



**St Vincent de Paul Society**  
NATIONAL COUNCIL *good works*

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## Submission on the Draft Amendments to the Racial Discrimination Act 1975

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The St Vincent de Paul Society (the Society) is a respected lay Catholic charitable organisation operating in 149 countries around the world. In Australia, we operate in every state and territory, with more than 60,000 members, volunteers, and employees. Our people are deeply committed to our work of social assistance and social justice, and we run a wide variety of programs around Australia. Our work seeks to provide help for those who are marginalised by structures of exclusion and injustice, and our programs target (among other groups) people living with mental illness, people who are homeless and insecurely housed, migrants and refugees, and people experiencing poverty.

On 24 March 2014 submissions opened for the Review of Mental Health Services and Programs. The Society has consulted nationally, and welcomes the opportunity to make this contribution.

## **1. Executive summary**

The Society is strongly against this change to our racial discrimination legislation. The current test is appropriate, reflecting the terrible damage that verbal assault based on race can have, as it occurs against a vast history and entrenched systems of racial oppression.

The new test is far too weak, and its exceptions far too broad. It is hard to see what will in fact be captured by it.

The new test privileges the freedom to abuse over the right to live in freedom from racial abuse. It also sends a dangerously regressive signal regarding the devaluing of multiculturalism, respect and diversity at a time when both the First Peoples and the most recently arrived asylum seekers face structural and historical injustice. This is unacceptable.

## **2. The Bill**

The Bill seeks to repeal s18C of the *Racial Discrimination Act 1975* (Cth), which currently makes it unlawful to engage in a public act that offends, insults, humiliates, or intimidates another person or groups of people because of the race, colour, or national or ethnic origin of the person or people.

The Bill seeks to replace this with a new unlawful public act, which is to vilify (incite hatred) or intimidate (cause fear of physical harm) a person on the basis of their racial attribute.

The amendment also specifies that whether an act is reasonably likely to have the effect is to be determined by the standards of an ordinary reasonable member of the Australian community, not by the standards of any particular group within the Australian community.

The proposed section also does not apply to communications occurring in the course of participating in the public discussion of any political, social, cultural, religious, artistic, academic or scientific matter.

### **3. The Society, Racial Identity, and Disadvantage**

The Society does much work around race and disadvantage. We work particularly with recent arrivals to Australia, for example asylum seekers, refugees, and migrants. Around the country, a large number of our local conferences (branches) are heavily engaged in providing material support to people who are new to Australia. Sometimes this is with the help of government-funded programs, but for much of our work with these groups it is with donated goods, money, and time. We also run language classes and after-school homework centres.

We are vocal advocates in solidarity with the First Peoples of Australia, as well as for the most recent arrivals. We have strongly supported the push for Indigenous recognition in the Constitution,<sup>1</sup> and have lobbied for freedom from detention, and for work, education, and housing rights for asylum seekers.

People who are subjected to racial discrimination also experience poverty, housing deprivation, and barriers to economic participation in greater proportions.

The most recent Scanlon Foundation Survey found that racial discrimination is increasing in Australia: 19% of us have experienced discrimination because of our skin colour, ethnic origin, or religion.<sup>2</sup> For example, 45% of Australians born in Malaysia have experienced this discrimination.<sup>3</sup>

### **4. Issues raised by the amendment**

#### **The Right to Abuse Others vs The Right Not to be Abused by Others**

It is uncontroversial that human rights coincide and intersect. No right is absolute, and the content of all rights is contingent on time, place, and context.

It is against that background of rights discourse that we are weighing one person's freedom to act how they want (and say what they want) against another person's freedom to go about life without being abused by others in the community. It is a question that the law has always grappled with. Environmental and employment law shows us that large companies' freedom to pollute and exploit workers must be limited at the point where it causes a certain level of suffering to others. Criminal law recognises that the freedom to swing one's arms

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<sup>1</sup>[http://www.vinnies.org.au/page/Publications/National/Submissions/Miscellaneous\\_Submissions/Submission\\_to\\_the\\_Inquiry\\_into\\_Aboriginal\\_and\\_Torres\\_Strait\\_Islander\\_Peoples\\_Recognition\\_Bill\\_2012/](http://www.vinnies.org.au/page/Publications/National/Submissions/Miscellaneous_Submissions/Submission_to_the_Inquiry_into_Aboriginal_and_Torres_Strait_Islander_Peoples_Recognition_Bill_2012/)

<sup>2</sup>[http://www.scanlonfoundation.org.au/docs/2013\\_SocC\\_report\\_final.pdf](http://www.scanlonfoundation.org.au/docs/2013_SocC_report_final.pdf) page 2.

<sup>3</sup>[http://www.scanlonfoundation.org.au/docs/2013\\_SocC\\_report\\_final.pdf](http://www.scanlonfoundation.org.au/docs/2013_SocC_report_final.pdf) page 2.

ends at the point where one's fists come into contact with someone else. The law of negligence (for example assault and defamation) reflects an understanding that one's words and actions can have a damaging impact on others, and that this damage can be quantified by a financial cost.

## **Where to draw the line**

The right to express oneself is not absolute. The question, then, is where the line is to be drawn: whether it is drawn at speech that is racially offensive, or at speech that is racially vilifying.

Australia, sadly, has a long and deep history of racial discrimination and abuse – from the attempted annihilation of the First Peoples, to the Stolen Generation, to the White Australia policy that many of our generation lived through, to the Cronulla Riots, to the xenophobia of the current “debate” about asylum seekers. It is a matter of fact, as the survey referred to above demonstrates, that racially diverse people experience high levels of discrimination in their lives. Their experience of being “Australian” in Australia is often very different to anything that others could imagine – far harder, and far less secure.

It is not right that we throw the blame for the “offence” back onto the victims of abuse. It is not right that, in the question about balancing rights in the year 2014, white privilege, white prejudice, and white entitlement to abuse others should come out on top of the right that racially-diverse Australians have to feel safe, secure, and welcome in their own country.

For this reason, the Society supports the current s18C, and is strongly against clause 1 of the Bill, repealing the current s18C, and is strongly against subclauses 3(1) and 3(2), inserting the new “vilify” of “incite hatred” sections. These new tests do not go nearly far enough, and reflect a complete lack of understanding of the severe emotional damage that can be done by offending, insulting, and humiliating someone based on their race.

## **5. Problems with Other Clauses of the Bill**

### **Subclause 3(3)**

The new test is whether an act is reasonably likely to have the vilifying or intimidating effect is to be determined by the “standards of an ordinary reasonable member of the Australian community”, not by the standards of any particular group within the Australian community.

The purpose of this subsection is to add some objectivity to the test, rather than accidentally making acts unlawful where someone happens to be particularly sensitive.

However, what is unclear is the nature of the “ordinary reasonable member of the Australian community” test. On the one hand, this could be intended to encapsulate the “reasonable person” test from negligence law – in which case the person would be assumed

to be in the position of the victim, including having their racial characteristics and background.

However, it seems from the comment that “the standards are not those of any particularly group within the Australian community”, that the new test does not mean this. It seems to suggest that the “ordinary reasonable member of the community” will not be racially diverse. This hypothetical person has probably never experienced vilification, let alone a lifetime of subtle and insidious discrimination. This “ordinary reasonable member of the community” will have no understanding of how oppressive and restrictive it is to live with the constant fear of racism and discrimination, not having experienced workplace discrimination, had abusive names screamed at them in the street, nor had people reacting to their skin colour on a daily basis. When asked, “does this incite hatred?” they will have little understanding of the vast systems of slavery, colonialism, and white oppression that have led to the speech act. They will most likely see it in isolation, as a stupid thing someone said, rather than as part of a far broader picture of denigration and “othering” that we all participate in on a daily basis. This “ordinary reasonable member of the community” may think that saying “we should have left you on that boat to drown”, or “it’s not my fault your type of people breed too much – go back to where you came from” is a stupid thing to say, and quite rude. But unless they have heard these sorts of comments, and read them in the press, and on social media, every day for the last 20 years, they may not understand how deeply vilifying, stigmatising, and destructive they are.

We would endorse reframing this so that that the test is “a reasonable member of the Australian community in the position of the victim”. This is the normal test for tortious behaviour. It seems highly inappropriate to remove all of the victim’s personal characteristics from the consideration of whether or not they have been abused on the basis of those characteristics.

### **Subclause3(4)**

The proposed “public debate” exception is that all racist speech is allowed if “participating in the public discussion of any political, social, cultural, religious, artistic, academic or scientific matter.”

This would appear to rule out a large chunk of potential unlawful behaviour that we believe ought to be covered. While the intention may have been to protect the public debate that is essential to a robust democracy, it is hard to see why vilification and incitement to violence must be an essential part of that debate that needs to be protected. Physical assault does not become acceptable as part of a political discussion, although that too is a form of expression. Why should verbal assault be acceptable? It is perfectly possible to have a robust and vibrant democracy and exchange of ideas without racially vilifying people. We see no need for this particular exception.

For example, racial vilification occurring at a political rally would not, under this exception, be unlawful, and neither would incitement to violence against asylum seekers if it is written about in a pamphlet that deals with the politics of refugees. Similarly, one might argue that speech is “in the public discussion of a social/cultural matter” if one tosses out a racial slur at a football match during the discussion of a contentious point. Will groups be able to incite hatred and violence against racially minorities if they affiliate themselves with a religious movement?

## **6. Conclusion**

The question of this Bill is a fundamental one, involving clashes of rights, race, and power. We all have a right to be free in our communities – to express ourselves, and to live our lives as we please. However, these rights must be limited when they start to impinge on other people’s rights of enjoyment of their own lives.

The current Bill is a backwards step in this regard. It swings the balance towards people’s ability to hurt other people, and away from the rights of the most vulnerable to live meaningful lives. It will not promote more political debate and discussion, but rather further silence those whose voice is already denied.

This Bill moves us further away from our goal of building a just, compassionate, inclusive, and diverse society that treats those who experience disadvantage and discrimination with respect and seeks to address the causes of the inequality they experience.

We oppose this Bill.

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