Using the Law...

by the Making Multicultural Australia Project Team

Racist attitudes are not illegal. A person can think whatever they wish and express those thoughts in the privacy of their own home without interference. But when people act on their opinions in a way which discriminates toward others on the grounds of their race, colour, descent, national or ethnic origin, then it becomes racial discrimination and unlawful. Making such discriminatory acts unlawful has been a process undertaken by the federal and state governments over more than 20 years, beginning with the passing of the Commonwealth Racial Discrimination Act in 1975.

In general the Act makes it unlawful "for a person to do an act involving a distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of any human rights or fundamental freedom in the political, economic, social, cultural or any other fields of public life". (Section 9, Racial Discrimination Act 1975). Other sections of the Act cover particular instances of racial discrimination in employment, provision of goods and services, access to places and facilities, land and accommodation, trade union membership and advertising. Over the years changes and additions to the Act have seen the introduction of "vicarious liability" - that an employer is responsible for the discriminatory acts of their employees or agents - and the protection of those taking action under the Act. Recent changes to the Act have seen added to it the prohibition of incitement to racial hatred; it is now unlawful to harass or intimidate by words as well as by deeds. More than 100,000 complaints have been lodged under this Act since 1975, most conciliated by the Human Rights and Equal Opportunity Commission which administers the law.

All the states and territories other than Tasmania now have their own legislation addressing the same issues of racial discrimination either through Anti-Discrimination Acts alone or, as in NSW, including an amendment to that act which makes incitement to racial hatred illegal and punishable with criminal sanctions. Other federal legislation, like the Industrial Relations Reform Act of 1993 and Affirmative Action and Equal Opportunity Legislation also provide protection for individuals discriminated against on the basis of race, colour, national or ethnic origin.

The RDA and the various state anti-discrimination acts are, however, only one plank in government strategies to combat racism. The federal act was originally supported by a Community Relations Commissioner, initially Al Grassby then Jeremy Long. But in 1981 the government established the Human Rights Commission which in 1986 was replaced by the Human Rights and Equal Opportunity Commission (HREOC); it provided for complaints under the RDA to be handled by the Race Discrimination Commissioner, one of three Commissioners and the President who constituted HREOC at the time. The first Race Relations Commissioner was Irene Moss; under her leadership a number of inquiries were initiated which threw a sharp light on race relations problems in this country and formed the basis for much which has developed since.

The first was the Toomelah Inquiry following so called "race riots" in the town of Goondiwindi in 1987. Commissioner Moss investigated the actual causes of the conflict but recognised that the underlying disparity between Aboriginal and

non-Aboriginal people was the basic prompt for the "riot". As a result a special Inquiry into the Social and Material Needs of residents of country towns like Goondiwindi was conducted which exposed the structural discrimination suffered by Aboriginal people.

In the same year, 1987, the federal government opened the Royal Commission into Aboriginal Deaths in Custody. Racist violence directed at Aboriginal activists and their supporters during this inquiry prompted non-Indigenous Australians to report to Commissioner Moss their own disquiet about racist violence which they saw as on the increase. At the end of 1988 HREOC announced a National Inquiry Into Racist Violence which took evidence in 1989 and 1990 and published its findings in 1991. The Inquiry made 67 recommendations in areas such as police practices, the administration of justice, education, employment, housing and community relations as well as recommending changes to legislation.

One of the indirect results of the Inquiry was the government's Community Relations Strategy (discussed elsewhere), launched in 1991 as part of the implementation of the National Agenda for a Multicultural Australia. A number of reviews into migration programs and services, the establishment of the Office of Multicultural Affairs in 1987 and the Aboriginal and Torres Strait Islander Commission in 1990 were all part of the tapestry of government responses to issues of racism, equity and social justice.

Another was the passage of the Native Title Act in 1993, a landmark in relations between Indigenous and non-Indigenous Australians which, in the words of Commissioner Moss, saw the "retraction of Australia's most profoundly racist fiction - the doctrine of terra nullius". The Native Title Act grew out of a challenge in the High Court to the Racial Discrimination Act and its power over the states. It concerned the right of Indigenous people to title over land to which they have had continuous connection where that title has not been extinguished by legislation or other government action. Simply put, it confirmed that European settlers in 1788 had not come to a terra nullius, a vacant land, but had invaded and expropriated land which belonged to its traditional owners. The High Court decision is usually called the Mabo decision after the man, Eddie Mabo, of the Merriam people from the Murray Islands off Queensland, who first brought the case in 1982. The Mabo decision, though being contested in several ways, is widely considered to have been a huge breakthrough in Aboriginal self-determination and in the fight against racism in Australia.

Following three years of debate in the Federal Parliament, the racial hatred amendments to the RDA were passed. The original Racial Discrimination Bill of 1974 had attempted to enact the international treaty obligation to proscribe the promotion of ideas based on racial superiority or hatred. These provisions had been withdrawn in the face of the Coalition parties' opposition in 1975. Changed provisions with the same goals were re-introduced following the National Inquiry into Racist Violence recommendations, and render it unlawful for a person to do a public act if the act is "reasonably likely in all the circumstances to offend, insult, humiliate or intimidate another person or group of people" on the basis of race, colour, or national or ethnic origin of that person or group. There are broad exemptions for public comment, and artistic, academic or scientific purposes. It permits complaints to be made, but does not provide criminal sanctions for breaches of the Act.

In 1996, a review into the Racial Discrimination Act was undertaken to evaluate it in the light of its changes and amendments and also to evaluate it against the other Acts, like the Native Title Act, which have had an impact on it. There was also a legislative challenge to HREOC's jurisdiction. But while these processes are not in themselves a threat to the substance of government responses to racism, there are warning signs of a breakdown in what appeared to be a community consensus about the need to combat racism and just who the principle victims of that racism are.

With the election of the Howard Coalition Government in early 1996 the Office of Multicultural Affairs was abolished, cuts to migration services made, massive cuts to the Aboriginal and Torres Strait Islander Commission announced and general budget measures introduced which could have a devastating impact on Aboriginal communities. In late August, 1996, HREOC's Aboriginal and Social Justice Commissioner Mick Dodson accused the Coalition of creating a culture of "disrespect, resentment and vilification" towards Indigenous people. He said the Government's policies had provoked a "social and political climate where respect for human rights and the principle of non-discrimination have become dirty words". Another activist, Father Frank Brennan, in the same week, accused the Government of racism and the director of the Australian Council of Social Services Robert Fitzgerald said "we can no longer assume the community at large appreciates or values the importance of basic fundamental human rights".

It was a sour note on which to end celebrations marking the 20th anniversary of the Racial Discrimination Act, described by former Attorney General Michael Lavarch as the "first of our bedrock laws" to establish the rights of all Australians to equality of opportunity.

Further reference:

Federal Race Discrimination Commissioner, Human Rights and Equal Opportunity Commission, State of the Nation, 1995: A report on people of non-English speaking backgrounds Canberra, Australian Government Publishing Service, 1995.