

*CYBER RACISM AND COMMUNITY RESILIENCE
RESEARCH PROJECT
CRaCR*

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9 December 2016

Committee Secretary
Parliamentary Joint Committee on Human Rights
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By email: 18Cinquiry@aph.gov.au

Dear Committee Secretary

**INQUIRY INTO FREEDOM OF SPEECH IN AUSTRALIA
CLOSING DATE: FRIDAY, 9 DECEMBER 2016**

Introduction

The Cyber Racism and Community Resilience (**CRaCR**) Research group comprises six researchers at five universities in NSW and Victoria. Since 2013 we have been pursuing research into cyber racism, its extent, its impact, its perpetrators, and its regulation. One of our key parameters have been the conditions identified in the RDA Section 18C as the basis for filing complaints. We have been most concerned to identify real evidence of public attitudes, public choices, and public preferences when encountering racism on the Internet.

Our research is based on a major online survey of over 2000 Australian internet users, a detailed examination of the operation of current regulatory approaches and their positive and negative impacts, and case studies of many Internet situations where racism is identifiable. The conflict between competing value preferences (freedom from hate vs freedom of speech) has been a continuing focus of our work.

We stress that any changes to the current regime in the RDA should be based on empirical evidence of its role in containing harm, and an evidence based assessment of likely increases in or reduction in harm associated with any proposed changes. We note with concern that much of the public debate draws on supposition and exhortation, and is low on empirical evidence.

A key finding of our research is that the targets of racism are deeply affected by their exposure to it. Their exposure includes medical and psychological effects, as well as deep impact on feelings of self worth and commitment to the wider society's mores and values. A society that approves bigotry increasing against minorities has a much harder time invoking a commitment from them to the wider social well-being.

Thus anything that would increase the exposure of the most vulnerable groups to more racist abuse may have three related effects. First it would model higher levels of incivility as the acceptable norm, increasing the likelihood of those who are exposed to racism becoming more aggressive in their responses and interactions. Second, it would provide organised racist groups with a vindication of their prejudices, thus increasing the levels of racist abuse in the community. Third, it would normalise higher levels of incivility for bystanders, making it more likely that public discourse would become more racially aggressive.

In our submission to the 2014 AG Department Inquiry we pointed out that any policy changes in such a socially sensitive area must have a strong social impact study, with clear consequences spelled out and strategies in place to minimize negative impacts. We would reiterate that argument, noting that the highly charged public debate that today places community harmony and security as an opponent of personal freedom, should be set aside. Rather the strategy needs to be one that sees freedom from hate as a companion to freedom of speech, as indeed it has proved to be. Absolute freedom produces the consequence rejected by the great political theorist Thomas Hobbes, where life becomes 'solitary, poor, nasty, brutish and short'.

Key implications of our research

Section 18C of the Racial Discrimination Act has been in place and functioning for two decades. Any changes to the current situation would need to scope the likely impact of such changes on the experiences of racism documented below. . The Government has not argued that the current level of racism in Australia is acceptable, or that an increase in racism against the more vulnerable groups identified below is an acceptable outcome of changes to the legislation. Indeed the Government continues to support the Human Rights Commission campaign against racism in the community.

- Our research demonstrates that , Australians:
 - i) are aware of the wide-spread existence of various types of racism, which in general they dislike and believe should be challenged, including by Government;
 - ii) experience different rates of racism, with the most intense and severe experiences among Indigenous Australians, Australians of Muslim faith, Australians of African and Asian backgrounds, and Australians of Jewish faith. The lowest incidence of experienced racism is among Australians of many generations, and European Australians. In effect racism is differentially spread across the population;
 - iii) are more likely to support reduction of protections under RDA IIA if they are of long-standing Australian or European Australian backgrounds, and most opposed to reductions if they come from the more targeted groups;
 - iv) are not supportive of any proposals to remove section 18C of the RDA. Less than one in ten support or strongly support such proposals. However about 20% of respondents in CRaCR (Cyber Racism and Community Resilience) survey are neutral or would not proffer an opinion;
 - v) support proposals for including Religion in addition to Race as the basis for protection from discrimination and vilification, though at a slightly lower level;
 - vi) value freedom of speech in different degrees in relation to freedom from vilification, and accept a balance between the two freedoms that protects free civil speech while negatively sanctioning hate speech.

The Evidence Base

Research recently conducted by several Australian universities has found that proposals to amend section 18C, as well as 18B, D and E of the *Racial Discrimination Act 1975* do not have majority public

support, with evidence showing most people believe it should continue be unlawful to offend, humiliate or insult people on the basis of race or ethnicity.

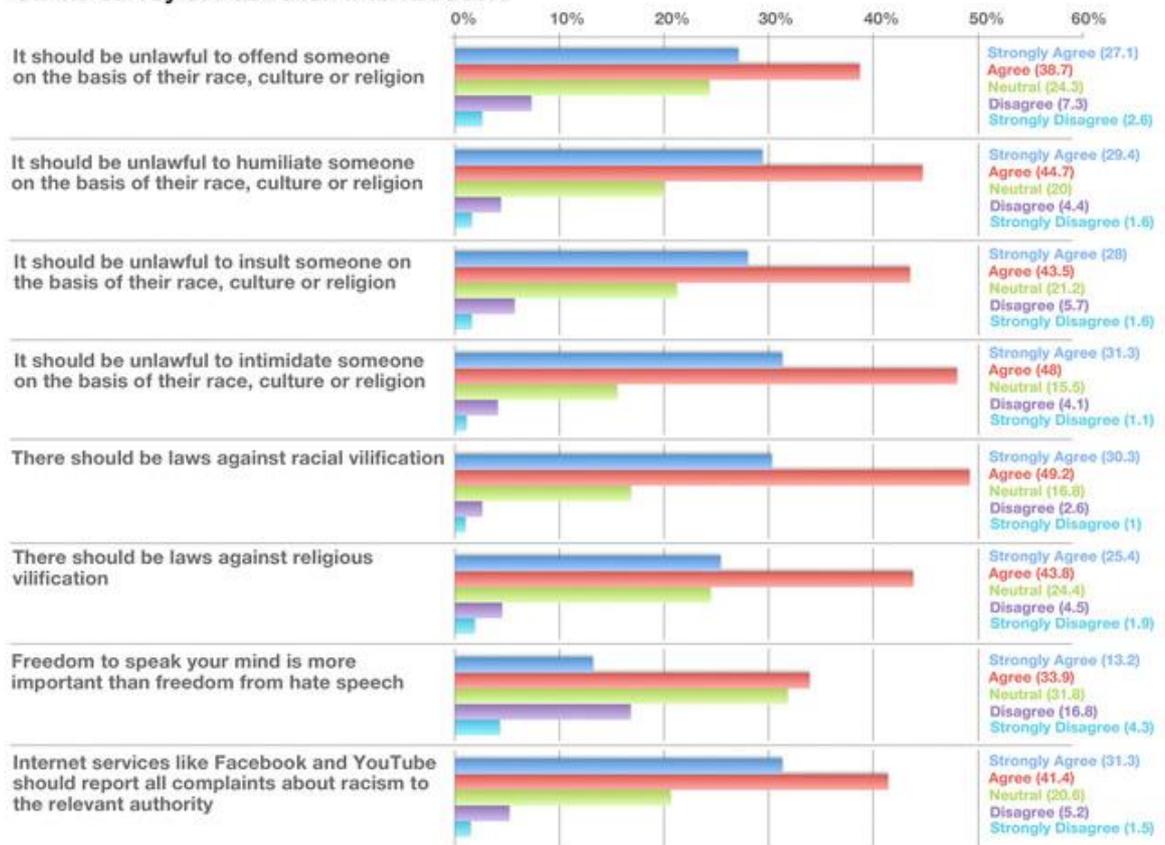
Respondents to our recent survey (n:214i) were asked whether it should be unlawful to humiliate, insult, offend or intimidate someone according to their race, with the results showing:

- Offend - 66% of participants agreed or strongly agreed it should be unlawful
- Insult - 72% of participants agreed or strongly agreed it should be unlawful
- Humiliate - 74% of participants agreed or strongly agreed it should be unlawful
- Intimidate - 79% of participants agreed or strongly agreed it should be unlawful

Most of those surveyed who did not agree were undecided, or neutral, rather than being opposed to offence, insult, humiliation and intimidation on the basis of race being unlawful. Levels of opposition to the legislation as it currently stands were 10% or less across all the forms of discrimination.

- Offend – only 10% of participants disagreed or strongly disagreed it should be unlawful
- Insult – only 7% of participants disagreed or strongly disagreed it should be unlawful
- Humiliate – only 6% of participants disagreed or strongly disagreed it should be unlawful
- Intimidate – only 5% of participants disagreed or strongly agreed it should be unlawful

Online survey of Australian internet users



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While 47% of respondents if forced to choose would agree that freedom to speak your mind is more important than freedom from hate speech (neutral 32%; disagree 21%), overall (73%) people would prefer the owners of cyber platforms to deal with complaints of racism and ensure racist material is reported to a regulatory authority for action.

Respondents indicated that they like the idea that people have a fair amount of freedom to say what they think, to express their opinions. But they also indicate real concern for the more vulnerable and most often targeted groups in the community and like the idea of some contemporary and focused regulation that would control vicious speech.

Experiences of Racism in Australia: Evidence from the Challenging Racism Project

This concern for vulnerable groups within our society is validated by the rates of racism experienced by these groups. The landmark Challenging Racism Project study, led from the University of Western Sydney, surveyed more than 12,500 Australians to provide a national picture of racism, ethnic relations and cultural diversity. They found that 27 percent of Australians have experienced racist talk. This unfortunately high experience of racism is unevenly born across Australian society. Forty-one percent of Aboriginal and Torres Strait Islanders indicated that they had experienced racism by being called names or similarly insulted on the basis of their ethnicity. Table 1 also demonstrates that those born overseas were also more likely to experience this race hate talk.

Table 1. Experience of racism by selected place of birth, Australia 2001-08.

Place of discrimination*	Australia %*** (n: 9271)	Overseas % (n: 2828)	China**** % (n: 122)	ATSI % (n: 185)	India and Sri Lanka % (n: 147)	Total survey respondents % (n: 12512)
In the workplace	12.8	30.2	46.7	28.9	40.8	17.5
In education	14.5	21.6	44.3	38.3	28.4	16.6
When renting or buying a house	4.6	12.4	29.8	23.1	26.4	6.8
Type of discrimination**						
You are called names or similarly insulted	22.6	39.4	50.4	41.0	43.2	27.0

Source: Challenging Racism Project surveys, state and territory telephone surveys, 2001-8.

Question wordings: *How often have YOU experienced discrimination because of your OWN ETHNIC ORIGIN in the following situations? **How often do you feel that because of your own ETHNIC ORIGIN; ***Percentage 'Yes' are those who answered any of: Very often; Often; Sometimes, and; Hardly ever. ****China born refers to Chinese Mainland, Hong Kong and Taiwan born)

Those born in China, India and Sri-Lanka, were more likely again to be called names or similarly insulted on the basis of their ethnicity. Half of the Chinese-born Australians surveyed (50.4%) indicated that they had been called names or similarly insulted because of their ethnic origin.

A recent survey of Australian Muslims conducted by the University of Western Sydney and the Islamic Sciences and Research Academy found that Australian Muslims also experienced a rate of discrimination significantly higher than the general population.

Table 2: Experiences of racism, Sydney Muslims and Australia

Place of discrimination*	Sydney Muslims % (n: 585 2011-13)	Total survey respondents % (n: 12512 2001-8)
In the workplace	61.6	17.5
In education	55.3	16.6
Type of discrimination**		
You are called names or similarly insulted	60	27.0

Question wordings: *How often have you experienced discrimination because of your own ethnic origin / religion in the following situations? **How often do you feel that because of your own ethnic origin ... ***Percentage 'Yes' are those who answered any of: Very often; Often; Sometimes, and; Hardly ever.

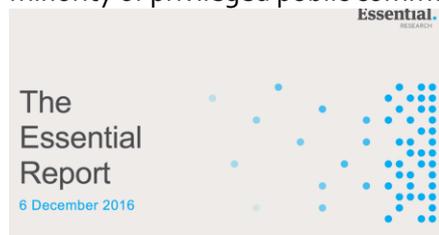
Two-thirds of the Sydney Muslims surveyed reported that they had experienced racism in the workplace (61.6%) or in educational settings (55.3%) (Table 2). We are able to compare that to the average reported experience of racism for Australia, from the Challenging Racism Survey data. Muslims report the experience of racism at three times the national average in workplace and education settings.

Concluding Reflections/Final Comments

One way of testing how effective RDA part IIA has been in protecting vulnerable groups is to compare anti-Indigenous posts on facebook with anti-Muslim posts in Australia. The facebook community standards directly follow the state of the law in Australia, so that abuse of Indigenous people has declined somewhat from its height three years ago, while abuse of Muslims (other than incitement to violence) has barely been tempered. This compares with the decline in anti-Muslim abuse in Germany during 2016, where facebook has specifically responded to German government concerns by enforcing a stricter regime of control.

As we prepare this submission Essential Media reported (6 December 2016) on its latest survey of public attitudes. People overwhelmingly believe that racist and religious abuse is rising. Does this mean that the RDA has failed in its role of educating the community, or rather that the RDA is crucial to holding back even a little the tide of abusive speech addressed to racial and religious minorities? Does it mean the attacks on the RDA Part IIA have emboldened those who would abuse others in the name of race and religion? Does the higher level of perceived abuse on the basis of religion reflect the fact that the RDA does not protect people from religious vilification?

Answers to these questions require careful research and considered thought, as reaching the wrong conclusion could have catastrophic impact on Australian social cohesion. Based on our research we would argue that the safest conclusion is that the RDA works as a brake on vilification, but compromised in an environment of sustained self-serving and misleading criticism of Section 18C by a minority of privileged public commentators.



Abuse and violence

Q Do you think the following types of abuse and violence have increased or decreased in Australia over the last few years?

	Increased	Decreased	No change	Don't know
Racial abuse or violence	52%	12%	27%	9%
Homophobic abuse or violence	33%	29%	25%	13%
Abuse or violence of people because of their religion	59%	9%	21%	10%

59% think that religious abuse/violence in Australia has increased and 52% think racial abuse/violence has increased. Opinion was more divided over homophobic abuse/violence – 33% think it has increased and 29% decreased.

The main differences were between Labor and Liberal/National voters.

64% of Labor voters and 45% of LNP voters think racial abuse/violence has increased.

41% of Labor voters and 28% of LNP voters think homophobic abuse/violence has increased.

68% of Labor voters and 50% of LNP voters think religious abuse/violence has increased.

It is outside the realms of possibility for the law to protect every victim of racist talk. What is possible is to continue and clarify laws with a symbolic role in setting inclusive norms that encourage us to speak out and speak up when we hear people using uncivil language. We should be extremely careful about removing the elements of the *Racial Discrimination Act* that protect the most vulnerable in our communities from abuse, thereby diluting their normalising effects in reinforcing civil behaviour.

Any changes made must be based on good evidence. At present, the evidence argues to the contrary of those who propose to truncate the grounds for action under 18C, by pushing up the line for acceptable race hate speech. The laws around racial vilification send an important message about what is considered to be lawful and civil, and what is uncivil.

Furthermore as is evident from many of the interactions on racist facebook pages and forums, current laws do act as a constraint on language. Numerous moderators of potentially racist facebook pages point to current law as a basis for limiting the intensity of hate speech they will publish, even though what is published is already well into the realm where complaints could be lodged. Under 18D the defences may anyway well protect some of these utterances.

Those who claim there is no evidence that 18C has any impact on constraining hate speech simply do not know what is occurring in the cyber realm where hate and bullying on the basis of race and ethnicity is widespread and intensifying. The cyberbullying of children on the basis of race, ethnicity and religion is a growing phenomenon, and one that is not well addressed by current child cyber bullying legislation. For instance the scope of cyber-bullying legislation where individual named children must be the target rather than a child who is a member of a targeted group, leaves children vulnerable to continuing harassment.

Any changes to the RDA legislation should be based on a careful and empirical appraisal of the likely impacts of those changes on the most vulnerable groups in Australia, an assessment of the costs and benefits of such impacts on social cohesion, mental and physical health, and economic opportunity, and a careful elaboration of the mechanisms to be put in place to minimise or ameliorate the negative impacts that may be identified. No changes to the current legal situation should be proposed until such empirical work has been completed, published and tested.

We would thus conclude that in relation to the Terms of Reference the empirical research evidence leads to the following determinations:

1. Whether the operation of Part IIA of the Racial Discrimination Act 1975 (Cth) imposes unreasonable restrictions upon freedom of speech, and in particular whether, and if so how, ss. 18C and 18D should be reformed.

The overall empirical evidence is that the current operation of Part IIA of the RDA does NOT impose any unreasonable restrictions. Indeed the restrictions that exist are widely affirmed by empirical research to be eminently reasonable and provide a workable balance between objectives of individual freedom and objectives of social harmony. This research shows that the minority who feel that Part IIA produces unreasonable restrictions are drawn from that part of the community with the most resources and cultural power. As people become more vulnerable they are more likely to affirm the reasonableness of current constraints. Given the Act is designed to protect the more vulnerable groups it would be unreasonable and counter-productive to reduce the current protections under 18C.

2. Whether the handling of complaints made to the Australian Human Rights Commission ("the Commission") under the Australian Human Rights Commission Act 1986 (Cth) should be reformed, in particular, in relation to:
 - a. the appropriate treatment of:
 - i. trivial or vexatious complaints; and
 - ii. complaints which have no reasonable prospect of ultimate success;
 - b. ensuring that persons who are the subject of such complaints are afforded natural justice;
 - c. ensuring that such complaints are dealt with in an open and transparent manner;
 - d. ensuring that such complaints are dealt with without unreasonable delay;
 - e. ensuring that such complaints are dealt with fairly and without unreasonable cost being incurred either by the Commission or by persons who are the subject of such complaints;
 - f. the relationship between the Commission's complaint handling processes and applications to the Court arising from the same facts.

Recommendations: The pursuing of complaints can be quite onerous and traumatic for more vulnerable and less well resourced individuals and communities. The Act could be reformed to enable the Commission to undertake independent action against people or organisations that are prima facie in breach of the RDA provisions. Such cases would be exemplary tests of the symbolic limits between freedom from hate speech and freedom to utter hate speech. In addition the Government should reconsider its position on the reservation filed against the adoption of Article 4A of the International Convention for the Elimination of all forms of Racial Discrimination (ICERD) and decide to withdraw its reservation. Furthermore a society-wide law such as that on cyber-bullying in New Zealand could extend the responsibility for managing hate speech on the Internet to service providers, giving more extensive powers to the regulatory bodies involved.

3. Whether the practice of soliciting complaints to the Commission (whether by officers of the Commission or by third parties) has had an adverse impact upon freedom of speech or constituted an abuse of the powers and functions of the Commission, and whether any such practice should be prohibited or limited.

There is no evidence that the current process of alerting the community to issues that may be significant for them has any significant adverse impact. In fact the majority of our respondents were anxious for the Government to provide a more pro-active capacity to pursue racial harassment and intimidation. They believed the laissez faire environment on line which requires individuals to initiate and pursue complaints, facilitates racial harassment and the spread of race hatred.

4. Whether the operation of the Commission should be otherwise reformed in order better to protect freedom of speech and, if so, what those reforms should be.

Recommendations: In the light of our study, it is recommended that some toughening up of the Commission's powers be endorsed. Thus the reservations on Art. 4A of ICERD should be withdrawn, and changes made to allow independent investigations by the Commission. Furthermore the defence of good faith should be removed from the provisions on criminal intimidation against groups defined by race etc. under the Commonwealth Criminal code 1996. This would regularise a situation to allow Commonwealth law enforcement officials to act in the most egregious cases, and for the Commission to pursue issues of significance to the wider community without an individual complaint to hand. Freedom of religious speech should be further defined to ensure that communication which is designed to destroy community harmony through attacking the validity of religious belief be open to complaint. This would allow a greater sense of fairness in relation to the main Abrahamic religions, multi-deity religions, and those without religious belief.

Members of the research team are willing to provide oral evidence in support of our submission. We are also happy to provide our submission to any interested person.

Yours sincerely

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