



## Free Speech is Non-Negotiable

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The Abbott government's decision, announced in the first week of August, to abandon its promise to reform section 18C of the Racial Discrimination Act is one of the biggest setbacks for freedom of speech—and the cause of liberal reform—in some years.

Not because the broken promise is highly consequential (although, obviously, it is that, as various section 18C cases have shown) but because it demonstrates just how hard it is to wind the clock back; just how hard it is to reverse the dilution of liberal freedoms.

Throughout the debate over section 18C, the Institute of Public Affairs has maintained that freedom of speech is a fundamental liberty.

The word 'fundamental' is not a rhetorical flourish. Speech is the expression of the deepest

condition of individuality: that of thought. It is our thoughts—our preferences, our values, our beliefs, our ethical and moral principles—that set us apart from the collective. Being prevented from expressing those thoughts is an attack on our individuality. It suppresses difference in the interests of the group.

Hence the significance of the Coalition's 18C promise. The last few decades have seen a substantial growth in the number of limitations placed on the freedom of speech. Most iconic of these has been the increasing legislative enactment of the doctrine of 'hate speech'.

Each Australian jurisdiction (with the exception of the Northern Territory) has its own form of racial vilification laws. The Commonwealth Racial Hatred Act, that introduced section 18C in 1995, was, and remains, the preeminent anti-hate speech law in Australia.

And the most stringent. It is worth recalling that the Andrew Bolt case was originally going to be launched in a Victorian court under Victoria's anti-discrimination law. However, a decision was made that the plaintiffs would have more success under the Commonwealth's section 18C.

So repealing section 18C, or amending it in such a way that it was effectively neutered, as George Brandis' exposure draft legislation would have done, would have been highly symbolic.

It was not for nothing that the promise was the hook on which George Brandis hung what he described as the 'freedom agenda'. When Tony Abbott gave the original promise to repeal section 18C in its current form at an Institute of Public Affairs event in 2012, his speech was titled 'the freedom wars'. Abbott's oratory was stirring. The Coalition would be 'freedom's bulwark' in government.

Abandoning the section 18C promise was not like abandoning any other election promises in the usual way that new governments do. A bulwark is supposed to provide protection.

So there is a heavy degree of irony that the announcement that section 18C would remain on the books came in the middle of a press conference on national security reforms.

Section 18C was, in the words of the prime minister, 'a complication' that put 'national unity at risk'. In this case the government was quite literally trading liberty for security. It was to drop its promise to restore freedom of speech in the hope it would encourage Muslim communities to assist it with anti-terror measures.

As a political tactic, this is a somewhat strange. Australia's Muslim leaders did not hesitate to condemn some of the new proposals that they believed targeted Muslims unfairly. The government's 'trade' didn't survive more than a few hours.

But as a position on public policy it is bizarre. Peter Costello was spot on when he asked in the *Herald Sun*:

Does the Government believe there are community leaders whose commitment to their



fellow citizens and the values of a civilised society is so weak they will not co-operate in preventing terror and murder if Section 18C is repealed? If that is the case we really do have a problem.

Let us hope our anti-terrorism strategy does not really hinge on this legislative quid-pro-quo.

But more critically: what does it say about Australia if a political party elected on a platform of 'freedom'—they used the word liberally—drops that platform as a bargaining chip for national security laws? Such laws are, after all, supposed to protect the liberties which have been discarded.

The case for repealing section 18C is as strong as it ever was. Support for substantially amending it—ranging from simply deleting the words 'offend' and 'insult' from the act to outright abolition of the section 18C—was found across the political spectrum.

The *Age*, the *Saturday Age*, the *Australian*, the *Herald Sun*, and the *Courier Mail* editorialised against section 18C.

Left wing agitators, human rights lawyers, legal academics, public commentators, aboriginal community leaders, and journalists are all found opposing section 18C as it stands and supporting reform. Figures from Keith Windschuttle to David Marr to Antony Loewenstein agree the act must change. (A full list of supporters of change is available at [freedomwatch.ipa.org.au](http://freedomwatch.ipa.org.au).)

Yet here we are. In the end change has to be fought through the parliamentary system. There will be future cases under section 18C. The section is a very real constraint on our most fundamental liberty. Hopefully future governments will take the freedom of speech challenge seriously.