



28 April 2014

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

Dear Sir/Madam,

Comments On Amendments To The Racial Discrimination Act 1975

We refer to the calling for submissions from the public by your Department to comment on the proposed amendments to certain parts of the Racial Discrimination Act 1975 (to be referred to as RDA hereafter) by the Government. We wish to offer our views for your consideration.

We have derived our views from consulting people in our community. We consider worthwhile to provide you with a description of our work first.

Brief Background of Chinese Australian Services Society Ltd (CASS)

CASS was established in 1981 with a vision to provide quality life for people of all ages. It has been providing a comprehensive range of social services to the culturally and linguistically diverse (CALD) community for over 30 years. Apart from the provision of social services, one of the organizational objectives of CASS is to provide assistance to special needs groups to integrate into the Australian society, fostering mutual understanding between Chinese Australians and the wider community.

The community services and activities provided by CASS currently covers a wide geographical area, including the Inner West region, Southern region, South-Western region and the Northern region of Metropolitan Sydney and Wollongong. Over 1,800 families access CASS services weekly, and these families come from very diverse backgrounds, including Chinese, Koreans, Vietnamese, Indonesians and people in the general community. Key services and activities include:

- Providing community respite aged day care centres funded under NRCP and HACC Programs (9 groups), self funded respite seniors groups (11 groups);

- Operating two group homes for intellectually disabled people;
- Operating 3 child care centres in Campsie, Hurstville and St. Leonards, catering over 250 children;
- CASS Family day care service catering for over 300 children;
- Settlement services assisting newly arrived Chinese-speaking migrants to settle in Australia;
- Vocational and Training Services helping and empowering unemployed Chinese speaking women;
- Promoting and managing volunteering services, including recruitment and training of volunteers to provide support and engage in major charitable welfare organisations in the Australian community with the services of over 200 volunteers;
- Promotion of Chinese languages and Culture and operating 4 weekend Chinese Schools and Arts programs;
- Community activities for women and socially isolated people;
- Community capacity building work, raising fund for charities, natural disasters, etc;
- Building a 63-bed Residential Aged Care Facility currently.

Our Comments On The Proposed Amendments To The RDA

We refer particularly to the proposal to change Section 18 and its sub sections of the current RDA. We consider that the proposed amendments should be rejected in total.

- 1) The Current RDA was incorporated into the Act in 1995, almost after 20 years of extensive consultations, involving three National reviews and widespread consultative processes and debates. It has withstood many tests and has been fair to all sectors in the communities, promoting and supporting multiculturalism and a harmonious society. Its success is reflected by the fact that in 2013, the Australian Human Rights Commission only received 192 racial vilification complaints and only 5 ended up in court. This shows that many cases are reconciled successfully between parties. Therefore, our people hold the view that the current legislation is working well and should remain unchanged. If the legislation is to be improved and enhanced to better defined the matters concerned, then the current legislation can be codified with reference to past cases in which there are plenty to rely upon.
- 2) The proposed changes to the RDA are based on one single case, i.e. Andrew Bolt case which failed to satisfy reasonableness and good faith test condition

under Section 18. If Andrew Bolt case is so “correct” as asserted, why did he not appeal against the judgement, the judicial avenue available? It is certainly not good at all to justify legislative changes based on a single case.

- 3) As stated by the Attorney General, the changes allow the freedom of speech including the expression of bigotry in the public which may be offensive to other people. We must understand and remember that the cornerstone of freedom in our democratic society is that one can do or say anything one likes so long as others are not affected in any way. This is why laws are enacted to “limit freedom” so as to protect people from hurt and harm because of the indulgence of some people to have absolute freedom, and we call ourselves living in a lawful society. If the changes to the current RDA would lead to the expression of bigotry in the public which even the Attorney General agreed that some people would be hurt, it means that the proposed changes would lead us to a “lawless” society! The assertion of the Attorney General that one has “the right to be bigots” is valid if and only if such a person is living alone in an isolated island, not in a multicultural, diverse, harmonious society. Therefore, the changes to RDA as proposed do not fit in to the freedom and democratic principles we cherish and condone.
- 4) The removal of the words “insult, offend, humiliate” from Section 18c in the current RDA and inserting “vilifies and intimidates” changes the meaning of the Section as the proposed changes to Section 18C are not in agreement with the original meaning of the words given in any English dictionary. The proposed amendments will almost diminish any chance of getting a fair trial by the victims of vilification and intimidation. In addition, Section 18b and Section 18d would be deleted/dramatically changed, in which those sections provide “reasonableness and good faith” tests. In short, the draft changes will cause division, create disharmony, and is unproductive and unacceptable in our society. We certainly do not want to see our younger and future generations grow up and live under a divisive society.
- 5) The current legislation already sets the burden of proof bar “high”. The proposed draft Bill will make things even more difficult by the removal of the protection against racial abuse provided by the present law, while providing no useful or adequate protection in its place. Therefore it represents a backward step in the preservation of our harmonious and diverse community.

We understand that the West Australian Model has been very effective and successful in dealing with racial harassment and we recommend the Department considers the incorporation of this model.

We all should ask ourselves, what sort of society do we want Australia to be? We are a successful Multicultural and diverse society and a harmonious one with high percentage of people who are born overseas. Section 18 is a declaration, after much debate and review, that we, Australians, are entitled to be protected from the expression of racial abuse. The proposed reduction in the scope of that protection would give green light to the racists that government has become less interested in providing protection.

CASS strongly believes if the draft changes are enacted, there will be disharmony in the community and as the law will weaken the protection offered to minority groups like members of our organisation. The current RDA legislation enjoys support from the community, as reflected by the results of many Surveys, such as the one conducted by the University of Western Sydney showing 66% to 74% of people supporting the existing RDA, and recent media poll indicates that 9 out of 10 Australians reject the Draft amendments. With this knowledge, why do we change the law?

Many clients and members of CASS have encountered and/or endured abuses especially during Hanson's days manifested in physical and verbal abuses, in particular, those people whose level of English is not of high standard. In view of the present consultation, CASS recommends the following:

- 1) The Draft changes to RDA should not proceed and the current RDA legislation should remain unchanged.
- 2) To make the current legislation "clearer", the Government can consider codifying the past case experiences into laws.
- 3) A penal clause should be included in the current legislation, similar to the West Australian model, if the Government is serious about fighting racial abuses.
- 4) If the Government decides to push the Draft amendments through the House of Representatives, then, the Government should respect "freedom of speech" by all MPs and "Freedom of Conscience Vote" be given to all MPs if the Government is serious about "freedom of speech".

Should you wish to discuss any matter in our submission, please feel free to contact the undersigned on 0414 512 027.

Yours Faithfully



A handwritten signature in black ink, which appears to read 'Tony Pang', is positioned above the printed name. The signature is fluid and cursive, with a long horizontal stroke at the end.

Tony Pang
Secretary/Vice Chairperson
CASS Group