



**SUBMISSION TO THE
ATTORNEY-GENERAL,
*Senator the Honourable George
Brandis QC***

Freedom of speech (Repeal of S. 18C) Bill 2014 – Exposure Draft

April 2014

Senator the Hon George Brandis QC
Attorney General
PO Box 6100
Senate
Parliament House
Canberra ACT 2600

Dear Attorney-General,

Freedom of speech (Repeal of S. 18C) Bill 2014 - Exposure draft

The Australian Refugee Association (ARA) has been proudly supporting asylum seekers, refugees and migrants for almost 40 years. As a leading settlement organisation in South Australia, ARA provides a wide range of services for individuals, families and communities from diverse cultural and ethnic backgrounds. Our organisation also works to combat racism and prejudice through community outreach and education programs.

Given our focus on facilitating successful settlement and promoting mutual understanding in the South Australian community, ARA strongly opposes the Freedom of speech (Repeal of S. 18C) Bill 2014. Our attached submission details the number of reasons behind this opposition.

The Racial Discrimination Act, as it stands, sends a powerful message that racist discourse and hate speech have no place in Australian society. By removing key protections and introducing broad exemptions, the government would give public commentators the freedom to spread racist ideas and rhetoric at the expense of their victims, who remain comparatively voiceless.

Rather than emphasizing the importance of tackling racism, the current debate has created a divisive climate that undermines the work that organisations such as ARA do to build strong, cohesive communities.

With a recent poll showing that 9 out of 10 Australians disagree with the proposed changes, it is ARA's hope that the government will abandon the Freedom of speech (Repeal of S. 18C) Bill and instead invest its efforts into policies and programs designed to break down barriers and address intolerance.

Yours sincerely,

Kirsten Bickendorf
Chief Executive Officer

Key Recommendations

- a. Given the importance of sending a strong message that racism is not tolerated in Australia, that the government maintains the current provisions of the Racial Discrimination Act 1975 (Cth) (RDA), including the words “offend,” “insult” and “humiliate” in section 18C.
- b. In the case of the proposed amendment being adopted, that the exemption clause have a narrower ambit such that it does not exclude any public discussion of political, social, cultural or religious matters. Raising the threshold to vilification and intimidation should necessarily narrow the exemptions.
- c. That the test of reasonable likelihood not be defined by the standards of the majority, who have most likely not suffered racial prejudice, abuse, discrimination and vilification, but by the standards of a reasonable person in the complainant’s position who has awareness and insight into the effects of racist abuse.
- d. That if the proposed amendment goes ahead, a substitute recourse or initiative be put in place to counter an increase of racist abuse or racial vilification.
- e. That the Government affirm and demonstrate its commitment to eliminating racism and racial discrimination in Australia, and act as leaders in the struggle against racial prejudice.



The Australian Refugee Association: An Overview

1. The Australian Refugee Association Inc. (ARA) was established in 1975 as the Indo-China Refugee Association and has since strived to enable refugees, asylum seekers, family and friends of refugees, community members and former refugees to settle in Australia with independence and dignity, and to develop and achieve their aspirations and opportunities in life.
2. ARA's mission is to help refugees become settled and participating citizens of Australia. ARA believes in the capacity and desire of refugees to be productive citizens through contributing to the social, cultural and economic life in Australia.
3. ARA's vision is a South Australia where all refugees have access to the full range of appropriate settlement services, where refugees have strong supportive communities of their own cultural backgrounds, where the general community is supportive of refugees and engaged with them. Our vision is a South Australia where refugees are an integral part of a thriving, prosperous community.
4. ARA works with individuals and communities from diverse cultural backgrounds, originating from dozens of countries across the world. The organisation receives federal funding under the Settlement Grants Program, and is one of South Australia's most experienced providers of settlement services. ARA's services include social support programs, casework, employment assistance, accommodation support, community development and leadership training, migration assistance and youth programs.
5. As a leading organisation working for refugees and migrants in South Australia, ARA contributes its expertise to related community discussions, public forums and policy submissions. It is in this capacity that ARA makes the following submission to the Attorney-General regarding the *Freedom of speech (Repeal of S. 18C) Bill 2014*.



Racism: An ongoing challenge for Australian society

6. Australia is a diverse and tolerant nation, built on successive waves of migration. In 2011, 46% of the population had at least one or more foreign born parent, while 30% was born abroad.¹ ARA believes that a great proportion of Australians are supportive of a multicultural society and welcome new migrants into the community.
7. Unfortunately, racism is still a serious issue that affects a significant number of Australians. A recent study, *Mapping Social Cohesion*², found that more than 41% of migrants from a non-English speaking background who arrived between 2000-10 experienced discrimination on the basis of their skin colour, ethnic origin or religion over the previous 12 months. This is in contrast with the national average of 16%. ARA believes it is vital that Australia takes a strong stand against all forms of racism and racial discrimination.
8. To combat racism, ARA seeks to increase awareness of refugee and migrant issues, and promote mutual understanding and build trust between various members of the community. ARA works extensively to realise its vision of an inclusive and harmonious South Australia.
9. Nevertheless, racism and racial barriers present formidable obstacles to ARA's work. ARA regularly receives reports of racial abuse, with these incidents disturbingly common in our clients' daily lives. The following are examples of some of the cases that we are aware of as an organisation:
 - 9.1. A client cannot enter or leave her home without being subjected to racial slurs from her neighbours. She is reluctant to go outside when her neighbours are home, and her friends have stopped visiting due to the same abusive behaviour. This has compounded her social isolation.
 - 9.2. A client was unable to stay until the end of an employment workshop due to fear of taking public transport during the late afternoon. She is regularly subjected to verbal abuse, including about her clothing, religion, origin and right to be in Australia.
 - 9.3. An African family who first suffered verbal racial abuse from their neighbours began to receive hate letters in their mailbox, telling them to "go home". A wall in their garden was partially knocked down, with a swastika and graffiti scrawled across it. The neighbours later began to verbally abuse a social worker who came to visit.

1 Australian Bureau of Statistics, 2011 Census QuickStats, accessed 12/4/2014, http://www.censusdata.abs.gov.au/census_services/getproduct/census/2011/quickstat/0

2 Andrew Markus, *Mapping Social Cohesion*, Scanlon Foundation Surveys: Recent Arrivals Report 2013, accessed 10/4/2014, http://www.scanlonfoundation.org.au/docs/Recent_Arrivals_report.pdf

- 9.4.** An Afghan client and her mother receive so much verbal abuse at bus stops, such as swearing and shouting “go back to where you came from,” that the mother now suffers from anxiety and is unable to leave her home.
- 9.5.** A client was physically attacked by a group of drunk Anglo-Saxon men on Australia day who smashed a beer bottle over his head and swore at him to “go back home.” The client stopped attending an ARA education programme due to his fear of Australian people. It took 3 weeks for ARA to convince the client to re-join the program, where volunteers from the wider community could show him that he was accepted and welcomed.
- 9.6.** A young Sudanese client had a job at his local fast food chain. He was working at the drive-thru window when a woman refused to be served by him, asking for a different staff member. The young man asked for his manager’s assistance, who ended up serving the customer with no questions asked.
- 9.7.** Fifteen young Bhutanese clients were on an excursion with our youth worker when they stopped for a red traffic light. As they were waiting, three men drove past screaming for the girls to “speak English” and swearing at them to “go back home.”
- 9.8.** A teacher from a local private school rang ARA, asking for assistance with African students. When the social worker asked for more information, the teacher responded by saying that he had concerns that all the African students would become terrorists because of the problems they face. The worker tried to explain to the teacher that these were negative stereotypes, but the teacher insisted that this was going to happen as he had heard reports of Somali jihadists in Australia.
- 9.9.** A local private school teacher was completing an ARA survey on working with culturally and linguistically diverse students. The teacher rang us and told us in confidence that she was witnessing first hand teachers being racist towards students from refugee backgrounds. However, the Principal would not allow her to disclose this information in her survey, forcing her to privately contact ARA over the telephone instead. At the end of the year, this teacher rang ARA to say that she was leaving this particular school, as she could no longer handle the racism being directed from adult teachers towards young students.
- 9.10.** A teacher and a school counsellor from a public all-girls school collaborated with ARA youth workers throughout the year, to more effectively assist new arrival students. The staff reported to the ARA worker that they constantly had to argue and defend their actions to the Principal. The Principal had implemented a rule that future ‘Muslim girls’ who wanted to join the school were to be told that the school was full. The intention was so to phase out the new arrivals, so that the school would be more appealing to Anglo-Saxon families in wealthy areas. As a result, the two teachers decided to leave this school.

10. These are only a small selection of the reports received by ARA. Given the prevalence of these incidents and their pervasive nature, ARA is aware that racism remains an enormous challenge that continues to confront Australia. Racism and its effects are invisible to many Australians, but have an insidious presence in Australian society.
11. The consequences of racist abuse are severe, and affect people at a profoundly personal level. Studies have shown that racism has serious impacts on mental and physical well-being, through stress, anxiety and preventing access to resources required for health.³ Marginalised individuals become further isolated, preventing them from becoming fully participating members of Australian society.
12. Australia recognises the damaging effects of this kind of behaviour, with legislation which provides for legal recourse and sends a strong message that racist abuse and racial vilification is not tolerable. However, the current debate regarding the *Racial Discrimination Act 1975* (Cth) (RDA) has appeared to have brought us to a point where the focus on human rights in Australia has shifted from a need to protect the rights of vulnerable minorities against racism to a supposed need to protect the perpetrators of racist abuse and racial vilification. Allowing speech intended to offend, humiliate or intimidate others on the basis of their race, ethnicity or religion can easily lead to violence. It is critical that Australia is seen to stand up strongly for the victims of these acts. By elevating the right to bigoted and harmful expression over the right to freedom from harmful racist abuse and racial vilification, Australia may be seen to condone such acts and give the 'green light' to racism.
13. ARA supports the current exemptions in s 18D of the RDA to protect art, academia, science or any genuine purpose in the public interest, as well as fair and accurate reporting of or a fair comment on any event or matter of public interest, so long as what is said or done is said or done reasonably and in good faith. This provides an excellent balance between freedom of expression of matters in the public interest, and freedom from racist abuse or racial vilification, as it ensures that anything that may be seen as offensive is not unlawful if the person has behaved reasonably and in good faith. This reflects the duty of responsibility when exercising one's freedom of expression, when it concerns a matter so vital to the ability of a multicultural society to live peacefully and harmoniously. It encourages thinking before speaking, and discourages racism.
14. ARA believes that to judge the reasonable likelihood of racial vilification or intimidation by the standards of an *ordinary reasonable member of the Australian community*, as the proposed amendment seeks to do, crucially misunderstands the nature of racism. An ordinary reasonable member of the Australian community will not often have the awareness or insight into the intricacies of racist abuse to make an informed judgement. The framing of this term also suggests that Australians from minority backgrounds cannot be 'ordinary reasonable members' of the community, capable of making an objective judgement.

³ Angeline Ferdinand, Yin Paradies and Margaret Kelaher, 2012, 'The impact of racism on mental health in immigrant and refugee communities' *Australian Mosaic Magazine*, no. 31, Winter, pp. 1-1.

Human Rights

15. ARA acknowledges that recognition of the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world. This is recognised in the preambles of the United Nations Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR).
16. Many of ARA's clients fled environments where racial hatred was given an opportunity to fester, resulting in conflict and turmoil. They have come to Australia to live a peaceful and secure life away from ethnic violence.
17. ARA appreciates that for many of its clients, racial hatred, intimidation and vilification is most effectively promulgated and encouraged verbally, leading to an environment of hate and racial barriers from where violence can grow.

Limitations on freedom of expression

18. ARA acknowledges that freedom of expression is a human right, recognised in Article 19 of the UDHR and Article 19 of the ICCPR. It is a right that many refugees value highly in Australia, particularly in light of the denial of this right in many of their countries of origin.
19. ARA recognises, however, that freedom of expression is not an absolute right, and laws restricting freedom of expression in Australia are currently justified in many circumstances, including defamation, harassment, threats of harm, misleading and deceptive conduct, protecting public order and copyright, among others.
20. ARA believes that the current S. 18C of the RDA restricts freedom of expression to a just and reasonable extent, particularly as an exemption clause excludes legitimate matters of public interest as mentioned above in paragraph 13.
21. Article 19(3) of the ICCPR recognises that freedom of expression carries with it special duties and responsibilities, and may be subject to certain restrictions provided by law and which are necessary for respect of the rights or reputations of others, and for the protection of national security, public order, public health or morals. Protection against racist abuse and racial vilification fulfils each of these legitimate justifications for restricting freedom of expression.

21.1. Rights and reputations of others

ARA believes that respect of the rights and reputations of others necessarily involves freedom from racist abuse and racial vilification. The *National Inquiry into Racist Violence* and the *Royal Commission into Aboriginal Deaths in Custody* found that racial hatred and vilification can reinforce discrimination and exclusion. ARA believes that laws in place to respect the freedom from racial discrimination by condemning racial abuse and vilification are justified.

21.2. Protection of national security and public order

ARA believes that laws restricting racist abuse and racial vilification are necessary for the protection of national security and public order. National security and public order are threatened by racial intolerance: discrimination between individuals on the basis of race, colour or ethnic origin is capable of disturbing peace and security among peoples and the harmony of persons living side by side, as is stated in the preamble of the *International Convention on the Elimination of All Forms of Racial Discrimination (CERD)*. The *National Inquiry into Racist Violence* and the *Royal Commission into Aboriginal Deaths in Custody* also made it clear that seemingly low-level behaviour can soften the environment for more severe acts of harassment, intimidation or violence by impliedly condoning such acts. ARA fears that it will take very little to severely diminish the increasing level of racial harmony that groups and organisations like ours have worked so hard to accomplish.

21.2.1. Protection of public health

ARA believes that laws restricting racist abuse and racial vilification are necessary for the protection of public health. The *National Inquiry into Racist Violence* and the *Royal Commission into Aboriginal Deaths in Custody* found that racial hatred and vilification can cause psychological harm. Racism can cause stress and anxiety, as well as inhibit access to health, as mentioned above in paragraph 11. ARA's clients and others who experienced racially-fuelled trauma or torture may be re-exposed to psychologically damaging abuse similar to that which they fled.

21.3. Protection of morals

ARA believes that laws restricting racist abuse and racial vilification are necessary for the protection of morals. The existence of racial barriers is repugnant to the ideals of any human society. Weakening laws which protect individuals and groups from racist abuse and racial vilification will implicitly condone such behaviour and foster racial divisions. ARA believes a society which actively protects minorities from harmful racist abuse is more moral and just than one which implicitly encourages bigots to express harmful racism without consequence. The proposed changes are said to send 'a strong message about the kind of society that we want to live in where freedom of speech is able to flourish and racial vilification and intimidation are not tolerated.' ARA works hard to try to achieve such a society, but fears that removing a legal recourse for vulnerable minorities will instead send a stronger message that intolerance and racism is acceptable in our society

22. Importantly, Article 20(2) of the ICCPR states that any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

Effectiveness of proposed amendments

- 23.** ARA recognises that there is a balance to be found between freedom of expression and freedom from racist abuse and racial vilification. The Government's role is indeed to implement a just balance between competing human rights.
- 24.** However, ARA is most concerned that the proposed amendments, as they currently stand, exempt all expressions of racial vilification or intimidation (as defined in the Act) which are done 'in the course of participating in the public discussion of any political, social, cultural, religious, artistic, academic or scientific matter.'
- 25.** ARA is significantly concerned to consider that anyone participating in the public discussion of political, social, cultural or religious matters would be free to incite racial hatred or to cause fear of physical harm. We are reminded of the racial vilification and intimidation by way of radio broadcast in Rwanda leading up to and during the genocide. This genre of broadcasting may be said to take place in the public discussion of a political, social or cultural matter, and it seems it would be exempt from the new provisions if it occurred here.
- 26.** ARA understands that the exemptions would exclude any comment made by a broadcaster, if it is in the public discussion of any political, social, cultural, religious, artistic, academic or scientific matter. ARA acknowledges that such personalities have a greater influence upon the general public, and could have a significant effect in diminishing racial harmony and encouraging racial barriers. To increase the threshold of the section to only a narrow definition of vilification and intimidation is a matter that requires serious debate. However, to effectively exclude the most influential public figures from its operation will mean that this higher threshold will have a little effect in its aim to show that racial vilification and intimidation are not tolerated in society. ARA fears that it will instead implicitly encourage public figures to racially vilify or intimidate in the public discussion.
- 27.** ARA emphasises that many of our clients have found peace and safety in our society. Weakening the restrictions on people to engage in racist abuse or racial vilification will mean that those who suffered torture or trauma on account of their ethnicity, colour or origin will feel less secure.

Elimination of racial prejudice and discrimination

- 28.** ARA recognises that all human beings are entitled to equal protection against any discrimination in violation of their human rights and against any incitement to such discrimination.
- 29.** ARA encourages strong measures to be taken in order to eliminate racial prejudice and discrimination, and for Government Ministers to be leaders in the struggle against racism.
- 29.1.** Article 7 of the CERD and Article 8 of the *United Nations Declaration on the Elimination of All Forms of Racial Discrimination* commit States to adopt effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups, as well as propagating the purposes and principles of the *Charter of the United Nations*, the UDHR, the *United Nations Declaration on the Elimination of All Forms of Racial Discrimination* and the CERD.
- 29.1.1.** ARA believes that the proposed amendment as it stands is contrary to these commitments, and may soften the environment for racism to flourish.
- 29.2.** Article 9(2) of the *United Nations Declaration on the Elimination of All Forms of Racial Discrimination* commits States to make punishable by law all incitement to violence against any race or group of persons of another colour or ethnic origin, as it is considered an offence against society.
- 29.2.1.** The proposed amendments to the RDA as they currently stand allow individuals in the public sphere to incite racial hatred and violence, so long as it is a social, cultural or political matter. ARA considers the exemption clause to be extremely broad, and would exclude the most influential and powerful voices from being covered by the section. ARA sees the proposed amendments as currently contrary to this commitment.
- 29.3.** Article 2 of the CERD commits States to encourage, where appropriate, integrationist multiracial organisations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division.
- 29.3.1.** ARA believes that if the current section 18C of the Act is amended as proposed, protection against racial division will be weakened. If the amendment is to be accepted as proposed, ARA urges the Government to increase funding for integrationist multiracial organisations and movements and other means of eliminating racial barriers to combat any resulting strengthening of racial division.

Symbolism

- 30.** ARA appreciates that claims regarding s 18C are rarely brought to the courts. ARA supports alternative recourse from unacceptable behaviour through meaningful conciliation and mediation rather than punishment. The provision is symbolic as most incidents of racist abuse or racial vilification are not pursued and remain unresolved.
- 31.** ARA believes that symbols are of great significance in society. They construct a society and demonstrate who we are as a people and as a nation. ARA believes that removing this provision will open the floodgates for negativity. Keeping it will symbolise that we are committed to fighting racism.
- 32.** Australian society benefits from a great deal of work to combat racism. ARA does not wish to see racist speech become part of the mainstream of public discourse. Such a shift will make the hard work done by organisations such as ours significantly more difficult.



For further information, please contact **Barbara Klompenhouwer** by phone **08 8161 3306** or email barbara.klompenhouwer@ausref.net