

Racial Hatred Bill Fact Sheet

Fact Sheet from: Attorney-General's Department.

Racial Hatred Bill

Background

The Federal Government is proposing to close a gap in the legal protection available to the victims of extreme racist behaviour.

The Bill is intended to strengthen and support social cohesion. No Australian should live in fear because of his or her race, colour or national or ethnic origin.

How the Bill works

The Bill will improve two existing laws:

1. It will change the Crimes Act to make it a crime to threaten physical violence or the destruction of property because of the race etc of the victim. A maximum penalty of two years jail will apply. The intentional incitement of racial hatred, in public and in circumstances where it is likely to succeed, will also be punishable by up to one year's jail.
2. The Bill will amend the Racial Discrimination Act to allow the victims of humiliating or intimidating racist behaviour to complain to the Human Rights and Equal Opportunity Commission in the same way as the victims of sex or disability discrimination. The Commission will try to solve the problem through conciliation. If that fails, it will hold a public hearing which could lead to, for example, an order for compensation.

Why the changes are needed

The legislation will provide a safety net for racial harmony in Australia, as both a warning to those who might attack the principle of tolerance and an assurance to their potential victims.

Three major enquiries found gaps in the protection provided by the Racial Discrimination Act. The National Inquiry into Racist Violence, the Australian Law Reform Commission Report into Multiculturalism and the Law and the Royal Commission Into Aboriginal Deaths in Custody looked at many incidents of racist behaviour. They all argued in favour of an extension of Australia's human rights regime to explicitly protect the victims of this kind of behaviour.

The National Inquiry into Racist Violence noted that while state and territory criminal law already protects the victims of violence, many deal inadequately with conduct that attacks our social cohesion by promoting racial violence.

The New South Wales Anti-Discrimination Board has found similar legislation to be an invaluable tool against racism in that state. Without it, they would have been powerless to help more than 400 people who have complained about racist incidents since its introduction in 1989.

Western Australia, Queensland and the Australian Capital Territory also have some protection for victims of racist behaviour in their criminal or civil laws but there is no such protection in other jurisdictions.

Freedom of Speech

The High Court has recently established an implied Constitutional guarantee of free speech. But it has also said that at times free speech should be, and is, restricted for the greater good.

In other words, there is no unrestricted right to say or publish anything regardless of the harm that can be caused. A range of laws prohibit some forms of publication or comment to protect Australians from behaviour with potentially harmful consequences, such as:

- child pornography and censorship laws,
- criminal laws about counselling others to commit a crime,
- Trade Practices laws on misleading and false advertising,
- fundraising provisions of the Corporations Law.

Under the Racial Hatred Bill, people will continue to be free to speak their minds, to criticise the actions and policies of others, and to share a joke. But the victims of public conduct which is deliberately intended, and likely to succeed in causing harm will have some protection too.

Combating Racism

The Racial Hatred Bill does not try to eliminate racist attitudes. The principle weapon to combat racism has always been education. The Human Rights and Equal Opportunity Commission currently conducts two major education and information campaigns which target racist attitudes. The Different Colours, One People, Campaign in secondary schools complements anti-racism programs run by state and territory authorities. The Commission also provides training and resources to combat racism in the workplace.

Just as the Sex Discrimination Act and

Disability Discrimination Act play an important role in changing community attitudes, the Racial Discrimination Act reinforces these education programs.

The Commission is planning a national awareness campaign to explain the new measures in the Racial Hatred Bill.