



North Australian Aboriginal Justice Agency Ltd

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Senator the Hon George Brandis QC
Attorney-General
Parliament House
Canberra ACT 2600

29 April 2014

By email: s18consultation@ag.gov.au

Dear Attorney,

Proposed amendments to the *Racial Discrimination Act 1975* (Cth)

I write on behalf of the North Australian Aboriginal Justice Agency to state our opposition to the proposed amendments to the racial vilification provisions of the *Racial Discrimination Act 1975* (Cth).

You would be aware that NAAJA is the Aboriginal and Torres Strait Islander Legal Service for the Top End of the Northern Territory. Our Board is made up of 12 Aboriginal and Torres Strait Islander people from communities across the Top End. We provide law and justice services to Aboriginal and Torres Strait Islander people in criminal, civil and family law as well as prisoner Throughcare and Community Legal Education.

The harm of racist speech

As an Aboriginal and Torres Strait Islander organisation that works closely with Aboriginal people and communities across the Top End, we know the harm that racial vilification causes. We see and feel its impact - particularly on our young people, their self-esteem and self-belief. We see the basic, everyday freedoms it denies our young people when they are subject to racist speech: the freedom to participate, to develop to their potential, to feel pride in themselves, to be treated as equal.

We ask that you try to understand how racist speech silences people and excludes them. We ask that you imagine what it is like to have your humanity publicly debased by racist speech and how this has the effect of limiting freedoms – including free speech - rather than promoting them. We ask why our law should protect people from defamatory speech that would harm their reputation, but not protect people from racist speech that can have effects that are deep and disabling. Why is a person's reputation valued above a person's feeling of their worth as a human being?

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Weakening protections against racism

The media release that accompanied the exposure draft of the proposed amendments said that the reforms would 'strengthen the Act's protections against racism'. With respect, we cannot see anything in the reforms that achieves this. The reforms remove protections against offence, insult, and humiliation and limit the scope of the protection against intimidation.

We accept there has to be a sensible threshold. The case law already says that 'mere slights' will not be enough to breach section 18C. Aboriginal people in the Top End tend not to be bothered by 'mere slights'. But we cannot accept a law that allows us to be publicly humiliated because of our race. We also do not understand why the law should only protect us from intimidation that causes fear of physical harm. How is this strengthening the protection against racism?

We are very concerned about the exception contained in subsection 4 of the exposure draft. The exception is so broad as to make the main prohibition meaningless. Even the worst race-hate propaganda would be exempt from the law if it can be said to fall within the wide scope of 'public discussion' of a 'social matter'. This does not support the claim in your media release that 'racial vilification is unacceptable in the Australian community.'

We are also very concerned that your proposal requires the act to be seen from the perspective of an 'ordinary reasonable member of the Australian community'. We think that a law that deals with racist speech needs to understand and respect the perspective of the racial groups that are subject to that speech. Because we are the ones who have to live with it.

Conclusion

Australians can be proud of the protection against racial vilification that is currently contained in the RDA. That protection should not be taken away. We should all be entitled to live without the harm of racist speech.

We therefore urge you not to proceed with these proposed reforms.

Yours faithfully,



Priscilla Collins
Chief Executive Officer