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Inquiry into the *Racial and Religious Tolerance Act 2001* (Vic)

This submission responds to the invitation by the Legislative Assembly's Legal and Social Issues Committee for submissions regarding the Victoria's current anti-vilification laws, their possible expansion and/or extension of protections beyond existing classes.

Summary

In summary, the Victorian regime has been effective in signalling to the community (within the state and more broadly across Australia) that hate-speech is impermissible.

The regime has not disproportionately inhibited freedom of expression, in particular the implied freedom of political communication. Contrary to criticisms prior to its establishment the regime has not resulted in "millions for lawyers", "legal minefields" or community disharmony. As Kidd CJ recently noted, racial and religious vilification is contrary to the fundamental principles of equality, democratic pluralism and respect for individual dignity at the heart of the protection of human rights.

Legislation such as the *Racial and Religious Tolerance Act 2001* is consistent with the 2006 *Charter of Human Rights & Responsibilities*.[1] And other Victorian legislation.[2] It positively promotes participation by people of different faiths in public life and discourse. As such it is commendable. It remains relevant because of vandalism, face to face harassment and electronic expression that is intentional rather than accidental, embodies an ethnic or religious animus, and in objectifying communities serves to threaten or deter the participation in public life of members of those communities.

Drawing on experience elsewhere in Australia the Act should address vilification on the basis of gender, sexuality or other attributes. In other words, it should be extended in order to foster tolerance beyond ethnicity or faith, given that the flourishing of individuals and the community encompasses attributes beyond ethnicity and faith. Such an extension is practical and necessary. It is indeed overdue.

Basis

The following paragraphs address the Committee's terms of reference, centred on the *Racial and Religious Tolerance Act 2001* (Vic).

The submission is made by Dr Bruce Baer Arnold (Assistant Professor, University of Canberra) and Dr Wendy Bonython (Bond University). Both teach law and have published on vilification, defamation, media regulation and the regulation of online platforms such as Facebook and Twitter. The submission complements recent work regarding the Commonwealth 'Religious Freedoms' Bills and the national Communication Department's 'Classifications' inquiry.

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[1] Note for example *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 15(3) regarding responsibilities in relation to free expression.
[2] See for example *Equal Opportunity Act 2010* (Vic) s 15.

The submission does not represent what would be reasonably construed as a conflict of interest.

We are happy to discuss aspects of the submission.

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1. The effectiveness of the operation of the *Racial and Religious Tolerance Act 2001* (the Act) in delivering upon its purposes

Overall the Act has been effective and remains necessary.

We suggest that any consideration of the Act involves several questions, as follows.

What was the Act meant to do?

As a preliminary comment we note that the Act had limited objectives and what can now be understood as a modest scope, reflected in our comments below about the feasibility of expansion.

The Act was not meant to stifle private speech. Its function was instead to signal to people across Victoria that vilification on the basis of ethnicity or faith is reprehensible. The legislation accompanied rather than replaced community education. In essence it reinforced measures for community awareness and in exceptional circumstances – evident in *Cottrell v Ross* [2019] VCC 2142 – criminalised egregious vilification understood as likely to result in violence or other harm to members of the vilified community. Criminalisation is a legitimate and effective form of signalling in a world where many people regard condemnations by politicians as mere lip-service.

In considering the effectiveness of the Act it is worth revisiting the Objects articulated when the Act was under initial consideration. The expectation was that it would -

- provide a way for the victims of racial and religious vilification to obtain civil redress which is inexpensive and accessible;
- prohibit extreme behaviour that denies the right of Victorians of all racial backgrounds and religious beliefs to participate as equals in the community;
- promote conciliation to resolve civil complaints and be a means of overcoming prejudice and ignorance;
- strike a balance by prohibiting racial and religious vilification while still ensuring that freedom of expression can be exercised.[3]

Vilification is a matter of harm rather than offended sensibilities. On introduction of the Act it was characterised as including 'communications that malign, abuse or seriously derogate other people or groups of people because of their racial background or religious beliefs and practices', accordingly encompassing 'intimidation, damage to property, graffiti and expressions of hatred or contempt by messages over the internet'. The expectation was that the legislation would 'prohibit extreme conduct which promotes and urges the strongest feelings of revulsion, hatred or dislike of a person or group on the ground of the racial background or religious beliefs and practices of that person or group'.

Our contention is that harms attributable to vilification on the basis of ethnicity and/or faith are evident in vilification based on other attributes.

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[3] As amended, s 4(1) of the Act identify its function as to (a) promote the full and equal participation of every person in a society that values freedom of expression and is an open and multicultural democracy; (b) to maintain the right of all Victorians to engage in robust discussion of any matter of public interest or to engage in, or comment on, any form of artistic expression, discussion of religious issues or academic debate where such discussion, expression, debate or comment does not vilify or marginalise any person or class of persons; (c) to promote dispute resolution and resolve tensions between persons who (as a result of their ignorance of the attributes of others and the effect that their conduct may have on others) vilify others on the ground of race or religious belief or activity and those who are vilified. See also ss 7(1) and 8(1).

Has the Act been necessary?

Regrettably the Act *has* been necessary, given substantive vilification and other activity prior to enactment and since that time. (See examples below in relation to the inquiry's Term of Reference 7).

People in Victoria and elsewhere have engaged in speech and other activity with the intention of harming individuals and groups on the basis of faith and/or ethnicity. That expression has been directed to audiences within Victoria and other jurisdictions. In line with the *Charter* and with a large body of jurisprudence about responsibilities regarding speech in a liberal democratic state the Act has been valuable in providing a proportionate response to hatred and exclusion on the basis of ethnicity or faith. It has not disproportionately restricted the articulation of religious doctrine or proselytising by adherents of particular faiths.[4] As such it has complemented community awareness mechanisms engaging adults and minors, including work by the state's Equal Opportunity & Human Rights Commission, the Australian Human Rights Commission and primary/secondary schools. It has offset irresponsible expression by politicians and controversialists in mass/specialist media concerning specific communities (for example brouhaha regarding 'African youth gangs') that is exploited by individuals and racist political organisations that seek to both mobilise opinion on the basis of ethnicity/religion and to marginalise public participation by members of those communities, a marginalisation to is contrary to well-being and may indeed be antithetical to law enforcement.

In commenting on the Inquiry's Term of Reference 8 we indicate that vilification is *not* restricted to matters of ethnicity and faith. It is instead apparent in expression regarding for example sexual affinity, gender (highlighted by the #MeToo movement) and physical/mental disability. Such vilification and its impact on the targets of such intended harm have been recurrently highlighted by activists, law academics and law reform bodies.[5]

A fundamental concern regarding the current Commonwealth 'Religious Freedoms' Bills is that the proposed national legislation in privileging religious adherents will legitimate and thereby foster vilification of people on the basis of sexual affinity, gender and relationship status, in essence a disproportionate freedom to objectify and denigrate. Many Victorians, along with peers in other Australian jurisdictions, regard such denigration as both unfounded and repugnant. It is however a feature of expression that will often have a disproportionate impact on vulnerable people, something that is evident in high rates of self-harm among LGBTIQ youth, institutionalised discrimination against LGBTI seniors and endorsements of statements by celebrities such as Israel Folau.

Has the Act been effective?

We suggest that any assessment of the Act must be contextualised. It was not meant to be the only response to vilification and was not intended to prohibit private expression. It was not expected to have an instant effect, such that as 'sunshine legislation' it might be repealed within a short time once its task was done.

Changing what was once dubbed the 'crooked timber of humanity' by encouraging responsibility in expression and fostering awareness of the wrongness of racism or religious hatred is, regrettably, an ongoing task. That is particularly the case given that in times of

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[4] Note *Racial and Religious Tolerance Act 2001* (Vic) s 11(1)(b)(i).

[5] In particular, the Committee's attention is drawn to the Australian Human Rights Commission 2011 report *Protection from vilification and harassment on the basis of sexual orientation and sex and/or gender identity - Addressing sexual orientation and sex and/or gender identity discrimination.*

economic disruption and international conflict some people will reach for easy solutions such as blaming those who are different for their own ills.

The Act was not intended to result in a very substantial number of prosecutions and, appropriately, it has indeed not done so. Concerns regarding whether there should have been more action might in part be addressed through greater resourcing of the state's Equal Opportunity & Human Rights Commission and Civil & Administrative Tribunal, alongside through a clear bi-partisan commitment on the part of Victorian and national politicians to leadership in articulating the human rights that are enshrined in the Charter.

It is salient that the Act has not been found to be unconstitutional. It has also not required inordinate expenditure by the state or other entities and has not resulted in significant case law regarding its implementation (for example recurrent disputes regarding interpretation).

Our contention is accordingly that the Act has been effective and that its effectiveness should be enhanced through an expansion of its ambit, which we discuss below. The expansion will provide Victorians with a similar protection to that enjoyed by their peers in for example New South Wales and the Australian Capital Territory, jurisdictions in which none of the harms forecast by critics of the Victorian regime have eventuated.

Has the Act been appropriate?

During passage of the Act members of Parliament claimed that the legislation would be unnecessarily divisive, would burden the judicial system and more broadly was not needed.

In ascertaining whether the regime has been successful it is useful to initially note that most proposals for law reform will face criticism that they are divisive, expensive, inappropriately benefit particular classes or are simply not needed. Such criticisms have historically been made of reforms that we now regard as quite unremarkable, for example giving the franchise to women, abolishing slavery, decriminalising same-sex activity and – more than a century ago – giving the franchise to adherents of Roman Catholicism and Judaism.

Has the Act prevented or limited serious harms? If we construe the Act's ultimate significance as signalling Victoria's abhorrence of ethno-religious hate-speech through a proportionate, graduated response to vilification (encompassing mediation and criminalisation) it has been appropriate. On that basis the time has come to strengthen the state's human rights (including anti-discrimination) regime by extending the Act to encompass vilification beyond ethnicity and faith.

In considering appropriateness we draw the Committee's attention to judicial statements endorsing the proposition that anti-vilification legislation enhances and promotes the implied freedom of communication. Those statements include *Sunol v Collier (No 2)* (2012) 289 ALR 128, [89]; *Durston v Anti-Discrimination Tribunal (No 2)* [2018] TASSC 48, [36]-[46], [49] and *Owen v Menzies* (2012) 293 ALR 571, [72].

2. The success or otherwise of enforcement of the Act, and the appropriateness of sanctions in delivering upon the Act's purposes

Preceding comments considered the effectiveness of the Act. In addressing the second Term of Reference we suggest that enforcement of the Act has been effective but could be improved.

Enforcement would be facilitated through

- firstly, additional resourcing of the Equal Opportunity & Human Rights Commission and the Civil & Administrative Tribunal, enabling the Commission

to better communicate its mission and thereby deepen the community awareness referred to by the Victorian Parliament when the Act was passed,[6]

- secondly, timely bi-partisan statements by senior politicians condemning both expressions of hate-speech by individuals such Cottrell and endorsement by media figures in 'op eds' or 'talk back' of speech that serves to foster hatred, fear and other harm,
- thirdly, encouraging the Commonwealth in responding to the recent Australian Competition & Consumer Commission *Digital Platforms* report to address concerns regarding 'fake news' in platforms such as Facebook, Twitter and Google that are rapidly replacing traditional broadcast/print media.

The *Charter* is founded on both responsibilities and rights. It is incumbent on Victorian politicians to display leadership in giving effect to the civil and political rights of everyone in the state. It is also incumbent on 'shock jocks' and other controversialists to behave responsibly in exercising their privileged position as broadcasters or columnists. Within Victoria and elsewhere it is evident that high profile figures such as Alan Jones have behaved in ways that directly represent or endorse views that are misogynistic, one-sided and likely to foster hatred. Those figures are legitimately 'called out' by politicians as representatives of the community.

We note that over half of the recommendations in the 2015 Independent Review of the Charter have not yet progressed by the Victorian Government.

3. Interaction between the Act and other state and Commonwealth legislation

See below. We note that the Act has not been held in the High Court or Victorian Supreme Court to be contrary to the implied freedom of political communication articulated in for example *Australian Capital Television Pty Ltd v Commonwealth* (1992) 177 CLR 106 and *Nationwide News Pty Ltd v* Wills (1992) 177 CLR 1. It has similarly not been found to conflict with the Victorian *Charter of Human Rights & Responsibilities*.

The Australian Human Rights Commission in its 2011 report on *Protection from vilification and harassment on the basis of sexual orientation and sex and/or gender identity* noted the significance of Commonwealth action to address vilification across Australia. The report noted major inadequacies on a jurisdiction by jurisdiction basis. The Commission called on the national Government to exercise leadership. The Government has not done so and, regrettably, appears unlikely to do so in the near future. In making this submission we accordingly suggest that Victoria has an opportunity to 'step up' by updating the state's vilification regime. That leadership will be of direct benefit to people in Victoria. Perhaps as importantly, it will provide a benchmark that encourages practical law reform in other jurisdictions.

4. Comparisons in the operation of the Victorian Act with legislation in other jurisdictions

In terms of fostering individual and community flourishing, an objective of every liberal democratic government, the Act is out of step with legislation in other jurisdictions and with the expectations of many Victorians. We suggest below that it can be updated without difficulty

[6] We are conscious that operation of the Commission and Tribunal are publicly (ie taxpayer) funded. That is the case with a range of entities such as courts, the parliament and police. Funding is justified because it fosters human rights and – from an economics perspective – increases in participation through the reduction of harm serve to boost Victoria's competitiveness and strengthen national productivity.

and that its enhancement will gain the support of most Victorians on the basis that a progressive government has recognised substantive concerns regarding harm and inequality.

Several Australian states and the Australian Capital Territory have enacted and implemented legislation prohibiting public vilification, typically characterised in terms of the anti-discrimination statutes in those jurisdictions. That legislation has been recurrently affirmed in superior courts as not contrary to the constitutional implied freedom of political communication and as productive of public participation, for example *Sunol* (2012), *Durston* (2018) and *Owen* (2012) noted above.

In New South Wales the *Anti-Discrimination Act 1977* (NSW) prohibits vilification, discussed in for example *Burns v Smith* [2019] NSWCATAD 56. It is complemented by the *Crimes Act 1900* (NSW). The *Discrimination Act 1997* (ACT), *Anti-Discrimination Act 1997* (Qld) and *Anti-Discrimination Act 1998* (Tas) similarly prohibit vilification.

The *Anti-Discrimination Act 1998* (Tas) in ss 17, 19 and 20 for example includes offences of inciting hatred, serious contempt or severe ridicule of a person or persons on the grounds of race, religious belief or activity, disability and sexual orientation

As discussed below, those enactments have been well-received by superior courts. They differ from the Victorian Act in encompassing vilification on the basis of gender and sexual affinity, two fundamental omissions on the part of the Victorian regime and inconsistent with the coverage of the *Charter*. Saliently the *Charter* does not identify Victorians as somehow less worthy of respect and thereby appropriately denied protection from harm on the basis gender or sexual affinity.

5. The role of state legislation in addressing online vilification

This submission began by noting that the ambit of the Act was and remains modest. There is very substantial Australian case law to the effect that Commonwealth and state/territory courts have authority over what takes place online, albeit recognising that in the absence of coherent international agreements and cooperation by overseas authorities and online service providers it may be difficult to enforce decisions regarding individuals who are located offshore.

It is within the scope of the Victorian government to address vilification that occurs online and emanates from entities within Victoria. That action is appropriate in instances of egregious vilification and, in contrast to defamation, should not be left to individuals. We suggest that the Victorian Government should encourage all Australian jurisdictions to move without delay towards a common position on vilification, whether online or offline. The Committee's inquiry into the Act provides an opportunity for amendment of the current Victorian regime to reflect experience in other jurisdictions, for example in Tasmania and New South Wales noted above.

We suggest that both state/territory and Commonwealth legislation if thoughtfully drafted and effectively implemented (with for example a sustained community awareness campaign about responsibilities and rights) have a role to play in fostering community flourishing. In making that comment we reiterate past concerns regarding deficient drafting and grossly inadequate public consultation regarding the *Criminal Code Amendment (Sharing of Abhorrent Violent Material) Act* 2019 (Cth), which failed to address vilification.

Amendment of the Victorian Act, as suggested above, should not ignore the dissemination of threatening hate-speech through digital media. The recent decision in *Cottrell v Ross* demonstrates that there is scope to address harms emanating within Victoria. Achievement of a coherent national regime should mean that Victorians who are harmed by vilification

emanating from, for example, New South Wales should be able to look to that state's government for action on behalf of any Australian.

6. The effectiveness of current approaches to law enforcement in addressing online offending

See above.

7. Any evidence of increasing vilification and hate conduct in Victoria

We are unaware of a comprehensive metric of vilification in Victoria over the past decade and the effectiveness of vilification in excluding targeted communities from public participation means that some hate-speech will simply be unreported.

It is clear however that vilificatory online and other expression continues. There are anecdotal indications that there has been an increase in such expression given normalisation of digital platforms such as Facebook, YouTube and Twitter (for example most Victorians now either actively contribute to or are exposed to Facebook), with some platform users mistakenly believing they are anonymous or otherwise outside the law. It is also clear that there are recurrent antisemitic incidents on the part of adherents of the 'new right'.

A cursory study of media over the past five years for example notes that swastikas were painted on the iconic Nylex building last year. An elder care facility in Caulfield housing Holocaust survivors was defaced. Nazi-themed vandalism has been evident at playgrounds in Carnegie and McKinnon, a West Footscray mall, a Bentleigh church, various train stations. Swastikas and antisemitic slogans have been painted on vehicles and properties in Oakleigh and Hughesdale and other locations, alongside spoken anti-Semitic comments to pedestrians and cyclists in North Caulfield and Balaclava.

Such expression represents more than property damage addressable under criminal or tort law. As one Jewish community spokesperson commented

> The swastika, the ultimate symbol of pure barbarity, dehumanisation and unprecedented genocide, has been weaponised by neo-Nazis and white-supremacists to sow fear, harass and intimidate. … For Holocaust survivors, who lost relatives in the Holocaust, seeing this ugly emblem of monstrosity is as threatening as being confronted by a gun, and tears a hole in their heart.

Other expressions of hatred have targeted members of Islamic communities and migrants, in particular people from Africa.

8. Possible extension of protections or expansion of protection to classes of people not currently protected under the existing Act

Preceding pages of this submission have suggested that the Act needs to be brought into line with vilification legislation in other jurisdictions and thereby reflect community expectations. The inadequacy of the Act is evident in the Reason Party's 2019 'Elimination of Vilification' Bill to "stop trolling in its tracks" by extending the Act to cover hate speech based on 'gender, disability, sexual orientation, gender identity and sex characteristics'. The feasibility of such an amendment is demonstrated by the legislation in the Australian Capital Territory, Queensland, New South Wales and Tasmania.

We suggest that in complementing the national anti-discrimination regime the Victorian Parliament can strengthen the state's human rights regime by amending the Act to cover sexual affinity and gender. That action is salient because the Commonwealth's 'Religious Freedoms' Bills (discussed in a separate submission by Bruce Baer Arnold, Wendy Bonython

and Richard Matthews) if passed are likely to authorise and thereby legitimate discrimination on the basis of faith, a discrimination that will be reflected in speech and action that will be reasonably construed as vilification.[7]

The Act is currently silent about sexuality, for example same-sex affinity. Despite the removal of civil disabilities through decriminalisation of male same-sex activity and changes to superannuation and marriage laws being – or merely appearing to be – gay or lesbian still results in violence and/or denigration on the part of both individuals and some institutions.[8] The Victorian Parliament last year apologised for past criminalisation of consensual gay activity, with the Premier offering an apology

> for laws that criminalised homosexuality in this state; laws which validated hateful views, ruined people's lives and forced generations of Victorians to suffer in fear, silence and isolation, …
>
> these laws represented nothing less than official, state-sanctioned homophobia …
>
> And we wonder why, Speaker – we wonder why gay and lesbian and bi and trans teenagers are still the target of a red-hot hatred.
>
> And we wonder why so many people are still forced to drape their lives in shame.
>
> These laws did not just punish homosexual acts, they punished homosexual thought. They had no place in a liberal democracy. They have no place anywhere. The Victorian Parliament and the Victorian Government were at fault. For this we are sorry.
>
> So please let these words rest forever in our records. On behalf of the Parliament, the Government and the people of Victoria, for the laws we passed and the lives we ruined, and the standards we set, we are so sorry; humbly, deeply sorry.

Criminalisation historically signalled to everyone that that 'homosexual thought' and deed was wrong and properly condemned. In 2020 condemnation is still evident in vilification, often most viscerally experienced by the young and by members of unsupportive religious communities. In making this submission we suggest that amendment of the Act is an opportunity for the Parliament to give effect to its apology and reflect recognition among most Australians that an individual is somehow less of a person and deserving less respect in law merely because of that person's sexual affinity.

Bathurst CJ in *Sunol v Collier* commented

> … seeking to prevent homosexual vilification is a legitimate end of government. A law seeking to prevent the incitement of such conduct seems to me compatible with the maintenance of the constitutionally provided system of government. It does not seem to me that debate, however robust, needs to descend to public acts which incite hatred, serious contempt or severe ridicule of a particular group of persons.[9]

We note that recognition of the appropriateness of proscribing vilification on the basis of sexual affinity is evident in a range of case law.[10] It is not exceptional or inappropriate. In Victoria it is overdue and would complement education and other awareness measures.

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[7] Our analysis is that the proposed Commonwealth regime, in contrast to the suggested amendment of the *Racial and Religious Tolerance Act 2001* (Vic), will result in substantial litigation on an ongoing basis.

[8] The reference to institutions is deliberate, given the likelihood that the proposed Commonwealth Religious Freedoms regime will enshrine discrimination on the part of some aged care, health, employment and other service providers.

[9] *Sunol v Collier (No 2)* [2012] NSWCA 44 at [52].

[10] See for example *Passas v Comensoli* [2019] NSWCATAP 298, *Burns v Smith* [2019] NSWCATAD 56, *Sunol v Collier (No 2)* [2012] NSWCA 44 and *Thurston v Anti-Discrimination Tribunal (No 2)* [2018] TASSC 48.

We further suggest that the Act should be amended to proscribe vilification on the basis of gender, in particular misogynistic hate-speech.

There is growing recognition of vilification on the basis of gender, including expression targeting women, intersex and transgender people. 'Harming women with words: The failure of Australian law to prohibit gendered hate speech' by D'Souza, Griffin, Shackleton and Walt pertinently commented

> In Australia, gendered hate speech against women is so pervasive and insidious that it is a normalised feature of everyday public discourse. It is often aimed at silencing women, and hindering their ability to participate effectively in civil society. As governmental bodies have recognised, sexist and misogynist language perpetuates gender-based violence by contributing to strict gender norms and constructing women as legitimate objects of hostility. Thus, gendered hate speech, like other forms of hate speech, produces a range of harms which ripple out beyond the targeted individual.
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> The harmful nature of vilification is recognised by the various Australian laws which prohibit or address other forms of hate speech. But … gendered hate speech is glaringly absent from most of this legislation. We argue that by failing to address gendered hate speech, Australian law permits the marginalisation of women and girls, and actively exacerbates their vulnerability to exclusion and gender-based harm.[11]

We add that although religious affinity might be obfuscated or invisible, and that ethnicity is often undiscernible, gender is typically more intractable. If the Parliament is going to signal and deter the inappropriateness of vilification around ethnicity and faith it should on the basis of principle address vilification that embodies disrespect for over half of the population.

9. Any work underway to engage with social media and technology companies to protect Victorians from vilification

We suggest that the most meaningful engagement with social media and digital platform providers must involve both the Commonwealth (given its head of power under the national Constitution) and the state/territory governments. Platform providers have typically argued that Australian law does not apply to them and, implicitly, that they can rely on a global *lex informatica* that derives from United States constitutional protection for free speech alongside a notion of an online 'market place for ideas' derived from theorisation by Milton, Locke and Mill. Those theorists offer an idea that is at odds with the inequality of many participants in the market place and with the reality that vilification either silences minorities within that market place or drives them away.

In considering the Victorian Act we argue that in a liberal democratic state there is no freedom from being offended, in part because offence is subjective and in part because offence fosters the discourse that is a basis of democracy. Offence or potential offence is however very different from the hatred and inducement of fear, anger, violence or disengagement that we have discussed above. That vilificatory expression is legitimately proscribed on a proportionate basis. There is no absolute freedom of expression.[12] We note that United States jurisprudence, often misread as at the heart of an online/offline 'anything goes' regime, has for many years restricted what one eminent judge characterised as falsely shouting fire in a crowded theatre with consequential harm.

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[11] Tanya D'Souza, Laura Griffin, Nicole Shackleton and Danielle Walt, 'Harming women with words: The failure of Australian law to prohibit gendered hate speech' (2018) 41 *University of New South Wales* 939.

[12] We thus note that all advanced economies have restrictions in the form of defamation, trade secrets, confidentiality, privacy, tort of malicious falsehood, electoral and other law.

We note that the EU voluntary 2016 Code of Conduct on hate speech requires online platforms to set standards to regulate the blocking or removal of undesirable content, reflecting the 2008 European Council Framework Decision on racism and xenophobia and the European Convention on Human Rights. We also note the growing body of European jurisprudence, for example this month's European Court of Human Rights chamber judgment in *Beizaras and Levickas v. Lithuania* (application no. 41288/15). That jurisprudence is not determinative in Australia. It does however offer both a benchmark for Victoria as a progressive state with a commitment to fostering the flourishing of all people. It also demonstrates that administration of an amended Act would not be intractable.

Conclusion

We conclude this submission with two statements in the Human Rights Commission report noted above.

The first is the Commission's comment that

> A federal law would make it clear to all Australians that vilification, and harassment on the basis of sexual orientation and sex and/or gender identity is never acceptable. Unless there is a clear law against it, it is too easy for bigots to feel their actions are justified, when actions based on prejudice and hatred are not, and never can be, just.

The Victorian Parliament need not wait and should not wait for leadership by the national Government to develop that law, particularly because the Prime Minister appears preoccupied with marketing.

The Victorian Parliament should instead amend the Act, thereby deepening both the state's attractiveness as a place for investment in an increasingly competitive global environment and respecting the dignity of all Victorians.

The second statement in the report comes from Tasmania, where as noted above the vilification regime has been more progressive than in Victoria

> During the bitter, decade-long debate over decriminalising homosexuality in the 1990s there was a constant stream of verbal statements and written materials that incited hatred against gay, lesbian, bisexual, transgender and intersex (GLBTI) people. This included written material published in newspapers and distributed through the mail. It also included vilifying statements by public figures. However, since the passage of the *Anti-Discrimination Act* in 1998, which included provisions against incitement to hatred, such written and verbal statements have virtually ceased.
>
> Tasmania's public debate on GLBTI issues continues to be vigorous but it is profoundly more mature, respectful and constructive than it was before 1998

It is time for Victoria to foster robust, informed, respectful and otherwise mature civic conversation by curbing hate-speech.

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