

INQUIRY INTO RACIAL VILIFICATION LAW IN NSW

Organisation: The Vietnamese Community in Australia NSW Chapter
Date received: 7/03/2013



**VIETNAMESE COMMUNITY IN AUSTRALIA
NSW CHAPTER INC.**

**CỘNG ĐỒNG NGƯỜI VIỆT TỰ DO ÚC CHÂU
TIỂU BANG NSW**

Cabramatta Office
4/50 Park Road
CABRAMATTA NSW 2166
PO Box 106 Cabramatta
NSW 2166
Phone: 02 9727 5599
Fax: 02 9727 5276

www.vietnamese.org.au

ABN 21 583 509 480

Submission
By
The Vietnamese Community in Australia – NSW Chapter
To
The NSW Racial Vilification Law Inquiry

Sydney, 7 March 2013

To: The Hon. David Clarke, MLC
Chair,
Inquiry into Racial Vilification Law in NSW
Legislative Council - Standing Committee on Law and Justice
Parliament House
Sydney NSW 2000

Dear Mr. Clarke,

I have the honour to send hereunder the Submission by the Vietnamese Community in Australia – NSW Chapter (VCA/NSW) for your Committee's consideration.
If required, the VCA/NSW would be pleased to appear before the Inquiry for further discussion on this issue.

With best wishes,

Thanh Van Nguyen
President – VCA/NSW

* * *

1. The VCA/NSW presents its compliments to the Inquiry and wishes to congratulate the Government of NSW and the Legislative Council of the NSW Parliament for this initiative.
2. The VCA/NSW believes that this is an important area of the law in NSW and an inquiry into its effectiveness is timely to ensure that this relevant part of the law truly reflects current community standard and expectation, in terms of achieving an appropriate balance between the protection of free speech and the protection of an individual's freedom from racial vilification in our multicultural society.

3. Under its Terms of Reference, the Inquiry is limited to only consider Section 20D of the *Anti-Discrimination Act 1977* (The Act) which creates the offence of serious racial vilification: its effectiveness, applicable tests and possible improvement(s).
4. The VCA/NSW understands that one of the reasons to set up the Inquiry is that since its inception a decade ago, there has not been any (successful) prosecution under this Section 20D.
5. The VCA/NSW also understands that arguably in the view of relevant legal authorities, the tests required for a successful prosecution are too high. This may be the case, but it is difficult to ascertain the real barrier in the absence of a judicial consideration and decision.
6. The VCA/NSW recommends that, Section 20D be amended to give the Director of Public Prosecution full responsibility without prior consent of the Attorney-General when the DDP decides to prosecute. Section 20D (2) should be repealed to remove this political requirement.
7. In the view of the VCA/NSW, Section 20 D does not stand alone but needs to be read together with Section 20 B (definition of ‘public act’) and Section 20 C (Racial Vilification unlawful) under Division 3A Racial Vilification of the Act
8. The VCA/NSW recommends that, in reviewing the three Sections under Division 3A, the essential requirements of *mens rea* and the high standard of proof beyond reasonable doubt, be unchanged as they are amongst the strengths of criminal law in our democracy.
9. The VCA/NSW believes in public education and recommends that the outcome of the inquiry – if it is accepted for legislative amendments to Division 3A – be publicised widely to encourage victims or potential victims of racial vilification to lodge complaints.
10. Freedom of speech is a matter of particular concern and interest for the Vietnamese Australian community because of their refugee background fleeing a totalitarian communist regime. The VCA/NSW strongly supports the protection of free speech in whatever manner free speech is expressed including public demonstrations, oral and / or written denouncements which may be perceived as containing a racial element (for example, against the Vietnamese communists for their abysmal human rights record, or against the Chinese communists in relation to the East Sea / South China Sea dispute). As we understand, currently these activities do not fall within the purview of Section 20D and we strongly submit that any improvements to strengthen the law would not directly or indirectly restrict this exercise of freedom of speech.
11. We believe that in a democracy such as Australia, Australians of culturally and linguistically diverse backgrounds must be able to express their political views and comments on domestic and international issues, including the conflict in the Middle East or the disputes in South East and East Asia.
12. The VCA/NSW would like to thank the Chair and Committee Members of this Inquiry and would wish the Inquiry every success./-

[The End]