

# **Submission by the Discrimination Law Experts Group to the Parliamentary Joint Committee on Human Rights**

## **Inquiry: Freedom of speech in Australia**

23 December 2016

Submitted to:  
Committee Secretary  
Parliamentary Joint Committee on Human Rights  
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## Summary

This submission concerns the inquiry referred by the Attorney-General to the Parliamentary Joint Committee on Human Rights relating to freedom of speech in Australia. It responds to the following terms of reference questions:

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.

**We submit** that s 18C provides reasonable protection for freedom of expression given the need to balance it against the right to non-discrimination and equality. While, as set out below, we support minor procedural changes if they improve the operation of this section, overall, the level of protection s 18C offers should not be substantially reduced.

**We submit** that the operation of s 18D, combined with the well-established case law on the seriousness of the conduct towards which s 18C is aimed, are reasonable and necessary limits on the right to freedom of speech, and so are a proportionate measure to protect the Australian community from harm caused by racist speech.

2. Whether 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, 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 Commission’s complaint handling processes and applications to the Court arising from the same facts.

**We submit** for reasons set out below that the handling of complaints made to the Commission under the *Australian Human Rights Commission Act 1986* (Cth) does not need substantive reform. We do, however, suggest one matter of fine-tuning, in addition to submitting the need for a greater level of funding to the Commission.

**We submit** that s 46PH provides an appropriate scope of power for the President to terminate a complaint. The grounds for termination do not need to be amended. Indeed, no further, wider grounds could reasonably be suggested.

**We submit** that the use of the discretionary term “may” in Section 46PH is appropriate and should remain intact.

**We submit** that a simple amendment ought to be made to the Act to require the President to notify all respondents of the complaint, within a specified and reasonable time after they are named as a respondent.

**We submit** that the Commission ought to be provided with funding at a higher level to enable the President’s functions of inquiry and conciliation to proceed at a faster pace than is currently the case.

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.

**We submit** that the Commission should be given greater resources so that it can continue to raise awareness about the law and conduct education campaigns and fulfil its mandate under the Act.

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.

**We submit** that there is no need to reform the Commission in any way other than the submissions we have made in relation to Terms of Reference 2 and 3.

## Introduction

This submission concerns the inquiry referred by the Attorney-General to the Parliamentary Joint Committee on Human Rights relating to freedom of speech in Australia.

The authors of this submission are members of the Discrimination Law Experts Group comprising academics from universities across Australia who have researched and published widely in the fields of discrimination and equality law. The Group met in Sydney on Friday 25 November 2016 to discuss this submission to the Parliamentary Joint Committee on Human Rights. The members of the Experts Group who endorse this submission are listed in the Appendix.

### Terms of Reference 1: Section 18C and freedom of speech

**We submit** that s 18C provides reasonable protection for freedom of expression given the need to balance it against the right to non-discrimination and equality. While, as set out below, we support minor procedural changes if they improve the operation of this section, overall, the level of protection that s 18C offers should not be substantially reduced.

The prohibition of racial hatred is set out in s 18C(1) which provides:

- 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.

The *International Covenant on Civil and Political Rights* protects both the right to freedom of opinion and speech in Article 19, and the right to equality and non-discrimination in Article 26. Since there is potential for conflict between these rights, the Covenant makes clear that the right to freedom of speech can be limited in appropriate circumstances. Article 19(3) provides that the exercise of that right:

- carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
- (a) For respect of the rights or reputations of others;
  - (b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

In addition, Article 20 immediately follows Article 19 and paragraph 2 provides that '[a]ny advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.'<sup>1</sup> Both of these provisions (A 19.3 and A 20.2) confirm and support Part IIA of the Act, including s 18C.

Further support for the reconciliation of these rights where they conflict is provided by the *International Convention on the Elimination of all forms of Racial Discrimination* (ICERD). Part IIA of the Act (and thus s 18C) relates specifically to Article 4, which calls on States Parties to the Convention to:

condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or groups of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred or discrimination in any form, and ... to eradicate all incitement to, or acts of, such discrimination.

Article 4 paragraph (a) further provides that States:

Shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof;

In light of these provisions of international law, the consensus is that restrictions on freedom of speech in support of non-discrimination rights are justified, and states are required to provide such restrictions in their laws. Australia has given effect to this obligation by prohibiting such speech in Part IIA of the Act. Section 18C is balanced by s 18D, which provides a broad exemption to the application of section 18C in favour of artistic works, statements made for public interest purposes and fair comment, provided they are made reasonably and in good faith. Rees, Rice and Allen describe it as ‘an attempt by the Commonwealth Parliament to balance... the right of free speech with the right of people to live in the community without being subjected to vilifying conduct because of their race.’<sup>1</sup>

This wide exemption to the prohibition against race hate speech is justified on the grounds that freedom of expression is a human right that must be accorded protection. Indeed, freedom of expression has long been recognised as a right that is essential to democracy and one that enables the promotion and protection of other rights.<sup>2</sup> However, this does not mean that freedom of expression is absolute. Freedom of expression is defended because of the values that it promotes both in the individual and society. The corollary of this is that when free expression clashes with the right of other people to freely develop their own individuality, to enjoy freedom and opportunity on the same basis as other members of the community, or to freely contribute to society, it has reached its limits.

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<sup>1</sup> Neil Rees, Simon Rice, Dominique Allen *Australian Anti-Discrimination Law* (The Federation Press, Sydney, 2014), 657.

<sup>2</sup> See, eg, Adrienne Stone, ‘The Limits of Constitutional Text and Structure: Standards of Review and the Freedom of Political Communication’ (1999) 23(3) *Melbourne University Law Review* 668; Thomas Scanlon, ‘Freedom of Expression and Categories of Expression’ (1978-1979) 40 *University of Pittsburg Law Review* 519.

The need to consider freedom of expression within a holistic understanding of human rights is reflected in both international law (as outlined above) and other national jurisprudence. The interrelationship between Articles 19 and 20, and the wider tension between regulating hate speech and freedom of expression, have been the subject of considerable debate and scholarship.<sup>3</sup> A consistent theme in this scholarship has been the recognition of the need to balance freedom of expression with the protection of other rights, including rights to equality, dignity and non-discrimination. In a society such as ours—borne out of colonisation, legally mandated racial discrimination against the Indigenous inhabitants of Australia, and the lasting impacts of this legacy on race relations in our country—the challenges to address incitement of racial hatred and foster improved race relations are of critical importance. As we discuss below, protecting equality rights through the regulation of race hate speech reflects a growing understanding of the real harm that can be caused to victims of hate speech, including the infliction of psychological damage, and the capacity to participate as an equal in society.

The Canadian Supreme Court has, for example, held that s 319(2) of the *Criminal Code*, which criminalises hate speech (on the basis of race and other attributes), constitutes a ‘reasonable limit on freedom of expression’ because ‘Parliament’s objective of preventing the harm caused by hate propaganda is of sufficient importance to warrant overriding’ Canada’s constitutionally protected freedom of expression.<sup>4</sup> The Court also emphasised that the kind of expression targeted by the law ‘constitutes a special category, a category only tenuously connected with the values underlying the guarantee of freedom of expression.’<sup>5</sup> The Court went on to find that hate speech contributes little to ‘the quest for truth, the promotion of individual self-development or the protection and fostering of a vibrant democracy where the participation of all individuals is accepted and encouraged.’<sup>6</sup>

Australian federal law does not, as the Canadian law does, criminalise hate speech. Australia has taken the different route of providing for a civil action, because of its reservation to Article 4(a) of the *International Convention on the Elimination of all forms of Racial Discrimination*<sup>7</sup> but

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<sup>3</sup> See, eg, Robert C. Post, ‘Racist Speech, Democracy, and the First Amendment’ (1990-1991) 32 *William and Mary Law Review* 267; Mari J. Matsuda et al (eds), *Words That Wound: Critical Race Theory, Assaultive Speech, and the First Amendment* (1993); Tarlach McGonagle, *The Council of Europe against online hate speech: Conundrums and challenges* (2013) Expert Paper, doc.no. MCM 2013 (005); Amnesty International, *Written contribution to the thematic discussion on Racist Hate Speech and Freedom of Expression organised by the United Nations Committee on Elimination of Racial Discrimination* (2012); Steven J. Heyman, ‘Righting the Balance: An Inquiry into the Foundations and Limits of Freedom of Expression’ (1998) 78 *Boston University Law Review* 1275.

<sup>4</sup> *R v Keegstra* (1990 Supreme Court of Canada) 3 R.C.S. 699.

<sup>5</sup> *Ibid* at 700-701.

<sup>6</sup> *Ibid* at 701.

<sup>7</sup> This reservation stated that at the time of ratification, Australian law did not comply, but that the government’s intention was to amend the law to comply: “The Government of Australia ... declares that Australia is not *at present* in a position specifically to treat as offences all the matters covered by article 4 (a) of the Convention. Acts of the kind there mentioned are punishable only to the extent provided by the existing criminal law dealing with such matters as the maintenance of public order, public mischief, assault, riot, criminal libel, conspiracy and attempts. *It is the intention of the Australian Government, at the first suitable moment, to seek from Parliament legislation specifically implementing the terms of article 4 (a).*” United Nations, Office of the High Commissioner for Human

the arguments in *R v Keegstra* apply equally to s 18C of the *Racial Discrimination Act 1975*; both the Canadian and Australian laws, despite imposing different types of sanction, specifically target hate speech that is made in bad faith and – as the case law has made clear<sup>8</sup> – is concerned with profound and serious effects. Hate speech is harmful to Australian society because it actively damages the values that are commonly associated with freedom of expression, such as ‘the quest for truth, the promotion of individual self-development or the protection and fostering of a vibrant democracy where the participation of all individuals is accepted and encouraged.’<sup>9</sup> It is a legitimate aim for the law to limit this specific class of expression in order to promote social harmony and the rights to equality, dignity and non-discrimination.

Unlike the criminal provision in Canada, s 18C is a civil provision. It does not establish criminal sanctions. We submit that Part IIA of the Act, including ss 18C and 18D serves a legitimate aim, and is appropriate and adapted,<sup>10</sup> and reasonably proportionate, to the achievement of that legitimate aim. It would thus be consistent with the implied constitutional freedom of political expression.

There is no evidence that racial vilification laws have been used as an attack on free speech. A recent study by McNamara and Gelber found no evidence that s 18C had had a ‘chilling effect’ on free speech in media commentary or debate over the last 20 years.<sup>11</sup> Instead, they found, ‘[d]amages orders are rare and, where made, the amount of compensation is modest...’ and that ‘[s]ome complainants turn to hate speech laws in desperation because all other efforts have failed to stop a neighbour from subjecting them to appalling public racist abuse and no other legal redress is available.’ They found that less than 2% of claims ended up in court.<sup>12</sup>

While there has been substantial public discussion about the impact of the judgment in *Eatock v Bolt* and its purported limitation on the right of free expression,<sup>13</sup> the basis for the Court’s finding that Mr Bolt acted unlawfully was due to a *lack of good faith*, and because Mr Bolt distorted the truth and used unnecessarily inflammatory language.<sup>14</sup> It was this lack of diligence to ensure accuracy and to avoid reinforcing racist attitudes that brought Mr Bolt’s exercise of

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Rights, *International Convention on the Elimination of All Forms of Racial Discrimination, Status of Ratifications and Declarations, Australia*, at <http://indicators.ohchr.org/>. The change was adopted in the 1995 amendments that introduced Part IIA including s 18C.

<sup>8</sup> *Creek v Cairns Post Pty Ltd* (2001) 112 FCR 352; *Bropho v HREOC* (2004) 135 FCR 105

<sup>9</sup> *Ibid.*

<sup>10</sup> *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520; *McCloy v New South Wales* [2015] HCA 34.

<sup>11</sup> Luke McNamara and Katharine Gelber, ‘Explainer: how do Australia’s laws on hate speech work in practice?’ (9 May 2014) *The Conversation*, (available at <http://theconversation.com/explainer-how-do-australias-laws-on-hate-speech-work-in-practice-26105>).

<sup>12</sup> *Ibid.*

<sup>13</sup> Sarah Joseph, ‘Free Speech, Racial Intolerance and the Right to Offend: Bolt Before the Court’ (2011) 3 *Alternative Law Journal* 225; McNamara and Gelber above n 10.

<sup>14</sup> ‘The lack of care and diligence is demonstrated by the inclusion in the Newspaper Articles of the untruthful facts and the distortion of the truth which I have identified, together with the derisive tone, the provocative and inflammatory language and the inclusion of gratuitous asides.’ *Eatock v Bolt* [2011] FCA 1103, [425].

free expression into conflict with the Act.<sup>15</sup> Furthermore, the impugned conduct was found not to be for a *genuine purpose in the public interest* because of these factors.<sup>16</sup> Justice Bromberg held that the effect on freedom of speech was justified:

I have taken into account the value of freedom of expression and the silencing consequences of a finding of contravention against Mr Bolt and HWT. Given the seriousness of the conduct involved, the silencing consequence appears to me to be justified. The intrusion into freedom of expression is of no greater magnitude than that which would have been imposed by the law of defamation if the conduct in question and its impact upon the reputations of many of the identified individuals had been tested against its compliance with that law. Additionally, I take into account that the conduct was directed at an expression of identity. An expression of identity is itself an expression that freedom of expression serves to protect.<sup>17</sup>

Significantly, Justice Bromberg found that the impugned conduct contravened s 18C not because of the subject matter, but because of the way the subject matter was dealt with.<sup>18</sup> Justice Bromberg was careful to emphasise that:

it is important that nothing in the orders I make should suggest that it is unlawful for a publication to deal with racial identification including challenging the genuineness of the identification of a group of people. I have not found that Mr Bolt and HWT to have contravened s18C simply because the Newspaper Articles dealt with subject matter of that kind. I have found a contravention because of the manner in which that subject matter was dealt with.<sup>19</sup>

Thus, *Eatoock v Bolt* demonstrates how ss 18C and 18D currently function to balance the right of freedom of expression and the right to live free from racial discrimination, without unduly limiting ‘legitimate freedoms of speech’. In fact, the balance is already set in favour of expression, with complainants under the Act having to meet a high standard of seriousness and subject to the broad exemption under s 18D for ‘reasonable’ race-based hate speech.

The regulation of hate speech also serves to protect the right to freedom of expression and to public participation for marginalised groups. Research shows that racism has a profound effect on those who experience it, including on their health.<sup>20</sup> Sections 18C and 18D not only function

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<sup>15</sup> Ibid.

<sup>16</sup> Ibid [442] – [443].

<sup>17</sup> Ibid [423].

<sup>18</sup> Ibid [461].

<sup>19</sup> Ibid.

<sup>20</sup> Paradies, Y; Chandrakumar, L; Klocker, N; Frere, M; Webster, K; Burrell, M; and McLean, P *Building on our Strengths: A Framework to Reduce Race-Based Discrimination and Support Diversity: Full Report* (2009); Naomi Priest, Dominique Allen ‘The Racial Discrimination Act needs strengthening – not weakening: a public health perspective’ (24 March 2014) (available at <https://croakey.org/the-racial-discrimination-act-needs-strengthening-not-weakening-a-public-health-perspective/>).

to balance freedom of expression with other freedoms, but also to balance access to freedom of expression between various groups in society.<sup>21</sup>

Our submission, therefore, is that s 18C is a measure that is aimed at the legitimate objective of protecting the Australian community from harm caused by racist speech, and that there is, in the terms of s 18C, clearly a rational connection between the measure and the objective. The crucial question raised by Term of Reference 1 is whether the measure is proportionate to the objective. **We submit** that the operation of s 18D, combined with the well-established case law on the seriousness of the conduct towards which s 18C is aimed, are reasonable and necessary limits on the right to freedom of speech, and so are proportionate measures to protect the Australian community from harm caused by racist speech.

### **Terms of Reference 2: Complaints Handling by the Australian Human Rights Commission**

The *Australian Human Rights Commission Act 1986* (Cth) (AHRC Act) establishes the Australian Human Rights Commission (Commission). The AHRC Act sets out the obligations and powers of the Commission and its President in receiving and handling complaints under s 18C of the *Racial Discrimination Act 1975* (Cth).

The AHRC Act provides that an aggrieved person may lodge a complaint alleging unlawful discrimination with the Commission (s 46P); no-one else can lodge such a complaint. The Commission must refer complaints that have been lodged to the President (s 46PD). The President is then required to inquire into the complaint and attempt to conciliate it (s 46PF(1)). None of these steps is discretionary.

The President is given a number of powers to assist in carrying out the functions of inquiry and conciliation. These include discretionary powers to obtain information and documents relevant to an inquiry (s 46PI), and to hold a conference for the purposes of conciliation (s 46PJ, s 46PK). If the President calls a conciliation conference, it is held in private (s 46PK(2)) and is subject to strict confidentiality obligations on Commission staff.

The President has power under s 46PH to terminate a complaint on a wide range of grounds. Once a complaint has been terminated on any of these grounds, then under s 46PO, the person who made it can bring an action in the federal courts within 60 days, regardless of the ground of the termination.

**We submit** for the reasons set out below that the handling of complaints made to the Commission under the AHRC Act does not need substantive reform. We do, however, suggest one matter of fine-tuning, in addition to submitting the need for a greater level of funding to the Commission. These matters address Terms of Reference 2 (a), (b), (d) and (f).

### **Terms of Reference 2(a)**

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<sup>21</sup> See Rees, Rice and Allen, above n 1.

Section 46PH sets out a number of grounds on which the President may terminate a complaint before the Commission. The grounds listed in s 46PH are sufficiently broad as currently drafted and provide the President with extensive power to bring to an end complaints that ought not to proceed. The grounds are where [emphasis added]:

- “(a) **the President is satisfied** that the alleged unlawful discrimination is **not unlawful discrimination**;
- (b) the complaint was lodged more than 12 months after the alleged unlawful discrimination took place;
- (c) **the President is satisfied** that the complaint was **trivial, vexatious, misconceived or lacking in substance**;
- (d) in a case where some other remedy has been sought in relation to the subject matter of the complaint—the President is satisfied that the subject matter of the complaint has been adequately dealt with;
- (e) the President is satisfied that some other more appropriate remedy in relation to the subject matter of the complaint is reasonably available to each affected person;
- (f) in a case where the subject matter of the complaint has already been dealt with by the Commission or by another statutory authority—the President is satisfied that the subject matter of the complaint has been adequately dealt with;
- (g) the President is satisfied that the subject matter of the complaint could be more effectively or conveniently dealt with by another statutory authority;
- (h) the President is satisfied that the subject matter of the complaint involves an issue of public importance that should be considered by the Federal Court or the Federal Circuit Court;
- (i) the President is satisfied that there is **no reasonable prospect of the matter being settled by conciliation.**”

**We submit** that s 46PH provides an appropriate scope of power for the President to terminate a complaint. The grounds for termination do not need to be amended. Indeed, no further, wider grounds could reasonably be suggested.

A criticism levelled at the Commission has been that it has not acted or does not act decisively in dealing with complaints that apparently fall within s 49PH. The Commission’s recent dismissal of Mr Leyonhjelm’s complaint – made public by Mr Leyonhjelm – illustrates the early and decisive exercise of the power under s 49PH.<sup>22</sup> Mr Leyonhjelm’s complaint further illustrates the course available to a complainant quite independently of the Commission: Mr Leyonhjelm has said he may commence Federal Court proceedings to litigate his complaint which, under the current law, is his right.

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<sup>22</sup> Hedley Thomas. “Angry white male’ not abusive, says Human Rights Commission’ (The Australian, 30 November 2016).

In our submission, therefore, no further or other grounds for the early dismissal of a complaint are needed or even reasonably possible.

A different question is whether and when the Commission exercises its power under s 49PH. Section 46PH uses the word “may”, indicating that the President has a discretion to terminate a complaint on one of the specified grounds. In practice, the President does in fact terminate a complaint when one of the specified grounds arises. **We submit** that this discretion is appropriate and should remain intact. We note that s 49PF of the AHRC Act requires the President to inquire into and attempt to conciliate a complaint. It will be in the course of that inquiry and attempted conciliation that the President could form the view that one of the grounds in s 49PH arises. As well, in the course of an inquiry and attempted conciliation, the President has the power under s 46PF(5) to not inquire or cease inquiring if the complaint has been settled or resolved.

### **Terms of Reference 2(b)**

A complaint may identify more than one respondent, and respondents may be added after the complaint has been lodged, at the instigation of either the complainant or respondent, if leave is granted by the President (s 46PF(3)). Although the AHRC Act requires the President to notify a respondent of a requirement to attend a conciliation conference (s 46PJ(3)), the Act does not require the President or the Commission to alert a respondent of a complaint at any earlier time. This gap in the machinery of the Act has been the subject of justifiable criticism. Earlier notice to all respondents may assist in the efficacy of the inquiry process and conciliation. **We submit** that a simple amendment ought to be made to the AHRC Act to require the President to notify all respondents of the complaint, within a specified and reasonable time after they are named as a respondent.

### **Terms of Reference 2(d)**

A criticism has been made of the amount of time the President sometimes takes between receiving a complaint and reaching a view to terminate the complaint on one of the grounds listed in s 46PH. In our view, better resourcing of the Commission would mean that there are adequate staffing levels to deal with all complaints in a timely manner.

A particular challenge arises regarding the many complainants who do not have legal representation and advice when they lodge their complaint under federal anti-discrimination law. For this reason complaints may be inadequately framed in terms of the legal framework and available evidence. In those circumstances the President’s inquiry function necessitates significant resources that might not otherwise be necessary in relation to a well-framed complaint. This matter lengthens the time taken by the President to inquire and conciliate.

**We submit** that the Commission ought to be provided with funding at a higher level to enable the President’s functions of inquiry and conciliation to proceed at a faster pace than is currently

the case. In reporting on its information and dispute resolution functions of inquiry and conciliation, the Commission noted (in its most recent annual report) that “[o]ngoing funding cuts have, however, impacted on the services that could be provided in 2015–16.”<sup>23</sup>

### **Terms of Reference 2(f)**

When the President terminates a complaint under s 46PH, the AHRC Act provides that the aggrieved person is entitled to make an application to the Federal Court or the Federal Circuit Court (within 60 days) to pursue their allegation under s 18C in court (s 46PO). Once the President terminates a complaint the President has no role in whether or not the aggrieved person chooses to lodge an application to the court. The question of whether to initiate court litigation lies entirely in the discretion of the aggrieved person.

**We submit** that the current disincentives for unmeritorious complaints that have been terminated by the Commission proceeding to court are adequate. No special treatment of particular terminated discrimination complaints is required and the usual deterrents to unmeritorious litigation, such as security for costs or court-based mediation, should apply in this area as they do in all other areas of law.

### **Terms of Reference 3: Soliciting complaints by the Australian Human Rights Commission**

As noted above, the AHRC Act establishes the Commission and sets out its duties, functions and powers. These functions include inquiring into and conciliating complaints lodged under the four pieces of legislation for which the Commission is responsible,<sup>24</sup> promoting an understanding and acceptance, and the public discussion, of human rights, and undertaking research, educational and other programs, on behalf of the Commonwealth, for the purpose of promoting human rights.<sup>25</sup>

Educating members of the community about their rights and obligations under the *Racial Discrimination Act 1975* (Cth) is one of the Commission’s core functions. It does so through its website, a phone advice line, holding training sessions and conducting advertising awareness campaigns. Individual Commissioners are also engaged in educating the community by delivering speeches and giving interviews to the media, amongst other activities.

The Commission does not play a role in enforcing the law. It cannot represent parties or assist them with pursuing their claim. Its role is to educate the community about the law, inquire into allegations of discrimination and provide a neutral conciliation service for those who allege a breach of the law and who are subject to a claim.

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<sup>23</sup> AHRC, *Annual Report 2015-2016*, p 30.

<sup>24</sup> Namely the *Racial Discrimination Act 1975* (Cth), *Sex Discrimination Act 1984* (Cth), *Disability Discrimination Act 1992* (Cth) and *Age Discrimination Act 2004* (Cth).

<sup>25</sup> Section 11.

The Commission does not solicit complaints. The President and the Commissioners have a statutory obligation to promote understanding, acceptance and public discussion of human rights and equality of opportunity in employment in Australia.<sup>26</sup> This necessarily extends to raising awareness about the rights and obligations contained in the legislation by highlighting what kind of behaviour is unlawful and making the community aware that they can lodge a complaint at the Commission if they have been subject to unlawful conduct. The Commission's State and Territory counterparts and its overseas equivalents do much the same thing.

It is important to maintain or even strengthen the Commission's current practice in this regard. The educative role that the Commission plays is fundamental to addressing discrimination in this country. **We submit** that the Commission should be given greater resources so that it can continue to raise awareness about the law and conduct education campaigns and fulfil its mandate under the AHRC Act.

#### **Terms of Reference 4: Need for Reform**

**We submit** that there is no need to reform the Commission in any way other than the submissions we have made in relation to Terms of Reference 2 and 3.

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<sup>26</sup> AHRC Act, ss 11(g), 11(h), 31(c) and 31(d)

**Appendix: Members of the Discrimination Law Experts Group who endorse this submission**

1. Dr Dominique Allen, Monash Business School, Monash University
2. Dr Alysia Blackham, Melbourne Law School, University of Melbourne
3. Associate Professor Anna Chapman, Melbourne Law School, University of Melbourne
4. Dr Cristy Clark, School of Law and Justice, Southern Cross University
5. Professor Beth Gaze, Melbourne Law School, University of Melbourne
6. Associate Professor Beth Goldblatt, Faculty of Law, University of Technology Sydney
7. Dr Paul Harpur, TC Beirne School of Law, University of Queensland
8. Ms Vedna Jivan, Faculty of Law, University of Technology Sydney
9. Ms Rosemary Kayess, Faculty of Law, University of New South Wales
10. Professor Isabel Karpin, Faculty of Law, University of Technology Sydney
11. Dr Trish Luker, Faculty of Law, University of Technology Sydney
12. Dr Karen O'Connell, Faculty of Law, University of Technology Sydney
13. Ms Alice Orchiston, Sydney Law School, University of Sydney
14. Professor Simon Rice OAM, ANU College of Law, Australian National University
15. Associate Professor Belinda Smith, Sydney Law School, University of Sydney
16. Professor Margaret Thornton, ANU College of Law, Australian National University