

## ***Racial Discrimination Amendment Bill 2014***

*A bill to restore freedom of speech*

Section 18C of the *Racial Discrimination Act 1975* (Cth) makes it unlawful to say or do anything that is reasonably likely to “offend, insult, humiliate or intimidate” a person because of the person’s “race, colour or national or ethnic origin”.

Section 18C was the law used against journalist Andrew Bolt in the Federal Court case of *Eatock v Bolt* in 2011. Section 18C is a significant restriction on freedom of speech and thought.

### **Family First Senator Bob Day has introduced a private member’s bill to amend section 18C of the *Racial Discrimination Act*.**

On 25 September 2014, Senator Day introduced the *Racial Discrimination Amendment Bill 2014*, which proposes to remove the terms “offend” and “insult” from section 18C of the *Racial Discrimination Act 1975*. The bill is co-sponsored by Liberal Democratic Party Senator David Leyonhjelm, and Liberal Senators Cory Bernardi and Dean Smith.

### **Section 18C is a significant limitation on freedom of speech and thought**

- As demonstrated by the Bolt case, making conduct that “offends” and “insults” unlawful restricts an individual’s freedom to express an opinion.
- The terms “offend” and “insult” are vague and ambiguous. These terms allow judicial discretion, and they establish a legal right not to be offended.

### **Removing the terms “offend” and “insult” will narrow the restriction on free speech in section 18C**

- The terms “offend” and “insult” in section 18C set a low threshold for conduct caught by this provision.
- To prove discrimination under section 18C, future complainants will have to meet the higher threshold set by the terms “humiliate” and “intimidate”.

### **Removing the terms “offend” and “insult” attracts broad support**

- Public commentators from across the political spectrum agree the terms “offend” and “insult” should be removed from section 18C.
- Former Prime Minister John Howard and former Liberal minister David Kemp have publicly spoken in favour of repealing section 18C.
- Even many prominent commentators on the political left agree these terms should be removed. For example:
  - Journalist David Marr: “Hurt feelings should never attract the law as they do now under section 18C.

Offence and insults are the everyday reality of free discourse.”

- Human rights academic Sarah Joseph: “The prohibitions on speech which offends and insults, even on the basis of race, go too far.”
- Barrister Julian Burnside: “The mere fact that you insult or offend someone probably should not, of itself, give rise to legal liability.”
- Journalist Gay Alcorn: “I find it hard to accept that it should be unlawful to ‘insult’ or ‘offend’ someone on the basis of race ... however awful that may be.”

### **Complete repeal of section 18C is still necessary**

- Removing the terms “offend” and “insult” from section 18C is a step in the right direction.
- Future cases brought under section 18C will have to meet a higher threshold because merely offending or insulting another person will no longer be grounds for a successful claim.
- Complainants will also no longer be able to rely on the precedent set in the Bolt case because the law being applied in that case will have changed.
- However, the judge in the Bolt case held that Andrew Bolt’s conduct met the threshold established by all four terms in section 18C—according to the judge, Bolt “offended”, “insulted”, “humiliated” and “intimidated” the complainants.
- The only way to guarantee that another Bolt case never happens again is to repeal the whole of section 18C.