

Chapter 1

Introduction

Referral and terms of reference

1.1 On 8 November 2016, pursuant to section 7(c) of the *Human Rights (Parliamentary Scrutiny) Act 2011*, the Attorney-General wrote to the Parliamentary Joint Committee on Human Rights (the committee) to refer the following matters for inquiry and report:

1. Whether the operation of Part IIA of the *Racial Discrimination Act 1975* (Cth) [(RDA)] imposes unreasonable restrictions upon freedom of speech, and in particular whether, and if so how, [sections] 18C and 18D should be reformed.
2. Whether the handling of complaints made to the Australian Human Rights Commission [(AHRC)] under the *Australian Human Rights Commission Act 1986* (Cth) should be reformed, in particular, in relation to:
 - a. the appropriate treatment of:
 - i. trivial or vexatious complaints; and
 - ii. complaints which have no reasonable prospect of ultimate success;
 - b. ensuring that persons who are the subject of such complaints are afforded natural justice;
 - c. ensuring that such complaints are dealt with in an open and transparent manner;
 - d. ensuring that such complaints are 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;
 - f. the relationship between the [AHRC]'s complaint handling processes and applications to the Court arising from the same facts.
3. Whether the practice of soliciting complaints to the [AHRC] (whether by officers of the [AHRC] or by third parties) has had an adverse impact upon freedom of speech or constituted an abuse of the powers and functions of the [AHRC], and whether any such practice should be prohibited or limited.
4. Whether the operation of the [AHRC] should be otherwise reformed in order better to protect freedom of speech and, if so, what those reforms should be.

The committee is asked, in particular, to consider the recommendations of the Australian Law Reform Commission [(ALRC)] in its *Final Report on Traditional Rights and Freedoms – Encroachments by Commonwealth Laws* [(Freedoms Inquiry)] [ALRC Report 129 – December 2015], in particular Chapter 4 – "Freedom of Speech".

In this reference, "freedom of speech" includes, but is not limited to, freedom of public discussion, freedom of conscience, academic freedom, artistic freedom, freedom of religious worship and freedom of the press.

1.2 The Attorney-General also released a press statement further setting out the reasons for his decision to refer the above matters, and requested the committee report by 28 February 2017.

Conduct of the inquiry

1.3 Following referral to the committee by the Attorney-General, the Chair of the committee, Mr Ian Goodenough MP, issued a media release on 11 November 2016 to call for submissions and announce the committee's intention to hold a number of public hearings.

1.4 The committee advertised the inquiry on its website, and wrote to a number of organisations and individuals with expertise in the areas of the terms of reference to invite them to make written submissions. The closing date for submissions was initially set as 9 December 2016; however, the committee extended the closing date for provision of submissions until 23 December 2016 if an extension was required.

1.5 The committee received approximately 11 460 items relating to the inquiry. 418 were accepted as submissions and published on the committee's website. These submissions are listed in Appendix 1.

1.6 For administrative purposes, approximately 10 590 items received were categorised as 'form letters'.¹ In general, these items presented submitters' views on, or support for or against, racial discrimination laws and sections 18C and 18D of the RDA, as well as submitters' views on the AHRC. The majority of items classified as form letters did not contain substantive commentary. One sample of each form letter received has been published on the inquiry webpage, noting the number of each that was received.

1.7 A further approximately 452 items were accepted as correspondence to the inquiry. Items were accepted as correspondence where they expressed views or opinions about the terms of reference, but did not contain substantive commentary.

1.8 The committee held nine public hearings in relation to this inquiry, visiting all state and territory capitals in Australia:

- Canberra, 12 December 2016;
- Hobart, 30 January 2017;
- Melbourne, 31 January 2017;

1 Items were classified as form letters where they contained an easily identifiable template of wording. An item was included as a variation to a particular form letter where the template of the form letter was used either with or without personal additions to that template.

- Sydney, 1 February 2017;
- Adelaide, 2 February 2017;
- Perth, 3 February 2017;
- Brisbane, 10 February 2017;
- Canberra, 17 February 2017; and
- Darwin, 20 February 2017.

1.9 A list of the witnesses who gave evidence at these public hearings is at Appendix 2. The *Hansard* transcripts of each hearing are available on the committee's inquiry webpage.²

Structure of the report

1.10 The report contains five chapters. In addition to this chapter:

- Chapter 2 responds to the inquiry's first term of reference regarding the operation of Part IIA of the RDA;
- Chapter 3 responds to the inquiry's second term of reference regarding complaint handling processes at the AHRC;
- Chapter 4 responds to the inquiry's third term of reference regarding soliciting complaints to the AHRC; and
- Chapter 5 responds to the inquiry's fourth term of reference regarding other potential reforms to the AHRC to better protect freedom of speech, and the term of reference regarding consideration of the recommendations of the ALRC in its Freedoms Inquiry.

Notes on references

1.11 In this report, references to the *Committee Hansard* are to proof transcripts. Page numbers may vary between proof and official transcripts.

Acknowledgements

1.12 The committee thanks all those who contributed to the inquiry, whether by making submissions, providing additional information or in giving evidence at public hearings. The committee is grateful for the breadth and quality of submissions and willingness of individuals and organisations to appear at hearings despite the short timeframe available to do so.

2 See:
http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights_inquiries/FreedomspeechAustralia.

