2014/05: Should Australia's Racial Discrimination Act be amended?

What they said...
'People do have a right to be bigots, you know. In a free country, people do have rights to say things that other people find offensive, insulting or bigoted'
Senator George Brandis, federal Attorney-General

'In this context, appeals to freedom are essentially calls to prioritise a right to discriminate...'
Rachel Ball, director of advocacy and campaigns at the Human Rights Law Centre

The issue at a glance
On March 25, 2013, federal Attorney General, Senator George Brandis, released an exposure draft of the amendments to section 18C of the Racial Discrimination Act.
Section 18C of the Racial Discrimination Act, in its current form, makes it unlawful for someone to make comments that are reasonably likely to 'offend, insult, humiliate or intimidate' someone because of their race or ethnicity.
Senator Brandis is seeking to remove the words 'offend, insult and humiliate' but to leave 'intimidate'.
Senator Brandis has also proposed repealing section 18D of the Act, which provides exemptions that protect freedom of speech. These ensure that artistic works, scientific debate and fair comment on matters of public interest are exempt, providing they are said or done reasonably and in good faith. The amendment would essentially remove the 'good faith' provisions.
Senator Brandis has justified the amendments in terms of ensuring freedom of speech. Critics are concerned that the amendments will serve to remove significant legal protections against racially motivated abuse and further that the amendments may foster other forms of racism within the Australian community.
The proposed amendments have drawn criticism from ethnic community groups, and Labor and the Greens have both said they oppose the legislation. But free speech advocates, including free-market think tank the Institute of Public Affairs, have thrown their support behind the changes.
The proposed changes will be subject to at least six weeks of community consultation.

Background
(Most of the information reprinted below has been taken from the section of the Australian Human Rights Commission's homepage titled 'Know your rights: Racial discrimination and vilification'.
The full text of this material can be accessed at https://www.humanrights.gov.au/publications/know-your-rights-racial-discrimination-and-vilification)

What is racial discrimination?
Racial discrimination is when a person is treated less favourably than another person in a similar situation because of their race, colour, descent, national or ethnic origin or immigrant status. For example, it would be 'direct discrimination' if a real estate agent refuses to rent a house to a person because they are of a particular racial background or skin colour.
It is also racial discrimination when there is a rule or policy that is the same for everyone but has an unfair effect on people of a particular race, colour, descent, national or ethnic origin or immigrant status. This is called 'indirect discrimination'. For example, it may be indirect racial discrimination if a company says that employees must not wear hats or other headwear at work, as this is likely to have an unfair effect on people from some racial/ethnic backgrounds.

What is racial hatred or racial vilification?
Racial hatred (sometimes referred to as vilification) is doing something in public based on the race, colour, national or ethnic origin of a person or group of people which is likely to offend, insult, humiliate or intimidate. Examples of racial hatred may include:
a) racially offensive material on the internet, including eforums, blogs, social networking sites and video sharing sites
b) racially offensive comments or images in a newspaper, magazine or other publication such as a leaflet or flyer
c) racially offensive speeches at a public rally
d) racially abusive comments in a public place, such as a shop, workplace, park, on public transport or at school
e) racially abusive comments at sporting events by players, spectators, coaches or officials.

How am I protected from racial discrimination and racial hatred?
The Racial Discrimination Act aims to ensure that Australians of all backgrounds are treated equally and have the same opportunities.
This Act makes it against the law to treat you unfairly, or to discriminate against you, on the grounds of race, colour, descent, national or ethnic origin, and immigration status.
The Act also makes racial hatred against the law.

Section 18C of the Racial Discrimination Act (1975) states:
It is unlawful for a person to do an act, otherwise than in private, if:
(a) the act is reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate another person or a group of people; and
(b) the act is done because of the race, colour or national or ethnic origin of the other person or of some or all of the people in the group.

When is racial hatred not against the law?
The Racial Discrimination Act aims to strike a balance between the right to communicate freely ('freedom of speech') and the right to live free from racial hatred or vilification.
To strike this balance, the Act outlines some things that are not against the law, provided they are 'done reasonably and in good faith' - even if they are done in public.
Under the Act, the things that are not against the law if they are "done reasonably and in good faith" are:
a) an artistic work or performance - for example, a play in which racially offensive attitudes are expressed by a character.
b) a statement, publication, discussion or debate made for genuine academic or scientific purposes - for example, discussing and debating public policy such as immigration, multiculturalism or special measures for particular groups.
c) making a fair and accurate report on a matter of public interest - for example, a fair report in a newspaper about racially offensive conduct.
d) making a fair comment, if the comment is an expression of a person's genuine belief.

The Andrew Bolt case
(Most of the information below come from the Wikipedia entry titled 'Andrew Bolt'. The full text can be accessed at http://en.wikipedia.org/wiki/Andrew_Bolt)
The Abbott-led Coalition Government plans to amend part of Australia's racial discrimination laws by repealing section 18C of the Racial Discrimination Act 1975.
The changes came in response to a high-profile case involving conservative commentator Andrew Bolt, who was found to have broken the law over two articles he wrote in 2009 about light-skinned people who identify as Aboriginal. At the time, Bolt said it was 'a terrible day for free speech in this country'.
Attorney-General George Brandis has stated that the Government's planned amendments 'will ensure that can never happen in Australia again'.
In September 2010, nine individuals claiming Aboriginal ancestry commenced legal proceedings in the Federal Court against columnist and commentator, Andrew Bolt, and the Herald Sun over two posts on Bolt's blog. The nine sued over posts titled 'It's so hip to be black', 'White is the New Black' and 'White Fellas in the Black'. The articles suggested it was fashionable for 'fair-skinned people' of diverse ancestry to choose Aboriginal racial identity for the purposes of political and career advancement. The applicants claimed the posts breached the Racial Discrimination Act. They sought an apology, legal costs, and a gag on republishing the articles and blogs, and 'other relief as the court deems fit'. They did not seek damages.
On 28 September 2011 Bolt was found to have contravened section 18C of the Racial Discrimination Act.

Internet information
The Universal Declaration of Human Rights, issued by the United Nations in 1948, can be accessed at http://www.un.org/en/documents/udhr/

On September 29, 2011, The Punch published an opinion piece by Bill Rowlings titled 'Bolt case shows need for more free speech, not less'. The comment argues that the answer to racially bigoted speech is not prohibition, but further argument.
The full text of this comment can be found at http://www.thepunch.com.au/articles/bolt-case-shows-need-for-more-free-speech-not-less/

The ABC has prepared explanatory information on the proposed amendments to the Racial Discrimination Act. The information is embedded in the ABC site and includes the amendments themselves (which have been inserted into the current Act). The amendments are highlighted. If you click on the highlighted section further explanation is provided. To view all proposed amendments you will need to scroll down the text in the embedded text box. The down arrow on the right-hand side of the box can be used for this purpose.
This information can be accessed at http://www.abc.net.au/news/interactives/racial-discrimination-act/

On September 17, 2013, Dr Tim Soutphommasane, Australia's Race Discrimination Commissioner, delivered the 2014 Peace and Understanding lecture. The speech focused on multiculturalism and racism in Australia and considered the current debate seeking to allow bigotry as part of free speech. The commissioner contends that Australia should not alter its Racial Discrimination Act in the manner proposed.
The full text of the speech can be accessed at http://www.humanrights.gov.au/news/speeches/racism-hate-speech-and-multiculturalism

On November 22, 2013, The Conversation published a comment by the President of the Australian Human Rights Commission, Professor Gillian Triggs. The comment is titled 'Why racial hatred laws are vital to Australian multiculturalism'
Professor Triggs argues against reducing the scope of Australia's Racial Discrimination Act.
The full text can be accessed at https://theconversation.com/why-racial-hatred-laws-are-vital-to-australian-multiculturalism-20015

On November 22, 2013, The Stringer published a comment by Gerry Georgatos titled 'Destroying 18C will give rise to "race hate"'. Georgatos argues that reducing the scope of section 18C of the Racial Discrimination Act will lead to less tolerant and a more racially abusive Australia.
The full text of this argument can be accessed at http://thestringer.com.au/destroying-18c-will-give-rise-to-race-hate/#.U0zTCldjEy6

On March 3, 2014, Dr Tim Soutphommasane, Australia's Race Discrimination Commissioner, delivered the Alice Tay lecture in Law and Human Rights. The lecture was titled 'Two freedoms: freedom of expression and freedom from racial vilification'.
In the lecture Dr Soutphommasane argues that the Racial Discrimination Act as it currently stands has performed a valuable function and that Australia would be unwise to amend it in the way proposed.
The full text of this speech can be found at http://freilich.anu.edu.au/sites/freilich.anu.edu.au/files/images/14%2003%2003%20Alice%20Tay%20Lecture%20Tim%20soutphommasane%20ANU.pdf

On March 3, 2014, The Conversation published a report by Michelle Grattan indicating that there were differences of opinion within the Australian Human Rights Commission over whether section 18C of the Racial Discrimination Act should be amended or repealed.
The full text of this report can be found at http://theconversation.com/human-rights-chiefs-divided-on-racial-discrimination-act-23917

On March 17, 2014, The Conversation published a preliminary report on a survey of over two thousand Internet users, which found that only ten percent believed it should be possible to vilify a person or group without legal restriction or penalty.
The full text of this report can be found at http://theconversation.com/what-do-australian-internet-users-think-about-racial-vilification-24280

On March 20, 2014, Crikey published a comment by its political editor, Bernard Keane, titled 'Racial vilification: why defenders of section 18C fail'. Keane argues that section 18C of the Racial Discrimination Act should be removed because it is too open to subjective interpretation.
The full text of this comment can be accessed at http://www.crikey.com.au/2014/03/20/racial-vilification-why-defenders-of-section-18c-fail/

On March 24, 2014, ABC News ran a report on the Attorney-General, Senator George Brandis, asserting that freedom of speech meant that Australians had the right to express bigoted remarks.
The full text of this report can be accessed at http://www.abc.net.au/news/2014-03-24/brandis-defends-right-to-be-a-bigot/5341552

On March 25, 2014, Crikey published a report and an analysis detailing Senator Brandis's proposed amendments to the Racial Discrimination Act. The full text of this document can be accessed at http://www.crikey.com.au/2014/03/25/racial-discrimination-act-brandis-moves-to-amend-not-repeal-18c/

On March 25, 2014, the Institute of Public Affairs issued a media release titled 'Abbott government's changes to Racial Discrimination Act a win for freedom of speech'
The media release defends the proposed changes to the Racial Discrimination Act.
It can be downloaded from http://www.ipa.org.au/publications/2252/abbott-government%27s-changes-to-racial-discrimination-act-a-win-for-freedom-of-speech---institute-of-public-affairs

On March 26, 2014, ABC Radio transmitted the opinion of the shadow foreign affairs minister, Tanya, Plibersek, that the proposed amendments to the Racial Discrimination Act would allow Holocaust deniers to express their views with impunity.
A recording of Ms Plibersek's comments can be accessed at http://www.abc.net.au/radionational/programs/breakfast/legal-expert-weighs-in-debate-anti-discrimination-debate/5345922

On April 9, 2014, the President of the Australian Human Rights Commission, Professor Gillian Triggs addressed the National Press Club on the freedom wars and human rights in Australia.
Professor Triggs defended the current provisions of the Racial Discrimination Act.
The full text of Professor Triggs's speech can be accessed at http://www.humanrights.gov.au/news/speeches/freedom-

wars-and-future-human-rights-australia

On April 11, 2014, the ABC opinion site The Drum published a comment by Rachel Ball titled 'Who's afraid of anti-discrimination laws?' Ms Ball is director of advocacy and campaigns at the Human Rights Law Centre
The piece argues that pitting freedom of speech against freedom from discrimination will only serve to promote the latter. It explains why legal protections against discrimination are necessary.
The full text of this comment can be accessed at http://www.abc.net.au/news/2014-04-11/ball-whos-afraid-of-anti-discrimination-laws/5381798

Arguments in favour of retaining section 18C of Australia's Racial Discrimination Act
1. Freedom from racially motivated abuse is a basic human right
The preamble to the Universal Declaration of Human Rights issued by the United Nations in 1948 refers to those principles which underpin the application of all other rights. Key among these is 'the inherent dignity...of all members of the human family'. From this declaration of the intrinsic worth of all human beings can be extrapolated an opposition to any form of discrimination that seeks to deny this worth and dignity. Included in this is discrimination based on race or ethnicity.
The Office of the United Nations High Commissioner for Human Rights states, 'Non-discrimination is a cross-cutting principle in international human rights law. The principle is present in all the major human rights treaties and provides the central theme of some of international human rights conventions such as the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination against Women.

The principle applies to everyone in relation to all human rights and freedoms and it prohibits discrimination on the basis of a list of non-exhaustive categories such as sex, race, colour and so on. The principle of non-discrimination is complemented by the principle of equality, as stated in Article 1 of the Universal Declaration of Human Rights: 'All human beings are born free and equal in dignity and rights.'
Racially based verbal abuse is a form of racial discrimination in that it uses an individual's ethnicity or racial origin as the basis for making negative comments about that person.
Rachel Ball, director of advocacy and campaigns at the Human Rights Law Centre, has noted that rights to freedom from discrimination are particularly important as their violation lies at the heart of significant forms of injustice that afflict Australia and other nations of the world.

2. Laws serve an educative purpose
The laws of a society articulate, through prohibition or punishment, those behaviours that society will not accept. Thus the laws of a country become a statement of the behaviours it endorses and those it does not. In this manner, the law serves to educate citizens regarding socially normative standards of behaviour.
This position has been explained with regard to criminal law by Babara Ann Stolz in an article published in Crime and Justice International in October 1998. Stolz states, 'Scholars have asserted that a society's criminal law may be directed not only toward potential criminals but the law-abiding citizen. That is, criminal law may serve a moral educative function, reassuring law-abiding citizens that they are right.'
In an article published in Social Science Research Network on May 1, 2013, Benjamin Justice, Associate Professor of Education and History at Rutgers University, and Tracey Meares, Professor of Law at Yale University, noted that the law provides 'a symbolic, overt curriculum rooted in positive civic conceptions of fairness and democracy.'
Thus, laws prohibiting public speech that offends, insults or humiliates members of a particular group on the basis of their race or ethnicity, help to set a standard of civil behaviour. Such laws reinforce for the general populace concepts of fairness, respect and decency in public speech as related to race and ethnicity.
Dr Tim Soutphommasane, Australia's Race Discrimination Commissioner has pointed out the value that the Racial Discrimination Act has had in this regard and the consequent danger of removing it. A change in law, he suggests, could also be educative, teaching intolerance and hate rather than acceptance and respect. Dr Soutphommasane has stated, 'The Racial Discrimination Act has worked as it was intended to work. It provides a civil and educative remedy for racial discrimination...Any legislative change can potentially change the tone of society.'

3. Reducing the protections offered under the Racial Discrimination Act will allow racially offensive comment that has a damaging effect on those targeted
It has been claimed that removing key elements of section 18C of the Racial Discrimination Act would leave racial minorities exposed to comments of an extremely offensive nature.
There is concern that if these provisions are removed claims such as those of holocaust denier, Frederick Tobin, will be able to be made with impunity, regardless of how distressing or harmful they are to surviving victims of Nazi persecution and their descendants.
Under the proposed amendments comments that offend, insult and humiliate would be allowed and the only protection against offensive speech would be the inclusion of a new prohibition against statements deemed 'racial vilification'. 'To vilify' is generally understood to mean 'to speak evil of, defame, traduce'. As it is to be defined within the Racial Discrimination Act 'to vilify' has a narrower meaning - 'to incite hatred against a person or group'.
The amendments would thus remove current protections against the psychological damage caused by racially

prejudiced statements that fall short of vilification. Dr Tim Soutphommasane, Australia's Race Discrimination Commissioner, has pointed to research which suggests a link between ethnic and racial discrimination and poor mental health and wellbeing. Dr Soutphommasane cited, by way of example, a survey participant who stated, '"I experience racism on an all too regular basis ... It is a tremendous psychological blow because it is something that I experienced from age 5 to now and I am often left feeling helpless and vulnerable for days afterwards.'
Among those who have stressed the psychologically damaging effects of racial abuse is Senator Nova Peris, former Olympic athlete and Australia's first indigenous female MP, who has stated. 'We have all seen the devastating effect racial abuse has on people. They are not the same...Racism hurts.'
There are those who fear that if the proposed amendments are made law there would be nothing to protect targeted individuals from the negative consequences of feelings of humiliation, exclusion and denigration.
Australian Human Rights Commission president, Gillian Triggs, has stated that the Racial Discrimination Act must continue to acknowledge the psychological and social harm to victims of racial abuse.

4. Racism is a significant problem in Australia which sometimes culminates in racial violence
Defenders of the current provisions of section 18C of the Racial Discrimination Act claim that racism is a significant problem in Australia and that it would not be appropriate to remove any of the legal sanctions against it.
In the 2013 Peace and Understanding Lecture delivered at International House on September 17, Dr Tim Soutphommasane, Australia's Race Discrimination Commissioner, highlighted the continuing problem of racism in this country.
Dr Soutphommasane noted that according to the Challenging Racism Project, led by researchers at the University of Western Sydney, about 20 per cent of Australians have experienced forms of race hate talk (for instance, racial slurs or verbal abuse).
About 11 per cent of Australians report that they have experienced exclusion from their workplaces or social activities based on their racial background.
Statistics from the Australian Human Rights Commission reveal a significant increase in the number of complaints made by members of the Australian public about racial discrimination in the year 2012-13 - with a noticeable increase of 59 per cent in the number of complaints about racial hatred compared to 2011-12.More than one in 20 Australians say they have been physically attacked because of their race.
The high incidence of racially motivated physical abuse is one of the principal reasons offered for discouraging verbal racial abuse. It has been claimed that there is no absolute divide between racially offensive comments and racially offensive behaviour; including that involving violence. Rather, it has been argued, racially offensive speech and violent, racially abusive actions, exist on a continuum where the first can serve as a precursor to the second.
Dr Tim Soutphommasane has stated, 'There is a connection between racial hatred and racial violence. Where people can degrade others freely, the effect may well be to encourage the physical escalation of prejudice.'
Gerry Georgatos, writing in The Stringer on November 22, 2013, stated, 'The amendments sought to the Racial Discrimination Act 1975 by the Australian Government will give rise to the advent of public race hate, foment racial tensions and solidify rampant racism.'

5. Australian citizens recognise that some limitations on free speech are necessary
It is generally accepted that all rights are potentially subject to restrictions to prevent them imposing upon other rights and freedoms.
Article 29 of the Universal Declaration of Human Rights states, 'In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.'
Defenders of section 18C of the Racial Discrimination act claim that this provision of the act gives legal form to a necessary curtailment of one freedom in order to protect another, as outlined in Article 29 of the Universal Declaration of Human rights.
Michael Lavarch, executive dean, Queensland University of Technology faculty of law, and a former commonwealth attorney-general, has stated, 'Free speech is the oxygen of a liberal democracy and market economy. But like oxygen, it is recognised that it is possible to get the mix wrong, and this has the potential to cause great harm to individuals, groups and the entire community. That is why we accept restrictions on unfettered free speech for social and economic policy reasons.'
Lavarch explained further, 'Probably the most clear-cut example of the public accepting a limitation on free speech is in the field of censorship, particularly in laws criminalising the dissemination of objectionable material, such as child pornography.'
Defenders of section 18C of the Racial Discrimination act argue that freedom of speech is not absolute and that it cannot, as Rachel Ball, director of advocacy and campaigns at the Human Rights Law Centre , has stated, be used 'to prioritise a right to discriminate.'

Arguments against retaining section 18C of Australia's Racial Discrimination Act
1. Freedom of speech is a vital element of the democratic process
Freedom of speech is a fundamental human right. It is one of the thirty human rights outlined in the United Nation's Universal Declaration of Human Rights, issued in 1948, to which Australia was an initial signatory. Article 19 of the

Universal Declaration of Human Rights states, 'Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.'
This right has been seen as necessary to intellectual growth for both individuals and societies. It has been held as the key component of social, economic and political debate. Freedom of speech is seen as a fundamental component of democracy as an informed electorate is necessary if people are to vote effectively. Censorship (the imposition of limits and bans on what people are able to say) has been condemned as a major threat to intellectual and political freedom.
It has been stated that freedom of expression has to apply to those with unpopular or disputed views, as much as to those with views that are generally endorsed or accepted. An editorial published in The Australian on March 4, 2014, stated, 'The concept of free speech has been grounded in Enlightenment principles for more than 300 years. It covers not only those with whom we agree, but those with whom we disagree, often vehemently.'
The Herald Sun editorial of March 12, 2014, defends this tradition. 'Australians pride themselves for saying what they think, fairly and without fear or favour. You might not like what I say but I defend my right to say it.'
The editorial further states, 'Gagging people from fairly and legitimately held opinions is censorship. It is a basic denial of freedom of speech.'
Similarly, Attorney-General, George Brandis, has stated, 'It is not the role of government to tell people what they are allowed to think and it is not the role of government to tell people what opinions they are allowed to express.'

2. The capacity to give offence is not a sufficient basis for limiting free speech
It has been claimed that the threshold at which the current 18C provisions of the Racial Discrimination Act begin to operate is too low. According to this argument, too little has to be done by a supposed perpetrator before that person's freedom of speech is removed under the current law.
There are two levels of objection to the prohibition of utterances on the basis that they are 'offensive'.
Firstly, there are those who argue that the mere giving of offence, even if that offence should be extreme, is not sufficient grounds for limiting freedom of speech. According to this line of argument, wounded feelings are not of sufficient consequence to justify a legal limitation being placed on freedom of expression. The Prime Minister, Tony Abbott, has stated in parliament 'Sometimes...free speech will be speech which upsets people, which offends people'.
The Attorney General, George Brandis, has further stated, 'People have the right to say things that other people would find insulting, offensive or bigoted.'
Prohibiting comment on the basis that it may give offence could serve to limit legitimate public debate. The key case frequently used to indicate where such restrictions have already occurred is the successful legal action taken against Herald Sun columnist Andrew Bolt for remarks made about pale-skinned Aborigines. In an editorial published on March 4, 2013, The Australian stated, 'In 2011, the Federal Court ruled that News Limited columnist Andrew Bolt's commentary about light-skinned Aborigines seeking advantage based on their heritage amounted to unlawful racial vilification. The court found Bolt guilty because the complainants were likely to have been "offended, insulted, humiliated or intimidated". However provocative Bolt's words, causing offence is not vilification.'
The second basis on which offensiveness has been challenged as a reason for limiting freedom of speech is that the determination of what constitutes offensiveness is far too subjective. Public affairs commentator and blogger Ken Parish has stated in relation to legal formulations such as 'likely to offend', '[The] assessment by individual judges and administrators of subjective, value-laden concepts determines controversies not the application of reasonably precise and knowable legal standards.'
According to Parish and others 'offensiveness' is too subjective a term to be applied with any precision and the result is that virtually any utterance with some perceived racial connection could be deemed insulting by someone. Critics claim that making judgements on the basis of offensiveness causes far too many restrictions being imposed on freedom of expression.

3. There is a variety of laws to protect against serious consequences of 'hate speech'
It has been noted that there are already laws that prohibit any incitement to violence, including that based on racial discrimination.
The Commonwealth Criminal Code makes unlawful statements urging the use of force or violence against a person or group distinguished by their race, religion, nationality, national or ethnic origin or political opinion. This is an offence punishable by imprisonment for up to seven years if the use of force or violence would threaten the peace, order and good government of the commonwealth, and otherwise by imprisonment for up to five years.
It has also been noted that not all the provisions of section 18C of the Racial Discrimination Act are to be amended. It will remain unlawful to express racially-based opinions intended to intimidate. Attorney General, Senator George Brandis, has also proposed that there be an extension of the Racial Discrimination Act to outlaw racial vilification.

4. Section 18C of the Racial Discrimination Act has not succeeded in preventing racism
It has been claimed that legal prohibitions are not an effective means of preventing racist acts, racist comments and the racist attitudes which prompt them.
University of Queensland, Garrick professor of law, James Allan, has claimed that section 18C of the Racial Discrimination Act has not been effective in preventing racist outbursts. Professor Allan has stated, 'The idea that this little law is going to do anything is garbage, to be totally honest.'
As evidence of the law's ineffectiveness, critics have noted that the Executive Council of Australian Jewry's annual

report on anti-Semitism listed 657 reports of racist violence directed at individuals or Jewish facilities in 2013 to September. The figure marked a 21 per cent increase on the previous year.
Similarly, in 2010-11 there were 422 complaints made about racist behaviour under the act. That figure rose to 477 the following year, and to 500 last year. Critics have claimed that if the section 18C of the Anti Discrimination Act were having an effect these figures would be declining rather than increasing. They claim that such growth indicates that prohibitive laws are not the best means of preventing racist comments.
It has been claimed that attempts to counter racism by restricting freedom of speech have also been ineffective in other jurisdictions. In an opinion piece published in The Australian on March 29, 2014, Gabriel Sassoon stated, 'Europeans have a long tradition of banning hate speech, but racism, anti-Semitism and anti-Muslim abuse are at fever pitch on the Continent. French Jews have been leaving the country in ever-increasing numbers. For all France's paternalistic hate-speech laws, its Jews live under threat and so do other minorities.'

5. Offensive comments are better countered with argument than prohibition
It has been claimed that racist and other offensive comments are better countered by debate and education rather than law and prohibition.
This point was made by Bill Rowlings in an article published in The Punch on September 29, 2013. Mr Rowlings has stated, 'The answer to speech or words permeated wholly or partly by hate or stupidity is more free speech, not less. People who are maligned should be able to speak out or to write, in the same forum and in others forums to a similar length, to highlight the wrong-thinking that lies behind the typical Bolt-like misinformation, misogyny or ignorance about miscegenation.'
It has further been suggested that all prohibiting the expression of racism ideas does is drive these ideas underground. They are still held; they are simply not in a position to be challenged. Thus, Bill Rowlings has further stated, 'Free speech allows fools and bigots...to out themselves and put objectionable views in the public space where they can be appropriately debated, rebutted and/or ignored.' Bill Rowlings has argued that what is needed is not prohibition but a guaranteed right of reply. Rowlings has claimed, 'The issue should be about how we force the media to give equal time and weight to outraged responses, not whose lawyer has the bigger wig.'
An editorial published in The Australian on March 6, 2014, similarly stated, 'Over time, strictures on free speech merely drive racism underground where it becomes more dangerous, away from public scrutiny. Free speech serves the interests of all, especially those at risk of racism.'
In the same vein, Gabriel Sassoon, a former public affairs director for Advancing Human Rights, has stated, 'Australians have a right to express any view they choose to. They have the right to be bigots if they so choose. And we have the right to ridicule them mercilessly. That is the essence of free speech.'

Further implications
At the time of writing, the draft amendments to the Racial Discrimination Act were approximately half way through the consultation period set by the Attorney General. However, Senator Brandis has stated that he does not intend to attempt to hurry the amendments through parliament without adequate community discussion.
At least two members of the Government have indicated that they would be prepared to cross the floor to oppose the amendments if any attempt were made to pass them into law in their current form. One of these critics from within the Liberal Party is Reid MP, Craig Laundy. Mr Laundy's concerns centre on the impact the changes would have on the current provisions of section 18D of the Racial Discrimination Act.
The changes to section 18D would dramatically expand the type of racially pejorative comments that could be disseminated in any medium so long as these comments were made as part of 'public discussion of any political, social, cultural, religious, artistic, academic or scientific matter.' The amendment removes the requirement that such comments be made 'reasonably' and 'in good faith'. Critics are concerned that the changes to section 18D effectively mean that anyone can say anything, so long as it is part of 'public discussion'. There are no longer any moderating provisions seeking to guarantee that comments are not malicious, manipulative or otherwise ill-intentioned.
Craig Laundy has stated, 'I am...fearful that where somebody is violently abused purely on the basis of the colour of their skin or their ethnic background, and this occurs during the course of a public debate, such abuse will be exempt from the act.'
The capacity for racist comments to be proliferated widely on the Internet as part of 'public discussion', with no moderating influence of law, has many social commentators, and some members of the Liberal Party, extremely concerned.
The fate of the legislation is currently unclear. It will be opposed by both Labor and the Greens, while there is the possibility that some Liberals might cross the floor rather than support it. It would not pass through the current Senate and Senator Brandis may hold off presenting it there until the composition of the Senate changes on July 1.
The proposed amendments do not appear to have found favour within the wider community. The Fairfax-Nielsen poll published on April 14, 2014, specifically asked voters if they believed it should it be lawful or unlawful to 'offend, insult or humiliate' somebody based on their race.
88 per cent of those surveyed indicated that they did not favour the proposed amendments to the Racial Discrimination Act and that they believed it should remain unlawful to discriminate.
Craig Laundy has stated that in the face of such extensive public rejection, he does not believe the present draft proposal to amend the Racial Discrimination Act will be presented before Parliament in its current form.

Newspaper items used in the compilation of this issue outline

AUST, November 13, 2013, page 12, comment by Daniel Ward, `(Andrew) Bolt law repeal is good policy'.
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