

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

12 April 2017

Dear Secretary,

Racial Discrimination Amendment Bill 2016

I am writing to you as National President of the Australian Lawyers Alliance (ALA), with regard to the current inquiry being conducted by the Senate Legal and Constitutional Affairs Legislation Committee into the Racial Discrimination Amendment Bill 2016, which seeks to reform s18C of the *Racial Discrimination Act 1975* (RDA).

The ALA is a national association of lawyers, academics and other professionals dedicated to protecting and promoting justice, freedom and the rights of the individual.

The ALA strongly believes that this Bill should not be passed in any form. We refer to our submission to the Parliamentary Joint Committee on Human Rights recent inquiry into Freedom of Speech in

Australia, in particular commentary in relation to the first term of reference,¹ which outlines in detail our concerns regarding reform of this legislation.

The case has not been made for amendment of the RDA. The Parliamentary Joint Committee report did not recommend changing the section. It noted how the section is applied by courts, namely that ‘section 18C only applies to conduct having “profound and serious effects, not to be likened to mere slights”’.² This definition has been uniformly affirmed by subsequent cases.³

There is strong community support for retaining the provision of s18C in its current format, as demonstrated by the number of submissions received by the Parliamentary Joint Committee’s recent inquiry. As many of the submitters noted, this section in fact protects the freedom of speech of minorities, who provided evidence that experiencing discrimination is in fact silencing for them.

Protections in s18D adequately protect freedom of speech, by ensuring that s18C does not render conduct unlawful if it is done reasonably and in good faith for artistic, academic, scientific or other public interest purposes, or is a fair and accurate report or fair comment.

¹ The submission can be found here: <https://www.lawyersalliance.com.au/documents/item/748>.

² *Creek v Cairns Post Pty Ltd* [2001] FCA 1007 at [16], per Kiefel J, as quoted in Parliamentary Joint Committee on Human Rights, *Inquiry report: Freedom of speech in Australia*, at [2.21].

³ *Bropho v Human Rights and Equal Opportunity Commission* (2004) 135 FCR 105 at 131, [70] (French J); *Jones v Scully* (2002) 120 FCR 243, [102]; *Eatock v Bolt* (2011) 197 FCR 261 at [267]-[268] (Bromberg J).

The ALA notes the significant amount of Parliamentary time and resources that have been spent already on this issue. Given amendments to the RDA have already been rejected by the Senate in March this year and that the Parliamentary Joint Committee on Human Rights made no recommendation for reforming the legislation in its report released in February, we hope that this Committee recommends that this Bill not progress, and that our elected representatives can move on from this issue.

Please do let me know if I can be of further assistance, in which case please direct correspondence to _____, Legal and Policy Adviser, Australian Lawyers Alliance, on _____ or at _____.

Yours sincerely,

Tony Kenyon
Australian Lawyers Alliance
National President