



CHINESE COMMUNITY COUNCIL OF AUSTRALIA

(Victorian Chapter)

澳華社區議會維多利亞州分部

SUBMISSION TO

Australian Government Attorney-General's Department Proposed Amendments to the *Racial Discrimination Act 1975 (Cth)*

Chinese Community Council of Australia (Victorian Chapter)

675A High Street, Thornbury VIC 3071, Australia

P.O. Box 589, Northcote VIC 3070, Australia

Telephone (03) 9018 7336 Email cccavic@gmail.com www.cccavic.org.au

Executive Summary

This submission is made on behalf of the Chinese Community Council of Australia (Victorian Chapter) (**CCCAVic**) as representative of the Chinese Australian community residing in the State of Victoria. In considering the changes to the *Racial Discrimination Act 1975* (Cth) (**the Act**) recently proposed by the Australian Government Attorney-General's Department, our comments will address four distinct aspects:

1. Legal effectiveness of the proposed amendments in protecting vulnerable citizens against racial discrimination;
2. Societal consequences of the proposed amendments;
3. Possible economic consequences for Australia;
4. Possible consequences for Australia in respect of international diplomacy and relations.

In this respect, this submission makes four key responses in relation to the proposed amendments to the Act, namely that:

1. The proposed amendments are legally ineffective to prevent against racially discriminatory behaviour directed at those most likely to suffer from it;
2. There are likely to be adverse societal consequences having regard to cohesion and harmony between the diverse groups of various ethnicities and cultures that form Australian society;
3. There is a possibility that the impact of the proposed amendments may be economic, in a way that is not in Australia's interests;
4. It is likely that the proposed amendments, if enacted, will reduce Australia's standing with regard to its relations internationally.

The Proposed Amendments to the Act

Under the current *Freedom of Speech (Repeal of S.18C) Bill 2014*, the Act is to be amended such that the following sections are repealed:

1. If an act is done for 2 or more reasons and one of the reasons is the race, colour or national or ethnic origin of a person (whether or not it is the dominant...or a substantial reason for doing the act) then...the act is taken to be done because of the [said reason].
2. It is unlawful for a person to do an act, otherwise than in private, if:
 - a. the act is reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate another person or a group of people; and
 - b. the act is done because of the race, colour or national or ethnic origin of the other person or of some or all of the people in the group.
3. [The above] does not render unlawful anything said or done reasonably and in good faith:
 - a. in the performance, exhibition or distribution of an artistic work; or
 - b. in the course of any statement, publication, discussion or debate made or held for any genuine academic, artistic or scientific purpose or any other genuine purpose in the public interest; or
 - c. in making or publishing a fair and accurate report of any event or matter of public interest or 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.

In the place of these provisions, the following is proposed to be inserted:

1. It is unlawful for a person to do an act, otherwise than in private, if:
 - a. the act is reasonably likely to vilify another person or a group of persons or to intimidate another person or a group of persons; and
 - b. the act is done because of the race, colour or national or ethnic origin of that person or that group of persons.
2. For the purposes of this section:
 - a. vilify means to incite hatred against a person or a group of persons;
 - b. Intimidate means to cause fear of physical harm to a person or to the property of a person or to members of a group of persons.
3. Whether an act is reasonably likely to have the effect specified in sub-section (1)(a) 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.
4. This section does not apply to words, sounds, images or writing spoken, broadcast, published or otherwise communicated in the course of participating in the public discussion of any political, social, cultural, religious, artistic, academic or scientific matter.

Response

1. *Legal Effectiveness of the Proposed Changes*

The CCCAV submits that the removal of ‘offend, insult, humiliate’ from the definition of actions done for a racially discriminatory purpose has the effect of raising the threshold of the kind of racially discriminatory actions required to attract the operation of the Act. While replacement of these terms may have provided scope for a similar level of protection for those who suffer from racial discrimination, the CCCAV submits that requiring a person to be ‘vilified’ is a higher bar than requiring someone to be offended, insulted or humiliated. As such, the CCCAV has grave concerns that the new definition in the proposed section 18C(1) will provide less protection to those likely to suffer from racial discrimination by raising the bar of what is considered discriminatory.

The CCCAV also submits that it is unclear when an act is done because of the race, colour, national or ethnic origin of a person under the proposed amendments. In this respect, the CCCAV submits that the bar for racial discriminatory action to attract operation of the Act will be raised from requiring the racial discriminatory purpose to be a purpose for an action to requiring it to be *the sole* or *dominant* purpose for an action. Again, the CCCAV has concerns that this will provide less protection to those likely to suffer from racial discrimination.

The proposed changes, through the proposed section 18C(3), have attempted to make assessment of whether someone has suffered racial discrimination an objective test. However, the CCCAV submits that determination of vilification and intimidation by the standards of an ordinary reasonable member of the Australian community will not include determination by members of ethnic or religious minorities. This includes even large and statistically significant communities, such as the CCCAV’s constituent Chinese Australian community, who would under the amendments be a ‘particular group’ within the Australian community. The CCCAV submits that the actual effect of this section is therefore that those who suffer or who have suffered from racial discrimination are never going to be able to determine when someone is vilified or intimidated by such action, meaning that only people that have never been vilified before will be somehow determining whether someone is racially vilified or not.

Lastly, the proposed amendments by the title of the Bill and its accompanying media release purport to protect freedom of speech. However, the CCCAV submits that it is unclear how freedom of speech is enhanced by the amendments, particularly when protections for free speech contained within the proposed section 18C(4) are largely the same as those contained within the current section 18D.

In summary, the CCCAV submits that the proposed amendments reduce the protections available to those likely to suffer from racial discrimination, while doing little to enhance freedom of speech in Australia. As such, the CCCAV submits that the proposed changes are legally

ineffective to achieve their desired purpose, while also removing legal protections currently enjoyed by Australian citizens from ethnically and religiously diverse backgrounds.

2. *Adverse Societal Consequences within Australia*

In light of the above, the CCCAV submits that the proposed amendments to the Act, which purport to protect free speech at the expense of protecting the vulnerable in society is unbalanced and fails to get the priorities correct for social harmony in Australia. In particular, the CCCAV submits that policies that support diversity, equality of all peoples and democracy have become civic values that shape the Australian identity, and that these values would be immeasurably eroded by the proposed amendments.

Furthermore, the CCCAV has grave concerns that the media accompanying the release of the changes, particularly comments to the effect that everyone explicitly has the 'right to be a bigot' send the wrong message to society and promote disharmony. The CCCAV submits that allowing episodes of racism and bigotry to prevail in the name of freedom of speech is not justified in this instance given that the payoff in terms of protection of free speech is not apparent for reasons as previously stated.

The CCCAV notes that in the 1990s, under the protection of the Act as it currently stands, Pauline Hanson was still able to incite such socio-political uproar and discord with her policies against asylum seekers, the indigenous community and Asian migration. The CCCAV has grave concerns for the stability and tolerance of society with the advent of a law giving an implicit green card to bigotry and racism in our mass media. As such, the CCCAV opposes the proposed amendments on the grounds of its ability to lead to societal disharmony.

3. *Possible Adverse Economic Consequences*

CCCAV submits that a tolerance or perceived tolerance for racism and bigotry, as has occurred within the Chinese Australian community in the advent of the proposed amendments, has adverse economic effects for the Australian economy. This is particularly so given the high volume of Australian trade with Asian countries whose citizens, many of whom function as trade 'bridges' to Australia, are ethnically and religiously diverse.

There are currently 150,000 students from China in Australia, each spending \$30,000, which amounts to 4.5 billion and countless number of jobs. Foreign investment, tourism, business and skilled migration, export of goods and services from Asia constitute a high figure in dollar terms and is fundamental to the Australian economy. According to Tourism Research Australia, Chinese visitors alone injected 3.1 billion to the country's economy in 2010. Export of goods and services from countries whose citizens would be considered ethnically and religiously diverse, according to the Department of Foreign Affairs and Trade, accounted for 83 % of our ten largest

trade partners, China was Australia's number one trading partner, with a trade value of \$AU 78.7 billion.

120,913 Indian students were enrolled in Australian universities in 2009, the second largest ethnic group in the education market, only after China. Following a series of racist assaults and violent incidents in 2009 and 2010, the numbers dropped by 46%. Each overseas student spends \$30,000 per year on the average, so this resulted in a loss of 1.7 billion dollars of revenue and thousands of jobs. In 2010, Federation of Indian Students in Australia (FISA) submitted that race attacks were one of the major reasons behind the exodus.

The CCCAV has grave concerns that the proposed amendments to the Act may indicate to foreign investors and potential citizens that 'freedom of speech' in Australia far outweighs our concern for 'racial equality', particularly as it relates to Australia's treatment of foreign money. If there is any doubt that there is a negative correlation between a perception of racism and foreign spending in Australia, the CCCAV notes the 1 July 1998 article in *The Australian* entitled "Fear keeps Asian Tourists away." The CCCAV questions whether potential loss to our economy, our jobs, our standard of living and our sense of security as we know it today, is justifiable for the purported improvements to protection of free speech.

4. Possible Adverse Consequences for Australia's International Relations

The CCCAV submits that the proposed changes to the Act are likely to strain relations between Australia and its Asian neighbours, particularly in the ASEAN region. This is an area in which Australia already has a negative reputation in respect of its treatment of people from an Asian background. It is submitted that the increase in the reputation of our country as racist, narrow-minded and regressive as a result of the proposed amendments is likely to further impact negatively on our relationship with countries in this region.

The CCCAV further has concerns that the scaling back of protections from racial discrimination in the proposed amendments may mean that we can't fulfill our obligations under the UN *International Convention on the Elimination of all forms of Racial Discrimination* (ICERD).

Concluding Remarks

For the reasons as stated above, the CCCAV opposes the proposed changes to the Act and calls on the Government to redraft the wording of the proposed amendments for legal effectiveness, societal harmony, and in the interests of Australia's economic and international standing.