QUAKER PEACE AND LEGISLATION COMMITTEE

SECTION 18 OF RACIAL DISCRIMINATION ACT

Submission to Attorney-General on proposed changes to Section 18 of the Racial Discrimination Act 1975.

Introduction and Background

1.The Quaker Peace and Legislation Committee (QPLC) is a national committee that represents the concerns of Australian Quakers on matters of peace and justice. This submission reflects the strong commitment of Quakers to promote a world in which, to quote Article 1 of the Universal Declaration of Human Rights, “all human beings are born free and equal in dignity and rights”.

2. In 1975 the Racial Discrimination Act was passed by Federal Parliament to implement within Australia the obligations ratified under the International Convention on the Elimination of All Forms of Racial Discrimination. In 1995 Parliament added (with support from all parties) a Section 18C which refers to offensive behavior because of race, colour or national or ethnic origin. It makes it unlawful to engage in behavior that is likely to offend, insult, humiliate or intimidate another person or group. This constitutes the racial vilification legislation.

3. Freedom of speech is protected under Section 18D. 18C does not render unlawful anything said or done reasonably or in good faith, in the performance, exhibition or distribution of an artistic work; in the course of any statement, publication, discussion or debate made or held for any genuine academic, artistic or scientific purpose of any other genuine purpose in the public interest; or in making or publishing a fair and accurate report of any event or matter of public interest, fair comment on any event or matter of public interest, if the comment expresses a genuine belief.

4. The Human Rights Commission has the responsibility for handling complaints under Section 18C in the first instance, and the Federal Court can then become involved if conciliation is not possible. In fact that section has constituted most of the cases brought before the Federal Court in relation to the Racial Discrimination Act.

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Proposed Changes

5. On 25 March 2014 Senator George Brandis, Federal Attorney-General, introduced an exposure draft Freedom of Speech (Repeal of Section 18C) Bill to amend the Racial Discrimination Act. He stated that "a new section will be inserted into the Act which will preserve the existing protection against intimidation and create a new protection from racial vilification". He emphasized that "laws which are designed to prohibit racial vilification should not be used as a vehicle to attack legitimate freedoms of speech". We recognise his desire to achieve a better balance between vilification and freedom of expression, but have reservations about (a) the need for change, and (b) the way in which the proposed changes will operate.

6. We see Section 18C of the Racial Discrimination Act 1975 as protecting the most vulnerable and marginalized members of our Australian community. As it stands it has been valued and used by such groups, and this is evidenced by the strength of concern raised in many different quarters about changing the Act as suggested. We have also noted that Irfan Yusuf, writing in *The Canberra Times* on 18 November 2013, recalled that Senator Brandis, in his maiden speech in Parliament in August 2000, had affirmed that "of all the obligations of government, perhaps the most fundamental is…to protect the weak from the strong". We wonder what has changed Senator Brandis' perspective.

7. We endorse the comment by Professor Gillian Triggs, President of the Australian Human Rights Commission (*media release*, 25 March 2014) that "the RDA provides a vital protection against racism and vilification in the community". We note her concern about the proposed changes to the Act, and affirm her statement that "the Commission's existing complaint processes under the RDA provide access to justice through swift and cost effective dispute resolution. It would be a shame for people to be denied the opportunity to use these processes. Instead they would have to rely upon defamation and other much more costly and inaccessible legal processes".

8. We also endorse the comments by Tim Soutphommasane, Race Discrimination Commissioner (*The Age*, 28 March 2014) that ""As it currently stands, the law allows people to hold others accountable for acts that offend, insult, humiliate or intimidate on the grounds of race. This doesn't mean that anything offensive or insulting is against the law. The only covers acts with a clear racial basis. It doesn't extend to trivial slights". He further points out that most cases brought before the Human Rights Commission are resolved, frequently with an apology, and very few end up in court – 5 out of 192 cases in 2012-13.

9. The import of these and many other public comments about the Government's move is that the proposed changes to Section 18B,C,D, and E would make it more difficult to challenge racist speech. There is an exemption clause that is too wide and does not clarify the distinction between expressing racial hate and taking part in legitimate public debate.

10. We draw attention to the original provisions of the International Convention on the Elimination of All Forms of Discrimination (adopted by the UN General Assembly in December 1965). It included specific provisions (Article 4) about outlawing hate speech. The UN Committee on the Elimination of Racial Discrimination (CERD) has seen this as a mandatory obligation, consistent with the provisions of the International Covenant on Civil and Political Rights (ICCPR) that outlaw incitement of racial hatred and violence. We believe that any changes to Section 18 of the Racial Discrimination Act need to conform with the intention of the Convention on which the Act is based.

Conclusion

11. In our view, the existing law is effective and strikes an appropriate balance between protecting minorities and preserving freedom of expression in our multicultural community. To the extent that any change is made, it should ensure that the Racial Discrimination Act continues to enable those who are subject to serious racial abuse to have full access to processes that hold the perpetrators accountable.

Canberra

April 2014