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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

RACIAL DISCRIMINATION AMENDMENT BILL 2014

EXPLANATORY MEMORANDUM

(Circulated by authority of Senators Day, Bernardi, Leyonhjelm and Smith)

RACIAL DISCRIMINATION AMENDMENT BILL 2014

Outline

The Racial Discrimination Amendment Bill 2014 amends paragraph 18C(1)(a) of the *Racial Discrimination Act 1975* to omit the words "offend" and "insult".

The current paragraph 18C(1)(a):

- (a) is inappropriately modelled upon the *Sexual Discrimination Act 1994*;
- (b) is contrary to the International Covenant on Civil and Political Rights to which Australia is a party; and
- (c) is much broader than racial discrimination legislation in countries comparable with Australia.

Consequently, the current paragraph 18C(1)(a) goes too far in curtailing Australian citizens' freedom of speech, expression and opinion.

The current Federal Government has recently withdrawn its commitment to amend the Racial Discrimination Act. As a result, this Bill is introduced in its stead. However, unlike the Government's original intentions, this Bill only makes a very minor amendment.

NOTES ON CLAUSES

Clause 1 – Short title

1. This is a formal provision specifying the short title as the *Racial Discrimination Amendment Act 2014*.

Clause 2 – Commencement

2. This clause provides that the Bill commences on the day after the Bill receives the Royal Assent.

Clause 3 – Schedule

3. This clause is a formal provision specifying that amendments or repeals are made to the provisions set out in the sections in the schedule.

SCHEDULE 1 – AMENDMENTS

Racial Discrimination Act 1975

Item 1

4. Item 1 amends paragraph 18C(1)(a) of the Act.

Item 2

5. Item 2 details the application of the amendment.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Racial Discrimination Amendment Bill 2014

This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Bill

The Bill amends paragraph 18C(1)(a) of the *Racial Discrimination Act 1975* to remove the words "offend" and "insult" to restore an appropriate balance between outlawing racial discrimination while preserving freedom of speech, expression and opinion.

Human rights implications

The human rights implications identified in the International Covenant on Civil and Political Rights and the Convention on the Elimination of All Forms of Racial Discrimination (CERD) have been considered and taken into account in tabling this Bill.

This Bill positively impacts those human rights to more appropriately balance the freedom of speech, opinion and expression while outlawing racial discrimination. This balance is reasonable, necessary and proportionate.

Conclusion

This Bill is compatible with human rights, because, to the extent that it limits rights, these limits are reasonable, necessary and proportionate.