



Submission to the Federal Government: VAEAI Opposition to the *Freedom of Speech (Repeal of s 18C) Bill 2014*

About VAEAI

The Victorian Aboriginal Education Association Incorporated (VAEAI) is the peak Koorie community organisation for education and training in Victoria.

VAEAI was established in 1976 by Koorie parents who wanted a say in their children's education. From that beginning VAEAI has become a Statewide organisation, representing all Koorie communities across Victoria. Our purpose is getting better education outcomes for Koorie people. VAEAI works across all sectors: from early childhood to schools and higher education/training. We provide community based advice to government and education providers. At the same time, we keep the Koorie community informed of opportunities in education. One of the major strengths of VAEAI is its local membership. VAEAI has 32 Local Aboriginal Education Consultative Groups (LAECGs) based across Victoria. LAECGs are voluntary bodies made up of a broad range of local Koorie community members. LAECGs are dedicated to improving the education opportunities of Koorie people in their local communities.

Overview

The Victorian Aboriginal Education Association Incorporated (VAEAI) welcomes the opportunity to provide input to the proposed changes to the *Racial Discrimination Act 1975* (Cth) ("the Act") released by Attorney-General George Brandis on 25 March 2014 (see Appendix 1).

VAEAI strongly believes that our federal racial vilification laws are working well and should not be changed. Protection from racism assists in providing Koorie people, and all people, with essential freedoms: freedom from intimidation, freedom from race-based attacks on self-esteem, and freedom to assert cultural identity. As noted by the Human Rights Law Centre: "the current racial vilification laws provide important protection against racist hate speech."

The laws generally strike a balance between the right to freedom of expression and the right to freedom from racial discrimination and vilification.”¹

VAEAI also believes that the Act - as it currently stands - makes an important contribution in defining what we believe is acceptable conduct in Australian society. The proposed changes to the Act not only drastically weaken protections to minority groups in Australia, they also threaten to diminish the perceived social value of freedom from racism. The proposed changes to the Act will make it lawful, in the course of public discussion, to engage in racially offensive, insulting, humiliating or intimidating conduct, whether or not this is done in good faith or in the public interest.

VAEAI’s concerns, outlined with evidence in this submission, can be summarised in two main points:

- Currently the Act strikes a fair balance for the public good: it allows for freedom of speech, where anything said or done “*reasonably and in good faith*”² is not rendered unlawful. VAEAI is concerned that without the current protections provided under the Act, public discussion that humiliates, intimidates, vilifies or otherwise offends a person or class of persons on the basis of race, nationality or ethnicity will be allowed to proliferate unchecked.
- The proposed changes can be detrimental to the self-esteem and wellbeing of Aboriginal people, which can lead to poor health and education outcomes, with lifelong impacts.

Reasonably and in good faith

Should the changes to the Act be passed there will be no onus on individuals or groups making public racist speech or racist cultural products to prove that they are acting reasonably or in good faith. VAEAI believes that this has the potential to erode the progress that has been made to date in promoting a more tolerant and culturally diverse Australian society.

Australians should be able to expect that public discussion on race, ethnicity and cultural identity is made reasonably and in good faith. This is a social standard that our federal legislation is currently aiming for. In the landmark case on racial discrimination involving the media, *Eatock v Bolt*, the Federal Court found that that two newspaper articles (collectively “the Newspaper Articles”, see Appendix 4) written by columnist Mr Andrew Bolt were in breach of Part IIA of the *Racial Discrimination Act*.

The articles in question discussed a number of well known Aboriginal Victorians, who did not look stereotypically Aboriginal, and in the course of those articles Mr Bolt questioned the motives of these individuals in asserting an Aboriginal identity. It is important to note that the questioning or debate Mr Bolt engaged in was not in itself the cause of the breach, as it would be fair and reasonable under the Act for Mr Bolt to initiate a public discussion about Aboriginal identity. Rather Mr Bolt was found to be in breach because of a number of factual errors, false characterisations, and

¹ Human Rights Law Centre (2014) *Information paper on proposed changes to Australia’s racial vilification laws*. p.2 www.hrlc.org.au

² Section 18D, *Racial Discrimination Act 1975* (Cth)

inflammatory language that had been used to support his arguments. As a result the articles were determined to not have been written reasonably and in good faith.

In the decision against Bolt, the Federal Court of Australia further contended that the current Sections 18B, 18C, 18D and 18E “find a balance between freedom of expression and freedom from racial prejudice and intolerance based on race.”³

Public discussion

“Public discussion” can refer to a variety of media and content available not only in hardcopy but increasingly online, including news articles, editorials, blogs and social media. The ever-growing number of online platforms has profoundly changed the way in which news, ideas and information can be accessed and circulated. These platforms can be used by Aboriginal people to creatively share information, which in turn can contribute towards the developing a sense of identity and pride. While the digital realm can offer these new possibilities, it can also be a new arena for the means of harassing or bullying another person or group of people based on race or ethnic identity.

The proposed amendments to the Act would make allowance for such actions to take place in public discussion virtually unchecked and without retribution. The Australian Media and Communications Authority (ACMA) regularly receives complaints from viewers having witnessed racially-based material on certain commercial television stations, talkback radio, current affairs programs and across a variety of online mediums.⁴ Addressing cyber-racism is a priority for The Australian Human Rights Commission, in recognition that cyber-racism can “profoundly affect the lives of thousands of Australians everyday”.⁵ Furthermore, cyber-racism can transcend the online environment, leading to verbal or physical harassment. Most Australians acknowledge that racial prejudice exists in Australia and that action to address this needs to be taken.⁶ Racism when not moderated effectively but allowed to perpetuate through online and print media can create an environment that normalises racist attitudes and allows for the spread of racial hate, which can impact the confidence of young Aboriginal people and their level of engagement in public life.

³ Point 14, Summary, *Eatock v Bolt (Cth)* [2011] FCA 1103. Available from: <http://www.austlii.edu.au/au/cases/cth/FCA/2011/1103.html>

⁴ Victorian Equal Opportunity and Human Rights Commission. Reporting Racism: What you say matters report. Melbourne: State of Victoria; 2013 May. [cited 2014 Apr 15]. Available from: <http://www.humanrightscommission.vic.gov.au/index.php/our-projects-a-initiatives/reporting-racism>

⁵ Australian Human Rights Commission (AU). Cyber Racism. Australian Human Rights Commission; [cited 2014 Apr 3]. Available from: <https://www.humanrights.gov.au/cyber-racism-0>

⁶ The University of Western Sydney Challenging Racism: The Anti-Racism Research Project report. Sydney: The University of Western Sydney; 2008 [cited 2014 Apr 3]. Available from: http://uws.edu.au/ssap/ssap/research/challenging_racism/findings_by_region

Impact of racism on Aboriginal people in Victoria

Aboriginal and Torres Strait Islander people continue to experience racism in varying settings at levels four times that of non-Aboriginal people.⁷ A study undertaken amongst Aboriginal young people in Melbourne aged 12-26 years found that 52.3% of those surveyed had experienced racism.⁸ In 2011, The Lowitja Institute and VicHealth surveyed 755 Aboriginal Victorians across two rural and two metropolitan regions of Victoria, finding that 97% of their participants had experienced a race-based attack in the past twelve months.⁹ Two-thirds of participants reported being told that ‘they didn’t belong in Australia, that they should “go home”, or “get out”’, highlighting social exclusion as a means of racial discrimination.¹⁰ Another study conducted by Victorian Indigenous Youth Advisory Council (VIYAC) on identity, culture and the impact of racism on young Aboriginal Victorians found that their experiences of racism impacted their emotional or social well-being and sense of identity.

“I’ve experienced racism at school by other kids and people who I thought were my friends, it is very hurtful and upsetting, but you need to stand tall against racism and try not to let it bring you down. You can’t let a person’s judgements knock you down as you know who you are at the end of the day. It can hurt and make you feel resentment. It can also be very damaging when it comes from authority as well..”¹¹

“I have experienced racism throughout my life. In high school, I faced racial taunts and students mimicking the sound of the didgeridoo. I have had students say that I get too much money from Abstudy from the government...I have had emotional trauma as an aftereffect of racism.”¹²

“I guess at times it can be pretty negative, the broader society’s expectations - and I’ve heard this said by many people. This can be a huge weight for Koorie youth to carry. If we don’t have the support around us it can play a huge impact on our

⁷ Szoke H. Racism exists in Australia – are we doing enough to address it? Queensland University of Technology, lecture given 16 February 2012. Available from:

<https://www.humanrights.gov.au/news/speeches/racism-exists-australia-are-we-doing-enough-address-it>

⁸ Priest N, Paradies Y, Stewart P, Luke J. Racism and health among urban Aboriginal young people BMC Public Health 2011 Jul [cited 2014 Apr 15]; 11 (568). Available from: <http://www.biomedcentral.com/1471-2458/11/568>

⁹ Ferdinand A, Paradies Y, Kelaher M. Mental Health Impacts of Racism Discrimination in Victorian Aboriginal Communities report. Melbourne: The Lowitja Institute; 2013 Jan. [cited 2014 Apr 15]. Available from: https://www.lowitja.org.au/sites/default/files/docs/LEAD%20Report-WEB_0.pdf. Ferdinand A, Paradies Y, Kelaher M. Mental Health Impacts of Racism Discrimination in Victorian Aboriginal Communities: Experiences of Racism survey: a summary report. Melbourne: Victorian Health Promotion Foundation; 2012 Nov [cited 2014 Apr 15]. Available from:

http://www.vichealth.vic.gov.au/~media/ResourceCentre/PublicationsandResources/Discrimination/Mental%20health%20impacts_racial%20discrim_Indigenous.ashx

¹⁰ Ferdinand A, Paradies Y, Kelaher M. Mental Health Impacts of Racism Discrimination in Victorian Aboriginal Communities report. Op Cit.

¹¹ 21 year old Yorta Yorta woman, survey participant, VIYAC and Youth Affairs Council of Victoria. Voices Telling Like It Is: Young Aboriginal Victorians on Culture, Identity and Racism report. Melbourne: VIYAC and YACVic; 2006 Nov [cited 2014 Apr 15]. Available from: <http://www.viyac.org.au/publication/file/viyacfinal%20AR.pdf>

¹² 23 year old Guntjimara woman, survey participant, ibid.

identity. If you have people thinking and telling you that you're something negative, it's hard to break free from that cycle.”¹³

Every day incivilities are the most common form of racism, occurring through racist insults, disrespectful treatment or mistrusting someone based on their ethnic heritage.¹⁴ We note that racism can include nonverbal innuendos, bullying, malicious gossip or rumours, shaming, physical violence or other verbal and nonverbal actions motivated by notions of superiority or inferiority. Racism results in the creation and perpetuation of negative stereotypes, reinforcement of social prejudice and social inequality; all of which can result in social exclusion.¹⁵ Racial targets do not necessarily need to know the perpetrator, with most cases of racism reported as having taken place in everyday life such as the workplace, catching a tram or going to the shops, with 50% of the cases taking place in educational settings.¹⁶ These more subtle forms of racism can be detrimental as it restricts people's access to resources, information and therefore gateways to reporting such cases, thus perpetuating the occurrences of racism.¹⁷

Under the proposed changes to the Act, clause 4 would allow for racism to occur in educational settings not only between peers but between staff and students, under the banner of “public discussion”. Racism has profound impacts on the self-esteem and identity of young Aboriginal children and young people. The ability for Aboriginal children and young Aboriginal people to feel proud of their cultural heritage and identify as such without fear of humiliation or ridicule has been identified in Victorian research as being the most important factor for personal development and their desire to engage with wider society.¹⁸ Culture is a defining factor of identity and how one sees themselves in relation to other groups, determining an individual's sense of belonging to the groups that they may identify themselves with and the broader community.¹⁹

“Koorie culture is an evolving lifestyle, I believe. It's everything that we do, everything that we breathe, everything that we feel, and everything that is important to us. It's how I believe we view our family, predominately. It's everything that we are.”²⁰

“Culture to me is about music, art, language, kinship, heritage, land and your connection. Being able to be a part of that and embrace it. Learning as much as

¹³ 21 year old Kurnai woman, survey participant, *ibid*.

¹⁴ The University of Western Sydney. *Op Cit*. Ferdinand A, Paradies Y, Kelaher M. Mental Health Impacts of Racism Discrimination in Victorian Aboriginal Communities: Experiences of Racism survey: a summary report. *Op Cit*.

¹⁵ <http://www.humanrightscommission.vic.gov.au/index.php/our-projects-a-initiatives/reporting-racism>

¹⁶ Ferdinand A, Paradies Y, Kelaher M. Mental Health Impacts of Racism Discrimination in Victorian Aboriginal Communities: Experiences of Racism survey: a summary report. *Op Cit*.

¹⁷ *Ibid*.

¹⁸ VIYAC and Youth Affairs Council of Victoria. *Voices Telling Like It Is: Young Aboriginal Victorians on Culture, Identity and Racism report*. Melbourne: VIYAC and YACVic; 2006 Nov [cited 2014 Apr 15]. Available from: <http://www.viyac.org.au/publication/file/viyacfinal%20AR.pdf>

¹⁹ VIYAC and Youth Affairs Council of Victoria. *Op Cit*. NSW Government, Education and Communities. *Understanding Racism*. Sydney: NSW Government, Education and Communities; 2013 [cited 2014 Apr 15]. Available from: <http://www.racismnoway.com.au/about-racism/understanding/culture-language-identity.html>

²⁰ 24 year old Yorta Yorta man, survey participant, VIYAC and Youth Affairs Council of Victoria. *Op Cit*.

possible from our Elders to ensure their knowledge is passed on and never lost. I believe it is an important part of me and who I am as a person.”²¹

“That’s [Culture] the absolute. I feel like if I lost that, it would be just devastating to me. It’s so important to me. Aboriginal culture is so important, and I often thought that if I wasn’t born Aboriginal, would I be not so passionate about it, but then I’ve realised that no, I really honestly think I would.”²²

Impact on education for Aboriginal children and young people

Education has lifelong benefits for an individual and indeed, the early years of a child’s life are the most critical for their personal development and growth into a young person. VAEAI regards education as the most important step towards achieving personal goals and a sense of self-satisfaction, purpose in life and active participation in society.²³ The Victorian Indigenous Youth Advisory Council (VIYAC) conducted a survey amongst young Aboriginal Victorians, finding that participants considered education as being essential for gaining a sense of self-satisfaction, achieving personal goals and investing in the future.

“Education is really, really important for Indigenous people. It empowers us. It gives us options.”²⁴

“Education is the most rewarding gift anyone can receive. Education has provided me with many wonderful and rewarding opportunities. Without education I cannot read the most inspirational and moving novels. Without education I cannot write to my friends and family and tell them how much they mean to me. Without education I cannot budget how much I need to save for a handbag, and without education I cannot become involved in a debate over the real issues. So, to me, education is the basis for surviving and succeeding in life... what I’ve learnt through schools has also enabled me to, I guess, be able to survive in, you know, a white Australia, that sort of culture.”²⁵

Education is crucial for the empowerment of Aboriginal children and young people in developing their own identity. Past research demonstrates that Aboriginal children and young people respond positively and are more enthusiastic in their engagement when there are supportive relationships at their school through staff and fellow peers.²⁶ Creating an environment that supports the educational achievements of Aboriginal children and young people is therefore vital for their individual success and personal identity.

²¹ 21 year old Yorta Yorta woman, survey participant, *ibid*.

²² 22 year old Murri woman, survey participant, *ibid*.

²³ VIYAC. *Voices Telling It Like It Is: Indigenous Young People on Education* report. Melbourne: VIYAC; 2011 Feb [cited 2014 Apr 15]. Available from:

http://www.viyac.org.au/publication/file/VIYAC_Research_Print_WEB.pdf

²⁴ Survey participant, *ibid*.

²⁵ Survey participant, *ibid*.

²⁶ *ibid*.

Racism in a school setting negatively impacts upon an Aboriginal child's achievements and participation in educational environments.²⁷ Racially-loaded comments or insults have been reported as a barrier to the educational achievements of Aboriginal children and young people, where the feeling of shame and embarrassment can cause them to disengage from the educational environment.²⁸ Through racism, the reinforcement of negative stereotypes can be internalised by Aboriginal children and young people, affecting their sense of self-worth and ability to feel proud of their cultural heritage, which can cause them to withdraw from engaging with mainstream society.²⁹ Internalised racism further hampers the ability of those targeted by racism to defend themselves when faced with other experiences of racism – perpetuating a cycle of disadvantage.

Bullying or harassment can occur both in the physical environments of schools and online. Research has demonstrated that 84% of those bullied online are also bullied offline.³⁰ 83% of those who bully online also bully offline. Cyberbullying can be more difficult to escape and moderate, as it can occur 24/7 and away from the school environment, at home. The establishment of Koori WebWise is reflective of the existence of these trends. It is an initiative that aims to address the prevalence of cyber racism and lateral violence.³¹ Aboriginal young people under the age of 25 make up the majority of the Aboriginal population in Victoria, and are active users of mobile phones and online media.³²

Racism can be associated with increased levels of violence within Australian schools. Violence can either be racially-motivated, or be used in retaliation to racist harassment or taunts. Since schools have a tendency to penalise physical violence more severely than verbal attacks such as bullying or name-calling, the sanctions for use of violence are greater and thus can be used in cases in which the student in question has used violence as retaliation against racial harassment. In serious cases, this can result in the student's suspension or expulsion from school.³³ The impact of racial discrimination is multidimensional, affecting the growth and personal development of Aboriginal children and young people into adulthood.

²⁷ *ibid.*

²⁸ *ibid.*

²⁹ Balvin N, Kashima Y. Hidden obstacles to racism. In Bretherton D, Balvin N, editor. *Peace Psychology in Australia*. New York. Springer; p. 197-219.

³⁰ Did You Know. *Bullying No Way*; 2013 [cited 2014 Apr 15]. Available from: <http://www.bullyingnoway.gov.au/teachers/facts/did-you-know.html>

³¹ Deadly Vibe. Sydney (AU): Deadly Vibe. Press release, *Young Koories Get WebWise*, 2013 Oct [cited 2014 Apr 15]. Available from: <http://www.deadlyvibe.com.au/2013/10/young-koories-get-webwise/>

³² Edmond F, Chenhall R, Arnold M, Lewis T, Lowish S. *Telling our Stories: Aboriginal Young People in Victoria and Digital Storytelling report*. Melbourne: The University of Melbourne; 2014 [cited 2014 Apr 15]. Available from: <http://broadband.unimelb.edu.au/publications/2014/Telling-Our-Stories.pdf>

³³ NSW Government, Education and Communities. *Understanding Racism: The extent of racism in Australian schools*. Sydney: NSW Government, Education and Communities; 2013 [cited 2014 Apr 15]. Available from: <http://www.racismnoway.com.au/about-racism/understanding/schools.html>

Impact on health outcomes

VAEI is concerned that the proposed reforms to the Act will have negative consequences for the health of Aboriginal and Torres Strait Islander peoples. Racial discrimination is an important determinant of health, there being a strong causal link between racism and poor health outcomes. Racism, whether it takes the form of beliefs, insults, prejudices, discrimination, stereotypes, and expressed through open threats or embedded into social systems and structure, contributes to poor health outcomes in adulthood. Racism can cause or contribute to unequal distribution of resources, power and opportunities. For Aboriginal children and young people, their well-being is negatively impacted by racism through emotional and behavioural difficulties, substance abuse and higher risk of suicide.³⁴ Targets of racism are strongly associated with an increase in anxiety, depression and generally poorer mental health, which are factors of the health gap between Aboriginal Australians and non-Aboriginal Australians.³⁵

Education is linked with not only greater employment options, but other social benefits including lower rates of imprisonment and a longer and healthier life through better nutrition and lower likelihood being burdened by ill-health.³⁶ Racism, and its consequent impact upon health, together, impact upon educational opportunities and the personal development and wellbeing of Aboriginal children and young people, from a young age through to adulthood.

The proposed changes ascribe greater responsibility towards civil society to regulate the nature of public debate. However, the impacts of racial discrimination on self-esteem and mental health compound the difficulty for Aboriginal children and young people to defend themselves, thereby diminishing their power, whether it be in a school setting or in another public space.

Consistency with and potential impact on broader Government policy objectives for Aboriginal and Torres Strait Islander Australians

VAEI is concerned that the proposed changes to the Racial Discrimination Act cut across the objectives of the Indigenous Advisory Council, and demonstrate inconsistent Commonwealth Government policy.

In September 2013, Prime Minister the Hon Tony Abbott MP announced that “a new engagement with Aboriginal people” would be one of the “hallmarks of the Coalition Government.”³⁷ An Indigenous Advisory Council was set up to achieve the following objectives:

³⁴ Priest N, Paradies Y, Stewart P, Luke J. Op Cit.

³⁵ Ferdinand A, Paradies Y, Kelaher M. Mental Health Impacts of Racism Discrimination in Victorian Aboriginal Communities report. Op Cit.

³⁶ Koorie Education Strategy Branch. Wannik: Education Strategy for Koorie Students. Melbourne: State of Victoria; 2008 [cited 2014 Apr 15]. Available from: <https://www.eduweb.vic.gov.au/edulibrary/public/govrel/Policy/wannik.pdf>. VIYAC. Op Cit.

³⁷ Prime Minister of Australia. Canberra (AU): Prime Minister of Australia. Press release, Establishment of the Prime Minister’s Indigenous Advisory Council, 2013 Sep [cited 2014 Apr 3]. Available from: <http://www.pm.gov.au/media/2013-09-25/establishment-prime-ministers-indigenous-advisory-council>

- a. improving school attendance and educational attainment
- b. creating lasting employment opportunities in the real economy
- c. reviewing land ownership and other drivers of economic development
- d. preserving Aboriginal and Torres Strait Islander cultures
- e. building reconciliation and creating a new partnership between black and white Australians
- f. empowering Aboriginal and Torres Strait Islander communities, including through more flexible and outcome-focused programme design and delivery
- g. building the capacity of communities, service providers and governments
- h. promoting better evaluation to inform government decision-making
- i. supporting greater shared responsibility and reducing dependence on government within Aboriginal and Torres Strait Islander communities
- j. achieving constitutional recognition of Aboriginal and Torres Strait Islander people.³⁸

VAEAI welcomes this engagement, seeing establishment of the Indigenous Advisory Council as a significant forwards step towards achieving social and economic equity for Aboriginal and Torres Strait Islander communities. However VAEAI is concerned that the proposed changes to the Act are inconsistent and incompatible with the Council's objectives, in particular the first objective, which is VAEAI's core business for our community across Victoria.

Specifically too, the proposed changes are at odds with the Prime Minister's commitment to strengthened policy and programs that he seeks to deliver by bringing all Indigenous policy and programs into the Department of Prime Minister and Cabinet.

VAEAI is concerned that the proposed changes to the Racial Discrimination Act are a dilution of Australia's commitment to a just and respectful society, and reconciliation with Aboriginal and Torres Strait Islander peoples. The impact of racism on Aboriginal children and young people can be so great that they choose to disengage from broader society. Racism is a disempowering experience that stays with a person for life: it can diminish self-esteem, cultural identity and reduce education and employment prospects, thereby significantly impinging upon the quality of a person's emotional and social life, and also their economic livelihood and contributions.

Conclusion

Given the profound negative impacts that racial discrimination can have upon individuals' lives, especially towards their health and education outcomes, VAEAI sees the proposed amendments as a threat to social and equitable advancement of Australian society, with particular implications for Aboriginal and Torres Strait Islander peoples whose position in Australia's society is beset with

³⁸ Department of the Prime Minister and Cabinet. Prime Minister's Indigenous Advisory Council. Canberra (AU): Department of the Prime Minister and Cabinet. [updated 2014 Apr 4, cited 2014 Apr 3]. Available from: http://www.dpmc.gov.au/indigenous_affairs/indigenous_advisory_council/index.cfm

multiple disadvantages in a country that does not yet formally recognise their primacy as First Peoples.

Undoing the protection that the Racial Discrimination Act currently provides for individuals against racial discrimination risks creating a society that tolerates discreet and indiscreet forms of racial hatred, and risks putting back efforts, and the gains that have been made in recent years, for reconciliation on all levels for our peoples. VAEAI values a society that seeks socially equitable opportunities and outcomes for all, and embraces progressive and sensitive acceptance of individual and cultural expression.

Appendices

Appendix 1: The proposed reforms to the *Racial Discrimination Act 1975*

As a key part of the Federal Government's freedom agenda, the Federal Government has proposed a number of amendments to the Act, with the view to creating an environment where freedom of speech is able to flourish and racial vilification and intimidation are not tolerated. The Federal Government has proposed the following amendments to Act:

- Repeal sections 18B, 18C, 18D and 18E
- Insert the following section:
 1. " It is unlawful for a person to do an act, otherwise than in private, if:
 - a. the act is reasonably likely:
 - i. to vilify another person or a group of persons; or
 - ii. to intimidate another person or a group of persons,
 - and
 - b. the act is done because of the race, colour or national or ethnic origin of that person or that group of persons.
 2. For the purposes of this section:
 - a. vilify means to incite hatred against a person or a group of persons;
 - b. intimidate means to cause fear of physical harm:
 1. to a person; or
 2. to the property of a person; or
 3. to the members of a group of persons.
 3. Whether an act is reasonably likely to have the effect specified in sub-section (1)(a) is to be determined by the standards of an ordinary reasonable member of the Australian community, not by the standards of any particular group within the Australian community.
 4. This section does not apply to words, sounds, images or writing spoken, broadcast, published or otherwise communicated in the course of participating in the public discussion of any political, social, cultural, religious, artistic, academic or scientific matter."³⁹

Appendix 2: Racial hatred as defined at a Federal level

Currently as Act stands, racial hatred is defined in Section 18C as being illegal, otherwise than in private, for a person to "offend, insult, humiliate or intimidate another person or a group of people" for reasons of "the race, colour, or national or ethnic origin of the other person or some or all of the

³⁹ Attorney-General for Australia. Canberra (AU): Attorney-General's Department. Press release, Racial Discrimination Act, 2014 Mar [cited 2014 Apr 3]. Available from: <http://www.attorneygeneral.gov.au/Mediareleases/Pages/2014/First%20Quarter/25March2014-RacialDiscriminationAct.aspx>

people in the group.”⁴⁰ For this to qualify the act must occur in a public space or within sight or hearing of people who are in a public place, through words, sounds, images and writing. This is inclusive of the Internet, since words, sounds, images and writing can be communicated through this medium.

Appendix 3: Racial hatred as defined at a State level

In Victoria, under the *Racial and Religious Tolerance Act* (2001) a person is prohibited from “engaging in certain conduct that, on the ground of race, incites hatred against, serious contempt for, revulsion or severe ridicule of a person or class of persons.”⁴¹

However as the Australian Human Rights Commission has noted it is very difficult to prove the act of inciting hatred (which is the legal definition of vilification). “It is not sufficient that the respondent’s conduct conveyed hatred or expressed serious contempt. Rather, it must be shown that the respondent’s conduct was capable, in an objective sense, of urging or arousing other people to feel hatred towards the complainant.”⁴²

Given that it is notoriously difficult to prove vilification (i.e inciting hatred in a third party/parties), the Federal laws as they currently are provide important protections for Victorians and for all Australians by encompassing the psychological harm that can be effected by acts of serious race/culture based insults, humiliations and intimidations.

Appendix 4: The Newspaper Articles

The Newspaper Articles are as follows:

- “It’s so hip to be black” was published in print, by the Herald and Weekly Times Pty Ltd (HWT), in The Herald Sun on 15 April 2009. On or about 15 and 16 April 2009, that article was also published by HWT on its website, under the title “White is the new black”.
- “White fellas in the black” was published by HWT in the Herald Sun both in print and online on 21 August 2009.⁴³

⁴⁰ Section 18C, Racial Discrimination Act 1975, Cth. [cited 2014 Apr 3]. Available from: http://www.austlii.edu.au/au/legis/cth/consol_act/rda1975202/

⁴¹ *Racial and Religious Tolerance Act 2001* (Vic) s7.

⁴² Australian Human Rights Commission (2011) *Section 9 - Protection from vilification and harassment on the basis of sexual orientation and sex and/or gender identity - Addressing sexual orientation and sex and/or gender identity discrimination: Consultation Report*. Available from: <https://www.humanrights.gov.au/publications/section-9-protection-vilification-and-harassment-basis-sexual-orientation-and-sex-and-or>

⁴³ Point 13, The Articles, *Eatock v Bolt* (Cth) [2011] FCA 1103. Available from: <http://www.austlii.edu.au/au/cases/cth/FCA/2011/1103.html>