Submission No 43

INQUIRY INTO RACIAL VILIFICATION LAW IN NSW

Name: Name suppressed

Date Received: 9 April 2013

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Dear Committee,

I would like to raise one issue regarding your inquiry into s 20D of the *Anti-Discrimination Act 1977.*

Issue
If the offence under s 20D of the *Anti-Discrimination Act 1977* or an equivalent were to become like any other summary or Table 1 or 2 criminal offence, i.e. investigated and summarily prosecuted by police, I am concerned that the most immediate and overwhelming, yet unintended, result of those reforms will be to prosecute Aboriginal people rather than to protect them.

Reasons for concern
It is frequently alleged by police in "Facts Sheets" before Local Courts, that Aboriginal people use racial taunts against each other and against the police and usually in a public place. The allegations are often of racial taunts accompanied by threats of violence.

It is not uncommon for Aboriginal people to use racial taunts against each other. It is commonly alleged by police that Aboriginal people use racial taunts accompanied by threats towards the police. No doubt this is fuelled by what many Aboriginal people see as racism towards them at the hands of usually white police.

Given the elements of the offence under s 20D of the *Anti-Discrimination Act 1977* and the frequent allegations of racial taunts accompanied by threats of violence that we see in cases involving Aboriginal people, it is difficult to see why the police will not start adding a racial vilification offence as a stand alone charge or back-up charge to common assault, affray, intimidation and/or assault/resist/intimidate police charges.

All reforms must consider the possible reach of those reforms and where possible any likely unintended consequence of the reform. I firmly believe an offence of racial vilification, if its an offence the police can charge will become the new affray charge. The offence of affray is a good example of the unintended consequence of Parliament creating a specific offence to deal with specific situations just to have it high jacked by police who frequently charge it in situation where, looking at the second reading speech, it was never intended to cover.

Is s 20D of the *Anti-Discrimination Act 1977* intended to be used to prosecute an intoxicated Aboriginal man arguing with police at 2am in a backstreet of Brewarrina? While the answer is no, that will not afford him a defence if the elements of the offence are made out.

Clearly it is not the Parliament's intention to have s 20D of the *Anti-Discrimination Act 1977* or its equivalent used overwhelming to further prosecute an already over prosecuted and oppressed racial minority.

A further problem with police investigating and prosecuting a racial vilification offence is that many Aboriginal people who are the victims of racial vilification would be reluctant to go to the police for help given the long standing and cultural distrust that many Aboriginal people have for the police. Further to this point, it is common for Aboriginal people to allege that it was a police officer who vilified them.

My recommendations

- Any new provision should retain the need for consent by the Director of Public Prosecutions
- The Anti-Discrimination Board should remain the sole body responsible for investigating possible breaches of s 20D of the *Anti-Discrimination Act* 1977 or any new equivalent.

Criminal Lawyer