

The Senate

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Legal and Constitutional Affairs  
Legislation Committee

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Racial Discrimination Amendment Bill 2016

May 2017

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Senator Louise Pratt (ALP, WA) (Deputy Chair)

Senator David Fawcett (LP, SA) (Chair from 28.03.2017 until 30.03.2017)

Senator Nick McKim (AG, TAS)

Senator John Williams (NATS, NSW) (until 27.03.2017)

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# **Recommendation**

## **Recommendation 1**

**1.4 The committee recommends that, whilst the bill is not as comprehensive as the amendments proposed in Schedule 1 of the Human Rights Legislation Amendment Bill 2017, this bill is still valuable and should be passed by the Senate.**





# Chapter 1

1.1 On 23 March 2017 the Senate referred the provisions of the Racial Discrimination Amendment Bill 2016 (the bill) to the committee for inquiry and report by 9 May 2017.

1.2 The committee considers that the content of the bill and related issues have been substantially considered by the Parliamentary Joint Committee on Human Rights in its inquiry into Freedom of Speech in Australia, which was tabled in Parliament on 28 February 2017, and by this committee's inquiry into Human Rights Legislation Amendment Bill 2017, which reported to the Senate on 28 March 2017.

1.3 While the committee did not invite submissions, three submissions have been received and published (refer to Appendix 1).

## **Recommendation 1**

**1.4 The committee recommends that, whilst the bill is not as comprehensive as the amendments proposed in Schedule 1 of the Human Rights Legislation Amendment Bill 2017, this bill is still valuable and should be passed by the Senate.**

**Senator the Hon Ian Macdonald  
Chair**



## **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'.<sup>1</sup>

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.

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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**

## **Australian Greens—Dissenting Report**

1.1 On 23 March 2017 the Senate referred the provisions of the Racial Discrimination Amendment Bill 2016 (the bill) to the committee for inquiry and report by 9 May 2017.

1.2 The Australian Greens note that the inquiry into this bill received three submissions, all of which opposed the changes proposed.

1.3 The Australian Greens consider that the amendments proposed in this bill were comprehensively considered by the Parliamentary Joint Committee on Human Rights in the inquiry into Freedom of Speech in Australia.

1.4 Multicultural and Aboriginal and Torres Strait Islander groups who made submissions and gave evidence to that Inquiry overwhelmingly concluded that any weakening of section 18C of the *Racial Discrimination Act 1975* (Cth) would send a message of acceptance of racist behaviour and therefore result in an increase in that behaviour.

1.5 The Australian Greens share the concern that any weakening of the protections contained in section 18C of the *Racial Discrimination Act 1975* (Cth) could be damaging to social cohesion, particularly in our current social and political climate.

1.6 The Australian Greens agree with submissions made to that Inquiry reiterating the importance of freedom of speech as a civil right, but maintain that the right is not unfettered.

1.7 Section 18D of the *Racial Discrimination Act 1975* (Cth) provides strong and broad defences to prosecution under section 18C and in so doing upholds the right to freedom of speech to an appropriate extent.

1.8 The Australian Greens stand strongly in support of section 18C in its current form, and against racism and racist hate speech in Australia.

### **Recommendation 1**

**1.9 The Australian Greens recommend that the bill be rejected by the Senate.**

**Senator Nick McKim  
Australian Greens**



# Appendix 1

## Public submissions

- 1 Australian Lawyers Alliance
- 2 Australian Human Rights Commission
- 3 Australian Association of Social Workers

