

Submission to the Federal Government: National IECB Network’s Opposition to the *Freedom of Speech (Repeal of s 18C)* *Bill 2014*

The National IECB Network position

The National Indigenous Education Consultative Bodies Network (**the Network**) refers to the collective grouping of the six state and two territory Indigenous Education Consultative Bodies (IECBs). Across Australia, IECBs are the peak community advocacy and advisory bodies for Aboriginal and Torres Strait Islander education within their jurisdiction. Whilst individual IECBs deal primarily with state and territory departments of education and local education and training providers, as a National Network IECBs’ principal relationship and line of communication is with the Federal Department of Prime Minister and Cabinet. IECB Chairs and Presidents hold numerous positions on local, state and national boards and advisory groups, such as the National Congress of Australia's First Peoples and the Standing Council on School Education and Early Childhood (SCSEEC).

IECB key stakeholders are the local Aboriginal and Torres Strait Islander communities within their jurisdictions, and as such represent a collective community voice on all issues pertaining to our communities education and training. IECBs are the most effective means through which Aboriginal and Torres Strait Islander communities can be directly involved in the design, development and implementation of education policies and programs.

The National IECB Network voices our strong and collective opposition to the proposed changes to Australia’s racial vilification laws under the *Freedom of Speech (Repeal of s 18C) Bill 2014 (the Bill)*, released by Attorney-General George Brandis on 25 March 2014.

Key points of general concern

The ultimate intent of Australia’s *Racial Discrimination Act (1975) (the Act)* is to protect Australians of all backgrounds, and ensure equality of opportunity and treatment within Australian society. Importantly, the Act makes it against the law for an individual or group to be treated unfairly or to be discriminated against on the grounds of race, colour, descent, national or ethnic origin, and immigration status (Racial Discrimination Act 1975). In doing so, the Act operationalises Australia’s commitment to and obligations under the United Nations *International Convention on the Elimination of All Forms of Racial Discrimination* (UN 1965).

The Federal Court of Australia, in the well-publicised case of *Eatock v Bolt* (2011), found that the current *Racial Discrimination Act* strikes ‘a balance between freedom of expression and freedom from racial prejudice and intolerance based on race’. The Human Rights Law Centre similarly notes that the Act allows for the Courts to interpret the current racial vilification laws to capture only behaviour that has profound and serious effects, and thus does not impeded on justifiable freedom of expression (HRLC 2014a). Furthermore, the Bill would substantially weaken the existing racial vilification protections by instilling new exemptions that will allow racially motivated ‘public discussion’, even if it incites racial hatred or causes racial humiliation or fear of physical harm on the grounds of race (HRLC 2014b).

The National IECB Network has grave concerns that the draft legislation *Freedom of Speech (Repeal of s 18C) Bill 2014* threatens the balance that is currently being achieved by the *Racial Discrimination Act* through the repeal of sections 18B, 18C, 18D and 18 E – sections that currently make it unlawful to say things in public that are offensive on the grounds of race.

The Network is alarmed by proponents of the Bill that have argued that the changes do not compromise equality of treatment for all Australians *under the law*. However as Human Rights Commissioner Tim Wilson has asserted; there is a ‘naïve assumption... that racism can purely be addressed by the law’ (ABC 2014). It is an unfortunate reality that the lived experiences of many minority groups within Australia is not one of equality – irrespective of the legal obligations of the rest of our citizens. For these minority groups, particularly Australia’s First Peoples the Aboriginal and Torres Strait Islanders, inequality is experienced on a daily basis, throughout people’s lives. For this reason, whilst the rhetoric of ‘equality for all before the law’ is theoretically sound, it is not reflective of lived realities within Australian society. As such, there are many individuals and minority groups who require specific protections such as those provided by the Act in order to achieve true protection and equality for all Australians in all aspects of life.

The question of ‘freedom of speech’ as an inherent right of all individuals is similarly problematic in that it assumes the existence of social equality as a starting point from which ‘freedom of speech’ can be enjoyed equally by all. This assumption is, of course, a falsity. Minority groups within Australia do not have a strong public ‘voice’ and respected presence, and their views are largely stifled in political, economic and social arenas. As such, true ‘freedom of speech’ – speech that can facilitate empowerment and self-determination – is in fact not enjoyed by all in Australia. Those, whether individuals or groups, with lesser access to ‘voice’ within the broader community require specific protections such as that provided under the Act in order to naturally, humanly assert the perspectives of those in positions of relative disadvantage and weakness.

The Human Rights Law Centre notes that ‘free speech, like many other human rights, is not absolute... [but] can be legitimately limited to protect against the serious harm that can flow from some speech’ (HRLC 2014a). Contrary to the situation of vulnerable minorities, those in positions of relative power within society arguably require fewer specific protections given their inherent advantages in terms of greater ‘voice’ and the benefits of ‘majority rule’ within democratic society. Paradoxically, it is these already societally empowered individuals whose protections would be

strengthened under the new provisions outlined in the Bill. More concerningly, those most in need of greater legal safeguards in order to experience social, political and economic equality would have their protections weakened and repealed.

Ultimately, strong legal protections for racial and ethnic minorities send a clear social message that racial vilification and racist hate speech will not be tolerated, and that victims of such acts can be assured they will be protected by Australia’s legal system. However, the repeal of sections of the Act will essentially make it more difficult for an individual or group to prove the existence of racial vilification; whilst removing the terms ‘offend’, ‘insult’ and ‘humiliate’ will weaken and narrow the scope of existing protections.

The IECB Network is concerned that the Bill is a real and imminent threat to the protections currently achieved by the Act, and to the future of a safe and cohesive Australian society that is on a path towards reconciliation

Impact on Aboriginal and Torres Strait Islander communities and education

Indigenous Education Consultative Bodies have, since the 1970s, been focused on advocacy to and influencing of education systems to become more culturally inclusive, understanding and respectful of Aboriginal and Torres Strait Islander histories and cultures, relevant to Aboriginal and Torres Strait Islander communities, and appropriately sensitive to the needs of current and future generations of Aboriginal and Torres Strait Islander children. The National IECB Network is confident that by creating schools and education institutions that are culturally responsive and informed with respect to Aboriginal and Torres Strait Islander cultures and histories provides the appropriate and best systemic opportunity of engendering social change, to achieve the ultimate goal of reconciliation between our communities and other Australians. Education, from early age, always enriches all lives.

Given the unique position of IECBs as peak advocacy and advisory bodies for Aboriginal and Torres Strait Islander education and training within our respective communities, the Network is acutely and comprehensively aware of the barriers and negative impacts that continue to result from racism within the education systems across all states and territories. Historically, racism and discrimination within education institutions and systems has been a key factor in the suppression of Aboriginal and Torres Strait Islander rights and self-determination, for generations of our peoples. Such racism has in turn contributed to the unequal distribution of resources, power and opportunities away from our peoples, and so has contributed significantly to many of the negative socio-economic outcomes experienced by many Aboriginal and Torres Strait Islanders today.

The profound impacts of racial discrimination on the health, education and life outcomes of Aboriginal and Torres Strait Islanders has been widely researched and reported on (See Ferdinand, Paradies, Kelaher 2013; Szoke 2012; Priest, Paradies, Steward, Luke 2011). Aboriginal and Torres Strait Islander people experience racism in varied settings at levels four times that of non-Aboriginal people. Every day incivilities are the most common form of racism, occurring through racist insults,

disrespectful treatment or mistrusting someone. 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. The impacts of racism on young people from vulnerable minority groups are significant, and Aboriginal and Torres Strait Islander students can be viewed as a particularly at-risk cohort in this respect, right through the life course of their schooling and further education and training.

Racism often results in the reinforcement of negative stereotypes, which can affect an individual’s sense of self-worth and their ability to feel proud of their culture or heritage (Balvin, Kashima 2012). This represents a real threat to Aboriginal and Torres Strait Islander students, as the ability for children and young people to feel proud of their cultural heritage and identify without fear of humiliation or ridicule has been identified as being the most important factor for personal development and their desire to engage with wider society (VIYAC 2013). Culture is a defining factor of identity for Aboriginal and Torres Strait Islander Australians, and can determine an individual’s sense of belonging, how they see them self in relation to other groups and within the broader community.

Concerningly, 50% of reported cases of racism take place in educational settings, with almost all Aboriginal and Torres Strait Islander students reporting to have experienced some form of racism at school (Ferdinand et al. 2013). Racially-loaded comments or insults have been reported as being a key educational barrier for this cohort, leading to feelings of shame and embarrassment that can cause them to disengage from their educational environment and negatively impacting upon their educational participation and achievements (Ferdinand et al. 2013).

Racism is also strongly associated with violence in Australian schools. Such violence is often in the form of bullying or harassment, which may be racially-motivated, or in retaliation to racist harassment or taunts. Experiences of racism and bullying are strongly associated with an increase in anxiety, depression and generally poorer mental health, which are factors of the health gap between Aboriginal and non-Aboriginal Australians (Ferdinand et al. 2013). Incidences of bullying in schools can occur both in the physical environments of schools and, increasingly, online. Research has found that 84% of those bullied online are also bullied offline, whilst 83% of those who bully online also bully offline (Bullying No Way 2013). The proposed changes to the *Racial Discrimination Act* would encourage, perhaps even lead to an increase in the incidence of race-based speech and conduct in ‘public discussion’ - including online, regardless of whether or not it is carried out in good or bad faith, or is dishonest or false - taking place virtually unchecked and without retribution. Under the Bill there is no requirement that public discussion with racial content must be conducted reasonably or in good faith, as is required by the current exemption in the Act. This means that most public racial vilification is likely to be covered by the new exemption, even if it incites racial hatred (HRLC 2014b).

The National IECB Network is disturbed by the level of ambiguity within the term ‘public discussion’ employed in clause 4 of the proposed changes, and its potential to increase incidences of racially motivated bullying and harassment in schools.

Clause 4 of the Bill essentially allows public discussion that humiliates, intimidates, vilifies or otherwise offends a person or a class of persons based on race. ‘Public discussion’ can refer to a variety of media and content available in hardcopy and online, including news articles, editorials, blogs and social media. Social media has become a primary means of communication for Australian youth, including the large proportion of Aboriginal and Torres Strait Islander young people who are active users of mobile phones and online media (Edmond, Chenhall, Arnold, Lewis, Lowish 2014). Even in remote communities there is extensive use of smart phones and social media networks and sites, which provide key sources of entertainment for youth in these smaller communities. The ever-growing number of online platforms has profoundly changed the way in which news, ideas and information can be accessed and circulated. While the digital realm offers endless positive new possibilities to creatively share information, it also provides a potentially endless arena for harassing or bullying another person or group of people based on race or ethnic identity.

Under the proposed changes within the Bill, clause 4 permits racism to occur not only between peers, but between and among staff and students in educational settings under the banner of ‘public discussion’. For children and young people in particular, wellbeing is negatively impacted by racism through emotional and behavioural difficulties, substance abuse and higher risk of suicide (Priest et al. 2011). Racism in all its forms cannot be tolerated. It cannot be allowed to perpetuate through online and print media can create a school and broader environments that normalises racist attitudes and the spread of racial hate, which can impact on the confidence of young Aboriginal people and their level of engagement in public life. Racism in schools can ultimately lead to decreased attendance, poor academic and post-school outcomes, bullying and increases in the incidence of youth suicide.

Education is linked with not only greater employment options, with 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 (DEECD 2008). Health and racism are therefore important determinants to educational opportunities and the personal development and wellbeing of Aboriginal and Torres Strait Islander children and young people.

As such, the National IECB Network is disturbed by the potential of the *Freedom of Speech (Repeal of s 18C) Bill 2014* to negatively impact upon the Aboriginal and Torres Strait Islander community resulting from increases in both discrete and indiscrete forms of racism within education institutions and across the nation as some individuals choose to express their ‘freedom of speech’ in unproductive and offensive ways.

Certainly, the Bill does not support the Government agenda for “Closing the Gap” nor is it a step closer towards reconciliation between the Aboriginal and Torres Strait Islander community and the broader Australian society.

Conclusion

Ultimately, the *Freedom of Speech (Repeal of s 18C) Bill 2014* drastically narrows the scope of protections against racial vilification in Australia, and in doing so fundamentally weakens the existing Federal laws set out by the current *Racial Discrimination Act (1975)*.

The National IECB Network asserts the Bill to be a step away from reconciliation and towards the creation of a society in which racism is tolerated – as ABC’s Q&A moderator Tony Jones put it, the potential creation of ‘a new generation of bigots’ (ABC 2014).

Human Rights Commissioner, Tim Wilson, also asserts that there is a ‘difference between social convention and law’ (ABC 2014), yet creating greater tolerance with respect to racialised acts under the law functions to dictate and guide social actions. In doing so the Bill is essentially creating ‘wrong headed’ if not perverse social norms for Australian society to live by and experience into the future.

The National IECB Network asserts that a fundamental question we must ask ourselves is: do we want to create future generations of Australians who value the concept of utterly unbridled ‘freedom of speech’, in the name of purely self-interested individualism, more than they value a society that is striving towards equality of opportunity for all?

The National IECB Network advocates the pursuit of a society in which all Australians feel safe from racism, and does not see any evidence that the proposed changes to the Racial Discrimination Act 1975 can protect personal safety and respect for individuals from any cultural group represented in our national community.

Be careful of your thoughts, for your thoughts become your words. Be careful of your words, for your words become your actions. Be careful of your actions, for your actions become your habits. Be careful of your habits, for your habits become your character. Be careful of your character, for your character becomes your destiny.

-- Chinese proverb, author unknown

NATIONAL IECB NETWORK CHAIRS CONTACT LIST

IECB	Chair	Contact
WA Aboriginal Education and Training Council (WAAETC)	Ms Carol Garlett	0417 911 877
Victorian Aboriginal Education Association Inc. (VAEAI)	Ms Geraldine Atkinson	0400 401 250
Queensland Indigenous Education Consultative Committee (QIECC)	Mr Leon Epong	0409 028 064
NSW Aboriginal Education Consultative Group Inc. (AECG)	Ms Cindy Berwick	0458 101 866
Tasmania Aboriginal Corporation for Education (TACE)	Ms Nola Hooper	03 6224 4742
SA Aboriginal Education and Training Consultative Body (SAAETCB)	Prof. Peter Buckskin	08 8302 9149
Northern Territory Indigenous Education Council (NTIEC)	Mr Mark Motlop	0427 270 816
ACT Aboriginal and Torres Strait Islander Education Consultative Group (ATSIECG)	Ms Michele Abel	0412 328 790

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