



# **Racial Hatred Act 1995**

**No. 101 of 1995**

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**An Act to prohibit certain conduct involving the hatred of other people on the ground of race, colour or national or ethnic origin, and for related purposes**

*[Assented to 15 September 1995]*

*[Date of commencement 13 October 1995]*

The Parliament of Australia enacts:

## **PART 1—PRELIMINARY**

### **Short title**

- 1.** This Act may be cited as the *Racial Hatred Act 1995*.

**PART 2—AMENDMENT OF THE RACIAL DISCRIMINATION ACT 1975**

**Principal Act**

2. In this Part, “Principal Act” means the *Racial Discrimination Act 1975*<sup>1</sup>.

**Insertion of new Part**

3. After Part II of the Principal Act, the following Part is inserted:

**“PART IIA—PROHIBITION OF OFFENSIVE BEHAVIOUR  
BASED ON RACIAL HATRED**

**Reason for doing an act**

“18B. If:

- (a) an act is done for 2 or more reasons; and
- (b) one of the reasons is the race, colour or national or ethnic origin of a person (whether or not it is the dominant reason or a substantial reason for doing the act);

then, for the purposes of this Part, the act is taken to be done because of the person’s race, colour or national or ethnic origin.

**Offensive behaviour because of race, colour or national or ethnic origin**

“18C.(1) It is unlawful for a person to do an act, otherwise than in private, if:

- (a) the act is reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate another person or a group of people; and
- (b) the act is done because of the race, colour or national or ethnic origin of the other person or of some or all of the people in the group.

Note: Subsection (1) makes certain acts unlawful. Section 22 allows people to make complaints to the Human Rights and Equal Opportunity Commission about unlawful acts. However, an unlawful act is not necessarily a criminal offence. Section 26 says that this Act does not make it an offence to do an act that is unlawful because of this Part, unless Part IV expressly says that the act is an offence.

“(2) For the purposes of subsection (1), an act is taken not to be done in private if it:

- (a) causes words, sounds, images or writing to be communicated to the public; or
- (b) is done in a public place; or
- (c) is done in the sight or hearing of people who are in a public place.

“(3) In this section:

**‘public place’** includes any place to which the public have access as of right or by invitation, whether express or implied and whether or not a charge is made for admission to the place.

### **Exemptions**

“18D. Section 18C does not render unlawful anything said or done reasonably and in good faith:

- (a) in the performance, exhibition or distribution of an artistic work; or
- (b) in the course of any statement, publication, discussion or debate made or held for any genuine academic, artistic or scientific purpose or any other genuine purpose in the public interest; or
- (c) in making or publishing:
  - (i) a fair and accurate report of any event or matter of public interest; or
  - (ii) a fair comment on any event or matter of public interest if the comment is an expression of a genuine belief held by the person making the comment.

### **Vicarious liability**

“18E.(1) Subject to subsection (2), if:

- (a) an employee or agent of a person does an act in connection with his or her duties as an employee or agent; and
- (b) the act would be unlawful under this Part if it were done by the person;

this Act applies in relation to the person as if the person had also done the act.

“(2) Subsection (1) does not apply to an act done by an employee or agent of a person if it is established that the person took all reasonable steps to prevent the employee or agent from doing the act.

### **State and Territory laws not affected**

“18F. This Part is not intended to exclude or limit the concurrent operation of any law of a State or Territory.”.

### **Consequential amendments**

4. The Principal Act is amended as set out in the Schedule.
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**SCHEDULE**

Section 4

**CONSEQUENTIAL AMENDMENTS OF THE RACIAL  
DISCRIMINATION ACT 1975**

**Paragraph 20(1)(a):**

Insert “or Part IIA” after “Part II”.

**Paragraph 20(1)(d):**

Add at the end “or Part IIA”.

**Subsection 22(1):**

Insert “or Part IIA” after “Part II”.

**Paragraph 24(1)(b):**

Insert “or Part IIA” after “Part II”.

**Paragraph 24(2)(a):**

Add at the end “or Part IIA”.

**Section 25W:**

(a) Insert “or Part IIA” after “Part II”.

(b) Omit “that Part”, substitute “those Parts”.

**Section 25X:**

Insert “or Part IIA” after “Part II”.

**Section 26:**

Add at the end “or Part IIA”.

*Racial Hatred No. 101, 1995*

**NOTE**

*Racial Discrimination Act 1975*

1. No. 52, 1975, as amended. For previous amendments, see No. 91, 1976; No. 18, 1980 (as amended by No. 25, 1981); No. 38, 1983; No. 126, 1986; No. 38, 1988; No. 115, 1990; Nos. 132, 165 and 179, 1992; and No. 13, 1994.

*[Minister's second reading speech made in—  
House of Representatives on 15 November 1994  
Senate on 28 November 1994]*