

**SUBMISSION TO THE
PARLIAMENTARY JOINT COMMITTEE ON HUMAN RIGHTS
BY THE MULTICULTURAL COMMUNITIES COUNCIL OF NSW (MCCNSW),
NATIONAL SIKH COUNCIL OF AUSTRALIA (NSCA),
CHINESE COMMUNITY COUCIL OF AUSTRALIA (CCCA),
VIETNAMESE COMMUNITY IN AUSTRALIA, NSW CHAPTER (VCA), &
MACEDONIA ORTHODOX CHURCH, ROCKDALE (MOC)
RESPONSE WITHIN THE TERMS OF REFERENCE
30th November 2016**

1. Whether the operation of Part IIA of the *Racial Discrimination Act 1975* (Cth) imposes unreasonable restrictions upon freedom of speech, and in particular whether, and if so how, ss. 18C and 18D should be reformed.

Response:

We are of the opinion that the operation of Part IIA of the Racial Discrimination Act 1975 (Cth) does not impose unreasonable restrictions upon freedom of speech. In particular Section 18C should remain intact. We argue our case that the repeal or any change to Section 18C removes our rights as humans to feel safe in Australia and we offer the following reasons to support our views:

Australia is a multicultural society and all Australians and all people who reside in this nation have the right to feel welcome and safe. Discrimination based on race is divisive.

Discrimination based on race not only instils fear about safety but is also the cause of humiliation for individuals or a certain community. In Australia's multicultural society, everyone should have the right to feel welcome and safe and be free of discrimination and humiliation in their lives, free from the fear of, or expectation that they will be offended, insulted, humiliated and intimidated merely because of their race, colour or ethnic origins.

The Racial Discrimination Act (RDA) is meant to provide protection to both minorities and every other person in this nation, to create a fairer society. Its intention being to prevent individuals or a group of people from being offended, insulted, humiliated, and intimidated on the basis of their race, colour or ethnic origin. The removal of Section 18C takes away this protection and consigns Australia back to the past, to the times of the "White Australia Policy" where the narrow mindedness of society considered this to be a fair and just belief. Australian society moved well beyond those bigoted societal attitudes when the *Immigration Restriction Act of 1901* was repealed in 1975.

In the federal court case [Eatock v Bolt \[2011\] FCA 1103](#) - Bolt was found to have contravened Sec 18C and Judge Bromberg J wrote: 453 On the basis of those findings, I am satisfied that each of Mr Bolt and HWT engaged in conduct which contravened s 18C of the RDA. In the case of HWT, I am also satisfied that as Mr Bolt's employer, it is liable for the contravention by Mr Bolt by reason of s 18E of the RDA.

Without Sec 18C, Andrew Bolt would have been found not guilty of his highly offensive and discriminatory article entitled "White Fellas in the Black"

Freedom of speech is a core value of democracy however there is a responsibility for those who make such pronouncements to be aware that what they say does not harm others in such a way that it can discriminate against or humiliate or intimidate individuals or groups. The existence and retention of [Part IIA of the Racial Discrimination Act 1975 \(Cth\)](#) provides the Australian courts with a judicial instrument to test whether such statements are harmful or discriminate against people on any grounds. Such adjudication in our democracy should be in the hands of the independent judiciary and removal of this instrument is considered not “fair-dinkum” in our multicultural society when inclusive and non-discriminatory policy is a pre-requisite for a harmonious, cohesive and united Australia. We are a nation of immigrants and established immigrants have no moral grounds to discriminate against later arrivals or the traditional owners of the land.

2. Whether the handling of complaints made to the Australian Human Rights Commission (“the Commission”) under the [Australian Human Rights Commission Act 1986 \(Cth\)](#) should be reformed, in particular, in relation to:

a. the appropriate treatment of:

- i. trivial or vexatious complaints; and
- ii. complaints which have no reasonable prospect of ultimate success;

b. ensuring that persons who are the subject of such complaints are afforded natural justice;

c. ensuring that such complaints are dealt with in an open and transparent manner;

d. ensuring that such complaints are dealt with without unreasonable delay;

Response:

We support the concepts of natural justice and transparency in the administration of government, of government agencies and their instruments, of all tribunals and review processes. Of particular concern would be fairness and transparency in the cases where a person’s liberty and reputation may be at stake.

We support the ‘filtering’ of complaints that can easily be identified as frivolous, vexatious or clearly having no reasonable chance of success through the application of a standard that should be met before proceeding further with the complaint. That such a standard should be a matter for the Commission.

e. ensuring that such complaints are dealt with fairly and without unreasonable cost being incurred either by the Commission or by persons who are the subject of such complaints;

Response:

Costs should not be a matter of consideration.

In what may appear to be a sensible consideration could have the intended outcome of inhibiting, denying or otherwise limiting the opportunity of individuals or groups in pursuing justifiable claims. The arbitrary imposition of cost barriers may result in the denial of due process and natural justice. If the consideration of costs is meant to prevent frivolous, vexation or cases that

have no reasonable chance of success from taking up time or placing an unnecessary financial burden on others then this particular concern should be addressed at an earlier stage.

Furthermore it is not clear if cost limitations would be used to restrict the activities of the Commission by denying funding for operational and administrative functions and/or prevent the Commission from investigating complaints that are justifiable and worthy, to an ultimate outcome. Or further to that, to protect or otherwise shield perpetrators of racial abuse by extending an opportunity for them to protest they are unable to defend their actions because they have no money and therefore should be exempt of any consequences for their actions.

This would have the same practical outcome as repealing s18c of the RDA of 1975.

[f. the relationship between the Commission's complaint handling processes and applications to the Court arising from the same facts.](#)

Response:

In reading through the Annual reports produced by the Australian Human Rights Commission (Commission), we are in the opinion that the legislated role of the Commission, neither as a court or tribunal with no jurisdictional powers, have performed well within its legislated framework. It is akin to the Anti-Discrimination Board of NSW in its role in education and conciliation. The Commission website published these statements:

In 2015-16, the Commission received 77 complaints under section 18C, and 52 per cent of racial vilification complaints were resolved at conciliation. During this year, 12 per cent of complaints were withdrawn and only one complaint of racial hatred proceeded to court. In particular, the website information of the Commission made the statements:

Each year, the Commission publishes relevant data in its [annual reports](#) about the volume and nature of complaints received and resolved.

Overall, the Commission's action is compliant with item 2(a) to 2(f) listed above. In our opinion, we are satisfied with the role and function of the Commission as being fair and proper.

[3. Whether the practice of soliciting complaints to the Commission \(whether by officers of the Commission or by third parties\) has had an adverse impact upon freedom of speech or constituted an abuse of the powers and functions of the Commission, and whether any such practice should be prohibited or limited.](#)

Response:

We are of the view that asking the public to make complaints to the Commission should not be construed as soliciting in an adverse sense like "inciting" or "encouraging" people to commit crime. The Commission's educational role in the community is legitimate and should include information on what are the available rights of the citizen, including making a complaint.

Tribunals often publish information and advice about the process of appeal available to the public. Would this constitute "soliciting" complaints for the court systems? We believe the definition or interpretation of the word "soliciting" is highly subjective and depends on whether one agrees that the public should be well informed or whether the information should be kept from the public based on an ideological view that people have no rights when it comes to discrimination or abuse on the grounds of race, colour or ethnic origins.

4. Whether the operation of the Commission should be otherwise reformed in order better to protect freedom of speech and, if so, what those reforms should be.

Response:

“Free” speech is not a universal truth, it has context and subjectivity. Free speech to one is a threat to another. The moral relativism here is the matter of abuse or denigration of a person or group solely because of their race, colour or ethnic origins. The mere presence of a person of different race, colour, or ethnic origins in society poses no danger to others. A human being has no control over their ethnic origins, race or colour, it is who they are and cannot be changed. However it may be denied and superficially but not substantively altered. Freedom of speech is not a belief system that is exclusively owned by or to be used exclusively by racial abusers or bigots.

The Commission should be given wider powers to refer cases to the Federal Court and such recommendations should be also be dealt with by an independent judicial officer.

Dr Anthony Pun OAM, Chair, MCC NSW & National President CCA
Mr Ajmer Singh Gill, President, NSCA
Dr Thang Ha, President, VCA (NSW Chapter)
Mr Tode Kabrowski, President, MOC (Rockdale)