person to do an act, otherwise than in private, if:

(a) the act is reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate another person or a group of people; and

(b) the act is done because of the race, colour or national or ethnic origin of the other person or of some or all of the people in the group.

Note: Subsection (1) makes certain acts unlawful. Section 46P of the *Australian Human Rights Commission Act 1986* allows people to make complaints to the Australian Human Rights Commission about unlawful acts. However, an unlawful act is not necessarily a criminal offence. Section 26 says that this Act does not make it an offence to do an act that is unlawful because of this Part, unless Part IV expressly says that the act is an offence.

I request that Section 18C of the Racial Discrimination Act be repealed in its entirety.

It has been abused, and is too much like the "thought crimes" that George Orwell wrote about in his famous book "1984".

In regards to TERM OF REFERENCE 2 :-

I am appalled that the Australian Human Rights Commission Act 1986 contains no section called "Objects"
(I note that section 10A "Duties of Commission" does provide a little guidance)

I do consider that the handling of complaints made to the Australian Human Rights Commission ("the Commission") under the Australian Human Rights Commission Act 1986 (Cth) should be reformed. The best way to accomplish this is, as I argue below under Term or Reference 4, to abolish the AHRC.

I understand that over 2,100 complaints have been made under Section 18C, with hundreds ending up in court. This is an absurd waste of effort, time and money for defendants to just stand up for their rights. Just a lawyer's picnic. Taxpayers' moneys being wasted to make lawyers rich. And one effect is that both those spuriously accused and other people then become more reluctant to exercise freedom of speech.

Time does not permit me to quote the many examples of absurd travesties of commonsense and justice that have been committed by the AHRC.
But one common example is the horrible treatment of the Queensland Uni students who expressed concern about being asked to leave a computer room in which all computers were dedicated to Aboriginal students. Part of the blame for the bungling of this case has been laid on the incompetent and discredited Gillian Triggs, whose evident bias does the cause of human rights no good.

Another similar example of the absurdity of creating an offence of "offending" others on the basis of religious belief is where a similar law in Victoria (the Racial and Religious Tolerance Act, 2001) caused great stress and expense for two Christian pastors (Danny Nalliah and Danny Scot) before they were finally vindicated by the Victorian Supreme Court of Appeal five years later. Other States then decided not to proceed with such harmful and counter-productive laws. For example, the NSW Premier, Bob Carr, rejected calls to introduce a law like the Victorian one, and after his retirement wrote an excellent newspaper article criticising this sort of thing, and I cut and paste it in below as Appendix 2.

A financial newsletter in 2012 (http://www.dailyreckoning.com.au/why-free-speech-is-the-most-important-of-all-the-civil-liberties/2012/12/11/) wrote something that I agree with:-

> "By suppressing speech, you suppress thought, too. Free speech is the most important of all the civil liberties precisely because it guarantees that uncomfortable, provocative, and unsettling ideas will be spoken out loud and be vigorously contested in an open society. The best disinfectant against hateful speech is sunlight: let the racists, xenophobes, homophobes and crazies open their mouth and prove to the world how ridiculous they are."

I have heard Danny Nalliah speak and I do not agree with him, but I do agree with his right of free speech to say things that prove to most people how ridiculous he is. However the Victorian court case made him a martyr, plus which it did not improve social harmony between Christians and Moslems. Governments should not legislate, but should allow the

Freedom of Speech for people like Danny Nalliah to 'open their mouth, and prove to the world how ridiculous they are'. Danny attracts only a tiny minority following – of similar size and importance as the small minority who want 'gender identity' and 'sexual orientation' introduced into laws and school education programs.
But these tiny minorities should be allowed the Freedom of Speech to speak up.

In regards to TERM OF REFERENCE 3 :-

I do consider that the practice of soliciting complaints to the Commission has had an adverse impact upon freedom of speech.
Further, I consider that soliciting complaints has constituted an abuse of the powers and functions of the Commission.

I request that such practices should be prohibited.
It is alright for a private company to advertise for customers, by promoting its wares and products. However it is NOT alright for a public sector organisation, funded by taxpayers, to waste money on soliciting customers to complain to it, so as to assist in justifying its taxpayer-funded existence.

In regards to TERM OF REFERENCE 4 :-

I do consider that the operation of the Commission needs to be massively reformed in order better to protect freedom of speech.
We got on just fine for 198 years in Australia before the creation of the Australian Human Rights Commission in 1986, and we can get on just fine without it again in future.

I note that the Discussion Paper in 2014 by Tim Wilson, then Human Rights Commissioner, stated inter alia:-

> Human rights are protected in Australia through a myriad of federal, state and territory laws, policies and practice, as well as through the common law (that is, decisions of the courts) and culture.[i] ….
>
> At the federal level, the *Human Rights (Parliamentary Scrutiny) Act 2011* provides a mechanism to consider whether any new legislation is compatible with human rights. An assessment of whether legislation is compatible with human rights or not is undertaken by a Joint Parliamentary Committee on Human Rights (Joint Committee).[ii]

Therefore I say, "The best reform would be to abolish the Australian Human Rights Commission."
We don't need it.
It has been an experiment gone horribly wrong.
The current staff of the AHRC could be offered redundancies or be re-deployed elsewhere in the Commonwealth Public Service.

Yours sincerely

Appendix 1 - 16 PIECES OF LEGISLATION THAT ALL HAVE "OBJECTS" SECTIONS:-

As far as I am aware, the Commonwealth Racial Discrimination Act 1975 and Australian Human Rights Commission Act 1986 are the only laws that do not have a section called "OBJECTS'.
I have not done a survey to see how many pieces of legislation do, or do not, have an OBJECTS section, however, based on my 46-year career of working with legislation, I do believe it to be the common legal custom. Here below is a list of all the 16 pieces of legislation that I have ever worked with**, and ALL of them DO have an Objects section.**

NSW

The NSW Acts that I worked with during 1977-1989 all had Objects sections:-

1. Clean Air Act, 1961
2. Clean Waters Act, 1970
3. Noise Control Act, 1975
4. State Pollution Control Commission Act, 1970
5. Waste Disposal Act, 1971

These were amalgamated into these three Acts, which I worked with during 2009-2012

6 PROTECTION OF THE ENVIRONMENT ADMINISTRATION ACT 1991

4. Objects of Act

7 PROTECTION OF THE ENVIRONMENT OPERATIONS ACT 1997

3. Objects of Act

http://www5.austlii.edu.au/au/legis/nsw/consol_act/poteoa1997455/

8 WASTE AVOIDANCE AND RESOURCE RECOVERY ACT 2001

3. Objects of Act

http://www5.austlii.edu.au/au/legis/nsw/consol_act/waarra2001364/

During 2009-2016 I also worked with the

9 ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

5. Objects

10 WORK HEALTH AND SAFETY ACT 2011

3. Object (n.b. This Object section gives an excellent example of Objectives)

http://www5.austlii.edu.au/au/legis/nsw/consol_act/whasa2011218/s3.html

11 FOOD ACT 2003

3. Objects of Act

http://www5.austlii.edu.au/au/legis/nsw/consol_act/fa200357/

QUEENSLAND

12 WORK HEALTH AND SAFETY ACT 2011

3. Object

13 COAL MINING SAFETY AND HEALTH ACT 1999

6. Objects of Act 7. How objects are to be achieved

COMMONWEALTH

14 ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

3. Objects of Act

15 WATER ACT 2007

3. Objects

16 WORK HEALTH AND SAFETY ACT 2011

3. Objects

Appendix 2 – article in "The Australian" by ex-NSW-Premier Bob Carr about Human Rights

Lawyers are already drunk with power

http://www.theaustralian.news.com.au/story/0,25197,23588943-7583,00.html

Bob Carr was premier of NSW from 1995 to 2005.

CALL it the first swallow of summer. Last week I met a lawyer who said while she opposed a charter of rights, all the barristers on her floor supported it, and for the obvious reason: the intoxicating whiff of litigation.

A bill of rights, or a charter, will lay out abstractions like the right to life, or privacy, or property, and thus enable judges to determine - after deliciously drawn-out litigation - what these mean.

A shift in power from elected parliaments to unelected judges, by a process of "judicial creep", is part of the bill of rights package.

Canada has had its Charter of Rights and Freedoms since 1982, planted in the constitution. Before that there was only a legislative version.

Clearly this is something the zealots want to see happen here: the first step only a law, but followed by constitutional entrenchment.

Like Australia, Canada also has a shortage of doctors in rural areas. British Columbia came up with a scheme to encourage doctors to practise there, with a finely tuned system of incentives.

The provincial Supreme Court struck it down, citing section 6 ("mobility rights") and section 7 (the "right to life, liberty and security") of the Canadian Charter of Rights and Freedoms. Canada's rural population is still under-served by doctors, thanks to judges who want to write society's rules.

That's the trouble. A menu of abstractions - that is, any attempt to list rights - wrenches from the cabinet table and the legislature and delivers to the courtroom things that ought to be determined by governments.

Thus, in the most recent burst of judicial activism, judges in Britain have determined that the justice secretary can no longer block a parole board decision to release a dangerous prisoner. Judges also determined that failed asylum-seekers in Britain could have access to the National Health Scheme, again something that should be a matter for elected politicians.

In Scotland, because of a delay in placing toilets in prison cells, the Scottish Law Reporter estimates that prisoners may be entitled to awards totalling pound stg. 76 million ($158.7 million) because their cells violated the European Charter of Fundamental Rights. The Government had been caught up with another priority, expanding drug rehabilitation programs for inmates.

Last year, pound stg. 750,000 was paid to 197 heroin-addicted prisoners who successfully argued that cutting short their treatment while in prison breached their human rights.

But there's another phenomenon that perverts proper process: police and bureaucrats in Britain anticipate getting overruled on human rights grounds and start to shape their responses.

Pity the factory owner who, this month, had to pay pound stg. 20,000 to bailiffs to remove 40 Gypsies who had torn down a 2.4m fence and occupied his factory land. The police refused to act so as not to breach the travellers' human rights.

A friend of mine who sits in the House of Commons says when his constituents talk about loutish behaviour in the streets or around housing estates, they say: *"I suppose the police can't do anything about it because of their human rights."*

Thus creeping judicial activism around a charter of abstractions renders negative a concept that should sit nobly and proudly in the lexicon.

When Kevin Rudd looks at the 2020 Summit's endorsement of a bill or charter, he'll be politically astute enough to know a move to enact a charter or bill in any form would meet the same commonsense opposition that doomed it in 1988, when Australians voted it down 69 per cent to 31per cent.

Consider the objectors.
Business knows it just represents another layer of uncertainty; what judges will do with "a right to property" is anyone's guess.

Churches are becoming aware their immunity from anti-discrimination laws - a justified immunity - will end with a charter or a bill of rights.
Church leaders can democratically lobby parliaments and cabinets, but not non-elected, tenured judges. The most obvious effect of a charter is to add opportunities to defence lawyers in criminal matters.

I look forward to advising victims of crime groups of the consequences of a bill or charter. The power of police to stop and search people for a knife, and remove the knife, which we enacted in NSW in 1998, would not survive judicial activism based on freewheeling interpretations. And the decisive life sentences imposed on the state's worst killers (who were originally given indeterminate "never to be released" sentences) would also be found to contravene prisoners' rights, as in Britain.

Perhaps, as former justice minister Michael Tate seemed to foreshadow in The Australian last week, we will see a proposal for a list of rights to be overseen by a parliamentary committee, not by judges. A big retreat, but it will still be objectionable.

I and others will take issue with any attempt by a group of zealots to arrogate to themselves the power to define, codify and nail down their definition at this time of what they think ought to be our rights. Talk about elitism.

Rights count. So much so they need the give and take of the common law, rowdy parliaments and the ebb and flow of public opinion.

It's the commonsensical ethos of a people - temper democratic, bias offensively Australian - not a declaration of abstractions that will keep us free

THE END

Dear Secretariat – ignore this bit – in my haste to prepare this Submission, I cannot work out how to delete this bit. My computer tells me that I am not allowed to delete “endnotes”.

[i] For a broader discussion, see G Williams and D Hume, *Human Rights Under the Australian Constitution* (2nd edition), University Press (2013).
[ii] See the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth), ss 4 and 7, which provides for the appointment of a Parliamentary Joint Committee on Human Rights to examine and report to Parliament on the compatibility of bills, legislative instruments and existing legislation with human rights; and undertake inquiries on human rights matters referred by the Attorney-General.