

OPEN LETTER:

AUSTRALIA NEEDS TO MAINTAIN STRONG PROTECTIONS AGAINST RACIAL HATRED AND AN INDEPENDENT AND ACCESSIBLE HUMAN RIGHTS COMMISSION

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Dear Prime Minister, Attorney-General and Chair,

We call on you to maintain the current important protections against racial hatred in Part IIA of the *Racial Discrimination Act 1975* (Cth) and to ensure that the Australian Human Rights Commission's independent, fair and low-cost complaints procedure remains accessible to all Australians.

Racism and protection against racial vilification and hatred

Racism is a serious and continuing problem in Australia. The Scanlon Foundation surveys on social cohesion in Australia identified increasing experiences of discrimination on the basis of skin colour, ethnicity and religion in its 2016 report.¹ Racism can have serious physical and mental health impacts and cause other social harms.² Racism remains a major barrier to achieving our vision for a just, equitable, diverse and reconciled Australia.

Freedom of speech is a fundamental right but it is not an absolute right. It must be balanced against other rights including the right to live free from racial discrimination and vilification. Australian laws limit speech in other areas like defamation, disorderly or offensive behaviour offences, false advertising and sexual harassment. Protecting against the serious harm that flows from racial vilification is a legitimate restriction on free speech.

In 2014 there was overwhelming community support for retaining section 18C of the Racial Discrimination Act. The Government must send a clear message to the community that racism and racial vilification are not acceptable.

The law has an important role to play in preventing the harm caused by racism. It sets standards that discourage people from racially vilifying others, constraining the spread of racial hatred in society, and encouraging people to speak out publicly against racism.

¹ Andrew Markus, *Mapping Social Cohesion: The Scanlon Foundation Surveys 2016* (2016).

² Y Paradies et al, *The Impact of Racism on Indigenous Health in Australia and Aotearoa: Towards a Research Agenda* (Lowitja Publishing, 2008); VicHealth, *Mental Health Impacts of Racial Discrimination in Victorian Aboriginal Communities* (2012).

The protections against racial vilification in section 18C make it unlawful to publicly engage in conduct reasonably likely to offend, insult, humiliate or intimidate on the basis of race. The courts have said that this means the effects must be 'profound and serious' and more than 'mere slights'.³

Section 18D of the Racial Discrimination Act has important safeguards that protect freedom of speech and balances it against freedom from racial vilification and discrimination. For example, a comment that offends, insults, humiliates or intimidates on the basis of race will not be prohibited so long as it is a fair comment about a matter of public interest that is done reasonably and in good faith.

The current protections against racial vilification in the Racial Discrimination Act must be maintained. They help us in the pursuit of an Australia that is free from racism, respectful of all cultures and proud of its cultural diversity.

Australian Human Rights Commission

To effectively combat unlawful discrimination, the law must provide a pathway for victims to seek legal remedies. This requires a complaints system that is fair, accessible and capable of catering to the needs of vulnerable complainants.

The Australian Human Rights Commission's complaints and conciliation function provides an efficient, low cost alternative to litigation and facilitates access to justice for victims of unlawful discrimination. Further, it is entirely consistent with the Paris Principles – the global standards relating to National Human Rights Institutions - for the Commission to have conciliatory or non-judicial complaints handling role on top of the monitoring, reporting and education functions.

In 2015-16, the Commission received 16,836 enquiries and 2,013 complaints. 1,308 conciliation processes were conducted and 76% of these complaints successfully resolved.⁴ The vast majority of these complaints related to employment and access to goods and services.

It is critical that the Commission maintain an accessible, fair and effective complaints resolution process for the thousands who experience discrimination on the basis of sex, gender, disability, race and age.

This letter is supported by the following organisations

- Aboriginal Peak Organisations Northern Territory
- Amnesty International
- Asylum Seeker Resource Centre
- Australian Muslim Women's Centre for Human Rights
- Australians for Native Title and Reconciliation
- Cultural Infusion
- Get Up!
- Federation of Ethnic Communities' Councils of Australia
- Flemington & Kensington Community Legal Centre
- Human Rights Law Centre
- Lowitja Institute
- National Aboriginal & Torres Strait Islander Legal Services
- Oxfam Australia
- Reconciliation Australia
- Refugee Council of Australia
- The Healing Foundation
- United Religions Initiative
- Victorian Aboriginal Child Care Agency
- Voices Against Bigotry

³ *Creek v Cairns Post Pty Ltd* (2001) 112 FCR 352 (Kiefel J).

⁴ Australian Human Rights Commission, *2015 - 2016 Complaint Statistics* (2016) 2.

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