

VIEW FROM PARLIAMENT

The fight to revise Section 18C is not over.

John Milton, one of the English language's finest poets, once likened free speech to a "flowery crop of knowledge," and in addressing the British Parliament in 1644 cautioned against censorship, which he likened to "an oligarchy" that would "bring famine upon our minds."

Without wishing to belabour the metaphor, it goes without saying that even the best-tended flowery crop will contain a weed or two. Yet their presence, though ugly and undesirable, does not overwhelm or detract from the beauty of the crop as a whole. In much the same way, over time, Australians have proven themselves more than capable of disregarding the false and the ugly arguments that can sometimes arise in public discourse. If the price that we must pay for our right to freedom of speech is to have our feelings hurt on occasion, then I venture that is a price the vast majority of us would be willing to pay.

Recent events in Australia and around the world have given many Australians greater reason to reflect on the issue of freedom of speech. True, not all Australians would necessarily use such a lofty term to describe that thought process, but there can be little doubt that many people are now more attuned to these issues.

Our tendency to "call a spade a spade" has long been a defining national characteristic. It's a quality that until very recently, most Australians took for granted. However, the Martin Place tragedy last year shook many Australians from their complacency. Although there is continued discussion and debate about the nature and motive behind those events, it absolutely represented a terrorist act, and an attack on our freedom. After all, a "terrorist act" does not necessarily have to involve co-conspirators, or be especially well planned or coordinated.

Someone who is prepared to hold a group of innocent civilians hostage for an entire day and night, which resulted in the deaths of two and a raft of other injuries both physical and psychological, plainly has little respect for the traditions of individual liberty that we hold so dear. The perpetrator's motives do not have to be sophisticated in order to be evil.

So it is that, for many of us, Martin Place is not only central to Sydney in the physical sense but now assumes a centrality in an intellectual and emotional sense. In this respect, Martin Place has joined that relatively small register of places—Gallipoli and Port Arthur being two other obvious examples—that because of tragic events which occurred there, have forced Australians to assess the nature of our society—and if we find it is not all we would wish, what we need to do to rectify that unsatisfactory condition.

Our right to freedom of speech and expression in Australia is of paramount importance. Quite simply, if we don't have that right, then our other rights have much less application. The freedom to think and speak as we see fit is what sets us apart from the world's repressive regimes.

For this reason, I was proud to co-sponsor Senator Bob Day's bill to reform Section 18C of the Racial Discrimination Act (1975), to remove the words "offend" and "insult" from its provisions.

My decision to co-sponsor that bill should not have come as a surprise to those who have closely



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followed the debate over reform of Section 18C of the Racial Discrimination Act. I was an enthusiastic supporter of the Government's original proposals to reform the law in this area. As can sometimes occur, unexpected developments in the international arena meant the priorities of the Government had to change, and those reforms were abandoned. I accept that—I will never be convinced that it was the right decision at the time, but nonetheless that is the decision that was made.

However, thanks to the unique processes of the Senate—often and sometimes unfairly maligned—we now have, through Senator Day's bill, another chance to consider these issues. In light of all that has happened since August of last year, when the government abandoned its own reform proposal, Australians should be enormously grateful for the opportunity that Senator Day's bill provides.

To put it simply, I don't believe that the most effective way to uphold our principles is to loosen our values. The right to live in freedom, to speak freely and to treat with respect and dignity those who may hold different views from ourselves, is the key difference between ourselves and those who wish to do us harm. As the prime minister himself has noted, those who now pose a security threat to Australia do not hate us because of anything we have done. That distaste arises because of what and who we are—a stable, mature and free democratic society that not merely tolerates, but celebrates diversity in all its forms, be it racial, religious, political, sexual, or cultural.

This has long been the case. Our record is not perfect; no nation's is. But Australia's reputation as one of the world's freest and most tolerant societies dates back many decades—and certainly to before 1995. I'm always bemused when opponents of reform in this area emphasise that, in their view, these laws have protected us “for twenty years.” Many adopt a solemn tone when they say “twenty years,” almost as though trying to imply that the elapse of this time period itself suffuses Section 18C with sacred properties—as though Moses himself had come down the mountain, bearing the legislation on stone tablets.

Supporters of reform are much more concerned with the preservation of ideas and rights that stretch back a lot further than twenty years. The ideas and

principles at stake have a history that stretches back centuries, not merely two decades. Tolerance in Australia did not simply materialise with the advent of Section 18C of the Racial Discrimination Act. Equally, it will not suddenly disappear if the words “insult” and “offend” are removed from its pages.

I was amused, when I agreed to co-sponsor Senator Day's bill, to be described by Labor's spokesperson as a “radical Senator.” I have to say, that is a first. Because what is in prospect is not a radical proposal, in any sense. It's actually a minimalist proposal, which highlights a simple point.

In the end, our core philosophical difference in Australian politics relates to the role of government. Many in the Labor Party and the Greens believe that government, and legislation and regulation can and should cure all society's ills. But the simple fact is there are limits to what legislation can achieve. You can't legislate to make people believe something, or think a certain way. That is not the role of the parliament. And that is the problem with Section 18C as it currently exists. It criminalises the holding of an opinion. True, I may not like your opinion. But the idea that you can be taken to court and charged and fined for holding it is antithetical to the principle of freedom on which this nation and its core values are based.

There has been some comment that retaining Section 18C might be a way to combat hate preachers. Again, with respect, I don't find that argument especially compelling. If someone is so irrational, so filled with prejudice and hatred that they engage in the sort of preaching that urges the followers of a religion, or a political party, or some other organisation to physically attack or degrade those of a different view, I'm not sure why anyone thinks two words in a piece of legislation are going to stop them. Irrational people—and that is what hate preachers are—do not sit down and think through the legal implications of their actions.

In similar vein, some of those opposed to reform of Section 18C contend that change will unleash a torrent of racist abuse on our streets. Yet the thug who goes out and physically assaults someone because of their religious beliefs, or who launches into a racist rant, typically won't be the type of individual much given to reconsidering their plan on the basis that Section 18C makes it illegal to

offend or insult someone. These sort of people are irrational and by definition aren't capable of that logical thought process.

The ugly Cronulla riots in 2005 are often cited by supporters of Section 18C as the sort of behaviour they are keen to stamp out. Yet the Cronulla riots occurred ten years after Section 18C came into being. Section 18C manifestly did nothing to prevent those riots, and those charged as a result of those riots were charged with criminal offences under different statutes—as they should have been.

The biggest problem with Section 18C at present is that it doesn't do anything to combat racism. It merely serves to hide it.

Hiding the problem isn't good enough. Our job in the parliament is not to create a better appearance; it's to create a better Australia. I want racists and bigots and homophobes to air their ugly, prejudicial views, so they can be shown for what they are. We can only defeat racism and prejudice through argument and a clear demonstration that the facts don't support the bigots. If we shut down discussion, if we use legislation to declare certain subjects are somehow off-limits, then we haven't defeated the problem. We have merely hidden the problem. Pushed into the darkness, the ugliness will simply continue to fester.

I was struck by the words of Senator Joe Bullock, a Labor senator, who in his first speech to the Senate, said: "To be tolerant of your views, I do not need to pretend that you are just as right as I am, but rather to accept that you have a perfect right to hold a view I believe to be wrong, even if I find your view offensive." That's a crucial point. A free and mature democracy does not have to accord all views equal weight in public discourse—but it does need to permit people the right to express them.

U.S. President Barack Obama, who undoubtedly knows what it's like to be attacked on the basis of one's race, has made his own view clear: "When ignorant folks want to advertise their ignorance, you don't really have to do anything, you just let them talk."

It's also interesting to have a look at Hansard from the mid-1990s, when the Keating government's racial hatred legislation was being debated. One particular contribution was striking:

Under this bill all that is necessary to create a civil offence is for someone to feel offended, insulted or humiliated. In other words, all that is necessary to create a civil offence is for someone to have hurt feelings. ... The best argument against bad taste is not to make it illegal. What we need to combat racism is argument, not censorship; we need exposure, not suppression.

This is the same person who stood before a crowd of unionists on a flatbed truck in Adelaide last year and gave what amounted to the most disgraceful, racist, xenophobic speech any mainstream Australian political leader has given in decades.

The member making that argument on 16 November 1994 was in fact the Member for Warringah, the now prime minister, Tony Abbott.

These statements from across the political spectrum demonstrate that the principle is well appreciated. What is now required is a matter of clever politics, old-fashioned political courage, and patient sure-footedness.

Perhaps the most surprising, and most disappointing, aspect of this entire debate is that all the hectoring, finger-pointing, misrepresentation, and name-calling tends to come from those who believe they are paragons of tolerance and virtue.

Bill Shorten had claimed in parliament that I, along with others who support reform, wish to give the "green light to racist hate speech."

This is the same person who stood before a crowd of unionists on a flatbed truck in Adelaide last year and gave what amounted to the most disgraceful, racist, xenophobic speech any mainstream Australian political leader has given in decades, when talking about Japanese submarine manufacturing.

Mr. Shorten's speech that day was so appalling, so embarrassing, that at first his own office refused to transcribe or distribute it. It was so disgraceful that one long-time Labor staffer described it as "an inexcusable performance" that "stank with racist rhetoric."

Labor's claims to be the great friends of multiculturalism and tolerance have been further undermined by the appalling campaign they have just run during the recent New South Wales state election.

In lock-step with their financial enablers in the CFMEU, Labor gave full vent to anti-Chinese prejudice. Frankly, I could not believe my eyes when I saw the television ad the CFMEU was running about electricity privatisation. It harked right back to the ugly "yellow peril" rhetoric that, frankly, I thought had been abandoned before I was even born.

It's pretty dire when even Bob Carr—a politician noted for elevating shamelessness to an artform—has to come forward and disassociate himself from the tone of the campaign the party he led for so long was running. Former Labor treasurer Michael Costa said the campaign was "completely disgraceful" and "absurd." There are other senior Labor luminaries who are distraught about what was being said in the name of their party.

Yet what did we hear from Federal Labor's current parliamentarians? Remember, these are the people who argue that supporters of legislative reform want to "give the green light to racist hate speech."

When confronted with a real life example of racist hate speech last week in the form of the Labor/CFMEU campaign, what did we hear from Bill Shorten? From Tanya Plibersek? From Anthony Albanese? Complete silence.

Bill Shorten recently told ABC radio that he wanted to create a society where "everybody is somebody." With apologies to George Orwell, it seems that for so-called "progressives," some of us are more "somebody" than others. One can't help but wonder how Chinese Australians must have felt about the tone of Labor's campaign.

Ultimately, my support for reform of Section 18C reflects my own faith in the fundamental decency of Australians, which we've seen shine through time and again over recent months when racism has reared its ugly head.

You may recall the case of Nilson Dos Santos, which came to prominence in Sydney last year. Dos Santos, a Brazilian-born gentleman seeking employment as a barista in Sydney, was refused a job at the Forbes and Burton café in Darlinghurst.

According to media reports, Mr. Dos Santos was refused a job by the café owner, a Mr. Steven Hu. The reason given to Mr. Dos Santos was that the café's customers "would not want coffee made by black people."

Perhaps what was most interesting was that when Mr. Hu was contacted by the media to investigate the claim, he did not deny making the remark. Unbelievably, he tried to justify it, at least initially, going on to claim that "I think the clients here want local people, not African people." He also told one media outlet, "I think the coffee culture is more about white people." Adding a further twist to this bizarre story, Mr. Hu is himself an immigrant to Australia, so his claim was as illogical as it was offensive. But that is not the issue.

Once this case was reported, the public reaction was swift and decisive. That café is now closed, such was the public's objection to the owner's behaviour. The public voted with their feet. They make their disgust at the incident known the best way anyone can—they took their business elsewhere. I can't think of a better demonstration of the power of the free market. No legislation was required. Mr. Dos Santos was offered work elsewhere, and the owner of the business paid the price for his stupid and offensive behaviour.

That is a powerful demonstration of the sort of society in which we live. It's a typical display of the fundamental decency that lives in the hearts of Australians. We don't need the government to legislate to make us tolerant, because the vast majority of us are imbued with a sense of fairness and justice. And those who are not quickly learn the error of their ways. I'm confident that this common-sense approach is one that actually transcends partisan boundaries, whatever the ALP's present leadership might say.

That is why I challenge the Labor Party to grant its parliamentarians the right to a conscience vote on this private senator's bill. This is an issue which transcends partisan politics. When Senator Day's bill comes to a vote in the Senate, I am confident I will be joined by other colleagues in supporting a change to our laws that better reflects the common-sense and decency that lies at the heart of contemporary Australia – and better protects the right of all Australians to freedom of speech.