

Proposed amendments to the *Racial Discrimination Act 1975*

Submission to the Exposure Draft

Background

This submission is written on behalf of Relationships Australia's eight member organisations.

Relationships Australia provides a range of family support services to Australian families, including counselling, dispute resolution, children's services and relationship and professional education.

We respect the rights of all people in all their diversity to live life fully within their families and communities with dignity and safety, and to enjoy healthy relationships. These principles underpin our work.

Of particular relevance to this submission is Relationships Australia's commitment to:

- social justice and inclusion;
- ensuring the services we provide are accessible to all families, particularly those that are vulnerable or disadvantaged;
- advocating, as appropriate, for individuals and families who are experiencing racism, discrimination and disadvantage of any kind;
- being culturally sensitive to the diverse experiences of families, and how families define their relationships and responsibilities to those within the family;
- recognising that our staff, including those from Aboriginal and Torres Strait Islander and culturally and linguistically diverse backgrounds, often experience racism and discrimination; and
- challenging the structural and systemic nature of racism which results in discrimination and disadvantage.

Many of our clients and staff, and the community members we collaborate with, have experienced racial discrimination which has impacted on their ability to maintain positive and respectful relationships.

The work of Relationships Australia

Relationships Australia strongly supports and celebrates a multicultural society in which all Australians feel valued and have the opportunity to contribute to, and participate fully without discrimination.

In fulfilling these values, we offer a comprehensive range of programs reflecting our commitment to diversity and social inclusion. Preventing racial discrimination and providing services to members of the Australian community who have been affected by racism is a component of this work.

In 2012 the Australian Human Rights Commission developed its National Anti-Racism Strategy. One of the key objectives of the Strategy was to reinforce policies and legal protections that promote respect and equality for Australians of all racial, ethnic and cultural backgrounds. In 2013, Relationships Australia joined forces with the Commission and many of Australia's leading businesses, sporting bodies and NGOs to support the "Racism. It stops with me" campaign.

Recognising that we need to challenge our own internal practices, in 2010 Relationships Australia adopted the Cultural Fitness Package, an ongoing training program developed by our Indigenous network. The program unpacks cultural norms and exposes privileges assumed by majority populations and the consequent impacts of inequity on Indigenous persons and people from other groups. As a group of organisations, Relationships Australia is committed to the protection of the rights of all people against open expression of prejudice and bigotry.

In recent years we have also been focussing on reaching a wider and more diverse group of families with programs and services appropriate and relevant to each group. In 2012-13, Relationships Australia's 1900 staff provided family support services to more than 155,000 clients in 150 locations in city, suburban, regional, rural and remote areas across Australia. Almost 7 per cent of our registered clients were from a culturally and linguistically diverse background, and 4.2 per cent identified as Indigenous.

What is the impact of racism on family relationships?

Racism can pervade many aspects of people's lives, be experienced at any age, and its effects can be intergenerational and long-lasting. Racism can occur at the individual level or can be institutional or systemic. Institutional racism can happen in government agencies, organisations and corporations that create policy and/or provide services like health care, education and housing. Institutional racism can be more subtle and harder to identify than individual racism.

Racism can isolate and exclude people and groups, preventing them from having equal opportunities to education, employment and services. It can also prevent social and community connectedness, resulting in increased distrust, fear and resentment.

Racism can have negative effects on an individual's physical and mental health. It can result in depression and ongoing psychological stress and anxiety. Systematic international reviews report links between racism and poor physical health (including hypertension, cardiovascular reactivity and chronic health conditions) and increased substance useⁱ. In Australian studies, self-reported racism has been associated with substance use, emotional and behavioural difficulties, and suicide risk for young Aboriginal peopleⁱⁱ. These findings are echoed in the eight studies on the impact of racism on Aboriginal and Torres Strait Islander peoples that have occurred to dateⁱⁱⁱ.

Racism can affect health and well-being through many pathways, including reduced access to positive health determinants such as education and employment; reduced self-efficacy and self-esteem; increased stress, substance use and self-harm; reduced social support; and detrimental effects on cultural identity^{iv}. If employment is denied or a person is demeaned at work because of their race, this can have serious and ongoing effects on workforce participation.

The mental and physical effects of racism can also negatively impact family relationships. The factors associated with family relationship breakdown are significant and well documented. Family breakdown and family violence contribute to the number of people in need of emergency accommodation, as well as increasing the risk of depression, suicide, drug/alcohol misuse and unemployment among adults^v, among other things. There is also a cost to the community, with recent research estimating the cost of negative family functioning at \$5.4 billion dollars^{vi}.

Children experiencing family breakdown are also at increased risk of disadvantage. Differences have been reported for social and emotional behaviour in childhood; educational and adult socioeconomic attainment; aggressive and antisocial behaviour and delinquency; substance abuse; mental health in adolescence and adulthood; and family and intimate relationships^{vii}. Research also suggests that the personal effects of racism can be detected in children as young as five years, with awareness of bias towards their ethnic group being associated with changes in personal interactions and academic performance^{viii}.

Key points

Relationships Australia welcomes the Australian Government's proposal to extend the *Racial Discrimination Act 1975* (the Act) to afford additional protection to individuals and groups who may suffer racial vilification. Relationships Australia also supports reforms that protect freedom of speech, where free speech does not lead to breaches of human rights or negative effects on the general welfare of society^{ix}.

Restriction of the definition of racial discrimination in the Act

The Act currently provides a minimum standard of protection for persons and groups who may be the target of racial discrimination. While the proposed reforms seek to preserve existing protection

against intimidation, Relationships Australia is concerned that the current protections against offensive, insulting and humiliating acts have been removed in the exposure draft.

Racism can take many forms, including jokes or comments that cause offence or hurt, name-calling or verbal abuse; harassment or intimidation, or commentary in the media or online that inflames hostility towards certain groups^x. The proposed amendments appear only to offer protection to individuals against the most serious form of racism, acts of physical abuse and violence, and contrast with the broad definition captured in the extant legislation and the 1966 International Convention on the Elimination of All Forms of Racial Discrimination that was ratified by Australia on 30 September 1975.

Laws should reflect the social and community values at the time they are written. These amendments appear counter to the values of Relationship Australia, our staff and clients. They also diverge from the overall aims of the National Anti-Racism Strategy 2012 that was directly shaped by the views of Australians from around the country.

Physical or mental harm

Relationships Australia is similarly concerned with the definition of intimidation in the Act which has been restricted to fear of physical harm. People with mental ill-health and mental disorders are particularly vulnerable to infringement of their civil and human rights and to discrimination^{xi}.

Relationships Australia recommends that the Government include specific protections for individuals suffering mental ill-health as a result of racism in line with one of the key aims of the Government's National Mental Health policy to assure the rights of people with mental health disorders.

The test of reasonableness – part (3)

Under part (3) the proposed amendments seek to define whether an act is unlawful based on the standards of an ordinary member of the Australian community, not by the standards of any particular group within the Australian community.

The experience of individuals and groups from diverse culturally and linguistic groups can vary greatly. A broad test of reasonableness may well be discriminatory in its own right and fail to safeguard the very people and groups of particular races, colours, national or ethnic origins it is designed to protect. Statements that would not be perceived to be harmful by an Australian-born, English speaking person may well be intimidating for a person from another culture. The potential for individuals to suffer racism as a result of this restrictive definition is explicitly captured in the definitions in the extant legislation below which closely follow the 1966 International Convention on the Elimination of All Forms of Racial Discrimination^{xii} :

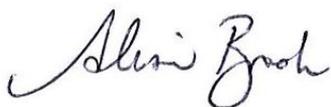
“Racial discrimination can also occur when a policy or rule appears to treat everyone in the same way but actually has an unfair effect on more people of a particular race, colour, descent or national or ethnic origin than others.”

Exemptions for public discussion – part (4)

The amendment proposes broad exemptions for acts of vilification and intimidation that are published or communicated in the course of participation in the public discussion of any political, social, cultural, religious, artistic, academic or scientific matter. These exemptions may provide excuses for many acts of racism that are unlawful under the current Act and allow for unregulated and widespread communication of racist statements and acts. This is likely to lead to increases in the levels of racism experienced by individuals and communities and a corresponding decrease in mental and physical health and well-being and the quality of family relationships.

Thank you for the opportunity to provide comments on the exposure draft. Should you require any further clarification of any aspect of this submission or need information about the services Relationships Australia provides, please do not hesitate to contact me.

Yours sincerely,

A handwritten signature in black ink that reads "Alison Brook". The signature is written in a cursive, flowing style.

Alison Brook
National Executive Officer

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- ⁱ Pachter L, Garcia Coll C., Racism and child health: a review of the literature and future directions. *J Dev Behav Pediatr* 2009; 30: 255-263.
- ⁱⁱ Zubrick SR, Silburn SR, Lawrence DM, et al. Western Australian Aboriginal child health survey: the social and emotional wellbeing of Aboriginal children and young people. Perth: Telethon Institute for Child Health Research, 2005.
- ⁱⁱⁱ National Mental Health Commission, 2013: A Contributing Life: the 2013 National Report Card on Mental Health and Suicide Prevention, Sydney NMHC.
- ^{iv} Sanders-Phillips K., Racial discrimination: a continuum of violence exposure for children of color. *Clin Child Fam Psychol Rev* 2009; 12: 174-195.
- ^v Allen, K., Value for Everyone: Understanding the Social and Economic Benefits of Family Support Services, <http://www.frsa.org.au/storage/FRSA%20Value%20for%20Everyone%20Report.pdf>, 2013.
- ^{vi} Ibid.
- ^{vii} Ibid.
- ^{viii} McKown, C, and Strambler, MJ., Developmental Antecedents and Social and Academic Consequences of Stereotype-Consciousness in Middle Childhood, *Child Development*, Vol. 80, Issue 6, 2009.
- ^{ix} Reflected in Article 29(2) , Universal Declaration of Human Rights, 1948.
- ^x National Anti-Racism Strategy, Australian Human Rights Commission, July 2012.
- ^{xi} National Mental Health Policy 2008.
<http://www.health.gov.au/internet/publications/publishing.nsf/Content/mental-pubs-n-policy-toc>.
- ^{xii} Article 1.