

40 Years of the Racial Discrimination Act Are We Still Protected?

- David D. Knoll AM

For reasons which will be obvious to anyone familiar with the history of the Jewish people, the Australian Jewish community has a special interest in, and commitment to, combating racism in all its forms, including Antisemitism. A society is only truly civilised when it accords all her minorities respect, understanding and acceptance. And those are the values which the Racial Discrimination Act affirms. .

Let me tell you the story of Saleh, and how the Racial Discrimination Act worked for him.

Saleh (not his real name) arrived in Australia from the Dafur region of the Sudan 15 years ago. He was granted a protection visa, but it took 6 years for his wife and children to be able to join him. Although a qualified mechanical engineer, and his English was very good, he took work on a factory assembly line. His workplace supervisor complained to him about his body odour in the presence of two co-workers; it was very embarrassing. The supervisor then referred to him within his earshot as: "*a black cunt*" and told him at break times to: "*fuck off*". As it happened, Saleh used deodorant, but the supervisor assumed that as a black man he would not do so. Other workers followed the supervisor's example, and began to abuse Saleh and the other black workers at the factory. When he returned from breaks, he found deodorant cans wrapped in a bow left for him. Saleh complained. The management response was to tell him to "*go home*."

The management response was manifestly inappropriate. It left Saleh apprehensive, and it left him with a sense that the use of racist epithets was acceptable in the workplace. He was brought to tears, and a number of his colleagues asked him why he was crying. Saleh was not merely offended by the incident. He succumbed to clinical depression as the workplace racism worsened, an entirely understandable reaction even from someone who had not, like Saleh, been a refugee from a horrific war. As a result, he stopped going to work.

I took on his racial discrimination complaint pro bono. Regrettably, it was only resolved after two conciliation conferences. Management initially tendered an anti-discrimination in the workplace policy, and it took considerable convincing to get across the point that a policy which was not respected on the shop floor left the employer liable for the discriminatory behaviour.

Ultimately, Saleh was compensated, and found other work. His case was about much more than mere hurt feelings. It is hard to imagine any worker who would not be profoundly affected in similar circumstances. Quite simply, he was driven out of his job.

The following are extracts from that which the Company eventually stated.

"Whilst we do not admit that we broke the law in any way, we apologise for the hurt and humiliation that you have suffered.

We assure you that subsequent to the experience that you had our company has implemented a detailed compliance program based upon considerable investment in training of all levels of employees ... Moreover, employees that have broken the company's policies requiring compliance have had their employment terminated.

We take seriously complaints about workplace harassment, discrimination, victimisation and other inappropriate workplace conduct. We are genuinely sorry that our compliance program was not in place insufficient time to stop the hurt and humiliation that you have suffered."

The goal of diverse, respectful workplaces continues. The cold, hard reality is that the number of racial discrimination cases is not dissipating when compared to 10 years ago.

Studies undertaken within the Macquarie University Faculty of Business and Economics are demonstrating that a racially and culturally diverse workplace can be more productive and profitable than a homogeneous one, *but only when* workplace trust and cross-cultural respect are valued and nurtured. The RDA makes that goal easier to achieve, but because prejudice is so often deeply rooted, much human effort is required.

The RDA expresses values that are central to being an Australian citizen. Citizenship is and should be a pathway to enhanced human dignity through education,

employment and participation in society at every level, but citizenship rightly requires an explicit embrace of the values that underpin it. .

It is Australia's adherence to the values of democracy, human rights, a 'fair go' and the rule of law, and the rejection of values which are inconsistent with them, that has made Australia one of the world's most stable, just and peaceful democracies and one of the most prosperous and desirable countries to live in. Our freedoms and rights are the essential pre-requisites of our prosperity.

Our laws against racial discrimination, including anti-vilification provisions, are widely accepted as legitimate, precisely because they fall squarely within those values, and are a part of the bedrock of fairness of Australian society.

When Adam Goodes, an indigenous footballer is the subject to racist vitriol even after he retires from his sport, this doesn't pass the fairness test.

When the NSW Government gives a free pass to a preacher who calls for the killing of racial minority group, this too doesn't pass the fairness test.

The vilification of people because of the colour of their skin or their national or ethnic origin is as harmful in its effect **both** on the victims, **and** on society as a whole; no less harmful than statements which defame individuals, breach copyright, promote obscenity, breach official secrecy, demonstrate con-tempt of court and parliament, and mislead or deceive consumers, all of which are prohibited, and widely accepted as rightfully prohibited, by law.

Although freedom of expression is a cherished Australian value, it does not include the freedom to harass, intimidate or threaten harm to others. That is why ethnic communities banded together last year to save the racial vilification provisions of the RDA. We must remain vigilant against ongoing attempts to misrepresent these laws and water them down to the detriment of our social cohesion.

Earlier this year, at a public function, I engaged in conversation with a Muslim friend who I hold in the highest regard. We agreed that much work needed to be done for the benefit of us all to get across to media organisations that generalised negative imagery should not be used in relation to Australian Muslims. He volunteered that some of the commentary about Jewish people was equally problematic, and then he

said something that troubled me. He said that he wished that Armenians would stop complaining about the fact that the genocide perpetrated against Armenian people at the beginning of the 20th century was insufficiently recognised. I said to him: *"You know, we have to be careful. We can't on the one hand demand fair treatment for ourselves and at the same time fail to acknowledge the cries for help from our Armenian friends."* I know he understood.

I have had similar conversations over many years with a range of ethnic community leaders encouraging positive engagement with other ethnic communities. The particular conversation earlier this year is not an isolated example.

Vilification of others on the basis of race is just wrong, whether it's the majority vilifying a minority group, or a minority group vilifying another minority group, or a minority vilifying the majority. Appeals to racial prejudice are also an unerring indicator of the moral and intellectual bankruptcy of those who make them.

The many leaders of our diverse cultural, ethnic and religious communities present here must accept responsibility to make the goals of the RDA a reality. We cannot call for respect, understanding and acceptance from others when we do not extend it ourselves.

If we reach out across our cultural, social and religious boundaries, then we practice, and not just talk about multiculturalism. We reinforce the noble goals of the RDA when we lead by example.

When we discipline ourselves to engage respectfully with, and importantly, about, those of another race, faith or culture with whom we disagree; when we avoid generalisation, polemics and vitriol, then we exemplify true mateship and Australian values.

The RDA has been a mainstay of building a cohesive Australian society.

Now, through our own conduct, we all must embed respect, understanding and acceptance into the way we live and engage in this wonderful Australian society that we are privileged to call our home.