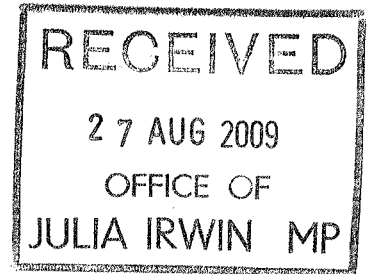


ATTORNEY-GENERAL
THE HON ROBERT McCLELLAND MP



09/8010 MC09/8710

20 AUG 2009

Ms Julia Irwin MP
Chair
Standing Committee on Petitions
Parliament House
CANBERRA ACT 2600

Dear *Julia* Ms Irwin

Thank you for your letter of 11 July 2009 regarding a petition recently submitted to the Committee's consideration regarding the display of the flag and artefacts of the Liberation Tigers of Tamil Eelam (LTTE). I apologise for the delay in responding.

The petition states that the display of certain images and the display of the LTTE flag is not in line with promoting multicultural harmony in our society.

The concerns raised in the petition highlight the balance that must be struck between the rights of one group to demonstrate publicly and express their views and the rights of others to be protected from offensive behaviour.

The Australian Government believes that one of the fundamental principles of a democratic society like Australia is freedom of expression. It is enshrined in the International Covenant on Civil and Political Rights (ICCPR) to which Australia is a party. The ICCPR recognises that the right to freedom of expression carries with it special duties and responsibilities. It acknowledges that the right may be subject to certain restrictions, but only those restrictions such as the law provides and are necessary for respect of the rights or reputations of others, and for the protection of national security or of public order, or of public health or morals.

In Australia the rights to freedom of expression, association and assembly are fundamental human rights that are enjoyed by all Australians. However these rights are subject to limitations that are reasonable and necessary in a free and democratic society to achieve an appropriate balance between freedom of expression and the protection of groups and individuals from offensive behaviour.

For example, the *Commonwealth Racial Discrimination Act 1975* makes it unlawful to discriminate against any person by reason of that person's race, colour, descent, or national or

ethnic origin, in a number of areas including access to places and facilities, the provision of goods and services, employment and advertisements.

Section 18C of the Act also prohibits racial vilification ('offensive behaviour based on racial hatred') on the basis of race, colour, or national or ethnic origin. Racial vilification covers acts that offend, insult, humiliate or intimidate a person or groups of people. The prohibition is subject to a number of exemptions intended to permit free debate on matters of legitimate public interest, thereby ensuring an appropriate balance between freedom of expression and the protection from racially offensive behaviour.

A person belonging to a racial group that is the target of vilification may wish to complain to the Australian Human Rights Commission. The Commission has the power to inquire into and attempt to conciliate complaints of breaches of the Act.

Whether the display of the LTTE flag and other images referred to in the petition amounts to vilification on one of the grounds prohibited by the Act, or whether an individual or group is being targeted because of their race, colour, national or ethnic origin, will depend upon the circumstances of the case and would ultimately be for a court to determine.

I hope this information is of assistance to the Committee when considering this petition.

Yours sincerely

Robert McClelland