



LEGISLATIVE COUNCIL

STANDING COMMITTEE ON LAW AND JUSTICE

MEDIA RELEASE

RACIAL VILIFICATION REPORT TABLED

FOR IMMEDIATE RELEASE

3 DECEMBER 2013

The NSW Legislative Council's Standing Committee on Law and Justice today tabled its report entitled *Racial vilification law in New South Wales*.

Committee Chair, the Hon David Clarke MLC said "It is our view that the effectiveness of section 20D of the *Anti-Discrimination Act 1977* (NSW), which sets out the criminal offence for serious racial vilification, has been hindered by a number of procedural impediments."

"The Committee's recommendations have therefore primarily focused on addressing these procedural issues. In particular, we have recommended that issues with timeframes for lodging and referring complaints be addressed, that the President of the Anti-Discrimination Board be permitted to directly refer serious racial vilification complaints to the NSW Police Force, and that the NSW Police Force be authorised to prepare a brief of evidence for the Director of Public Prosecutions, following the referral of a serious racial vilification complaint", commented Mr Clarke.

"While there were a number of issues relating to the substance of s 20D raised during the Inquiry, we have made a few recommendations on these issues as we wish to see the effect of our procedural recommendations first. In order to assess this we have proposed that there be another review of the effectiveness of s 20D, to be conducted as soon as possible after five years from the implementation of any amendments to s 20D that have been recommended in our report."

Mr Clarke said: "The Committee would like to thank all participants in this Inquiry who made submissions, shared their experiences with us and provided expert advice". He added: "I would also like to thank my fellow committee members for their unanimous approach to this important report."

A copy of the Committee's recommendations are attached. The full report is available on the Committee's website: www.parliament.nsw.gov.au/lawandjustice.

-ENDS-

*For further comment please contact the Hon David Clarke MLC, Committee Chair, on
9230 2260 or 0419 247 661*

Summary of recommendations

Recommendation 1

That the NSW Government consider amending section 20B of the *Anti-Discrimination Act 1977* to ensure that it covers communications that occur in quasi-public places, such as the lobby of a strata or company title apartment block.

Recommendation 2

That the NSW Government consider amending section 20B of the *Anti-Discrimination Act 1977* to insert an exception for private conduct, as per section 12 of the *Racial and Religious Tolerance Act 2001* (Vic).

Recommendation 3

That, for avoidance of doubt, the NSW Government amend section 20D of the *Anti-Discrimination Act 1977* to state that recklessness is sufficient to establish intention to incite.

Recommendation 4

That the NSW Government amend Division 3A of the *Anti-Discrimination Act 1977* to include persons of a presumed or imputed race.

Recommendation 5

That the NSW Attorney General refer the same or similar terms of reference to the Standing Committee on Law and Justice as soon as possible after the period of five years of any amendments to Division 3A of the *Anti-Discrimination Act 1977*.

Recommendation 6

That the NSW Government review the adequacy of the maximum penalty units in section 20D of the *Anti-Discrimination Act 1977*, taking into account the maximum penalty units for comparable offences within the *Crimes Act 1900* and other Australian jurisdictions.

Recommendation 7

That the NSW Government repeal the requirement for the Attorney General's consent to prosecutions of serious racial vilification in section 20D(2) of the *Anti-Discrimination Act 1977*.

Recommendation 8

That the NSW Government amend the standing for the lodgement of complaints provision in section 88 of the *Anti-Discrimination Act 1977* to include persons of a presumed or imputed race.

Recommendation 9

That, for the purposes of racial vilification proceedings only, the NSW Government extend the time limit for commencing prosecutions under section 179 of the *Criminal Procedure Act 1986* to 12 months to be consistent with the time limit for lodging complaints under section 89B of the *Anti-Discrimination Act 1977*.

Recommendation 10

That, if Recommendation 7 is not implemented, the NSW Government extend the timeframe for the President of the Anti-Discrimination Board to refer complaints to the Attorney General under section 91(3) of the *Anti-Discrimination Act 1977*.

Recommendation 11

That the NSW Government amend section 91 of the *Anti-Discrimination Act 1977* to allow the President of the Anti-Discrimination Board of NSW to directly refer serious racial vilification complaints to the NSW Police Force.

Recommendation 12

That the NSW Government amend the *Anti-Discrimination Act 1977* to allow the NSW Police Force to prepare a brief of evidence for the Director of Public Prosecutions, following the referral of a serious racial vilification complaint.

Recommendation 13

That, if Recommendation 7 is implemented, the NSW Government remove the requirement for the President of the Anti-Discrimination Board of NSW to refer serious racial vilification complaints to the Attorney General under section 91(2) of the *Anti-Discrimination Act 1977*.

Recommendation 14

That the NSW Police Force provide training to its members about the offence of serious racial vilification in section 20D of the *Anti-Discrimination Act 1977*.

Recommendation 15

That the NSW Government amend section 20C of the *Anti-Discrimination Act 1977*, where appropriate, to reflect any amendments made to section 20D.
