Progress On The Fight To Repeal 18C

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Policy change doesn't happen overnight. Supporters of freedom of speech were palpably disappointed that the Abbott government abandoned its promise to repeal section 18C of the Racial Discrimination Act in August 2014—branding it a 'needless complication'. In retrospect it is clear that the Abbott government's original approach to free speech reform was misconceived. But two years later, not only is the cause of free speech still alive, it has momentum.

As the IPA's Morgan Begg writes in this issue, three significant events give reason to think that the path to reform is opening up. The first was the virtually unprecedented show of support for Senator Cory Bernardi's Notice of Motion that he was going to reintroduce a private member's bill to amend 18C that had lapsed at the 2016 federal election. The bill—first introduced by Family First Senator Bob Day in September 2014—removes the words 'offend' and 'insult' from 18C.

In the last parliament the bill had a handful of supporters. But in this parliament, 20 Senators co-signed Bernardi's Notice of Motion— including the new senators Derryn Hinch and the One Nation group. The full Coalition Senate backbench have committed to supporting the bill.

Of course, 18C should be abolished outright, not merely amended. The Bernardi / Day bill would mean that it was still unlawful to 'humiliate' or 'intimidate' someone on the basis of their racial, ethnic or national origins. David Leyonhjelm, the Liberal Democrat senator from New South Wales, has a bill which would repeal 18C entirely. This is hardly a radical position. Conduct that intimidates or (to a lesser extent) humiliates a person is already amply prohibited by other state and federal law—regardless of whether that intimidation or humiliation has some ethnic or racial basis. Once the egregious offend and insult are removed from the *Racial Discrimination Act,* 18C is redundant and can be repealed comfortably.

Nevertheless, it is the amendment bill, rather than the full repeal bill, which is most prospective, in large part because it is supported by so many on the left. Progressive luminaries such as David Marr and Julian Burnside, and organisations like the Human Rights Law Centre and Liberty Victoria, support removing offend and insult from the provision. Even Gillian Triggs, the head of the Australian Human Rights Commission, believes that there is 'a genuine community concern' that the threshold in the current provision is at 'too low a level'. Policy change cannot proceed without compromise, and in this we have a compromise position that will genuinely remove one of the most meaningful restrictions on free speech in Australia.

The second event hardly can be described as an 'event' at all, as it has been dragged out to a farcical extent. In May 2013 an engineering student at Queensland University of Technology named Alex Wood entered a computer lab at that university and began to study. They were confronted and told that the lab in question was reserved for indigenous students. The students then left. Wood subsequently posted on an unofficial Facebook group for QUT students that he had 'Just got kicked out of the unsigned indigenous computer room. QUT stopping segregation with segregation'.

As I write this in October 2016, the legal fallout of that Facebook post has been going on for three and a half years. Wood and others have been accused of violating 18C. Their case is currently with the Federal Circuit Court, which is due to rule whether the case should be taken to trial. The court may decide that the QUT students do not have a case to answer. But this is hardly the point. As Morgan Begg writes, the process is the punishment. Even before it has concluded, the QUT case is a travesty of justice, and an unambiguous demonstration of the harm of 18C.

The defenders of 18C often ask what opponents of 18C would like to say that they are prevented from saying. The QUT case answers that question and raises another in response. Is dragging a group of students through the courts for three years for making a political statement—'QUT stopping segregation with segregation'—really an example of 18C working well?

Finally, there is good reason to believe that the public is swinging behind reform, especially in the light of the QUT case. An Essential poll published in September this year found that 45 per cent of

Australians approved of the proposal to remove offend and insult from 18C while leaving humiliate and intimidate in place, including 56 per cent of Coalition voters. Just 35 per cent opposed the proposal. It is hard not to conclude that 18C is on its last legs.