

Submission
No 42

INQUIRY INTO RACIAL VILIFICATION LAW IN NSW

Organisation: Aboriginal Legal Centre

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ALS

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Submission to the NSW Legislative Council – Standing
Committee on Law and Justice. April 2013.

By the Aboriginal Legal Service (NSW/ACT) Limited.

Inquiry into Racial Vilification Law in NSW

The Aboriginal Legal Service (NSW/ACT) Limited (ALS) provides legal advice and representation to the Aboriginal people of NSW in the areas of criminal and family law. Due to funding restrictions, we do not provide a civil law practice. However we have established referral pathways for such matters to appropriate Legal Aid NSW offices and Community Legal Centres.

In the course of our daily legal service provision we encounter many instances of complaint from our clients of both racial discrimination and vilification. According to the Australian Bureau of Statistics data in 2008, more than one quarter of Aboriginal and Torres Strait Islander people experienced racial discrimination over the previous 12 months.

That Aboriginal and Torres Strait Islander (ATSI) people are the most severely disadvantaged group of people in Australia across a range of indicators is well accepted. ATSI people already suffer in various ways from the circumstances in which they live. It is accepted that the results upon the victims of racial vilification include physical and mental harm, so that this harm is cumulative to that experienced from other sources. The national Inquiry into racist Violence in 1991 reported an “endemic problem” relating to racist violence and racial vilification against Aboriginal people.

That there has not been one prosecution under section 20D of the Anti-Discrimination Act (NSW) (ADA) since 1989 strongly suggests that reform is needed. Accordingly the ALS proposes the following changes to the ADA in relation to racial vilification:

- 1) Provide for organisations with a special interest in the issue (such as the ALS) to lodge complaints on behalf of any aggrieved individual or group.

[reference the Second Reading Speech on 4/5/89 by Attorney-General John Dowd: “The Anti-Discrimination Board encounters many individuals who lack the confidence or ability, or who may be afraid, to approach the board to complain directly. This is particularly so in relation to the ground of race. These potential

complainants often need the assistance of their own community organizations or bodies to aid them in the complaint-making process.”; reference the National Report of the Royal Commission into Aboriginal Deaths in Custody, Volume 4, par.28.3.50:”Such legislation (Racial Vilification) should provide for an organisation, such as an Aboriginal Legal Service, with special interest in the issue to be able to lodge a complaint on behalf of any aggrieved individual or group.”]


The following proposals are an endorsement of proposals contained in the Submission to the Inquiry by Legal Aid NSW, which we have had the benefit of reading:

- 2) Widen the definition in section 20B of “public act” to include any conduct that is within the hearing of people who are in a public place;
- 3) Extend section 20D to include the serious racial vilification on the grounds of the imputed or presumed race of a person or group of persons;
- 4) Introduce an objective test into section 20D so that it covers conduct that is “reasonably likely” to threaten physical harm to persons or property, or incite others to do so;
- 5) Replace the Attorney-General in section 20D(2) with the Director of Public Prosecutions as the office-holder whose consent for the launching of a prosecution is required.

We will be able to expand upon our proposals when the opportunity to address the Standing Committee arises on Monday 8 April 2013.

We welcome this opportunity to address this important issue.

Yours faithfully,

 **John McKenzie, Chief Legal Officer. 4 April 2013.**