

**Submission
No 40**

INQUIRY INTO RACIAL VILIFICATION LAW IN NSW

Organisation: Australian Hellenic Council (NSW),

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SUBMISSION TO LEGISLATIVE COUNCIL OF NSW STANDING COMMITTEE ON LAW AND JUSTICE - INQUIRY INTO RACIAL VILIFICATION LAW IN NSW

The Executive Committee of the Australian Hellenic Council (NSW), the elected representative organisation of the Hellenic Greek community in New South Wales, presents the following Submission to the NSW Government's Inquiry into the effectiveness of the existing legislation proscribing serious racial vilification.

1. HISTORICAL OVERVIEW

In 324 BC, Alexander the Great emblazoned his intolerance for racial vilification and racism during the following oath he gave to the apex of decision-makers in the Great Empire he created:

"...I wish all of you now that the wars are coming to an end, to live happily in peace. All mortals from now on shall live like one people, united and peacefully working forwards a common prosperity. You should regard the whole world as your country- a country where the best govern-, with common laws and no racial distinctions. I do not separate people as many narrow minded others do, into Greeks and Barbarians. I'm not interested in the origin or race of citizens. I only distinguish them on the basis of their virtue. For me each good foreigner is a Greek and each bad Greek is a barbarian. If ever there appear differences among you, you must not resolve them by taking to arms; you should resolve them in peace. If need be, I shall act as your negotiator. You must not think of God as an authoritarian ruler, but you should consider him as common father, so that your conduct resembles the uniform behaviour of brothers who belong to the same family. For my part I consider all- whether they be white or black- equal, and I would like you to be not only the subjects of my common-wealth, but also participants and partners. Within my powers I shall endeavour to fulfil all my promises. You should regard the oath we have taken tonight as a symbol of love..."

THE "OATH" OF ALEXANDER THE GREAT

- SPEECH BY ALEXANDER THE GREAT AT OPIS (ASSYRIA), IN 324 BC, TO SOME 9,000 DIGNITARIES AND NOBLES OF ALL NATIONS

[Pseudo-Kallisthenes*C; Eratosthenes]

Integers that arise from the foundation of the above statement and relevant to these submissions are as follows:

- I. All citizens shall live as one group;
- II. Society will be united and peaceful working toward a common prosperity;
- III. There will be common laws;
- IV. No racial distinctions;
- V. No narrow mindedness;
- VI. No discrimination between origin or race of citizens;
- VII. A good foreigner is a Hellene;
- VIII. A bad Hellene is a barbarian;
- IX. Resolutions involving differences shall be peaceful, not brutal;
- X. The uniform behaviour demanded of citizens is that of siblings in the same family;
- XI. Black or white, there is equality;
- XII. Citizens should participate and should be partners in society;
- XIII. Society should promote love and not hatred because of differences.

In the premises, any laws that protect an individual from hatred or ridicule by another person, a group of persons or corporations on the ground of their race or creed, should be maintained. Further, the law should reflect the above notions of Alexander the Great, almost 2500 years ago and introduce a more transparent prosecution process with the introduction of much harsher penalties than currently exist.

2. THE ORIGINS OF RACISM

Defining racism is in itself a difficult task.

The Athenian ideas of autochthony are relevant to this debate. This is a useful starting point in highlighting Athens' unguarded openness to foreign goods and ideas, thereby dismissing racism.

In particular, Pericles' funeral oration as represented by Thucydides, stresses Athens' lack of emphasis placed on an individual's roots, rather, as an Athenian, one's character outweighs that of appearance or cultural heritage.

'...while there exists equal justice to all and alike in their private disputes, the claim of excellence is also recognized; and when a citizen is in any way distinguished, he is preferred to the public service, not as a matter of privilege, but as the reward of merit. Neither is poverty an obstacle, but a man may benefit his country whatever the obscurity of his condition. There is no exclusiveness in our public life, and in our private business we are not suspicious of one another, nor angry with our neighbour if he does what he likes; we do not put on sour looks at him which, though harmless, are not pleasant. While we are thus unconstrained in our private business, a spirit of reverence pervades our public acts; we are prevented from doing wrong by respect for the authorities and for the laws, having a particular regard to those which are ordained for the protection of the injured as well as those unwritten laws which bring upon the transgressor of them the reprobation of the general sentiment...'¹

¹ Thucydides,

The laws of NSW should reflect an open society, despite cultural roots or race, and protect multiculturalism as enriching, not limiting society in Australia.

Plato's *Republic* and *Laws* and Aristotle's *Politics* provides a reflection of institutional structures which determine collective characteristic of the application of the law, going to the root of preventing racism by the enforcement of the law.²

As discussed in Benjamin Isaacs', *The Invention of Racism in Classical Antiquity* (2004), he stated: '*... It is appropriate to observe that no single definition will ever satisfy everybody, for racism is not a scientific theory or concept, but a complex of ideas, attitudes, and forms of behaviour which are themselves by definition irrational.*'³

However, in light of the various obstacles associated with defining racism, Isaac provides a definition of racism as follows:

*'... [Racism is] an attitude towards individuals and groups of people which posits a direct and linear connection between physical and mental qualities. It therefore attributes to those individuals and groups of peoples collective traits, physical, mental, and moral, which are constant and unalterable by human will, because they are caused by hereditary factors or external influences such as climate or geography...'*⁴

The critical issue is that; institutions are malleable and susceptible to historical change. Ancient ideas surrounding political, social and cultural institutions as common denominators in the development of collective characteristics pose a direct challenge to the understanding of racism, as these factors are consistently evolving and adapting according to the current social, cultural and political ideologies at any given time.

As citizens of NSW, we are Australian citizens and are entitled to the Australian notion of 'a fair go'.

There is no place in NSW for racism to exist.

If racism is ventilated by a person, or through the media, or by 'the slip of the tongue' of a radio announcer, then that individual and corporation should be prosecuted by the justice system of NSW and harsh penalties, including public exposure that their conduct is not tolerated at any level, should be administered.

3. THE ANTI-DISCRIMINATION ACT AND ITS EFFECT

Over the last 30 years, the Commonwealth Government and State and Territory Governments of Australia have implemented numerous anti-discrimination laws in order to protect people from encountering discrimination in all facets of life. In particular, in New South Wales (NSW), the *Anti-Discrimination Act 1977* (NSW) ("the ADA"), outlines the areas in which racial discrimination and racial vilification are considered unlawful.

As evidenced in Section 20C, 'Racial vilification unlawful' states:

² Isaac, Benjamin, *The Invention of Racism in Classical Antiquity*, (2004), Princeton, Princeton University Press Pg 22.

³ Isaac (2004), Pg 22.

⁴ Isaac, (2004), Pg 23.

'(1) It is unlawful for a person, by a public act, to incite hatred towards, serious contempt for, or severe ridicule of, a person or group of persons on the ground of the race of the person or members of the group.

(2) Nothing in this section renders unlawful:

(a) a fair report of a public act referred to in subsection (1), or

(b) a communication or the distribution or dissemination of any matter on an occasion that would be subject to a defence of absolute privilege (whether under the Defamation Act 2005 or otherwise) in proceedings for defamation, or

(c) a public act, done reasonably and in good faith, for academic, artistic, scientific or research purposes or for other purposes in the public interest, including discussion or debate about and expositions of any act or matter.⁵

In light of this, for a conviction to be categorised under Section 20C, there are various elements that must be present in order to satisfy the notion of beyond reasonable doubt under the criminal burden of proof.

The act must be:

- (1) A public act;
- (2) Which incites;
- (3) Hatred towards, serious contempt for, or severe ridicule of a person or group of persons;
- (4) On the grounds of race;
- (5) The means relevant that include:
 - (a) Threatening physical harm towards, or towards any property of, the person or groups of persons, or;
 - (b) Inciting others to threaten physical harm towards, or towards any property of, the person or group of persons.

Without satisfying every one of these elements, a conviction cannot be made.

Further, section 20D of the ADA 'offences of serious racial vilification' states:

(1) A person shall not, by a public act, incite hatred towards, serious contempt for, or severe ridicule of, a person or group of persons on the ground of the race of the person or members of the group by means which include:

(a) threatening physical harm towards, or towards any property of, the person or group of persons, or

(b) inciting others to threaten physical harm towards, or towards any property of, the person or group of persons.

Maximum penalty:

In the case of an individual-50 penalty units or imprisonment for 6 months, or both.

In the case of a corporation-100 penalty units.

(2) A person shall not be prosecuted for an offence under this section unless the Attorney General has consented to the prosecution.⁶

20B Definition of “public act”

In this Division, “public act” includes:

(a) any form of communication to the public, including speaking, writing, printing, displaying notices, broadcasting, telecasting, screening and playing of tapes or other recorded material, and

(b) any conduct (not being a form of communication referred to in paragraph (a)) observable by the public, including actions and gestures and the wearing or display of clothing, signs, flags, emblems and insignia, and

(c) the distribution or dissemination of any matter to the public with knowledge that the matter promotes or expresses hatred towards, serious contempt for, or severe ridicule of, a person or group of persons on the ground of the race of the person or members of the group.⁷

4. THE ATTORNEY GENERAL OF NSW- THE CONSENT TO PROSECUTE

Currently, a person cannot be prosecuted for an offence under Section 20D of the Act unless the Attorney-General of NSW Consents to the prosecution.

The above requirement should be removed from the Act.

Recommendations 1 & 3 below will compensate for the removal of the Attorney General’s consent to prosecute as an independent informant will investigate and prosecute the offences under the Act.

5. RECOMMENDATIONS

The recommendations advocated by the Australian Hellenic Council are set out more fully below.

Recommendation 1- either the NSW Police Force or a division set up under WorkCover should investigate and prosecute breaches of the Act (both bodies have investigative and prosecutorial divisions within their departments).

Recommendation 2- Consent by the Attorney General should be removed as a pre-requisite to prosecute offenders under the Act.

Recommendation 3- By establishing an informant (either NSW Police or WorkCover Inspectors) to make the decision to investigate and prosecute any breaches of the Act as independent in accordance with the law and transparent (moieties should

exist where the payment of fines are then distributed between the state and the prosecutorial arm under the Act).

Recommendation 4- The development of an educational programme in years 5 & 6 for all schools as part of the curriculum, teaching children for 5 hours per year the principles against racism and the operation of the Act.

Recommendation 5- The penalties for all serious vilification offences should be amended to include the following.

- I. In the case of an individual 500 penalty units or imprisonment for 5 years or both
- II. In the case of a corporation 2000 penalty units for the corporation and 500 penalty units of imprisonment for 2 years for any director or directors knowingly involved in the breach (similar to corporations laws prosecutions for directors personal liability or both).

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