

Oxfam Australia Submission to the Parliamentary Inquiry into Freedom of Speech

Oxfam welcomes the opportunity to make a submission to *Parliamentary Joint Committee on Human Rights Inquiry on Freedom of Speech*. We believe that *the Racial Discrimination Act 1975 (Cth)* and the *Australian Human Rights Commission Act 1986 (Cth)* do not inhibit freedom of speech but rather ensure that the public discourse is conducted with a due measure of respect and responsibility.

About Oxfam Australia

Oxfam Australia is an independent, not-for-profit, secular, international development agency. We are a member of *Oxfam International*, a global confederation of 15 Oxfam affiliates that work together to fight poverty and injustice in almost 100 countries around the world.

Oxfam Australia has worked with local communities around the world to combat poverty and injustice for over 50 years. Our organisation undertakes long-term development projects, provides emergency response during disaster and conflict, and conducts campaigning and advocacy for policy and practice changes which promote human rights and justice. We support over 400 long-term development projects in 30 countries across Africa, Asia, the Pacific and Indigenous Australia.

Oxfam adopts a rights-based approach to community development. This approach focuses on the full achievement of the rights of human beings and looks at the drivers of inequality, poverty and conflict, rather than focusing on an immediate needs analysis alone. *Oxfam's* experience is that a rights-based approach has the potential to have a far greater impact within various levels of society because it uncovers and proposes solutions to multi-levelled barriers. Significantly, rights-based approaches are no less 'practical' than other approaches as they look holistically at both rights and responsibilities.

Oxfam Australia has supported opportunities for Aboriginal and Torres Strait Islander Peoples to exercise their rights to basic social services, sustainable livelihoods, a strong voice and cultural diversity, for more than 30 years. We are a strong supporter of the United Nations Declaration of the Rights of Indigenous Peoples (UN DRIP) and believe that the UN DRIP should guide all government policies concerning, and engagement with, Aboriginal and Torres Strait Islander Peoples.

Racial Discrimination Act (Terms of Reference 1)

It is *Oxfam Australia's* view that the *Racial Discrimination Act (RDA)* plays a critical role in ensuring that minority groups are protected from race-based vilification and insult. Proposed changes to 18c would have the likely effect of making offensive race-based speech more acceptable in society and lead to increased racial intolerance. All people have the right to not suffer from racial vilification and abuse. The emotional and mental harm caused by hate speech often has serious consequences for the victim and for that victim's ethnic community. Changes to 18c are therefore likely to impact negatively on the social fabric of Australian society. History has taught us that societal acceptance of vilification and racial insult can too easily lead to discrimination and physical violence. The RDA has an important role to play in addressing the harm caused by racial discrimination and racial vilification. By setting standards of conduct, the laws constrain the spread of racism and racial hatred and encourages people to speak out against racism, complementing broader education strategies.

The current 18c's impact on freedom of speech is clearly limited by 18d. Section 18d details exemptions to 18C, which covers anything said or done as part of an artistic work or "any other genuine purpose in the public interest" as long as it relates to 'fair comment'. For example in the *Bolt* caseⁱ the issue was that of factual inaccuracy and therefore a lack of fairness in the comment – not the issue raised by Bolt. In *Creek v. Cairns Post 2001*ⁱⁱ the judges found that 18c was not concerned with mild insults but with comments that have "profound and serious effects". "Fair comment" must be done reasonably and in good faith. To see this as a restriction on freedom of speech is disingenuous. Other laws, such as defamation and libel laws and various secrecy-related provisions in particular laws and employment contracts have a far broader reach in limiting freedom of speech.

Since 18c and d were introduced as amendments to the RDA only 1.8% of racial vilification complaints nationally have ended up in the courts. Rather, the Australian Human Rights Commission oversees a confidential, mediation-based conciliation process. The Commission has no power to litigate in relation to an alleged breach of the RDA. Only a person alleging their own racial or ethnic group was vilified by statements made in public can commence court proceedings. For example the recent *Prior v QUT case*ⁱⁱⁱ involved a person taking a case to the courts after the Commission determined that the case could not be resolved. When considering the freedom of speech protections of 18d and the various case law it is difficult to see how freedom of speech is being unfairly inhibited by the current operation of the RDA.

Australian Human Rights Commission (Terms of Reference 2, 3 and 4)

The Australian Human Rights Commission plays a significant role in education, inquiry and mediation concerning the human rights of individuals and communities in Australia. To suggest that there should be any kind of prohibition or limitation in Australia upon any person or institution who encourages a person to pursue avenues of redress which are legally open to them is itself a restriction of free speech.

To effectively combat unlawful discrimination, the law must provide a pathway for victims to seek legal remedies. The Commission's complaints process is fair, accessible and caters to the needs of vulnerable complainants. It provides an efficient, low cost alternative to litigation and facilitates access to justice for victims of unlawful discrimination. The Commission's operation is consistent with the Paris Principles – the global standards relating to National Human Rights Institutions – providing it with a 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.

Oxfam Australia believes that it is essential 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.

ⁱ <http://www.austlii.edu.au/au/cases/cth/FCA/2011/1103.html>

ⁱⁱ <http://www.austlii.edu.au/au/cases/cth/FCA/2001/1007.html>

ⁱⁱⁱ <https://castancentre.files.wordpress.com/2016/11/prior-v-qut.pdf>