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Chair, Legislative Assembly Legal and Social Issues Committee  
Inquiry into Anti-Vilification Protections  
Parliament House, Spring Street  
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B19/19274

Dear Ms Suleyman

On behalf of the Victorian Government, I am pleased to make a submission to the Victorian Legislative Assembly Legal and Social Issues Committee's Inquiry into Anti-Vilification Protections. Please find the submission enclosed.

This submission is intended to provide a body of evidence to support the Committee's consideration of important issues impacting Victorian communities. To this end, the submission includes:

- an overview of hate conduct, vilification and anti-vilification protections in Victoria
- views and experiences obtained through targeted consultation with stakeholders and community organisations in Victoria
- an overview of the complexities of applying and enforcing protections in Victoria
- descriptions of the challenges of preventing and responding to vilification and hate-based conduct occurring online and through hate-based events
- an overview of options that could be further explored to prevent and respond to hate conduct and vilification in Victoria.

The Victorian Government thanks all stakeholders who participated in interviews or who provided information to support the development of this submission.

Should the Committee require further assistance or information, please contact Brigid Monagle, Deputy Secretary, Fairer Victoria, Department of Premier and Cabinet, [REDACTED]

Yours sincerely

[REDACTED]  
Hon Richard Wynne MP  
Minister for Multicultural Affairs

CC. The Hon Daniel Andrews MP, Premier

Inquiry into Anti-Vilification Protections  
Legislative Assembly | Legal and Social Issues Committee

**Victorian Government Submission**

## Acknowledgment

We proudly acknowledge Victoria's First Nations peoples and their ongoing strength in practising the world's oldest living culture. We acknowledge the Traditional Owners of the lands and waters on which we live and work, and pay our respect to their Elders past and present.

Victoria's Aboriginal communities continue to strengthen and grow with the ongoing practice of language, lore and cultural knowledge. We recognise the contribution of Aboriginal people and communities to Victorian life and how this continues to enrich our society more broadly. We acknowledge the contributions of generations of Aboriginal leaders who have come before us, who have fought tirelessly for the rights of their people and communities.

We acknowledge Aboriginal self-determination is a human right as enshrined in the United Nations Declaration on the Rights of Indigenous Peoples, and we commit to working towards a future of equality, justice and strength.

Finally, we acknowledge that there are long-lasting, far-reaching and intergenerational consequences of colonisation and dispossession. The reality of colonisation involved the establishment of Victoria with the specific intent of excluding Aboriginal people and their laws, culture, customs and traditions. Over time, the development of Victorian laws, policies, systems and structures explicitly excluded Aboriginal Victorians, resulting in and entrenching systemic and structural racism. We acknowledge that the impact and structures of colonisation still exist today. Despite the past and present impacts of colonisation, Aboriginal people, families and communities remain strong and resilient.

## Contents

Acknowledgment .....	2
Purpose of this submission .....	4
Executive Summary .....	4
Terminology .....	5
Data and evidence .....	6
Context – existing protections in Victoria.....	7
Vilification and hate conduct in Victoria.....	9
Race and faith-based hate conduct .....	9
Hate conduct is impacting other people and communities.....	12
Hate conduct experienced by LGBTIQ communities .....	12
Hate conduct experienced by women .....	13
Hate conduct experienced by people with disability.....	14
Availability of protections .....	16
Balancing protections and freedom of expression .....	18
Exceptions to anti-vilification laws .....	18
Threshold for vilification in Victoria: The ‘incitement test’ .....	19
Effective operation of protections.....	23
Making complaints.....	23
Dispute resolution.....	24
The role of Victoria Police in responding to prejudice motivated crime .....	27
Other legislation that responds to prejudice motivated incidents.....	28
Pre-empting vilification or hate-motivated events.....	30
Online vilification .....	31
Interplay with Commonwealth legislation.....	33
Broader actions to prevent and respond to hate conduct and vilification.....	34

## Purpose of this submission

The purpose of this submission is to support the Social and Legal Issues Parliamentary Committee's consideration of anti-vilification protections in Victoria by:

- providing an overview of hate conduct, vilification and anti-vilification protections in Victoria
- outlining views and experiences obtained through targeted consultation with stakeholders and community organisations in Victoria
- identifying the complexities of applying and enforcing protections in Victoria
- describing the challenges of preventing and responding to vilification and hate-based conduct occurring online and through hate-based events
- providing an overview of options that could be further explored to prevent and respond to hate-conduct and vilification affecting Victorians.

The Victorian Government thanks all stakeholders who participated in interviews or who provided information to support the development of this submission.

## Executive Summary

Based on available evidence and data, as well as views expressed through targeted consultations, it is clear that hate conduct and vilification are present in Victoria. Exposure to vilification and hate conduct appears to be more prevalent for Aboriginal people, people from culturally and linguistically diverse backgrounds, people from particular faiths, women, people who identify as LGBTIQ and people with disability.

Hate conduct and vilification occur in many settings, including schools, sporting grounds, workplaces and services. Vilification and hate conduct is also occurring online – often from anonymous sources.

The harm caused by hate conduct and vilification can be profound:

- there is direct physical and psychological harm caused to those who are exposed to and experience it
- whole communities can be limited in their ability to fully participate in, and contribute to, daily life
- the strength of Victoria's social cohesion is undermined through the inherent divisiveness and unequal distribution of power associated with hate conduct and vilification.

Instances of hate-conduct and vilification are often linked to external events, for example, acts of terror or negative public discourse or public backlash against issues of community interest.

In Victoria, vilification based on race and religion is prohibited through the *Racial and Religious Tolerance Act 2001* (RRTA). In introducing this legislation, the Victorian Parliament recognised the rich contribution of culturally, linguistically and religiously diverse communities in Victoria, and noted that behaviour that disregards the rights of others to participate in society is unacceptable.

Regulating and preventing hate conduct and vilification is complex. Any formal regulatory measures to protect against vilification will need to:

- clearly define the type of conduct that constitutes vilification and hate conduct in a way that does not capture conduct that is a reasonable and justifiable expression of a person's views
- consider which attributes are being protected against vilification and make a clear case as to why it is in the public interest to afford greater protection to people with these attributes

- consider who is to be regulated and in what settings
- consider appropriate penalties, having regard to the benefits of deterring vilification and hate conduct and providing redress to victims
- consider challenges with enforcement, including barriers that may preventing Victorians from reporting incidents of hate-conduct or vilification
- consider the interaction of Commonwealth laws.

Given the significant and cumulative harm caused by vilification and hate conduct, the primary objective of anti-vilification protections should be to prevent vilification and hate conduct from happening in the first place. This requires coordinated action through regulatory and other measures on the root causes, or ‘drivers’ of this conduct. Although there is currently no single agreed cause of hate-conduct and vilification, patterns of exposure and the differential nature of the conduct means it will be critical to look further than the individual ‘perpetrator’ or ‘victim’ and consider the context of broader social inequalities, behavioural norms and other factors that enable this conduct to occur.

## Terminology

Terms such as vilification, discrimination and hate conduct are often used interchangeably. Given the differences between the legal definition and common usage of these terms, the following definitions have been used in this submission.

### Definitions

#### Vilification

The term vilification is often used to describe expressions of significant or severe intolerance or hatred. This includes communications that malign, abuse or are seriously derogatory toward other people or groups of people. For example, the term may be used to describe incidents of intimidation, damage to property, graffiti and expressions of hatred or contempt by messages over the internet.<sup>1</sup> The term vilification is often not limited to expressions of intolerance or hatred against race or religion, but to any expression of intolerance or hatred directed at a person or group of people because of a particular attribute or characteristic.

The *Racial and Religious Tolerance Act 2001* (RRTA) defines vilification as behaviour that “incites hatred against, serious contempt for, or revulsion or severe ridicule” against another person or group of people because of their race or religion. This ‘incitement test’ makes for a narrower definition of vilification than is commonly understood, as it is specific to racial or religious intolerance and because it requires a third party to be ‘incited’ – expressions of hatred toward an individual alone do not meet the threshold for vilification under the RRTA. This is described further on page 17.

For the purposes of this paper, where vilification is used, it refers to the definition of vilification under the RRTA. The term ‘hate conduct’ is used to describe communications that malign, abuse or are seriously derogatory toward other people, attributes or groups of people. This is used instead of the common usage of ‘vilification’, to distinguish from vilification as defined under the RRTA.

#### Discrimination

Discrimination happens when a person, or a group of people, is treated unfavourably because of their background or certain personal characteristics (direct discrimination) or when an unreasonable rule or policy applies to everyone but has the effect of disadvantaging some people because of a personal characteristic they share (indirect discrimination). Victorian discrimination law is contained

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<sup>1</sup> Racial and Religious Tolerance Bill, Explanatory Memorandum

within the *Equal Opportunity Act 2010*. There are also numerous Commonwealth Acts which cover discrimination law.

### Acronyms

- RRTA: *Racial and Religious Tolerance Act 2001 (Victoria)*
- RDA: *Racial Discrimination Act 1975 (Commonwealth)*
- EOA: *Equal Opportunity Act 2010 (Victoria)*
- VEOHRC: Victorian Equal Opportunity and Human Rights Commission
- VCAT: Victorian Civil and Administrative Tribunal
- LGBTI/ LGBTIQ: lesbian, gay, bisexual, transgender, intersex and/or queer. Where different terms are used, this is generally to reflect the terminology or focus of particular research or legislation.

### Data and evidence

The Victorian Government's submission has been informed by research and reporting data available at the time. Recognising some gaps in the evidence-base as a result of limited data available, the submission has also been complemented by a targeted consultation with stakeholders and community organisations in Victoria. Through this process of consultation, the Victorian Government was provided with a range of stakeholder feedback and anecdotal evidence.

The Victorian Government engaged with a small number of organisations to inform this submission, noting that many organisations, agencies and individuals will also be providing submissions to this Inquiry:

- Anti-Defamation Commission
- Ethnic Communities Council of Victoria
- Islamic Council of Victoria
- Jewish Community Council of Victoria
- LGBTI Taskforce's Justice Working Group
- Office of Public Prosecutions
- Our Watch
- Victorian Disability Advisory Council
- Victorian Gay and Lesbian Rights Lobby
- Victoria Police
- Victorian Equal Opportunity and Human Rights Commission
- Victorian Multicultural Commission
- Victorian Commissioner for Gender and Sexuality.

Victorian Government officials invited a discussion with each of these organisations or stakeholder groups and also offered the alternative of receiving written feedback. Discussions focused on the experiences of communities in respect to vilification and hate conduct reporting processes and the effectiveness of the current responses to vilification.

The views that were provided through this targeted consultation were varied, reflecting the complexity of the issues within scope of this Inquiry. Therefore, the stakeholder views referred to in this submission may not reflect all views of communities or groups represented by the interviewed stakeholders.

## Context – existing protections in Victoria

The RRTA establishes protections and avenues for seeking redress in respect to experiences of vilification in Victoria based on race or religion.

The RRTA provides civil remedies for race and religious vilification. Under the RRTA, the Victorian Equal Opportunity and Human Rights Commission (VEOHRC) assists people with complaints and to settle disputes through dispute resolution mechanisms. The RRTA also provides avenue to make civil complaints via the Victorian Civil and Administrative Tribunal (VCAT).

The RRTA also criminalises serious racial and religious vilification (sections 24 and 25). The criminal offences only apply to the most ‘extreme behaviour’ and can be investigated by Victoria Police. Penalties for criminal offences under the RRTA are up to six months imprisonment and/or 60 penalty units for a person, or 300 penalty units for a body corporate (at the time of writing, one penalty unit is \$165.22 in Victoria).

### Other Victorian legislation

The RRTA is part of a broader framework of Victorian legislation that upholds the rights of all Victorians and prohibits discrimination. This framework includes the *Equal Opportunity Act 2010 (Vic)* and the *Charter of Human Rights and Responsibilities Act 2006 (Vic)*.

This legislative framework prohibiting racial and religious discrimination and vilification is an important way for people in Victoria to seek redress for racial and religious hatred by making a complaint to VEOHRC or VCAT.

### The Equal Opportunity Act 2010 (EOA)

The EOA prohibits direct or indirect discrimination against a person on the basis of 18 personal characteristics, and across areas of public life, as outlined below:

<ul style="list-style-type: none"><li>• Age</li><li>• Breastfeeding</li><li>• Employment activity</li><li>• Gender identity</li><li>• Disability</li><li>• Industrial activity</li></ul>	<ul style="list-style-type: none"><li>• Lawful sexual activity</li><li>• Marital status</li><li>• Parental status or status as carer</li><li>• Physical features</li><li>• Political belief or activity</li></ul>	<ul style="list-style-type: none"><li>• Pregnancy</li><li>• Race</li><li>• Religious belief or activity</li><li>• Sex</li><li>• Sexual orientation</li></ul>	<ul style="list-style-type: none"><li>• An expunged homosexual conviction</li><li>• Personal association with someone who has, or is assumed to have, any of these personal characteristics</li></ul>
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The EOA is focused on the experience of discrimination, rather than of vilification based on hate. Direct discrimination occurs when someone is treated unfavourably because of a personal characteristic that is protected by this law, it can often happen as a result of people making unfair assumptions about what people with particular characteristics can or cannot do. While indirect discrimination occurs when an unreasonable requirement, condition or practice is imposed that disadvantages a person or group because of a personal characteristic<sup>2</sup>.

The EOA also makes sexual harassment unlawful. Sexual harassment is unwelcome sexual behaviour, which could be expected to make a person feel offended, humiliated or intimidated. Sexual harassment can be physical, verbal or written<sup>3</sup>.

<sup>2</sup> <https://www.humanrightscommission.vic.gov.au/discrimination>

<sup>3</sup> <https://www.humanrightscommission.vic.gov.au/discrimination/sexual-harassment>



Both discrimination and sexual harassment are different to vilification. Vilification is about hatred toward a group or individual. And while protection under the RRTA is available against vilification based on race and religion, it is not available to hatred directed towards other groups, such as LGBTIQ communities, women or people with disability.

#### The Charter of Human Rights and Responsibilities Act 2006 (the Charter)

The Charter sets out the basic rights, freedoms and responsibilities of all people in Victoria. The Charter protects 20 fundamental human rights in order to protect them as law in Victoria.

The Charter requires that all statutory provisions, whenever enacted, are interpreted so far as is possible in a way that is compatible with human rights. Section 38 of the Charter makes it unlawful for a public authority to act in a way that is incompatible with a human right, or in making a decision, to fail to give proper consideration to a relevant human right.

However, Charter rights can be limited under section 7 of the Charter if they can be “demonstrably justified in a free and democratic society”, taking into account certain factors such as the importance of the purpose of the limitation, the nature and extension of the limitation and whether there is any less restrictive means available to achieve the objective behind the limitation. The limitation must be proportionate.

## Vilification and hate conduct in Victoria

Evidence suggests that hate conduct and vilification are prevalent, but under-reported, in Victoria. Over seven years since 2013-14, VEOHRC has filed 80 complaints of racial vilification and 78 complaints of religious vilification (refer page 18 for detail). In the 18 years of the RRTA's operation, the Office of Public Prosecutions has prosecuted two serious vilification matters.

Despite these relatively modest figures, this section outlines data, evidence and community feedback which indicates some communities are experiencing frequent, severe and repeated exposure to this conduct based on a range of attributes.

Hate conduct is reportedly occurring across a range of settings, such as within public places like shopping centres or restaurants, places of recreation, on public transport, educational settings and workplaces, within service settings and online. The conduct experienced can be direct (for example, verbal abuse directed to an individual) or indirect (for example, hate-based graffiti or posters in public places). There are also increasing reports of exposure to vilification occurring online, particularly on open and widely accessible social media platforms. Recent reports from the Islamophobia Register of Australia and the Executive Council of Australian Jewry, are examples of community-led data sources which provide evidence of these issues<sup>4</sup>.

Vilification and hate conduct are causing serious harm to individuals, families, communities and Victorian society more broadly. Given the likely under-reporting of hate conduct and vilification, it is also likely that the extent of harm is also underestimated.

A critical question for this Inquiry is whether protections against vilification should be extended beyond race and religion in Victoria. To inform this, a summary of the experiences of hate-motivated conduct experienced by different communities and groups is included below. Whilst the focus is on hate-motivated conduct, data and evidence on vilification specifically is somewhat limited. To better inform the Inquiry, data and evidence on related conduct, such as discrimination, is also included. This evidence is drawn from a variety of sources, including academic research, reports from community organisations and agencies, and anecdotal evidence from stakeholder groups.

### Race and faith-based hate conduct

According to the Scanlon Foundation's 2019 Mapping Social Cohesion survey, 19 per cent of Australians experienced discrimination in the last 12 months because of their skin colour, ethnic origin or religion<sup>5</sup>. Those of a non-English speaking background reported the highest experience of discrimination, at 29 per cent, compared to 17 per cent of those born in Australia.<sup>6</sup>

Racism and race-based discrimination contribute to poorer health outcomes, particularly poor mental health and reduced quality of life. Experiences of racism can undermine an individual's sense of self-worth, leave them feeling vulnerable and isolated, and affecting their physical and mental health. Members of communities targeted by racism can feel unwelcome and less confident to participate in public life and debate.

*Victorian adults who frequently experience racism are almost five times more likely than those who do not experience racism to have poor mental health<sup>7</sup>.*

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<sup>4</sup> Islamophobia in Australia – II (2016-2017), Charles Sturt University and ISRA (2019) available at: <http://www.islamophobia.com.au/wp-content/uploads/2019/11/Islamophobia-Report-2019-2.pdf>, ECAJ Antisemitism Report 2019, available at: <http://www.ecaj.org.au/wp-content/uploads/2019/11/ECAJ-Antisemitism-Report-2019.pdf>

<sup>5</sup> Mapping Social Cohesion 2019: National Report, available at: <https://scanloninstitute.org.au/report2019>

<sup>6</sup> Mapping Social Cohesion 2019: National Report, available at: <https://scanloninstitute.org.au/report2019>

<sup>7</sup> Victorian Population Health Survey 2014, <https://www2.health.vic.gov.au/public-health/population-health-systems/health-status-of-victorians/survey-data-and-reports/racism-in-victoria>

*Victorian adults who frequently experience racism are 2.5 times more likely than those who do not experience racism to have poor physical health<sup>8</sup>.*

### Racism in schools

A 2019 study of racism in Australian schools found that one third of students surveyed reported being the victim of racial discrimination by their peers.<sup>9</sup> The study found that 40 per cent of students surveyed in years five to nine from non-Anglo or European backgrounds reported experiencing racial discrimination by their peers. Close to 20 per cent of students surveyed from Aboriginal and Torres Strait Islander background reported experiences of racial discrimination from their teachers. One in three students from non-Anglo or European backgrounds surveyed reported experiences of racial discrimination in wider society.

### Racism experienced by Aboriginal Victorians

The unique experiences of Aboriginal Victorians are shaped by a range of factors, including colonial dispossession, Stolen Generations, intergenerational trauma and the ongoing experiences of discrimination that Aboriginal Victorians face. The structures and systems established during colonisation had the specific intent to exclude Aboriginal people and their laws, customs and traditions, resulting in entrenched systemic and structural racism.<sup>10</sup>

Racism can have a harmful impact on the cultural identity and confidence of Aboriginal Victorians. Research shows that experiences of racism can also have detrimental long-term health effects, both mentally and physically.<sup>11</sup>

Racism manifests in many forms, including systemically through structures that exclude the participation of Aboriginal Victorians in everyday life. A VicHealth survey found that 97 percent of Aboriginal Victorians surveyed had experienced racism in the previous 12 months and over 70 per cent experienced 8 or more racist incidents.<sup>12</sup>

Culturally safe and culturally responsive health services are vital to ensure Aboriginal Victorians are getting the health care that they need. A 2010-11 study of 755 Aboriginal Victorians aged 18 and above found that almost three in 10 Aboriginal adults had experienced racism in health settings within the previous 12 months.<sup>13</sup>

Based on the latest available data from the National Aboriginal and Torres Strait Islander Social Survey in 2014-15, 37 per cent of Aboriginal Victorians reported feeling unfairly treated at least once in the previous 12 months because of their Aboriginal identity. This highlights the need to continue tackling racist attitudes toward Aboriginal Victorians that remain pervasive within our community.

### Experiences of Islamophobia

The Islamophobia Register of Australia captured 349 verified incidents of Islamophobia in Australia over a two year period from 2016-17. Of the reported incidents, the majority of attacks were verbal

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<sup>8</sup> Victorian Population Health Survey 2014, <https://www2.health.vic.gov.au/public-health/population-health-systems/health-status-of-victorians/survey-data-and-reports/racism-in-victoria>

<sup>9</sup> Priest, N, Chong, S, Truong, M, Sharif, M, Dunn, K, Paradies, Y, Nelson, J, Alam, O, Ward, A & Kavanagh, A, 2019, Findings from the Speak Out Against Racism (SOAR) Student and Staff Surveys, available at: [https://csmr.cass.anu.edu.au/sites/default/files/docs/2019/9/Summary\\_of\\_findings\\_2017\\_SOAR\\_student\\_and\\_staff\\_surveys.pdf](https://csmr.cass.anu.edu.au/sites/default/files/docs/2019/9/Summary_of_findings_2017_SOAR_student_and_staff_surveys.pdf)

<sup>10</sup> [https://www.content.vic.gov.au/sites/default/files/2019-09/Victorian-Aboriginal-Affairs-Framework\\_1.pdf](https://www.content.vic.gov.au/sites/default/files/2019-09/Victorian-Aboriginal-Affairs-Framework_1.pdf)

<sup>11</sup> [https://www.aboriginalvictoria.vic.gov.au/sites/default/files/2019-11/Victorian%20Government%20Aboriginal%20Affairs%20Report%202019\\_0.pdf](https://www.aboriginalvictoria.vic.gov.au/sites/default/files/2019-11/Victorian%20Government%20Aboriginal%20Affairs%20Report%202019_0.pdf)

<sup>12</sup> Mental health impacts of racial discrimination in Victorian Aboriginal communities, Victorian Health Promotion Foundation, 2012, pg.2

<sup>13</sup> [https://www.aboriginalvictoria.vic.gov.au/sites/default/files/2019-11/Victorian%20Government%20Aboriginal%20Affairs%20Report%202019\\_0.pdf](https://www.aboriginalvictoria.vic.gov.au/sites/default/files/2019-11/Victorian%20Government%20Aboriginal%20Affairs%20Report%202019_0.pdf)

(60 per cent). Of the online incidents, wanting to kill/harm Muslims was the most dominant rhetoric, consisting of one quarter of all online cases<sup>14</sup>.

Of the in-person Islamophobic incidents, most victims (72 per cent) were women. Of the 113 female victims, 96 per cent of female victims were wearing a headscarf (hijab). This targeting generally occurs because headscarves make Muslim women more easily identifiable, according to stakeholders. Data collected by the Islamophobia Register shows anti-Muslim hate incidents are also associated with other characteristics that make people vulnerable, such as gender.

The report indicates incident hotspots are commonly in shops, schools, public buildings and public transport. Majority of reported incidences (60 per cent) occurred in guarded or patrolled areas, and in almost half of the cases (49 per cent), surrounding people passed by paying no attention to the incident. Half of the in-person cases were hate speech, while one-quarter consisted of vandalism and physical attacks.

The Scanlon Foundation's 2019 Mapping Social Cohesion Survey reported negative attitudes towards Muslims at an average of 24 per cent, markedly higher than negative opinions towards Christians and Buddhists, which is in the range of 4 – 6 per cent<sup>15</sup>.

### Experiences of Antisemitism

In 2019, the Executive Council on Australian Jewry (ECAJ) recorded 368 Antisemitic incidents. In the year prior, the ECAJ reported 366 incidents. While the total number of incidents has not increased significantly, the ECAJ reported a marked increase in the numbers in some of the more serious categories of incidents, including an increase in the number of reported incidents involving direct verbal abuse, harassment and intimidation from 88 in 2018 to 114 in 2019, and in the number of reported graffiti attacks from 46 to 95<sup>16</sup>.

Antisemitic sentiment in the online environment has also been recognised as particularly prevalent, not just in Australia but worldwide. This was recognised in a United Nations Report on Combatting Antisemitism to Eliminate Discrimination and Intolerance Based on Religion or Belief. This report notes "serious concern that the frequency of antisemitic incidents appears to be increasing in magnitude in several countries where monitors attempt to document it, including online"<sup>17</sup>

During stakeholder consultations, community organisations indicated that they receive predominantly anecdotal evidence of Islamophobia and Antisemitism as many people do not then go on to officially report their experience of vilification. As such, incidents of vilification in Victoria are likely significantly higher than is being reported.

### Experiences of newly arrived communities and African Australians

Based on targeted consultation with representatives from newly arrived communities, these groups face additional challenges, including limited knowledge of protections available to them, fewer personal connections to access assistance, and for some, greater distrust of government.

These challenges are exacerbated for those who are readily visually identified as 'different'. This has particularly been the case for newly arrived communities from African countries as well as African Australians.

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<sup>14</sup> Islamophobia in Australia – II (2016-2017), Charles Sturt University and ISRA (2019) available at: <http://www.islamophobia.com.au/wp-content/uploads/2019/11/Islamophobia-Report-2019-2.pdf>

<sup>15</sup> Mapping Social Cohesion 2019: National Report, available at: <https://scanloninstitute.org.au/report2019>

<sup>16</sup> <http://www.ecaj.org.au/wp-content/uploads/2019/11/ECAJ-Antisemitism-Report-2019.pdf>

<sup>17</sup> [https://www.ohchr.org/Documents/Issues/Religion/A\\_74\\_47921ADV.pdf](https://www.ohchr.org/Documents/Issues/Religion/A_74_47921ADV.pdf)

A 2010 Australian Human Rights Commission report on African Australians: Human Rights and Social Inclusion Issues identified a range of experiences of violence and harassment experienced by African Australians, which took different forms. From occasional incidents of serious assault to more frequent examples of racial abuse and threatening behaviour, as well as damage to mosques and churches<sup>18</sup>.

This report also identifies that “while a large number of African Australians said they felt increasingly concerned about racist violence being directed at them, their family and those in their community, most were not confident that it could be properly dealt with by law enforcement authorities”. The reasons for non-reporting included a fear of authorities, often based on perceptions of police from their country of origin, and a fear of being seen to ‘make trouble’<sup>19</sup>.

### Hate conduct is impacting other people and communities

Hate conduct is not limited to culturally diverse and faith communities and Aboriginal communities. Based on feedback in targeted consultations, and available evidence, other communities and groups with the most frequent experiences of hate conduct and vilification are:

- LGBTIQ communities
- people with disability
- women.

As with racial and religious vilification, evidence outlined below also indicates that this hate conduct can have profound negative impacts on individuals.

### Hate conduct experienced by LGBTIQ communities

Research into the harassment, abuse and bullying of LGBTIQ Australians suggests that LGBTIQ communities experience prejudice and hate-based conduct at a significantly higher rate than the non LGBTIQ population.

***Almost 75 per cent of LGBTI people in Australia have experienced bullying, harassment or violence on the basis of their sexual orientation, gender identity or sex characteristics.***<sup>20</sup>

This figure predates the Australian Marriage Law Postal Survey in 2017. A study by the Australia Institute and the National LGBTI Health Alliance found that “experiences of verbal and physical assaults more than doubled in the three months following the announcement of the postal survey compared with the prior six months.”<sup>21</sup>

This abuse can have a range of significant and long-lasting impacts. For example, the Royal Commission into Victoria’s Mental Health System reported that “elevated levels of mental illness and suicidality are not due to sexuality or gender identity but to discrimination and exclusion as key determinants of mental health. This is sometimes referred to as ‘minority stress’”.<sup>22</sup>

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<sup>18</sup> Australian Human Rights Commission, 2010, *African Australians: Human Rights and Social Inclusion Issues*, available at: <https://www.humanrights.gov.au/our-work/race-discrimination/projects/our-own-words-african-australians-review-human-rights-and>

<sup>19</sup> Australian Human Rights Commission, 2010, *African Australians: Human Rights and Social Inclusion Issues*, available at: <https://www.humanrights.gov.au/our-work/race-discrimination/projects/our-own-words-african-australians-review-human-rights-and>

<sup>20</sup> Australian Human Rights Commission, *Resilient Individuals: Sexual Orientation, Gender Identity & Intersex Rights: National Consultation Report* (2015)

<sup>21</sup> Saan Ecker & Ebony Bennett, The Australia Institute and National LGBTI Health Alliance, Preliminary results of the Coping with marriage equality debate survey: Investigating the stress impacts associated with the Australian marriage equality debate during the lead up to the postal survey results announcement (December 2017)

<sup>22</sup> See State of Victoria, Royal Commission into Victoria’s Mental Health System Interim report (2019), p47

Lesbian, gay, bisexual, trans and gender diverse and intersex people and groups experience prejudice motivated conduct in different ways and to different extents. For instance:

- research studies conducted by Gay & Lesbian Health Victoria have outlined ongoing harassment and abuse on the basis of sexual identity and gender identity, with a close nexus established between incidents of harassment and abuse and both acute and ongoing psychological harm<sup>23</sup>
- a study on intersex students found that many intersex young people had experienced bullying and discrimination, including physical violence in schools, based on a known variation or more commonly on the basis of physical traits<sup>24</sup>
- results from 2012's Private Lives 2 found that trans and gender diverse people report higher rates of abuse (including higher rates of sexual assault against trans women) and that a significant percentage of respondents hide their sexual orientation or gender identity out of fear of experiencing violence or discrimination<sup>25</sup>
- results from 2014's Growing Up Queer report indicate that 24 per cent of harassment, homophobia and transphobia experienced by young people took the form of cyberbullying<sup>26</sup>
- the Australian Human Rights Commission has reported that 6 in 10 LGBTI people experienced verbal homophobic abuse and 1 in 5 experienced physical abuse in a 12-month period<sup>27</sup>
- LGBTIQ community advocates at the Royal Commission into Family Violence Expert Roundtable discussed the prevalence of harassment perpetrated in public spaces and noted that somewhere between 9 per cent and 24 per cent of harassment occurs in the home<sup>28</sup>
- a recent study found that 50.4 per cent of LGBTIQ participants experience public harassment on a weekly or monthly basis.<sup>29</sup>

### Hate conduct experienced by women

Research and evidence identifies gender-based hate conduct as a significant issue experienced predominantly by women in Victorian and Australian communities, but with little legal protection available.

Awareness of online vilification appears to be rising in Australia, which is having a significant impact on women. A recent Our Watch report notes that "online bullying and hate has emerged as a key issue, with the internet providing a space where non-physical forms of violence occur at a rapid rate"<sup>30</sup>.

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<sup>23</sup> See e.g. Lynne Hillier, Tiffany Jones, Marisa Monagle, Naomi Overton, Luke Gahan, Jennifer Blackman and Anne Mitchell (2010) 'Writing Themselves In 3: The third national study on the sexual health and wellbeing of same sex attracted and gender questioning young people', The Australian Research Centre in Sex, Health & Society (La Trobe University); above n 2

<sup>24</sup> Tiffany Jones, 'The needs of students with intersex variations' 16(6) Sex Education (2016). See also, Intersex Human Rights Australia website, 'New publication "Intersex: Stories and Statistics from Australia"' (2016) Phoebe Hart – Hartflicker Moving Pictures, 'Orchids: My Intersex Adventure' (2010)

<sup>25</sup> William Leonard, Marian Pitts, Anne Mitchell, Anthony Lyons, Anthony Smith, Sunil Patel, Murray Couch and Anna Barrett (2012) 'Private Lives 2: The second national survey of the health and wellbeing of gay, lesbian, bisexual and transgender (GLBT) Australians', The Australian Research Centre in Sex, Health & Society (La Trobe University)

<sup>26</sup> Growing Up Queer, Issues Facing Young Australians Who are Gender Variant and Sexuality Diverse, Young and Well Cooperative Research Centre, Melbourne (2014)

<sup>27</sup> Australian Human Rights Commission, Face the Facts: Lesbian, Gay, Bisexual, Trans and Intersex People (2012).

<sup>28</sup> See State of Victoria, Royal Commission into Family Violence: Report and recommendations (2014-2016) Vol V, 145.

<sup>29</sup> Bianca Fileborn, Australian Research Centre in Sex, Health & Society, LGBTIQ+ experiences of public harassment (August 2016).

<sup>30</sup> <https://www.ourwatch.org.au/getmedia/47bd1d32-4099-4bbf-85d1-c09e5d982877/Men-in-focus-web.pdf.aspx?ext=.pdf>

### *Thirty per cent of Australian women have experienced online abuse or harassment<sup>31</sup>*

This includes nearly half (47 per cent) of respondents to the survey aged 18-24. Online abuse can take multiple forms, including but not limited to sexual harassment, revenge porn and cyber-stalking. Further, 37 per cent of women who had experienced online abuse or harassment said that on at least one occasion, these online experiences made them feel that their physical safety was threatened.

Made clear in high profile cases, it has been observed that women are “more likely to be attacked when they are not performing gender appropriately”<sup>32</sup> and when they step outside of more traditional roles. This disproportionate impact on women can have a silencing effect, forming barriers to participation and isolation, and entrenching and perpetuating gender stereotypes.

The attitudes and beliefs that inform hateful and abusive language and behaviour directed towards women can be seen to be closely connected to the perpetuation of violence against women<sup>33</sup>.

There are some legal avenues to protect against particular conduct in Australia, for example, the *Crimes Act 1958 (Vic)* (threat to commit a sexual offence), the *Personal Safety Intervention Order Act 2010 (Vic)* (stalking and harassment provisions). However, these two Acts address conduct towards a specific individual or individuals, not hate-based conduct towards women generally. Further, there are other circumstances where gender-based hate would not be prohibited by current legislation, such as in respect to public vilification and hate speech.

Numerous stakeholders considered that the lack of recognition of gender-based vilification in law falls short of community expectations. For example, a Muslim woman may be vilified both for being a Muslim, and because of her gender. This can have a compounding effect which current protections do not consider.

#### *Hate conduct experienced by people with disability*

People with disability can commonly be subjected to a range of negative behaviours such as discrimination, bullying, abuse and harassment. This has been evidenced through a number of Parliamentary Inquiries and reviews at both the Commonwealth and state levels into the abuse and discrimination of people with disability<sup>34</sup>. While these have focused specifically in respect to disability-specific service providers and institutions, reports provide clear evidence that abuse is not confined to these environments and is experienced in community and mainstream services.

Community stakeholders identified a range of issues related to the experiences of people with disability, including the following:

- experiences of bullying and vilification for people with disability were more likely to take place online rather than in person.
- the compounding effect of vilification, particularly when the individual identifies with a range of characteristics that are subjected to hate conduct, for example when an individual experiences hate conduct related to their disability and sexual orientation.

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<sup>31</sup> 2018 poll by Ipsos MORI

<sup>32</sup> Hannah Mason-Bish, ‘Beyond the Silo: Rethinking Hate Crime and Intersectionality’ in Nathan Hall et al (eds), *The Routledge International Handbook on Hate Crime* (Routledge, 2014) 24, 29.)

<sup>33</sup> <http://www.unswlawjournal.unsw.edu.au/wp-content/uploads/2018/09/DSouza-et-al.pdf>

<sup>34</sup> [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Community\\_Affairs/Violence\\_abuse\\_neglect/Report](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Violence_abuse_neglect/Report), <https://www.parliament.vic.gov.au/publications/fact-sheets/397-fcdc/inquiry-into-abuse-in-disability-services> and <https://www.pc.gov.au/inquiries/completed/disability-discrimination/report>

- concern that there may be some people with disability that may be more vulnerable to vilification and hate conduct than others and less likely to be able to self-advocate in response, such as people with an intellectual disability, autism, people who have high communication needs, or those who are reliant on others for their self-care and participation in community life. Research indicates that these can be risk factors for violence<sup>35</sup>.

While research appears to be somewhat limited in the field of vilification of people with disability, there is clear evidence that people with disability are more likely to experience violence than people without disability. In a study of data from the Australian Bureau of Statistics Survey on Personal Safety, it was found that people with disabilities were significantly more likely to experience all types of violence (physical, sexual and intimate partner violence and stalking/harassment), both in the past 12 months and since the age of 15. Women with disabilities were more likely to experience sexual and partner violence and men were more likely to experience physical violence<sup>36</sup>

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<sup>35</sup> <https://onlinelibrary.wiley.com/doi/pdf/10.1111/1753-6405.12498>

<sup>36</sup> <https://onlinelibrary.wiley.com/doi/pdf/10.1111/1753-6405.12498>



## Availability of protections

### Comparison of vilification protections with other jurisdictions

The RRTA currently provides protections against racial and religious vilification in Victoria. Compared with other Australian jurisdictions, Victoria provides more comprehensive vilification protections against religious vilification, however does not cover the breadth of attributes protected by other states; for example:

- sexual orientation, sexuality or homosexuality are attributes protected against vilification in ACT, New South Wales, Queensland and Tasmania (Tasmanian law does not expressly refer to vilification but provides provisions against inciting hatred, serious contempt for or severe ridicule)
- gender identity is a protected attribute in ACT, Queensland and Tasmania
- transgender status is a protected attribute in New South Wales
- HIV/AIDS status is a protected attribute in ACT and New South Wales
- disability is a protected attribute in ACT and Tasmania.

The table below outlines each of the anti-vilification attributes across each jurisdiction in Australia. Should an expansion of protected attributes be considered, Victoria would be in line with an increasing number of other states.

<i>Attributes protected from vilification across Australian Jurisdictions</i>									
Attributes	Vic	CTH	ACT	NSW <sup>37</sup>	NT	Qld	SA	Tas <sup>38</sup>	WA
Race	X	X	X	X		X	X	X	X
Religion	X		X			X		X	
Sexual orientation/ homosexuality			X	X		X		X	
Lawful sexual activity								X	
Gender identity			X			X			
Transgender status				X					
HIV/AIDS status			X	X					
Disability			X					X	
Age									
Gender									
Intersex			X					X	
Criminal offences	Y	N	Y	Y <sup>39</sup>	N	Y	Y	N	Y
Civil remedies	Y	Y	N	Y	N	Y	N	Y	N

<sup>37</sup> This refers to the *Anti Discrimination Act 1997 (NSW)*. Separate to this, the *Crimes Act 1900 (NSW)* creates an offence where a person, by a public act, intentionally or recklessly threatens or incites violence towards another person or a group of persons on grounds including race, religious belief or affiliation, sexual orientation, gender identity, intersex status or HIV/AIDS.

<sup>38</sup> The attributes listed here, as per the *Anti Discrimination Act 1998 (Tas)*, is in respect to provisions against inciting hatred. A broader range of attributes are also protected from conduct that "offends, humiliates, intimidates, insults or ridicules another person on the basis of an attribute"

<sup>39</sup> Separately to the *Anti-Discrimination Act 1997*, the *Crimes Act 1900 (NSW)* at s 93Z creates an offence where a person, by a public act, intentionally or recklessly threatens or incites violence towards another person or a group of persons on grounds including race, religious belief or affiliation, sexual orientation, gender identity, intersex status or HIV/AIDS (s 93Z(1)).

## Attributes protected under the Equal Opportunity Act 2010 (Vic)

The RRTA is complemented by anti-discrimination protections under the *Equal Opportunity Act 2010*. Eighteen attributes are currently protected under the EOA, including:

• Age	• Lawful sexual activity	• Pregnancy	• An expunged homosexual conviction
• Breastfeeding	• Marital status	• Race	
• Employment activity	• Parental status or status as carer	• Religious belief or activity	• Personal association with someone who has, or is assumed to have, any of these personal characteristics
• Gender identity	• Physical features	• Sex	
• Disability	• Political belief or activity	• Sexual orientation	
• Industrial activity			

During consultations, some stakeholders suggested that vilification protections should be expanded to cover all attributes under the EOA, to provide more consistent protections against both discrimination and vilification. Several stakeholders raised that the inconsistencies in how hate conduct and vilification against particular attributes are provided is confusing, unfair and outdated, and indicated their support for extending protections beyond race and religion.

The *Equal Opportunity Act 2010* (Vic) (the EOA), RDA, *Disability Discrimination Act 1992* (Cth), *Sex Discrimination Act 1984* (Cth), and *Age Discrimination Act 2004* (Cth) specifically prohibit conduct that is discriminatory on the basis of the various protected attributes that are set out within the respective statutes.

### KEY CONSIDERATION

Research and anecdotal evidence available strongly indicates that vilification and other forms of hate conduct is experienced by a number of communities and groups in Victoria.

After taking into account race and religion, the most common attribute protected against vilification in other Australian jurisdictions is sexual orientation (either 'sexual orientation', 'homosexuality', or 'sexuality'), followed by gender identity, disability and HIV/AIDS status.

The benefits, implications and practicalities of providing protections against vilification for attributes not currently protected in Victorian law could be considered by this Inquiry, including options available in reforming the existing legislative framework in Victoria.

## Balancing protections and freedom of expression

Hate conduct, by its very definition, is unacceptable as it harms others, isolates communities, and is a threat to an inclusive society. However, a key consideration in protecting against hate conduct, is to make sure that conduct that falls short of ‘hate conduct’, and which is a reasonable and justifiable expression of a person’s views, is not inadvertently restricted. The definition of ‘hate conduct’ must preserve the freedom of Victorians to express themselves, while at the same time making sure that this expression is not at the expense of the rights of individuals to participate freely in their society and community without fear of hateful violence or abuse. Living in an open, democratic society requires the recognition that we all have rights and responsibilities to one another.

This section looks at the current definition of vilification in the RRTA, with a particular focus on exceptions to unlawful vilification, and the ‘incitement’ threshold for vilification.

Stakeholders expressed differing views on the effectiveness of exceptions. Some stakeholders indicated the existing exceptions adequately safeguard public debate and individual self-expression, while others were concerned they make it too difficult to prove vilification through the RRTA. Overall, some stakeholders expressed concern that any move towards greater protections against hate conduct and vilification could have unintended ramifications, such as creating negative public discourse or backlash against protections.

### Exceptions to anti-vilification laws

The RRTA provides the following exceptions to conduct that may otherwise constitute racial or religious vilification:

- the first relating to public conduct, ensures that genuine, legitimate public debate on issues of public interest can continue unfettered. Conduct for academic, artistic, religious or scientific purposes is protected. The only qualification on such discussion or debate is that it is engaged in ‘reasonably’ and in ‘good faith’
- the second concerning private conduct, which ensures that the law has no reach over what people say or do in their own homes or amongst their friends, in private.

The need to strike a balance between protections and freedom of expression is reinforced by the *Victorian Charter of Human Rights and Responsibilities Act 2006*. The charter sets out 20 fundamental human rights, including the right to freedom of expression. The Charter also protects the right to equality, freedom of religion and belief, and cultural rights.

#### ***The tension between anti-vilification protections and freedom of expression in practice: LGBTIQ experiences and religious expression***

On 29 August 2019 the Commonwealth Government published an exposure draft of its proposed Religious Discrimination Bill 2019. This Bill has been proposed to add to protection against discrimination on the basis of religious belief or activity in specified areas of public life. This Bill also includes a proposal to protect bona fide statements of religious belief and exempt them from the operation of state anti discrimination law. It therefore has the potential to unwind existing protections against prejudice, including for Victoria’s multicultural and multifaith communities, LGBTIQ people and people with disability. Tasmania’s anti-vilification protections, the strongest in Australia, are explicitly proposed to be over-ridden by the Religious Discrimination Bill 2019.

There is some potential for the current exemption for religious proselytising under the RRTA (Section 11 (2)) to have the same effect, if protections were expanded to more attributes. With racial and religious vilification currently protected, this exemption can protect someone

proselytising who may otherwise be considered to be vilifying a different religious or racial group. If protections were expanded to more communities, there may be a greater likelihood of religious proselytising that may also be considering vilification – for example, of LGBTIQ communities.

The RRTA currently excludes “conveying or teaching a religion or proselytising” from the prohibitions on vilification.

The Commonwealth Government has released a revised draft of its proposed Religious Discrimination Bill 2019.

### Threshold for vilification in Victoria: The ‘incitement test’

The RRTA also protects freedom of expression by setting a high threshold for vilification. The RRTA defines racial and religious vilification as behaviour that “incites hatred against, serious contempt for, or revulsion or severe ridicule” against another person or group of people because of their race or religion.

The test for this legislation is about *incitement* – inciting others to feel hatred, serious contempt, revulsion or serious ridicule against a person or class of persons. Stakeholders from culturally and linguistically diverse and faith backgrounds have advised that the RRTA has proven difficult to use for individuals and communities affected by vilification, in part because of this threshold of the ‘incitement test’.

The incitement test also does not take into account the impact of the behaviour on the individual or community who is the subject of vilification. In determining whether a contravention of section 7 or section 8 has occurred, the motive of the person engaging in the conduct is irrelevant.

The cases where a third person is going to be moved to extreme emotions are limited, as shown by the example below.

#### **Case Study: Threshold for ‘inciting’**

In *Catch the Fire Ministries Inc, Nalliah & Scot vs Islamic Council of Victoria and Attorney-General for the State of Victoria [2006]* (Catch the Fire), the Victorian Court of Appeal considered whether statements made by Catch the Fire Ministries amounted to religious vilification.

This Victorian appellate court decision is the current authority on the definition of “inciting” within the meaning of the RRTA. The case has been referred to in multiple judgments delivered in the New South Wales Court of Appeal and the Queensland Court of Appeal.

In this case, the Court:

- made clear that ‘incites’ means to ‘urge, spur on, animate or stimulate’. It involves inciting serious negative emotion about a person because of their religious beliefs or their race
- considered that the test to be applied was ‘whether the natural and ordinary effect of the conduct is to incite hatred or other relevant emotion in the circumstances of the case’. The reaction which the conduct incites must not be mild or trivial; rather, the conduct ‘must incite the strongest feelings of antipathy’
- confirmed that the threshold for breaching the RRTA is high – it is concerned with conduct that incites extreme responses in third persons i.e. conduct which is merely critical, offensive or insulting will not amount to vilification.

The 'incitement test' has been referenced as a factor that leads to reduced confidence in the efficacy of the RRTA among some communities, and a likely reason why the RRTA dispute provisions are used infrequently, either by people making complaints to VEOHRC or to VCAT.

In seven years from 2013-14, VEOHRC reported having 80 complaints filed that relate to incidents of racial vilification, and 78 complaints related to incidents of religious vilification, as the table below outlines:

<b>Complaints to VEOHRC under the <i>Racial and Religious Tolerance Act 2001 (Vic)</i></b>								
	<b>2013/14</b>	<b>2014/15</b>	<b>2015/16</b>	<b>2016/17</b>	<b>2017/18</b>	<b>2018/19</b>	<b>2019/20</b>	<b>TOTAL</b>
Racial Vilification	14	45	9	3	4	4	1	80
Religious Vilification	10	37	4	5	14	5	3	78
Authorising, Assisting Vilification		20		4				24
Victimisation	1	4						5
<b>TOTAL</b>	<b>25</b>	<b>106</b>	<b>13</b>	<b>12</b>	<b>18</b>	<b>9</b>	<b>4</b>	<b>187</b>

*Note: Complaints are matters which have been lodged with VEOHRC and accepted as within jurisdiction of the RRTA.*

A search of publicly available decisions reveals that 12 cases have been heard and determined in VCAT in relation to the RRTA. Eight matters have been heard and determined in the Supreme Court of Victoria and there has been one case heard and determined in the Victorian Supreme Court of Appeal, the case of *Catch the Fire Ministries*.

#### Incitement test for criminal offences

The offences of serious racial or religious vilification also contain an incitement test.<sup>40</sup> Criminal offences must be proved 'beyond reasonable doubt', which is a harder threshold to meet than proving incitement 'on the balance of probabilities', which is required for civil remedies.

There have been two successful criminal prosecutions since the RRTA's introduction in January 2002. The difficulties described above in relation to proving incitement are even more of a barrier when they must be proved 'beyond reasonable doubt'. It may be possible that the high threshold of the incitement requirement in the offences is a deterrent to prosecuting complaints of serious vilification.

#### **Case Study: First criminal conviction under the RRTA**

In September 2017, three members of a far-right wing group were found guilty following a contested hearing in the Magistrate's Court, for inciting serious contempt against Muslims after they enacted and videoed a mock beheading to protest against the building of a mosque in Bendigo. The incident was filmed and posted on Facebook, the video had 275 'likes'. Each of the three people involved received a \$2,000 fine. This conviction was the first successful criminal prosecution under the RRTA. Since the conviction, an appeal was made against the conviction. The Chief Judge of the County Court heard the appeal, which concluded on 14 November 2019. At the time of making this submission, the decision was pending. The main substantive issue on appeal was whether there was an intention to incite severe ridicule, revulsion or serious contempt. The

<sup>40</sup> It is an offence to: intentionally engage in conduct on the ground of a person's race, religious belief or activity that the offender knows is likely to (a) incite hatred against the person and (b) threaten, or incite others to threaten, physical harm towards person/class of persons" (ss 24(1), 25(1)); or knowingly engage in conduct with the intention of inciting serious contempt for, or revulsion or severe ridicule of that person or other persons (ss 24(2), 25(2)).

matter also involved arguments in relation to the *Victorian Charter of Human Rights and Responsibilities Act 2006* and the Constitution.

#### **Case Study: Matter of Enrody**

In 2018, Mr Enrody pleaded guilty to one charge of serious racial vilification and one charge of serious religious vilification. Both charges were rolled up charges. He was sentenced on 7 August 2018 to an aggregate fine of \$1000. Mr Enrody posted two offensive videos on his account on Youtube. The first video published 27 May 2017 involved Mr Enrody making vilifying remarks against Turkish Muslims, Pakistani Muslims and persons of Jewish faith. The second video published on 15 July 2017 involved Mr Enrody making vilifying remarks against non-white persons and Jewish persons.

### Comparing the incitement threshold to Commonwealth and other jurisdictions

The test of incitement is used in all state and territory Acts where vilification provisions exist, with the exception of the federal *Race Discrimination Act 1975* (RDA). In comparison, the RDA assesses the impact of the conduct on the person directly affected.

Section 18C of the RDA requires that the conduct must be reasonably likely to “offend, insult, humiliate or intimidate” another person or group. It assesses the impact of the conduct on those directly affected and focuses on the seriousness of the conduct as it would be expected to affect an ordinary or reasonable person in the affected person’s position. Section 18C of the RDA must be read in the context of Section 18D, which provides protections for a number of acts in good faith (such as artistic works, fair and accurate reporting, and acts for a genuine academic purpose).

Tasmania, in addition to having an ‘incitement test’ that prohibits inciting hatred towards, serious contempt for, or severe ridicule against a person (like the Victorian RRTA), also makes it unlawful to ‘engage in any conduct which offends, humiliates, intimidates, insults or ridicules another person’ on the basis of certain attributes (like the Commonwealth RDA)<sup>41</sup>.

Stakeholder feedback on the incitement test has been quite mixed. Some stakeholders emphasised the difficulties using the incitement test, as they considered that it was technically difficult to use. Regardless of where the threshold was set, they felt it could be made less legally complex.

Some stakeholders felt protections should be broadened to cover a wider range of conduct, and suggested that something similar to the Commonwealth RDA may be appropriate, as it would put more emphasis on the impact on communities.

Others emphasised the importance of ensuring broad community acceptance of the threshold for anti-vilification protections, and so felt that the incitement test’s high standard was appropriate. Stakeholders also often suggested that regardless of where the threshold for vilification was set, it is important that it be complemented by non-legislative measures, such as programs and policies.

### **KEY CONSIDERATION**

Where vilification provisions exist, the incitement test is commonly in place in Australian jurisdictions as a means for setting a threshold for unlawful conduct. Complaints data and feedback from stakeholders indicates that Victoria’s threshold of incitement test in the RRTA is high and a barrier to the effective use of the legislation.

<sup>41</sup> Anti Discrimination Act 1998 (Tas), section 19 and section 17 (1)

The Committee may consider alternatives such as the Commonwealth or Tasmanian models, which focus on the impact of the conduct on the person directly affected, including the benefits, implications and practicalities of such alternatives.

The Committee could also consider whether there is a case for applying different tests for civil matters (a conciliatory process focused on the harm to the vilified party) and criminal matters (an adversarial process with a greater focus on providing a deterrent).

Importantly, any vilification test must be careful not to unjustifiably limit the right to freedom of expression and implied freedom of political communication, and must be considered in the context of the law's exceptions.

## Effective operation of protections

Regardless of how strong or weak protections are, their value for communities is often determined by how well they operate. This section looks at four key aspects of how vilification protections are accessed and operationalised in Victoria:

- complaints under the RRTA
- dispute resolution under the RRTA
- the role of Victoria Police
- protections from other legislation.

### Making complaints

All jurisdictions handle concerns of vilification and hate speech differently. Victoria's legislation has a range of features allowing for complaints to be made and for disputes to be resolved – section 22 of the RRTA applies the dispute resolution procedures under the EOA to complaints under the RRTA.<sup>42</sup>

Existing evidence and stakeholder feedback indicate that low reporting rates are likely due to several factors including:

- a lack of community awareness or knowledge of the complaints or protections more broadly
- the perceived length of time of the complaints process
- community trepidation about the complaints process, either because of fear or distrust of authorities involved in complaints processes, or because of a fear of reprisal for reporting
- systemic barriers faced by communities, for example language barriers
- parameters placed upon the reporting process by legislation
- the perception that a complaint would not lead to a meaningful outcome.

#### *Community in focus – barriers to reporting for LGBTIQ Victorians*

While there is extensive evidence of hate conduct towards LGBTIQ Victorians, there may be reluctance to report incidents due to “a lack of trust in reporting to police; a lack of awareness about available offences, an inability to identify perpetrators; fears reporting will exacerbate bullying, cause victimisation or escalate the behaviour; and barriers caused by the significant psychological trauma and ongoing mental health impacts of being a victim of crime”.<sup>43</sup> Likewise, a Gay & Lesbian Health Victoria study cited “the belief that their complaint will not be taken seriously (e.g. family violence), shame (e.g. offences at beats), lack of confidence in police responses, inconsistency in police responses and ‘self-triaging’ by a victim.”<sup>44</sup>

In response to these challenges, some communities have established their own mechanisms for people to make reports. For example:

- the Islamophobia Register of Australia provides an online avenue for anyone to report an incident of Islamophobia or Anti-Muslim abuse

<sup>42</sup> *Racial and Religious Tolerance Act 2001* (Vic) s 22. In particular, Division 1 of Part 8 (Dispute resolution by the Commission), Division 3 of Part 11 (The Commissioner), Division 1 of Part 12 (Proceedings for offences) Division 3 of Part 12 ((Other offences), and [s 189](#) of the *Equal Opportunity Act 2010* (Vic) (Protection of people giving evidence and information) apply to disputes under the RRTA.

<sup>43</sup> Human Rights Law Centre, *End the Hate: Responding to Prejudice Motivated Speech and Violence Against the LGBTI Community* (2018), 15.

<sup>44</sup> William Leonard, Anne Mitchell, Marian Pitts and Sunil Patel (2008) ‘Coming forward: The underreporting of heterosexist violence and same sex partner abuse in Victoria’, Australian Research Centre in Sex, Health & Society, La Trobe University



- The Executive Council of Australian Jewry (ECAJ) reports annually on antisemitic incidents, the data is collected nationally through volunteer Community Security Groups, official Jewish state roof bodies, and the ECAJ
- In 2019 VEOHRC developed a Community Reporting Tool (CRT), a simple online form that provides an additional way for community members experiencing harmful racism, discrimination and vilification to report to VEOHRC. Anonymous reports can be made through this tool. In November 2019, the CRT was located on 15 local council websites in Victoria.

Additionally, there are some features of the RRTA that stakeholders have indicated create barriers for communities to make complaints and report incidents of vilification they have experienced or witnessed. For example:

- the complainant must be able to obtain the name of the individual/s who engaged in the act of alleged vilification. This requirement can prove challenging, given the circumstances in which vilification can often occur in public spaces and settings. For example, between strangers on public transport or on the street. Without the name or identity of this individual, VEOHRC has limited means to accept a complaint for dispute resolution
- the individual complainant must be named. Similarly, complaints by representative bodies require each person represented to be named. Community stakeholders have reported this feature of the RRTA as a deterrent for some to report
- the RRTA is for circumstances in the public domain only. This includes use of the internet or email to publish or transmit statements or other material. A private conversation in a public place does not constitute a 'public act', however speech directed by one individual toward another can constitute a public act if it is reasonably foreseeable that a member of the public could have heard it
- only a member of the targeted group at which the allegedly unlawful conduct is directed has standing to make a complaint and pursue civil litigation. Representative complaints by an organisation can be made if the organisation has a 'sufficient interest' in the complaint to give it standing. Victoria Police may prosecute an offence in court, if it is an indictable offence. The State, via the Office of Public Prosecutions, may prosecute cases of serious vilification.

### Dispute resolution

The RRTA's civil dispute resolution function allows applicants to bring a dispute to VEOHRC for resolution. A person or a representative body can make a complaint to VEOHRC if they believe that they, or the people they represent, have been racially or religiously vilified. VEOHRC can conciliate the complaint by bringing the parties together and assisting them to resolve the dispute. The conciliation process is voluntary and confidential.

VEOHRC reports that over the last 6 years, 64 per cent of its conciliations under the RRTA were resolved. Typical resolutions include: removal of offensive material; apologies; donation to charity; and policy changes.

Complaints can also be made to VCAT for hearing and determination. VCAT can hear and decide cases that allege a breach of Part 2 of the RRTA (Unlawful conduct). A person can apply directly to VCAT, whether or not they have first attempted dispute resolution at VEOHRC.

As with complaints to VEOHRC, a complaint can be brought by an individual or by a representative body. If VCAT finds that a person has breached the RRTA, it may make an order that a person:

- stop the unlawful conduct from continuing

- pay the complainant, within a specified period, an amount VCAT thinks fit to compensate any loss, damage or injury suffered as a result of the conduct
- do anything specified in the order with a view to redressing any loss, damage or injury suffered as a result of the conduct.

The Commission may apply to enforce the order on behalf of the applicant if a person fails to comply with an order of the Tribunal.

Community stakeholders report dissatisfaction when a complaint is not taken for dispute resolution, because it may not have been deemed to have met the threshold for current anti-vilification protections. Some stakeholders have also expressed concerns around the time this process can take, how arduous it can be for the person bringing the complaint, and that outcomes may not meet community expectations.

#### *Conciliation in practice – a de-identified example*

The complainant, who is Aboriginal alleged racial vilification against a hotel. He alleged he was at a hotel bar when a racial insult was directed at him by another patron. Bar staff did not assist him and told him he had “enough to drink”. He left the hotel to wait for his ride home when he alleges the patron came back and taunted him further. The parties attended conciliation where the hotel agreed to implement a policy for managing complaints relating to racism, donated \$500 to charity and agreed to post a sign on the noticeboard indicating that racism will not be tolerated. The noticeboard also acknowledges the traditional owners of the land.

#### Interstate comparison: Civil dispute resolution processes and penalties

Victoria’s model is similar to numerous other jurisdictions, where the relevant human rights, equal opportunity or anti-discrimination body provides an avenue for conciliation, with the relevant State administrative tribunal available for hearing and determination (this is the case in Tasmania, New South Wales, the Australian Capital Territory and Queensland).<sup>45</sup>

In South Australia, Western Australia, and the Australian Capital Territory, there are no civil remedies, only criminal. The Northern Territory has no vilification provisions.

Financial compensation is the main point of difference between jurisdictions. This varies from up to \$100,000 in New South Wales, or, as in Victoria, Queensland and Tasmania, an amount the respective tribunal thinks appropriate.

In relation to criminal offences, penalties differ across jurisdictions. In Victoria, New South Wales, Queensland, Western Australia and South Australia, both imprisonment and financial penalties apply. Some examples of penalties are detailed below:

State	Penalties
Victoria	Up to six months imprisonment and/or 60 penalty units (over \$9,000) for a person, or 300 penalty units (over \$49,000) for a body corporate (one penalty unit is currently \$165.22 in Victoria).

<sup>45</sup> In the ACT there is no right to commence civil proceedings in a court or tribunal. This is because Section 72 of the *Discrimination Act 1991* (ACT) (the ACT DA) sets out that the ACT DA does not give a person any civil right of action against a person that commits an unlawful act under the ACT DA. As such, no civil remedies or penalties are enforceable under the ACT DA. The recourse available is for a person to make a complaint to the ACT Human Rights Commission.

New South Wales	The maximum penalty for inciting <i>violence</i> (not hatred) for an individual is 100 penalty units (\$11,000) or imprisonment for 3 years (or both), or in the case of a corporation—500 penalty units (\$55,000).
Northern Territory	No vilification provisions.
Queensland	A person can face a possible jail sentence of six months, or a fine of 70 penalty units (over \$9,000). The fine for a company is up to 350 penalty units (over \$46,000).
South Australia	A person can be fined up to \$5,000, face imprisonment up to 3 years or both. The maximum penalty for a body corporate is \$25,000.
Tasmania	Tasmanian legislation does not include any criminal offences.
Western Australia	Maximum penalties range from 12 months to 14 years, with fines of up to \$24,000.

## KEY CONSIDERATION

The RRTA has been in operation for 18 years, and in this time there have been some operational challenges that some community stakeholders and organisations have identified, including:

- Limitations of who can make a complaint. For example, if a person encounters (but is not the subject of) public conduct that they believe breaches anti-vilification legislation, this person has no standing to take legal action in relation to the conduct in question. If protections were expanded to include other attributes (such as sexual orientation), a family member who experiences vilification in relation to their relative, would not be able to file a complaint under current law.
- Complainants are required to be named in the process of making a complaint and resolution. This requirement may act as a disincentive where complainants are concerned for their safety as a result of possible retribution and has been identified as a contributing factor to the low number of complaints made under the RRTA.
- In some instances, a complainant will be unable to name the person who has engaged in vilification. This prevents the person from bringing the matter to VEORHC for dispute resolution or proceeding to VCAT. The name of the respondent may be known to someone else, such as a social media organisation or police. VEOHRC is unable to request that another person or entity provide information that would assist with dispute resolution.
- Community members have mixed experiences in understanding and navigating the reporting processes. Community leaders have a key role to play in supporting people to access protections and educating communities. We have seen an emergence of community-led reporting. Statutory reporting and community-led reporting could be better aligned to build a more comprehensive and fulsome picture of the problem in Victoria. There may be opportunities for these efforts to better complement each other.

## The role of Victoria Police in responding to prejudice motivated crime

Several community stakeholders raised the role of Victoria Police in relation to protections from vilification and indicated that Victoria Police has an important role to play as an accessible support for communities.

Victoria Police has developed a holistic framework focused on addressing and responding to vilification offences and issues. This is reflected in policies, procedures and education.

## Recording prejudice motivated crime

Victoria Police has an important role in responding to hate conduct, and a key aspect of this is recording prejudice motivated crime. Prejudice motivated crime is a crime motivated by prejudice or hatred towards a person or a group because of a particular characteristic such as sexual orientation, gender identity, religion, race, sex, age, disability or homelessness. Many crimes can be motivated by prejudice, including harassment, threats, verbal abuse, destroying or damaging property, and in more serious cases, physical violence.

The Victoria Police Manual (VPM) contains a detailed overview for considering and responding to alleged offences that may constitute a prejudice motivated crime. In defining prejudice motivation the VPM links to offences under sections 24 and 25 of the RRTA.

Standards for recording prejudice motivated crime are included in the VPM. Where the victim or investigating member believes that prejudice is a motivating factor in the criminal offence under the RRTA, police members must complete an incident report (Form L1) along with an Offence Against the Person Form (Form L2A) and/or Offence Against Property (Form L2B), as applicable. The Victoria Police member must ensure that on the Form L2A and/or L2B that the categories of 'prejudice motivated crime' are recorded correctly.

Victoria Police also has a role in respect to prejudice motivated incidents, where no criminal offence is immediately apparent and is perceived by the victim, or any other person, to be motivated by a hostility or prejudice based on the victim's actual or perceived characteristics. In these circumstances, the incident may not meet the threshold for constituting a prejudice motivated crime. In this case, an Information Report is drafted and the 'motivation' for the incident is classed under the following headings: 'political', 'sexual', 'racial', 'hate', 'religious', 'terrorism', and 'financial'.

## Support to community

Victoria Police provides general support to community members who experience hate conduct. As part of the VPM in responding to prejudice motivated crime and providing victim support generally, police members are instructed to:

- gather information sensitively, identifying and mitigating any risks to the victim such as continued threats or repeat victimisation
- explaining to victims how police will proceed with any investigation
- arranging for an interpreter or an independent third person if necessary
- activating assistance from a specialist internal liaison officer (such as a Multicultural Liaison Officer). This includes dedicated officers for Aboriginal and LGBTIQ communities.

## Training of Victoria Police personnel

Victoria Police builds capacity of police recruits to respond to prejudice motivated crime through its training program. Police recruits receive one session dedicated to understanding and acting on reports of prejudice motivated crimes. This session also introduces participants to the RRTA and

explains the context of vilification in a law enforcement setting. Education and capacity building continues for Police Managers and through internal online resources available in their application of legislation and policies related to vilification issues.

Stakeholders have indicated that some communities face challenges in reporting to authorities. For example, some culturally and linguistically diverse communities who have experienced state-sanctioned persecution historically in their countries of origin would be reluctant to report incidents of hate conduct to authorities.

Victoria Police records a quite small proportion of all offences as prejudice motivated offences. In 2018, 860 offences were recorded as prejudicially motivated crime. This statistic accounts for 0.17% of total offences in 2018. This statistic should be read with caution because prejudice motivated crime data is collected via a flag in police reporting that is optional to complete. While it is difficult to say conclusively, when considered alongside stakeholder feedback, it appears that prejudice motivated offending may be under-recorded.

### KEY CONSIDERATION

Victoria Police has an important role in responding to prejudice motivated crime and is undertaking a range of actions to respond.

However, some stakeholder groups have indicated concern that people might be reluctant to approach Victoria Police to report an incident for a range of reasons, such as some migrant communities' historical relationship with authorities in their countries of origin, lack of understanding about reporting processes, or because of shame or fear of reprisal from the perpetrator. Feedback also indicates that data recording and incident reporting of hate conduct by Victoria Police could be strengthened.

The Inquiry may consider steps Victoria Police could take to work more with and support communities experiencing vilification, prejudice motivated crime and incidents, as well as incident reporting of hate conduct.

### Other legislation that responds to prejudice motivated incidents

There are other laws that intersect with the RRTA, which may be utilised as legal avenues for enforcing protections against conduct that is motivated by prejudice. Some are outlined below:

- When sentencing an offender, section 5(2)(daaa) of the *Sentencing Act 1991* (Vic) requires courts to consider whether the offence was motivated (wholly or partly) by hatred or prejudice. The hatred or prejudice must be 'against a group of people with common characteristics'. A court's consideration of this can be informed by Victoria Police's recording.
- It is a summary offence to use indecent or obscene language or insulting words and to behave in a riotous, indecent, offensive or insulting manner (see section 17 of the *Summary Offences Act 1966* (Vic)). If vilifying conduct includes the use of offensive or insulting language or infringes any of the other prohibited conduct referred to above, then it may be possible for a person to be charged summarily for breaching section 17 of the *Summary Offences Act 1966* (Vic).
- Further, it is an offence under the *Transport (Compliance and Miscellaneous) (Conduct on Public Transport) Regulations 2015* (Vic) to use indecent, obscene, offensive or threatening language on public transport, or to behave in an obscene, offensive, threatening, disorderly or riotous manner.

- The *Criminal Code Act 1995* (Cth) includes offences of urging violence against a group or members of a group that are distinguished by race, religion, nationality, national or ethnic origin or political opinion.

In New South Wales, the *Crimes Act 1900* (NSW) provides an offence of “publicly threatening or inciting violence grounds of race, religion, sexual orientation, gender identity or intersex or HIV/AIDS status a person” (s 93Z). This provision was introduced in 2018 and replaced the ‘serious vilification’ offences in New South Wales anti-discrimination law.

### KEY CONSIDERATION

There are different legal avenues that can be utilised to respond to prejudice motivated crime. The Committee may consider the efficacy, prominence and visibility of the RRTA in context with these other laws.

In 2018, NSW replaced ‘serious vilification’ offences in anti-discrimination law with provisions in the *Crimes Act 1900* (NSW). The Committee may wish to consider alternative legislation for serious vilification offences.

## Pre-empting vilification or hate-motivated events

In September 2019, the Victorian Government was made aware of a music event being organised at an undisclosed location by international hate groups with a white supremacist agenda.

Some communities and advocacy groups advocated for the event to be shut down ahead of the event, with a petition signed by over 28,000 people. The Victorian Trades Hall Council strongly encouraged workers at the event to boycott. The Victorian Government did not have an effective basis for shutting down this event prior to it occurring but was clear in calling out the event as hateful and at odds with Victorian values.

This is not the first event of this kind in Victoria. Victorian's legislation gives pathways for individuals and organisations to make complaints as a result of an act or event of vilification having occurred. However, it provides very limited avenues to prevent such events from occurring.

This Inquiry has an opportunity to consider legislative avenues for preventing an event or act that promotes hate. In doing so, it will be important to assess compatibility with the *Charter of Human Rights and Responsibilities Act 2006 (Vic)*, the *Constitution Act 1975 (Vic)* and the *Commonwealth Constitution*. That is, when developing options for pre-emptive actions, it will be important to consider due process, and ensure there is a clear basis for taking action – for example, clear evidence of organisation of such an event.

The role and laws of the Commonwealth are important considerations when assessing options for preventing vilification-motivated events. There are some Commonwealth laws that could provide stronger options for responding to hostile organisations, should these organisations meet certain thresholds. Numerous approaches are taken to some white supremacist organisations in other countries, including banning them.

Victoria Police has various powers to manage events that are already taking place. Victoria Police is also able to work with venues and organisers in advance of events, to place informal pressure on them not to proceed with an event.

### KEY CONSIDERATION

Community stakeholders had diverse views around the option to prevent events or incidents that promote hate from taking place. The Inquiry could consider options to prevent events that promote hate, including amendments to Victorian legislation, or actions that could be taken by the Commonwealth.

## Online vilification

### Role of Legislation in Addressing Online Vilification

Stakeholders have raised serious concerns about online vilification, reporting that the frequency and severity of online vilification is both significant and increasing, and expressing concern that not enough is being done to address it.

Vilification occurring in online settings is complex; online content is often easily accessible, can be easily targeted to particular groups, can occur anonymously, and can be difficult to trace.

Recent high-profile public incidents, such as the widely condemned sexist social media abuse of AFLW player Tayla Harris in March 2019, demonstrate that the right of some citizens to participate equally in society can be undermined by online harassment, some of which may rise to the level of vilification.

Some laws already operate in Victoria to criminalise some forms of online vilification or harassment, for instance:

- Under the *Crimes Act 1958 (Vic)*, it is an offence to publish on the internet a statement or other material relating to the victim “with the intention of causing physical or mental harm to the victim ... or of arousing apprehension or fear in the victim for his or her own safety or that of any other person.”<sup>46</sup> However, proving intent for online vilification may be a difficult process.
- Under the *Personal Safety Intervention Order 2010 (Vic)* it is possible to obtain a personal safety intervention order on the balance of probabilities for ‘stalking’. This Act also includes cyber-stalking. Under this Act, harassment is also prohibited behaviour, and is defined as ‘a course of conduct by a person towards another person that is demeaning, derogatory or intimidating and includes such conduct that is carried on by or through a third person’.<sup>47</sup>
- Protections under the RRTA provide for vilification that occurs in the public domain, which includes use of the internet or email to publish or transmit statements or other material.

Responding to online vilification will require coordinated action from governments across jurisdictions, from the organisations that host the harmful content, and from the broader community who can play a role in preventing the sharing and spreading of hate-based material.

In this context, legislation could have an important role to fulfil in protecting the rights of all Victorians to safely participate in all facets of our society. Unlawful conduct under the RRTA includes certain conduct on the internet and email. However, the online world was very different when the RRTA was first introduced nearly 20 years ago. In 2001, Facebook did not yet exist, access to the internet on mobile phones was very limited, and it was far more difficult to share photos and videos online. Community stakeholders raised concerns that in 2019 it seems most vilification and hate conduct takes place online, and acknowledged that the online environment is very different than it was in 2001 when the RRTA was introduced.

The Commonwealth Government plays an active role in responding to online hate conduct. In 2015, the then-Office of the Children’s eSafety Commissioner was established to help protect Australian children from cyberbullying and to take a national leadership role in online safety for children through education, advice and enforcement. In 2016, the Commonwealth Government subsequently legislated to extend the role of the Office to promote online safety for all Australians. The Office of the eSafety Commissioner now co-ordinates and leads online safety efforts through providing a

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<sup>46</sup> Crimes Act 1958 (Vic), s 21A

<sup>47</sup> Personal Safety Intervention Order Act 2010 (Vic), s 7 and s 9



complaints service for young Australians who experience serious cyber bullying, identifying and removing illegal online content, and tackling image-based abuse through the issue of removal notices to websites, content hosts and social media providers.

### Non-legislative Measures to Reduce Online Vilification

Community stakeholders advised of some models and organisations that monitor online hate, work with social media companies and undertake capacity building activities and campaigns to prevent online hate, which could be considered by this Inquiry. Examples include:

- TrueVision is a UK organisation focused on monitoring online hate and an avenue for people to report and register incidents
- Tell Mama is another UK-based organisation that supports victims of anti-Muslim hate, which also measures and monitors anti-Muslim incidents
- in Australia, the Online Hate Prevention Institute is an organisation that aims to improve prevention, mitigation and responses to online hate.

The Victorian Government is working to keep young Victorians safe from vilification online. For instance, the Department of Education and Training funds three state-wide anti-bullying programs available to all Victorian schools:

- Bully Stoppers, which focuses on Bullying prevention and response, including online modules about cyber safety and guidance on how to talk to the school about bullying
- eSmart Schools, which focuses on Cybersafety and cyberbullying, including training sessions and online training, and one-on-one support in person (in metropolitan and regional areas)
- Safe Schools, which focuses on safe and inclusive environments for LGBTI students.

Furthermore, the Victorian Anti-Bullying and Mental Health Initiative was announced in 2018 to prevent and respond to bullying in schools, and to support strong health, wellbeing and learning outcomes for all students, and included:

- \$4.8 million to provide mental health services in government schools to respond to complex issues, including addressing depression, anxiety and trauma; and
- \$2.5 million to enable all Victorian schools who have not yet participated in eSmart Schools the opportunity to do so at no cost to the school.

This initiative also included a specific focus on preventing and responding to racist bullying and supporting intercultural understanding.

### KEY CONSIDERATION

The scope of the RRTA currently includes internet and email as sites where unlawful conduct could take place. However, there are some features of the RRTA that in practice may produce barriers for people to report online vilification, for example a complainant may be unable to name the person who has engaged in online vilification and VEOHRC cannot compel this type of information in order to facilitate a resolution. The Inquiry may consider how current Victorian legislation could better respond to online vilification and hate conduct.

The scope of online hate is vast and complex, crossing jurisdictions and across sectors. There will be opportunities to learn from other jurisdictions in respect to acting on online vilification, and test and trial tailored efforts in Victoria. The Inquiry may consider proven, practical measures to respond to online hate conduct and vilification.

## Interplay with Commonwealth legislation

### Constitutional considerations

Section 109 of the Constitution provides that to the extent of any inconsistencies between State and Commonwealth laws, the Commonwealth laws shall prevail and the State laws will be invalid.

There is an overlap between the anti-discrimination provisions of the EOA and the Commonwealth statutes. However, the EOA covers a broader range of attributes and as such the EOA appears to complement the Commonwealth laws, rather than give rise to any inconsistencies that would invalidate it. However, any amendments to the RRTA that are inconsistent with laws of the Commonwealth risk being deemed invalid as a result of section 109 of the Constitution.

### Religious Discrimination Bill (Cth)

The proposed Religious Discrimination Bill is consistent with the existing Commonwealth approach, as it does not prohibit conduct that is vilifying in relation to religion (or any other protected attribute).

The Bill proposes to over-ride state anti-discrimination laws to ensure freedom of religious expression. While the Bill does not propose to over-ride state anti-vilification laws, it does propose to over-ride Tasmanian protections – the strongest of any state – against “conduct which offends, humiliates, intimidates, insults or ridicules another person on the basis of a gender, race, age, sexual orientation, lawful sexual activity, gender identity, intersex variations of sex characteristics, disability, marital status, relationship status, breastfeeding, parental status or family responsibilities”. This is a key consideration for any potential Victorian changes – there is some possibility that Commonwealth legislation may over-ride protections.

## Broader actions to prevent and respond to hate conduct and vilification

Hate-based and vilification protections should, as a primary objective, seek to prevent vilification and hate conduct from happening in the first place. To achieve this, action must be taken against the drivers of vilification and hate-based conduct, for which there is an emerging evidence base.

The prevalence, level of harm and complexity of vilification and hate-based conduct call for coordinated efforts comprising legislative and non-legislative measures, informed by community experience and existing and emerging evidence. Community stakeholders also reiterated that legislation cannot be the only solution to responding to hate conduct.

While not exhaustive, examples of broader actions that are underway and that could be taken are provided below.

### Supporting inclusion and belonging through education

Education has a profound impact on the values, attitudes and beliefs of children and young people.

The Department of Education and Training is delivering several initiatives that seek to address and prevent discrimination and foster belonging and inclusion of all students, including:

- the Respectful Relationships whole-of-school approach recognises that schools are a workplace, a community hub and a place of learning. It seeks to ensure that everyone involved in school communities are respected, valued and treated equally
- the Victorian Anti-Bullying and Mental Health initiative, and Bully Stoppers, which has been helping students, parents, teachers and principals to make sure that schools are safe and supporting places where bullying, including racist bullying, is taken seriously and not ignored
- the Safe Schools program helps schools foster a safe environment that is supportive and inclusive of LGBTIQ students. Safe Schools program works with principals, teachers and school communities to help schools foster a safe environment that is supportive and inclusive of LGBTIQ students. It recognises that creating a safe and inclusive environment is key to tackling bullying and harassment and preventing suicide and self-harm.

VEOHRC provides tailored education and engagement programs across communities, workplaces and other settings. These education activities inform and build understanding of how Victoria's anti-discrimination and human rights legislation works, help achieve compliance with legislation, embed best practice and support culture change, and promote the benefits of diversity and inclusivity.

### Improved understanding of community attitudes, experiences and prevalence

Building an evidence base is critical to preventing and responding to hate conduct and vilification. This can be supported through, for example, longitudinal surveys and community and government reporting mechanisms.

VEOHRC for example, provides a reporting platform where Victorians who are subject to discrimination can report their experience and undergo a conciliation process. Deidentified statistics can support the organisation and the government more broadly to target their resources and efforts.

Better understanding the experiences of marginalised communities, as well as the attitudes and beliefs of the broader community, supports government to better prevent and respond to hate conduct and vilification.

## Awareness raising

Awareness raising can educate and influence key audiences about wide-ranging issues. It is a process that seeks to inform and educate people about a topic or issue with the intention of influencing their attitudes, behaviours and beliefs towards the achievement of a defined purpose or goal.

Awareness raising and the dissemination of information can be critical in creating an enabling environment for promoting dialogue, self-reflection and behaviour change.

Promoting the positive stories of Victorians from diverse backgrounds, about their contributions and achievements to broader society as well as the challenges they experience, helps build understanding and empathy across groups.

## Broader efforts to prevent discrimination and hate-based conduct

The Victorian Government is implementing and developing wide-ranging initiatives that seek to prevent and address discrimination. These include:

- **State Disability Plan:** *Absolutely Everyone* is the state disability plan 2017-2020 for the whole of the Victorian Government. It demonstrates the government's commitment to a range of actions for achieving greater inclusion, in partnership with the community. The plan focuses on key areas to drive change such as adopting a universal design approach, changing attitudes, increasing access to affordable housing, public transport, schools and jobs.
- **Self-determination:** The Victorian Government is committed to self-determination as the guiding principle in Aboriginal affairs as set out in the Victorian Aboriginal Affairs Framework 2018-2023 (VAAF). Government has committed to taking whole of government action across its systems, structures and services to address racism and promote cultural safety. Government will publicly report annually on its goals to eliminate racism experienced by Aboriginal Victorians through the Self-Determination Reform Framework.<sup>48</sup>
- **Gender Equality Bill:** The Gender Equality Bill proposes new obligations on the Victorian public sector, universities and local councils to plan, implement strategies and report on gender equality in the workplace and promote gender equality across the wider community through considering how policies, programs and services impact people of different genders.
- **Anti-Racism Action Plan:** Development of an Anti-Racism Action Plan is underway, proposed as a long-term, whole-of-government strategy to prevent and address racism in Victoria.
- **LGBTIQ Strategy:** Development of an LGBTIQ Strategy is underway, which will set Victoria's equality agenda for years to come.
- **Economic inclusion initiatives:** a range of initiatives seek to address discrimination in seeking secure employment, such as programs to assist African and Pasifika communities, as well as a pilot to assist transgender women to enter the workforce.

### KEY CONSIDERATION

Legislation should not be the only lever for responding to vilification and hate conduct. It is widely recognised that hate conduct manifests through a wide spectrum of behaviours, and requires a range of coordinated actions to respond.

The Victorian Government has committed to a range of strategies that aim to respond to issues of discrimination and exclusion, at a systemic level and at a community and interpersonal level. The Inquiry may consider the role of government in preventing and responding to vilification and hate conduct.

<sup>48</sup> <https://www.aboriginalvictoria.vic.gov.au/self-determination-reform-framework>