

Darebin City Council

Submission Regarding the Amendments

of the Racial Discrimination Act 1975



1. Introduction

This is a submission from the Darebin City Council (DCC) to the Attorney-General's exposure draft to the Racial Discrimination Act 1975 (RDA). DCC is well placed to provide this response due to the municipality's rich cultural, religious and linguistic heritage stemming from the traditional owners of the land, the Wurundjeri people, other Aboriginal and Torres Strait Islanders, various refugee and migrant communities and Australian-born residents that have all made Darebin their home. The Darebin municipality is a culturally and religiously diverse community with 34% of residents born overseas, 39% of Darebin households speaking two or more languages, the second largest population of Indigenous people in metropolitan Melbourne and significant religious diversity (Darebin 2013 p.7-9).

As a result of Darebin's cultural diversity, Darebin City Council has undertaken significant work in the area of social cohesion and anti-racism, which is demonstrated in key documents that guide our work including the 2012-2015 Equity and Inclusion Policy and the 2014-2017 Community Health and Wellbeing Plan. The Equity and Inclusion Policy notably recognises that our Aboriginal and Torres Strait Islander and culturally and linguistically diverse residents are particularly at risk of exclusion because of racism and race-based discrimination and that this is an issue Council should contribute to addressing. The Health and Wellbeing Plan highlights the well-documented direct and indirect effects that racism has on the health and wellbeing of people and communities and therefore seeks to "Promote freedom from discrimination and violence as a basis for emotional and social wellbeing".

Furthermore, Council recognises the universality of human rights. Council affirms the inherent rights of all people to be treated with respect and dignity, and recognises their equal worth and value and their right to live free from discrimination.

Significantly, DCC undertook a Racism Inquiry in 2012 that led to the 2012-2015 Anti-Racism Strategy, which guides local initiatives to address racism at interpersonal, organisational and systemic levels in the community. Through the Anti-Racism Strategy, DCC has made a firm commitment to work towards a "racism-free Darebin". DCC is also an official supporter of the national "*Racism. It Stops With Me.*" campaign.

This experience in anti-racism work provides Darebin Council with the background, knowledge and on-the-ground experience to make an informed, evidence-based and well-founded submission to the proposed amendments to the RDA.

2. Details of the Submission

The DCC submission is based on three key arguments:

- The exposure draft does not recognise the wide ranging impacts of non-violent forms of racism on an individual’s health and wellbeing, their capacity to participate in society and subsequent impact on society in general
- The exposure draft ignores that while an individual’s freedom of speech is essential in a democratic society, it is never absolute but rather subject to a set of responsibilities
- The exposure draft leaves little, if any, room for a person to make a complaint as a result of the exemption categories and the power imbalance set by section (3)

Overall, DCC is concerned that the proposed changes give little to no protection to individuals and groups affected by racism and display a lack of understanding of the detrimental impacts racism has, not only on individuals, but across the broader community.

2.1 Recognition of Non-Violent forms of Racism

Darebin City Council is extremely concerned that the exposure draft has excluded the terms ‘offend, insult and humiliate’ and replaced them with ‘intimidate’, which refers solely to a fear of physical harm as a result of racism, and ‘vilify’, which simply refers to inciting hatred in others.

By only referring to a threat of physical harm and inciting hatred in others, the exposure draft ignores the far broader impacts of non-violent forms of racism on an individual’s health and wellbeing and the repercussions for the community at large.

2.1.1 Impacts of Racism

Considerable research has been conducted around the impacts of racism including non-violent interpersonal, organisational and systemic racism. Findings from reports such as *Mapping Social Cohesion 2013*; *The Impact of Racism on Indigenous Health in Australia and Aotearoa: Towards a Research Agenda*; *Challenging Racism: The Anti-Racism Research Project*; and *The Business Case for Racial Equity* demonstrate the detrimental impacts racism can have on an individual’s mental and physical health, the repercussions for businesses and local and national economies and the consequences for social cohesion.

Furthermore, the 2012 Darebin Racism Inquiry found that non-violent forms of racism, such as verbal abuse and misinformation, caused individuals to feel vulnerable, disempowered, humiliated, alone, angry, sad, embarrassed and bitter towards the general community (Darebin 2012 p.73-75). One comment summarises these feelings

“Racism impacts on life... Makes life really bad, and it affects you. You ask yourself ‘did I imagine those things?’ Because nobody else believes you, as a child, a migrant child too. It is very destructive” - anonymous

The Inquiry found that racism caused depression, post-traumatic stress and self-harm (p.73-75). All of these are serious consequences that go much further than mere “hurt feelings”. Respondents stated that as a result of racism they avoided people, certain locations, public transport and community services and ceased employment and education commitments (p.79-82). Respondent stated,

“The [racist] incidents have upset and scared me. I never go walking on my own anymore” – woman, Lebanese background

This clearly shows how racism encroaches on a number of rights, for example, people’s right to freedom of movement or their right to security of the person. These are rights recognised in Victoria through the Charter of Human Rights and Responsibilities, but also, fundamentally, at the international level through the Universal Declaration on Human Rights and through the International Covenant on Civil and Political Rights, which Australia has ratified.

Furthermore, respondents reported feeling a loss of trust in others and their community and became alienated and marginalised (p.73-5).

“I feel like a perpetual foreigner – where do I belong?” – man, middle eastern background

“All I want is to be safe. In Australia, we’re safe and we’re very grateful for that. But experiencing racism here gets us back to our old painful experiences [in the countries we fled]” – man, Syrian background

Such findings demonstrate how non-violent forms of racism can severely impact on an individual’s health and wellbeing and their willingness and preparedness to participate in their local community, ultimately having a detrimental impact on all in our community.

Moreover, the definition of ‘vilify’ used in the exposure draft to incite hatred in others, rather than to degrade or denigrate a particular individual or group, disregards and trivialises the detrimental impacts that racism has on an individual and community.

2.1.2 Reporting Difficulties

The lack of recognition of non-violent racism in the exposure draft further restricts an individual’s options when reporting racism to authorities. Considering the current difficulties and limitations facing individuals and communities when reporting racism to authorities, this is extremely worrying.

The Darebin Racism Inquiry found that nearly half of respondents did not take any action following a racist incident and only 10% of respondents reported their experience to authorities (Darebin 2012 p.84). Reasons for this were dominated by their perception that nothing could or would be done.

Reporting racism and receiving reparation as a result is very important in providing individuals and groups with a sense of empowerment over the act and reassures them that racist behaviour is not tolerated by the broader society. Yet, the changes within the exposure draft will create an environment where racism is protected and effective in building exclusion, thus threatening community cohesion.

2.1.3 Responsibilities attached to Freedom of Speech

Darebin City Council is opposed to the repeal of Section 18D in the RDA where the terms ‘reasonably and in good faith’, ‘a matter of public interest’ and ‘a fair comment’ allow for freedom of speech with good intentions and the public interest in mind. DCC is concerned that the inclusion of Sections Three and Four in the exposure draft ignores the responsibility that are also required from having the right of freedom of speech.

DCC recognises that with civil rights also come civil responsibilities. Citizens have a right to freedom of speech but with that right, they also have responsibilities to act with good intentions and in the public interest. Evidently, individuals may not always act within the public interest or with good intentions. However, it is the role of government and the legislative system to provide leadership and encourage healthy and constructive public debate regarding cultural differences and matters.

The Victorian Charter of Human Rights and Responsibilities, which DCC must uphold and promote in its everyday operations, explicitly acknowledges that freedom of expression has special duties and responsibilities attached. Accordingly, the right can be subjected to limitations in order to respect the rights and reputation of others and for the protection of the community at large. Council’s community engagement on human rights demonstrates that citizens both understand and appreciate the rationale for this balance:

“At times the freedom of some must be regulated for others to enjoy their freedom” –
Darebin resident, Male, 52, Darebin Kite Festival 2012

“Freedom is being able to make your own choices without taking someone else’s freedom” -
Darebin resident, Female 27, Koori Youth Pride 2012

Council agrees that the right to freedom of opinion must exist as an absolute right. However, the freedom to express that opinion is a right which carries with it some weighty yet critical responsibilities.

2.1.4 Restricted Grounds to make a Complaint

Darebin Council is very concerned that the inclusion of Section Four of the exposure draft restricts individuals or groups from making a claim under the RDA. The exempt categories of ‘*political, social, cultural, religious, artistic, academic or scientific matter*’ appear to cover all aspects of society or at least, could be argued that way by persuasive legal representation. It is difficult to imagine a situation in which a target of racism would be protected under the act due to the broad range of exempt categories.

Additionally, DCC would like to state its opposition to Section Three of the exposure draft, which outlines that the racist act will 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*’. This implies that racism will be determined by the experiences and reasonableness of an individual from the majority group rather than from someone from the group affected by the

racism. This appears at odds with common sense considering it is difficult for one to make a judgement on the impacts of racism that they have not experienced. This aspect of the exposure draft reinforces our concern that protection for individuals and groups affected by racism is being seriously neglected.

Furthermore, Section Three leads to a power imbalance faced by minority groups when reporting racism. Not everyone is on an equal footing in relation to their capacity to respond to racial discrimination and harassment. The intention of Section 18C when introduced in 1995 was to protect the most vulnerable people in the community and those with less power to hold perpetrators accountable for their actions enabling them some redress. The proposed changes fail to recognise how one of the effects of racism is the silencing of individuals and communities affected.

3. Effectiveness of the RDA to date

The courts have consistently interpreted sections 18C and 18D as maintaining a balance between freedom of speech and freedom from racial vilification. The courts have held that for conduct to be covered by section 18C, the conduct must involve “profound and serious” effects, not “mere slights”. The courts have also found that section 18C is an appropriate measure to implement Australia’s obligations to prohibit racial hatred under the ICCPR and ICERD.

While many laws restrict freedom of speech, such as laws applying to defamation, advertising and national security, section 18C fills an important gap in legal protections for those affected by racial hatred and vilification.

During the 2012-2013 financial year, the Commission received a 59 per cent increase in complaints under section 18C. Fifty-three per cent of racial vilification complaints in 2012-13 were resolved at conciliation. Four per cent of complaints made under section 18C were terminated or declined for being trivial, misconceived or lacking in substance. And less than three per cent of racial hatred complaints proceeded to court (Human Rights Commission). Therefore Darebin City Council strongly advocates for the retention of section 18C as a clear message to Australian citizens that hate speech has no place in multicultural Australia and it ceases to be free speech when it denigrates people on the basis of their ethnicity or race and therefore

4. Conclusion

It is the belief of Darebin City Council that Section 18C, 18D and 18E of the RDA should remain and the changes proposed by the exposure draft should be discarded. The proposed changes constitute a backward step for Australia and risk damaging social cohesion and Australia’s international reputation as a successful multicultural country. Darebin Council believes protection of those affected by the severe and paralysing effects of racism should be paramount.

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6. References

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