

Ethnic Communities' Council of Victoria

# Inquiry into Anti-Vilification Protections

ECCV Submission

December 2019



The Voice of Multicultural Victoria

## Acknowledgments

*The Ethnic Communities' Council of Victoria (ECCV) would like to thank and acknowledge all community members who volunteered their time to participate in our community consultation, as well as other community organisations who shared informal comments.*

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## Introduction

The Ethnic Communities' Council of Victoria (ECCV) is the peak advocacy body in Victoria for over 220 member organisations, including ethnic and multicultural organisations, and eight regional ethnic community councils across the state. For more than 45 years, we have been advocating for human rights, freedom, respect, equality and dignity for ethnic and multicultural communities, and for the building of a socially cohesive and inclusive Victorian community.

ECCV congratulates the Victorian Parliament for the establishment of this Inquiry into Anti Vilification Protections, which demonstrates its commitment to ensuring that all members of our community can enjoy a life free from the fear of racial and religious vilification.

The views presented in this Submission are based upon a community consultation ECCV hosted with the Department of Justice and Community Safety, on 25 November 2019 in Footscray. The consultation was attended by over 20 community members. ECCV also participated in consultations organised by the Victorian Equal Opportunity and Human Rights Commission (VEOHRC), and by the Department of Premier and Cabinet.

## Background

In Australia, Commonwealth and state legislation secures protection against racism. However, protection against religious discrimination and religious vilification varies, and it is still not guaranteed at the national level.<sup>1</sup> Within this context, the state of Victoria stands out for having a strong legal framework - the Racial and Religious Tolerance Act 2001 (RRTA) - which addresses both racial and religious vilification.

While the RRTA represents an important advance, its effectiveness has been widely questioned. In 17 years since the commencement of the RRTA, there have been only two successful prosecutions of vilification before the Victorian Civil and Administrative Tribunal, and only one prosecution of serious vilification by Victoria Police. At the same time, since 2002 the Victorian Equal Opportunity and Human Rights Commission has received 335 complaints of racial vilification, and 283 complaints of religious vilification.<sup>2</sup>

We know that vilification is more likely to occur in social contexts of prejudice and discrimination. Data from Victoria Police suggests that approximately three offences per day seem to be connected with discrimination,<sup>3</sup> and the Victorian Equal Opportunity and Human Rights Commission reported

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<sup>1</sup> For a comparison of existing laws for protection against religious hate speech, including religious vilification, see Schedule 2 of the *Joint Submission to the Australian Government on the Exposure Draft. Religious Discrimination Bill*, prepared by a group of national and state based organisations, which are involved in the Australian Muslim community, 2 October 2019 [electronic file].

<sup>2</sup> Victorian Equal Opportunities and Human Rights Commission, 'Fact sheet 2 on reforming hate laws: How is the RRTA enforced?', Handout, Victorian Equal Opportunities and Human Rights Commission, Carlton, Vic, n/d.

<sup>3</sup> ABC Background Briefing, 'Hate crime laws rarely used by Australian authorities, police figures reveal,' 3 May 2019, <https://www.abc.net.au/news/2019-05-03/hate-crimes-rarely-prosecuted-in-australia/11055938>

an increase of 34% in racially motivated incidents in the first half of 2018 alone.<sup>4</sup> The Scanlon Foundation *2019 Mapping Social Cohesion* survey confirmed that while the vast majority of Australians continue to support multiculturalism (85%), the percentage of individuals who have experienced discrimination based on *skin colour, ethnic origin or religion* is high (19%), maintaining the upward trend observed since 2016. As the report identified, ‘the average for the first six surveys (2007-13) was 13%, for the last six surveys (2014-19) a much higher 18%.’<sup>5</sup> Moreover, support (‘strongly agree’ or ‘agree’) for discriminatory immigration policy based on race or ethnicity was around 15%-23%, with support for discrimination based on religion being even higher. Negative attitudes towards Muslims were also confirmed by the high number of Muslims who reported having experienced discrimination (42%) within the 12 months prior to the survey.<sup>6</sup>

Similarly, the *Inclusive Australia’s Social Inclusion Index*, developed by Monash University, identified that prejudice amongst Australians is higher against religious and racial minorities (27%) and Aboriginal and Torres Strait Islander people (25%) than it is against women, LGBTI people, and young people.<sup>7</sup>

This data, combined with public acts such as the far-right, anti-immigrant rally in St Kilda early this year, and the planned Anti-Semitic concert last October,<sup>8</sup> should serve as a warning. ECCV believes that it is vital that all Victorians be better educated about what vilification means, and the fact that it is unlawful, and its impact on community wellbeing.

## ECCV’s Findings and Recommendations

### Issue 1: Communities and organisations indicated low awareness of the distinction between the definition of vilification, as provided in the RRTA, and what they perceive as vilifying behaviours and actions

Most comments we have received showed lack of awareness of the RRTA’s definition of unlawful vilification. When asked about vilification, most people referred to examples of hate speech, verbal

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<sup>4</sup> The Saturday Paper, ‘Reporting Racism,’ 9 November 2019, <https://www.thesaturdaypaper.com.au/news/media/2019/11/09/reporting-racism/15732180009055>

<sup>5</sup> Andrew Markus, *Mapping Social Cohesion 2019*, Scanlon Foundation Research Institute, Australian Multicultural Foundation, Monash University, Caulfield East, Vic, 2019, p.72, <https://scanloninstitute.org.au/report2019>

<sup>6</sup> The latest Islamophobia report cited 349 incidents between 2016-2017, in a context in which under reporting is common. See Derya Iner (ed), *Islamophobia in Australia II (2016-2017)*, Centre for Islamic Studies and Civilisations, Charles Sturt University, Sydney, 2019, <https://news.csu.edu.au/latest-news/islamophobia-continues-in-australia-2019-report>

<sup>7</sup> The research also examines prejudice against other groups who are likely to be discriminated, including women, LGBTIQ people, young people, and older people.<sup>7</sup> See Nicholas Faulkner, Kun Zhao, Sarah Kneebone, and Liam Smith, *The Inclusive Australia Social Inclusion Index: 2019 Report 2019*, <https://inclusive-australia.s3.amazonaws.com/files/Inclusive-Australia-Social-Inclusion-Index-WEB.pdf>

<sup>8</sup> ABC News, ‘White supremacist concert in Melbourne cannot be stopped, Premier says’, 8 October 2019, <https://www.abc.net.au/news/2019-10-08/white-supremacist-neo-nazi-concert-in-melbourne-to-go-ahead/11582120>

aggression, vandalism and public use of symbols such as the swastika, and highlighted the negative impact these have on individuals and their communities. There was little understanding of the complexity involved in the legal characterisation of vilification and the fact it is centred on *curbing conduct that incites third parties to cause harm, not on addressing the impact on those directly affected by a harmful conduct*.

Cases of discriminatory and abusive behaviour appear to be common, especially for young men from African backgrounds (South Sudanese in particular), and for Muslims. Muslim women wearing the hijab are a particular target for verbal abuse and harassment. The latest Islamophobia Report (2016-2017) registered 349 incidents, with women comprising 72% of the victims, and men 71% of perpetrators. Moreover, 96% of the female victims were wearing the hijab when they experienced the abuse.<sup>9</sup>

When asked about the places in which these incidents take place, the vast majority cited social spaces which are part of our day to day life in community: public transport, schools, workplaces, and shopping centres. Media, both in the traditional form and social media, were also cited as critical in inciting hatred against particular communities.<sup>10</sup>

**Recommendation 1:** The Victorian government should support public campaigns and school programs that educate *all Victorians* on vilification, its negative impacts, existing protection mechanisms, and channels for reporting. Campaigns and educational initiatives should aim to ensure all Victorians understand the provisions of the RRTA, instead of only emphasising awareness raising of victims.

## Issue 2: The ‘incitement test’ is too strict and compromises the effective operation of the RRTA

Even if people are aware of the legislation and understand the legal definition of vilification, the extremely low number of legal cases indicates that the requirements for demonstrating incitement are cumbersome and unlikely to be fulfilled. This can create a perverse incentive familiar to legal professionals, whereby police and prosecutors may avoid classifying an incident as vilification, which in turn leads to the invisibility of the issue.

The need to revisit the threshold for demonstration of vilification is even more important in view of growing community concerns with online vilification. Inciting hatred online, for instance, can be more effective in attracting a large number of followers, given the level of anonymity, speed, geographical reach and ability to tailor the message to specific audiences. While there is recognition that monitoring and regulating online spaces is unlikely to be a task that the state government alone

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<sup>9</sup> See Derya Iner (ed), *Islamophobia in Australia II* (2016-2017), Centre for Islamic Studies and Civilisations, Charles Sturt University, Sydney, 2019,

<https://news.csu.edu.au/latest-news/islamophobia-continues-in-australia-2019-report>

<sup>10</sup> The Saturday Paper, ‘Reporting Racism,’ 9 November 2019,

<https://www.thesaturdaypaper.com.au/news/media/2019/11/09/reporting-racism/15732180009055>

can perform, it is important to examine how the anti-vilification protections can better address this specific form of vilification.

The high threshold for demonstration of incitement also indicates that at its current form, the RRTA is unlikely to create a threat to freedom of expression. It is worth remembering that the RRTA already contains exceptions to ensure that this fundamental democratic value be upheld, however, it does so with due acknowledgement that freedom of expression is not the only value, but it is limited by the right of all community members to not be vilified. Any review of the RRTA should preserve this balance.

**Recommendation 2:** That consideration is given to broadening the definition of vilification in the RRTA, to allow for greater likelihood of vilifying behaviour being successfully prosecuted, and provisions for addressing online vilification strengthened.

### Issue 3: Incidents driven by racism or religious intolerance remain under reported.

In the consultation ECCV carried out with the Department of Justice and Community Safety, participants were asked to provide specific feedback on their decision to report an incident and reasons for not doing so. The answers included:

- (i) not knowing that vilification is unlawful
- (ii) not knowing all the reporting mechanisms available or how to use them
- (iii) fear of potential impact on job opportunities
- (iv) communication issues, including language
- (v) lack of trust in the system

Most participants identified the police as the institution to which they should report an incident, but mentioned that given the perceived racial profiling experienced by groups such as young men of African background, they find it hard to trust that the police will support them if they do decide to speak up. Moreover, and reinforcing comments we have heard on other occasions, some participants talked about a certain normalisation of abuse as ‘the way things are here’. Asked about what it would take them to report a case, some participants talked about the need for ‘real harm’ or high risk.

The decision to report was also connected with potential outcomes from reporting. Here community members expected more than an individualised resolution between a victim and perpetrator. Their desired outcomes included opportunities to celebrate differences, interfaith practice, better information, fairness and education through media, more open discussions, and mandatory intercultural training for councils, schools, universities, police, and government departments, amongst other things.

**Recommendation 3:** Victoria Police be sufficiently resourced and trained to deal specifically with cases of vilification. It must continue its investment in building trust amongst the groups that are most likely to be targets and send clear signals to perpetrators that violations will be taken seriously and prosecuted.

#### Issue 4: The current debate about vilification has been dominated by incitement of hatred, without consideration of the other forms of vilification proscribed by the law

The RRTA defines as unlawful vilification as conduct that incites ‘**hatred, serious contempt for, or revulsion or severe ridicule of**’ a person or class of persons. Therefore, vilification is not reduced to incitement of hatred. When, for instance, media organisations or public figures behave in ways that foster revulsion towards or severely ridicule members of a particular community due to their race, ethnicity or religion, and when public statements are followed by an increase in racist incidents against the targeted community, it is crucial that the RRTA be applied more effectively to these situations.

During consultations, it was also brought to our attention that the levels of social tolerance for speech and actions that can lead to vilification varies depending on the targeted group. One Muslim leader mentioned that Muslim women wearing a headscarf have been disproportionately targeted, without strong social reaction to defend them or to condemn the perpetrators.

**Recommendation 4:** Reinforcing Recommendation 1, campaigns and education initiatives should provide education on all forms of unlawful vilification, including incitement of hatred but also serious contempt, revulsion or severe ridicule.

#### Issue 5: Impact on individuals and communities

Failing to effectively address vilification has a profound cost for our society. Community members agreed that incidents are underreported and were concerned with the actual impact of ‘vilification’ on the community at large, and on young people in particular. When asked about the implications for community, comments included:

- People becoming more protective, avoiding certain places, creating their own spaces
- Loss of confidence, feeling racially profiled, sense of inferiority, loss of identity
- Efforts to “blend in”, emotional distress, sadness, feeling scared, mental health deterioration (depression, anger), reduced contribution to society
- Lack of motivation, no sense of belonging
- Increase in divisions, isolation, reduction of cooperation and increase in tension amongst communities

One key theme of this Inquiry refers to the potential expansion of the protections to other classes of people, based on sexual orientation, gender identity, or experience of disability, amongst others. While the question was presented in consultation, we did not receive many comments.

However, we know that those characteristics can be a source of vulnerability to discrimination, and that when they are present simultaneously, levels of vulnerability increase. We've heard a young Muslim African woman speak about the challenges of being a Black woman and visibly Muslim, which makes it difficult for her to know, when discriminated against, whether the motivation is race or religion. It is important that the protection against vilification takes into account how these characteristics, when combined, may intensify vilifying conduct.

Sadly those directly impacted by vilification, and their communities, have been denied the freedom and equal participation that the majority of Australians enjoy in our democracy.

**Recommendation 5:** Any reform of the RRTA should consider intersectionality as a framework that acknowledges the cumulative disadvantages and higher vulnerability of individuals with certain characteristics, to allow for prosecutions that recognise multiple layers of discrimination.

## Conclusion

ECCV commends the Victorian Government for demonstrating its commitment to combatting racial and religious vilification by holding this inquiry. We believe that it is important to understand why so few Victorians have been successfully prosecuted under the Racial and Religious Tolerance Act, and therefore how the RRTA can be strengthened to ensure that vilifying behaviours receive the appropriate sanctions.

ECCV strongly recommends that the Victorian Government develops a strategy to increase public awareness of how vilification is defined under the RRTA, and that it considers broadening this definition to encompass a wider range of threatening behaviours. We also believe that the RRTA should include an intersectional framework that recognises and protects individuals who face multiple layers of discrimination. Finally, to build trust amongst culturally and linguistically diverse communities, we believe that the Victoria Police must be sufficiently resourced and trained to respond specifically to cases of vilification.

ECCV would be delighted to have the opportunity to speak further with the Victorian Government about the issues we have raised in this submission. ECCV looks forward to continuing to work with Government to confront racial and religious discrimination and vilification across society.