

INQUIRY INTO RACIAL VILIFICATION LAW IN NSW

Organisation: Liberal Democratic Party

Date received: 8/03/2013



Inquiry into racial vilification law in NSW

The Liberal Democrats are concerned with the terms of reference for this inquiry, in particular:

"whether section 20D establishes a realistic test for the offence of racial vilification in line with community expectations;"

The Liberal Democrats do not believe "community expectations" should be a primary factor regarding freedom of speech. At one time, suggesting interracial marriage, the abolition of slavery or the right of women to vote would have been completely out of line with "community expectations".

Our progress to a liberal democratic society has not been helped by restricting speech that the community found offensive, but by allowing it. It would be arrogant to assume that we now have a perfect society and any speech outside of "community expectations" may be legitimately suppressed.

The Liberal Democrats believe the government's main role in restricting speech is preventing "imminent lawless or violent action". The often quoted "falsely shouting fire in a crowded theatre" is one example, as are direct threats of violence, or inciting a riot. These involve a direct and identifiable victim or victims who can reasonably be expected to suffer actual harm as a direct consequence of the action. Prohibitions on child pornography are similarly justified.

However, vague statements about a group should not be criminalised as they can be broadly construed as a prior restraint on speech. Under the current act, political discussion of Islamic extremism, immigration, indigenous affairs and many aspects of foreign policy could be construed as *"threatening physical harm towards, or towards any property of, the person or group of persons"*.

In these cases all that needs to be shown is that a statement, if acted upon, would result in physical harm or loss of property to the group, arguably the case in these issues.

The act currently states: *"A person shall not be prosecuted for an offence under this section unless the Attorney General has consented to the prosecution."* One may argue that the Attorney General would never consent to prosecuting political speech. Nonetheless, our society is supposed to be governed by the rule of law, not rule of men. When laws are written in such a broad way but then only selectively enforced, they can and have historically been used to oppress minorities.

The Liberal Democrats also believe that any reasonable prosecution under the current act, such as direct threats of violence, could be pursued under criminal law. This makes section 20D of the act at best redundant, and because of its broad reach and Attorney General's discretion, a source of uncertainty to publishers regarding their legal rights.

Given that, the Liberal Democrats recommend abolishing section 20D and oppose any extensions to it.

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