

# Submission:

## *Elimination of Vilification Bill 2019*

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AUSTRALIAN CHRISTIAN LOBBY

## About Australian Christian Lobby

Australian Christian Lobby's vision is to see Christian principles and ethics influencing the way we are governed, do business, and relate to each other as a community. ACL seeks to see a compassionate, just and moral society through having the public contributions of the Christian faith reflected in the political life of the nation.

With more than 170,000 supporters, ACL facilitates professional engagement and dialogue between the Christian constituency and government, allowing the voice of Christians to be heard in the public square. ACL is neither party-partisan nor denominationally aligned. ACL representatives bring a Christian perspective to policy makers in Federal, State and Territory Parliaments.

[acl.org.au](http://acl.org.au)

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20 December 2019

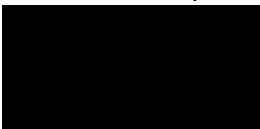
Dear Sir/Madam,

On behalf of the Australian Christian Lobby, I welcome the opportunity make a submission to the inquiry on the amendments to the Racial and Religious Tolerance Act 2001 as proposed to become *Elimination of Vilification Bill 2019*.

We submit that the proposed Bill will replace the existing Racial and Religious Tolerance Act 2001 rather than enhance it. It will undermine the existing protection of religious beliefs and practices.

Please feel free to contact me if you require any further information or clarification.

Yours sincerely,



**Dan Flynn**  
Chief Political Officer

### Executive summary:

The Australian Christian Lobby does not support the substantial changes proposed to the existing *Racial and Religious Tolerance Act 2001* with the wide-ranging amendments proposed by Fiona Patten MLC.

The proposed changes obscure the intentions of the *RRTA* and change the entire focus of the legislation. This is evidenced by change of name from *Race and Religious Tolerance* to *Elimination of Vilification*. Race and Religious Tolerance is not the same as Elimination of Vilification, especially in the manner proposed by the Bill.

Many ethnic communities identify by both race and religion, where religion is a manifestation of their culture. Indeed, all religions shape culture. Culture is religion externalised. Western culture is a product of Christianity.

The *EoV Bill* is not inclusive, but divisive. It introduces 'protected attributes' about which there is no community consensus. The acceptance of these 'protected attributes' into law will cause offence to members of the community, including religious views which are currently protected by the *RRTA*. Those legitimate religious views will not be recognised by the proposed Bill.

There are some serious issues with the proposed legislation, particularly Clauses 7 and 24, which set the bar for vilification as too low. This will result in incriminating people who unintentionally cause offense to others.

As they stand, in the *EoV Bill*, they are so wide reaching as to be impossible to implement without embarking on a precedent of substantial litigation.

## Anti-vilification laws and freedom of speech

Anti-Vilification laws are a direct threat to freedom of speech and this Bill will restrict important freedoms in Victoria. ACL expresses concern about the following:

1. The Bill restricts people's ability to speak freely and publicly criticise someone's point of view;
2. The bar on what constitutes unlawful and serious vilification in the Bill is too low.

Freedom of Speech and freedom of the press has enjoyed long and special recognition in Australia. These freedoms have often been taken for granted and are woven into the fabric of our common law system.<sup>1</sup> This is because our democracy is built upon the foundations of free and open exchange of ideas in the public square. This exchange serves the important purpose of testing and refining ideas and arguments, so that the best of these and the truth may prevail in developing policy that will benefit all Australians. Anti-Vilification laws do not create, nor do they encourage an environment where speech is met with speech. Rather than engage with a bad or offensive idea and show that it is false. Such laws encourage a stifling of debate altogether.

If people think that their public speech on unpopular issues or views is liable to be prosecuted under Anti-vilification legislation they will most likely 'self-censor'. Rather than benefit society, this can deepen prejudice and ignorance.<sup>2</sup>

The low bar that the Bill sets for clauses 7 and 24 means that even views that are expressed in a way that is reasonable and moderate could be caught by the clauses.

There is a clear difference between the incitement of violence and hatred towards others, and engaging in conduct that is likely to invite severe ridicule of someone. This is an important distinction if someone is advocating a position or view which in truth may be incorrect or detrimental to society and should be able to be openly and publicly debated.

These kinds of laws, that are put forward in this Bill, create a chilling effect on free speech. The potential for punishment through process, as was experienced by Archbishop Porteous is enough to make people think twice before speaking their mind honestly. A complaint was lodged against Archbishop Porteous under Section 17(1) of the Tasmanian Anti-Discrimination Act 1998 which states that:

*A person must not engage in any conduct which offends, humiliates, intimidates, insults or ridicules another person on the basis of an attribute referred to in section 16(e)*

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<sup>1</sup> Neil Foster, 'Defamation and Vilification: Rights to Reputation, Free Speech and Freedom of Religion at Common Law and Under Human Rights Laws' in *Freedom of Religion under Bills of Rights* (University of Adelaide Press, 2012), p.69; *Australian Broadcasting Corporation v O'Neill* (2006) 227 CLR 57, [30], *Davis v Commonwealth* (1988) 166 CLR 79, [100].

<sup>2</sup> Neil Foster, 'Defamation and Vilification', above no. 1, p. 69.

The case against Archbishop Porteous was eventually dropped. However, the changes proposed in the *Elimination of Vilification Bill 2019* does not encourage healthy democratic debate in Victoria.

### The purpose of the Race and Religious Tolerance Act 2001

The purpose of the *Race and Religious Tolerance Act 2001* was to support multiculturalism in Victoria and protect those attributes that are central to the identity of cultural communities: ethnicity and religion. It also aimed to encourage those communities to participate in the wider society. According to the Victorian Human Rights Commission:

*The aim of the Act is to promote full and equal participation of every person in a society that values freedom of expression and is an open and multicultural democracy.*<sup>3</sup>

Race and religion are essential ingredients of cultural identity and therefore any multicultural policy must protect them. This is also true of the relationship between western culture and Christianity. For this same reason, religious freedom must be protected. By changing the purpose of the *Racial and Religious Tolerance Act 2001* the Bill restricts religious freedom and interests of the minority groups that the RRTA was designed to protect.

The proposed Elimination of Vilification Bill significantly changes the purpose of *RRTA* and replaces it with something else.

### Comments on the Bill:

#### Preamble

Items 5-7 introduce diverse attributes in relation to gender, disability, sexual orientation, gender identity or sex characteristics and notes that some Victorians are vilified on the ground of their unique attributes.

#### Part 1 – Preliminary.

##### Clause 1

Removes all references to ‘racial and religious tolerance’ which is the primary purpose of the *RRTA*.

##### Clause 3 and 3A

Clause 3 imports an array of definitions from the *Equal Opportunity Act 2010* and introduces protected attributes and definitions in addition to race and religion: gender identity, sex characteristics and sexual orientation.

Clause 3A lists the protected attributes: Race; Religious belief or activity; Gender; Disability; Sexual orientation; Gender identity and Sex characteristics.

The Bill introduces attributes that are the subject of bona fide religious views; views that on their face and without any malicious intent could be prosecuted under the suggested changes..

Mainstream believers in all the Abrahamic faiths – Judaism, Christianity and Islam, amongst others, believe definitively that God made humankind “male and female”. Christian anthropology believes that God made human beings as distinctly male and female (Genesis 1:27) and this has implications

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<sup>3</sup> <https://www.humanrightscommission.vic.gov.au/the-law/racial-and-religious-tolerance-act>

for beliefs about morality including about sexual behaviour. Christianity teaches that to choose against a moral good is a sin. Christian parents have the right to pass their beliefs to their children and the many ethnic communities represented in Victoria have the right to pass on their beliefs and culture to subsequent generations.

Those of different races and faiths or of no faith may not accept a particular teaching of a religion, but it is precisely this diversity of belief that the *RRTA* was designed to protect, but which is not safeguarded under the *Elimination of Vilification Bill*.

The expanded protected attributes also discriminate against women whose safety is at risk if trans-women are given access to specialist women's services.<sup>4</sup> There have been some cases overseas of trans-women who have not medically transitioned who demanding intimate services from women of cultural minorities.<sup>5</sup> This is not acceptable and vulnerable groups must be protected. A law purporting to eliminate vilification must not incite vilification of those who do not subscribe to arbitrary forms or political correctness.

## Part 2 – Unlawful Conduct

### Removal of any reference to 'Race' and 'Religious vilification' (Clauses 7, 8, 9, 10 and 11)

Amendment to these clauses in the *RRTA*, effectively remove any references to race and religious vilification. Excluding these attributes is contrary to the intentions of the *RRTA*.

Clause 8 in the existing *RRTA* referring to religious vilification as unlawful is removed..

Clause 10 is amended to remove any reference to race or religion and substituted with 'protected attribute'.

In Clause 11, however, it is proposed that proselytising be removed and therefore, presumably no longer offensive. This is a curious deletion in the light of the anti-religion bias of the proposed amendments.

### End of multiculturalism?

The removal of any specific references to Race or Religion in Clauses 7-11 removes support for the freedom to live according to a person's culture because race and religion are manifest through culture. This Bill, in broadening protected attributes, also dismantles multiculturalism.

## Part 4 – serious vilification offences

### Lowering the bar on what constitute unlawful and serious vilification (Clauses 7, 24 and 26)

The changes to Clause 24 introduce uncertainty as to what constitutes vilification. The deletion of the phrase "a person knows" and the addition of "or recklessly" will make the law more subjective rather than introduce any objectivity in determining whether vilification was intended.

Clause 26 is even more subjective. In the case of the protected attributes which the Bill proposes to add to the legislation [Clause 3A], it is difficult not to make assumptions about sexual orientation; gender identity; sex characteristics, unless these have been disclosed.

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<sup>4</sup> <https://womenslegaltas.org.au/media-release-from-tasmanian-womens-organisations/>

<sup>5</sup> <https://globalnews.ca/news/6068486/transgender-woman-genital-waxing-discrimination-tribunal/>

The *Bill* leaves the interpretation of whether someone's actions are 'likely to incite revulsion or severe ridicule of' another class of persons to a court. This creates uncertainty for people, never knowing for sure if what they are about to say or do will breach these kinds of provisions.

The recent well-known episode involving Archbishop Porteous and similarly low-bar Tasmanian Anti-Vilification laws show the kind of scenarios that can be created by laws like those suggested in this Bill.

## Conclusion

This Bill should be rejected. It is not an amendment to the RRTA 2010, but a rescinding of that Act with the intention of replacing it with something unrelated.

The Bill can be seen as an infringement of free speech. It limits the expression of race and religion rather than protecting them. It undermines religious freedom by circumscribing expressions of race, religion and culture.