



19 December 2016

Committee Secretary  
Parliamentary Joint Committee on Human Rights  
PO Box 6100,  
Parliament House  
Canberra ACT 2600

### **Submission to the Inquiry - Freedom of speech in Australia**

#### **Who we are**

The Lowitja Institute is Australia's national institute for Aboriginal and Torres Strait Islander health research, named in honour of its Patron, Dr Lowitja O'Donoghue AC CBE DSG. It is an Aboriginal and Torres Strait Islander organisation working for the health and wellbeing of Australia's First Peoples through high impact quality research, knowledge translation, and by supporting a new generation of Aboriginal and Torres Strait Islander health researchers.

Established in January 2010, the Lowitja Institute operates on key principles of Aboriginal and Torres Strait Islander leadership, a broader understanding of health that incorporates wellbeing, and the need for the work to have a clear and positive impact.

The Institute hosts the Lowitja Institute Aboriginal and Torres Strait Islander Health CRC (Lowitja Institute CRC) which is funded by the Australian Government CRC Programme. The history of the Lowitja Institute CRC dates back to 1997 when the first CRC for Aboriginal and Tropical Health was established.

The Institute and the CRC organisations since 1997 have led a substantial reform agenda in Aboriginal and Torres Strait Islander health research by working with communities, researchers and policymakers, with Aboriginal and Torres Strait Islander people setting the agenda and driving the outcomes. At present, the Lowitja Institute CRC works in partnership with 23 Participants around Australia, including Aboriginal and Torres Strait Islander health organisations; State, Territory and Australian government departments; and academic research institutions.

Further information about the Lowitja Institute can be found at [www.lowitja.org.au](http://www.lowitja.org.au).

The Lowitja Institute makes the following submission to the Parliamentary Joint Committee on Human Rights Inquiry into Freedom of Speech in Australia.

### Racism and health policy

In recent years, Aboriginal and Torres Strait Islander health leaders and organisations have worked diligently and collaboratively with the Australian Government in the development of:

- The National Aboriginal and Torres Strait Islander Health Plan 2013–2023<sup>1</sup>, and
- The Implementation Plan for the National and Torres Strait Islander Health Plan 2013–2023<sup>2</sup>.

The vision for the Health plan is

*The Australian health system is free of racism and inequality and all Aboriginal and Torres Strait Islander people have access to health services that are effective, high quality, appropriate and affordable. Together with strategies to address social inequalities and determinants of health, this provides the necessary platform to realise health equality by 2031.*

The Health Plan and the Implementation Plan went a significant way in identifying racism as a social determinant for Aboriginal and Torres Strait Islander health. Racism had not to date been acknowledged in policy as a serious risk to Aboriginal and Torres Strait Islander health. The Health Plan acknowledges that

*“racism is a key social determinant of health for Indigenous Australians, and can deter people from achieving their full capabilities, by debilitating confidence and self-worth which in turn leads to poorer health outcomes. Evidence suggests that racism experienced in the delivery of health services contributes to low levels of access to health services by Aboriginal and Torres Strait Islander people.*

*There are a number of pathways from racism to ill-health – experiences of discrimination, linked to poor self-assessed health status, psychological distress, depression and anxiety, and health risk behaviours such as smoking and alcohol and substance misuse.<sup>3</sup>*

The Hon Ken Wyatt MP, Assistant Minister for Health, in opening the Lowitja Institute International Indigenous Health and Wellbeing Conference in November 2016, said “What a huge step forward to have racism recognized as a critical issue to be addressed in the Implementation Plan”. Further, as an Aboriginal man and Minister responsible, he said “Our

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<sup>1</sup> National Aboriginal and Torres Strait Islander Health Plan 2013-2023, Commonwealth of Australia, 2013 - <http://www.health.gov.au/natsihp>

<sup>2</sup> Implementation Plan for the National Aboriginal and Torres Strait Islander Health Plan 2013-2023, Commonwealth of Australia, 2015, [http://www.health.gov.au/internet/main/publishing.nsf/Content/AC51639D3C8CD4ECCA257E8B00007AC5/\\$File/D\\_OH\\_ImplementationPlan\\_v3.pdf](http://www.health.gov.au/internet/main/publishing.nsf/Content/AC51639D3C8CD4ECCA257E8B00007AC5/$File/D_OH_ImplementationPlan_v3.pdf)

<sup>3</sup> Health Plan, op cit, page 7

people need to feel culturally safe in the mainstream health system".<sup>4</sup>

### Racism within the health system

The Health Plan addresses the need for the health system to be free of racism. Whether racism is experienced within, or outside of the health system, it nonetheless impacts on people's health and wellbeing.

Institutionalised racism is a factor for accessing the health system and better health outcomes for Aboriginal and Torres Strait Islander people. For example, a study<sup>5</sup> by the Deeble Institute in 2016 found that Aboriginal and Torres Strait Islander peoples are over-represented in rates of discharge against medical advice (DAMA). DAMA has serious implications for peoples' recovery and ongoing health and contributes further to the higher rates of chronic disease (eg diabetes, cancer and kidney disease). The study identifies a number of causal factors associated with discharge against medical advice, including institutionalised racism, a lack of cultural safety and distrust in the health system.

### Racism in other settings

The *Experiences of Racism 2010-2011*<sup>6</sup> survey was funded by the Lowitja Institute, and was undertaken in Victoria as part of a broader study. The research surveyed 755 Aboriginal Victorians aged 18 years and older, living in two rural and two metropolitan local government municipalities. Key findings included:

- **Where** - Racism can occur in a range of settings, such as shops and public spaces, education and employment settings and sports settings;
- **Prevalence** - 97% of those surveyed had experienced racism in the previous 12 months; more than 70% of respondents experienced eight or more racist incidents in the period;
- **Types of racism** – 92% of those surveyed were called racist names, teased or had heard jokes or comments that relied on stereotypes about Aboriginal people; 85% were ignored, treated with suspicion or treated rudely because of their race; 84% were sworn at, verbally abused or subjected to offensive gestures because of their race.

### The link to physical and mental health

Participants in this survey were assessed through a modified version of the Kessler 6 scale. The Kessler scale is a well-established assessment tool that screens for psychological distress. High psychological distress is an indicator of increased risk of mental illness.

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<sup>4</sup> Mr Ken Wyatt MP, speech to the Lowitja Institute International Indigenous Health and Wellbeing Conference 2016, Melbourne, Tuesday 7 November 2016, <http://lowitjaconf2016.org.au/photos-and-videos/videos/day-one/>

<sup>5</sup> Deeble Institute Issues Brief N. 14, Dated 16/03/2016, *An evidence-based approach to reducing discharge against medical advice amongst Aboriginal and Torres Strait Islander patients*, <https://ahha.asn.au/publication/issue-briefs/deeble-institute-issues-brief-no-14-best-practice-approach-reducing>

<sup>6</sup> Ferdinand, A., Paradies, Y. & Kelaher, M. 2012, *Mental Health Impacts of Racial Discrimination in Victorian Aboriginal Communities: The Localities Embracing and Accepting Diversity (LEAD) Experiences of Racism Survey*, The Lowitja Institute, Melbourne; <https://www.lowitja.org.au/lowitja-publishing/L023>

The survey found that

- people who experienced the most racism also recorded the highest psychological distress scores;
- two thirds of those who experienced 12 or more incidents of racism reported high or very high psychological distress.

The survey indicates that racism has a high level of prevalence, it occurs in a range of settings, and it impacts on health and wellbeing.

### **Section 18C of the RDA**

The Lowitja Institute is gravely concerned that, given high levels of prevalence of racism and its impact on health and wellbeing, that amendments to Section 18C of the Racial Discrimination Act (RDA) would send a very negative signal that it is acceptable to ‘offend, insult, humiliate or intimidate another person or a group of people’, based on race.

Many of the arguments that are put forward for the change to 18C of the RDA centre on a right to have freedom of speech, as if this is an absolute right. We note that Section 18C of the RDA is not the only area of Australian law that limits freedom of expression. Defamation laws limit freedom of expression in recognition of the fact that harm to reputation can be very damaging to individuals and business and should in some circumstances be prohibited.<sup>7</sup> In some Australian jurisdictions there are laws regulating swearing in public. We do not make any comment on this except to reiterate that freedom of speech is not an absolute right, and therefore should not be used as a rationale to amend Section 18C of the RDA.

Other proponents of change to Section 18C have put the argument that offence is taken rather than given. This argument misses the point that whether or not an act is deliberate or inadvertent, harm may be caused. We can see from the evidence referred to above<sup>8</sup> that words can and do cause harm to peoples’ mental health and wellbeing. This is an important consideration from a health policy perspective.

The Lowitja Institute believes that Section 18C – even if left unamended – cannot itself address the issue of racism that Aboriginal and Torres Strait Islander people – and other Australians – continue to face.

However, the Lowitja Institute asks: at what cost so-called free speech? In terms of the mutually agreed agenda by all Australian governments to Close the Gap in health, education, employment and other outcomes for Indigenous Australians, we ask:

- As a nation, is it more important to allow anyone to ‘offend, insult, humiliate or intimidate another person or a group of people’ – or should we commit to laws that support the

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<sup>7</sup> Human Rights Law Centre Fact Sheet Australia’s Racial Vilification Laws - [http://www.hrlc.org.au/wp-content/uploads/2013/11/HRLC\\_Fact\\_Sheet\\_Australias\\_Racial\\_Vilification\\_Laws.pdf](http://www.hrlc.org.au/wp-content/uploads/2013/11/HRLC_Fact_Sheet_Australias_Racial_Vilification_Laws.pdf) accessed 2 December 2016

<sup>8</sup> Ferdinand, A., Paradies, Y. & Kelaher, M. 2012, *Mental Health Impacts of Racial Discrimination in Victorian Aboriginal Communities: The Localities Embracing and Accepting Diversity (LEAD) Experiences of Racism Survey*, The Lowitja Institute, op cit

- already challenging task of improving the health of Aboriginal and Torres Strait Islander Australians?
- Furthermore, as a nation, do we submit to political impulse, or do we uphold dignity, respect and fairness in our public discourse?

As the Prime Minister stated in his Closing the Gap Prime Minister's Report 2016:

*"We pride ourselves on having built an egalitarian country where everyone has the same chance to realise their dreams and to fulfil their potential. But it is not until Aboriginal and Torres Strait Islander people have the same opportunities for health, education and employment that we can truly say we are a country of equal opportunity."*

In terms of Aboriginal and Torres Strait Islander health policy, we believe that Australia has made important gains in acknowledging racism and its impact on health and wellbeing in the National Aboriginal Health Plan.<sup>9</sup> Indeed, there is a need for racism to be addressed beyond the health system. Evidence shows that racism impacts on the health and wellbeing of Aboriginal and Torres Strait Islander people. The Lowitja Institute believes that any amendments to 18C of the Racial Discrimination Act will undermine hard-fought policy gains to start to fully address racism and discrimination.

### **Section 18D of the RDA**

We note that while Section 18C of the RDA makes it unlawful for people to say or do anything that is “likely, in all the circumstances, to offend, insult, humiliate or intimidate another” on the basis of their “race, colour or national or ethnic origin”, Section 18D allows for a reasonable balance between this legislation and (so-called) free speech. It makes journalism, art, and political comment exempt from the conditions of 18C, provided it is done “reasonably and in good faith.”

The Lowitja Institute believes that, while the test that comment is made “reasonably and in good faith” can be very subjective, it nonetheless provides a fair balance and should not be amended.

### **Summary**

We urge the Parliamentary Joint Committee on Human Rights not to amend Section 18C nor 18D of the Racial Discrimination Act, for the following reasons:

- Evidence shows that racism is a fact of life for many Aboriginal and Torres Strait Islander peoples
- Evidence shows that racism and ill health are linked
- Allowing people to ‘offend, insult, humiliate or intimidate another person or a group of people’, based on race, can potentially cause harm and thus widen the health gap between Aboriginal and Torres Strait Islander peoples and non-Indigenous Australians

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<sup>9</sup> *National Aboriginal and Torres Strait Islander Health Plan and National Aboriginal and Torres Strait Islander Health Plan – Implementation Plan*, referred to above.

- Changes to the Act could cause potential erosion of hard-fought health policy gains for Aboriginal and Torres Strait Islander peoples
- As a nation, together we should strive for dignity, respect, equity and a deeper understanding of one another.

If you have any questions regarding our submission to this Inquiry, would you please contact Ms Mary Guthrie, Manager – Knowledge Translation

Yours sincerely

Romlie Mokak  
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