



Australian Council of Social Service

23 December 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

Re: Inquiry into Freedom of Speech in Australia

ACOSS is a national voice in support of people affected by poverty, disadvantage and inequality. Our vision is for a fair, inclusive and sustainable Australia where all individuals and communities have the opportunities and resources they need to participate fully in social and economic life.

Thank you for the opportunity to participate in this inquiry into:

- whether the operation of Part IIA of the *Racial Discrimination Act 1975* (Cth) (including sections 18C and 18D) impose unreasonable restrictions on freedom of speech; and
- whether the complaints-handling procedures of the Australian Human Rights Commission should be reformed.

When changes to the *Racial Discrimination Act 1975* were previously proposed in 2013, community leaders, state and local governments, and civil liberties and human rights experts opposed any weakening of the protections provided to minority communities against racial vilification.

ACOSS supported these views, warning that watering down the *Racial Discrimination Act* would “give the green light to racial based vilification of minority groups in our country”.¹ Since then, as voices on both sides of the debate have made their cases, our position and reasoning has not changed.

The Australian Council of Social Service opposes any changes to legislation that would reduce the protection of ethnic and other minorities against racism and vilification.

To that end, we strongly urge the Australian parliament to reject the proposed changes to the *Racial Discrimination Act*.

We further call on parliament not to interfere, through amendment, with the Australian Human Rights Commission’s complaints and conciliation function. The AHRC has delivered effective, low-

¹ ACOSS, Media Release: ‘ACOSS joins voices welcoming Government rethink on RDA changes’, 6 August 2014 at: http://www.acoss.org.au/media_release/acoss_joins_voices_welcoming_government_rethink_on_rda_changes/.



cost mechanisms for the resolution of human rights complaints, including those brought by victims of vilification.

The Commission delivers a fair and accessible complaint resolution process for the victims of discrimination based on race, sex, gender, age and disability – and does so in accordance with the highest global standards.

It is vitally important that the Commission continues to provide an independent service.

Racism remains a serious problem in Australia, not least for those groups who are the targets of mistrust and xenophobia, but for the country as a whole. It impacts on our social cohesion at home and our reputation abroad.

While the retention of the *Racial Discrimination Act* in its existing form will not, in itself, remedy racism in Australia, the weakening of the protections that it offers almost certainly will inflame it, and for no justifiable benefit.

The most commonly-stated examples of the ‘need’ for watering down the legislation – the freedom to use language without constraint – is not well founded. Freedom of speech is a recognised human right, but as with other rights, it is not absolute. Reasonable restrictions protect consumers from misleading advertising, people from sexual harassment, individuals from threats to harm, employees from bullying, and communities from incitement to violence.

Just as various laws protect these groups from the excesses of rhetoric, so too does the *Racial Discrimination Act* protect minority Australian communities.

It should also be remembered that the Act is neither arbitrarily nor easily administered. It contains rigorous protections to prevent its abuse. Most notable of these protections is that the unlawfulness of ‘conduct reasonably likely to offend, insult, humiliate or intimidate on the basis of race’ under section 18C has been examined by the courts and determined that it must be ‘profound and serious’. Section 18D recognises the important balance between free speech and offensive speech by acknowledging that comments may be fair if made reasonably and in good faith.

The *Racial Discrimination Act* exists for a noble, clearly defined purpose – to ensure that the nation’s laws on race relations live up to its ideals. It recognises in law that, as former Attorney-General Kep Enderby, who introduced the bill, said “all human beings are born free and equal in dignity and rights and that any doctrine of superiority based on racial differentiation is scientifically false, morally condemnable, socially unjust and dangerous and without any justification”.

For more than four decades, this legislation has served to help prevent harm, discourage racial vilification, constrain racial hatred, and help foster a successful, modern, multicultural Australia. It had its origins in the Universal Declaration of Human Rights adopted after the atrocities of the Second World War, and the Convention on the Elimination of All Forms of Racial Discrimination adopted in 1965.

Arguably, the case for the preservation of the Act in its current form is particularly important as developments within Australia and around the globe give warranted concern about a rise of racism and xenophobia. Indeed, in just the short time since these amendments were first introduced,



concerning events in democracies around the globe, and here in Australia, have provided ample demonstration of the need to maintain – if not strengthen – the legal protections afforded ethnic communities to defend against racial vilification, tension, and even violence. The scapegoating of ‘the other’ has been a common tool used by extreme political groups in Europe and the United States, fuelling racism and xenophobia as a response to people’s fear of economic uncertainty.

Should parliament allow the protections of the *Racial Discrimination Act* to be weakened, it would give a clear signal to those who would, under cover of ‘free speech’, give new momentum to racism and xenophobia in Australia.

We urge the Committee to oppose amendments to this important national legal protection.

Yours sincerely,

Cassandra Goldie
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