



**AASW**

Australian Association  
of Social Workers

*Submission to the Senate Standing  
Committee on Legal and Constitutional  
Affairs Inquiry into the Racial Discrimination  
Amendment Bill 2016*

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## Introduction

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### 1. Who we are

The Australian Association of Social Workers (AASW) is the professional body representing more than 10,000 social workers throughout Australia.

We set the benchmark for professional education and practice in social work and have a strong voice on matters of social inclusion, social justice, human rights and issues that affect the quality of life of all Australians.

### 2. The social work profession

Social work is a tertiary-qualified profession recognised nationally and internationally that supports individuals, families, groups and communities to improve their wellbeing. Principles of social justice, human rights, collective responsibility and respect for diversity are central to the profession and are underpinned by theories of social work, social sciences, humanities and Indigenous knowledge.

Social workers practise in a diverse range of settings. Social workers consider the relationship between biological, psychological, social, cultural and spiritual factors and their impact on a person's health, wellbeing and development. Accordingly, social workers maintain a dual focus in both assisting with and improving human wellbeing and identifying and addressing any external issues (known as systemic or structural issues) that may have a negative impact, such as inequality, injustice and discrimination.

Social workers are well placed to consider and respond to this inquiry as it relates to not only the individuals directly affected by racial discrimination, but also to the broader impacts on families, communities and society. Therefore, the AASW welcomes the opportunity to contribute to this inquiry.

### 3. Our submission

It is the AASW's position that section 18C of the Racial Discrimination Act 1975 sends a clear message to the local and international community that Australia is a country that does not tolerate racism or hate speech. Any changes to section 18C that would weaken its power could be seen to be condoning verbal and written racism, potentially increasing levels of physical, psychological and social harm that will have long-term consequences for the health and wellbeing of many Australians.

Furthermore, earlier this year the Parliamentary Joint Committee on Human Rights made no recommendation for reform and amendments to the Act were rejected by the Senate and. We therefore believe that enough time, discussion and resources have been utilised on this issue.

## Responses

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1. Racial discrimination harms the health and wellbeing of Australians. International studies show that public experiences of racism are related to poor physical and mental health, particularly depression, anxiety and substance misuse.<sup>1</sup> These findings have been replicated in Australia and are particularly significant for Indigenous populations.<sup>2</sup> Poor health and

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<sup>1</sup> Paradies, Y 2008 *Policy brief: Racism undermines health*, retrieved 24 April 2014, <http://crcah.org.au/sites/default/files/docs/Racism-policy-brief-march-2008.pdf>

<sup>2</sup> Paradies, Y, Harris, R & Anderson, I 2008 *The impact of racism on Indigenous health in Australia and Aotearoa: Towards a research agenda*, retrieved 23 April 2014, <https://www.lowitja.org.au/sites/default/files/docs/Racism-Report.pdf>

mental illness limit or undermine an individual's capacity to contribute to and participate in social life including, for example, employment and education. A major study of the impacts of racism in Victoria,<sup>3</sup> found that two-thirds of victims coped with their experiences of racism by avoiding public settings in which racism might occur. This included public transport, shops, educational institutions and sporting events. Twenty-three per cent responded that they did not feel safe to participate in activities that many Australians take for granted. Social isolation in and of itself has been shown to result in higher rates of mental illness and poor health outcomes, and these are compounded when added to manifestations of racism.

The negative effects of this withdrawal from economic and social participation are not random: the majority (fifty-four per cent) of complaints registered by the Australian Human Rights Commission (AHRC) with respect to the Racial Discrimination Act (RDA) were from people of Aboriginal descent. To the extent that current wording of section 18C plays a role in facilitating the full economic participation of Aboriginal people, it contributes to improving the economic and health outcomes of Aboriginal people. For that reason, the AASW believes that section 18C should not be weakened.

2. The harmful effects of racism are not confined to the individuals who are the direct targets of racial discrimination and vilification. Clearly, the relationships between racial discrimination and social harms are complex and multilayered. Nevertheless, in the most basic terms the inability to fully participate in education and employment, whether due to poor physical or mental health, impacts on the capacity to earn a living, sustain housing and rise above poverty. Avoidance of public settings has implications for the children in such families, whereby they miss out on participation in social or cultural events and thus opportunities for learning, development and the formation of a sense of belonging and community. The poverty or disadvantage of families thus has intergenerational effects and creates a burden on health and welfare systems. We believe the integrity of racial discrimination laws are one important component in tackling and reducing these multiple and complex issues over generations.
3. The AASW believes that Australian society as a whole suffers when members of our community are unable to fully participate in public life, including access to justice. We also believe that the current wording of section 18C is playing an important role in granting this access to vulnerable people. To understand how this relationship works, it is important to look at the data about the numbers, sources and outcomes of complaints.

In the 2015–16 financial year, the AHRC received only seventy-seven complaints related to section 18C of the RDA, which counteracts the claim that that section 18C is opening up avenues for larger numbers of unjustified complaints. Of the people lodging complaints, fifty-four per cent identify as having an Aboriginal background, and at least forty-five of the complaints were related to employment issues or the provision of goods and services. The AHRC has demonstrated that the vast majority of complaints on the grounds of racial discrimination are resolved by conciliation. Only five per cent proceed to a court case, and the majority of these result in the case being dismissed.<sup>4</sup>

In this context, it is important to note that complaints cannot be brought under the current

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<sup>3</sup> VicHealth 2012, *Mental health impacts of racial discrimination in Victorian culturally and linguistically diverse communities*, retrieved 29 April 2014, [http://www.vichealth.vic.gov.au/~media/ResourceCentre/PublicationsandResources/Discrimination/VH\\_Racial%20Discrimination\\_CALD\\_web.ashx](http://www.vichealth.vic.gov.au/~media/ResourceCentre/PublicationsandResources/Discrimination/VH_Racial%20Discrimination_CALD_web.ashx)

<sup>4</sup> Evershed, 2017

wording of 18C just because someone was offended or insulted. The words of the section state it is unlawful 'if the act was reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate'. This means that a third and independent party has made the judgement that the words or action were offensive. The AHRC reports positive outcomes from the conciliation process. In seventy-four per cent of cases, participants rated the process as either 'Good' or 'Excellent'.<sup>5</sup>

The AASW concludes from this that the current wording of section 18C is facilitating a useful process whereby the proponents of offensive and insulting material are brought into contact with people who can demonstrate the negative consequences in human terms. In this context, it is also important to note that conciliation must be voluntary. Setting a higher threshold for damage before conciliation can be entered into means that parties will have experienced discrimination or intimidation, making it less likely that they will agree to conciliation. The consequence of changing the wording of section 18C will be that fewer complaints are conciliated and fewer people will experience the educative effects of the conciliation process.

4. While the freedom to hold an opinion is absolute, that is, it cannot be restricted, the ICCPR recognises that the right to freedom of expression may be subject to restrictions where necessary to respect the rights and reputations of others. International human rights law specifically recognises the need to limit freedom of expression to protect against the harm of racial vilification. Indeed, international law makes it clear that the right to freedom of speech and the right to be protected from racial vilification is not an 'either/or' proposition. As Australian Human Rights Commission President, Prof. Gillian Triggs states in relation to government's proposed changes to the Act: 'the current law has served Australia well over the last 20 years in sending the message that racial abuse will not be tolerated'.<sup>6</sup>

Proponents of this amendment argue that the current wording it 'goes too far', that the Bill still protects against serious harm and that for an individual to take offence is not sufficient reason to limit someone else's freedom of expression. We wish to repeat the argument above that instances that result in serious harm are less likely to be handled in a conciliatory manner.

As we have demonstrated, physical violence is not the only way to cause harm and conscious discrimination is not the only way to exclude people. The inclusion of the words 'offend or insult' serve as a trigger for important conciliation process in which individuals are educated to the awareness that their actions or words could reasonably have been interpreted as insulting. It is important to remember that the majority of these cases represent the denial of a service or occur in an employment context and are directed towards people of Aboriginal descent. In this respect, in our view, the law is operating in exactly the way the law should; it provides a neutral forum in which power imbalances are neutralised and in which vulnerable people have an opportunity to represent their lived experience to people who would not otherwise hear it.

## Conclusion

The AASW believes that ultimately all Australians suffer when we limit opportunities to learn about and from culturally and linguistically diverse communities. We believe diversity is enriching and adds immeasurable value to Australian community life. The current wording of the legislation that respects and enhances the participation of people who are currently

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<sup>5</sup> Triggs 2017

<sup>6</sup> Triggs, 2017

subject to racial discrimination should be protected.

Submitted for and on behalf of the Australian Association of Social Workers Ltd



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