

Submission to the Parliamentary Inquiry into Freedom of Speech

From Victorian Multicultural, Faith and Community Organisations on behalf of our communities

9 December 2016

Background

The multicultural, faith and community organisations listed at the end of this submission, represent a great diversity of the Victorian community. We thank the Australian Government and the Parliamentary Joint Committee on Human Rights for the opportunity to provide our views and express our concerns regarding changes to the Racial Discrimination Act 1975 (Cth) and the Australian Human Rights Commission Act 1986 (Cth).

1. Racial Discrimination Act – Principles (Terms of Reference 1)

We have come together in common cause to defend the integrity of the Racial Discrimination Act (RDA) to ensure that the vulnerable are protected from hate speech and vilification based on race.

We believe that any watering down or perceived dilution of the RDA would send the wrong message to potential offenders that hate speech was becoming more acceptable in our society, opening the door to more abuse, and to potential victims that their right to live free from racial or religious vilification, abuse and intolerance was diminished.

Perceptions are important, and there is a danger in even proposing to change the RDA, especially in light of the heightened racial intolerance fuelled by Donald Trump's election victory in the USA, and the previously stated proposition that "people have the right to be bigots", that this increases the risks to the community of increased racial intolerance, vilification and abuse.

Freedom of speech is a very important right but not an absolute right. It is limited for good reason in several areas, such as in cases of defamation, libel and sexual discrimination, as well as racial discrimination.

Hate speech based on race, ethnicity or religion should be deplored and all members of society should be protected from it. Just as freedom of speech should be valued, so should the right of people to be part of a free and fair society without suffering the emotional and mental harm caused by hate speech, which can often have physical and life threatening implications.

Political philosophers such as Thomas Paine and John Stuart Mill have been quoted in support for the importance of freedom of speech over protection from hate speech, however they did not live in a modern multicultural society where social media carried hate speech to larger audiences and targets marginalised groups. In the days of Paine and Mill, many forms of sexual discrimination, which are no longer acceptable today, would have been the norm. Just as sexual discrimination is unacceptable today, so too is racial discrimination unacceptable in modern Australia, a society enriched with people from a multitude of countries, ethnicities and faiths.

We believe that Australia's multicultural society and diversity are valuable and important elements of modern Australia. Harmony in a diverse society can be a fragile thing, and hate speech puts this harmony at risk.

We believe that the RDA as it stands has been working well and is effective in creating an environment that supports multiculturalism and a harmonious Victorian community. We also believe that the protections it provides and the avenues it opens to conciliation are critical to a society that can see things from the perspective of the vulnerable and less powerful. The current legislation forms a good foundation to create a civilised civic society for all.

The legislation is not about mild insults, as Justice Kiefel found, the prohibitions in s.18C are limited to cases which have “profound and serious effects not to be likened to mere slights.” (Creek v. Cairns Post Pty Ltd [2001] FCA 1007 [16])

The burden of proof bar for the existing legislation is already very difficult to reach, so any proposed watering down would be a serious problem, though we recognise there may be opportunities to improve the practicalities of the complaint handling processes at the Australian Human Rights Commission.

Particular communities may be perceived as strong or weak, united or fragmented, but any individual within any of those communities may feel threatened, harassed, fearful or disempowered when confronted with racially vilifying graffiti, incitement of racial or religious hatred in the media, religious or racial abuse hurled from a passing car, people calling for the death or elimination of a race on the sporting field or when confronted by hate speech on public transport.

The current legislation has also been very useful in helping to remove the online presence of hate speech, which can cultivate fear and animosity towards targeted groups, and creates serious mental and psychological health concerns. History shows that hate speech can often lead to physical attacks. We fear the repercussions associated with removing the protections of 18C, and urge the Government to acknowledge the societal damage associated with its removal or watering down.

We would not like to see s.18C or s.18D of the RDA changed, except to strengthen it by explicitly adding religion into the protections. We believe that s.18D already provides an adequate and very reasonable protection of free speech. It sets out a wide range of defences which is one of the key reasons why there are so few established contraventions of s.18C.

We understand that being a signatory to the International Covenant on Civil and Political Rights (ICCPR) gives the Commonwealth power to extend the RDA to include religion.

By adding ‘religion’ into the list in s.18B(b) and s.18C(1)(b) of the RDA – “race, *religion*, colour or national or ethnic origin”, we believe that many people of various religious affiliations and faiths would feel better protected, accepted and respected as members of society.

For many people, wearing a hijab, turban, yarmulke, cross or other symbol of religious observance can make them feel like they are target for abuse. In a free and just society, this should not be the case. For effective freedom of religion, people should be able to practice their faith without fear, intolerance or vilification.

Racial and religious intolerance, vilification, incitement of hatred and intimidation are lines that should not be crossed.

This is not an issue specific to any one race or religion, but an issue for all members of society. Over the past few years, over 35 Victorian ethnic, community and faith organisations have worked together, discussed community concerns, shared stories of racially motivated attacks, Islamophobia, Antisemitism and other instances of religious intolerance and vilification. Our efforts to create an enriched society requires legislative protection, and our diverse communities should feel supported and guarded by the support of our Commonwealth Parliament.

2. Australian Human Rights Commission – Handling of Complaints (Terms of Reference 2)

We do not believe there is any evidence to suggest that there is a higher proportion of vexatious complaints under section Part IIA of the RDA than there is through other areas of law. Even if there were, we do not believe that the issue of vexatious complaints, in itself, provides grounds to review the substance of Part IIA of the RDA. To tackle issues of process, the inquiry must be directed at the laws which regulate the processes of the AHRC – the Australian Human Rights Commission Act 1986.

We do believe that it is sensible for trivial or vexatious complaints, and complaints that have no reasonable prospect of ultimate success be discouraged and actively weeded out early in the complaints process. Priority should be made for resources to focus on material and serious claims which have a good chance of success.

We believe that the President of the Commission should have the authority to terminate complaints under Part IIA of the RDA which are trivial, vexatious or have little chance of success. This should be done on receipt of the complaint. The complainant should have the right to appeal that determination with the Federal Court, and the complainant should have to provide security for costs before seeking judicial review to ensure that the complainant is serious.

It is important that there are adequate checks and balances to ensure that complaints get a fair hearing and that serious, material complaints proceed and are handled in a timely manner. People who are subject to complaints deserve natural justice, so complaints should be acted upon and dealt with expeditiously, and without any unreasonable delay.

We suggest that the appointment of a part-time judicial member to the Commission be evaluated as is done in some other tribunals, such as the Administrative Appeals Tribunal. The initial complaints could be handled by the judicial member on behalf of the President of the Commission.

We believe that any changes to the complaints handling process and the role of the Commission must be in line with the recommendations from the Commission, as they have the experience and expertise from handling incidents and cases over many years.

3. Australian Human Rights Commission – Soliciting Complaints (Terms of Reference 3)

What is meant by “soliciting complaints to the Commission”? Does it mean people speaking about the Commission’s functions and encouraging those who believe their relevant rights have been infringed to seek the Commission’s assistance? If so, we strongly support such behaviour. That is the whole point of having the Commission. Certainly such behaviours should not be prohibited or limited. It should be encouraged.

It is not clear how encouraging victims of racist speech to seek the remedies to which they are entitled at law has an adverse impact upon freedom of speech. Whose free speech would be “impacted”? What speech would be discouraged? Why do the terms of reference maintain an implicit argument that free speech is a superior human right? One can only assume that it would be the speech of persons who don’t want the Commission to exist or succeed in its conciliatory tasks, and/or persons who want to use speech which amounts to an offence under the law who claim that free speech is being adversely affected by the RDA and the Commission.

Why do the terms of reference evince no similar concern about discussing human rights abuses regarding discrimination against women, for example? No one has suggested that to encourage women who are discriminated against to pursue their legal rights amounts to a restriction on free speech. How could it? The same reasoning must apply here.

It is extraordinary that the terms of reference appear to suggest that there should be any kind of prohibition or limitation in Australia upon any person - in any capacity - who encourages a person to pursue avenues of redress which are legally open to them. That would indeed be to restrict free speech. It would also be to undermine the rule of law. We trust that we have misunderstood the question but cannot find any other meaning in it.

The reference to “officers of the Commission” appears entirely inappropriate. It is clearly the role of the Commissioners, given their tasks of education, inquiry and promoting conciliation, to engage in public conversations about the work of the Commission and about human rights generally. In doing so they are not in any way abusing their powers or functions. It would be completely inappropriate to limit the speech of officers of the Commission in the manner suggested.

We see the role of the Commission in education, inquiry and promoting conciliation, and communicating about and promoting human rights as of vital importance, and would not want to see that role curtailed.

It is also not clear what third parties are contemplated in the terms of reference or why third parties should be prevented from exercising their free speech rights and enforcing the RDA. Is the implication that lawyers should not be able to give advice, or advertise that they can give advice, about legal avenues of redress in relation to racial vilification? That would be an outrageous restriction on the free speech of lawyers, the rule of law and lawyers’ ultimate and supreme duty to the court, which would completely undermine the objects and administration of the RDA and leave victims of racial vilification without legal assistance. If this is not the meaning of the terms of reference, who are the “third parties” referred to?

In the context of the RDA, the Commission’s role is to educate perpetrators of racist speech and conciliate disputes in a way that promotes social harmony and removes racist speech from Australian society. Such speech is harmful both directly to the recipients and indirectly hurtful to Australians. Racist speech is not just offensive. It is well known that racist speech has many undesirable effects. It chills the free speech of victim groups. It disempowers their members. It makes them fearful and reluctant to fully engage in our democratic political system. It encourages others to act against minority groups, and ultimately to use violence against them. It undermines our democracy. By discouraging this speech, the existing legislation, and the Commission, fulfill an enormously important social function.

4. Australian Human Rights Commission – other reforms (Terms of Reference 4)

Refer to 2 above.

5. Additional statements of support from Endorsing Organisations

"We should be doing more to say to people, 'it's not acceptable to be racist' ...That's the message we want to get across to politicians, legislators, but also to the broader community."

- *Joseph Caputo, Chairman of the Federation of Ethnic Communities' Councils of Australia*

"Freedom of speech is a cornerstone of our democratic society, and must be defended. However, we must also ensure that this does not come at the expense of protections against discrimination, hatred and vilification. The right balance needs to be met to safeguard the rights of all members of society."

- *Eddie Micallef, Chairperson of the Ethnic Communities' Council of Victoria*

"Racial and religious intolerance, vilification, incitement of hatred and intimidation are lines that should not be crossed. We must defend and celebrate diversity in Victoria, not just tolerate it."

- *Jennifer Huppert, President, Jewish Community Council of Victoria*

"As the great Mahatma Ghandi once conveyed, we should look at any proposed amendments through the eyes of those most vulnerable and least powerful."

- *Bishop Philip Huggins, President of the National Council of Churches of Australia*

"Racial vilification and religious intolerance have no place in modern society especially in Australia which believes in a fair go to all. All citizens should be able to practice their faith and beliefs without been subjected to bigotry and harm."

- *Mohamed Mohideen, OAM, President Islamic Council of Victoria*

"The notion that a society should tolerate speech intended to insult or offend people is anathema to everything we hold dear. Free speech is critically important but, like all human rights, has parameters. We feel that 18C is that parameter having served us well since being legislated."

- *Rabbi Yaakov Glasman, President of the Rabbinical Council of Australia and New Zealand*

"No to racism and to racist elements in our society."

- *Dr Berhan Ahmed, Chairperson of the African Think Tank Inc.*

"Racism is still a pervasive problem in our community and legal protections against racial vilification are essential in combatting bigotry and protecting individuals. We know through our work that strong and effective racial vilification laws such as section 18C of the RDA are a vital and necessary tool in addressing and countering the unique harm caused by bias-motivated hate speech."

- *Dr Dvir Abramovich, Chair of the B'nai B'rith Anti-Defamation Commission*

"Mental and emotional harm can cause physical harm through substance abuse, self-harm and potentially suicide: these outcomes also need to be avoided. This has serious implications for the individual and the community."

- *Dr Andre Oboler, CEO of the Online Hate Prevention Institute*

“Civility is key to society and civilization, and mutual respect is key to civility. No robust discussion requires the denigration and dehumanisation of the other.”

- *Professor Emeritus Gary Bouma AM, UNESCO Chair in Interreligious and Intercultural Relations – Asia Pacific*

“The CCJ Vic is the oldest interfaith organisation in Australia and has fought for 30 years to create understanding and respect between faiths and communities. We see at the cutting edge what harm and division, racism and bigotry can create.

Anything that dilutes the present legislation can only harm community relations in this country and opens a Pandora’s box in which no one can predict the outcome.”

- *Dr Philip Bliss, Chair, Council of Christians and Jews Vic*

“The arguments being used to make amendments to 18C of the Act are already covered by Section 18D of the Act. Any watering down of Section 18C will encourage racists to increase their anti-migrant behaviour.”

- *Marion Lau OAM JP, Community Advocate for Multiculturalism & Cultural Diversity*

“Racial vilification and religious intolerance, incitement of hatred and intimidation threaten the core of our multicultural and democratic society. Section 18C is tempered by Section 18D and together protect and celebrate freedom of speech and a harmonious multicultural society.”

- *Miriam Bass, President National Council of Jewish Women of Australia (Victoria)*

“The great Prophet Muhammad, peace and blessings upon him, instructed us to be fair towards all, he made it clear that racism carries a terrible stench. He also said: You are all from Adam and Adam was from the earth. S18C needs to be strengthened to remind us of our equality and the necessary access and protections that come with equality, if not for the sake of the minorities, then for the sake of Australia as a whole because our history shows that diversity has brought tremendous benefit to Australian society.”

- *Keysar Trad, President of the Australian Federation of Islamic Councils*

Endorsed by the following organisations:

Africa Day Australia Inc (ADA)

African Music and Cultural Festival Inc

African Think Tank (ATT)

African Australian Communities Leadership Forum (AACLF)

African Australian Multicultural Employment and Youth Services (AAMEYS)

African Australian Small Business Association (AASBA)

Afro-Australian Student Organisation

Al Ehsan Centre (Bangladeshi community)

The Rt Reverend Andrew Curnow AM, Anglican Diocese of Bendigo
Ararat Islamic Welfare Association
Arkan Toledo
Asian Australian Democracy Caucus (AADC)
Australian Catholic Religious Against Trafficking of Humans (ACRATH Qld)
Australian Federation of Islamic Councils (AFIC)
Australian GLBTIQ Multicultural Council Inc
Australian Intercultural Society
Australian Macedonian Human Rights Committee
Australasian Union of Jewish Students
Ballarat Islamic Society
B'nai B'rith Anti-Defamation Commission
B'nai B'rith Australia/New Zealand
B'nai B'rith Victoria
Board of Imams Victoria
Borderlands Cooperative Limited
Brigidine Asylum Seekers Project
Brigidine Sisters Kildara Centre
Brigidine Sisters Victorian Community
Brimbank Maribyrnong Interfaith Network
Buddhist Council of Victoria
Chinese Association of Victoria Inc
Chinese Community Council of Australia (Victoria)
Church of All Nations, Carlton
CO.AS.IT Italian Assistance Association (Victoria)
Council of Christians and Jews Inc Victoria (CCJ)
Council of Orthodox Synagogues of Victoria (COSV)
Ethnic Communities' Council of the South East (ECCOSE) Inc
Ethnic Communities Council of Victoria (ECCV)
Fair Go for Pensioners (FGFP) Coalition Victoria Incorporated
Faith Communities Council of Victoria (FCCV)
Franciscan Missionaries of Mary – JPIC (Justice, Peace & Integrity of Creation)
Gippsland Australian Muslim Community
The Greek Community of Melbourne
Hindu Council of Australia
Hindu Swayamsevak Sangh
Incubate Foundation
The Interfaith Centre of Melbourne
ISKCON
Islamic Association of Monash Mosque
Islamic Council of Victoria (ICV)
Islamic Shia Council of Victoria
Jewish Christian Muslim Association (JCMA)
Jewish Community Council of Victoria (JCCV)
Jewish Taskforce Against Family Violence Inc (JTAFV)

Kerala Hindu Society Melbourne
Keshet Australia
KSIJ Melbourne
Medical Association for Prevention of War
Melbourne Unitarian Church
Monash Interfaith Gathering
National Council of Jewish Women of Australia (Victoria) Inc
National Council of Jewish Women of Australia NSW Division
National Italian Australian foundation (NIAF)
National Liaison Council of Chinese Australians Inc
National Tertiary Education Union
The Nigerian Society of Victoria Inc
Online Hate Prevention Institute (OHPI)
Pax Christi Australia
Progressive Judaism Victoria (PJV)
Rabbinical Council of Australia and New Zealand (RCANZ)
Rabbinical Council of Victoria (RCV)
Religions for Peace Tasmania Branch
Religious Society of Friends (Canberra) Inc
Religious Society of Friends (Quakers) Victoria Regional Meeting Inc
Seva International
Sikh Interfaith Council of Victoria
South Sudanese Community Association in Victoria Inc
The UNESCO Chair in Interreligious and Intercultural Relations - Asia Pacific
The Union of Greater Upper Nile States
United Sri Lankan Muslim Association
Uniting Church in Australia Synod of Vic/Tas
Victorian Council of Churches (VCC)
Vietnamese Community of Australia (Victoria)
Wesley Mission Victoria
Willing Older Workers W.O.W! Inc