

9 December 2016

Committee Secretary
Parliamentary Joint Committee on Human Rights
PO Box 6100
Parliament House
Canberra ACT 2600

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DIVERSITY
COUNCIL
AUSTRALIA

By email: 18Cinquiry@aph.gov.au

Freedom of speech in Australia inquiry

Dear Mr Goodenough MP

Thank you for the opportunity to provide a submission in response to the Committee's inquiry into freedom of speech in Australia.

Diversity Council Australia is the only independent, not-for-profit workplace diversity advisor to business in Australia. We have a wealth of experience providing advice to our members on the business benefits of cultural diversity.

In developing this submission, surveyed our membership and the majority of those who responded told us that they do not support changes to the current framework of the *Racial Discrimination Act 1975* or the way the Australian Human Rights Commission handles complaints.

As such, DCA does not believe that an adequate case for changing the parameters of the *Racial Discrimination Act* has as yet been made.

Please feel free to contact myself or DCA's Policy and Research Manager, Cathy Brown, on 0424 578 698 should you require any further information about this matter.

Yours sincerely

Lisa Annese
Chief Executive Officer

I. ABOUT DIVERSITY COUNCIL AUSTRALIA

Who we are

Diversity Council Australia (DCA) is the only independent, not-for-profit workplace diversity advisor to business in Australia. We offer a unique knowledge bank of research, practice and expertise across diversity dimensions developed over 30 years of operation. In partnership with our members, our mission is to:

- Lead debate on diversity in the public arena;
- Develop and promote the latest diversity research, thinking and practice; and
- Deliver innovative diversity practice resources and services to enable our members to drive business improvement.

DCA's income is generated from membership fees, sponsorships and services to businesses.

What we do

We work in partnership with members and thought leaders to generate ground breaking diversity projects. DCA identifies internationally emerging diversity and inclusion trends, and brings these first to market to Australia, introducing them in well-considered way which speaks to Australia's unique context.

Our research is tailored to Australia's unique institutional, cultural and legal context. It:

- Challenges organisations and triggers action in the Australian labour market;
- Establishes leading thinking and practice;
- Enables organisations and policy makers to respond to the latest trends;
- Creates a lasting difference to the community through fostering innovation and creativity; and
- Drives business improvement through evidence-based, practical guidance.

II. SUMMARY

DCA is deeply committed to the spirit and application of Australian anti-discrimination law, which over the last 40 years has played an important role in raising awareness of discrimination and providing access to remedies for individuals whose complaints fall within the parameters of the *Racial Discrimination Act, 1975* (RDA).

In preparing this submission, DCA asked its members for their views on changing the RDA.

- More than two thirds (69%) of DCA members who responded were not supportive of changes to sections 18C or 18D of the RDA.
- Our members were not supportive of any significant shift in the way that complaints are handled by the Australian Human Rights Commission.
- Only 8% of respondents felt that the current RDA was not fulfilling its obligations to protect people from vilification.
- More than half of respondents (59%) agreed that changes to section 18C of the RDA could impact more on some groups of people than others, highlighting sections of the community that the Scanlon Foundation have also noted are currently experiencing higher levels of discrimination than in past years of the Foundation's survey.

This submission also discusses the business benefits of cultural diversity and the importance of a strong legal framework to prevent racial discrimination and vilification.

DCA recognises that racism and racial vilification are not issues which can be addressed through the law alone. DCA is strongly of the view that business has an important role in promoting a cohesive and multicultural society through continued efforts to combat racism – a role that is supported by ongoing effort and attention from all levels of government, together with the corporate sector and the broader community.

The experience of DCA and its members highlights that workplaces which are inclusive of cultural diversity require a commitment from organisational leaders to act decisively against discrimination and harassment where they occur, but also to actively raise awareness about the business benefits of cultural diversity. We strongly encourage the Government to actively support initiatives which promote cultural diversity in the workplace and in the wider community.

Given the views expressed by our membership, and from our 30+ years of experience as the only independent, not-for-profit workplace diversity advisor to business in Australia, DCA submits that the current framework of the RDA which aims to prevent racial discrimination and vilification and offers an avenue of redress for complainants, is one which has worked well over a number of decades, strikes an appropriate balance between the rights of individuals to live free from racial discrimination and vilification and the need for free speech in the community, and is one that business is experienced in working with.

DCA does not believe that an adequate case for changing the parameters of the Act has as yet been made.

III. BACKGROUND

In 2014, DCA made a submission on the draft exposure bill *Freedom of Speech (Repeal of S. 18C) Bill 2014*. Our submission, formulated after consulting with our members, stated that:

DCA is strongly of the view that business has an important role in promoting a cohesive and multicultural society through continued efforts to combat racism – a role that requires ongoing effort and attention from all levels of government, together with the corporate sector and the broader community.

We believe the current framework of the RDA has worked well over a number of decades, strikes an appropriate balance between the rights of individuals to live free from racial discrimination and vilification and the need for free speech in the community, and is one that business is experienced in working with.

Changing the RDA in the way currently proposed would send a negative message about the type of behaviour that is now acceptable in the community, and this will inevitably have a flow on effect into the workplace.

DCA does not believe that a case for changing the parameters of the RDA has as yet been made. In relation to the current proposals, DCA recommends that:

- *The current wording of the RDA be retained, pending more extensive community consultation, including specifically with Australian business; and*
- *The Government actively support initiatives which promote cultural diversity in the workplace and in the wider community.*

IV. DCA CONSULTATION FINDINGS

To develop this response to the inquiry, DCA sent out a questionnaire to its members asking seven questions relating to the Terms of Reference, and based on the questions developed for DCA’s consultation in 2014.

The questionnaire was distributed to our members via DCA’s membership email list and shared via our LinkedIn network. To ensure the integrity of our submission, we asked respondents to provide us with the email address they use to access their DCA account to ensure they were DCA members.

Overall we had 39 completed¹ responses, representing 31 member organisations.

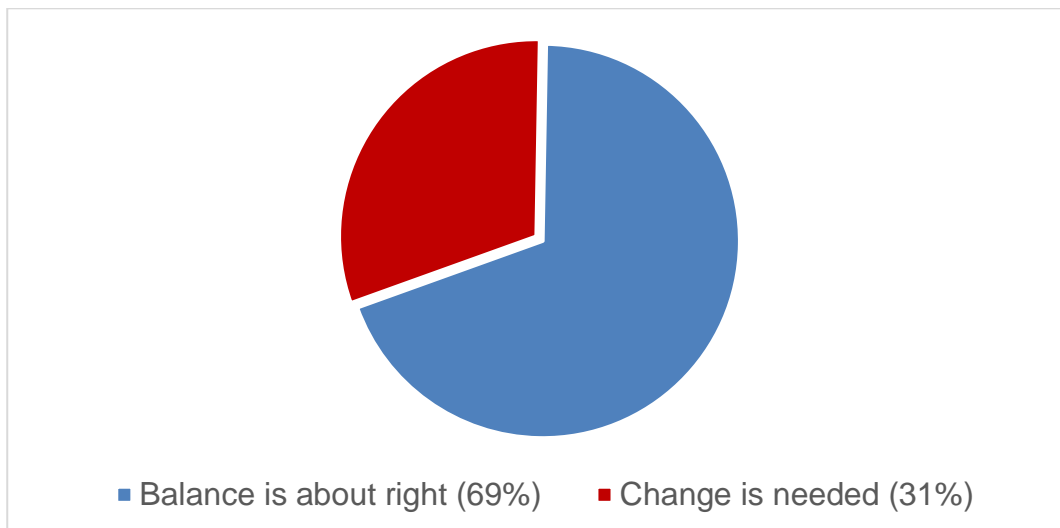
Responses

Question 1. Currently, the RDA makes it an offence in Section 18C “to offend, insult, humiliate or intimidate another person or a group of people”.

Part 18D of the current Act sets out a wide range of defences. As the Australian Human Rights Commission explains: “Exemptions under Section 18D of the RDA ensure that artistic works, scientific and academic inquiry, and fair comment on matters of public interest are exempt from Section 18C, provided they are done reasonably and in good faith.”

Is the current balance between free speech and discrimination in the RDA about right, or are changes needed?

The vast majority (69%, 27 respondents) of respondents indicated that no change was needed.



¹ Only responses which provided a work email address (which is used to access DCA membership) were included.

Of those who stated a need for change:

Two felt that the law needs to be strengthened to better protect people from prejudice. For example:

Law requires to protect people from indirect discrimination. Isolation and non-inclusion needs to be addressed.

Two suggested that the exemptions in Section 18D are too broad. For example:

tightening [sic] of the definition - 'fair comment', 'reasonably and in good faith' are too subjective.

Five felt that Section 18C should be amended, for example:

The word "offend" is too subjective for law. An individual gets to choose (it is a "choice") on whether or not to be offended. I could say, do, or undertake an act with no intention to offend, yet you may become offended, and that is your choice. Unless this is covered by "fair comment" which only covers something that is spoken or written, then the term "offend" needs to be removed.

Two argued that change is required to deal with vexatious complaints, for example:

While intentions are noble, current system allows vexatious suits which undermines the purpose of the regulation, and generates discontent.

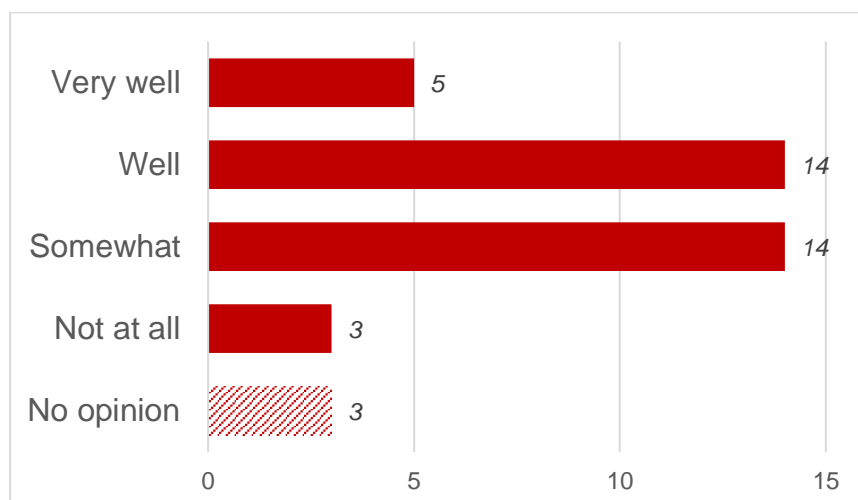
One respondent provided no reason.

Question 2. How well does the RDA currently protect individuals and groups of people from vilification on the basis of their race, colour, nationality or ethnicity?

Respondents were asked to rate the effectiveness of the RDA's current protections.

Almost half (49%, 19 respondents) felt the current Act was doing well or very well.

Only 8% of respondents (3) felt that the current RDA was not fulfilling its obligations to protect people from vilification.



Question 3. Do you think changing the RDA is likely to have any impact on the extent of such protections (i.e. on the basis of their race, colour, nationality or ethnicity)?

Respondents were asked to provide an open-ended answer to whether they felt changing the RDA would impact on protections from vilification.

Of the 39 responses, 18 (46%) could be characterised as arguing that changing the RDA as proposed would have a negative impact:

Indeed, yes. Tim Soutphommasane articulated my view best in 2014 when he said - "My concern about what was proposed by the Federal Government... was that it would embolden a small minority of Australians with bigoted attitudes to believe they had complete impunity to racially abuse and harass others in the name of free speech."

...

Yes, I believe in it [sic] current form it provides a framework for decent, civil debate and exchange. Those arguing for change seem to believe they have a right to say whatever they want about certain segments of our society with impunity.

Four respondents (10%) argued that changes would improve community cohesion or enhance free speech:

By reducing the over-reach of the current Act, we can build community consensus and support.

...

Changing the RDA will prevent those who are "offended" being encouraged to make a complaint, and will thus prevent the complainants from unwanted media attention or ridicule if their complaint is viewed as unrealistic or vexatious.

Three respondents (8%) felt that changing legislation was not the key issue:

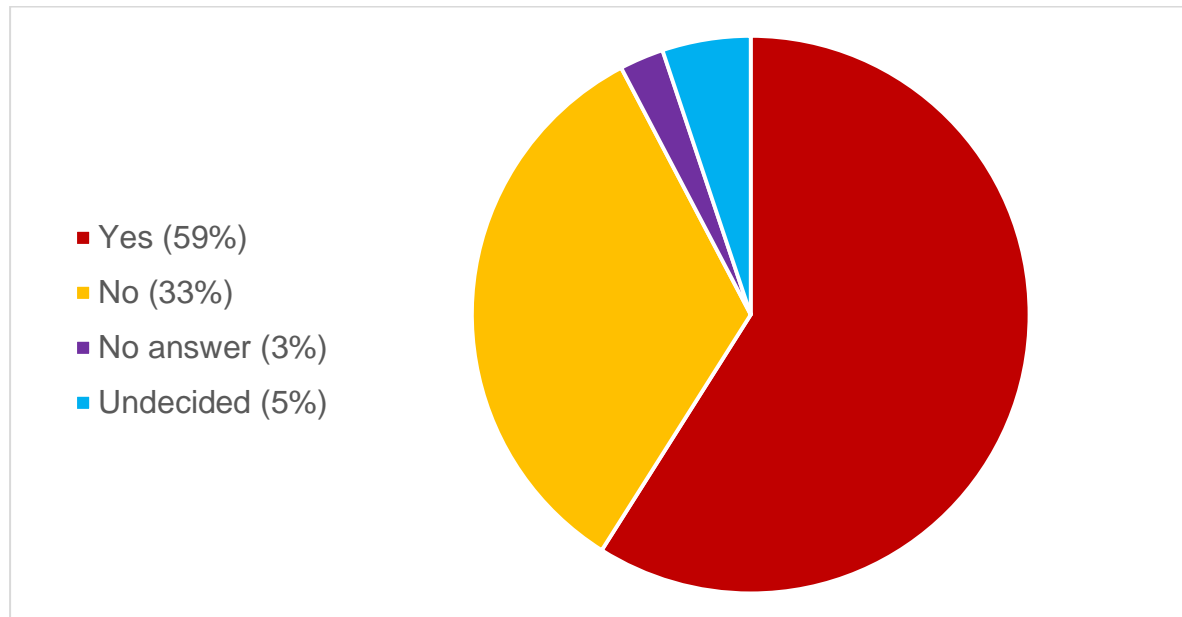
I think education and goodwill is much more appropriate than legislation.

Nine respondents answered simply "No" (5) or "Yes" (4) and the remaining four responses didn't specify an answer.

Question 4. Do you think changes to Section 18C of the RDA could impact more on some groups of people than others?

Respondents were asked to provide an open-ended answer, but the vast majority could be categorised as either agreeing or disagreeing with the question.

More than half of respondents (59%) agreed that changes to Section 18C of the RDA could impact more on some groups of people than others, a number of whom identified that certain sections of the community could become more prone to discrimination (interestingly the sections of the community identified were similar to those highlighted by the Scanlon Foundation’s Report, discussed below).



Of those who agreed, common responses were:

Yes - in the current political climate I think that people of Middle Eastern nationalities and ethnicities, and South Asian nationalities are particularly at risk.

...

The changes will see more and more overt racist attacks on minority groups such as Aboriginal, Muslims, LGBTI and other races such as Sudanese.

....

Certainly so. I expect that changes to 18C would embolden bigots targeting Asian and Middle Eastern people (or even those mistaken to be so) in a bid to make those people feel unwelcome in Australia. I don't want to see our law permit, or our politicians encourage, people to do so.

Of the thirteen who said that changes would not impact more on some groups of people than others most simply answered “No”, with one respondent stating:

Not really as I believe the issues it raises can be managed in other ways.

Question 5. Do you think changing Section 18C could send any important messages to business and/or the broader community?

One respondent identified how businesses at an early stage on their diversity and inclusion journey would be impacted:

Yes. Businesses with immature diversity policies would strongly base their HR policies on legislation or the RDA and any changes (especially an increase to the exemptions) could easily be reflected in business practices.

A number of respondents highlighted areas where they felt that changing the RDA could send a damaging message to business about the value of diversity:

*Business impact: * Changes to 18C would send the message that it's okay to treat people differently based on race. It would encourage people of the same race to cluster together to avoid racist incidents (as fear of racism already does today), and embolden bigots in multicultural workplaces. * As a foreign investor, I would be deterred from conducting business in an Australia with lowered protections against racist attacks. Broader community impact: * If changes are made to 18C, the impact that I foresee is that bigots win, and minorities lose. a) [sic] Bigots would be emboldened, similar to as we have seen in the rise in racist attacks - in the UK, fuelled by Brexit, and in the US, fuelled by Trump's win. * Growth of the fear amongst the non-white community of racist public attacks that occur today, e.g. on public transport on a regular basis.*

...

Changing section 18c will tell businesses and the broader community that it's fine to be discriminatory and will tell those discriminated against that as a nation we do not care about nor respect them.

...

It would send a terrible message to the business and broader community, that it is ok for people to use offensive language or to insult people simply because of their race, religion or country of origin. It also inappropriately values the view of certain people (eg while [sic] male politicians) over the views of people who tend to experience significant discrimination. Another message it sends is that you can use politics to change important legislation that acts to support unity and multiculturalism: this will attract people to political positions who are xenophobic and racist, rather than people who have the skills and competencies to make decisions in the future long term interests of all Australians.

...

Yes it will say that it is acceptable to vilify minority groups in Australia. It will lead to greater adverse events towards minority groups and give a clear message to racists and bigots that that behavior [sic] is acceptable. There is already a perceived acceptance with the One Nation party being elected to parliament. Extreme right

wing groups are already accelerating in their racist, vilifying behavior [sic] with violence often the result.

One respondent felt that changes could encourage more organisations and the broader community to take action on discrimination:

Yes, it'll finally mean that people in business and the broader community will talk about and take action on issues of discrimination, gender, race, ethnicity, sexuality etc.

One respondent felt that changes could help deal with what they termed 'false claims':

I think it will send a message that the focus on legitimate complaints will be paramount. Too many false claims have gone on which lower the impact.

Question 6. The inquiry has also been asked to examine the Human Rights Commission's complaint handling process and whether changes should be made to the way the Commission eliminates vexatious complaints, affords natural justice, is transparent, whether the system works efficiently, avoids unfair costs on the taxpayer or subjects of complaints, and impacts freedom of speech more broadly.

Do you have any views on the proposed changes to the complaints handling mechanisms?

The majority (54%) of respondents to this question did not support changing complaint handling mechanisms.

My understanding is that a very small percentage of complaints actually end up in court, so I am confident that the current process is rigorous enough in screening for vexatious complaints.

...

I think it works well currently and shouldn't be tampered with.

Of the minority (21%) who indicated they supported changes to the way complaints are handled, reasons provided included:

Recent cases have showed the HRC mechanisms are clearly tilted in favour of complainants, and deny natural justice to those accused. This should be addressed.

...

The QUT case shows that the process is clearly poorly managed and stressful for those at the receiving end.

...

Very important to have mechanisms to address the vexatious complaints - if this could include possible costs then real complaints can be focused on.

About one quarter of respondents (26%) provided no answer or indicated that they weren't all that familiar with the current process so did not have a view.

Question 7. Business has an important role in promoting a cohesive multicultural society and workplaces through continued efforts to combat racism – a role that requires ongoing effort and attention from all levels of government, together with the corporate sector and the broader community.

What are some of the initiatives that your organisation is undertaking to promote cultural diversity and inclusion in your workplace?

DCA members have a range of proactive measures in place to support cultural diversity. Some of the examples provided included:

- Networks, Diversity Councils and Employee Resource Groups
- Inclusion of diversity specific KPIs
- Reconciliation Action Plans
- Training – for example 'Cultural Spotlight' events, aimed at challenging stereotypes, giving context to some cultural-specific behaviours, and giving colleagues a chance to ask questions about culture in a safe and accepting dialogue
- Recruitment practices – for example, using agencies like RecruitAbility, and trialling different practices such as blind recruitment.

V. CULTURAL DIVERSITY IN AUSTRALIA – THE CURRENT CONTEXT

According to the ABS, at 30 June 2015, 28.2% of Australia's population were born overseas, the highest proportion in over one hundred years.² A further 20% of Australians had at least one parent born overseas, a figure that is likely to increase in the 2016 census.³

While people born in the UK remain the largest group migrating to Australia, in recent years the mix of migrants to Australia has changed with a tripling of Australian residents who were born in India, a doubling of the number of Australian residents born in China and significant increases to the proportion of Australian residents who were born in Nepal, Bangladesh and Brazil.

For much of Australia's history, migration policy has been underpinned by labour market needs. Migrants to Australia have contributed greatly to the economy, with the ABS noting that recent migrants have a labour market participation rate equivalent to, or higher than the total Australian rate.⁴

Overall, it is fair to say that Australia's cultural diversity is commonly regarded as a strength.⁵

Despite this, the annual Monash Scanlon Foundation Social Cohesion survey shows there has been a **significant increase in the reported experience of discrimination, which rose from 15% in 2015 to 20% in 2016** – the highest proportion recorded over the nine Scanlon Foundation surveys.⁶

² ABS, Migration, Australia, 2014-15, catalogue release 3412.0, accessed at <http://www.abs.gov.au/AUSSTATS/abs@.nsf/Latestproducts/3412.0Main%20Features32014-15?opendocument&tabname=Summary&prodno=3412.0&issue=2014-15&num=&view=>

³ Australian Bureau of Statistics 2012, *Cultural Diversity in Australia - Reflecting a Nation: Stories from the 2011 Census*, 2012–2013, Cat No. 2071.0. Accessed at: <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/2071.0main+features902012-2013#Endnote3>

⁴ ABS 2013, Characteristics of Recent Migrants, Australia, Nov 2013, catalogue release 6250.0, accessed at <http://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/6250.0Main%20Features2Nov%202013?opendocument&tabname=Summary&prodno=6250.0&issue=Nov%202013&num=&view=>

⁵ See for example:

- Laundry, C., 'Cultural diversity is one of our strengths', *The Australian*, 1 March 2016, accessed at: <http://www.theaustralian.com.au/opinion/cultural-diversity-is-one-of-our-strengths/news-story/782c1c592f77d9ad12eb56ddb29029a>
- Australian Human Rights Commission, 2014, *Face the facts: Cultural Diversity*, accessed at: <https://www.humanrights.gov.au/face-facts-cultural-diversity>
- Scanlon Foundation, 2016, *Discussion Paper: Multiculturalism*, accessed at: <http://scanlonfoundation.org.au/wp-content/uploads/2016/02/DiscussionPaperMulticulturalismFINAL.pdf>

⁶ A Markus. *Mapping Social Cohesion 2016: The Scanlon Foundation Surveys National Report*, Monash University, 2016, accessed at <http://scanlonfoundation.org.au/wp-content/uploads/2016/11/2016-Mapping-Social-Cohesion-Report-FINAL-with-covers.pdf>

Specifically, the 2016 Monash Scanlon Foundation Social Cohesion National Report found that:

...in 2016 those of a non-English speaking background reported the highest experience of discrimination, 27%, compared to 17% of those born in Australia and 19% of those born overseas in English speaking countries.

This pattern of differentiation is also evident when responses are analysed by religion of respondent. The aggregated data for the nine national surveys (2007-2016; 12,557 respondents) indicates that reported experience of discrimination ranges from 8% Anglican and 13% Roman Catholic to 26% Hindu and 31% Muslim.

...

*The findings of the Scanlon Foundation's Australia@2015 survey, which included more than 5,000 overseas-born respondents, including those born in countries not represented in sufficient numbers for analysis in national surveys, indicate high levels of reported discrimination for a number of national groups. While reported discrimination for a number of European countries was in the range 11%-15%, **reported discrimination was at 39% among those born in India, 39% China, 55% South Korea, 67% Kenya, 75% Zimbabwe, and 77% South Sudan [emphasis added].**⁷*

DCA's research backs up these findings. DCA's nationally representative workplace survey *Working for the Future* found that non-Australian born respondents were significantly more likely to report being discriminated against on the basis of cultural background (11% vs 2%) and racially harassed (14% vs 6%) and that racial harassment was (9% incident in previous twelve months) more common than sexual harassment (6%). Further, Indigenous Australians were up to six times more likely to experience inappropriate workplace behaviour than non-Indigenous Australians.

In addition, in one of the largest studies ever conducted looking at employment based race discrimination in Australia, researchers randomly submitted over 4,000 fictional job applications for entry-level jobs, over a six month period, varying only the name as an indicator of ethnicity.⁸ The study compared a number of ethnic groups, using distinctively Anglo-Saxon, Indigenous, Italian, Chinese and Middle Eastern names to denote ethnicity. The researchers found clear evidence of discrimination, with Chinese and Middle Easterners both having to submit at least 50% more applications in order to receive the same number of callbacks as Anglo candidates.

For a country looking to engage effectively with our region – particularly in terms of trade – Australia's international reputation as a nation which respects and values our cultural diversity has never been more important.

⁷ *ibid.* p26.

⁸ A. Booth, A. Leigh & E. Varganova, 'Does Ethnic Discrimination Vary Across Minority Groups? Evidence from a Field Experiment', *Oxford Bulletin of Economics and Statistics*, vol. 74(4), August, 2012. pp 547-573.

The public discourse around changing elements of the RDA is particularly relevant given another finding of the Monash Scanlon Foundation survey this year:

Two key factors seem to inform Australian attitudes to immigration: the political prominence of immigration issues and the level of unemployment. For the years 2001-2009, in the context of a growing economy, most surveys found that the proportion who considered the intake to be 'about right' or 'too low' was in the range 54%–57%.⁹

DCA is of the view that the messages conveyed to the community – including businesses – by Government policy and legislation are a critical element of creating a culture which supports a society free of racism and promotes cultural diversity.

Businesses have been playing their part in creating workplace cultures that are free from discrimination and harassment and offer equal employment opportunities to all. There is a clear understanding by the majority of businesses about what behaviour is unacceptable in relation to racial bias and discrimination and what will not be tolerated. Most workplaces have clear statements and policies in this regard. However, as noted above, weakening legislative protections could send a message to businesses who may be at an early stage on developing their diversity and inclusion policies and lead to a lower standard of protection in workplaces.

⁹ A Markus. *Mapping Social Cohesion 2016: The Scanlon Foundation Surveys National Report*, Monash University, 2016, P.37, accessed at <http://scanlonfoundation.org.au/wp-content/uploads/2016/11/2016-Mapping-Social-Cohesion-Report-FINAL-with-covers.pdf>

VI. THE BUSINESS BENEFITS OF CULTURAL DIVERSITY

Australian businesses are very aware of the importance of a culturally diverse workforce and providing workplaces which are free from cultural bias, discrimination and vilification.

The legal framework provided via the RDA to prevent and provide redress against racial discrimination and vilification, is clearly only one part of an effective community response to these issues. Equally important for business is an understanding of the great benefits offered by a culturally diverse workforce and culturally competent global engagement.

The enormous diversity in cultural, ethnic and language background of the Australian labour force offers significant untapped potential which can provide business with vital:

- Language skills;
- Cultural knowledge and understanding;
- Business networks and knowledge of business practices and protocols in overseas markets; and
- Low cost intelligence about overseas markets, including intimate knowledge of consumer tastes and preferences.

The case with respect to Australian businesses' global – and local – markets is particularly strong. Organisations that effectively capitalise on the skills and talents of their culturally diverse workforces can:

- Better understand and service an increasingly diverse client base;
- Open up business networks and identify and enter new local, regional and international markets; and
- Develop improved domestic niche marketing - 9.9 million Australian consumers are either born overseas or have at least one parent born overseas. Businesses that want to reach their 'whole' market cannot afford to ignore this critical mass of consumers.

With increased urbanisation and economic development across Asia, it is clear that the importance of Asian markets in particular will continue for some time. ¹⁰ In 2009, 28% of the world's middle class lived in the Asia Pacific,¹¹ but by 2030 the share will be 66%. By 2022, in China alone the middle class is predicted to be consuming goods and services valued at US \$3.4 trillion – 24% of GDP.¹² Over half of projected global consumption growth will occur in developing economies, most in Asia. China and India increased their share of world GDP

¹⁰ Australian Government, *2011-12 Australian government budget — Budget paper No. 1*, 2011. Accessed at: http://www.budget.gov.au/2011-12/content/bp1/html/bp1_bst4-02.htm.

¹¹ The Brookings Institution, *The Emerging Middle Class in Developing Countries*, June 2011

¹² Barton D. 2013. 'Half a Billion: China's Middle-Class Consumers', *The Diplomat* 30 May 2013. Accessed at: <http://thediplomat.com/2013/05/half-a-billion-chinas-middle-class-consumers/>

from one tenth in 1990 to one fifth in 2010, and this share is predicted to increase to one third of world GDP by 2030.¹³

Closer to home, Australia's own population requires businesses to focus on culturally diverse approaches to marketing, business strategy, workforce development and talent management. Australia has been multi-racial and multi-ethnic for its entire history¹⁴ and compared with other countries, currently has a relatively large proportion of immigrants – almost 28% of Australia's 22 million people were born overseas (6.4 million people) and approximately 13% (or 1.75 million people) were born in Asia.¹⁵

Australian businesses are becoming increasingly aware of the vital importance of Asian markets, both locally and internationally, in part as a consequence of the publicity surrounding the former Government's Australia in the Asian Century White Paper. In all, 56% of businesses surveyed in an AIG/Asialink business survey with current dealings in or with Asia indicated that at least one of their Asian operations is 'highly important' or 'extremely important.'¹⁶ In addition, half of businesses surveyed plan to start or expand their businesses in Asia within 12 months.

Asialink's Asia Capable Workplace Task Force¹⁷ has identified that "*attracting retaining and leveraging Asia capable talent*" is the "*single most pressing challenge for organisations wishing to engage in Asia*" and Asialink's National Centre for Asia Capability has been established to improve the Asia skillset of Australia's workforce.

The business case

There is a clear and compelling business case for fostering and supporting inclusive, culturally diverse workplaces. Research tells us that:

- There is improved performance in culturally diverse bank branches which have a supportive inclusive team environment – that is, diverse perspectives are valued, people are encouraged to come up with new and better ways of doing things, diversity of styles and approaches are encouraged and the opinions and thinking of people are actively elicited)¹⁸.

¹³ Australian Government, *2011-12 Australian government budget — Budget paper No. 1*, 2011.

¹⁴ D'Netto, B., Smith, D. , & Da Gama Pinto, C. (2000). *Diversity management: Benefits, challenges and strategies*. Canberra, Australia: Department of Immigration and Multicultural Affairs.

¹⁵ Australian Bureau of Statistics 2013, *Migration Australia 2011-12 and 2012-13*. Cat. No. 3412.0. ABS: Canberra.

¹⁶ Australian Industry Group & Asialink, *Engaging Asia: Getting it right for Australian business*, Asialink University of Melbourne, 2011.

¹⁷ The Asia Capable Workplace Taskforce is chaired by Mike Smith (ANZ CEO) and includes CEOs and senior representatives from EMR Capital, MMG, Optus, Australian Industry Group (AIG), Leighton Holdings, Business Council of Australia (BCA), Insurance Australia Group (IAG), Rio Tinto, Universities Australia, and Gresham.

¹⁸ Ely, R., Padavic, I. & Thomas, D. (2013). Racial diversity, racial asymmetries and team learning environment. *Organization Studies*, 33(3), 341–362.

- A study by a sociologist at the University of Illinois in Chicago finds that racial diversity in the workforce is associated with increased sales revenue, more customers, greater market share and greater relative profits. Additionally, gender diversity is associated with increased sales revenue, more customers and greater relative profits (source: Source: Herring, C. (2009, April) 'Does Diversity Pay?').
- Recent Australian research has found that the higher the proportion of senior leaders who have cultural training, speak an Asian language or have lived and worked in Asia for more than three months, the more likely business performance will exceed expectations.¹⁹
- Studies demonstrate strong relationships between people with global experience and multicultural backgrounds and organisational creativity and innovation.²⁰
- Cultivating a cultural diversity-differentiated reputation can position your organisation as a leader in its field, translating into positive media attention,²¹ as well as positive recruitment²² and business outcomes.²³
- A [2014 study by researchers at a Kansas State University](#) found that employees who openly discuss their religious beliefs at work are often happier and have higher job satisfaction than those employees who do not. It was noted that being able to express important aspects of one's life can influence work-related issues, such as job satisfaction, work performance or engagement. It can be beneficial for organisations to have a climate that is welcoming to every religion and culture.

A growing body of research confirms that the impact of culturally diverse and inclusive workplaces is clearly seen on organisations' bottom lines in respect of:

- **Market share** - A survey of over 500 organisations in the United States (U.S.) found that companies with greater workforce cultural diversity performed better in terms of

¹⁹ Asialink, *Developing An Asia Capable Workforce*.

²⁰ W. Watson, K. Kumar, and K. Michaelsen, 'Cultural Diversity's Impact on Interaction Process and Performance: Comparing Homogeneous and Diverse Task Groups', *Academy of Management*, vol. 36, no. 3, 1993, pp. 590-602.

Leung AK-y, Maddux WW, Galinsky AD, & Chiu C-y, 2008, 'Multicultural experience enhances creativity: The when and how', *American Psychologist*, 63(3), 169-181.

Maddux W, Galinsky A, & Tadmor CT, 2010, 'Be a better manager: Live abroad'. *Harvard Business Review*.

Tadmor, C.T., Tetlock, P.E., & Peng, K. (2009). Acculturation strategies and integrative complexity: The cognitive implications of biculturalism. *Journal of Cross-Cultural Psychology*, 40(1), 105-139.

²¹ FECCA, *Factsheet 8: Maximising the Value of Cultural Diversity*, Sydney, FECCA, 2013.

²² D.R. Avery and P.F. McKay, 'Target Practice: An Organizational Impression Management Approach to Attracting Minority and Female Job Applicants,' *Personnel Psychology*, vol. 59, no. 1, 2006, pp. 157-187.

D.R. Avery, M. Hernandez and M.R. Hebl, 'Who's Watching the Race? Racial Salience in Recruitment Advertising,' *Journal of Applied Psychology*, vol. 34, no. 1, 2004, pp. 146-161.

²³ Q.M. Roberson and Q.M. & H-j. Park, 'Examining the Link Between Diversity and Firm Performance: The Effects of Diversity Reputation and Leader Racial Diversity', *Group & Organizational Management*, vol. 32, 2007, pp. 548-560.

number of customers and market share – a one unit increase in cultural diversity increased the number of customers by more than 400.²⁴

- **Sales revenue** - The same survey also found a relationship between greater workforce cultural diversity and sales revenue performance – a one unit increase in racial diversity increased sales revenue by 9%.²⁵ Other research shows culturally diverse employees are able to generate significantly better employee sales performances when they work in an organisation with a positive diversity climate.²⁶ In a study of over 6,000 workers across 750 U.S. stores, the researchers found that African-American and Hispanic employees produce significantly larger sales per hour in stores with pro-diversity work climates, and White sales personnel also showed improvements. The average annual sales gain for African-American employees was \$21,000, while the annual gain for Hispanic employees was \$27,000.
- **Financial performance** - A survey of 180 publicly traded companies in France, Germany, the United Kingdom and the U.S., showed a consistent link between cultural and gender board diversity and financial performance. For companies in the top quartile of executive-board diversity, returns on equity (ROE) were on average 53% higher, and the earnings before interest and taxes (EBIT) were on average 14% higher, than they were for those companies in the bottom quartile.²⁷ Recent Australian research has found that the higher the proportion of senior leaders who have cultural training, speak an Asian language or have lived and worked in Asia for more than three months, the more likely business performance will exceed expectations – with the opposite also being true.²⁸
- **Competitive advantage** - A survey of 115 Fortune 1,000 companies over three years found that organisations with more culturally diverse leadership tend to launch more competitive actions such as new product introductions, creative advertising and promotions and sales incentives than firms with homogeneous management. In fact, firms with highly diverse management mixes launched 71 competitive actions per year while companies with low diversity leadership introduced only 9.²⁹
- **Innovation** - Numerous studies have demonstrated that people with overseas immersion experiences and multiple cultural identities display more creativity and are better problem solvers and more likely to create new businesses and products. Indeed, research shows that cultural diversity provides the biggest potential benefit to teams with challenging tasks that require creativity and innovation.

²⁴ C. Herring, 'Does Diversity Pay? Race, Gender, and the Business Case for Diversity', *American Sociological Review*, vol. 74, 2009, pp. 208-224.

²⁵ Ibid.

²⁶ P.F. McKay, D.R. Avery, and M.A. Morris, 'Mean Racial-Ethnic Differences in Employee Sales Performance: The Moderating Role of Diversity Climate', *Personnel Psychology*, vol.61, no. 2, 2008, pp. 349–374.

²⁷ T. Barta, M. Kleiner and T. Neumann, 'Is There a Payoff From Top Team Diversity?', *McKinsey Quarterly*, 2012. https://www.mckinseyquarterly.com/Is_there_a_payoff_from_top-team_diversity_2954

²⁸ Asialink, *Developing An Asia Capable Workforce*.

²⁹ G. Andrevski, O.C. Richard, W.J. Ferrier, and J.D. Shaw, 'Managerial Racial Diversity, Competitive Aggressiveness and Firm Performance: A Moderated Mediation Model,' *Academy of Management Proceedings*, 2010. <http://proceedings.aom.org/content/2010/1/1.109.short>

- **Group Performance** - A study of culturally diverse and homogenous teams found that, while initially the culturally homogenous team scored higher on group problem-solving, after 17 weeks there were no differences in performance and indeed the diverse team scored higher on generating a broader range of solutions.
- **Brand Management** - U.S. research found a correlation between diversity reputation and book-to-market equity, suggesting investors may view the future earnings prospects of leading diversity employers more favourably. U.S. Department of Labor research indicates that when employers have a diversity complaint which goes public their share price will drop within 24 hours, while when they win a Diversity Award their share price will increase within 10 days.
- **Managing Labour Costs** - Failing to provide a culturally inclusive workplace environment can lead to costly unplanned absenteeism, with research showing 70% of employees exposed to racial discrimination, violence or harassment take time off work. Indeed, there is strong evidence that race-based discrimination causes ill health, especially mental health problems such as anxiety and depression.
- **Managing Risk** - Organisations incur a range of costs associated with discrimination complaints, including readily quantifiable costs of negotiated damages (known to have exceeded \$200,000 in individual matters), awarded damages (known to have exceeded \$1 million), and legal fees (more than \$100,000 to defend complex complaints). DCA estimates the current cost of resolving the average 'in-house' serious complaint to be around \$90,000, and \$125,000 for a serious external grievance.

VII. DCA'S RESEARCH ON CULTURAL DIVERSITY

Building Inclusion: An Evidence-Based Model of Inclusive Leadership

In 2015, DCA released a new study, [Building Inclusion: An Evidence-Based Model of Inclusive Leadership](#) which shed light on the need for inclusive leadership and what it takes build more inclusive leaders.

International research clearly shows that organisations need to cultivate an inclusive workplace in order to experience the benefits of diversity. Inclusive leaders are the ones who can create successful organisations in that complex, diverse and in many cases global environment. They improve performance, productivity and innovation, through their ability to relate to a diversity of people and perspectives, be open and flexible, and focus on personal, team, and organisational growth.

The research showed that leaders who are aware of and able to relate to a diversity of people from varying cultural backgrounds are best positioned to leverage the benefits of inclusion.

FIVE MINDSETS OF THE INCLUSIVE LEADER



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Leading in the Asian Century: A National Scorecard of Australia's Workforce Asia Capability

In 2015, DCA generated the first ever [National Scorecard of Australia's Workforce Asia Capability](#). 'Asia capability' (A-Cap) is defined as individuals' ability to interact effectively in Asian countries and cultures, and with people from Asian cultural backgrounds, to achieve work goals.

For Australian businesses, one of the biggest impediments to realising business and investment opportunities in the Asian region is a lack of understanding about Asia capabilities – in particular which capabilities are critical to business success and how prevalent they are in the workforce.

The findings released in DCA's report, revealed that there is significant scope to better cultivate workforce Asia capability in Australian organisations. This research also highlighted that organisations are missing out by not utilising their culturally diverse talent.

- **There is a strong business case for fostering workforce A-Cap.** Seven out of Australia's top ten export markets are in Asia, and constitute 66% of our total export market. More than 50% of the world's population lives in Asia and its consumer demand is worth US\$10 trillion annually, similar to the U.S.
- **Asia capable talent is available.** A-Cap is considerably higher in some groups – in particular the 16.7% of Australian workers who have an Asian cultural identity, the 15.9% who have lived and worked in Asia and the 20.9% who can read, write and/or speak an Asian language (at least basic proficiency level).

Asia Capability - Leading Practice Case Studies

In a new series of case studies following on from the [Leading in the Asian Century](#) report published in September 2015, DCA worked with Norton Rose Fulbright, Telstra and The Star Entertainment Group to demonstrate how organisations can build Asia capability.

Capitalising on Culture: A Study of the Cultural Origins of ASX 200 Business Leaders

In 2013, research by DCA examining the [cultural diversity of business leaders in ASX 200](#) companies found that while there is some way to go, there is also encouraging breadth and depth in cultural diversity amongst business leaders.

Produced in partnership with the federal government's Australian Multicultural Council, PwC Australia, the Australian Government and IBM Australia, the research analysed the personal and family names and company, occupation and gender of board members and senior executives of ASX 200 companies.

In all, 57 different cultural origins were identified amongst ASX 200 board directors, and 74 different origins amongst ASX 200 senior executives. However, when we compare this to the diversity of the Australian population we identified underrepresentation in key areas. From

the research, DCA made a series of recommendations to assist organisations to better measure and capitalise on culture.

Cracking the Cultural Ceiling: Future Proofing Your Business in the Asian Century

In 2014 DCA released [*Cracking the Cultural Ceiling: Future Proofing Your Business in the Asian Century*](#). Conducted in partnership with Deloitte, CBA and IBM, with King & Wood Mallesons, The Next Step and Performance Education, this research explored why people from Asian backgrounds are well represented in entry level and mid-level jobs in Australian business, yet they are significantly under-represented in leadership roles.

While 9.3% of the Australian labour force is Asian born, only 4.9% make it to senior executive level. In ASX 200 companies, only 1.9% of executives have Asian cultural origins, compared to 9.6% of the Australian community.

This project uncovered valuable information about 'the bamboo ceiling' and why so few Asian leaders are reaching the top. Key findings include:

- **Asian talent is ambitious, motivated and capable:** 84% plan to advance to a very senior role, 91% say challenging work is very important in their next career move, and 97% have Asia capabilities.
- **Asian talent is under leveraged, undervalued and likely to leave:** Only 17% strongly agree that their organisation uses their Asia capabilities very well, one in five are very satisfied with career progress and opportunities, and 22% strongly agree that they have worked in organisations that value cultural diversity. 30% say they are likely to leave their employer in the next year.

Key barriers are locking out Asian talent in Australian organisations:

- **Cultural bias and stereotyping:** Only 18% of Asian talent feel their workplaces are free of cultural diversity biases and stereotypes. Many regularly experience bias and stereotyping, including about their cultural identity, leadership capability, English proficiency, and age. Women from Asian backgrounds experience a 'double disadvantage'.
- **Westernised leadership models:** 61% feel pressure to conform to existing leadership styles that are inherently 'Anglo', e.g. over-valuing self-promotion and assertive direct communication, while undervaluing and misinterpreting quiet reserve, deference and respect for seniority.
- **Lack of relationship capital:** Only one in four has access to mentors or professional networks and even less has access to sponsors; similarly low levels feel included in workplace social activities.
- **The case for culture not understood:** Only 15% strongly agree their organisation leverages its workforce cultural diversity to better service clients. Organisations often fail to fully grasp the strategic value of Asian markets, capabilities and talent for Australian organisations operating in the Asian Century.

Capitalising on Culture Pilot Survey

DCA's landmark study on cultural diversity, sponsored by Deloitte Touche Tohmatsu, ANZ, Mallesons Stephen Jaques and Goldman Sachs, was released in December 2011.

Capitalising on Culture: A Study of Cultural Diversity amongst Australian Senior Executives and their Immediate Pipeline showed an encouraging depth and breadth of cultural and linguistic diversity at the most senior levels and in the leadership pipeline, but also revealed a need to capitalise more on talent who possess a non-English speaking cultural identity.

DCA Networks

In recognition that Australian businesses are looking for guidance, in March 2014, DCA launched Australia's first ever **Building Cultural Capability Network** to provide DCA members with an opportunity to further develop their learning and progress on building cultural capability. Over the past two years, DCA has heard from a range of speakers about:

Tackling Islamophobia and creating more inclusive workplaces for Muslim Australians:

- Mariam Veiszadeh, President Islamophobia Register Australia
- Randa Abdel Fattah, Australian Muslim writer of Palestinian and Egyptian parentage
- Hakan Harman, Chief Executive Officer of Multicultural NSW
- Deb Howcroft, Executive General Manager, Organisational Development, CBA

Courageous Conversations about Race:

- Malcolm Fialho, Senior Diversity Officer at the University of Western Australia
- Nareen Young, Director at PwC's Indigenous Consulting, and former CEO of DCA

Breaking through the 'bamboo ceiling' to make the most of Asian talent:

- DCA's Research Director, Dr. Jane O'Leary
- Alec Bashinsky, Chief Human Resources Officer, National Partner, People & Performance at Deloitte
- Jenny Taing, Senior Lawyer, Australian Securities & investment Commission (ASIC) and non-executive director of The Royal Victorian Eye & Ear Hospital and a non-executive director of The Australian Health Practitioner Regulation Agency (AHPRA)
- Vivienne Nguyen, Business Practice Manager at Melbourne City Mission and non-executive director at City West Water
- Dr Tom Verghese, Principal, Cultural Synergies

VIII. THE BUSINESS BENEFITS OF STRONG LEGISLATION TO ADDRESS RACE DISCRIMINATION AND RACIAL VILIFICATION

DCA members have long recognised the benefits of pro-actively preventing workplace discrimination and harassment, and effectively managing issues and complaints when they arise. This commitment is driven by social and legal imperatives, as well as good business practice.

Appropriate and effective action in this area:

- Minimises costs associated with unnecessary staff absenteeism,
- Reduces avoidable costs associated with turnover, recruitment and re-training,
- Positions organisations to receive positive rather than adverse publicity in relation to its people management practices,
- Provides a safe and healthy work environment,
- Generates productivity benefits through retention of valued staff,
- Improves staff morale, and
- Minimises legal exposure and risk.

DCA notes that the current RDA framework focuses strongly on conciliation. Conciliated outcomes benefit both the employer and the complainant by being a quick and cost minimising mechanism for resolving complaints.

Conciliation is a low cost mechanism for encouraging fast and efficient resolution of an otherwise potentially damaging and costly dispute and in that way beneficial to both employers and employees.

According to the Australian Human Rights Commission, in 2015-16, the Commission finalised 86 complaints about racial hatred. Only one complaint about racial hatred proceeded to court.³⁰

The vast majority of DCA members who responded to our questionnaire supported the current arrangements, but there was also support by a number of people for improvements to the way vexatious complaints can be handled.

DCA would be concerned about any changes that could undermine the legitimacy of the existing conciliation process as a way resolving complaints under the RDA, and may encourage increased complaints under defamation laws, creating additional difficulties for business and complainants.

This is particularly important given that DCA reviews of the available research highlight that preventing and effectively managing workplace discrimination has demonstrable benefits to businesses through appropriate and effective management of issues and complaints.

³⁰ Australian Human Rights Commission, *Race Hate and the RDA*, 8 September 2016, accessed at: <https://www.humanrights.gov.au/our-work/race-discrimination/projects/race-hate-and-rda>

Costs of Discrimination and Vilification

Costs to organisations

As indicated above, organisations incur a range of costs associated with discrimination. Readily quantifiable costs of diversity complaints to the organisation may take the form of negotiated damages, awarded damages, and legal fees running to many hundreds of thousands of dollars. The experiences of DCA members indicate that legal costs regularly exceed \$100,000 and in more complex cases it would not be uncommon for legal fees to exceed double this amount.

Less easy to quantify are the “hidden” costs, including, for example unplanned absenteeism, reduction in work team cohesion and productivity, reduction in staff morale, lost management/employee time (investigations, hearings etc.), resignations and staff replacement costs, workplace accidents, stress and illness claims, damage to the company's reputation, and/or political and industrial relations impacts.

Turnover associated with complaints is also common, representing a considerable cost to employers in recruitment, training and development, in addition to the indirect cost associated with loss of staff morale inevitably arising from unresolved disputes within workplaces³¹. Turnover costs have been variously estimated at between 50 and 150% of the person's annual salary.

Discrimination also has an impact on company reputation and share prices with research conducted by the U.S. Department of Labor showing that when employers have a diversity complaint which goes public, their share price will drop within 24 hours. Conversely, when employers win a Diversity Award their share price will increase within 10 days.³²

Costs to individuals

Discrimination and vilification exact a financial as well as emotional toll on complainants and their families. It is extremely difficult to precisely quantify the economic cost of this. However, available research demonstrates discrimination in employment has a range of psychological, physical, and financial consequences. For instance, VicHealth research indicates that the health impacts of discrimination include higher rates of depression and other forms of mental illness³³. This finding is consistent with an emerging consensus that discrimination and stigmatization are major causal factors of ill health, including higher anxiety, depression, worsened quality of life, a sense of loss of control and difficulty coping³⁴.

³¹ HREOC, (2003). *A bad business (Review of sexual harassment in employment complaints 2002)*. Available at: http://www.hreoc.gov.au/sex_discrimination/workplace/bad_business/media/fact_cost.html

³² Wright, P.M., Ferris, S.P., Hiller, J.S. & Kroll, M. (1995). Competitiveness through management of diversity: Effects on stock price valuation. *Academy of Management Journal*, 88: 272-287.

³³ VicHealth, (2007). *More than tolerance: Embracing diversity for health*. Available at: [http://www.vichealth.vic.gov.au/assets/contentFiles/DCASv2%20\(4\)%20-%20FINAL%20060907.pdf](http://www.vichealth.vic.gov.au/assets/contentFiles/DCASv2%20(4)%20-%20FINAL%20060907.pdf)

³⁴ Lynch, P. (2005). Homelessness, poverty and discrimination: Improving public health by realising human rights, *Deakin Law Review*. Available at: <http://www.austlii.edu.au/au/journals/DeakinLRev/2005/11.html#fn46>

Beyondblue estimates that depression costs the Australian economy \$3.3 billion in lost productivity each year. Six million working days are lost, with another 12 million days of reduced productivity and economic studies indicate that each employee with untreated depression and related conditions will cost their organisation nearly \$10,000 a year.³⁵ While depression is not only associated with workplace discrimination, there are clear financial imperatives for businesses to minimise the impact of depression where possible.

In addition to adverse psychological consequences, individuals experiencing discrimination face a range of financial hardships. Foremost among these is the financial toll associated with loss of employment, with Australian Human Rights Commission statistics indicating three out of four complainants are no longer employed with the organisation when they lodge their complaint³⁶. Added to this, in the process of seeking legal redress, complainants often incur significant legal costs.

³⁵ beyondblue, *National depression in the workplace program*. Available at: http://www.beyondblue.org.au/index.aspx?link_id=4.1028

³⁶ HREOC, (2003). *A bad business: Review of sexual harassment in employment complaints 2002*. Available at: http://www.hreoc.gov.au/sex_discrimination/workplace/bad_business/media/fact_cost.html

IX. 7. CONCLUSION & RECOMMENDATIONS

Given the views expressed by our membership, and from our years of experience as the only independent, not-for-profit workplace diversity advisor to business in Australia, DCA submits that the current framework of the RDA which aims to prevent racial discrimination and vilification and offers an avenue of redress for complainants, is one which has worked well over a number of decades, strikes an appropriate balance between the rights of individuals to live free from racial discrimination and vilification and the need for free speech in the community, and is one that business is experienced in working with.

DCA does not believe that an adequate case for changing the parameters of the Act has as yet been made.

DCA also recognises that racism and racial vilification are not issues which can be addressed through the law alone. DCA is strongly of the view that business has an important role in promoting a cohesive and multicultural society through continued efforts to combat racism – a role that is supported by ongoing effort and attention from all levels of government, together with the corporate sector and the broader community.

The experience of DCA and its members highlights that workplaces which are inclusive of cultural diversity require a commitment from organisational leaders to act decisively against discrimination and harassment where they occur, but also to actively raise awareness about the business benefits of cultural diversity. We strongly encourage the Government to actively support initiatives which promote cultural diversity in the workplace and in the wider community.