

Submission re: Freedom of Speech (Repeal of S. 18C) Bill 2014

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Introduction

The aim of this submission is to provide the Government with the most current empirically-verifiable information in relation to the experience of racism in Australia, the attitude of Australians to the appropriate responses to this racism, and the implications of this information for potential intervention strategies. This data is drawn from the current situation, where Section 18C of the Racial Discrimination Act has been in place and functioning for nearly two decades. Any changes to the current situation would need to scope the likely impact of such changes on the experiences of racism documented below. The exposure draft of the proposed legislation contains no examination of the potential impact of the proposed changes on the current situation in relation to racism. No research has been made available for public scrutiny that indicates what changes are likely from the proposed legislation, nor has an impact study been made available that documents the likely level and extent of effects on the most vulnerable groups. The Government has not argued that the current level of racism in Australia is acceptable, or that an increase in racism against the more vulnerable groups identified below is an acceptable outcome of changes to the legislation. Indeed the Government continues to support the Human Rights Commission campaign against racism in the community.

In summary, Australians:

- i) are aware of the wide-spread existence of various types of racism, which in general they dislike and believe should be legally condemned, including by Government;
- ii) experience different rates of racism, with the most intense and severe experiences among Indigenous Australians, Australians of Muslim faith, Australians of African and Asian backgrounds, and Australians of Jewish faith. The lowest incidence of experienced racism is among Australians of many generations, and European Australians. In effect racism is differentially spread across the population;
- iii) are not supportive of Government proposals to remove section 18C of the RDA. Less than one in ten support or strongly support Government proposals. However about 20% of respondents in CRaCR (Cyber Racism and Community Resilience) survey are neutral or would not proffer an opinion;

- iv) support proposals for including Religion in addition to Race as the basis for protection from discrimination and vilification, though at a slightly lower level;
- v) value freedom of speech in different degrees in relation to freedom from vilification, and accept a balance between the two freedoms that protects civil speech while sanctioning hate speech.

The Evidence Base

Research recently conducted by several Australian universities has found that the Federal Government's plans to amend section 18C, as well as 18B, D and E of the *Racial Discrimination Act 1975* does not have majority public support, with evidence showing most people believe it should be unlawful to offend, humiliate or insult people on the basis of race or ethnicity.

Respondents to a recent survey (n:2100) were asked whether it should be unlawful to humiliate, insult, offend or intimidate someone according to their race, with the results showing:

- Offend - 66% of participants agreed or strongly agreed it should be unlawful
- Insult - 72% of participants agreed or strongly agreed it should be unlawful
- Humiliate - 74% of participants agreed or strongly agreed it should be unlawful
- Intimidate - 79% of participants agreed or strongly agreed it should be unlawful

Most of those surveyed who did not agree were undecided, or neutral, rather than being opposed to offence, insult, humiliation and intimidation on the basis of race being unlawful. Levels of opposition to the legislation as it currently stands were 10% or less across all the forms of discrimination.

- Offend – only 10% of participants disagreed or strongly disagreed it should be unlawful and 25% were undecided
- Insult – only 7% of participants disagreed or strongly disagreed it should be unlawful and 20% were undecided
- Humiliate – only 6% of participants disagreed or strongly disagreed it should be unlawful and 20% were undecided
- Intimidate – only 5% of participants disagreed or strongly agreed it should be unlawful and 15% were undecided

A Fairfax-Nielson poll conducted in April 2014 mirrored these findings. Of the 1400 respondents to a nationwide telephone survey 88% said it should be unlawful to 'offend, insult or humiliate' someone because of their race or ethnicity, while only 10% said it should be lawful. This poll was specifically focused on those terms Attorney-General George Brandis has proposed be removed from section 18c. There was bipartisan support for section 18c as it currently stands, with 84% of Coalition voters supportive of the law in its present articulation.

The findings are clear. The public strongly believe the existing protections should remain in place. The findings reported here indicate there is very little public support for any changes to the current protections covered by section 18c of the *Racial Discrimination Act*.

Cyber Racism and Community Resilience Research Project

The Cyber Racism and Community Resilience research project is a joint project involving a number of Australian Universities with support from industry partners. The Chief Investigators on the project are Professor Andrew Jakubowicz (University of Technology Sydney), Professor Kevin Dunn (University of Western Sydney), Associate Professor Yin Paradies (Deakin University), Professor Gail

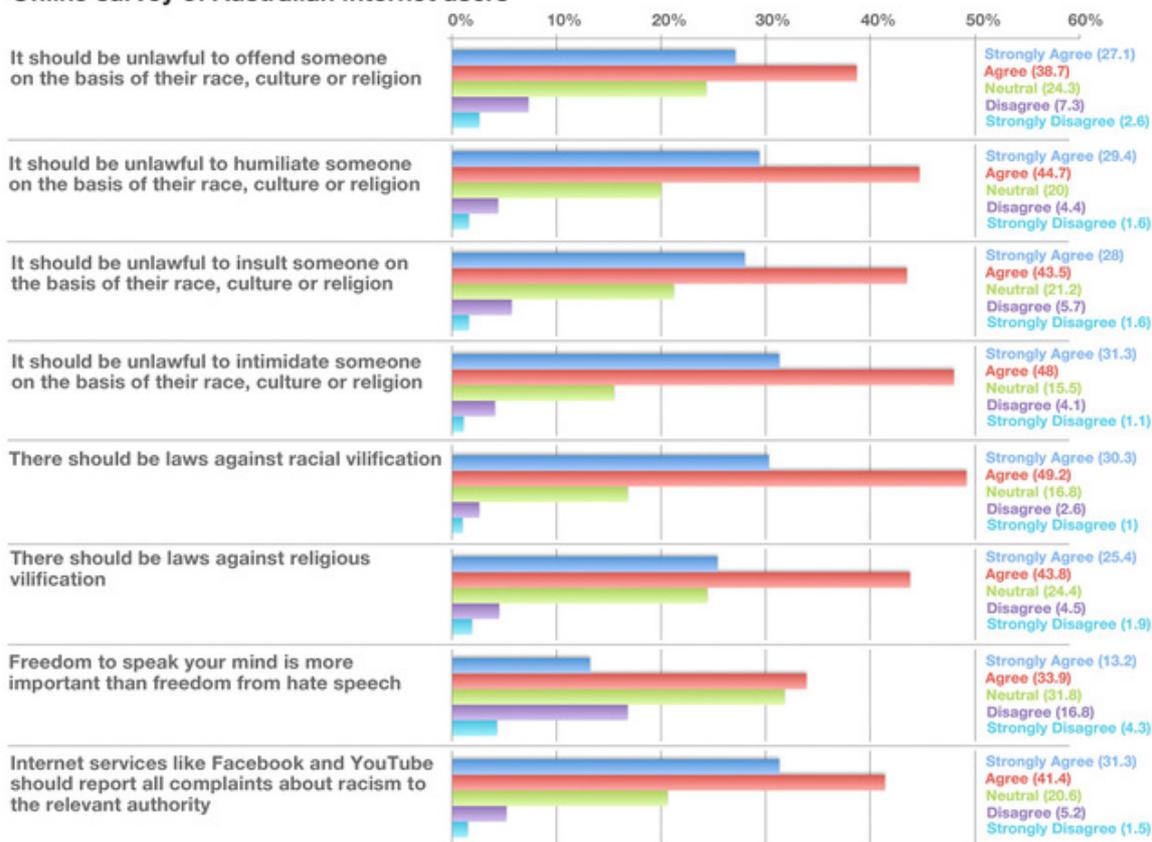
Mason (University of Sydney), Dr Ana-Maria Bliuc (University of Sydney) and Dr Nasya Bahfen (RMIT University). The project is funded by an Australian Research Council Linkage Grant.

The overall project seeks to examine the production of, prevalence of, exposure to, and strategies for responding to and limiting the negative impact of cyber-racism. One element of this project involved a survey of regular internet users to investigate the ways in which they encounter and respond to cyber-racism, the impact of these encounters, how well regulation is working, and encounters with or experiences of anti-racism online.

The survey used established prompts on encounters with different types of racism (name-calling, exclusion, violent incitement, discrimination, etc.) narrowed and adapted to those likely to be apparent within the internet. The survey also examined the extent of the morbid effects of such encounters (sense of wellbeing, belonging, etc.), and the actions taken by respondents (report, formal complaint, ignore, engage with, etc.). The survey was contracted to a commercial survey provider, MyOpinion, who provided two online panels: one reflecting the demographics of the Australian population aged 15 -54 as at the 2011 Census (mirroring the ethnic diversity of Australia); the other identifying groups significantly at risk of racism, including Australians from the following groups: (1) Indigenous Australians, (2) Australians of North African and Middle Eastern background, (3) Australians of South-East Asian background, (4) Australians from North-East Asian background and (5) Australians from Southern and Central Asian background. Panel participants self-nominated to participate in the survey. The data was collected in December 2013 and the total number of respondents was 2141.

The first results of our survey, which are yet to be published, present some challenging data for those who propose to weaken the laws that prohibit the offending, insulting, humiliating and intimidating of people on the basis of race. Participants were asked to respond to a number of attitudinal statements by indicating whether they agreed or disagreed with the statements made. Amongst these, University researchers requested that we include questions pertinent to s18c of the Racial Discrimination Act.

Online survey of Australian internet users



Nearly half of those surveyed (47%) believe that freedom to speak your mind is more important than freedom from hate speech (neutral 32%; disagree 21%). And yet three-quarters of respondents agreed or strongly agreed with protections against humiliation (74.1%), insult (71.5%) and intimidation (79.3%) based on race, culture or religion, and two-thirds (65.8%) with protection against offence on that basis. An overwhelming majority, 73%, put the onus on websites such as Facebook and YouTube to report the complaints they receive about racism to the relevant authorities.

Respondents indicated that they like the idea that people have a fair amount of freedom to say what they think, to express their opinions. But they also indicate real concern for the more vulnerable and most often targeted groups in the community and like the idea of some contemporary and focused regulation that would control vicious speech.

Experiences of Racism in Australia: Evidence from the Challenging Racism Project

This concern for vulnerable groups within our society is validated by the rates of racism experienced by these groups. The landmark Challenging Racism Project study, lead from the University of Western Sydney, surveyed more than 12,500 Australians to provide a national picture of racism, ethnic relations and cultural diversity. They found that 27 percent of Australians have experienced racist talk. This unfortunately high experience of racism is unevenly born across Australian society. Forty-one percent of Aboriginal and Torres Strait Islanders indicated that they had experienced racism by being called names or similarly insulted on the basis of their ethnicity. Table 1 also demonstrates that those born overseas were also more likely to experience this race hate talk.

Table 1. Experience of racism by selected place of birth, Australia 2001-08.

Place of discrimination*	Australia %*** (n: 9271)	Overseas % (n: 2828)	China**** % (n: 122)	ATSI % (n: 185)	India and Sri Lanka % (n: 147)	Total survey respondents % (n: 12512)
In the workplace	12.8	30.2	46.7	28.9	40.8	17.5
In education	14.5	21.6	44.3	38.3	28.4	16.6
When renting or buying a house	4.6	12.4	29.8	23.1	26.4	6.8
Type of discrimination**						
You are called names or similarly insulted	22.6	39.4	50.4	41.0	43.2	27.0

Source: Challenging Racism Project surveys, state and territory telephone surveys, 2001-8.

Question wordings: *How often have YOU experienced discrimination because of your OWN ETHNIC ORIGIN in the following situations? **How often do you feel that because of your own ETHNIC ORIGIN; ***Percentage 'Yes' are those who answered any of: Very often; Often; Sometimes, and; Hardly ever.

****China born refers to Chinese Mainland, Hong Kong and Taiwan born)

Those born in China, India and Sri-Lanka, were more likely again to be called names or similarly insulted on the basis of their ethnicity. Half of the Chinese-born Australians surveyed (50.4%) indicated that they had been called names or similarly insulted because of their ethnic origin.

A recent survey of Australian Muslims conducted by the University of Western Sydney and the Islamic Sciences and Research Academy found that Australian Muslims also experienced a rate of discrimination significantly higher than the general population.

Table 2: Experiences of racism, Sydney Muslims and Australia

Place of discrimination*	Sydney Muslims % (n: 585 2011-13)	Total survey respondents % (n: 12512 2001-8)
In the workplace	61.6	17.5
In education	55.3	16.6
Type of discrimination**		
You are called names or similarly insulted	60	27.0

Question wordings: *How often have you experienced discrimination because of your own ethnic origin / religion in the following situations? **How often do you feel that because of your own ethnic origin ...

***Percentage 'Yes' are those who answered any of: Very often; Often; Sometimes, and; Hardly ever.

Two-thirds of the Sydney Muslims surveyed reported that they had experienced racism in the workplace (61.6%) or in educational settings (55.3%) (Table 2). We are able to compare that to the average reported experience of racism for Australia, from the Challenging Racism Survey data.

Muslims report the experience of racism at three times the national average in workplace and education settings.

Concluding Reflections/Final Comments

It is outside the realms of possibility for the law to protect every victim of racist talk. What is possible is to establish laws with a symbolic role in setting inclusive norms that encourage us to speak out and speak up when we hear people using uncivil language. We should be extremely careful about removing the elements of the *Racial Discrimination Act* that protect the most vulnerable in our communities from abuse and diluting their normalising effects. Any changes made must be based on good evidence. At present, the evidence argues to the contrary of the Federal Governments plans. Racism fades and flourishes over time according to political contexts, leadership and the nature of public debate. The laws around racial vilification send an important message about what is considered to be legal and civil, and what is uncivil.

Any changes to legislation should be based on a careful and empirical appraisal of the likely impacts of those changes on the most vulnerable groups in Australia, an assessment of the costs and benefits of such impacts on social cohesion, mental and physical health, and economic opportunity, and a careful elaboration of the mechanisms to be put in place to minimise or ameliorate the negative impacts that may be identified. No changes to the current legal situation should be finalised until such empirical work has been completed, published and tested. In this regard we support the submission of the Australian Multicultural Council, which calls for a full review of and public inquiry into the legislation, prior to the drafting of specific legislative changes.
