

The Darebin Ethnic Communities Council (DECC) makes this submission with the intention of contributing to public discourse on the Australian Government's Exposure Draft of the Proposed Changes to the Racial Discrimination Act 1975; and to this end, DECC approves of this document being made available in the public domain.

SUBMISSION BY THE DAREBIN ETHNIC COMMUNITIES COUNCIL (DECC)
IN RESPONSE TO THE AUSTRALIAN GOVERNMENT'S EXPOSURE DRAFT
OF THE PROPOSED CHANGES TO
THE RACIAL DISCRIMINATION ACT 1975 –
THE FREEDOM OF SPEECH (REPEAL OF SECT. 18.C) BILL 2014

I. Credentials

The **Darebin Ethnic Communities Council (DECC)** is the peak body for ethnic communities within the Darebin municipality in the State of Victoria. For some thirty years, DECC has advocated on behalf of and represented the views and interests of Darebin's culturally and linguistically diverse residents to all tiers of government.

DECC's membership reflects the spectrum of groups, clubs, associations and individuals of cultural, linguistic and religious diversity from the ethnic communities residing in and connecting to Darebin; and encompasses the long established migrants and their descendants, the smaller and marginalised communities, emerging communities and newly arriving groups. The latter includes refugees, asylum seekers, international students and the transient population of long-term visitors with working holiday visas.

The City of Darebin is one of the most culturally, linguistically and religiously diverse municipalities within Australia. It is also home to the second largest community of Aboriginal people in Australia.

DECC is therefore well placed to articulate the views and concerns of the plethora of ethnic communities in Darebin.

II. Background

The Racial Discrimination Act 1975 is the shortened title for the *Act relating to the Elimination of Racial and other Discrimination*, as enacted by the Parliament of the Commonwealth of Australia; and is premised on the *International Convention on the Elimination of all Forms of Racial Discrimination*, as adopted by the United Nations and consequently also signed into adoption by Australia.

This Convention in turn is premised on the *Charter of the United Nations*, of which Australia was an instrumental author, and which is “...**based on the principles of the dignity and equality inherent in all human beings... (and) to promote and encourage universal respect for and observance of human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion...**”

Therefore, it is imperative to remain focussed on the original **purpose and intent** of the Act now under consideration through the Exposure Draft.

The Darebin Ethnic Communities Council acknowledges the opportunities provided for diverse migration into Australia as a consequence of the adoption of the Racial Discrimination Act in 1975; and the manner in which such a legislative framework has, over these past forty-odd years enabled the development and evolution of the multicultural mosaic of Australian society.

DECC also acknowledges the direct benefit this Act has played in the lives of many of our member communities which have migrated to Australia and made their home in Darebin since 1975.

Additionally, DECC acknowledges the bi-partisanship in legislative and policy formulation on issues of multiculturalism, as previously demonstrated by the Parliaments of Australia and the State of Victoria; and in particular notes the Victorian Government’s recently announced **Multicultural Affairs and Citizenship Policy “Victoria’s Advantage – Unity, Diversity, Opportunity”** which draws its roots from the intent and purpose of the *Racial Discrimination Act 1975*.

DECC believes that highly principled Commonwealth legislation effectively applied through State and Local government levels can visibly improve the lives of ordinary people in Australia through social cohesion and active engagement in civic life.

In Darebin, the relationship between the Darebin City Council and the Darebin Ethnic Communities Council – reinforced on a very real and practical level through a Memorandum of Understanding - demonstrates the benefits of meaningful engagement and inclusion of ethnic communities in order to develop timely responsiveness to identified needs, mutual respect, understanding, intercultural dialogue and collaboration across the whole community which have ultimately resulted in an enviable degree of social harmony within the Darebin municipality.

DECC is of the view that the Racial Discrimination Act 1975 has brought enormous benefits to Australian society precisely by gradually delivering its intended outcomes. We see this as an ongoing process which evolves with each generation of migration, settlement and engagement into the wider community. The current legislation is therefore working effectively.

DECC notes that there is neither an evident nor an implicit community groundswell of opinion within mainstream Australian society which has sought any change to the current Racial Discrimination Act 1975. Furthermore, this issue was not raised as a key

issue within the mainstream public discourse during the most recent Federal Election (September 2013).

Therefore, it is with much of dismay and disbelief, and certainly with great concern that DECC now considers what it is that the Australian Government is actually proposing with the Exposure Draft of Proposed Changes to the Racial Discrimination Act 1975.

III. Response to the Exposure Draft

Since the announcement of the Exposure Draft by Commonwealth Attorney General, Senator, **The Hon. George Brandis, QC**, in March 2014, the Darebin Ethnic Communities Council had sought opportunity for informed public debate on the announced proposal for changes to the Racial Discrimination Act 1975. To this end, DECC endeavoured to secure the participation of Senator Brandis – as the proposer of the Exposure Draft on behalf of the Australian Government – in **a public forum held on Thursday 24th April 2014 within the City of Darebin.**

With agreement from the **Darebin Mayor Cr. Gaetano Greco** to chair the public forum, participation was also sought from the Federal Opposition, through the **Shadow Attorney General, The Hon. Mark Dreyfus, QC**; and from leading and relevant stakeholders – **Liberty Victoria**, represented by their **Immediate Past President, Professor Spencer Zifcak**; and the **Human Rights Law Centre**, represented by their **Executive Director, Hugh de Kretser.**

It was therefore unfortunate that the Attorney General's Office was not able to confirm a speaker to outline the Government's reasoning for the proposed changes. Consequently, the allocated seat remained vacant. The event was attended by some 95 persons representing the spectrum of ethnic communities in Darebin; and provided fruitful discourse towards shaping the DECC position on the Exposure Draft.

Moreover, and albeit within the constrained and limited timelines as set by the Government, the Darebin Ethnic Communities Council has undertaken consultation with its membership base to identify specific concerns; and has provided the DECC membership with details on how they too, as individual associations representing their own ethno-specific communities could input into the submission process. Consequently, the comments contained herein are the views to which DECC has arrived following our consultations on the Exposure Draft.

Nonetheless, DECC takes this opportunity to strongly voice our concerns that the timelines set by the Attorney General's Office for public discourse on the Exposure Draft; and the Australian Government's limited willingness to explain the justification for the need to change the Racial Discrimination Act 1975 has directly impacted on the Australian community's ability to digest the proposal and to provide a considered response. Such timelines have in fact curtailed democratic dialogue.

In addition, DECC has contributed background comment to the Darebin City Council in the process of preparing their submission.

Therefore, we take this opportunity to state that **the Darebin Ethnic Communities Council fully endorses the sentiment contained within the Submission to the Consultation on the *Exposure Draft of the Proposed Changes to the Racial Discrimination Act 1975* which has been prepared and presented to the Australian Government by the Darebin City Council.**

Furthermore, the Darebin Ethnic Communities Council clearly and unequivocally states that:

The Commonwealth of Australia's *Racial Discrimination Act 1975*;

as the shortened title for the *Act relating to the Elimination of Racial and other Discrimination*;

which is premised on the *International Convention on the Elimination of all Forms of Racial Discrimination*, as adopted by the United Nations and by Australia as one of its signatories;

and which entered into force on 2 January 1969;

which in turn is premised on the *Charter of the United Nations*, of which Australia was a leading founder, and which is "*...based on the principles of the dignity and equality inherent in all human beings... (and the obligation of signatory States) to promote and encourage universal respect for and observance of human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion...*" as contained and outlined in the Schedule to the Act under deliberation;

is therefore,

one of the most significant Acts ever enacted by the Australian Parliament.

For close to four decades, the Racial Discrimination Act 1975 has defined, guided and shaped Australian society; and provided the moral and ethical framework with which our cacophony of disparate descendants of colonialists, convicts, settlers, adventurers, migrants, refugees and the dispossessed Indigenous peoples has been able to develop into the relatively harmonious, peaceful and law-abiding community which we are proud of today.

For a vast majority of Australia's population, like with electricity, the Racial Discrimination Act 1975 has been the constant with which we have been born, gone to school, got our jobs and lived our daily lives. It has been the accepted premise which has guaranteed one's right to be oneself, regardless of what one's neighbour thinks about us. It is the law which has assured us that it is acceptable to be different from the next person, but which also guarantees our commonality and equality as citizens. For all migrants and refugees seeking protection in Australia, the Racial Discrimination Act has been the guiding light of hope and assurance that in this land of Australia, the

freedom to live safely, to seek education, to work and aspire, and to build a better life for our children without prejudice and discrimination because of our ethnicities, skin colours, religious beliefs, maternal languages, cultural traditions and varied histories has been understood as a sacred principle embedded in the very earth, air and water around us, as an essence of life, which has therefore made it worthwhile to plant our roots and to seek out citizenship as our further commitment to the common Australian nation.

While **Part II—Prohibition of racial discrimination** of the Act defines our rights to equality before the law and in exchanges with others in the course of daily life;

Part IIA—Prohibition of offensive behaviour based on racial hatred specifically provides mechanisms for regulating the conduct between groups and individuals who may not be able to momentarily or otherwise, progress beyond their often emotionally charged prejudices, views or reactions. It is precisely this Part of the Act which has successfully provided a degree of mutual self-restraint and ensured that communities of different people, backgrounds, places of origin and religion have been able to co-exist within the mainstream Australian community with relative calm while wars, atrocities and tragedy have ravaged their former homelands and sometimes directly impacted on their extended families living overseas.

The commonly understood and accepted safeguards provided through Part II of the Act have therefore guaranteed the safety and security for all Australian citizens and residents, despite external influences. It is a shared belief that to safeguard ourselves we also respect the right of others to be safeguarded. Therefore, Part II of the Act, as it stands is clear, effective and accepted throughout the Australian community.

The Darebin Ethnic Communities Council is therefore seriously concerned about the consequences of the proposed amendments to the Racial Discrimination Act 1975 as outlined in the Exposure Draft.

DECC is gravely concerned and apprehensive about the health and wellbeing of citizens and residents who currently experience racism directly and indirectly.

DECC is seriously concerned:

- at the impact proposed changes would have on Multiculturalism within Australia;
- at the risk to achievements in intercultural and interfaith dialogue and collaboration between communities and groups; and
- at the potential impacts on the interracial understanding, acceptance, respect and harmony between citizens and residents of different races, ethnicities and faiths.

The Darebin Ethnic Communities Council is therefore compelled to most strongly voice the following:

- i) **DECC opposes ALL of the proposed amendments to the Racial Discrimination Act 1975.**
We believe that the current legislation, as it stands, is an essential and integral part of what defines and reinforces the democratic, pluralistic and diverse society which is Australia.
- ii) **We express our serious concern about the manner in which the proposed amendments to the Racial Discrimination have been justified;** and how proponents for the changes contained in the Exposure Draft have sought to portray the **Racial Discrimination Act 1975** as being a limitation upon, and for some, in opposition to our “freedom of speech and expression”.

DECC applauds the Australian Government’s apparent commitment to freedom of speech. Freedom of Speech and the freedom of thought are an essential human right and the cornerstone to a democratic culture and society. Nonetheless, it is also accepted that with rights come responsibilities; and that rights are applied within a context of minimising harm to other individuals and to society as a whole.

In a democratic and pluralistic society where people are free to speak and think for themselves, we already accept some limits on the freedom of speech – in relation to defamation, to harassment and bullying, to misleading advertising, to consumer protection, to privacy and confidentiality.

It would therefore be a retrograde step if we were to legislate to enshrine one’s right to the public verbalisation of bigotry.

Furthermore, DECC takes this opportunity to make two observations in relation to freedom of speech:

Firstly, within our democracy, the right to freedom of speech is not enshrined but is accepted as an entitlement with responsibilities; and in public discourse on matters where **Part IIA—Prohibition of offensive behaviour based on racial hatred** of the Act applies, clearly, it is legitimate to engage in commentary which is based on facts, on truth telling, on good faith.

When freedom of speech is used as a cover up and/or justification for fabrications, for distortions of fact, for deliberate lies, for public disinformation and manipulation, then such actions seriously diminish - both ethically and practically - the very meaning and essence of freedom of speech.

DECC believes that the Attorney General's statement in introducing the amendments to the Racial Discrimination Act in the context of the Andrew Bolt case (Eatock vs Bolt 2011) has seriously compromised and diminished the perception by Australians to the authenticity of the Government's commitment to freedom of speech.

Furthermore, by focusing on the Bolt case, the Government has in fact trivialized and misrepresented the intent of the very Part of the Act which it seeks to change. Part II exists in order to curtail racial hatred from festering into offensive behavior perpetrated by the "hater" upon the victim/"the hated".

As determined by the Judge, Andrew Bolt's articles contained errors of fact and distortions of the truth.

Therefore, surely, errors of fact and distortions of truth have no validity in forming the basis upon which freedom of speech is protected, because then it is not freedom to speak, but rather the freedom to lie.

Secondly, although freedom of speech is an essential human right, it is not one that should be reinforced at the cost of the dignity and wellbeing of and between members of our society.

Freedom of speech is not an absolute human right. Similarly, within civilization and within a society which seeks to develop harmoniously and equally in freedom and democracy, the egoism and freedom of the individual cannot extend to the infliction of pain and suffering upon others.

We therefore believe that the current Racial Discrimination Act allows for serious consideration of freedom of speech balanced with human dignity and individual and community wellbeing.

iii) DECC was one of Darebin Council's key partners in carrying out the Darebin Racism Inquiry 2012.

www.darebin.vic.gov.au/racism

We believe that the findings of the Darebin Racism Inquiry justify the importance of maintaining the current Racial Discrimination Act as it stands.

Some of the findings of that Inquiry are important to reiterate here:

- *On the whole, respondents to the Darebin Racism Inquiry phone survey seem to hold very positive views and be very supportive of diversity and multiculturalism.*
- *However the Inquiry found that for Aboriginal and African Australians racism was described as an integral experience of everyday life, with the most common experience of racism was being faced with racist material in the media (46% of phone respondents and most focus group participants).*
- *The Inquiry found that racism prevented people from fully participating in*

community life through feelings of shame, sadness, isolation and made them feel that they did not and could not belong to the broader Darebin community.

These findings of the Darebin Racism Inquiry 2012 are serious and as such, were alarming to both DECC and the Darebin City Council.

DECC is therefore concerned that the proposed changes in legislation would not only reinforce but further expand the experiences of racism for people from culturally and linguistically diverse backgrounds.

For example, the withdrawal of any measure of reasonableness of good faith in public discussion, especially within the media, will create more opportunities for racism in the media that is not measured and cognisant of people's dignity. This is significant in the context that people's most common experience of racism even with the current legislation is through the media.

Darebin's Racism Inquiry also found that bystanders - those witnessing race-based incidents - were also deeply affected by racist act. These experiences of bystanders included sadness, outrage, shock and yet wanting to intervene.

It is therefore not only the direct victims of racism that are hurt by racism but our community and society as whole become victims of such racism.

DECC believes that our current Racism Discrimination Act 1975 not only provides protection for people who experience racism, but provides a strong platform and protection for most Australians who are open committed to a free and fair society.

During the public meeting organised by DECC on 24th April 2014 – as cited earlier – the majority of the audience expressed grave concerns about the proposed changes to the Act. Several drew a connection with the Australian Governments' (past and present) treatment of asylum seekers as a clear indication of the callousness possible when a group of people is "dehumanized".

By removing the ethical attachment to the treatment of humans, it is then possible to remove conscience from the debate; and in turn, to negate or diminish moral, ethical and legal responsibility to treat another human being humanely.

Furthermore, in a period of economic down turn and in a climate of demonization of asylum seekers - who are predominantly from Middle-Eastern, Muslim and Asian backgrounds, the dilution of Racial Discrimination Act 1975 will give rise to increased racism within the Australian community.

In a context where the bigots would be empowered to speak and act freely, the victims of this newfound "right to bigotry" in the first instance, would be those people of coloured, "non-white" skin, migrants with evident accents and English language limitations, or hijab wearing women and children, regardless of where they were born.

IV. Conclusion

History has taught us that without protections and safeguards, the most vulnerable members of society – children, women, the frail and the elderly, those with disabilities, those with health issues - are always the ones to become society's first victims.

In recognition of the atrocities of World War II and the failure of the international community to prevent those crimes against humanity and genocide, Australia, together with other countries, came together to establish the Charter of the United Nations and the Universal Declaration of Human Rights:

"...based on the principles of the dignity and equality inherent in all human beings... (and) to promote and encourage universal respect for and observance of human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion..."

Flowing from this declaration was the UN's *International Convention on the Elimination of all Forms of Racial Discrimination*, which was signed and ratified by Australia and resulted in the Australian Parliament's enactment of the *Act relating to the Elimination of Racial and other Discrimination - The Racial Discrimination Act 1975*.

Since that time, this legislative framework has safeguarded freedom and democracy within Australia and led to our vibrant multicultural society.

There is no need to change it now.

DECC makes this submission as a contribution towards strengthening intercultural dialogue and collaboration; and interracial and interfaith respect and understanding, within a multicultural Australian democracy.

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