Submission to the Attorney-General on the Exposure Draft of the *Freedom of Speech (Repeal of Section 18C) Bill 2014*

Racial Discrimination Act 1975 (Cth)

NATIONAL CONGRESS
OF AUSTRALIA'S FIRST PEOPLES

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Introduction

The National Congress of Australia's First Peoples (Congress) is the national representative body for Aboriginal and Torres Strait Islander Australians. Congress is a leader and advocate for protecting and advancing the wellbeing and empowerment of Aboriginal and Torres Strait Islander Peoples, and for securing our economic, political, cultural and environmental futures.

Congress has created one of the largest networks of our Peoples in the country. Congress has about 8000 individual members and 175 organisational members, with these national bodies, peaks and community organisations contributing their massive membership of tens of thousands of our Peoples to the Congress movement. We acknowledge and pay respect to our ancestors, our Elders and the diversity of traditional owners across this ancient land.

Congress makes this submission to the Attorney-General's Department in response to the Coalition Government's exposure draft Bill on proposed changes to the racial hatred provisions of the Commonwealth *Racial Discrimination Act 1975* (RDA).

Congress's observations on the proposal to amend the RDA and the specific text of the draft Bill follow.

Congress Position

Congress rejects the Australian Government's proposed amendments (*Freedom of Speech (Repeal of Section 18C) Bill 2014)* to the *Racial Discrimination Act 1975* and believes the draft Bill should be abandoned in its entirety.

Key Objections

The National Congress of Australia's First Peoples considers that the Government's proposal to amend the *Racial Discrimination Act 1975* (RDA) via the *Freedom of Speech (Repeal of Section 18C) Bill 2014* is inconsistent with the State's obligation to eliminate all forms of racial discrimination in Australia. Congress considers that the Bill should be rejected in its entirety, based on the following key objections:

- No compelling case has been made to change the RDA.
- The Bill fails to achieve a proper balance between freedom of expression, a basic right that is strongly supported, and the right to live free from threat of harm through racial vilification and discrimination, another basic human right. [i]
- The Bill does not adequately recognise the often serious and profound harm – beyond the physical to emotional, psychological and/or social – caused by the public expression of racial hatred.
- The failure to restrict speech, as it is in defamation law, to "truth and fair comment" or, as in the present Act to what is "reasonable and in good faith" is unacceptable, as the Bill would make racial vilification and intimidation lawful in almost any context without these provisions.
- Congress considers proposed definitions of 'vilify' and 'intimidate' in subsection 1 of the draft Bill to be too narrow and inadequate in providing protection against racial discrimination. This is particularly pertinent in the absence of 'offend, insult or humiliate'

as outlined in s18C of the RDA, and recommend that the current s18C of the RDA is not altered in any way.

- Congress also notes that the terms 'offend and humiliate' are terms used in the Sex Discrimination Act 1984 (Cth) and believes the impacts of such offense and humiliation caused by racial discrimination to be just as damaging as sexual offense and humiliation, and as such sees no justification for removal of these words from the RDA.
- Congress objects to Subsection 3 of the Bill, which would provide that whether an act or speech is deemed to vilify or intimidate should be judged by the standards of an "ordinary reasonable member of the Australian community, not by the standards of any particular group within the Australian community". This section is plainly unjust as most 'ordinary' members of the Australian community would not have experienced racial discrimination and could not possibly be in a position to judge the profound impact such an experience might cause. While the perceptions of any particular group would not necessarily be determinative, they are relevant and should be able to be considered.
- Part IIA of the RDA, including sections 18C, D and E, has functioned satisfactorily since being passed in 1995. It was introduced after long-standing and rigorous debate regarding the balance of freedom of expression and freedom from discrimination.

Rationale

Congress is alarmed that the Coalition Government is planning to remove or water down the protections provided against racial vilification in the Racial Discrimination Act 1975 (RDA).

The RDA cannot be seen as a piece of legislation to be amended by parliament at whim. Despite their significant opposition to the legislation initially, the previous Coalition Government did not attempt to amend these provisions during their 11 years in office.

It is clear that this draft Bill has been expressly designed to benefit a single columnist. As Attorney-General Brandis stated in the Senate during question time on 24 March 2014[ii]:

> *"It is certainly the intention of the government to remove from the Racial Discrimination Act those provisions that enabled the columnist Andrew Bolt to be taken to the Federal Court merely because he expressed an opinion about a social or political matter. I will very soon be bringing forward an amendment to the Racial Discrimination Act which will ensure that that can never happen in Australia again—that is, that never again in Australia will we have a situation in which a person may be taken to court for expressing a political opinion…"*
>
> *"…People do have a right to be bigots, you know. In a free country, people do have rights to say things that other people find offensive, insulting or bigoted."*

The *Racial Discrimination Act 1975* (RDA) gave domestic effect to Australia's international obligations under the *International Convention on the Elimination of All Forms of Racial Discrimination*. Almost 20 years later, a number of new provisions were added to the RDA concerning racial vilification.

These new provisions were in response to disturbing developments. There had been heightening racial violence against both Aboriginal and Torres Strait Islander Peoples and ethnic groups in the late 1980s and early 1990s and three major inquiries, including the

National Inquiry into Racist Violence, the *Royal Commission into Aboriginal Deaths in Custody*, and the Australian Law Reform Commission's *Multiculturalism and the Law* report, had demonstrated a need for, and made recommendations about, the introduction of racial vilification legislation.

The RDA is a key, if not foundational, law establishing Australia's identity as a nation upholding equality and tolerance within a diverse multicultural society. It is also a keystone for reconciliation in Australia between Aboriginal and Torres Strait Islander Peoples and the settler state. The Act featured prominently in the Mabo decision of the High Court in 1992. Also on a number of occasions it has prevented state governments from creating discriminatory laws acting against the Aboriginal and Torres Strait Islander Peoples.

The current provisions in the RDA strike a careful balance between freedom of expression and freedom from racial vilification. Congress is concerned that a change to these provisions would send a signal that racism is acceptable. We cannot justify racial vilification as a freedom. Racial intolerance and the spread of racial derisions ultimately form a basis for acts of racism. Racist sentiments cannot be separated from or dissociated from racist behaviours.

The actual harm caused by racial vilification should not be dismissed.

This damage, even if not physical damage, is very real and extensive. The damage is not limited to the single occasion of a racial slur but can be lifelong and crippling in people's social behaviour and development. We know that racism has huge mental health impacts on our young people and can affect their ability to work or study, and to achieve their future goals.

Belonging to a group which is racially vilified in public can undermine and ultimately destroy the sense of safety and security with which members of the group go about their daily lives.

We believe Australia still needs these laws because it is not yet the sophisticated multicultural society it purports to be. If we were at that point, we clearly would not get the level of racially motivated complaints that we do see from the Aboriginal and Torres Strait Islander Peoples and others who are vilified on the basis of their race. So while we aspire to that, we cannot say we are there yet.

> *"I've been called boong, abo, nigger, coon, black c**t, black drunk, petrol sniffer, primitive. I've been discriminated against and refused entry into bars and clubs when with other Aboriginals like me. My nephews and nieces have to deal with the same sh*t so it's not like this happened years ago. It's today. That's why I support the Racial Discrimination Act. It gives us protection. Whether you are black, Asian or white we all need to say "don't mess with the Racial Discrimination Act".* - Congress Member.

As the above quote from one of our Congress members illustrates, we don't need flashpoints such as the Andrew Bolt case or the Adam Goodes incident to be reminded of the racism that our families and communities face daily. However, incidents like these shine a spotlight on the necessity of laws that provide redress in cases such as this; a reminder that racism is not free speech.

To change these laws would send a signal that racism is acceptable.

A simplistic, absolutist view of freedom of expression will not solve the problem. The law needs to provide also for countervailing freedoms, including freedom from racial vilification.

Those who advocate an absolutist position on free speech paradoxically overlook the fact that racial vilification can have an intimidating silencing effect on those who are vilified. The need to balance freedom of expression with freedom from racial vilification is no mere matter of theory in contemporary Australia. The 2011 Census resulted in more than 300 ancestry groups being identified and more than 40% of Australians were born overseas or had at least one parent who was born overseas.

The cultural diversity of Australia's people is a great source of our nation's strength. It also imposes an obligation on government to protect and encourage social cohesion. Failure to do so would have very serious if not catastrophic consequences for our society, the economy, law and order and security.

Balancing these competing freedoms is not straightforward. The balance struck by the existing law in sections 18C and 18D of the Act was carefully reached after years of national inquiries and debates in Parliament and the general community.

Any attempt to restrike that balance is not to be undertaken lightly.

Congress notes that racism and the lack of trust it engenders is detrimental to reconciliation efforts in Australia. Reconciliation needs to be based on mutual trust, understanding and respect – not racism and discrimination. Congress considers that the draft Bill poses a threat to enhancing reconciliation efforts in Australia.

The proposed changes if enacted would also undermine efforts to close the gap in inequality facing Aboriginal and Torres Strait Islander people. The Close the Gap Steering Committee asserts that racism is shown to be detrimental to the mental health and wellbeing of those who experience it, and is a contributor to the health inequality facing Aboriginal and Torres Strait people. Allowing racism to flourish in schools, workplaces and other public arenas will undermine similar efforts to close the gap in educational and employment outcomes, both stated as priorities in the Government's agenda to address Indigenous inequality.

Aboriginal and Torres Strait Islander peoples' experience of racism

Aboriginal and Torres Strait Islander Peoples continue to experience high levels of racism across multiple settings, and the resultant contemporary disadvantage and harm experienced is well documented.[iii]

In October 2012, Congress conducted a survey of its members' perceptions and attitudes to the health system. One of the telling findings was the high prevalence of racism in the interactions of those members in the health system, with 39.6% of respondents experiencing racism. The majority of these experiences reportedly occurred in public hospitals, at local general practices or medical centres. This discrimination included health care providers making assumptions based on race and questioning patients' Aboriginality and their eligibility for services. For those members who had made a complaint, most of them said the issue

had not been resolved to their satisfaction[iv]. The narrative evidence collected from participants in the survey painted a picture of how pervasive racial discrimination is and the impact racism has in diminishing their trust in the health system. The data from this survey helped to inform the Aboriginal and Torres Strait Islander National Health Leadership Forum (NHLF) in preparing a submission on the National Aboriginal and Torres Strait Islander Health Plan, which ultimately set the eradication of racism as a key direction in health policy.

Further evidence of the prevalence of racial discrimination experienced by Aboriginal and Torres Strait Islander people is outlined below:

- The Localities Embracing and Accepting Diversity (LEAD) Program *Experiences of Racism Survey* (2010-11)[v] involved 755 Aboriginal Victorians aged 18 years or older living in four municipalities – two rural and two metropolitan – in Victoria. The survey found that:

    - 97% of those surveyed experienced racism in a 12 month period;
    - Survey respondents indicated an alarmingly high prevalence of experiencing racism, with 18% saying it was an everyday occurrence, 26% at least once a week and 28% about once a month. People who experienced the most racism also recorded the highest psychological distress scores;
    - Racism is more likely to lead to elevated levels of psychological distress, placing people at increased risk of developing mental health problems; and
    - Coping strategies do not appear to provide sufficient protection from harm.

- The 2010 *Australian Reconciliation Barometer*[vi] found that:
    - 93% of Aboriginal and Torres Strait Islander respondents believed that non-Indigenous Australians hold 'very high' or 'fairly high' levels of prejudice towards them;
    - 91% of Aboriginal and Torres Strait Islander respondents and 64% of other Australians agreed that previous race-based policies continue to affect some Aboriginal and Torres Strait Islander people today; and
    - 81% of Aboriginal and Torres Strait Islander respondents believe that discrimination was a factor in disadvantage.

- The 2012 *Australian Reconciliation Barometer*[vii] found that:
    - 15% of Aboriginal and Torres Strait Islander respondents and 13% of non-Indigenous respondents agree they can trust each other;
    - 72% of Aboriginal and Torres Strait Islander respondents and 70% of non-Indigenous respondents agree they are prejudiced against each other; and
    - 50% of both groups agree the relationship is improving.

- In 2008 the Australian Institute of Health and Welfare (AIHW) stated that 27% of Aboriginal and Torres Strait Islander peoples over the age of 15 reported experiencing discrimination in the preceding 12 months. The most common settings included the general public (11%), police/security personnel/courts of law (11%), and at work or when applying for work (8%).[viii]
- The Challenging Racism research, conducted by the University of Western Sydney, in March 2011 found that Aboriginal and Torres Strait Islander respondents reported much

higher rates of experiences of racism. In relation to contact with police and seeking housing, their experiences of racism were four times that of non-Indigenous Australians.[ix]

The results of Congress' Member Survey supports a wealth of other research showing that people subjected to racism are at greater risk of developing a range of mental health problems such as anxiety and depression. One such study under the LEAD program in Victorian communities, showed a correlation between the number of experiences of racism a person and poor mental health outcomes[x]. In other words, continued experiences of racism had a cumulative effect in undermining the mental health of those subjected to it.

The destructive impact of social dislocation caused by racism is clear in recent research that found that racism and cultural barriers led to some Aboriginal and Torres Strait Islander people not being diagnosed and treated for disease in its early stages, when treatment is most effective.[xi] The Close the Gap Campaign strongly advocates that addressing racism is a critical component of efforts to close the unacceptable health and life expectancy gap between Aboriginal and Torres Strait Islander and people and other Australians.

Through a greater understanding of the devastating effects of depression, anxiety and other mental health conditions in the lives of people, families and communities, contemporary society has reached a point where it should understand that harm is not limited to physical threats, but can extend to threats to our mental health and emotional wellbeing. For Aboriginal and Torres Strait Islander people, rates of anxiety and stress are three times that of other Australians[xii]. We are also facing a crisis in the suicide rates of our young people, as indicated in Table 1. And the evidence is compelling that racism is a driver of these serious health issues.

We must take all steps to mitigate the harm that racism causes. This is why the harm minimisation principle used as the test within the existing provisions of the RDA must be retained.

Table 1: Rates of suicide (*per 100,000) between Aboriginal and Torres Strait Islander and other Australians 2001-2010[xiii]

Age group (years)	Aboriginal and Torres Strait Islander males*	Non-Indigenous males*	Aboriginal and Torres Strait Islander females*	Non-Indigenous females*
15-19	43.4	18.7	9.9	3.2
20-24	74.7	21.8	19.2	4.0

History of Part IIA of the Racial Discrimination Act 1975

The RDA was passed by the Whitlam Government in 1975, in part to give domestic effect to Australia's international obligations under International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), to which Australia became a signatory in 1966 and ratified in 1975. In 1994, the Keating Government introduced, through the *Racial Hatred Act 1995*[xiv] a number of new provisions to the RDA concerning racial vilification. While the note

to s 18C (1) was amended in 1999 and 2009, these provisions are otherwise unchanged from those passed in 1995.

Then Attorney-General Michael Lavarch's Second Reading Speech for the Racial Hatred Bill 1994 (subsequently the *Racial Hatred Act 1995*) referred to the findings of three major inquiries – the *National Inquiry into Racist Violence*, the *Royal Commission into Aboriginal Deaths in Custody*, and the Australian Law Reform Commission's *Multiculturalism and the Law* report – noting that the inquiries had "found gaps in the protection provided by the *Racial Discrimination Act*."[xv]

The *National Inquiry into Racist Violence* commenced in August 1989 and reported in 1991. The Report's extensive findings included that:

- Racist violence is an endemic problem for Aboriginal and Torres Strait Islander people in all Australian States and Territories.
- Racist violence, intimidation and harassment against Aboriginal and Torres Strait Islander people are social problems resulting from racism in our society, rather than isolated acts of maladjusted individuals.
- The fact that Aboriginal and Torres Strait Islander people are faced with racism in almost every aspect of their daily lives, is the underlying reason for the high levels of racist violence against Aborigines and Torres Strait Islanders reported to this Inquiry.[xvi]

The Inquiry considered the need to balance rights and freedoms, noting that international instruments such as ICERD and the International Convention on Civil and Political Rights (ICCPR) have made clear that the freedoms of speech, the press, assembly and association "are not guaranteed in absolute terms. They are expressed as subject to considerations such as respect for the rights or reputations of others, and protection of national security and of public order. Implementation of Australia's international obligations under these instruments thus requires the striking of a balance between potentially conflicting rights and freedoms."[xvii]

It is important to note that in-depth debate was held regarding the balance between the right to freedom of expression and the right to be free from racial discrimination. Acknowledging that the Bill had "generated much comment and raises difficult issues for the parliament to consider"[xviii] the then Attorney-General stated:

> *"This bill has been mainly criticised on the grounds that it limits free expression and that to enact such legislation undermines one of the most fundamental principles of our democratic society. Yet few of these critics would argue that free expression should be absolute and unfettered. Throughout Australia, at all levels of government, free expression has had some limits placed on it when there is a countervailing public interest.*
>
> *"Laws dealing with defamation, copyright, obscenity, incitement, official secrecy, contempt of court and parliament, censorship and consumer protection all qualify what can be expressed. These laws recognise the need to legislate where words can cause serious economic damage, prejudice a fair trial or unfairly damage a person's reputation. In this bill, free speech has been balanced against the rights of*

Australians to live free of fear and racial harassment. Surely the promotion of racial hatred and its inevitable link to violence is as damaging to our community as issuing a misleading prospectus, or breaching the Trade Practices Act.

"The bill places no new limits on genuine public debate. Australians must be free to speak their minds, to criticise actions and policies of others and to share a joke. The bill does not prohibit people from expressing ideas or having beliefs, no matter how unpopular the views may be to many other people. The law has no application to private conversations. Nothing which is said or done reasonably and in good faith in the course of any statement, publication, discussion or debate made or held for an academic, artistic or scientific purpose or any other purpose in the public interest will be prohibited by the law."[xix]

Further, the then Attorney-General noted that "The requirement that the behaviour complained about should 'offend, insult, humiliate or intimidate' is the same as that used to establish sexual harassment in the *Sex Discrimination Act.*[xx] Congress also notes that while the note to s18C(1) was amended in 1999 and 2009, these provisions are otherwise unchanged from those passed in 1995. [xxi]

International Obligations

Congress considers the draft Bill to be inconsistent with the Australian Government's international obligations to eliminate all forms of racial discrimination.

The right to freedom of expression is not absolute

As a signatory to various international human rights instruments, Australia has obligations under international law with respect to both freedom of expression and racial vilification. The human right to freedom of expression is contained in both the Universal Declaration of Human Rights (UDHR) and ICCPR.

Critically however, the right to freedom of expression under the ICCPR is not absolute – rather the ICCPR makes clear that freedom of expression does not extend to advocacy of racial hatred or incitement to discrimination, hostility or violence. Article 19(2) of the ICCPR sets out the right to freedom of expression, including the right to seek out and impart information and ideas 'of all kinds'. However, Article 19 (3) of the ICCPR clearly asserts that the exercise of freedom of expression carries with it special duties and responsibilities and may therefore be subject to certain restrictions, as provided by law and that are necessary:

(a) For respect of the rights or reputations of others;
(b) For the protection of national security or of public order, or of public health or morals.

Further to this, Article 20(2) of the ICCPR states:

Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

All peoples have the right to freedom from discrimination

The right to be free from discrimination is recognised in Article 2 of the United Nations Declaration on the Rights of Indigenous Peoples (the Declaration), which Australia endorsed in 2009:

> Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their Indigenous origin or identity.

ICERD obliges state parties, including Australia as a signatory, to make laws, which prohibit incitement to racial hatred and discrimination. Article 4 of ICERD states:

> State Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in Article 5 of this Convention, inter alia:
>
> (a) shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof;
> (b) shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law;
> (c) shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.

Defects in the Proposal

The Australian Government seeks to amend Part IIA of the RDA with the stated intention to "strengthen the Act's protections against racism, while at the same time removing provisions which unreasonably limit freedom of speech".[xxii] However, the Bill would significantly weaken, almost extinguish, existing protections against racial hatred, vilification and discrimination as provided in s18C and D of the RDA, if introduced.

Subsection 1 of the draft Bill - unlawful to vilify and intimidate

The Bill would repeal s18C and under subsection 1, make it unlawful to vilify or intimidate a person or group of persons. Vilify is defined narrowly in the bill to "incite hatred against a person or group". The term vilify is commonly understood as "inciting serious contempt or severe ridicule", as contained in state racial vilification laws. Additionally, 'intimidation' is defined to include physical intimidation only. Forms of intimidation that do not involve fear of physical harm such as psychological, economic and social harm would not be covered.

Congress considers these proposed definitions of 'vilify' and 'intimidate' to be too narrow, particularly in the absence of 'offend, insult or humiliate' as outlined in s18C of the RDA, and recommend that the current s18C of the RDA is not altered in any way.

Subsection 3 of the draft Bill – standards of an ordinary reasonable member of the Australian community

Subsection 3 of the Bill would provide that whether an act or speech is deemed to vilify or intimidate should be judged by the standards of an "ordinary reasonable member of the Australian community, not by the standards of any particular group within the Australian community". Congress views this as particularly problematic given that many 'ordinary' members of the Australian community will not have experienced racial discrimination and could not possibly be in a position to judge the profound impact such an experience might cause. Further, Congress considers that this fails to take account of the social circumstances of present-day Australia. The 2012 Australian Reconciliation Barometer[xxiii] found that 72% of Indigenous and 70% of non-Indigenous Australians feel they are prejudiced against each other.

Subsection 4 of the draft Bill – removal of 'reasonably and in good faith'

The draft Bill proposes to remove the statement of 'reasonably and in good faith' from the existing free speech exemptions in s18D of the RDA, for fair comment, fair reporting and artistic and scientific works. This would allow for the danger of this exemption becoming over-inflated and greatly expanded to include "public discussion of any political, social, cultural, religious, artistic, academic or scientific matter[xxiv].

Under existing law, the protections contained in s18C do not apply if a person has acted "reasonably and in good faith" in the "performance, exhibition or distribution of an artistic work" or in the "course of any statement, publication, discussion or debate made or held for any genuine academic, artistic or scientific purpose or any other genuine purpose in the public interest".

Additionally, the "reasonable and good faith" exemption applies in making or publishing a "fair and accurate report of any event or matter of public interest" or is "fair comment on any event or matter of public interest if the comment is an expression of a genuine belief held by the person making the comment". Essentially this means that, if this Bill were to be implemented, an act may be: unreasonable; done in bad faith; disingenuous; unfair; inaccurate; not in the public interest; and not be a genuine belief.

Finally, the draft Bill states that s18C would "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." This exemption is extremely broad, and Congress considers that it would be near impossible to find a situation where the proposed new s18C would apply. As the President of the Australian Human Rights Commission has stated:

> This astonishingly broad exemption will positively permit racial vilification and intimidation in virtually all public discussions. Indeed, it is hard to think of examples of racial vilification or intimidation in public that will not be exempted by these changes. Will, for example, racial vilification on public transport, at football matches or the

factory canteen be protected because this is a 'social', 'cultural' or 'religious' matter?[xxv]

Congress considers that the failure to restrict speech, as it is in defamation law, to "truth and fair comment" or, as in the present Act to what is "reasonable and in good faith" would be inconsistent and irresponsible.

Removal of Vicarious Liability

The draft Bill would remove Section 18E – Vicarious Liability of the RDA. Congress considers that this section should not be removed. Congress notes that there is no rationale for removing this liability provision. Vicarious liability provisions exist in each of the federal discrimination acts.[xxvi]

To remove the responsibility of an employer is problematic and akin to absolving employees of supervision or oversight. This is inconsistent with good public policy.

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ENDNOTES

[i] a contribution by one of the founders of Liberty: "Without Freedom of Thought, there can be no such Thing as Wisdom and no such thing as Public Liberty, without Freedom of Speech; which is the Right of every Man, as far as by it, **he does not hurt or control the Right of another."**

Benjamin Franklin, New England Courant, 49, 9 July 1772.

[ii] Senate Hansard, 24 March 2014, Question Without Notice, Racial Discrimination: http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansards%2F6a5b8de8-212b-46a9-b00f-61b865fe92a2%2F0026%22

[iii] See, for example: Australian Bureau of Statistics (ABS), *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples,* Catalogue No. 4704.0. Accessed at http://www.abs.gov.au/ausstats/abs@.nsf/mf/4704.0/ (viewed 3 June 2012); Australian Bureau of Statistics (ABS), *National Aboriginal and Torres Strait Islander Social Survey 2008,* Catalogue No. 4714.0. Accessed at http://www.abs.gov.au/ausstats/abs@.nsf/mf/4714.0/ (viewed 3 June 2012); Australian Institute of Health and Welfare (AIHW), *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples: an overview 2011*, 5 May 2011, Cat. no. IHW 42. Canberra: AIHW. Accessed at http://www.aihw.gov.au/publication-detail/?id=10737418989&tab=2 (viewed 3 June 2012); Close the Gap Campaign Steering Committee, *Shadow Report: On Australian governments' progress towards closing the gap in life expectancy between Indigenous and non-Indigenous Australians*, February 2012. Accessed at http://resources.oxfam.org.au/pages/view.php?ref=687 (viewed 3 June 2012); Australian Government, Productivity Commission, *Overcoming Indigenous Disadvantage Key Indicators 2011 Overview*, 25 August 2011. Accessed at http://www.pc.gov.au/gsp/indigenous/key-indicators-2011 (viewed 3 June 2012).

[iv] National Health Leadership Forum within National Congress of Australia's First Peoples' Submission on The Aboriginal and Torres Strait Islander National Health Plan, January 2013, http://nationalcongress.com.au/wp-content/uploads/2013/10/CongressNATSIHPSubmissionWeb.pdf.

[v] Ferdinand, A., Paradies, Y. & Kelaher, M. 2013, Mental Health Impacts of Racial Discrimination in Victorian Aboriginal Communities, The Lowitja Institute, Melbourne. - See more at: http://www.lowitja.org.au/mental-health-impacts-racial-discrimination-victorian-aboriginal-communities#sthash.902eCAx5.vXCP3koj.dpuf

[vi] Reconciliation Australia, *Australian Reconciliation Barometer 2010: Comparing the Attitudes of Indigenous People and Australians Overall*, 4 June 2010, p.14. Accessed at http://www.reconciliation.org.au/home/archived-pages/barometer2010 (viewed 3 June 2012).

[vii] Australian Reconciliation Barometer 2012: An overview: http://www.reconciliation.org.au/wp-content/uploads/2013/12/2012-Australian-Reconciliation-Barometer-Overview.pdf

[viii] Australian Institute of Health and Welfare, 2011, The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples: An overview 2011, n. 8.

[ix] Challenging Racism Project, *Challenging Racism: the Anti-Racism Research Project*, 2011, http://www.uws.edu.au/ssap/school_of_social_sciences_and_psychology/research/challenging_racism/findings_by_region (viewed 3 June 2012).

[x] Ferdinand, A., Paradies, Y. & Kelaher, M. 2013, Mental Health Impacts of Racial Discrimination in Victorian Aboriginal Communities, The Lowitja Institute, Melbourne. - See more at: http://www.lowitja.org.au/mental-health-impacts-racial-discrimination-victorian-aboriginal-communities#sthash.902eCAx5.vXCP3koj.dpuf

[xi] Paradies, Harris, Anderson, *The impact of racism on Indigenous health in Australia and Aotearoa: towards a research agenda,* n.18.

[xii] See ABS Health Survey (Nov 2013)

[xiii] Department of Health and Ageing, 2013, National Aboriginal and Torres Strait Islander Suicide Prevention Strategy: Aboriginal and Torres Strait Islander suicide: origins, trends and incidence: http://www.health.gov.au/internet/publications/publishing.nsf/Content/mental-natsisps-strat-toc~mental-natsisps-strat-1~mental-natsisps-strat-1-ab

[xiv] Australian Human Rights Commission, 2013, *The Racial Hatred Act: What is the racial hatred act?* http://www.comlaw.gov.au/Details/C2004A04951 See also: Australian Human Rights Commission, *Guide to the Racial Hatred Act*, https://www.humanrights.gov.au/publications/guide-racial-hatred-act (accessed 25 November 2013).

[xv] The Hon Michael Lavarch MP, Attorney-General, Commonwealth of Australia, Parliamentary Debates, House of Representatives, Tuesday 15 November 1994, p 336.
[xvi] *Ibid,* p.387
[xvii] *Ibid,* pp.294-295
[xviii] Parliamentary Research Service, Department of the Parliamentary Library, Racial Hatred Bill 1994, Digest, http://parlinfo.aph.gov.au/parlInfo/download/legislation/billsdgs/M7Z10/upload_binary/M7Z10.pdf;fileType=application%2Fpdf#search=%22legislation/billsdgs/M7Z10%22 (accessed 27 November 2013)
[xix] *ibid*
[xx] *ibid*
[xxi] *ibid*
[xxii] Attorney General George Brandis, 25 March 2014, Media Release: Racial Discrimination Act.
[xxiii] Australian Reconciliation Barometer 2012: An overview: http://www.reconciliation.org.au/wp-content/uploads/2013/12/2012-Australian-Reconciliation-Barometer-Overview.pdf
[xxiv] *ibid*
[xxv] Gillian Triggs, President Australian Human Rights Commission, Race law changes seriously undermine protections http://www.humanrights.gov.au/news/stories/race-law-changes-seriously-undermine-protections
[xxvi] *Sex Discrimination Act 1984* (Cth) s 106; *Disability Discrimination Act* 1992 (Cth) s 123; *Age Discrimination Act 2004* (Cth) s 57.