

**Submission regarding the Exposure Draft of the
Freedom of Speech (Repeal of S.18C) Bill 2014**

From Islamic Organisations of Queensland

21 April 2014

Background and Principles

The Islamic organisations listed at the end of this submission, represent a great diversity of the Australian Muslim community. We thank the Attorney-General and the Federal Government for the opportunity to respond to the proposed changes to the Racial Discrimination Act (RDA).

We are deeply concerned about the Exposure Draft of proposed changes to the RDA.

Any changes of the RDA would send the wrong message to offenders that hate speech is more acceptable in our society, opening the door to more abuse, and to victims that their right to live free from racial or religious vilification, abuse and intolerance is diminished.

We wish to acknowledge that freedom of speech is a very important right but not an absolute right, and it should not be abused or misused.

Just as freedom of speech should be valued, so should the right of people to be part of a free and fair society without suffering the emotional and mental damage caused by hate speech

Hate speech based on race, ethnicity or religion should be condemned and all members of society should be protected from it, because it strikes at the inner core of peoples' being. Hate speech and bigotry does not provide any constructive critique, rather, its sole intent is to be vitriolic and malicious and condescending.

The existing provisions of the Act offers legislative protection to the most vulnerable and marginalised members of our society – including our indigenous population, culturally and ethnically diverse communities and religious minority groups (amongst which are Australian Muslims from diverse ethnicities).

Instead of removing the protections afforded in the current the legislation, we would want it strengthened by explicitly adding religion into the provisions. By adding 'religion' into the list in s.18B(b) and s.18C(1)(b) of the existing Racial Discrimination Act – "race, *religion*, colour or national or ethnic origin", we believe that many people of various religious affiliations and faiths would feel better protected, accepted and respected as members of society.

Any watering down of the Act will make many people such as those wearing a hijab, turban, yarmulke, cross or other symbol of religious observance feel like target for abuse. This contravenes the principals of a free and just society, and should be avoided. For effective

freedom of religion, people should be able to practice their faith without fear, intolerance or vilification.

The proposed changes of sections 18B, 18C, 18D and 18E and the introduction of a replacement section in the terms announced would result in a significant weakening of existing legal protections against racial vilification and a significant step backwards for a multicultural and harmonious Australia.

Response to Proposed Changes

Proposal: *18B is entirely removed. This section is designed to ensure that if a person commits an act prohibited under s. 18C but does so for several reasons only one of which is in order to insult, offend, humiliate or intimidate a person on the basis of race etc, then even if that reason is not the dominant one, it will be treated as THE reason for the commission of the prohibited act for the purpose of s.18C.*

Response: We oppose the removal of s.18B on two grounds:

1. Its removal would elevate the burden of proof required from someone who has been the target of hate speech. For example, if at a shopping mall or school, a Muslim is abused and is told that he/she are a “terrorist”, then we believe the victim should still be protected from the hate speech component of the abuse. This may not be the case if 18B is removed. Any person being abused on the basis of their visual characteristics and/or attributes, ought to have recourse to the law. An example of this would be Muslim men/women with beards and traditional Islamic dress being abused and menaced because of their outward dress code. If the current protections are removed the burden of proof will be significantly more onerous and an increase in this type of bullying activity will result.

2. Any mischievous bigot can surreptitiously hide their prejudice by intentionally covering their malicious speech with reasoning that sounds logical and fair minded. The removal of the ‘fairness’ test in 18B would serve as a conduit to propagate hate speech

Proposal: *18C and 18D are also repealed but replaced by a new 18AA. The major changes here are that the words “insult, offend, humiliate” are deleted and replaced subsection 1 with the word “vilify” and so the core prohibition is to commit an act reasonably likely to vilify another person or group of persons or intimidate another person or group of persons.*

Response: The existing wording is virtually the same as in the Sex Discrimination Act s.28A (offended, humiliated or intimidated) and we believe that the existing wording supported by the ‘reasonably and in good faith’ exemptions under s.18D ensure a rational and responsible view of situations.

We would be amenable to amending the wording to “seriously offend, insult or humiliate” to ensure that there is no perception that trivial situations are included. Nevertheless, we recognise that use of the word ‘serious’ could be too subjective and we would prefer to maintain the current s.18C balanced by s.18D as a better solution.

Proposal: “Vilify” and “intimidate” are both defined in subsection 2.

Response: Vilification as defined (inciting hatred) would concern itself with how the hate speech affected a third party or audience, rather than the damage inflicted directly by the hate speech on the target.

We welcome the introduction of the idea of ‘vilification’ into the RDA, but believe that by narrowly defining it as inciting hatred it is far too narrowly defined, unless it is used *in addition* to existing protections rather than as a replacement of existing protections: offend, insults or humiliate. In order to establish a harmonious society people should be protected from racial and religious vilification as well as incitement of hatred if we are to feel free to safely practice our faiths and cultures in Australia. Failure to establish harmony results in other unwanted societal pressures and sows conflict between different communities.

Proposal: *By what standards should acts alleged to vilify or intimidate be judged? Subsection 3 states that it is to be judged by the standards of an ordinary reasonable member of the Australian community, not those of a particular group. This would mean that if words were uttered about a person who is a member of Group A and by the standards of that Group the words would be regarded as reasonably likely to vilify that person, that would not be enough to constitute a breach of the new section UNLESS the words concerned would be so regarded by an ordinary member of the wider Australian community as well.*

Response: The implication of the proposed subsection 3 suggests that there is a set of criteria that defines what characterizes “an ordinary reasonable member of the Australian community”. As this is clearly not the case, the proposal is not fit to be enacted as rule of law as there is no concrete definition of “an ordinary reasonable member of the Australian community”.

Moreover, the English language has clear definitions that explain the meaning and implications of vilification. These definitions have and are being used normatively in our current society and other western societies all over the world. There would be no reason to induce conjecture as to the meaning of this word as it only serves the purposes of those who indulge in this behaviour.

Lastly, because Australia is an amalgamating pot of such cultural and ethnic diversity, It is difficult for all of us to truly appreciate each other’s experiences and cultures. However, it is not impossible for us to accept our differences and empathise with our collective experiences.

We would prefer that the last part “not by the standards of any particular group within the Australian community” be removed as it could be seen as offensive by many community members.

Proposal: *Subsection 4 is in effect an exemption of words etc which are communicated “in the course of participating in the public discussion of any political, social, cultural, religious, artistic, academic or scientific matter.”*

The most serious problem we have with the Exposure Draft is subsection 4. It excludes vilification and intimidation if “in the course of participating in the public discussion of any

political, social, cultural, religious, artistic, academic or scientific matter.” We believe that this is far too broad. Racial vilification and intimidation as defined should not be tolerated under any circumstances and we would want subsection 4 as it stands to be deleted. The proposed subsection 4 would exclude most imaginable situations making the proposed legislation completely ineffectual and a virtual full repeal of the protections for which the RDA was designed.

We understand that subsection 4 aims to ensure that free speech, public discussion and debate are not inhibited by subsection 1. However, we believe that the ‘reasonable or in good faith’ protection in the existing s.18D provides a reasonable and adequate protection to freedom of expression. Hence, the ‘reasonable or in good faith’ should be maintained and not deleted.

18E (Vicarious liability) - to be deleted entirely.

We do not have strong opinions about the repeal of s.18E.

18F – State and Territory laws are not to be affected.

We believe that it is very important that the Federal RDA does not seek to exclude or limit any concurrent State or Territory laws. We see the State laws as critically important and as complementary to the RDA.

Supported and Signed by:

1. AlNisa
2. Australian Muslim Advocates for the Rights of All Humanity (AMARAH)
3. Australian Muslim Times (AMT)
4. Brisbane Islamic Centre (BIC)
5. Council of Imams QLD (CIQ)
6. Crescents Community News (CCN)
7. Crescents of Brisbane Inc.
8. Dr Daud Batchelor, International Institute of Advanced Islamic Studies
9. Islamic Council of Queensland (ICQ)
10. Islamic Educational Trust of Queensland
11. Islamic Information Service Cooloola
12. Islamic Medical Association of Queensland (IMAQ)
13. Islamic Shia Council of Queensland
14. Islamic Society of Gold Coast (Gold Coast Mosque)
15. Islamic Society of Holland Park (Holland Park Mosque)
16. Islamic Society of Toowoomba (Garden City Mosque)
17. Islamic Women's Association of Queensland (IWAQ)
18. Kuraby Mosque
19. Muslim Business Network (MBN)
20. Muslim Charitable Foundation (MCF)
21. Muslim Funeral Service (MFS)
22. National Centre of Excellence for Islamic Studies (Griffith University Node)
23. Pakistan Australian Cultural Association
24. Queensland Muslim Historical Society
25. Queensland Muslim Welfare Association Inc.
26. Sisters House Services Inc.