

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
ATTORNEY-GENERAL'S PORTFOLIO

Program: Australian Human Rights Commission

Question No. SBE16/076

Senator Abetz asked the following question at the hearing on 18 October 2016:

1. How many complaints has the AHRC received alleging a breach of section 18C of the Racial Discrimination Act in the past 24 months?
2. How many of those complaints have been finalised?
3. How many of those finalised matters included a payment to the complainant by the respondent?
4. How many of the complaints were preceded by a Commissioner of the AHRC calling for complaints to be lodged?
 - a) Is this a principle that is condoned?
5. How much in legal costs has the AHRC expended in pursuing cases for complaints in the past two years?
6. How much in legal costs has been expended by respondents in legal costs over the past two years?

The answer to the honourable senator's question is as follows:

1. The number of complaints received by the Commission alleging a breach of section 18C in the past 24 months (from 18 October 2014 to 18 October 2016) is 188.
2. Of the complaints received over the past 24 months, 160 have been finalised.
3. Of the 160 finalised complaints, 26 included financial compensation as an outcome.
4. The answer to Question 4 is none.

Question 4 appears to proceed from the false premise, which has been widely reported, that the Race Discrimination Commissioner called for complaints to be lodged in relation to a cartoon drawn by Mr Bill Leak and published in *The Australian* newspaper on 4 August 2016.

The Commissioner did not call for complaints to be lodged about this cartoon. On 4 August 2016, the Commissioner was asked a number of questions about the cartoon by a journalist including: 'Is it racist?' and 'Will any action be taken from AHRC with regards to this?' The full answer given by the Commissioner was:

'Our society shouldn't endorse racial stereotyping of Aboriginal Australians or any other racial or ethnic group.

'A significant number of people would agree that this cartoon rehearses racial stereotypes about Aboriginal Australians.

'If there are Aboriginal Australians who have been racially offended, insulted, humiliated or intimidated, they can lodge a complaint under the Racial Discrimination Act. Section

18D of the Act does protect, however, artistic expression and public comment, provided they were done reasonably and in good faith.’

One of the functions of the Race Discrimination Commissioner is to promote an understanding and acceptance of, and compliance with, the *Racial Discrimination Act 1975* (Cth) (RDA). In the course of performing this function, it is appropriate for the Commissioner to make people aware of the complaints mechanisms available under the RDA. As part of the Commissioner’s advocacy role, it is also appropriate for him to provide his opinion on matters of public interest that relate to questions of racial discrimination.

The Race Discrimination Commissioner has no role in inquiring into and attempting to conciliate complaints of unlawful discrimination. This function is performed by the President of the Commission.

5. The Commission does not pursue cases for either complainants or respondents to complaints that are made to the Commission.
6. The Commission does not have any information about the legal costs incurred by either complainants or respondents where complaints cannot be conciliated and a complainant decides to commence court proceedings.