

Labor Senators—Dissenting Report

1.1 This bill proposes a significant change to section 18C of the *Racial Discrimination Act 1975* (the RDA).

1.2 Consistent with the Australian Labor Party's dissenting report to the committee's report on the Human Rights Legislation Amendment Bill 2017 in March 2017, which dealt with a similar proposed amendment to section 18C, Labor senators do not believe that this bill should be passed.

No compelling arguments for change

1.3 No compelling arguments have been made for the change to section 18C proposed in schedule 1 of the bill. The proposal to remove the words 'offend' and 'insult' weakens existing protections for Australians against racial hate speech and racial discrimination.

Removal of 'insult' and 'offend'

1.4 Schedule 1 of the bill proposes an amendment to the RDA to remove the words 'offend' and 'insult'. At present, section 18C makes it unlawful for a person to do an act, otherwise than in private, if:

- (a) the act is reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate another person or a group of people; and
- (b) the act is done because of the race, colour or national or ethnic origin of the other person or of some or all of the people in the group.

1.5 This proposed change reduces the protections that are afforded to victims of racial discrimination and racial hate speech by narrowing the scope of behaviour that may constitute offending conduct.

1.6 Extensive case law over twenty years in the Federal Court, including a decision by the now Chief Justice of the High Court of Australia, provides certainty as to the scope of section 18C. That well-established jurisprudence also makes clear that section 18C is not to deal with mere 'hurt feelings', and that it only applies to 'profound and serious effects, not to be likened to mere slights'.¹

1.7 Labor does not support any changes to weaken protections against racial hate speech, and opposes any change to 18C of the RDA that would have this effect. It is certain that these changes would have this effect.

1.8 The extensive protections for freedom of speech contained in 18C's accompanying provision, section 18D, ensure that Australia's laws prohibiting racial discrimination do not unduly restrict freedom of speech. Accordingly the changes to the scope of section 18C proposed by this bill are entirely unnecessary to protect freedom of speech in Australia.

1 *Creek v Cairns Post Pty* (2001) 112 FCR 352, 356 [16] per Kiefel J; see also *Jones v Scully* (2002) 120 FCR 243, 269 [102].

Recommendation 1

1.9 Labor members of the committee recommend that bill not be passed.

**Senator Louise Pratt
Deputy Chair**