



Refugee Council of Australia

PARLIAMENTARY JOINT COMMITTEE ON HUMAN RIGHTS

SUBMISSION ON FREEDOM OF SPEECH IN AUSTRALIA

The Refugee Council of Australia (RCOA) is the national umbrella body for refugees, people seeking asylum and the organisations and individuals who work with them, representing over 180 organisations and 700 individual members. RCOA promotes the adoption of humane, lawful and constructive policies by governments and communities in Australia and internationally towards refugees, people seeking asylum and humanitarian entrants. RCOA consults regularly with its members, community leaders, people seeking asylum and people from refugee backgrounds, and this submission is informed by their views.

RCOA welcomes the opportunity to make a submission to this Committee's inquiry on freedom of speech in Australia. RCOA strongly opposes changes to the *Racial Discrimination Act 1975* (Cth) as we believe they weaken protections against racism, racial vilification and discrimination towards refugee communities.

RCOA submits that Part IIA of the *Racial Discrimination Act* protects people from the harm of racial vilification and discrimination. Watering down these provisions is likely to encourage elements of the Australian community to engage in racist behaviour and may lead to further acts of racially motivated violence. It also arouses legitimate fears among highly vulnerable communities that their rights are being targeted, at a time when they are already being attacked in public and political discourse in Australia and overseas.

Refugee communities, which are often highly visible and most vulnerable to racism, will be among those most affected by these proposed changes. Many refugee communities are all too familiar with racial vilification and discrimination. Many refugee communities have fled persecution on the basis of their race. People of refugee background consulted in the preparation of this submission emphasised the importance of protecting against racist hate speech, which can easily lead to racially motivated violence and serious harm to physical and mental health.

1. Impacts of racism on refugee communities

1.1. Racism is a serious and widespread issue in the Australian community. The ninth survey by the Scanlon Foundation, *Mapping Social Cohesion*, released in November 2016, found:

- the highest level of reported experience of discrimination (20%) since the surveys began, with 27% of people from non-English speaking backgrounds reporting an experience of discrimination in the past year
- 31% of those experiencing discrimination reporting experiencing it about once a month or most weeks in the year
- 55% of those experiencing discrimination were verbally abused, 17% were not offered work or were not treated fairly at work; 10% had their property damaged; and 8% were physically

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attacked, and 22-25% of people consistently report a personal negative opinion of Muslims.

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- 1.2. Another report by the Scanlon Foundation released in August 2016, also found:
- 77% of the South Sudanese participating in the survey reported discrimination, and 43% of these reported experiencing property damage and physical attack
 - those born in African countries reported the highest level of discrimination, averaging 54% with several groups reporting averages of more than 50%
 - 25% of people from South Sudan reported experiencing discrimination at least once a month
 - 51% of Muslims born in Australia reported discrimination, while 46% of those born in Iraq and 27% of those born in Iran also reported experiencing discrimination.²
- 1.3. Another report by the Scanlon Foundation in 2013, focusing on recent arrivals, found that 41% of newly arrived communities from non-English speaking backgrounds had been discriminated against because of their skin colour, ethnic origin or religious beliefs in the previous year.³
- 1.4. Racism and racial vilification has a significant impact on people from refugee backgrounds and their communities. Racial hatred and vilification can cause emotional and psychological harm, as well as reinforce other forms of discrimination and exclusion. Further, by tolerating offensive, humiliating and intimidating language we may open the door to more severe acts of harassment, intimidation or violence.
- 1.5. **Racism and community participation:** Racist behaviour has significant impacts on a person's engagement in the community. People from refugee backgrounds consulted by RCOA have shared many experiences of racism at work, in public places, on public transport and in social activities such as sporting clubs. These experiences of racism, especially words that 'offend', 'insult' and 'humiliate', cause people to disengage with community life. Many people have told us how they no longer go out in public because of experiences of racially motivated verbal and physical abuse. This has led to isolation, exclusion and mental health issues. People from refugee backgrounds have also reported experiences of verbal abuse when participating in sport, which has led many to leave the sporting clubs.
- 1.6. **Racism and health:** Racism also has a significant impact on a person's physical and mental health. Many people have talked of experiences of depression, anxiety and physical complaints due to racial abuse and vilification. Psychological harm has been a significant issue in many racial vilification cases. Previous case law regarding section 18C shows that racial abuse and discrimination can cause significant psychological issues.⁴
- 1.7. There has been significant academic research into the impacts of racism on mental health, which has found an 'association between self-reported racism and ill health for oppressed racial groups.'⁵ A VicHealth report in 2012 has also demonstrated that experiences of racism are associated with poor mental health.⁶
- 1.8. In 1991, the National Inquiry into Racist Violence made recommendations which led to the enactment of section 18C of the *Racial Discrimination Act*. The inquiry found that:

¹ Andrew Markus, *Mapping Social Cohesion* (Scanlon Foundation, 2016), pp. 25-26, 43.

² Andrew Markus, *Australians Today* (Scanlon Foundation, 2016), pp. 60-63, 67, 82.

³ Andrew Markus, *Mapping Social Cohesion: Recent Arrivals Report* (Scanlon Foundation, 2013), p. 1.

⁴ See *Rugema v Gadsten Pty Ltd & Derkes* [1997] HREOCA 34; *Gama v Qantas Airways Ltd* (No.2) [2006] FMCA 1767, para [125].

⁵ Y. Paradies, "A Systematic Review of Empirical Research on Self-Reported Racism and Health," *International Journal of Epidemiology* 35, no. 4 (July 12, 2006): p. 888.

⁶ Victorian Health Promotion Foundation, *Mental Health Impacts of Racial Discrimination in Victorian Aboriginal Communities: Experiences of Racism Survey: A Summary*. (Carlton South, Vic.: Victorian Health Promotion Foundation, 2012), p. 2, http://visions-download.unimelb.edu.au/Mental%20health%20impacts_racial%20discrim_Indigenous-4.pdf.

*Physical violence is not the only, or even in some cases the most important, form of racist violence. The physical effects of violence often cause less damage to the individual victim than the psychological effects.*⁷

1.9. RCOA is concerned that changes to the *Racial Discrimination Act* will encourage racial abuse, with significant impacts on the mental health of people from refugee and asylum seeker backgrounds. Experiencing racial abuse in Australia will further undermine their vulnerable mental health, caused by their previous persecution and often by experience of torture and trauma.

1.10. **Racism in the workplace:** Racism is also a significant issue for refugee communities in the workplace. Racism can have significant effects on a person's work, productivity and rapport with employees. Racist comments can also be detrimental to those seeking work, as harmful negative stereotypes are often portrayed about refugee communities, which is likely to negatively affect their employment.

1.11. Some people have spoken of their of fear going to work because of the racist abuse they encounter. This is exemplified in the Human Rights and Equal Opportunity Commission case of *Rugema v Gadsten Pty Ltd & Derkes*, in which the Commission found that a workplace breached section 18C of the *Racial Discrimination Act* because of one employee's racist language and signs against another employee, a former refugee from Uganda. These abuses included comments such as 'black bastard' and 'lazy black bastard'. This racial abuse had such a severe impact that the man was unable to concentrate, had become suicidal and had to be hospitalised, suffering a severe major depressive disorder. This example highlights the important protections 18C provides against racism in the workplace.

1.12. **Racism in education:** Refugee communities' experience of education is also significantly affected by racism. Some have discussed being verbally abused by classmates and teachers, as well as being treated unfairly because of their race. Teachers have verbally attacked students because of the colour of their skin or because of their cultural background. These abuses can also hinder people from attending education, significantly affecting a person's engagement in education and later employment. Many people have also raised concerns about people assuming that their limited English language means they are poorly educated or not intelligent.

1.13. **Racism and settlement:** Racism also affects the settlement of newly arrived communities. For those who are new to Australia, finding housing, employment and participating in public life is vital to ensure successful settlement into life in Australia. As discussed above, racism affects a person's participation in community life, education and employment, thus hindering vital aspects of the settlement process.

1.14. Racism also alters people's perceptions of the Australian community, as people fear that the majority of Australians are racist, thus impairing social cohesion. Many people have expressed concern that, because of the negative stereotypes and racist comments directed to them, they would not be 'accepted' into the Australian community. Such experiences have ongoing negative consequences for communities' settlement and their health and wellbeing, especially for young people.⁸

1.15. **Racism and structural inequality:** Racism occurs not only through express verbal attacks but also through systemic and inherent structures of inequality. While these laws cannot address these structural inequalities, they do at least set a minimum standard of respect for all members of the public.

1.16. As some of those consulted by RCOA have argued, addressing the issues of privilege, history and society needs to involve more than simply changing the law but at the very least 'it would be nice not to get racially abused on the bus.'

⁷ Human Rights and Equal Opportunity Commission, *Racist Violence* (1991), p 168.

⁸ See VicHealth, "Racism and its links to the health of young people", <http://www.vichealth.vic.gov.au/Publications/Freedom-from-discrimination/Racism-and-young-people-research.aspx>.

1.17. Another refugee community member commented that, while the *RDA* has not addressed issues of systemic racism, it at least forces people to reconsider the language they use when making bigoted comments: 'The only thing [the Act] changed is that it will censor what people say to you.' As another person said, by removing these protections from the Act, the government is 'whispering' to bigoted people that they are allowed to humiliate people on the basis of race.

1.18. ***Racism and further violence:*** Racist behaviour and speech can lead to further violence and intimidation. Racist comments and actions can be seen to condone more severe physical attacks directed at members of ethnic or cultural groups. Many people consulted regarding these changes emphasised the fear that by watering down protections against racial abuse, it 'opens the door' to other acts of racial based violence. Racial incitement to hatred and violence is a particular concern to members of refugee communities, as many fear the repeat of the Cronulla riots and other similar events.

2. Racism and the current political debate on refugee and asylum seeker issues

2.1. RCOA has often highlighted the harmful nature of public discourse targeting people seeking asylum. It cannot be ignored that those seeking asylum in Australia are from specific ethnic backgrounds. As such, there is a fine line, especially in the public's perception, between comments directed against people seeking asylum and comments directed against certain ethnic minorities.

2.2. In our annual submissions to the Australian Government on the Refugee and Humanitarian Program,⁹ a number of former refugees have expressed significant concern at the racist and derogatory comments directed towards people seeking asylum. This negative portrayal by some politicians and public figures has encouraged racial abuse towards refugee and asylum seeker communities.

2.3. These racist and misleading comments affect not only those who arrive by boat but also those resettled through Australia's offshore refugee program. A startling assertion made by a community representative in Western Australia (and echoed in other states) during RCOA's consultations on the 2011-12 Refugee and Humanitarian Program was that refugees coming through Australia's offshore resettlement program should be warned about the negative public attitudes towards refugees before they arrive in Australia.¹⁰

2.4. RCOA has and continues to express concern about the increasingly divisive tone of public debate, by the media, public figures and politicians. Such comments effectively serve to condone and even encourage racist behaviour, even if the *Racial Discrimination Act* is not changed. We call on Australian politicians and public figures to show leadership by condemning all forms of racism, and by educating people about the dangers of, and harms caused by, racism.

3. Sections 18C and 18D strike an appropriate balance

3.1. Sections 18C and 18D of the *Racial Discrimination Act* are designed to balance freedom of speech with the rights of people not to be racially vilified. These sections were enacted in recognition of the clear harms caused by such racial vilification, and the importance of protecting minorities in our multicultural society.

3.2. RCOA supports and recognises the value of free speech. Many people from refugee and asylum seeker communities have fled to Australia because of persecution resulting from the exercise of free speech. Those consulted by RCOA have often stated that they value the protections for free speech in Australia and see them as a cornerstone of democracy.

3.3. However, freedom of speech is not absolute and needs to be balanced against other important rights, such as freedom from racial vilification and discrimination. As one person from a

⁹ RCOA's submissions on the Refugee and Humanitarian Program can be viewed at <http://www.refugeecouncil.org.au/our-work/annual-consultations/>.

¹⁰ See <http://www.refugeecouncil.org.au/r/isub/2011-12-IntakeSub-Sec6.pdf>.

refugee background notes: 'Free speech is very important. Some of us have never had free speech ... but you cannot use your free speech to vilify and demonise others.

3.4. In our view, the Act has struck the right balance. We disagree with the suggestion made by the Attorney-General that the section protects mere hurt feelings.¹¹ Rather, case law shows that the conduct must have 'profound and serious effects, not to be likened to mere slights'.¹² As such, the law requires that the harm complained of must be significant. If they do not meet this threshold, they have been dismissed appropriately.

3.5. As stated by Justice Bromberg, the words 'offend, insult, humiliate' should be understood to refer to conduct that is 'injurious to the public interest and relevantly, the public's interest in a socially cohesive society.'¹³ Thus it is important to consider the harm such racist conduct causes to social cohesion in the community when considering the merits of the case. As discussed above, racist behaviour has a significant impact on social cohesion in the community.

3.6. In our view, the Attorney-General's comments also belittle the significant harm that members of refugee communities can face when confronted with such racist behaviour. As discussed above, words that offend, insult and humiliate have serious impacts on refugee communities and their engagement in the public sphere.

3.7. It is also important to recognise that racial abuse often restricts freedom of speech, by silencing those abused. Refugee communities have told us how they feel silenced or marginalised when speaking about a certain issue because of racism within the broader community. Thus, racism can make a person less free to speak.

4. Complaints mechanisms

4.1. RCOA believes that the existing process of making a complaint under the *Racial Discrimination Act* is effective. As a conciliation tool, the law provides a civil and educative process to bring aggrieved parties together through mediation. Over the past five years, the Australian Human Rights Commission has received an average of 130 racial vilification complaints each year. According to the Human Rights Law Centre, 'a very small percentage of complaints (4% in 2012-13) are terminated because they are trivial, misconceived or lack substance. The majority are resolved through mediation. Few complaints go on to court (less than 3% in 2012-13).'¹⁴ This shows the significant role the laws play not through the courts but through mediation and conciliation processes. RCOA emphasises the need to ensure adequate access to these complaint mechanisms, especially for refugee communities.

4.2. RCOA acknowledges the support available for members of refugee communities, including the use of translators and the extensive list of translated information packs. However, more could be done to increase community awareness regarding the process for making a complaint to the Australian Human Rights Commission. Most people consulted for this submission were not aware of the process for making a complaint and how such an issue is resolved. More education sessions, community engagement activities and dissemination of fact sheets could help towards increasing community understanding of the conciliation process of the Australian Human Rights Commission.

Recommendation 1

The Committee should recommend that the the Racial Discrimination Act 1975 should not be amended.

¹¹ Attorney-General George Brandis, Press Conference, Parliament House, 25 March 2014, <http://www.attorneygeneral.gov.au/transcripts/Pages/2014/First%20Quarter/25March2014-PressConference-ParliamentHouse.aspx>

¹² *Creek v Cairns Post Pty Ltd* [2001] FCA 1007, para [16].

¹³ *Eatock v Bolt* [2011] FCA 1103, para 263.

¹⁴ Human Rights Law Centre, "Racial Vilification Laws: New Resources to Help the Public Give Feedback on Changes," accessed April 25, 2014, <http://hrlc.org.au/racial-vilification-laws-new-resources-to-help-the-public-give-feedback-on-changes>.

Recommendation 2

The Committee should recommend that politicians condemn racism and show greater political leadership in combating racism.

Recommendation 3

The Australian Human Rights Commission should promote awareness of the complaints process under the Racial Discrimination Act.