

Inquiry opens way for changing Section 18C and the Human Rights Commission too

Written by Michelle Grattan, Professorial Fellow, University of Canberra

Malcolm Turnbull, who just recently had “no plans” to change section 18C of the Racial Discrimination Act (RDA), has now launched an inquiry that will lead to changing both it and the Human Rights Commission.

A combination of unrelenting pressure from conservatives in his ranks, two controversial high-profile cases, mishandling by the Human Rights Commission, and a blitzkrieg by News Corp has forced Turnbull to accommodate the noisy critics.

The announcement of a parliamentary inquiry is the first step towards change. But this is a risky path for Turnbull to go down.

It carries the danger of rerunning what in Tony Abbott’s days was a very damaging debate, involving a big backlash against the government from ethnic communities.

It’s all very well for Turnbull to talk in high falutin terms about maintaining “balance” in the debate, warning that Labor will accuse the government of trying to licence hate speech.

Unless a lot has changed, the ethnic communities don’t require too much encouragement to be worried about a rewriting of the law. Not that Labor won’t be using the opportunity to stir the issue and strengthen its support among these groups.

18C makes it unlawful to “offend, insult, humiliate or intimidate” a person or group on the basis of race, colour or national or ethnic origin. Coalition conservatives at the least want “offend” and “insult” taken out.

It is notable that the Coalition’s original assault on 18C – which survived untouched throughout the Howard years – was triggered by right wing columnist Andrew Bolt losing a court case revolving around his comments about some fair skinned Aborigines.

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Now the parliamentary inquiry follows the intense debate around a complaint against Bill Leak's cartoon in *The Australian*, featuring an Aboriginal father who didn't know his son's name. Predictably this has produced a ferocious campaign from that newspaper, which had already long pushed for change. The Leak matter remains unfinished.

The Human Rights Commission must take some responsibility for what's happened.

It appeared to be deliberately encouraging a complaint against Leak, although there was little chance of such a complaint succeeding, because of the public interest protection in 18D.

Its handling of the case involving students and a staffer at the Queensland University of Technology, where a complaint was lodged after the students were excluded from an Indigenous-only area, dragged on far too long and, it appears, was marked by poor process.

The parliamentary inquiry will be done by the Joint Committee on Human Rights; the committee's chairman, Ian Goodenough, has said he personally favours removing the words "insult" and "offend".

The terms of reference are broad. Reporting by the end of February, the inquiry will examine whether the relevant part of the RDA imposes "unreasonable restrictions upon freedom of speech" and, if so, how 18C and 18D should be reformed.

It will also look at whether the Commission's handling of complaints should be reformed, including in relation to the appropriate treatment of trivial or vexatious complaints and those that have no reasonable prospect of success, and ensuring matters are dealt with in timely manner.

It will probe "whether the practice of soliciting complaints to the Commission (whether by officers of the Commission or by third parties) has had an adverse impact upon freedom of speech or constituted an abuse of the powers and functions of the Commission, and whether any such practices should be prohibited or limited".

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Apart from the specifics, there is a broad catch-all term of reference: “whether the operation of the Commission should be otherwise reformed in order better to protect freedom of speech and, if so, what those reforms should be”.

There can be little argument with the need to reform the processes for handling the 18C complaints; last week Liberal backbencher Julian Leeser put forward suggestions for doing this. The Commission itself has called for some amendments.

But this inquiry could pave the way for an extensive overhaul and, potentially, a significant weakening of the Commission, which is deeply disliked by many Coalition MPs.

Current president Gillian Triggs, constantly under attack from some in the Coalition, ends her term next year, so the government will get the opportunity to install its own person as well as make changes to the body. What sort of clout the Commission will be left with remains to be seen.

While the current push for change to 18C has come from the government backbench, and especially from senators, some government MPs with ethnic constituencies are concerned and sceptical.

John Alexander, in John Howard’s old seat of Bennelong, is disappointed that 18C has been reopened and told the ABC it doesn’t rank in the top 100 issues.

There is no doubt that if you were starting again to write the RDA, it would be better not to include “offend” and “insult”.

But context is everything, and there are three relevant contextual aspects.

One is that winding back protections can send out more negative signals to those who might feel vulnerable than if the protections were not put there in the first place.

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Second, as the government goes into the next election with virtually no margin, it is somewhat rash to place an extra burden on the members in marginal seats by stirring ethnic agitation.

Third, the new move threatens to set up another diversion, when the government is having a good deal of trouble managing the important mainstream issues.

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