

1992

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

RACIAL DISCRIMINATION LEGISLATION
AMENDMENT BILL 1992

EXPLANATORY MEMORANDUM

(Circulated by authority of the Attorney-General, the Honourable
Michael Duffy MP)



Racial Discrimination Legislation Amendment Bill 1992

Outline

This Bill amends the Racial Discrimination Act 1975 to make racial vilification unlawful, and also amends the Crimes Act 1914 to create an offence of racial incitement.

2. The amendment to the Crimes Act makes it an offence to stir up hatred against a person or group of persons on the ground of race, colour or national or ethnic origin and provides a maximum penalty of imprisonment for 12 months.
3. The amendment to the Crimes Act also makes it an offence punishable by a maximum penalty of 2 years imprisonment to inspire fear that violence may be used against groups of persons on the grounds of their race, colour or national or ethnic origin.
4. The amendment to the Racial Discrimination Act makes it unlawful for a person to do an act that is likely in all the circumstances, to stir up hatred, serious contempt or severe ridicule against a person or a group of persons on the ground of race, colour or national or ethnic origin, and makes exemption for certain acts done in good faith. The amendment also makes it unlawful to incite the doing of unlawful acts.

Financial Impact Statement

For legislation prohibiting racial vilification to be of any long term benefit it will be necessary for there to be an extensive public awareness and education campaign. The Human Rights and Equal Opportunity Commission will conduct the public awareness and education campaign. There are no costs involved for this financial year. Subsequent year costs are estimated by the Human Rights and Equal Opportunity Commission to be \$.603m for 1993-94 financial year \$1.177 for 1994-95 and \$740,000 for 1995-96 financial year.

Notes on Clauses

Part 1

This Part of the Bill is mechanical and deals with what the legislation will be called after it is enacted and also, in clause 2, states that the Bill will not take effect until 3 months after the Bill receives the Royal Assent from the Governor-General.

Clause 1: Short title

This legislation is to be called the Racial Discrimination Legislation Amendment Act 1992.

Clause 2: Commencement

This legislation comes into effect 3 months after the date it receives the Royal Assent.

Part 2

This Part amends the Commonwealth *Crimes Act 1914* to provide for a criminal offence of Racial Incitement. Racial Incitement is defined in the Bill to mean the doing of a public act that is racially offensive. A public act is defined in the Bill to mean any action that communicates words or actions to the public, by such means as radio, television, newspapers, and at public rallies. It also includes certain physical gestures or the display of some particularly offensive clothing or emblems. A racially offensive act is an act that considering all the circumstances of the particular case would be likely to stir up hatred against people on the ground of their race, colour, national or ethnic background.

It is intended that it be necessary to show that the person did the act knowing that it would be likely to stir up racial hatred.

Where the public act is done with the intention of causing people to fear that actual violence might be used against them then that is regarded as a more serious offence carrying a greater penalty. These amendments are aimed at the extreme racist propaganda of groups such as some Neo-Nazi organisations and those like the Ku Klux Klan of the United States. It will not be possible to prosecute someone unless it is clear that their statements or actions are designed to incite hatred or fear of violence. An offence cannot be committed by mere recklessness as to the likely outcome of the actions. It is therefore likely that only the most serious cases would be covered by the offence provisions.

Clause 3: Principal Act

This clause indicates the Act amended in Part 2 of this legislation is the *Crimes Act 1914*.

Clause 4: Long title

This clause amends the long title of the Crimes Act.

Clause 5

This clause inserts a new part - Part IVA - into the Crimes Act

- (1) New section 57(1) defines the words "act" and "public act" used in the legislation. It is intended to emphasize that racially offensive conduct that takes place privately rather than publicly is not an offence in terms of new subsections 59(1) and 59(2). For racially offensive conduct to be an offence under new subsection 59(1) it must be a public act as defined in this section or an act as defined in this section done publicly i.e. communicated to the public.
- (2) New section 58 defines the terms racially offensive as used in subsections 59(1) and (2).
- (3) New subsection 59(1) makes racial incitement an offence and provides a maximum penalty of 12 months.
- (4) New subsection 59(2) deals with acts that cause people to fear that violence might be used against them. The subclause therefore deals with assault rather than battery. An assault at common law is any act by which a person intentionally or recklessly causes another person to apprehend immediate and unlawful fear or threat of the application of force to his or her person. A battery is an act by which a person intentionally or recklessly inflicts unlawful personal violence on another. This new subsection does not cover battery, as the infliction of unlawful physical personal violence on the person of another regardless of race, nationality, ethnic origin etc is already a criminal act and is perceived as such by the criminal laws of all States and Territories. However, this subsection extends the offence of assault to groups in the community and thus fills a gap that exists in the law.
- (5) New subsection 59(3) states that this legislation does not seek to cover the field and allows for existing State and Territory legislation to continue to operate. It would not be possible for a person to be prosecuted for the same offence under State law and

then under this legislation. A choice would have to be made by the prosecuting authorities.

Part 3

Part 3 is designed to make racial vilification unlawful. It does this by amending the *Racial Discrimination Act 1975* to add racial vilification as a ground upon which a person can bring a complaint to the Human Rights and Equal Opportunity Commission under that Act.

Racial vilification is defined to mean a public act, which is defined the same way as a public act in Part 2 of the legislation, i.e. an act done by a person with the intention of stirring up hatred, serious contempt or severe ridicule, against people on the grounds of their race, colour, national or ethnic background. The provisions would include acts which could also be offences and this allows an individual to receive personal redress in much the same way that criminal defamation is a crime but the act of defamation can also be the subject of a claim for damages in the civil courts.

The provision also deals with acts where the person may not actually intend to stir up hatred etc. but does not care whether or not racial vilification occurs or in other words is reckless in his or her actions. It must be remembered that it is necessary to show that in all the circumstances it would be likely that the action would stir up hatred, serious contempt or severe ridicule.

A complaint, once received by the Commission, is then referred to the Race Discrimination Commissioner who would investigate the complaint and if it is found to come within the provisions of the legislation the Commissioner would attempt to reach an amicable settlement between the parties by conciliation. If conciliation is not possible then the matter can be referred back to the Human Rights and Equal Opportunity Commission for determination. That determination whilst not binding on the parties can be enforced in the Federal Court.

There are a number of very important exemptions provided for in the legislation. Firstly there is the exemption which deals with an act that is done reasonably and in good faith in relation to artistic works. This exemption would cover serious drama as well as comedy acts. Whilst some of these performances may cause offence to some people they are presented as entertainment and not with the intention of causing people to suffer racial vilification.

There are also exemptions which will cover statements, publications and the like made for academic, artistic or scientific purposes or for any other worthwhile purpose in the public

interest. Again this exemption is intended to strike a balance between what is done merely to cause offence and what is done in the course of scientific research and the like.

Finally, there is an exemption relating to fair reporting of an event or matter of public interest. It is clearly necessary that the media be at liberty to report events as they happen even where that may give rise to the publication of racially vilifying actions or statements. The publication must be fair. This provision would not permit the publication of racially offensive material where the publication has for example interviewed a person purely to allow them to disseminate racist propaganda. It would, however, allow accurate reporting of the public debate of, for example, migration policy.

Clause 6

This clause indicates that the Principal Act that is amended in Part 3 is the Racial Discrimination Act.

Clause 7

This clause inserts a new part - Part IIA - into the Racial Discrimination Act.

- (1) New section 19A defines a "public act" for the purposes of the amendments.
- (2) New section 19B makes racial vilification unlawful, and provides for certain exceptions e.g....
- (3) New section 19C makes it unlawful to incite the doing of unlawful acts.
- (4) New section 19D makes the employer liable for the actions of the employee unless the employer establishes that he or she used due diligence to prevent the doing of the act.

Clause 8

Clause 8 deals with consequential amendments to the Racial Discrimination Act 1975.

