

INQUIRY INTO RACIAL VILIFICATION LAW IN NSW

Organisation: Ethnic Communities' Council of NSW

Date received: 8/03/2013



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7 March 2013

The Director
Standing Committee on Law and Justice
Parliament House
Macquarie St
Sydney NSW 2000

Inquiry into racial vilification law in NSW

The Ethnic Communities Council of NSW (ECC) congratulates the NSW Government and the Legislative Council for launching the Inquiry into racial vilification law in NSW.

The ECC is pleased to present the following submissions to the Standing Committee on Law and Justice.

Existing laws need to be made effective

The existing criminal law can be simplified to make it effective. Sec. 20D of the Anti-Discrimination Act 1977 (NSW) which was introduced in 1989 has never been effective. Despite 27 prosecutions having been recommended, none have commenced.

The crime of serious vilification is about prosecuting real criminals, not about interfering with free speech. It is about ensuring NSW is not be a place where one section of the community, whether being identified by ethnic or national origin race, religion, colour or otherwise, could be isolated and demonised leading to contempt and hatred of that entire group.

Freedom of Speech

The law already places beyond the reach of civil racial vilification provisions any public act which is 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, and any fair report of a public act.

The social need

We need to ensure that NSW does not continue to experience displays of racial hatred. Members of minority groups feel isolated from the wider community and withdraw from participation in the broader community when they are afraid because incitement to racial hatred goes unpunished. When individual incidences of incitement go undeterred, then community wide incitement and violence can follow. In March 2005, the NSW Bureau of Crime Statistics and Research released a report that concluded that racist taunts are a principal cause of violence in schools.

Economic cost

Diversity now defines the way of life in NSW and the resulting benefits need to be protected to ensure a harmonious and productive NSW.

Vilification of one section of the community reduces the productivity of the entire business sector. Vilification reduces community harmony, placing greater burdens on the State budget for social services and security. Vilification in NSW but publicised internationally detrimentally effects our tourism and trade.

Leadership from the Government with legislation indicates the aspirations of business and community for a harmonious and economically productive NSW.

The legal issue

Those who engage in violent behaviour whether or not motivated by racial hatred are liable to criminal prosecution under the existing criminal law. But those who incite the hatred, seek to create community wide hatred, seek to manipulate prejudices, fears and grievances, seek to incite violence against persons and property, are effectively beyond the reach of the criminal law.

That is because under the current law a prosecutor must prove that:

- 1) a perpetrator incites hatred towards, serious contempt for, or severe ridicule of, a person or group of persons;
- 2) a perpetrator does so on certain grounds such as race;
- 3) a perpetrator engages in threats or incitement;
- 4) the perpetrator knew that his or her communications or conduct will promote or express hatred;
- 5) there must be a direct connection between the threat or incitement and actual physical harm towards the person or property of the person or persons against whom the threat of incitement is directed.

Vilification crime should be subject to the same standards as other crimes

The DPP should have power to consider prosecution on the same ground rules as ordinarily apply for other criminal behaviour and the penalty should be the same for other crimes of incitement.

The fourth and fifth elements listed above should be replaced by a simpler provision so that harassing behaviour against an individual or group on the ground of race, including the use of words that, viewed objectively, constitute serious and substantial abuse, are no longer beyond the reach of the law.

The services of the Ethnic Communities Council of NSW are available to further assist the Joint Standing Committee with its inquiries.

Yours sincerely,

Mark Franklin
Executive Officer