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January 31st 2021

Re: Your ref: 2020-15230

Complaint by Roger Karge against Affirm Press Pty Ltd, Diversity Arts Australia, Sweatshop Literacy Movement Incorporated and the Australia Council for the Arts

Dear Shyamika,

Thank you for your letter of 18th January 2021 in response to the above complaint alleging racial hatred under the *Racial Discrimination Act 1975* (Cth) (RDA).

Please find below a response to your letter (using the page numbers of your letter as reference, your text in **bold** and my answers in *italics*) and further information in support of my complaint, which you indicated would be useful in enabling the Commission to make a final determination as to whether my complaint meets the requirements of section 18(1)(a) of the RDA.

Page 1 : The complaint

Complaint documents

- Yes, I agree that these are my submitted documents to date.

Page 2 : Summary of complaint

*- Yes, I agree this is the summary of my complaint, but **you appear to have omitted** my reference to the radio interview with the book editor Michael Mohammed Ahmad, which I feel is very important to bring attention to, given that we can hear in the editor's own words statements that have profound effects on me.*

I would ask that you include a reference to the following in your summary of my complaint -

From my Letter to the AHRC on 28/11/2020 :

*'In addition, I am profoundly affected given that the editor of the book, *After Australia*, Michael Mohammed Ahmad, who has responsibility for the 'defaced'*

book-cover has said in a podcast interview regarding his *After Australia* book, on July 9th 2020 that,

'...Australia...for tens of thousands of years starts with an Indigenous voice and that the end of this country has to be an indigenous voice as well; that, this is a black country and that's what we are on, and we need eventually need to be in a time where the country is led by Indigenous people". [Listen here from 40:14](#) [Ref. 1].

Page 4 : However, as explained below, the information before the Commission at this time does not appear to sufficiently support that the act you are complaining about would meet the requirements of section 18C(1)(a) of the RDA.

Consideration of section 18C(1)(a)

To support a claim of racial hatred, a complainant is required to provide sufficient information to support that the act they are complaining about is reasonably likely in all the circumstances to offend, insult, humiliate or intimidate another person or group of people. The test in section 18C(1)(a) is an objective one. That is, if a matter proceeded to court, the question to be considered is not whether the person making the complaint was offended, insulted, humiliated or intimidated; but rather whether the act complained of was reasonably likely to have that effect on a hypothetical representative member of the relevant group of people, in this case the relevant group being white Australians of European descent.

*- At this stage, I have no **extensive, objective data** to support my claim that,*

'...the act complained of was reasonably likely to have that effect on a hypothetical representative member of the relevant group of people, in this case the relevant group being white Australians of European descent.'

*In an attempt to **obtain sufficient objective data** to support my claim should it proceed to court, I have initiated an **online public petition** outlining the details of my complaint with a view to collating how many 'hypothetical representative members there may be who are similarly effected as I am.'*

The petition can be viewed online at [Change.org](#) and a printout of the petition is attached in Attachment 3 .

Page 5: The cover that is the subject of your complaint relates to a book of creative writing by members of minority groups within Australia and it exists in a context in which white Australians of European descent could not be said to be an oppressed minority group.

*- Yes, in the case of McCleod v Power, ‘...a case involving white prison officers, a woman was refused permission to visit a prisoner, and she yelled abusive comments at the prison officer who was at the gatehouse. The Magistrate was clearly reluctant to hold against the woman and decided that, while much of the language she used was offensive, the racial element, using the epithet “white,” was something that a reasonable officer would not have found offensive. The Magistrate interpreted the impact of the allegedly racially offensive words in the context of **a power imbalance between the white prison officer and the Aboriginal woman abusing him**. In that case, the Aboriginal woman was railing against a decision of the prison officials to refuse her entry that she could do nothing to change. Interpreting “reasonable” victims in this way can avoid the potential problem, raised by some commentators, that **members of victimized groups** may be punished for hate speech directed against **dominant groups**.’ (Source : Page 31 of <https://ir.law.fsu.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1129&context=lr>)*

However, should this matter proceed to court, we would argue that there may be a case to be made that,

*- The publisher and the twelve contributors may in fact be in a **relatively higher position of power** than myself and many other ‘white Australians of European decent’.*

To support this claim, I note that :

*- the publisher **Affirm Press** has funding and backing from powerful sources, such as the Australian Government via the Australia Council;*

*- the management and staff members of **Affirm Press** do not appear to be representatives of either a ‘**victimised group**’ or an ‘**oppressed minority**’ (See Attachment 4 – Source <https://affirmpress.com.au/about-us/>)*

*- all the contributors to the book, **After Australia**, have been able to express their views publicly in a very wide number of journals and literary publications, and many have been awarded literary prizes;*

*- some of the contributors, for example **Michelle Law**, have very successful careers and are widely published and have material that is produced for TV (eg: SBS) (see Attachment 5);*

*- there is a view that there, “...is a clear manifestation of the social reality that **racist acts of social elites are privileged**, even though the harm occasioned*

by such acts may be more pervasive than that arising from a crude tract.”

Source - Margaret Thornton on Page 38,

<https://ir.law.fsu.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1129&context=lr>

*- I would argue that Affirm Press and some the contributors to the book, After Australia, are members of a ‘**social elite**’ that gives them ‘**privileges**’ that enables them to publish ‘racist’ images, such as a ‘**defaced white family**’ without fear of censure.*

Page 5 - Exemptions in section 18D of the RDA

- You advise that that,

‘...section 18D of the RDA includes several exemptions – that is, situations which would not constitute racial hatred. These situations include anything said or done reasonably and in good faith in the performance, exhibition or distribution of an artistic work. It would appear that the book cover is an artistic work...

Even if it could be established that the book cover is reasonably likely to offend, insult, humiliate or intimidate a hypothetical representative member of the relevant group, the act you are complaining about may be covered by the exemptions in Section 18D.

Please note that as it appears that your complaint does not meet the requirements of section 18(1)(a) of the RDA, the Commission has not formed a view on the applicability of section 18D to your complaint.’

*- Should my complaint ultimately reach a position where a determination of section 18D be required, I would make the point that even though the book cover would appear to be an artistic work, its publication would still need to comply with being, ‘**done reasonably and in good faith**’ to gain an exemption under section 18D.*

I would suggest there may be evidence that the book cover was not done, by at least some of the contributors, ‘in good faith,’ and that an exemption under section 18D might not be possible.

*For example, one of the contributors, **Michelle Law**, has been selected by the publishers in their marketing program to prominently display the book-cover with its ‘defaced white family’ clearly visible, as shown below in Figure 1, which is clip from the larger marketing material (See Attachment 1).*



Fig.1 – Author Michelle Law promoting the book, *After Australia* and its racially vilifying book-cover, in which she has a contribution on page 27.

I would allege Ms Law is not acting in 'good faith' given that, on July 10 2020, it was reported in [The Sydney Morning Herald](#) (See full transcript in Attachment 2) that she,

'...has apologised for a "racist" scene that "depicted dangerous stereotypes" in a film she wrote. Law issued an "apology without reservation" for a scene in her 2013 short film Bloomers that...'involved black-facing 'a white girl and boy and an Asian girl..'



Gabby (Janet Wang) applies blackface in the 2013 short film Bloomers. :

Fig.2 – 'Black-face' scene from Michelle Law's film *Bloomers*, for which she has apologised for as being 'racist'.

Law is quoted as saying,

"The truth is, the scene we made seven years ago is racist. Jokes my collaborators and I made online discussing the scene seven years ago are also racist. I'm deeply sorry," Law posted on Twitter..."

"Ms Law posted on Twitter: "In depicting teens naively putting ash on their face – and asking themselves if it was appropriate – we created an inappropriate scene.

"I know some argue the scene doesn't constitute blackface. For me it doesn't matter: I think it does, and I am ashamed."

"Ms Law said she decided to post the apology – "owning [her] mistakes and errors completely" – after an anonymous Twitter user posted clips from the scene.

"If you've held me to account over this, I'm very grateful," Ms Law tweeted. "I'm also sorry you had to invest energy and time to do so. "It's entirely fair those coming after me are using with the same rhetoric I've been using. This conversation is part of a bigger and vital dialogue now, one in which I'm committed to participating. I'll continue asking all parties hold themselves to account. That includes me."

In a statement, Ms Chen said the scene was "indefensible".

"As many people have been doing in the last few weeks, I have been reflecting on my own blindspots with regards to behaviour in my work, actions that may seem harmless but are actually incredibly hurtful to certain people, or are perpetuating systemic racism," Ms Chen wrote.

"Within that reflection, I have been educating myself on the history of blackface and how it has been used as an instrument of oppression, the systematic racism it represents and how it's been normalised within my own framework as a non-European settler...

"I appreciate you for holding me accountable and we should all continue to do so to work towards a more just and equal society." (From SMH July 10th 2020)

*As I understand it, at about the time Ms Law was making the above unreserved apology (mid 2020) she was promoting, apparently unashamedly, a book that had a cover depicting a 'defaced' white family. I would allege that this represents **'bad faith'** on her part, and her publisher Affirm Press, as it is inconceivable that she, and they, would not consider this book cover, as she would say, **'incredibly hurtful to certain people.'***

Page 6 - Named respondents

Based on the initial response of the Australia Council for the Arts (the Council) (their email of 4th August 2020) it did appear that the Council did not fund the publication of 'After Australia', or its cover artwork.

*However, since then, it has been drawn to my attention that the acknowledgment page in the book, After Australia, clearly shows that the Australia Council **did provide** financial support to the publisher. (see Attachment 6 -Acknowledgement page of the book).*

I have emailed the Australia Council again seeking further clarification of this point but have not as yet received a response.

With regard to the Australia Council's position that, even if they did provide funds for the project, they do not exercise any editorial control of the grant recipients, this is rather a lame and irresponsible excuse in my opinion. Surely the Australian taxpayer would expect the Australia Council to have some oversight of the projects it funds? If my complaint is successful with the HRC, it would be most reasonable for the Australia Council to advise the publisher that, due to a community complaint, the Council would request the publisher to agree to remove the 'defacement lines' from the faces of the white family on the book cover prior to any subsequent print runs, which is all I am asking for.

I do not accept at this stage that my "complaint against the Council is misconceived".

Page 6 : Conclusion & Possible Next Steps

Yes, I wish to proceed with the complaint.

R L Karge

Roger Karge
Melbourne