

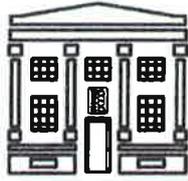


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Patron

Her Excellency Professor Marie Bashir AC  
Governor of New South Wales

28 April 2014

Human Rights Policy Branch  
Attorney-General's Department  
3-5 National Circuit  
Barton, ACT, 2600  
Email: [S18cconsultation@ag.gov.au](mailto:S18cconsultation@ag.gov.au)

Dear Sir/Madam,

**Amendments to the Racial Discrimination Act 1975 (RDA)**

ACCA (the Australian Chinese Community Association of NSW) wishes to express its utmost concern with the Attorney General's announcement to repeal Section 18C of the *Racial Discrimination Act 1975* ("RDA"). ACCA consider the Government's proposal to amend the RDA is a bad and wrong move and the amendments should be abandoned.

For more than 18 years Section 18C and 18D of the RDA has operated well together to provide a good balance between freedom of speech and freedom from racial vilification. As one of the leading organisation representing the Chinese community, ACCA has observed that the law in its current form has helped to preserve harmony in Australian society and reduced the many instances of racial vilification, intimidation and bullying by bigots and racists.

Senator Brandis's reason for wanting to repeal section 18C is to protect freedom of speech in Australia arising from the one Andrew Bolt case. ACCA does not dispute one's right to freedom of speech but freedom of speech must be exercised within the realms of responsibility and decency in a civilised society.

The current law as it stands has not stopped media shock jocks and others from making derogatory and racist remarks openly in the community. There have already been numerous instances of racist rants, abuse and attacks. Instances have included the bashing of a Jewish family in Bondi, race based physical attack of Chinese students in Hurstville, Hobart and Indian students in Melbourne. There is also Major Ting Li case in the Defence Force. The Chinese press (Singtao) also reported on 21 April 2014 that on 12 April 2014, a Chinese musician was abused and spat at by two people in a bus in Adelaide. He was also swore at. Yet the Attorney General is on record to say that freedom of speech and expression must be protected, and that "people have a right to be bigots you know". History has shown us that where racial vilification is publicly sanctioned by those in high office, those words can incite intimidation, humiliation, hatred and violence. If Section 18C (along with 18B, 18D,

18E) are repealed, bigots, racist and media shock jocks would see this as an open invitation, with the shackles removed, their divine right and licence to ramp up their free speech further to offend, insult, humiliate and bully marginalised or ethnic groups.

The proposed amendments to the Racial Discrimination Act 1975 are contained in the Exposure Draft. We comment as follows:

Section 1 – the words 'offend', 'insult' and 'humiliate' are to be replaced with “vilify” and “intimidation”. On the surface, whilst it may appear to look the same as Section 18C, the redefined meanings of the words, *vilify* and *intimidate* are not at all in agreement with the meanings given in any English dictionary. The proposed amendments will, if passed and implemented, very likely diminish the chances of victims of vilification and intimidation being given a fair hearing or trial.

Section 3 - the term “**the standards of an ordinary reasonable member of the Australian community**” is unclear. Even if it were, ACCA consider this Section unfair considering the power imbalance – the person making the remark and those whom the remark is aimed at. People needing protection under section 18C are those that quite come from marginalised minority ethnic groups. Many do not and cannot expect to stand on equal footing with the white Australian whose standards, social behavior and cultures are not necessarily the same. Yet the proposed law is seeking to protect this category of people, the perpetrators!

ACCA is therefore totally against the proposed amendment in the Exposure draft of the Freedom of Speech (Repeal of Section. 18C) Bill 2014. For the members of our community who have experienced racism and cultural vilification at the hands of the bigots in the past, ACCA sees this as a deeply personal issue that will open up old wounds and a winding back of the clock into the darker era of Australian history. To suggest that S18C needs to be repealed or amended because it has totally curtailed free speech is incorrect and misleading. For the Government to propose changes based on the one case (Andrew Bolt) are even more astonishing as the Bolt case was in breach of S18D test for “reasonableness and good faith”.

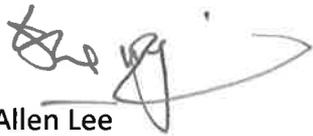
In his ruling on the Andrew Bolt case, Judge Bromberg stated:

*“nothing in the orders I make should suggest that it is unlawful for a publication to deal with racial identification, including by challenging the genuineness of the identification of a group of people. I have not found Mr Bolt and the Herald & Weekly Times to have contravened section 18C, simply because the newspaper articles dealt with subject matter of that kind. I have found a contravention of the Racial Discrimination Act because of the manner in which that subject matter was dealt with.”*

The “manner” to which the court referred included the finding that the publications in question *“contained errors of fact, distortions of the truth and inflammatory and provocative language.”*

**Accordingly, ACCA respectfully request the Government to abandon the Exposure Draft on the "Freedom of Speech (Repeal of Section 18C) Bill 2014".**

**ACCA would ask that if the exposure draft is to be debated in the House of Representatives, Coalition MPs hands should not be tied nor should they be directed to vote Abbott/Brandis way. Freedom of conscience vote must be given to the MPs as part of freedom of speech.**

A handwritten signature in black ink, appearing to read 'Allen Lee', with a long horizontal stroke extending to the right.

**Allen Lee  
President**

**Mobile: 0414 932 218**