

INQUIRY INTO RACIAL VILIFICATION LAW IN NSW

Organisation: Chinese Australian Forum of NSW
Date received: 8/03/2013

Chinese Australian Forum

PO Box 876 Turramurra, NSW 2074

ABN 51 130 412 996 www.caf.org.au



8 March 2013

The Hon David Clarke MLC
Chair of Standing Committee
Inquiry into Racial Vilification Law in NSW

The Chinese Australian Forum of NSW ("CAF") welcomes the Parliamentary inquiry into NSW Racial Vilification law and the effectiveness of section 20D of the NSW Anti-Discrimination Act 1997.

CAF is the most highly regarded Chinese community group in Sydney that advocates on issues of public policy affecting Chinese Australians, including racial discrimination and racial vilification.

CAF has reason to be concerned by the overall ineffectiveness of the NSW Anti Discrimination Act 1997.

In April 2012, CAF ran a case past the Australian Human Rights Commission (AHRC) involving Sydney 2SM radio host John Laws. The case sadly came to nothing for reason that the Commonwealth Racial Discrimination Act 1975 (RDA 1975) lacks real power to deal effectively with such complaints.

This has enabled many radio broadcasters to continue to make racially offensive and racist comments without concern for the consequences for their victims. That the AHRC is not a court of law begs the question - what use is it absent of any power to prosecute ?

An audio/visual file of the John Laws remarks of 1 March 2011 is provided - refer audio/visual clip link: <http://www.abc.net.au/mediawatch/transcripts/s3157338.htm>)

Text of the John Laws Remarks & Offensive Racist Comments:

*"And I hate to say it, it was a woman driver, and it was **an Asian woman driver** and she was from one lane to the other, I think she was putting on lipply or mascara or something, which is a bit of a waste of time if **you're Asian because you haven't got too many eyebrows to put the mascara on...** I remember **my friend Ron Casey** ... he was **taken off the air from 2KY for a week** because he said the problem with **Asian drivers was they didn't have any peripheral vision**, and of course if you look at the **shape of the eyes of Asian people** he may well have a **fact**. I don't know that it's ever been proved, maybe we should ring an eye specialist and ask is that true."*

An audio file of the John Laws on-air comments of 13 July 2012 is attached.

CAF further questions the value of a process where individuals and associations are expected to attend costly court processes to stand up for their rights.

ZG Case 1999 – Excelsior Public School, Castle Hill

CAF had closely followed the case of an Asian parent codenamed ZG whose sons attended Excelsior Public School in or about 1999. The children of ZG had been subjected to long periods of racial harassment/bullying by classmates at Excelsior. They sought redress unsuccessfully from the school and subsequently through other avenues of the NSW legal system.

The following documents are attached for your information:

- A copy of the letter dated 26 June 2008 written by Parliamentary Secretary for Education the Hon Virginia Judge to the Hon Henry Tsang MLC in response to CAF's actions.
- A copy of CAF's letter to the then NSW Opposition Leader Barry O'Farrell dated 25 Sep 2008 concerning the continued failure of the ZG case.

It is CAF's hope that the Inquiry will lead to a strengthening of the provisions of the Anti Discrimination Act 1997 with respect to racial harassment/bullying in NSW schools.

We list below some recommendations of the Law Reform Commission NSW (Review of ADA 1975):

a) Recommendation 3 - the concept of direct discrimination should be redefined to cover conduct causing detriment or disadvantage on the ground of an irrelevant characteristic; to include a conduct, a refusal or omission to act. This should make the proof of discrimination less onerous taking it from the problematic "comparability" test to a test of "detriment". It would have led to a ruling in ZG's favour.

b) Recommendation 96: to remove s20D from the ADA and relocate the offence of serious vilification in the Crimes Act 1900 (NSW)

c) Recommendations 97-100 further elaborated upon the bringing the NSW Act closer to the WA model on racial vilification.

Conclusion:

CAF hopes this inquiry will lead to amendments to the NSW Anti Discrimination Act 1997 so as to make Racial Vilification law in NSW more effective and fairer for all NSW citizens.

Yours sincerely

Patrick Voon

President

Chinese Australian Forum