

Late on Friday the long-awaited decision came in a key test of the much-debated section 18C of the Racial Discrimination Act.

A federal circuit court judge killed a complaint from a Queensland University of Technology employee against students who posted allegedly offensive comments after she ejected them from a computer lab reserved for Indigenous people.

Those inside and outside the Coalition agitating for the section to be rewritten or removed have had laser-like focus on this case. If it had gone the other way, that would have much strengthened their argument. But the decision has not deterred but actually energised campaigners such as Eric Abetz, as they point to how the students have suffered through the drawn out process.

When prime minister, Tony Abbott really wanted to gut 18C, but he was forced to back off, after a massive backlash from ethnic communities.

Malcolm Turnbull hasn't wanted to touch the section, repeatedly saying the government has "no plans" to do so. But he's found himself having to respond to the mounting push for change within his own ranks and from the powerful News Corp. Turnbull on Friday again flagged he favours referring 18C to a parliamentary inquiry.

Whether or not he's ultimately forced into proposing a rewrite, the issue is unhelpful for a prime minister generally beset by troubles (although it might be a useful quid pro quo with crossbencher David Leyonhjelm in negotiations on the industrial legislation).

18C makes it unlawful to "offend, insult, humiliate or intimidate" because of "race, colour or national or ethnic origin". A defence of fair comment is provided in 18D. Over many years the section received little attention until the finding against News Corp columnist Andrew Bolt spurred the Coalition, then in opposition, to take a stand.

18C case against students dismissed but conservatives' push for change continues

Written by Michelle Grattan, Professorial Fellow, University of Canberra

After Abbott's retreat, conservative Liberals simply regrouped. They see this as a core "free speech" fight. South Australian senator Cory Bernardi has rounded up almost all the Coalition senators to back a proposed private member's bill to remove offend and insult.

Events and ineptness by the Human Rights Commission, which deals with complaints under 18C, have given grist to the critics.

Apart from the case of the students, there is the furore around Bill Leak's controversial cartoon in the Australian, depicting an Aboriginal father, holding a beer can, being told by a policeman, "You'll have to sit down and talk to your son about personal responsibility", and replying "Yeah righto what's his name then?"

The Leak cartoon is now before the Commission after a complaint from a Melissa Dinnison.

The attention on a cartoon in a major newspaper gives the 18C issue a justified "free speech" profile.

Given 18D, one would think – and certainly hope – the complaint would be thrown out. People could hardly, for example, stand up for the cartooning at Charlie Hebdo while suggesting Leak should be constrained. If the complaint against Leak were upheld, the push for change would be unstoppable.

While the conservatives are vocal on 18C, the Liberals who support the present law have been very quiet, probably feeling they're swimming against what has been a growing tide.

But on Friday backbencher Julian Leeser, from NSW, launched a strong defence of the section, in a speech to the Chinese Australian Services Society. Leeser also put forward proposals on how its application could be improved.

He invoked the Liberals' longest serving prime minister, saying Robert Menzies "recognised

both the need for free speech and the protection of minorities as part of the liberal tradition”.

Leeser also pointed out that the particular words critics want removed are commonplace in laws. “Having undertaken a cursory and incomplete search I have come across more than 40 sections in 25 Commonwealth laws alone which use the terms ‘offend’, ‘offensive’, ‘insult’ or ‘insulting’.”

He said: “I support such legislation [as 18C] because the sweep of human history has shown the evils of racist violence and what ends with racist violence always starts with racist speech.” And, he observed, the prohibitions in 18C were limited to offence or insult “at the higher end of the scale”.

The problem was not with 18C but with the processes for handling complaints by the Human Right Commission, Leeser argued.

He proposes the Commission’s act be amended “so that on receiving a complaint the Commission must initially determine whether the complaint has little prospect of success”. In such a case the complaint would be terminated. A judge could be appointed as a part-time judicial member of the Commission to deal with initial complaints.

Leeser’s proposals are sensible. Such a compromise would save opening a divisive argument that would embroil the government in renewed conflicts with ethnic communities. But the Liberal conservatives are not much into compromise.

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