

1. the operation of ss 18c and 18d of the RDA impose unreasonable restrictions upon freedom of speech and I call on the Committee to recommend repealing *Part IIA of the Racial Discrimination Act 1975 (Cth)* as a whole, including ss 18c and 18d.
2. The Human Rights Commission should be abolished, but in the advent of it not, it should be subject to sweeping reforms which include
  - Trivial, vexatious and false claims that have no chance of success in a court of law but still have to be administered by the Commission are a drain on taxpayer's resources and should incur a penalty from the complainant as compensation. This would be in line with normal legal processes.
  - Conciliation between the two parties should only be called if a reasonable chance of success of prosecution is determined by a third party lawyer; otherwise the claim should be dropped.
  - The names of respondents should only be made public in the event of the complaint being referred to the Court.
  - That respondents brought before the Commission and their case is subsequently ruled by the Commission or a Court as unlikely to succeed to prosecution – be compensated for out of pocket costs.
  - Ensuring that such complaints are dealt with in an open and transparent manner.
  - Costs should be shared between complainer and the Commission for cases that have failed in the Court or in commission processes.
3. Touting for complainants should be forbidden under the Act.
4. The Australian Human Rights Commission must be abolished

## Forward

Thank you for the opportunity to present this submission for consideration.

My public commentary on political matters of immigration, foreign workers and their relationship and impact on unemployment in Australia have been published on three occasions with responding commentary on one occasion from the former Deputy Premier of Victoria Peter Ryan and Federal MP Darren Chester.<sup>1</sup>

I am writing this submission to highlight how freedom of speech in relation to commentary on politically charged aspects of immigration and multiculturalism can be restricted - restricted in my view by fear and concerns of litigation through Part IIA of the Racial Discrimination Act 1975 (Cth) ss 18c and 18d.

Motivation to write this submission was also spurred on by my own experience of a false and vexatious claim of racism. A false claim of racism was made against me to a public official as a defence for not following the official's directive. Although the claim didn't precede any further I felt compelled to write to the official to put my case on the public record. This experience left me with the belief that if cases of racist abuse are to be tried before the courts, then equally, false, frivolous and vexatious claims of racism should be held to account and also attracts a penalty.

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<sup>1</sup> <http://www.gippslandtimes.com.au/story/2519688/illegal-workers-taking-local-jobs-local-group/>

**I refer to the terms of reference of this inquiry 1-4 with my accompanying response to each:**

1. *“Whether the operation of Part IIA of the Racial Discrimination Act 1975 (Cth) imposes unreasonable restrictions upon freedom of speech, and in particular whether, and if so how, ss. 18C and 18D should be reformed.”*

**Response:**

My view is that *Part IIA of the Racial Discrimination Act 1975 (Cth) (the “RDA”)* as a whole, including ss 18c and 18d, imposes unreasonable restrictions upon freedom of speech and it should be repealed in its entirety.

Sections 18c and 18d have been shown to stimulate false, trivial and vexatious claims of racial hatred to the Australian Human Rights Commission, revealed in analysis of the Commissions 2015-16 statistics.<sup>2</sup>

Of the 77 complaints of racial hatred made

- only one was referred to the Court
- and 59 were either discontinued or withdrawn

29 complaints were discontinued because “a complainant did not respond to the commissions attempt to contact them, including after being provided with an assessment of the complaint.”

30 complaints were withdrawn “due to personal circumstances or where they decide not to proceed after reviewing information from the respondent or being provided with information about the law and/or a preliminary assessment of the complaint.”

A total of 76.6% of racial hatred claims made to the Commission for the period of 2015-16 were not pursued any further after lodgement by the claimants.

Presumably the 59 defendants were notified of the complaint of racism against them as it’s a requirement of the Commission. There seems to be little regard for the psychological harm and pain that may have been endured by these 59 defendants because it’s not the focus of investigators at the Commission - nor has their welfare been of any great concern to advocates of the RDA. The respondents did not have to engage in conciliation with their accuser and so by all accounts were not proven to have committed an offence under section 18c and 18d.

These statistics can serve to demonstrate how easy it is to make a vicious, false, trivial, vexatious or even slanderous claim under 18c to the Commission without ever having to pursue the matter further or suffer a penalty or other consequence.

However, having to defend a claim of racism at the Commission, or a complaint made public, is itself punishment by the court of public opinion – whether legitimate or not. Having to defend a false or trivial complaint can be costly in money, time and emotional resources as was the case with recently dismissed

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<sup>2</sup> <https://www.humanrights.gov.au/sites/default/files/AHRC%202015%20-%202016%20Complaint%20Statistics.pdf>

Federal Circuit Court case - *Prior v Queensland University of Technology & Ors*<sup>3</sup> - which disgracefully ran for 3 years costing the career of one of the respondents and scarred the lives of the other respondents falsely tarred for life with the brush of racism.

With these points in mind, there is no certainty as to what can and can't be said publically – what words or groups of words may attract a claim of racism to the Commission and in all probability, 76% of these claims will not be followed up by the accuser.

Recent statistics on immigration and foreign workers identifies the two largest source countries as India then China.<sup>4</sup> This presents real challenges in regard to commentary on immigration. The editor's knife has intervened in my press releases more than once - important content being removed to appease fears of receiving racist or xenophobic claims and consequently having to conform to political correctness.

The pointing finger of racism, or allegations of xenophobia or bigotry are often weapons of choice for promoters of multiculturalism, indiscriminant immigration, Asianisation and Muslimisation of Australia, from Government, media and lobby groups.

Racial profiling to any degree in commentary, even by nation of origin is

*(a) "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."*

As debate rages over s.18c another high profile person is facing allegations of racism and hauled before the Commission – it seems that one careless remark can indeed put you in a tub of hot water at the AHRC. Recently, Aboriginal woman and Labor MP, Ms Linda Burney stated<sup>5</sup>

*"It astounds me that the people that are advocating for the removal of 18C are basically white men of a certain age that have never experienced racial discrimination in their life."*

Ms Burney's remarks, made in response to an enquiry being called into 18c - have placed her before AHRC to face complaints of racism lodged by two white males. Ms Burney responded on Twitter with a single word, "honestly", followed by a laughter emoji. It seems no one is safe from the futile net of this disastrous piece of legislation.

These are some of the reasons I believe that sections 18c and 18d of the RDA create an impediment to free speech on sensitive issues relating to immigration and multiculturalism by creating an atmosphere of fear of litigation, bordering on intimidation – they are the sledge hammers of the thought police and have their roots in Communist regimes.

There is little comfort in the assurances and provisions of protections in 18d, as once a complaint is made, even if it is frivolous, vexatious or false, considerable stress and anxiety would hang over an

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<sup>3</sup> <https://theconversation.com/qut-discrimination-case-exposes-human-rights-commission-failings-68235>

<sup>4</sup> <https://www.border.gov.au/ReportsandPublications/Documents/statistics/2015-16-migration-programme-report.pdf>

<sup>5</sup> <http://www.sbs.com.au/news/article/2016/11/11/white-men-file-complaint-claiming-indigenous-mp-linda-burney-has-been-racist-them>

individual for some time as well as considerable financial loss in lawyer's fees until it was dismissed by the Commission.

Opinions about Australia's ethnic and cultural make-up into the future should have free air, whether it offends some people or not. The alternative is subservience to an authoritarian regime of governance backed by a leftist media that represses freedom of speech to achieve their own ends.

On the basis of these assertions I believe that the operation of ss 18c and 18d of the RDA impose unreasonable restrictions upon freedom of speech and I call on the Committee to recommend repealing *Part IIA of the Racial Discrimination Act 1975 (Cth)* as a whole, including ss 18c and 18d.

2. *"Whether the handling of complaints made to the Australian Human Rights Commission ("the **Commission**") under the Australian Human Rights Commission Act 1986 (Cth) (the "**HRC Act**") should be reformed, in particular, in relation to:*

**Response:**

- a) *"the appropriate treatment of:*
- i trivial or vexatious complaints; and*
  - ii complaints which have no reasonable prospect of ultimate success,"*

Trivial, vexatious and false claims that have no chance of success in a court of law but still have to be administered by the Commission are a drain on the taxpayer's resources and should incur a penalty as compensation. This would be in line with normal legal processes.

- b) *"ensuring that persons who are the subject of such complaints are afforded natural justice;"*

Respondents brought before the Commission should be presumed innocent until otherwise proved and their case should be heard without bias. This is unlikely to occur because of the Racial Discrimination Commissioners enthusiastic touting for business. All cases referred for mediation should first be tested by a third party - If found to have little hope of prosecution then the claim should be cancelled.

- c) *"ensuring that such complaints are dealt with in an open and transparent manner;"*

The names of respondents should only be made public in the event of the complaint being referred to the Court.

- d) *"ensuring that such complaints are dealt with without unreasonable delay;"*

Complaints should on all accounts be dealt with without unreasonable delay.

- e) *"ensuring that such complaints are dealt with fairly and without unreasonable cost being incurred either by the Commission or by persons who are the subject of such complaints;"*

Costs should be shared between complainer and the Commission for all failed claims including claims that have failed in the Court.

- f) *"the relationship between the Commission's complaint handling processes and applications to the Court arising from the same facts.?"*

3. *“Whether the practice of soliciting complaints to the Commission (whether by officers of the Commission or by third parties) has had an adverse impact upon freedom of speech or constituted an abuse of the powers and functions of the Commission, and whether any such practice should be prohibited or limited.”*

**Response:**

Using taxpayer’s resources for touting of complaints creates an atmosphere of fear and smacks of big brother. Totalitarian regimes use similar tactics to squash free speech and the practice should be prohibited by legislation.

4. *“Whether the operation of the Commission should be otherwise reformed in order better to protect freedom of speech and, if so, what those reforms should be.”*

**Response:**

**The Australian Human Rights Commission must be abolished:**

The Commission has become a platform and enforcement arm for political left wing activism in both its support and opposition to Government Policy and has argued for wider restrictions on free speech:

**Tim Wilson**, a former HRCommissioner is openly homosexual and was seen to be a vocal proponent and activist during his tenure for gay marriage - a publically contentious issue with deep political divides and widely advocated by leftist parties Labor and Greens but not the Coalition who were in power.

While Mr Wilson was Commissioner at the AHRC website he promoted gay marriage in an article Tuesday 15 July 2014 titled:

**Commissioner Wilson: equality before the law includes marriage**<sup>6</sup>

The article quoted Mr Wilsons advocacy for gay marriage 5 times – one of which was directed at Government who at that time apposed gay marriage “The role of the government is to respect loving couples, not tell loving couples what they can do.”

Mr Wilson was a curious appointment as Commissioner given he was previously an open critic of AHRC and its leftist agendas and was party to calling for it to be abolished at the Senate Legal and Constitutional Affairs Legislation Committee hearing on the 23rd January 2013 representing the Institute of Public Affairs. “The Australian Human Rights Commission does not defend fundamental rights such as the right to free speech and property. Instead, it selectively defends a human rights agenda determined entirely by the left,”<sup>7</sup>

Tim Wilson was Human Rights Commissioner from Feb 2014 and Feb 2016

**Gillian Triggs** - current President of AHRC – has demonstrated her politically left bias

- By delaying an investigation into children in detention during a Labor administration for 18months and then initiating the enquiry only after the Coalition was elected.<sup>8</sup>
- And being reported as saying that [the Coalitions] “successful people-smuggling boat turnback policy was having a detrimental effect on Australia’s negotiations with Indonesia on such issues

<sup>6</sup> <https://www.humanrights.gov.au/news/stories/commissioner-wilson-equality-law-includes-marriage>

<sup>7</sup> <http://ipa.org.au/publications/2146/ipa-australian-human-rights-commission-should-be-abolished>

<sup>8</sup> <http://www.heraldsun.com.au/blogs/rita-panahi/triggs-must-go/news-story/a6a18bcc0931087ec9aaccceb58571f9>

as the death penalty — an erroneous and inflammatory comment in the wake of the two recent executions.”<sup>9</sup>

Gillian Triggs was criticised for campaigning to expand Labor’s Racial Discrimination Act in the Senate Legal and Constitutional Affairs Legislation Committee hearing by the Institute of Public Affairs who told the committee “The Commission has been campaigning for an expansion of anti-discrimination laws despite the impact it would have on freedom of speech.”<sup>10</sup>

**Tim Soutphommasane** – A recent immigrant of Chinese and Lao parents and the current Racial Discrimination Commissioner has been an active member of the Labor Party as speech writer to Former New South Wales premier Bob Carr<sup>11</sup> and a Labor adviser. By association with Labor politics he has an inherent bias and protectionist attitude to Labor’s multi/race multi/culture policies and Labor’s Racial Discrimination Act 1975. His many carefully worded pre and post federal election anti racist commentary, directed at Pauline Hanson and her political party One Nation, are subversive. “Dr Soutphommasane has been outspoken in the media and on Twitter about Hanson’s comments, warning they could give licence to racism and lead to violence.”<sup>12</sup> Multiculture, Muslim Immigration and the RDA are all opposed in One Nations published policies.

**“One Nation will abolish *multiculturalism* and the Racial Discrimination Act and promote assimilation, nationalism, loyalty and pride in being an Australian.”<sup>13</sup>**

Mr Soutphommasane is unfit to hold the position of RDC having publically inferred that 49% of Australians were racist.

In the latest Essential poll “49 per cent of respondents agreed Muslims should not be allowed to settle in Australia,” supporting One Nation and Pauline Hansons assertions and calls for a ban on Muslim Immigration.

In an extraordinary outburst of bigotry from Soutphommasane on the ABC he declared that “the 49 per cent figure is a surprisingly high number, and indicates there's a risk unacceptable ideas about race and religion are being normalised.”<sup>14</sup> [in Australia]

### Key recommendations

- Repeal S.18C and S.18D of the *Racial Discrimination Act 1975 (Cth)*.
- Abolish the Australian Human Rights Commission

### Alternate recommendations

If the Australian Human Rights Commission is not abolished and S.18C and S.18D of the *Racial Discrimination Act 1975 (Cth)* are not repealed, I propose the following alternate recommendations:

- The Australian Human Rights Commission should no longer investigate complaints under the RDA.
- A new body should be created that deals only with points of law and does not engage in political activism.

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<sup>9</sup> <http://www.theaustralian.com.au/opinion/gillian-triggs-defenders-need-to-look-at-facts/news-story/b3c4e37552d4ca76aa77a853117608ab>

<sup>10</sup> <http://ipa.org.au/publications/2146/ipa-australian-human-rights-commission-should-be-abolished>

<sup>11</sup> [http://www.usyd.edu.au/sydney\\_ideas\\_quarterly/people/profiles/03\\_tim\\_soutphommanse.shtml](http://www.usyd.edu.au/sydney_ideas_quarterly/people/profiles/03_tim_soutphommanse.shtml)

<sup>12</sup> <https://probonoaustralia.com.au/news/2016/07/pauline-hanson-rhetoric-dangerous-race-discrimination-commissioner-warns/>

<sup>13</sup> <http://www.onenation.com.au/policies/multiculturalism>

<sup>14</sup> <http://www.abc.net.au/radionational/programs/breakfast/we-should-be-committed-to-tolerance/7867024>

- The practice of soliciting complaints be prohibited and written into law.
- To discourage vexatious claims a fee should be charged to lodge a complaint.
- Complaints lodged must not be delayed by the Applicant or any third parties requests.
- Respondents must be notified immediately the complaint is lodged.
- The complaint must only relate to the complainants personal material damage.
- Parties should not have to attend a conciliation session before the complaint is tested by a third party lawyer for its reasonable chance of success in court. If found to have a reasonable chance then conciliation should be offered before a case is referred to a court. If found not to have a reasonable chance then the claim should be dismissed.
- The body must dismiss a complaint if it's found to be vexatious or assesses the complaint would fail in the High Court.
- Claims found by the body to be frivolous or vexatious should incur a monetary fine to recover taxpayer's costs for hearing the complaint.
- If the complaint fails in the High Court Costs should be shared against the new investigating body and the complainant.

#### In conclusion:

**Freedom of speech is widely accepted as a legitimate human right** regardless of whether it offends, insults, humiliates or intimidates another person or group of people or the State. For the State to determine that a word or groups of words used in conversation, correspondence or publishing are deemed offensive and punishable in a court of law, is the slippery road to totalitarianism where such a freedom is curtailed. America's first president and revolutionary leader, General George Washington warned his Generals passionately against curtailing free speech in his famous *Newburg Address saying; the freedom of Speech may be taken away—and, dumb & silent we may be led, like sheep, to the Slaughter.* <sup>15</sup>

If we are to value free speech as integral to our place in the free world then we must remove all encumbrances one of which is section 18c and 18d of the RDA.1975

*The Universal Declaration of Human Rights* (UDHR) – UN; Under Article 19 states that **“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers”.** <sup>16</sup>

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<sup>15</sup> <http://founders.archives.gov/documents/Washington/99-01-02-10840>

<sup>16</sup><http://www.un.org/en/universal-declaration-human-rights/>