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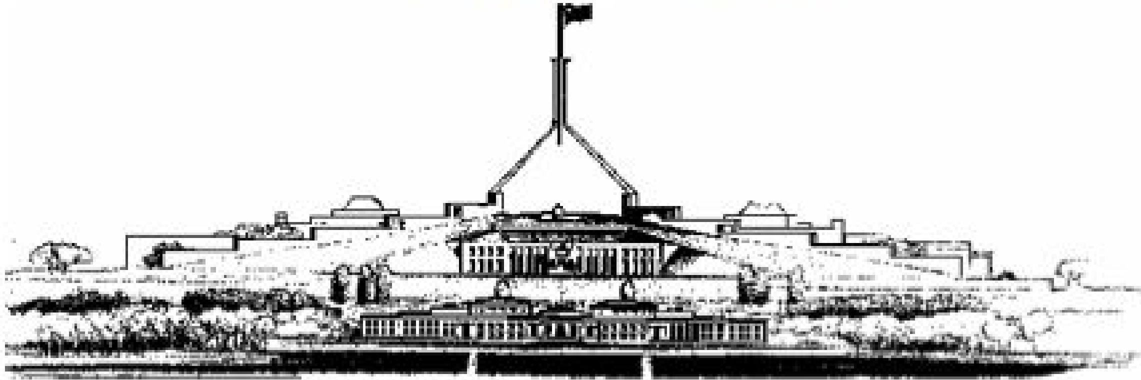

THE SENATE

PROOF

BILLS

Human Rights Legislation Amendment Bill 2017

Second Reading

SPEECH

Thursday, 30 March 2017

BY AUTHORITY OF THE SENATE

SPEECH

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Speaker	Fawcett, Sen David	**Question No.**	

Senator FAWCETT (South Australia—Chair of the Joint Standing Committee on Foreign Affairs, Defence and Trade and Deputy Government Whip in the Senate) (17:40): I rise to speak on the Human Rights Legislation Amendment Bill, because this is an important issue. I made some comments in my maiden speech in this place on what are those things about democracy that are worth defending. It is not so much the benefits; it is about those principles, those things, that underpin a plural liberal secular democracy. Freedom of speech and thought, freedom of association and all those things are part of it, and that is why this is important.

This debate is problematic. The examples that are often given by those who wish to keep 18C as it is often go to the personal interactions between people. There have been not only in the chamber here but also in committee hearings some very distressing stories told about the personal interactions between people when people have been harassed or intimidated on the basis of their race. There is no-one in this place who would find that acceptable. I think it is fair to say, and let me be clear, nobody wants to see someone harassed on the basis of the colour of their skin. But nor should anyone here want to see a cartoonist harassed by a government authority for expressing a view.

The difference between those two cases is that on one hand you have a fairly clear, directed, personal attack on somebody that is intimidating or harassing, bearing in mind the definition of 'harassment' in this bill means that it can be a one-off event and it is not the circular argument that some people have pointed to with other definitions of 'harassment'. So the government is actually strengthening the provision against that individual case. As I said, to be clear, nobody supports that sort of harassment. The problem with the other case, the more general public statement, is that there is no clear threshold, no predictor that somebody can use, as to what that threshold of offence is. It is instructional when we look at this broader type of statement to look at the Bill Leak case because it is a fantastic exemplar of this in action.

Submissions to the inquiry on 18C and how it should be interpreted have said, 'Look you cannot have the reasonable person test because you have not walked in that person's shoes, you do not understand what they have gone through.' That is a fair argument from one perspective, but in this case we saw some people—Senator Back just referred to this—from the Aboriginal Legal Service going out and encouraging people, saying, 'Don't you find that offensive; we should take some action over this.' So that is one threshold where people have taken offence. But then you have people like Mr Mundine, who wrote a very good article in the press which highlighted his background, highlighted the fact that he was one of the Indigenous population group and his background was not a privileged one. He had experienced all kinds of actions, and yet he, as a member of that people group, made the very clear statement that some people see racism where there is none—referring to Bill Leak's cartoon. That identifies a very clear difference between that personal, one-on-one incident of harassment and intimidation and a case where somebody is expressing a view, and there is no clear threshold at the moment, no predictor of the threshold, for me to understand or for Bill Leak to have understood, 'Am I going to get the Aboriginal Legal Service's response or am I going to get Warren Mundine's response?'

That is not an acceptable place for our society to be in, because it means that the intent, the purpose, of an expression is judged lawful or unlawful on the unquantifiable response of even one other individual who may choose to say, 'I take offence at that.' We saw that in the case of the QUT students. We see it often where difficult subjects come up—subjects that people feel personally. They may well have had experiences in their past that are painful and disturbing. They will choose to respond in certain ways.

But, if one of the fundamental parts of our democracy is that people can speak about difficult topics, we need to allow for the fact that not everybody will have the training of a lawyer and not everyone will have the opportunity to research case history before exercising that right. In fact, Justice Kirby in his judgement in the decision of the High Court in 2004 in Coleman v Power said:

In Australia, we tolerate robust public expression of opinions because it is part of our freedom and inherent in the constitutional system of representative democracy. That system requires freedom of communication. It belongs to the obsessive, the emotional and the inarticulate as it does the logical, the cerebral and the restrained.

Those are not my words. That is Justice Kirby. It highlights the fact that, when people enter into this debate around ideas, they may not have the background to understand all the jurisprudence around what has or has not been accepted in the past for 18C—the high legal standard that we are constantly told is applied for 18C.

Part of the problem—as we saw for the QUT case, for Mr Leak, for names that are undisclosed but the reports from the Human Rights Commission identify, and for many hundreds of other people, who have ended up paying in the order of hundreds of thousands, nearly a million, dollars in these processes—is the process. When somebody says, 'I'm offended,' and goes to the Human Rights Commission, the process itself is debilitating and punishing even if things do not get to the court. So we need to look at how we word this piece of legislation that protects the individuals in all those cases we have heard. The government are strengthening this so that we do protect people from that harassment, or that intimidation, but we provide a platform, an ability, for people who want to contribute to the public debate in good faith and not be hauled up before a state authority because one person or a group of people, in the words of Warren Mundine, see racism where it is not.

It is important that we resolve this now, because, as we have seen in the media just in the last week, there have already been discussions by the opposition about how this potentially should apply not just to the Racial Discrimination Act; this 18C construct should apply more broadly, whether it be in religion, sexuality or other areas. When we look at the reluctance of sections of our community now, in the absence of any law, to be tolerant of views that differ from their own, I shudder to think of the consequences if this were wrapped up in a law and a process that is similar to section 18C of the Racial Discrimination Act.

Let us take another very current example, the debate on a Bible Society video where people were drinking a Coopers beer. I have watched that. I know both of the gentleman concerned. The debate was civil. It was informed. You could even say it was innocuous, except that in the current climate it was challenging. It was challenging because, despite the rhetoric of the progressive left that anyone who does not agree with their view is a hateful bigot, it demonstrated that people of good character and goodwill can have differing points of view and discuss it in a civil way. It said that both of those people have worth. Their views have a place in our society. Our society, if it is to function as a plural, liberal, secular democracy, must allow people to discuss and debate ideas in that format.

But what happened? We saw outrage on social media. We saw people boycotting the products of Coopers, who were by and large the innocent party in this whole affair. Damage was done to people, in this case a company, by people who were intolerant of ideas that differed from theirs. So if we already see, under section 18C of the Racial Discrimination Act, people seeing racism where there is none, and in cases like this we see people seeing bigotry and hatred where there is demonstrably none, then I shudder to think of adding the weight of law to that.

Likewise the case of Mark Allaby, an employee of IBM, who was singled out by activists who questioned why he should be allowed to work for a firm that was an avowed supporter of diversity, equity and marriage equality—and that is fine; they are quite entitled to do that if they wish. This person was singled out on the basis of his association with a group that was looking to raise up and train articulate contributors to our society. If you look at the Lachlan Macquarie Institute and you look at what they are about, they are about training people to participate in an articulate and informed way in the debates of our society and in our culture, not to dominate it, not to impose their views on others, but to contribute to see where their world view has a place.

If you look at the people who are on the board of that institute, you do not see people who you would characterise in any negative terms. There are people there who for a number of years have been committed to relieving global poverty, who are involved in microfinancing initiatives for people in developing countries. We see people who are concerned about housing availability for those least able to obtain housing in our community. We see people who are committed to preventing modern slavery and the trafficking of people. We see people who have served their country in the Defence Force for over 30 years. These are quality people, who have contributed to our society, to the poor, to the global good, yet from the way they are labelled by the Left you would assume that they are the worst of the worst people and wonder why would IBM want one of them on its board. In fact, the person who started that diatribe against him, which I understand has resulted in Mr Allaby having to stand down from the board of the Lachlan Macquarie Institute, said that this is not about freedom of religion—he can have his belief;

he can go to church. But if you look at article 23 of the International Covenant on Civil and Political Rights, you will see the non-derogable writer that person is not only to have his belief or his faith or his conscientious thought but, unless there is a competing right, which in this case there is not, he is also free to express it, to manifest it, to teach it. Article 22 guarantees the freedom of association, so Mr Allaby is quite free, and we should be backing him to the hilt, about his freedom of association, particularly with a group where other board members have such high standards and records of ethical contribution to our society and to the population of the world more broadly.

I think it is important that we come to the statement that was issued just recently about our shared values on multiculturalism. This is something issued by the government, but the opposition has lent its support and said that it is a positive document. Under the heading 'Freedom' it says:

We support freedom of thought, speech, religion, enterprise, and association.

Those detractors of Mr Allaby should realise that he has a right to have his faith, to associate with a group that is a positive group developing people's character and ability to contribute to our society. That right should never be undermined. We need national leadership from this parliament and, I would argue, even in the business place to support people like him. Rather than remaining silent, I would like to see the CEOs of those companies out supporting these fundamental rights. They write letters on other topics; you can argue whether or not they should be, but they do, and they have a right to do that.

IBM's equity and diversity statement says:

A key element in our workforce diversity programs is IBM’s long-standing commitment to equal opportunity.

Business activities such as hiring, promotion and compensation of employees are conducted without regard to gender, race, religion, gender identity or expression, sexual orientation, national origin, genetics, disability, or age.

It goes on to say:

IBMers around the world work in an environment where diversity—including diversity of thought—is the norm and innovation can flourish.

What the activists are demanding, and what it appears IBM have acquiesced to, is to say, 'No, we will have a workplace with no diversity of thought. We will not allow people to have any opinion on this topic'—and perhaps other topics—'that deviates from the norm that the company has established.' That is not diversity. If they want diversity and the innovation that they say will flourish through diversity they actually need to live that out. All corporates do. All members of this place should recognise that diversity is important. I have stood here before and put forward my view on contentious topics in a polite, respectful way, with no hatred, but I have been called a hater and a bigot in this place. That to my mind says that people do not actually understand what diversity and equality mean. They do not understand the very nature of a liberal, plural, secular democracy, where people should be free to do what our new statement on multiculturalism says:

We support freedom of thought, speech, religion, enterprise, and association.

So to my mind, national leadership on this is required, and the government is seeking to do that through these reforms. The reforms provide that leadership in terms of the wording of amended section 18C to strengthen the case that are talked about at the start, where individuals are harassed or intimidated one on one. We are strengthening that, because currently there is no protection for harassment. When this all started back in 1995, that was the recommendation, that section 18C of the Racial Discrimination Act should prevent harassment. So the government is strengthening this provision by putting that in. But we are also strengthening the freedom of thought and speech in this nation, particularly of those areas where people are expressing a view, and we are recognising the fact that even within a subpopulation group you will get the diversity of people like the Aboriginal legal service of WA and Mr Warren Mundine. Who in this place is to judge which of those two is right? If Mr Mundine says others see racism where there is none but he sees none, why should we say he is wrong? Without that predictable threshold, we need to change that wording.

For a similar reason, we also need to change the basis upon which the judgement is made. That is why the government is looking at 'the reasonable person', which is common across pretty much all of our other statutes,

in that we look at what a reasonable member of the Australian population would think. That is why juries are chosen at random to be brought in, so we have a cross-section of ordinary Australians who come in to apply their judgement to a certain conduct and evidence that goes before them.

Lastly, because the process itself has often been the punishment for people, this legislation also looks at changing the process of making complaints at the Human Rights Commission. This is an important issue, because we need to protect the individuals. As I said at the outset, let me be clear: nobody in this place should—or, I would argue, does—support that kind of harassment or intimidation of an individual. But likewise nobody in this place, the centre of Australia's democracy, should support situations where we cannot discuss freely and put forward views in society without a government-funded authority being used as a threat to shut down that discussion. This government is taking national leadership in this space. I would encourage corporates and other people to take leadership to support those people within their workplace to have true diversity, freedom of speech and association.