

**Submission on the Exposure Draft of the Freedom of Speech (Repeal of S.18C) Bill
2014**

The Australian Partnership of Religious Organisations comprises representatives appointed by the peak bodies of seven major religions in Australia, as well as national-level multicultural and interfaith community organisations and academics with expertise in inter-faith and intercultural relations. A list of our member organisations is appended.

Our aims include the promotion and advocacy of interfaith harmony and understanding and respect between the adherents of the various religions in Australia, and action to combat religious prejudice and discrimination. We see the preservation of harmony in Australia's culturally diverse society as associated with these objectives.

We note the reference to "Freedom of Speech" in the title of the draft Bill, which implies that it is sought to repeal Section 18C for the purpose of safeguarding that freedom. While we recognise the vital importance of the promotion and protection of freedom of speech, we would submit that Section 18C as it presently stands does not limit the civilised exchange of ideas, and that it only addresses offensive behaviour. If speech or writing does not offend, insult, humiliate or intimidate, then it is clearly not limited by the present law.

It is also our view the very idea that the victims of racial abuse ought to defend themselves by rational argument betrays a deep misunderstanding of the sadistic mechanism of racism and its corrosive social impact. The victims of abuse should never find it necessary to engage in demeaning protest and argumentation, and they certainly would not wish to promote racist defamations by public debate.

In this context the provisions in the existing law which provide civil remedies for "offensive behaviour because of race, colour or national or ethnic origin" have proved to

be a useful measure for the preservation of the right of Australians to live in freedom from such offensive behaviour in the nineteen years since it was proclaimed.

One element of the present law is the process of conciliation, which often leads to formal retraction and apology, and occasional compensation. Where this is successful it provides both vindication for the complainants and a discouragement of further offensive activity by the perpetrators. This is a process which could, of course, be improved by expediting the various procedures.

The existing law is also readily accessible to those who suffer racial abuse in its more usual manifestations through its definition, in objective terms, of offensive behaviour on the ground of race as an act that is “reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate another person or a group of people”. These are elements which are capable of straightforward proof and which are appropriate for the minimal civil remedies which are provided.

The amendment proposes to abolish that law. In its place, protection would be provided only against acts which “vilify” or “intimidate”. The language is unusual, and the words are given highly restrictive definitions in the Draft Bill. To “vilify” is defined as “to incite hatred”, which is a challenging concept to prove in the usual situations. The ordinary meanings of the word “vilify”, such as the defamation or denigration of the members of a particular group by virtue of their identity, are not included in the definition. “Intimidate” does not include the essential psychological elements, but becomes “to cause fear of physical harm”.

The result would be that the new grounds for protection would apply only in the case of the most dangerous and extreme threats. The new serious unlawful acts, which ought to be subject to criminal penalties, would attract only the present civil remedies, such as orders against repetition or for retraction and apology, and occasional damages, and which aim for reconciliation and education.

Returning to the issue of freedom of expression, it is notable that such freedom is also preserved under the existing law by Section 18D, which provides an exemption for actions done “reasonably and in good faith”, including “a fair comment on any event or matter of public interest if the comment is an expression of a genuine belief held by the person making the comment.”

We are particularly concerned that the draft Bill proposes to repeal Section 18D and replace it by a new exemption which will apply in the case of “the public discussion of any political, social, cultural, religious, artistic, academic or scientific matter.” The proposed new exemption would not require reasonableness, good faith or an expression of genuine belief.

The result of the proposed amendment would be that a person inciting hatred or threatening physical harm to another on the ground of race, colour or national or ethnic origin would be exempted from the operation of the law merely by showing that the act occurred as a public discussion of a political or social matter. Such a provision would make the legislation almost entirely ineffective in practice.

We understand that much of the motivation for the proposals being considered comes from the *Andrew Bolt Case*. However, we do not believe that the fact that a judgment is highly controversial is a reason for reducing the protection afforded by the law. It should rather be seen as a difficult case, as reflected in the minimal nature of the orders made. It is also notable that the court ruled in that case that the exemption in Section 18D did not apply.

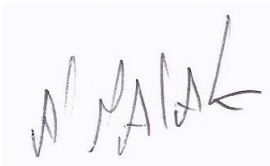
In all, it appears that the draft Bill would remove the limited protection against racial abuse provided by the present law, while providing no useful or adequate protection in its place. As such its passage would represent a retrograde step in the preservation of our harmonious and diverse society.

Section 18C is important as a declaration by government that Australians are entitled to be protected against the expression of racial abuse. It follows that the proposed reduction

in the scope of that protection would represent a signal to racists that government has become less interested in providing that protection.

Accordingly we would respectfully submit that the draft Bill should not proceed, and that the *Racial Discrimination Act* should remain unchanged.

Signed on behalf of the Australian Partnership of Religious Organisations

A handwritten signature in black ink, appearing to read 'M MALAK', is written on a light blue rectangular background.

Prof Abd Malak AM
APRO Convenor

APPENDIX: APRO MEMBERSHIP

Member organisations:

National Council of Churches in Australia

Muslims Australia (Australian Federation of Islamic Councils)

Executive Council of Australian Jewry

Australian Sangha Association

Federation of Australian Buddhist Councils

Hindu Council of Australia

Australian Baha'i Community

Sikh Community

Associate Members:

Religions for Peace Australia

Australian Multicultural Foundation

Settlement Council of Australia

Academic and community advisors:

UNESCO Chair in Interreligious and Intercultural Relations, Asia Pacific

Interfaith adviser

Legal adviser