



27 March 2017

Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Committee,

Inquiry into the *Human Rights Legislation Amendment Bill 2017*

ANTaR welcomes the opportunity to provide this brief submission to the Committee. I refer to our Submission to the Freedom of Speech Inquiry for a more detailed discussion of ANTaR's position on this issue.¹

In that submission, with regards to the *Racial Discrimination Act 1975* (RDA), we noted the damage to health and wellbeing of those that experience discrimination based on race, and the balance struck between S18C and S18D in relation to Freedom of Speech. We remain strongly of the view that S18C and S18D do not require amendment. We believe that amending the RDA will send the message to the broader community that offending, insulting and humiliating based on race will lead to further racism and have significant consequences for culturally diverse communities, including Aboriginal and Torres Strait Islander people.

ANTaR calls on the Australian Government to ensure the Australian Human Rights Commission (AHRC) maintains an accessible, fair and effective complaints resolution process for people who experience discrimination on any of the grounds prohibited under international human rights law, including race, colour or national or ethnic origin. We also call for the Australian Government to ensure the AHRC's independence was protected.

We note that the bipartisan inquiry - which received thousands of submissions - did not recommend any changes to sections 18C and 18D.

ANTaR firmly opposes the amendments to s18C(1)(a) of the RDA, which removes the words "offend, insult, humiliate" and substitutes them with "harass."

ANTaR also opposes the insertion of a new standard of "reasonableness" in s18C(2)(A). The current objective test interpreted by the courts - where the conduct is interpreted according to the standard of a reasonable or average person of the particular cultural or ethnic group being affected - is a better test. To replace this test with one where the reasonable person is a member of the general Australian

¹ See ANTaR Submission to the Freedom of Speech Inquiry:
https://antar.org.au/sites/default/files/submission_to_parliamentary_joint_committee_on_human_rights_inquiry_into_free_speech_in_australia_.pdf

community - a community which for the majority does not suffer the impacts of racism - sets a much higher burden and does not reflect the impact of statements on the affected group.

ANTaR is of the view that 18D provides ample protection for freedom of speech. Freedom of speech is a fundamental human right, but it is not an unfettered right: it has corresponding responsibilities and there must be a balancing of rights. Amnesty International is of the view that sections 18C and 18D, working together, strike the right balance.

ANTaR notes that racism has severe impacts on communities across the country, especially for Aboriginal and Torres Strait Islander people and other Australians from a wide range of linguistic and cultural backgrounds. Racism and discrimination contribute to poor mental health, increased self-harm and suicide, decreased school attendance and lower workplace productivity, and participation in society more broadly.

It is completely unacceptable that, this inquiry denied Aboriginal and Torres Strait Islander people, representatives and organisations from being heard at the hearing on Friday. While the Committee heard from the Federation of Ethnic Communities Council of Australia, not a single Indigenous person or organisation was invited to speak and the Aboriginal Legal Services were present at the hearing and denied the ability to speak.

The haste with which the Australian Government has moved to shorten the Committee process means this legislation will not receive the scrutiny it warrants. Interested parties have already had an opportunity to provide comment through the Freedom of Speech Inquiry, as at that point there was no draft bill to comment on.

ANTaR opposes the changes this bill proposes to section 18c of the *Racial Discrimination Act 1975*. We call on the Australian Senate to reject this legislation.

Yours sincerely,

Andrew Meehan
National Director