

Australian Greens—Dissenting Report

1.1 The Senate Inquiry into the Human Rights Legislation Amendment Bill 2017 received eleven submissions with the majority coming from organisations representing multicultural groups and lawyers with expertise in human rights.

1.2 Despite the evidence provided and concerns raised, the Chair's report recommends that this bill be passed.

1.3 Schedule 1 of the bill significantly amends the scope of 18C of the *Racial Discrimination Act 1975*.

1.4 A majority of submitters stated that the proposed changes to 18C that remove the words 'offend, insult, humiliate' and substitute 'harass' would weaken the current protections which exist against racial vilification in Australia.

1.5 Dr Emma Campbell, Director, Federation of Ethnic Communities' Councils of Australia stated in evidence to the committee that:

Changing 18C and weakening the Racial Discrimination Act, as proposed in this bill, would grant a licence to those who want to undo Australia's great, harmonious, tolerant and cohesive multicultural society. The message would be clear: it is acceptable in Australia for one person to verbally attack another, to offend, insult and humiliate based on their race. After nine years of surveys, the Scanlon Foundation has found this year that experiences of discrimination in Australia on the basis of skin colour, ethnic origin or religion are at their highest levels. Put simply, the level of racism in this country is rising.¹

1.6 The Human Rights Law Centre submitted, in relation to the proposed amendment to introduce a reasonable person test:

The current objective standard of a reasonable member of the relevant racial group is being applied sensibly by the courts and should be retained as part of section 18C of the RDA. To change the test to 'a reasonable member of the Australian community', as proposed in the Human Rights Legislation Amendment Bill 2017, would weaken legal protections against racial vilification and risk reinforcing prejudice, particularly against unpopular racial minorities.²

1.7 The Law Council of Australia submitted:

....sections 18 and 18D of the RDA, as interpreted by the Courts, strike an appropriate balance between freedom of expression and protection from racial vilification, and should not be amended.³

1.8 The Australian Greens share these concerns and are opposed to any changes to 18C.

1 *Submission 1*, p. 1.

2 *Submission 2*, p. 1.

3 *Submission 8*, p. 4.

1.9 The Schedule 2 amendments propose reforms to the *Australian Human Rights Commission Act 1986*.

1.10 The Australian Human Rights Commission, while welcoming the majority of the proposed amendments, submitted that nine of the items:

...would result in additional red tape for the Commission, would be likely to cause additional delay and added costs for parties to complaints, and would impede access to justice in relation to meritorious complaints.⁴

1.11 Their main concerns include the requirement that the Australian Human Rights Commission notify a person who is not a respondent but who is the subject of an adverse allegation, the proposed mandatory accept/reject phase, and that matters discussed during conciliation should remain confidential.

1.12 Professor Gillian Triggs, President of the Australian Human Rights Commission, in evidence explained the implications of an accept/reject phase:

If it injects a legal challenge process in the middle of it then immediately you go from a free, confidential process of conciliation to a potentially expensive and lengthy process of judicial determination. We think that that is a retrograde step and that it will retard the ability for the commission to get what at the moment amounts to a 76 per cent success rate of conciliations.⁵

1.13 In relation to the confidentiality issue the Australian Human Rights Commission submitted:

If the parties were aware that any offer they make during or receive during the course of a conciliation conference could be later tendered in legal proceedings on the question of costs, they would be less likely to engage meaningfully in the Commission's conciliation process.⁶

Recommendation 1

1.14 That Schedule 1 be rejected by the Senate.

Recommendation 2

1.15 That Schedule 2 be amended to reflect the recommendations of the Australian Human Rights Commission.

Senator Nick McKim
Australian Greens

4 *Submission 1*, p. 1.

5 *Proof Senate Hansard*, 24 March 2017, p. 27.

6 *Submission 1*, p. 7.