Submission from the Multicultural Council of the Northern Territory Inc (MCNT) for the *Senate Legal and Constitutional Committee* on *proposed changes to the Racial Discrmination Act 1975*

Background and Introduction to the MCNT:
First established in 1977, the Multicultural Council of the Northern Territory Inc (MCNT) is based in Darwin, is the local peak body for multiculturalism as well as a service provider for individuals, families and communities from culturally, linguistically and religiously diverse backgrounds residing in Darwin and Palmerston. The MCNT moved into its suburban office in 2004 and has been funded to provide settlement services continuously since 2007.

The Northern Territory enjoys the reputation as a welcoming and functional multicultural society with a strong record of successful effective settlement of skilled migrants and humanitarian entrants over many years. The MCNT has a strong commitment to community development, social justice and empowerment with the primary aim to identify and address barriers to cultural inclusion and social and economic participation for our new settlers.

The MCNT receives operational funding from the Northern Territory Government through the Office of Multicultural Affairs and ongoing project funding from the Commonwealth Government through the Department of Social Services (DSS). Though its programs and activities the MCNT facilitate self-reliance for recently-arrived migrants and refugees, and encourages effective inclusion and integration within the Australian economy and society.

The MCNT celebrates cultural diversity and engages its multicultural constituency and the wider community to identify and address generic and Territory-specific racism and social cohesion issues. The MCNT as a peak body and service provider welcomes this opportunity to provide comments on the proposed changes to s18C.

Content of the submission

The MCNT's submission provides direct input from the community, gathered from consultations on the subject that were held by the MCNT. We also enclose with this submission, a copy of the Hansard from the Parliamentary Inquiry's session in Darwin, which provides in-depth insight into the community's fears of watering down the legislation.

It is the MCNT's view that what is needed with respect of s18C is more education and awareness as to what it protects and what it allows, rather than a change in legislation. We are gravely concerned that the removal of the words 'insult, humiliate and offend' leaves it open for hurtful comments that are not accepted by a large portion of the Australian populace to be made publicly. The term 'harass' does not adequately capture instances of extremist comments made against a particular community, which can incite hatred and/or violence. A public comment of that nature made in the media for example, may not be held to be 'harassment' but it certainly can incite hatred and cause division in the community. The proposed amendment does not in any way instill belongingness or facilitate social cohesion; rather, it has the capacity to marginalize communities, which is the root cause of radicalization.

The MCNT's perceptions of section 18C:

Just over forty years ago, the *Racial Discrimination Act (RDA)* came into effect as our first national human rights law. It was designed has provided every Australian with the assurance that they should be treated fairly, regardless of their ethnic background, and remains more important than ever, particularly for the most vulnerable people in our community - notably in multicultural Australia - experiencing racism and discrimination.

Sections 18C and 18D were introduced to the *RDA* in 1995. Section 18C makes unlawful any act reasonably likely to offend, insult, humiliate or intimidate another person or group of people because of their race, colour, ethnicity or nationality. Section 18D exempts artistic expression, scientific inquiry and journalism created reasonably and in good faith, and is one of the few provisions in Australian law that protects freedom of expression.

The Act was updated in 1995 to include sections 18C and 18D after three major national inquiries: the Royal Commission into Aboriginal Deaths in Custody; the National Inquiry into Racist Violence; and the Australian Law Reform Commission Report into Multiculturalism and the Law; found a strong link between racist conduct in public and racially-motivated violence.

Australia has international obligations to prohibit actions that promote racial hatred and bigotry. The Australian community needs to ensure that national legislation is strengthening, and not diminishing, the protection of vulnerable groups in our society. The *RDA* gives effect to Australia's obligations under the *International Convention on the Elimination of All Forms of Racial Discrimination*. As it stands, the *RDA* protects all Australians from racial vilification and also guarantees freedom of speech. Repealing section 18C would undermine community harmony, and further diminish Australia's already damaged international reputation.

The MCNT as well the Federation of Ethnic Communities' Councils of Australia (FECCA), has always been opposed to continuing attempts to water down or repeal section 18C of the *RDA* and abandon the protections that it provides from racial vilification in our nation. In the MCNT's view section 18C does not restrict the freedom of speech in Australia. Moreover it protects our migrant and refugee communities against racially motivated attacks, including hate speech.

The recent re-opening of the public debate about section 18C of the *RDA*, particularly after the overwhelming community reaction against changes in 2014, is sending the message to the community that essentially anything goes in the name of free speech, and that racism is acceptable. In our view, sections 18C and 18D of the *RCA* strike an appropriate balance between the right to the freedom of expression, and the right to freedom from racial vilification.

Comments from the 18C and Freedom of Speech Community Forum:

The following comments are derived from the 18C and Freedom of Speech Community Forum held at the MCNT on Tuesday evening 6 December 2016. This community forum was held in response to the *Parliamentary Inquiry into Freedom of Speech in Australia* and FECCA's advocacy. The MCNT decided to elicit feedback from its multicultural constituency to contribute directly to FECCA's submission. The community forum was successful, attended by about 30 people - an informed and culturally diverse audience comprising community representatives, leader and advocates - and resulted in productive dialogue. The audience members included a former Indigenous MLA and Minister, a current Elected Member of local government, a senior bureaucrat from the NT Office of Multicultural Affairs, and even a local ABC journalist. Ron Mitchell from the MCNT introduced the speakers and took minutes. The Hon Dale Wakefield,

Minister for Territory Families, was in attendance and officiated with an opening speech. Kevin Kadirgamar, a lawyer as well as the MCNT President and Traci Keys, also a lawyer and the Director of the NT Anti-Discrimination Commission, informed the audience and led the discussion with their observations focused on their interpretation of the *RDA* and section 18C, and an explanation of the terms of reference of the inquiry. The Minister Wakefield, Kevin Kadirgamar and Traci Keys formed a panel to respond to questions from the audience.

One high profile Indigenous participant M.B. felt that there should be more public recognition and contextual discussion about the origins of the *RDA*; that this is as Australia's response to the *International Convention on the Elimination of All Forms of Racial Discrimination*. This UN Convention came into existence directly as a result of incidents of anti-Semitism and hate speech internationally. The *Convention* (and the *RDA* in domestic law) is in fact a human rights instrument to counter the racist excesses as exemplified in Nazi Germany and South Africa.

M.B. also felt that there should be a compulsory history component in the education curriculum for all primary school children that explores and outlines the history and development of multicultural Australia. Mainstream Australians usually do not in fact interact in a meaningful way (beyond tokenism) with Aboriginal Australians and multicultural Australia.

An Anglo-Australian advocate, P.T. who works for a large indigenous corporation, spoke of indigenous perspectives of racism and the protections provided by section 18C. The public discourse space (and social media commentary) is very one-sided, and there is the feel of retaliation when speaking out about racism. There is also the perception that the legal system is also considered to be one-sided, in that the interests of white Australians are usually protected over the interests of Aboriginal people. Legislative Interventions and protections such as section 18C in the public discourse space are essential to enhance the safety of public discourse spaces and ensure respectful engagement and broader participation of Aboriginal as well as multicultural people in Australian society in ways that are more reflective of our cultural diversity. Section 18C should not only be retained within the *RDA*, it should be strengthened.

P.T. remarked that in fact section 18C (paradoxically to those in the mainstream who rarely experience racial vilification) protects and enhances the freedom of speech for disadvantaged groups. The removal of the minimalist protections afforded by the protections in section 18C of the *RDA* will effectively silence Aboriginal people who will feel that they cannot express their views or complain about racism, and will be contrary to freedom of speech in Australia. It was felt by the panel that the *RDA* in its 40 years of existence - perhaps as its primary function - had protected Aboriginal Australians from systemic and historical racism, and should not diluted.

One migrant participant G.O. (of African background) remarked that racist insults and the offence taken are largely contextually based; in the public it is often easier to walk away from the perpetrator, while in the workplace the abuse may be more insidious and difficult to escape; there is no choice to walk away. Also in a small such as Darwin, it can be difficult to complain as an individual; it is too easy to be identified and recognised, and there may payback elsewhere. Yes, Darwin can be multicultural and welcoming, but not if you speak out of turn.

Another migrant participant F.M. (of Iranian background) felt that the RDA was not enforceable in that it was not having a positive impact on the attitudes of mainstream Australians or on incidents of racism, and agreed with the idea of introducing a multicultural component into the school curriculum so avoid future conflicts in Australian society. F.M sees racism as a "social cancer" (a comment receiving applause from the audience). The panel felt that the *RDA* and section 18C were significant in that the legislation effectively sets a standard of behavior; even if

mainstream Australians do not fully understand the legislation, they feel that it is somehow unlawful and wrong to be racist to people who are different. Aboriginal Australians and minority groups in multicultural Australia can also feel comfortable that there is legislation - even if it is not seen as working for them all the time - that is at least designed to protect them from racism.

One mainstream participant (married to a migrant) L.G. remarked that section 18C prohibited any comment from strongly held personal views that are likely to be seen as 'offensive', even in private conversation with friends, or in fact with difficult conversations in public spaces, and was an affront to freedom of speech. Kevin Kadirgamar responded that the key phrase in section 18C is "reasonably likely". In legal terminology this sets a very high bar, and does not impact in any way on private conversations, and does not nor prohibit people from speaking out. The comments would have to be internationally harmful, profound or extremely serious to attract a complaint through section 18C. While L.C. may be concerned that there was not enough public understanding of the legislation, the wording in section 18C is fair; "we are not being silenced".

There was then general discussion led by the panel that the Northern Territory was in the rather unique situation in that that not only does it not have specific protections with racial vilification legislation, but also the *RDA* as national legislation was suspended during the Intervention. This jurisdiction, perhaps more than in any other in Australia, has an interest in ensuring that the RDA and section 18C should be "retained, strengthened and not weakened".

S.M. the local government Elected Member, remarked that the *RDA* is essential had provided a model for socially inclusive anti-discriminatory local government bylaws and practices. The *RDA* (and other relevant Commonwealth Government legislation) is embedded within its HR Equal Opportunity Policy so ensure that all employees and prospective employees are treated according to the principles of fairness, equity and respect. Removing section 18C and repealing the *RDA* would send the wrong signal to the general community throughout Australia.

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