



Thursday, December 08, 2016

Committee Secretary
Parliamentary Joint Committee on Human Rights
PO Box 6100
Parliament House
Canberra ACT 2600
By email: 18Cinquiry@aph.gov.au

Dear Committee Secretary,

Inquiry into Freedom of Speech in Australia

The Settlement Council of Australia (SCoA) is grateful for the opportunity to make a submission to the Committee on its inquiry into Freedom of Speech in Australia.

With regard to the terms of reference of the inquiry, we note that the Committee is considering whether the *Racial Discrimination Act 1975* (Cth) (“RDA”) imposes unreasonable restrictions upon freedom of speech as well as the effectiveness of certain administrative functions of the Australian Human Rights Commission (“Commission”).

SCoA represents over 80 agencies in the settlement sector, which comprise the vast majority of agencies providing settlement support to recently arrived migrants and people from refugee backgrounds across Australia. Our members work directly with a wide range of people from diverse backgrounds, as well as the mainstream Australian community and various governmental and private stakeholders.

Our members witness firsthand the true value of the contribution made to Australia by those it welcomes as migrants and humanitarian entrants, but also the challenges those people face when attempting to settle in their new communities. Our members also see the importance of fostering and strengthening our country’s commitment to tolerance and non-discrimination and the crucial role these principles play in a multicultural democracy.

SCoA’s consultations with members informs our response to the Inquiry.

Discrimination and Settlement – the importance of Section 18C

Concepts of integration and engagement are a mutual process, requiring both migrants and the receiving community to commit to inclusive and common practices and values, without precluding the celebration and practice of one’s own culture.¹ This process leads to successful settlement outcomes and fosters a harmonious and cohesive multicultural society.

¹ This is a concept that has been given considerable consideration by the European Council, when it adopted its Common Basic Principles on Immigrant Integration in 2004. See http://www.eesc.europa.eu/resources/docs/common-basic-principles_en.pdf (accessed on 28 November 2016).

Across the political divide the concept of multiculturalism is heralded in Australia as a success story of global significance. This was recently reinforced by Prime Minister Turnbull and Leader of the Opposition, Mr Shorten, when they presented in parliament a bipartisan motion supporting Australia's cultural diversity. The motion recognised Indigenous people, refugees and Muslims, reaffirmed the commitment to equal rights, a non-discriminatory immigration policy, reconciliation and multiculturalism and denounced racism.²

While SCoA welcomes positive developments such as this, we note that there is, at the same time, an increasingly loud, but relatively small group of dissenters. These dissenters question the effectiveness of Australia's multicultural policy, and argue for the removal of section 18C (among other actions).

On behalf of our members, SCoA urges the Inquiry exercise extreme caution when considering recommendations such as these.

The settlement sector's work with communities across Australia regularly focusses on strengthening social inclusion, fostering community cohesion and promoting respectful engagement within and between the many diverse communities that comprise the multicultural nation of Australia.

SCoA considers that the current provisions within the RDA, the subject of this Inquiry, provide a basis for respect and tolerance which are core to any community and are essential in a multicultural democracy.

We note that the rationale for the inclusion of sections 18C and 18D in the RDA in 1995 arose from recommendations contained in a number of crucial inquiries conducted at around that time including the *National Inquiry into Racist Violence*, the *Royal Commission into Aboriginal Deaths in Custody*, and the Australian Law Reform Commission's *Multiculturalism and the Law* report.

Seen in this context, it is easily understood that the inclusion of those sections in the mid-1990s was justified and reasonable. SCoA submits to the Committee that the need for 18C and 18D is as apparent in 2016 as it was in 1995.

The settlement sector is concerned about continuing high levels of discrimination in the community, and SCoA members regularly hear reports of direct and indirect discrimination and racism experienced by their clients.

Recent research by the Scanlon Foundation points to disturbing trends in the increase of experiences of discrimination in Australia. Despite finding that the majority (over 80%) of Australians support our multicultural society,³ the Survey reports that 20% of respondents have experienced discrimination. This number is the highest in the Survey's 10 year history.⁴

While the figure of 20% is unacceptably high, we note that this percentage takes into account all respondents to the Survey, including Australian-born. When one considers the experiences of discrimination with relevance to a person's country of birth, the numbers become even more compelling. Of relevance, SCoA recommends to the Committee the Scanlon Foundation's larger

² Sydney Morning Herald (10 October 2016) "As Donald Trump questioned Muslims, Turnbull and Shorten did something remarkable" accessible at <http://www.smh.com.au/federal-politics/political-news/as-donald-trump-questioned-muslims-turnbull-and-shorten-did-something-remarkable-20161010-gryqxy.html> (accessed on 29 November 2016).

³ Scanlon Foundation (2016) "Mapping Social Cohesion" p54, accessible at http://scanlonfoundation.org.au/research_surveys/2016/

⁴ Scanlon Foundation (2016) "Mapping Social Cohesion" p25, accessible at http://scanlonfoundation.org.au/research_surveys/2016/.

survey report, released earlier in 2016, “Australians Today”.⁵ “Australians Today” provides the results of a comprehensive survey conducted by the Foundation in 2015: Australia@2015. In relation to reported instances of discrimination experienced by persons of different backgrounds, “Australians Today” reveals the following alarming numbers:

- Indian: 39%
- Chinese: 39%
- South Korea: 55%
- Kenya: 67%
- Zimbabwe: 75%
- South Sudan: 77%⁶

“Australians Today” reveals that these issues are exacerbated in some parts of regional Australia, with the number of South Sudanese reporting experiences of discrimination jumping to 96% in regional centres.⁷

These findings highlight the crucial need to maintain the strength of the provisions in the RDA which restrict and limit discrimination, as well as the need to work with community to reinforce standards of respectful behaviour.

The negative experience of discrimination can have a devastating impact on individuals and their chances of achieving a successful settlement in Australia.

SCoA therefore strongly urges the Inquiry not to recommend any changes to the RDA that seek to weaken the language currently contained in section 18C. Weakening legislative protections is a serious action which should only be undertaken if there is a clear urgent need. There is no urgent need to change the provisions of the RDA and SCoA is concerned that there are significant dangers to the Australian community in reducing protections.

The Role of the Commission

SCoA does not have any direct involvement with complaints before the Commission. We therefore defer to others to inform the Inquiry as to the nature of that process.

SCoA does note, however that as a method of legal enforcement the regime contained in the Racial Discrimination Act is one of the more modest forms of regulatory intervention. SCoA understands the role of the Commission is to act as facilitator, not an enforcer, and that wherever possible complaints are resolved via conciliation.

We therefore see no reason why the complaints-handling procedures of the Commission should be reformed. To the best of our knowledge the Commission’s procedures generally work satisfactorily and with minimum cost and inconvenience to all parties.

Conclusion

Australia has much to benefit from maintaining an open, inclusive multicultural democracy. The prevention of discrimination is a crucial component of social cohesion and is therefore a justifiable limitation on the right to freedom of speech.

⁵ Scanlon Foundation (2016), Australians Today.

⁶ Scanlon Foundation (2016), Australians Today, p62.

⁷ Scanlon Foundation (2016), Australians Today, p63.

SCoA recommends to the Committee the significant work performed by the settlement sector in promoting inclusion. We strongly believe that it is through this positive work that Australia will realise its full potential as a multicultural nation, and that any attempts to weaken protections against discrimination and racism will have a significant impact on this progress.

We therefore urge the Committee to avoid any recommendation to alter the RDA and the processes of the Commission.

For further information please contact the SCoA National Office on 6282 8515 or info@scoa.org.au