Racial vilification amendment

In the light of the storm of racist comments which the debate over the Mabo decision has unleashed, progress on the *Racial Vilification Amendment Bill* seems timely.

The legislation was introduced on 16 December 1992 to enable the Attorney-General's Department to undertake extensive public consultations. Because of the March federal election the Bill lapsed and currently has no status. It is now with the Attorney who will examine the results of the consultation process and decide whether to proceed with the Bill in its original form or to incorporate threshold issues such as criminal sanctions, exemptions and religious vilification.

The bill is a two-pronged attack on racial intolerance. It amends the *Crimes Act 1914* to create a criminal offence of racial incitement and it amends the *Racial Discrimination Act 1975* to make racial vilification unlawful. Clauses 19B and 19C make it unlawful to stir up hatred, serious contempt or severe ridicule on the grounds of race, colour or national or ethnic origin. Sub-clause 2 allows for exceptions such as ethnic jokes (even, alas, the corny ones), artistic works and academic debate. Clause 59 makes it a criminal offence to incite people to vilify others racially.

In introducing the bill into Parliament the Minister gave a clear explantion of what would constitute unlawful behaviour.

> *It may be helpful to give an example of where it is envisaged that the dividing line between lawful and unlawful behaviour might fall. Republication in full of a nineteenth century book on Australia with some racist passages concerning Chinese and Aborigines but with an introduction placing the work in its historical context certainly would not be covered. On the other hand, publication of a pamphlet consisting exclusively of a selection of those same racist passages with an accompanying text advocating that all Chinese persons in Australia should be deported would be covered. By insert*
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> *ing these provisions into the Racial Discrimination Act, it makes it possible to retain the very considerable advantage of adopting existing conciliation procedures and increases the educative role of the law.*
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> *Australia is a multicultual society. Its survival as a multicultural society demands that the communities that make up the Australian society live in peace and harmony. Inciting hatred and hostility against sections of the community is an affront to the whole community and the whole community has an interest in ensuring that it does not happen.*
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> *The Government's current Bill does not cover abuse of, or incitement to hatred of, religious groups or individuals that are attacked on the grounds of their membership of such groups. This is essentially because the Bill concerns amendments to the Racial Discrimination Act 1975, which is founded on the International Convention on the Elimination of All Forms of Racial Discrimination. This Convention does not cover religious discrimination.* (From Second Reading Speech read by Mr Duncan — Parliamentary Secretary to the Attorney-General — on 16 December 1992.)

The bill drew on the findings of the ALRC's reference on *Multiculturalism and the law*, the Human Rights and Equal Opportunity Commission's National Inquiry into Racist Violence and the Royal Commission into Aboriginal Deaths in Custody.

In the ALRC's report on *Multiculturalism and the law*, the Commission considered whether it should be a criminal offence to incite racial hatred. The subject became a hot issue and different Commissioners took all the positions available. One member considered it was too great an incursion on freedom of speech.

The rest were in favour of imposing some form of prohibition but most of them took the view that it should not be a criminal prohibition. Two members dissented, arguing that the criminal law should be available as a remedy for spreading racist propaganda designed to provoke racial hatred and hostility. In cases where the intention to cause hatred stops short of proof of intention to cause violence, any offers of conciliation would be more likely to add to the victim's trauma. The dissenting members argued that Australia's obligations under the International Convention on the Elimination of all Forms of Racial Discrimination (CERD) do not stop at outlawing racist violence. The Convention also requires us to 'declare an offence punishable by law all dissemination of ideas based on racial superiority or

hatred'. This distinction is based on the argument that racism has its roots in ideas of racial superiority or hatred, ideas which can have an insidious effect on the social fabric and which cannot be dealt with under 'offensive behaviour provisions'. The members argued that these obligations had to be dealt with by making the public promotion of racism a criminal offence.

The Human Rights and Equal Opportunity Commission's National Inquiry into Racist Violence opened in Sydney on 24 August 1989 and, during the next 12 months, held public hearings around Australia. It published its final report in 1991. The report concluded that racist violence, including intimidation and harassment, is an endemic problem for Aboriginal and Torres Strait Islanders in all Australian States. It found that racist attitudes and practices pervade Australian institutions, both private and public. Racist violence also occurs on the basis of ethnic identity. The report concludes that a threatening environment is the most prevalent form of racist violence confronting people of non-English speaking backgrounds. The level of racist violence on the basis of ethnic identity in Australia is nowhere near that in many other countries. But it does exist at a level that causes concern and it could increase if allowed to go unchecked.

The Royal Commission into Aboriginal Deaths in Custody recommended that governments which have not already done so legislate to proscribe racial vilification and provide a conciliation mechanism for dealing with complaints of racial vilification. The penalties for racial vilification should not involve criminal sanctions.

In the course of their consultations over the bill the Attorney-General's Department canvassed the major issue of freedom of speech versus freedom from harrassment and found that public opinion was roughly divided 60:40 in favour of the latter. Written submissions, on the other hand told a different story. Of the more than 600 written submissions, about 80% expressed a preference for freedom of speech. Media commentators were, on the whole, grudgingly supportive of the bill. There were, of course, predictable exceptions.

Since the Government introduced the bill, the issue has gained considerable currency, initially with reported incidents of racism in sport, and most recently with the some provocative comments by participants in the debate over the Mabo decision.