

Short guide to making a submission on proposed changes to Australia's racial vilification laws

About the consultation

On 25 March 2014, Attorney-General George Brandis released details of proposed changes to Australia's racial vilification laws. The details are set out in what is known as an "exposure draft" of the proposed legislation. The draft legislation *Freedom of Speech (Repeal of s 18C) Bill 2014* has not been introduced into the Federal Parliament but has been released publicly for consultation.

The Federal Government is seeking submissions from interested people and organisations on the proposed changes **by 30 April 2014**.

The Government has not provided a background paper on the proposed changes to assist interested people and organisations to make submissions. The Human Rights Law Centre has prepared an Information Paper to provide that background, and also to inform the community of our views about the proposed changes.

This guide is a shorter summary of information from that paper. It is focussed on giving you:

- information on how to make a submission;
- an overview of the proposed changes; and
- our views on the proposed changes.

Who should make a submission?

We encourage interested people and organisations to give your feedback to the Federal Government about these proposed changes.

You do not need to be lawyer and you do not need to understand technical legal issues to make a submission.

We think it is particularly important for the Government to hear from people and communities affected by racial vilification. If you, your family or people your organisation works with have experienced racial vilification, we encourage you to write about those experiences in your submission.

If you are writing about someone else's experience, you should check first that they are happy for you to write about their experience or make sure they can't be identified from what you say in your submission.

What should I put in a submission?

There is no required format for a submission.

If you haven't ever made a submission before, you should just think of your submission as a letter to the Government explaining your views on the changes.

In your submission, you may want to put your views about some or all of the following issues:

- whether we need laws to protect against racial vilification in Australia;
- whether the current laws are working well;
- whether you agree with the Government's proposed changes to the laws; and
- any other views you have about how to prevent racial vilification.

As set out above, we think it's also important for the Government to hear people's experiences of racial vilification in the community.

How do I make a submission?

Submissions can be emailed to s18cconsultation@ag.gov.au or mailed to:

Human Rights Policy Branch
Attorney-General's Department
3-5 National Circuit
BARTON ACT 2600

The details of the proposed changes and basic information on the submission process is here:

<http://www.ag.gov.au/Consultation>

Make your submission public – email us a copy

We understand that the Federal Government will not be making submissions publicly available. We encourage organisations to publish their submissions on their website. We also invite individuals and organisations to email us a copy of your submission to admin@hrlc.org.au so that we can make submissions publicly available on the one website here: <http://www.hrlc.org.au/racial-vilification-protections>.

Because the Government isn't making submissions publicly available, we also encourage you to consider sending a copy of your submission to your local Member of Federal Parliament. You can find out who your local Member of Parliament is here: <http://australia.gov.au/faq/which-federal-electorate-do-i-live-in>

About the Human Rights Law Centre

The Human Rights Law Centre protects and promotes human rights in Australia and beyond through a strategic mix of legal action, advocacy, education and capacity building.

It is an independent and not-for-profit organisation.

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Summary of the proposed changes

Remove “offend”, “insult” and “humiliate”

The words “offend”, “insult” and “humiliate” would be removed from the existing racial vilification protections. This would weaken the existing protection.

Insert “vilify” and narrowly define “intimidate”

The new provision would make it unlawful to “vilify” or “intimidate” another person or a group of persons on the grounds of race.

The normal meaning of vilify is to disparage or denigrate. In the Government’s proposed changes, it would be defined narrowly to mean “incite hatred against a person or a group of persons”.

The current word intimidate would be kept but it would be given a much narrower meaning “to cause fear of physical harm” to a person, property or members of a group of persons.

Taken together, these changes would substantially wind back the scope of the existing protection.

Insert a new community standards test

Under the current law, there is an objective test as to whether conduct is unlawful. It requires an assessment of the conduct from the perspective of a hypothetical reasonable or ordinary person from the relevant racial group.

The government is proposing to change this test to require an assessment from the standards of an ordinary reasonable member of the Australian community, not from the standards of any particular racial group within the community. The concern here is that the impact of racial vilification is best assessed from the perspective of the groups who are the targets of that vilification. Depending on how it would be interpreted by the courts, the new test has the potential to narrow the scope of the protection currently offered by the law.

Insert a new, extremely broad “public discussion” exemption with no reasonable or good faith requirement

The proposed reforms would remove the existing free speech exemptions in the law. They would be replaced with a new exemption that would mean the racial vilification protections would 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.

There is no requirement that to be exempt, the public discussion must be conducted reasonably or in good faith (as required by the current exemption).

This new test is extraordinarily broad. Most public racial vilification is likely to be covered by the exemption – even if it incites racial hatred or causes racial humiliation or fear of physical harm on the grounds of race.

Remove sections 18B and 18E

The proposed changes would remove section 18B which has the potential to make it harder to prove racial vilification when there is more than one reason for the vilification. The proposed changes would also remove section 18E. It’s difficult to predict the impact of removing this provision but it will narrow the scope of the racial vilification protections and reduce the legal obligation on employers to take steps to prevent racial vilification, for example by having proper policies and training.

Our views on the proposed changes

The HRLC strongly opposes the proposed changes.

The current racial vilification laws provide important protection against racist hate speech. The laws are being interpreted sensibly by the courts and are operating reasonably effectively. The laws generally strike an appropriate balance between the right to freedom of expression and the right to freedom from racial discrimination and vilification.

The proposed changes substantially weaken the existing racial vilification protections. Of greatest concern is the proposed exemption which is extraordinarily broad. Most public racial vilification is likely to be covered by the exemption – even if it incites racial hatred or causes racial humiliation or fear of physical harm on the grounds of race.

The exemption is so broad, and the new protection is so narrow, that the combined changes would almost completely remove the existing Federal racial vilification protections.

The radical scope of these proposed changes is confirmed by the commentary on them by the Institute of Public Affairs, which has called for complete removal of Federal racial vilification laws. The Institute welcomed the proposed changes saying they go “95% of the way towards the repeal of 18C”, they “neuter 18C” and they are a “magnificent example of how to repeal legislation without admitting you’re repealing legislation”.

Mitigating the worst of the proposed changes

We strongly believe the proposed changes should be rejected in their entirety.

If however, the Federal Government proceeds with the changes, our view is that the worst aspects of the changes should be mitigated by the following measures:

- giving the words “intimidate” and “vilify” their ordinary meaning;
- retaining “reasonableness”, “good faith” and “public interest” requirements in the exemption;
- ensuring the community standards test requires some consideration of the impact on the relevant racial group affected by the conduct; and
- retaining sections 18B and 18E.

Our more detailed Information Paper has some additional comments on how the laws might be improved.

This guide was prepared on 11 April 2014.