



The National Aboriginal and Torres Strait Islander Catholic Council

National Aboriginal and Torres Strait Islander Catholic Council response to the proposed changes to the Racial Discrimination Act by the Federal Government

10 April 2014

The Federal Government has signalled its intent to amend of the Racial Discrimination Act 1975ⁱ. The National Aboriginal and Torres Strait Islander Catholic Council (NATSICC) has several concerns and questions regarding these amendments.

Most notably, the new legislation intends to repeal Section 18C which makes it unlawful for someone to publicly "offend, insult, humiliate and intimidate" a person or group of people. Also repealed is Section 18D of the Act which allows comments or actions made in good faith and "fair comment" if it is an "expression of a genuine belief held by the person making the comment". The amended legislation narrows its focus to govern behaviour that falls into the following two categories:

- Intimidation (cause fear of physical harm)
- Vilification (incite hatred)

Glaringly absent is any reference to the emotional and psychological damage that can be caused by racial abuse along with the associated generational trauma that permeates through families. The current wording of Section 18C has been interpreted as "hurting another's feelings" by Attorney General George Brandis who went on to tell reporters in Canberra on March 25

"It is not, in the Government's view, the role of the State to ban conduct merely because it might hurt the feelings of others."

ACT Liberal Senator Zed SESELJA echoed Mr. Brandis' comments by saying

"Yes, our feelings get hurt from time to time. We do not like it when it happens; I do not like it when it happens. But we cannot have a law to protect against every piece of offensive behaviour in our community."ⁱⁱⁱ This stance has resulted in the terms "insult, humiliate and intimidate" being removed from the amendments.

We believe that deliberately hurting others is nobody's right, and that this should be reflected in the Racial Discrimination Act. Australian Human Rights Commission President Professor Gillian Triggs is of the same opinion

"It is not clear why intimidation should not include the psychological and emotional damage that can be caused by racial abuse."ⁱⁱⁱ

Our youth are impacted greatly by racism. They may not possess the skills (nor should they have to) to decipher between what constitutes behaviour that 'vilifies' and thus falls foul of the amended legislation and that which fall under 'public discussion' - which, according to the modified Legislation is OK. Whilst we struggle to protect our children from racism, it is the role of Government to ensure that they have the right to participate and live in a society on an equal footing with anyone else. The modifications will increase the instances where racial 'slurs' are accepted, and this is counterproductive to raising the next generation of strong, self confident leaders in this country.

As an International comparison, the Norwegian Anti Discrimination Act is very strong in its intent and protection of its people and includes the following sections:

Section 4: Direct and indirect discrimination on the basis of ethnicity, national origin, descent, skin colour, language, religion or belief is prohibited.

Section 5: Harassment on such grounds as are mentioned in section 4. first paragraph, is prohibited. "Harassment" shall mean acts, omissions or statements which have an offensive, frightening, hostile, degrading or humiliating effect, or which are intended to have such an effect.

The Council believes that under the Human Rights Act prohibiting activities (in any form) that constitute offensive, frightening, hostile, degrading or humiliating behaviour due to ethnicity, national origin, descent, skin colour, language, religion or belief is a relevant and responsible inclusion.

NATSICC concedes that free speech is a natural right in any democratic society. We need to be able to share our opinions without fear of retribution. Australia is a contemporary multicultural society and we have freedoms that many around the world envy. In many instances the legislation that govern our behaviour reflects this. However, the very connotations of free speech differ in their application to certain circumstances and situations which is why there needs to be a balance when applying the legislation in the real world.

The intended amendments included in Section 4 tips the balance strongly in favour of those wanting to publically declare their 'bigotry', the right of every Australian according to Attorney General Brandis^{iv}. It 4 reads:

(4) This section does not apply to words, sounds, images or writing spoken, broadcast, published or otherwise communicated in the course of participating in the public discussion of any political, social, cultural, religious, artistic, academic or scientific matter.

It is hard to imagine a situation that does not fall under this section, such is its ambiguity and broadness. Effectively, the amendments have narrowed what is seen by the law as harmful to minorities as well as adding a 'catch all' that allows for exemption from the Act in the name of 'public discussion'. It is this section that warrants the most scrutiny in that it has the scope to undermine the entire Act, both as it stands as well as the intended amendments. We have lived with assimilation, abuse, harassment, intimidation, humiliation and the final insult is to make us invisible.

NATSICC would also question the timing of any changes to the Act, given our current social context. We are in the midst of an unprecedented boom in the use of social media, particularly Facebook. Governments are struggling to keep up in providing adequate protection to the public in chat rooms, blogs, webpages and message boards. Current laws were drafted in an era of print and broadcast media and have deficiencies in dealing with

the lightening speed in which material can permeate from user to user, across borders and quickly become global. Combine this with the narrowing of definitions and the cloak of 'Public Discussion' (as cited in Section 4) and that is a recipe for disaster.

The Human Rights Commission has experienced a 59% increase in complaints received about racial abuse, many over the internet or social media so it is imperative that the Federal Government investigate and implement changes to the way that these emerging trends of media are legislated. Under the changes, intimidation is restricted to the fear of physical harm. The Australian Human Rights Commission have stated that the hundreds of inquiries or complaints they receive each year alleging racial abuse, typically on the internet, are not about a fear of physical violence. If psychological and social impacts are excluded from the prohibition, very few cases will be covered by the legislation.^v

The discussion thus far has been counterproductive, and the question must be asked - what is the impetus for the change? Indigenous Australian's are having our basic human rights impinged upon via the Stronger Futures legislation in the Northern Territory and we are still dying much earlier than non Indigenous people and the Government is concerned with modifying legislation to ensure that people do not fall foul of Racial Discrimination laws?

Energy would be best directed at trying to address why some sectors of the community in Australia still adopt racist behaviour rather than change the ways in which we deal with it.

Background Reading

Drop racial change, Mundine urges PM	http://www.cowracommunitynews.com/news.php?id=16&t=Social+Conscience+Issues
Australian Human Rights Commission	https://www.humanrights.gov.au/news/stories/changes-racial-discrimination-act
Racial Discrimination Act amendment: Warren Mundine warns against changes, labels George Brandis's bigotry comment 'bizarre'	http://www.abc.net.au/news/2014-03-26/mundine-critical-of-proposed-changes-to-racial-discrimination-a/5345742
Norway's Anti Racial Discrimination Act	http://www.regjeringen.no/en/doc/laws/acts/the-act-on-prohibition-of-discrimination.html?id=449184
Racial Discrimination Act: Brandis moves to amend — not repeal — 18C	http://www.crikey.com.au/2014/03/25/racial-discrimination-act-brandis-moves-to-amend-not-repeal-18c/
"A Bad Law"	http://www.abc.net.au/news/2014-04-09/gillian-triggs-steps-up-criticism-of-rda-changes/5378156
Balance Freedom with Dignity	http://www.brisbanetimes.com.au/queensland/blogs/the-hermit/brandis-has-to-balance-freedom-with-dignity-20140408-36at8.html
Repeal protects rights of bigots	http://www.theaustralian.com.au/opinion/columnists/repeal-protects-rights-of-bigots/story-fnktpi7i-1226874996152#

ⁱ The intended amendments are as follows:

Section 18C is repealed.

Sections 18B, 18D and 18E are also repealed.

The following section is inserted:

(1) It is unlawful for a person to do an act, otherwise than in private, if:

(a) the act is reasonably likely:

(i) to vilify another person or a group of persons; or

(ii) to intimidate another person or a group of persons,

and (b) the act is done because of the race, colour or national or ethnic origin of that person or that group of persons.

(2) For the purposes of this section:

(a) vilify means to incite hatred against a person or a group of persons;

(b) intimidate means to cause fear of physical harm:

(i) to a person; or

(ii) to the property of a person; or

(iii) to the members of a group of persons.

(3) Whether an act is reasonably likely to have the effect specified in sub-section (1)(a) is to be determined by the standards of an ordinary reasonable member of the Australian community, not by the standards of any particular group within the Australian community.

(4) This section does not apply to words, sounds, images or writing spoken, broadcast, published or otherwise communicated in the course of participating in the public discussion of any political, social, cultural, religious, artistic, academic or scientific matter.

ⁱⁱ Cth. Parliamentary Debates. House of Representatives. QUESTIONS WITHOUT NOTICE: Future of Financial Advice, Racial Discrimination Act 1975 - SPEECH, Tuesday, 25 March 2014.

ⁱⁱⁱ <https://www.humanrights.gov.au/news/stories/changes-racial-discrimination-act>

^{iv} <http://www.openaustralia.org/senate/?id=2014-03-24.30.1> Senate Debates. QUESTIONS WITHOUT NOTICE Racial Discrimination Act 1975 (Attorney General George Brandis, 24 March 2014)

^v <https://www.humanrights.gov.au/news/stories/race-law-changes-seriously-undermine-protections>