



The Ask Me Anything sessions are about a team of diverse, brave, and honest volunteer presenters sharing their personal stories and inviting audiences to ask anything. We encourage curious high school students and community members to ask uncensored, unabashed, and anonymous questions about race, culture, resilience, mental health, and other issues.

Our aim is to provide community members and students the ability to drive their own learning and have the appropriate freedoms to be able to ask anything, consider personal responses, and gain a better understanding of Australian diversity, stereotypes, racism, and other issues that are important to our community. Our presenters include a previously homeless police officer, a Muslim-American, a male feminist and atheist, an Indian-Jewish Australian, a bisexual trans woman, and an Indigenous Australian father of three.

The Ask Me Anything team knows free and open conversations can be the beginning of meaningful dialogue, increased understanding, and positive action to make our communities more informed, and more inclusive of all Australians. However, we also know that freedom of speech<sup>1</sup> is not absolute, and consider that sections 18C and 18D of the *Racial Discrimination Act 1975* (Cth) maintain a balance between freedom of speech and freedom from racial vilification. Indeed our Ask Me Anything sessions address racial, ethnic, religious, and gender stereotypes, promote dialogue, and encourage mutual respect by openly discussing the words, labels, and issues that may subjectively be considered offensive.

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This submission to the Parliamentary Joint Committee on Human Rights, Inquiry into Freedom of Speech in Australia, responds to the following elements of the Terms of References:

- Whether the operation of Part IIA of the *Racial Discrimination Act 1975* (Cth) imposes unreasonable restrictions upon freedom of speech, and in particular whether, and if so how, ss. 18C and 18D should be reformed.

Freedom of speech has never been absolute. There are laws moderating what we can and cannot say. Laws guarding against misrepresentation, official secrecy, contempt of court and parliament, slander, libel, copyright, and misleading and deceptive conduct. These various laws recognise the need to legislate where words can cause economic damage, unfairly harm a person's reputation, or compromise community safety and national security. There seems to be little or no concern about whether such laws impose unreasonable restrictions upon freedom of speech.

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<sup>1</sup> In this submission, 'freedom of speech' includes, but is not limited to, freedom of public discussion, freedom of conscience, academic freedom, artistic freedom, freedom of religious worship and freedom of the press



We understand that sections 18C and 18D were introduced partly in response to recommendations of the National Inquiry into Racist Violence, and the Royal Commission into Aboriginal Deaths in Custody. These inquiries and other research has found that racial hatred and vilification can cause psychological harm to their targets, reinforce other forms of discrimination (e.g. on the basis of religion, sex, gender and/or sexual orientation), and have an inevitable link to racially motivated physical violence (including to property).

The *Racial Discrimination Act 1975* (Cth) aims to provide a benchmark for racial tolerance, and guards against racial vilification of a serious nature. In its present form, sections 18C and 18D do not unreasonably restrict freedom of expression due to the following:

- There is no violation of Part IIA unless the offence is found to have “profound and serious effects, not to be likened to mere slights”. An act is not unlawful simply because someone happened to get their feelings hurt. The court makes its assessment using an objective test, regardless of the individual complainant’s feelings and sensitivities.
- There is a wide margin of tolerance for potentially offensive or humiliating political satire or artistic works with a race related focus. This includes satire or comedy that perpetuates damaging negative stereotypes about Australia’s first peoples, or any other group based on perceived race or ethnic origins.
- Controversial, or potentially offensive, beliefs or opinions about race, religion, or ethnic origins, even if expressed in writing on social media, do not infringe Part IIA of the Act.

Australians have freedom to express their views and opinions, engage in debate about race issues, and tell racist jokes. At the same time, our community should actively work to protect all Australians from gross negative stereotyping, and repetitive and serious cases of verbal or written abuse due to perceived race or ethnicity. Legislation is one way to protect Australians from racial vilification but it does not eliminate racist attitudes and misunderstandings.

Australian law cannot by itself hope to eliminate racist attitudes or behaviours. Legislation, dialogue, and education are all tools to combat racism, dispel stereotypes, and encourage social harmony and mutual understanding between diverse Australians. Indeed the former Attorney General emphasised this point, saying that:

*Racism is often a by-product of ignorance, and education is an essential part of any response...Racism should be responded to by education and by confronting the expression of racist ideas. But legislation is not mutually exclusive of these responses. It is not a choice between legislation or education...There is no doubt that the Racial Discrimination Act has been a powerful influence on the rejection of racist*



*attitudes over the past two decades. It has forced many people to confront racist views and have them debunked. It can be compared to the contribution of the Sex Discrimination Act over the past 10 years to improving the way women are treated in our society.<sup>2</sup>*

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In conclusion, Part IIA of the Act in its current form achieves a reasonable balance between freedom from racist hate speech, and freedom of speech. We recommend that Part IIA of the Act be left in its present form. Its operation does not unfairly or unreasonably restrict freedom of speech any more than other legislation that moderates what we can and cannot say.

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<sup>2</sup> Commonwealth of Australia, Parliamentary Debates, House of Representatives, Tuesday 15 November 1994, pp 3336-3337, (The Hon Michael Lavarch MP, Attorney-General):  
[http://parlinfo.aph.gov.au/parlInfo/download/chamber/hansardr/1994-11-15/toc\\_pdf/H%201994-11-15.pdf;fileType=application%2Fpdf#search=%221990s%201994%22](http://parlinfo.aph.gov.au/parlInfo/download/chamber/hansardr/1994-11-15/toc_pdf/H%201994-11-15.pdf;fileType=application%2Fpdf#search=%221990s%201994%22)