Quaker Peace & Legislation Committee

WATCHING BRIEF

REPEAL OF SECTION 18C of RACIAL DISCRIMINATION ACT (RACIAL HATRED ACT).

Background

In 1975 the Racial Discrimination Act was passed by Federal Parliament to implement within Australia the obligations ratified under the International Convention on the Elimination of All Forms of Racial Discrimination. In 1995 Parliament added (with support from all parties) a Section 18C which refers to offensive behaviour because of race, colour or national or ethnic origin. It makes it unlawful to engage in behaviour that is likely to offend, insult, humiliate or intimidate another person or group. This constitutes the racial vilification legislation.

Freedom of speech is protected under Section 18D. 18C does not render unlawful anything said or done reasonably or in good faith, in the performance, exhibition or distribution of an artistic work; in the course of any statement, publication, discussion or debate made or held for any genuine academic, artistic or scientific purpose of any other genuine purpose in the public interest; or in making or publishing a fair and accurate report of any event or matter of public interest, fair comment on any event or matter of public interest, if the comment expresses a genuine belief.

The Human Rights Commission has the responsibility for handling complaints under Section 18C in the first instance, and the Federal Court can then become involved if conciliation is not possible. In fact that section has constituted most of the cases brought before the Federal Court in relation to the Racial Discrimination Act.

The Andrew Bolt Case

In 2009 Andrew Bolt, a journalist with the Melbourne *Herald Sun*, wrote that some 'fair-skinned Aboriginals' were pretending to be Aboriginal in order to access benefits available to Aboriginal people. He was challenged by Pat Eatock on behalf of a group of nine Aborigines, and the case went to the Federal Court. In the judgement, Justice Bromberg said he was satisfied that Andrew Bolt and the newspaper had engaged in conduct which contravened Section 18C of the Racial Discrimination Act.

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Government Plans

The Coalition made it clear before the September election that it plans as a priority to remove Section 18C. This followed several public statements since the decision in the Andrew Bolt case was made in 2011. Both Tony Abbott and Senator George Brandis claimed that the Section was against the fundamental right to free speech.

So far no move has occurred to repeal Section 18C, and it is likely that there will be some form of consultation process before legislation is presented to Parliament.

Commentary

In September 2011 Senator Brandis commented that the decision by Justice Bromberg represented a "significant new constraint" on freedom of political expression. He said "freedom of speech and expression…are not interests to be weighed in the scale but fundamental rights without which individual liberty cannot exist and democratic governance cannot work". On 6 August 2012, Tony Abbott expressed the view that Section 18C was really about "hurt feelings" and such a test was adequately covered by the common law provisions on incitement.

Mariam Veiszadeh on 13 August 2012 (ABC *Religion and Ethics* website) queried Tony Abbott's interpretation of Section 18C, and said the Section is about "offering legislative protection to the most vulnerable and marginalized members of our society – our indigenous population, along with culturally and ethnically diverse communities and religious minority groups". She pointed out that the Act specifically exempts conduct done reasonably and in good faith, and that Justice Bromberg took into account the way in which Andrew Bolt's articles were written - with errors of fact, distortions of truth, and provocative language.

Amy McQuire, editor of *The Tracker* magazine (NSW Aboriginal publication) wrote an editorial on 28 August 2012 emphasising the harm done by the actions of Andrew Bolt. "It is not the role of the media to determine one's identity. Those issues…should be discussed within the Aboriginal community, not placed on a national stage to be misinterpreted and misused by shock jocks like Bolt".

Irfan Yusuf, writing in *The Canberra Times* on 18 November 2013, recalled that Senator Brandis, in his maiden speech in Parliament in August 2000, had affirmed that "of all the obligations of government, perhaps the most fundamental is…to protect the weak from the strong". Irfan Yusuf queried why Section 18C, which had operated without much concern for many years, had suddenly become a focus of attention to assist Andrew Bolt – hardly one of the weaker members of society, given his ready access to several media outlets and to legal representation.

Suresh Rajan, on *The Stringer* website (9 November 2013) drew attention to the London Declaration on Combating Anti-Semitism, which was supported by Tony Abbott as Opposition Leader. The Declaration says that Parliamentarians should speak out against anti-semitism and discrimination directed against any minority, and should legislate hate crime legislation covering 'incitement'. Suresh Rajan asks why a similar approach should not be taken towards racism and vilification, and challenges Senator Brandis to justify the inconsistency of approach.

Reconciliation Australia, in a submission to the Commonwealth Attorney-General's Department in February 2012 about Anti-Discrimination Legislation, recommended that the racial vilification clause was one of the features of the Racial Discrimination Act that should be maintained and strengthened.

The Executive Council of Australian Jewry made a statement on 12 November 2013 (*J-Wire* website) opposing removal of the racial hatred sections of the Racial Discrimination Act, saying that the existing law "strikes a careful balance between freedom of expression and freedom from racial vilification".

Professor Gillian Triggs, president of the Australian Human Rights Commission, writing on *J-Wire* on 22 November 2013, reported that last year the Commission received a 50% increase in complaints about racial abuse in the workplace, on radio, on public transport and at football matches. By contrast there were two complaints alleging violation of the right to freedom of expression. She said "the right to freedom of speech is not and has never been an absolute one. It is subject to many restraints including laws on defamation, blasphemy, and contempt of parliament". She continued that "it is hard to see how abusive and offensive speech can advance the right to participate in a representative democracy".

Possible Responses by Quakers

- Watch for news of the Government's intentions, and take up with MPs and Senators your concerns. If a consultation process is allowed, contribute to the process. QPLC will endeavour to give details of any such process.
- Maintain or develop contact with human rights and other groups working to preserve Section 18C, and act in co-operation where appropriate. In this respect, the Presiding Clerk has asked the Human Rights Law Centre in Melbourne to add the name of the Religious Society of Friends in Australia to a letter to the Federal Attorney-General asking that Section 18C not be repealed.

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