Bleak Future

Publish Date:

December 2016

The extraordinary complaints—now, after furious media attention, withdrawn—against Bill Leak for drawing a satirical political cartoon demonstrates why Australia's most prominent anti-free speech law must be repealed.

In October, *The Australian* reported that the Australian Human Rights Commission (AHRC) had accepted a complaint against cartoonist Bill Leak under Section 18C of the *Racial Discrimination Act* 1975.

Leak's misdeed was his cartoon, published on 4 August 2016, in which an Aboriginal policeman collars an errant Aboriginal boy and seeks to return him to his Aboriginal father saying: 'You'll have to sit down and talk to your son about personal responsibility'. 'Yeah righto,' says the father. 'What's his name then?'

Race Discrimination Commissioner Tim Soutphommasane immediately launched into the media with condemnation for what Leak had drawn. He told Fairfax media: 'Our society shouldn't

endorse racial stereotyping of Aboriginal Australians or any other racial or ethnic group' and 'urged anyone who was offended by it to lodge a complaint under the Racial Discrimination Act.'

In any context, a government agency investigating a cartoon published in an Australian newspaper for what is deemed merely offensive, insulting or humiliating is inherently and unambiguously wrong.

But this particular case also highlights the implications for public debate of such actions.

Leak's explanation for his cartoon reveals that, rather than being merely provocative or satirical for the sake of being provocative or satirical, the cartoonist was making a political point about the importance of personal responsibility and disadvantage in Australia's indigenous community.

The job of a newspaper cartoonist is to draw provocative illustrations of topical events. As fellow cartoonist John Spooner noted in *The Australian* in October: 'The right to offend and insult are, in part, necessary ingredients in serious argument.'

If the law proposes to allow any offended person to take a cartoonist to 'conciliation' for doing their job, then the whole profession might as well pack up their pencils and find other work.

As the IPA highlighted in the last edition of the *IPA Review*, the AHRC disgraced itself in the case against the QUT students by its failure to inform the students that a complaint had been made against them for 14 months and cancelling conciliation without actually giving the students a proper change to participate.

In the Leak case, the AHRC again disgraced itself by actively inflaming outrage about the cartoon, encouraging people to make complaints. It reflects an organisation seeking to bolster its own relevance and workload. As Justice Dyson Heydon stated in the 2010 case of *Kirk v Industrial Court of NSW*, specialist bodies 'tend to become over-enthusiastic about vindicating the purposes for which they were set up'.

The Australian's Legal Affairs Editor Chris Merritt has speculated that Soutphommasane may have been 'drumming up' work, as the racial hatred workload appeared to be shrinking. Merritt referred to documents extracted from the AHRC in June by the IPA under the Freedom of Information Act, which showed that the commission was then dealing with just 18 racial hatred matters.

Undeniably, Soutphommasane's public comments also bring into doubt whether the AHRC can fairly deal with the high profile Section 18C cases. Yet while the AHRC seems unfit to carry out its statutory duties fairly or capably, the problem is not the Commission. It is the bad law that enables the overly sensitive to complain to the Commission and have a chilling effect on open debate in this country.