

**SUBMISSION**  
**BY**  
**THE ISLAMIC COUNCIL OF VICTORIA (ICV)**  
**TO THE**  
**INQUIRY INTO ANTI-VILIFICATION PROTECTIONS**  
**OF**  
**THE PARLIAMENT OF VICTORIA**  
**January 2020**

The Islamic Council of Victoria (ICV) welcomes the opportunity to make a submission to the Victorian Government Legislative Assembly's Legal and Social Issues Committee on the Inquiry into Anti-Vilification Protections.

The ICV applauds the Victorian Parliament for the protective legislation of the Racial and Religious Tolerance Act 2001 (the Act) and the Victorian Equal Opportunity and Human Rights Commission for the role it plays as the primary avenue for reporting prejudice outside the Victoria Police. The ICV commends the Victorian Police for its Prejudice Motivated Crime Strategy and its ongoing commitment to community engagement and the current Act to reduce hate offences around racial and religious vilification.

The ICV supports retaining the Racial and Religious Tolerance Act 2001 as an important legislation that protects the freedom of people in Victoria to practice their religious beliefs without racial or religious discrimination. The Act has underpinned and supported our multicultural harmony and social cohesion for almost two decades.

In the climate of increased global and local tensions towards Muslims we believe it is of vital importance to retain and further strengthen the Act. We advocate for some practical recommendations to be considered by the Victorian Government together with the Victoria Police to further enhance the operations of the Act in relation to religious freedom.

We believe that the proposals in the new Racial and Religious Tolerance Amendment Bill 2019 to broaden the scope of protected attributes in the Act will distract the focus from improving the current law so that it better protects vulnerable racial and religious communities.

Historically the Racial and Religious Tolerance Act 2001 was enacted at a time when Victoria received adverse international attention. At that time Victoria committed to enforce a strong legislative protection against racial and religious hate and abuse. It is vital to continue this work that has served the Victorian community so well and retain the integrity of the current Act. The proposed Amendment Bill 2019 in favour of a new Elimination of Vilification Act would hinder and even risk abolishing two decades of important legislative work around racial and religious community harmony for all Victorians.

## About the ICV

The ICV is the peak Muslim community organisation representing an estimated 200,000 Victorian Muslims and over 60 member societies. It offers advocacy and social welfare services while leading state and national initiatives on social cohesion and harmony through community consultations and advice to Government. The ICV has meaningful engagements, partnerships and projects with over 70 organisations, Muslim and non-Muslim, including over 20 multi-faith and multicultural groups.

The ICV works to support all Victorian Muslims to have a strong sense of belonging and increased respect for all. Its work contributes to the strengthening of social bonds between and amongst the numerous diverse communities which in turn builds a more respectful, cohesive and resilient society.

## Introduction

### **A strong evidence-base**

This submission is based on the ICV's on-going community consultations over the past two years in particular with Islamic and multicultural community groups, Islamic faith communities and Muslims in Victoria and Australia. Perspectives include the views of women and young people in Victoria who identify as Muslims. We also draw on evidence from current Victorian, Australian and some relevant international research on Islamophobia, social cohesion, legislation effectiveness, policing, online harassment, and issues that impact on Muslim individuals and communities in migration countries.

The ICV is closely connected at the grassroots level through its member societies and other community organisations. It is therefore well-placed to engage with government, at all levels, media, civil society groups, faith bodies and other stakeholder groups.

The ICV represents, and works closely with, culturally diverse communities and their relevant mosques; Islamic faith-based peaks and teaching academies; and related Muslim youth organisations as well as university researchers and Muslim Student Associations. Most mosques are attached to dynamic culturally diverse community centres and play an important role in promoting harmony and community dialogue.

The ICV has a good working relationship with the Australian Muslim Women's Centre for Human Rights, and with the Muslim Women's Association. In addition, the ICV Office for Women continues

to enhance gender equality and Muslim women's leadership through a variety of initiatives and projects.

### **Religious freedom is one of the most fundamental human rights**

Religious and spiritual affiliation and practises help build resilience in culturally diverse communities which in turn supports Victoria's social cohesion. A harmonious multicultural Victoria requires a genuine appreciation and celebration of its citizens' diversity of languages, cultural backgrounds and spiritual and religious beliefs. People of faith have the right to be protected by laws in Victoria to express their religious freedom. Victorians are fortunate to have the benefit of the current Racial and Religious Tolerance Act 2001.

Events such as the annual Interfaith Breakfast at the Victorian Parliament give parliamentarians the opportunity to meet with leaders from diverse faiths - including various Muslim, Christian, Jewish, Hindu, Buddhist, Sikh and other communities – with the intention of celebrating shared values.

Professor Greg Craven AO, GCSG, Vice-Chancellor of the Australian Catholic University, said at the 2019 Fifth Parliamentary Interfaith Breakfast in Melbourne, that the ability to observe one's faith in Australia was not just a privilege, but a fundamental human right. He said, "As leaders – whether in law, government, faith, industry, education or society – it is our responsibility to champion, uphold and protect these important freedoms, so we can continue to express our faith, and live in harmony and mutual respect."<sup>1</sup>

Victoria's faith communities play a key role in the effective settlement of many migrants and refugees that in turn benefits the broader society. The opening up of places of worship promotes better understanding and builds bridges for Victoria's future. Mosque Open Days are popular amongst Muslims and non-Muslims. These open days and faith bus tours conducted by interfaith networks throughout Victoria contribute to promoting peace, harmony and understanding. A spokesperson in the Interfaith Network commented that places of worship provide individuals, families and communities, in the City of Greater Dandenong and beyond, with 'sacred havens, spaces of reflection and refuge, and sanctuaries of belonging and gathering.' For culturally diverse Victorians who have endured journeys of hardship, faith communities help them to build a better life: 'Along the way their faith has nurtured and sustained them, and the entire community has benefited from this multi-faith, multicultural diversity.'<sup>2</sup>

The ICV advocates that when things go wrong through hate speech; when our social cohesion is at risk, it is important to have a strong legislative framework such as the current Racial and Religious Tolerance Act 2001 in place to protect our freedom of religious belief.

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<sup>1</sup> The Importance of religious freedom examined at interfaith breakfast, comment by ACU Vice-Chancellor Professor Greg Craven AO, GCSG, 27 November 2019 in media release on Australian Catholic University website <https://www.acu.edu.au/about-acu/news/2019/november/the-importance-of-religious-freedom-examined-at-interfaith-breakfast> accessed 1 January 2020

<sup>2</sup> Helen Heath OAM 12:2019 *Many Faiths, One People*, The Interfaith Network of the City of Greater Dandenong.

## Growing diversity of Muslims in Victoria

Muslims represent a growing community in Australia. There are approximately 600,200 self-declared Muslims living in Australia (2016 Census). Melbourne is home to around 100,000 Muslims with almost 200,000 living in Victoria. The largest Muslim population percentages continue to be in Victoria (3.32% of total population) and New South Wales (3.58%)<sup>3</sup>. Whilst Christianity remains the largest religion in Australia, Islam is one of the fastest growing religious classifications in Australia up from 1.7 per cent to 2.6 per cent in the decade from 2006-2016, alongside Hinduism and Sikhism<sup>4</sup>. Some community leaders believe the Muslim community is even larger as many people fail to disclose their religion due to fear of persecution. A distinctive feature of the Australian Muslims' age profile is that they are significantly younger than the overall Australian population<sup>5</sup>.

The ICV is proud of Victoria's multicultural policies, programs and legalisation. In Victoria multicultural harmony promotes multicultural as well as multi-faith diversity. Population changes in society sometimes cause localised misunderstandings and anxiety in neighbourhoods. This requires education, as well as easily understood and accessible legislation that build bridges, trust and respect. Australian Muslims are ordinary citizens keen to make a productive contribution to society. Islamophobia and religious hate crime have been on the increase in Victoria<sup>6</sup>. In terms of identity a typical survey response by Muslims was: "I see no opposition between being a good loyal Australian citizen and a Muslim, since Islamic values teach me to love and work diligently towards the betterment of any community, I live in."<sup>7</sup>

In this submission ICV puts forward the following practical suggestions and recommendations to further strengthen and improve the Racial and Religious Tolerance Act 2001 to better protect its citizens from racial and religious abuse and benefit the broader society.

## Key Issues and Summary of Recommendations

ICV discusses the following key issues and recommendations in relation to strengthening and retaining the current Racial and Religious Tolerance Act 2001

### Key issues

The main issues are:

- Lowering the threshold
- Amending the civil incitement test and introducing a harm-based test

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<sup>3</sup> Table: Self-identifying Muslims in Australian Census 2016 – States and Territories, Australian Bureau of Statistics

<sup>4</sup> Australian Bureau of Statistics

<sup>5</sup> Australian Muslims – a Demographic, social and Economic Profile of Muslims in Australia 2015, International Centre for Muslim and non-Muslim Understanding, University of South Australia.

<sup>6</sup> Mason G. and Asquith N Islamophobia within the Hate Crime Framework in Iner, Derya, ed. Islamophobia in Australia Report II (2017-2018) Sydney: Charles Sturt University and ISRA 2019

<sup>7</sup> Ibid – see page 31 of reference above

- Improved racial and religious classifications
- Greater focus on intersectionality of gender, race and religion especially for women
- Improved reporting, recording and data collection procedures by Victoria Police
- Replicating and moving criminal provisions to Crimes Act
- Reinforcement of national legislative comparisons
- Third party reporting
- Islamophobia and increasing anti-Muslim vilification
- Updating the Act to address the worlds of online hate
- Setting standards for unacceptable online abuse

#### Summary of Recommendations

1. That the Racial and Religious Tolerance Act 2001 be retained, and its operational effectiveness be strengthened.
2. That several amendments be made to the Racial and Religious Tolerance Act, to lower the criminal offence threshold, and the definition of “conduct” be expanded as referred in this submission.
3. That the legal test for vilification in the Racial and Religious Tolerance Act 2001 be amended to provide that a person must not engage in conduct that expresses hatred, serious contempt for, revulsion, or severe ridicule of a person or group, or is reasonably likely, given the circumstances, to incite hatred, serious contempt for, revulsion or severe ridicule of a person or group.
4. That a separate civil harm-based test be added to the Racial and Religious Tolerance Act 2001 which provides an alternative path for complainants that focuses on the harm done to the complainant by the conduct.
5. That the Racial and Religious Tolerance Act 2001 allow both categories of racial and religious vilification to apply when a person makes a report of abuse.
6. That the intersectionality of gender, race and religion be considered an aggravating factor when complaints are made under the Racial and Religious Tolerance Act 2001.
7. That frontline officers in Victoria Police receive the necessary procedures, resources and training to identify, accurately record and investigate prejudice motivated crimes.
8. That the recording of racial and religious hate crimes by Victoria Police be made mandatory with the inclusion of additional mandatory offence classifications that reflect racial and religious vilification.

9. That the Victorian Government consider establishing an impartial complaints mechanism and agency. This agency could be responsible for investigating complaints mishandled by Victoria Police. It could also review and provide recommendations to address the under-reporting of prejudice-motivated incidents and crimes.
10. That the criminal provisions be retained in the Racial and Religious Tolerance Act 2001 and be replicated in the Crimes Act (Vic) for a more accessible range of prosecution responses. And that the criminal sanctions for serious racial and religious vilification in the Act are made consistent with comparable crimes
11. That the Victorian Government consider third-party reporting mechanisms hosted in trusted community organisations such as the Islamic Council of Victoria or the Islamophobia Register, as an additional avenue for reporting prejudice motivated crime to the police.
12. That the Racial and Religious Tolerance Act 2001 provides a set of standards and sanctions for unacceptable online hate content that vilifies racial and religious groups, and legislates for such offensive content to be reported, taken down or filtered.
13. That the Victorian Government continues to partner with Muslim community organisations such as the Islamic Council of Victoria, law enforcement and human rights agencies to collect evidence and develop a strategy to reduce online Islamophobic offending in Victoria.

## Addressing the Terms of Reference

We will address the Inquiry's Terms of Reference for the Legal and Social Issues Committee to consider as follows.

### **TOR 1: THE EFFECTIVENESS OF THE OPERATION OF THE RACIAL AND RELIGIOUS TOLERANCE ACT 2001 (THE ACT) IN DELIVERING UPON ITS PURPOSES**

The ICV applauds the purpose of the Racial and Religious Tolerance Act 2001 (the Act) which recognises that vilifying racial and religious belief and behaviour is contrary to our democratic values as it diminishes a person's dignity, sense of worth and belonging; it reduces their ability to participate socially, economically, politically and culturally in society; and subsequently reduces the benefits that diversity brings to the broader community.

The ICV values an appropriate balance in the Victorian legislation of freedom of expression in our democracy and the right not to be vilified. We accept the exceptions in the Act for public conduct that is reasonable and done in good faith.

The ICV supports retaining the purpose of the Act that is:

- Promoting racial and religious tolerance by prohibiting vilification of people based on their race or religious belief or activity
- and
- Providing a means of redress for the victims of racial or religious vilification.

Australian studies<sup>8</sup> consistently show that when Muslims take up Australian citizenship and identify as an Australian, this provides them with insufficient protection from public abuse, stereotypes and prejudice. Islam has been increasingly negatively depicted as a global threat,<sup>9</sup> and community consultation and anecdotal evidence suggests there is an increase in local hate speech towards Muslims in Victoria.

The 2019 Scanlon Social Cohesion Survey shows that the vast majority of Australians consistently feel good about multiculturalism (85%). However, the report shows that a significant minority still express negativity towards Australian Muslims. In addition, people who identify as Muslim or Hindu reported much higher rates of discrimination at 42 per cent for Muslims and 38 per cent for Hindus<sup>10</sup>.

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<sup>8</sup> Australian Muslims – a Demographic, social and Economic Profile of Muslims in Australia 2015, International Centre for Muslim and non-Muslim Understanding, University of South Australia

<sup>9</sup> Abe W. Ata and J. A. Ali. "Introduction: Understanding Islam–West Relations and Muslim and Non-Muslim Mutual Perceptions" in Abe W. Ata and Jan A. Ali (eds.) *Islam in the West: Perceptions and Reactions*. New Delhi: Oxford University Press, pp. 1-14.

<sup>10</sup> Mapping Social Cohesion – The Scanlon Foundation Surveys 2019 Andrew Markus, Monash University



The ICV believes that the Victorian Racial and Religious Tolerance Act 2001 (Act) is crucial in complementing and reinforcing other Victorian legislation such as the Multicultural Victoria Act 2011. The 2001 Act is vital to further protect Victorian citizens from public behaviour that 'incites hatred, serious contempt, and severe ridicule' against Muslim which has been on the rise in public places such as shopping centres and on public transport.

The ICV believes the current Victorian Act is still in its infancy and has only been tested somewhat since it was enacted almost two decades ago. Our viewpoint is supported by the findings of the report produced by Victoria University on far-right movements in Victoria that the 'legal framework for combating hate speech and hate crime in Victoria is perceived as lacking strength'.<sup>11</sup>

The operational areas that require improvement in the Act are:

- The threshold is too high
- Lowering the threshold and amending the incitement test
- Replacing incitement test with a harm-based test
- Both racial and religious classifications should be allowed
- Greater focus on intersectionality of gender, race and religion especially for women

These are explained as follows.

### **Threshold is too high**

Two law cases relating to Victorian Muslims that have been prosecuted under the Act have set a critical milestone in Victorian legislation. The prosecution provided important community messaging that racial and religious intolerance is unacceptable. At the same time the potential for successful prosecution and community messaging is diminished because there were so few prosecutions due to the high criminal threshold. The three successful racial and religious vilification cases were:

- *The Islamic Council of Victoria v. Catch the Fire Ministries Inc.* was a landmark lawsuit in Melbourne<sup>12</sup>. Statements about Islam were made by the Catch the Fire Ministries in a seminar, their newsletter and website. The court held that the original decision had to be remade by the Victorian Civil and Administrative Tribunal (VCAT) and it was ultimately settled<sup>13</sup>. In 2004 the Islamic Council of Victoria won the first ruling. It took the Victorian Supreme Court Hearing until 2006 to announce a long-awaited decision<sup>14</sup>. At the eventual outcome the two parties reached an agreement and put out a public statement.

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<sup>11</sup> Peucker, M., Smith, D., and Iqbal, M. (83:2018). *Mapping Networks and Narratives of Far-Right Movements in Victoria*. Melbourne: Victoria University

<sup>12</sup> Australasian Legal Information Institute *Catch the Fire Ministries Inc & Ors v Islamic Council of Victoria Inc* [2006] VSCA 284 (14 December 2006)

<sup>13</sup> Australasian Legal Information Institute *Catch the Fire Ministries Inc & Ors v Islamic Council of Victoria Inc* [2006] VSCA 284 (14 December 2006)

<sup>14</sup> *The Jihad Seminar – a true story of religious vilification and the law*, Hanifa Deen 2008 University of Western Australia Press.



- *Cottrell* case – Blair Cottrell and two other members of the United Patriot’s Front were convicted of serious vilification for staging a mock beheading to protest the building of a mosque. All three were found guilty by a magistrate of inciting contempt, revulsion or ridicule of Muslims<sup>15</sup>. Each person was fined \$2,000.

The protracted Catch the Fires case lasted 6 years. This shows there is a lack of relevant case law on vilification in Australia with no clear rulings to help judges with their decisions.<sup>16</sup> Nevertheless, the outcomes of these two cases sent an important message to the Victorian public backed by legislation. The former race discrimination commissioner, Tim Soutphommasane, pointed out that when police act on racial vilification and abuse it sends an important message that discrimination is unacceptable, and offenders will be held accountable under the law.<sup>17</sup>

Studies show that Australian vilification laws are sparingly used and rarely convict offenders of hate crime.<sup>18</sup> The ICV supports the views of the Victorian Equal Opportunity and Human Rights Commission (VEHOCR) that the threshold in the Act is too high as there were so few anti-Muslim cases prosecuted.<sup>19</sup>

The two prosecutions were punitive, educative and symbolic. They sent messages to the broader public that racism and religious vilification are taken seriously; that it is unacceptable to vilify minority religious groups; and that they need to be protected.<sup>20</sup> There was disproportionately negative media reporting of these law cases and about Muslim Victorians in general and this likely contributed to the rising tide of Islamophobia<sup>21</sup>. Ultimately it is the enforcement of legislative protections that has the greater positive impact on public perceptions and in promoting community harmony.

<sup>15</sup> Far-right trio convicted, fined \$2000 each, over mock-beheading mosque protest by Adam Cooper September 5, 2017 first published in The Age at website <https://www.theage.com.au/national/victoria/far-right-trio-convicted-fined-2000-each-over-mockbeheading-mosque-protest-20170905-gybdei.html> accessed 1 January 2020

<sup>16</sup> Asquith, N. L. 2014. A governance in denial – Hate Crime in New Zealand and Australia

<sup>17</sup> Hate crime laws rarely used by Australian authorities, police figures reveal, ABC Background Briefing by Hagar Cohen and Scott Mitchell Posted 3 May 2019 at <https://www.abc.net.au/news/2019-05-03/hate-crimes-rarely-prosecuted-in-australia/11055938> accessed 1 January 2020

<sup>18</sup> Susann Wiedlitzka 2016 The Legislative Context of Prejudice Motivated Victimisation – Perceptions of Police Legitimacy and Citizen Decisions to Report Hate Crime Incidents PhD thesis University of Queensland

<sup>19</sup> Victorian Equal Opportunity and Human Rights Commission Fact Sheets 1 on reforming hate laws: How does the RRTA work?

<sup>20</sup> Susann Wiedlitzka 2016 The Legislative Context of Prejudice Motivated Victimisation – Perceptions of Police Legitimacy and Citizen Decisions to Report Hate Crime Incidents PhD thesis University of Queensland

<sup>21</sup> Report: “Who Watches the Media? Race-related reporting in Australian mainstream media – Summary Report December 2017 University of Technology Sydney and all Together Now

Research shows that successful prosecution in the courts under anti-vilification laws helps to educate the public about the problem of hate crime<sup>22</sup>. Therefore, in a climate of increased hostility, negativity and public abuse of Muslims it is important to retain and strengthen the Act in its current form of racial and religious protection rather than broaden it by bringing in the extensive amendments in the proposed 2019 Bill.

#### **Recommendation**

**1. That the Racial and Religious Tolerance Act 2001 be retained, and its operational effectiveness be strengthened.**

#### **Lowering the threshold for criminal offence and amending the incitement test**

The ICV believes the existing criminal offence threshold should be amended to lower the threshold for criminal incitement. The current test should be replaced with an objective test of conduct that 'is likely to incite'. Further, whether the offence is considered a threat or an incitement, they should both be prohibited. In addition, s.24 should be amended to include reckless conduct, not merely intentional conduct. The ICV would like to expand the definition of "conduct" in the Act so that it covers any form of public communication including broadcasting and communicating through social media, speaking, and the distribution of any material in public.

#### **Recommendation**

**2. That several amendments be made to the Racial and Religious Tolerance Act, to lower the criminal offence threshold, and the definition of "conduct" be expanded as referred in this submission.**

#### **Amending the incitement and introducing a harm-based test**

Currently the civil test for vilification requires that the complaint prove that a third party was incited to hatred by the conduct. This places an unreasonable burden on the victim of the vilification for a number of reasons, one being that it can be very difficult to identify the third party. It is however important that the Act retain a civil incitement provision, but it must be made more reasonable to improve the operational effectiveness of the Act.

Mortimer SC, senior lawyer of the Victorian Bar<sup>23</sup> points out the weakness in the Act is at the operational level where the respondents are over-protected, and complainants are disadvantaged by the number of issues that they are required to prove. The focus in the Act is on incitement of hatred against someone, incitement of serious contempt for someone, and incitement of revulsion or severe ridicule of someone. This places an unreasonable burden to prove what happened on the

<sup>22</sup> Susann Wiedlitzka 2016 The Legislative Context of Prejudice Motivated Victimisation – Perceptions of Police Legitimacy and Citizen Decisions to Report Hate Crime Incidents PhD thesis University of Queensland

<sup>23</sup> Debbie Mortimer SC of the Victorian Bar, "Vilification legislation – is it worth the trouble?"

[https://www.monash.edu/\\_data/assets/pdf\\_file/0007/138292/mortimer-paper.pdf](https://www.monash.edu/_data/assets/pdf_file/0007/138292/mortimer-paper.pdf) accessed 1 January 2020

person who experiences vilification as it is difficult for an individual to establish proof of incitement of serious negative emotions and hatred in a third party who is often unidentifiable<sup>24</sup>.

The current vilification test should be amended to provide that a person must not engage in conduct that expresses hatred, serious contempt for, revulsion, or severe ridicule of a person or group, or is reasonably likely, given the circumstances, to incite hatred, serious contempt for, revulsion or severe ridicule of a person or group.

In summary it is difficult for an individual to establish proof of incitement of serious negative emotions and hatred in a third party who is often unidentifiable<sup>25</sup>. A harm-based test, on the other hand, is where the focus is on the impact of offensive conduct, and on the harm caused by that conduct on a particular person or group of persons. People wishing to rely on the harm-based test would no longer need to demonstrate that a third party has been incited to hatred. Instead they would be required to show that it was likely that a reasonable person of the targeted groups would have felt vilified.

#### Recommendations

**3. That the legal test for vilification in the Racial and Religious Tolerance Act 2001 be amended to provide that a person must not engage in conduct that expresses hatred, serious contempt for, revulsion, or severe ridicule of a person or group, or is reasonably likely, given the circumstances, to incite hatred, serious contempt for, revulsion or severe ridicule of a person or group.**

**4. That a separate civil harm-based test be added to the Racial and Religious Tolerance Act 2001 which provides an alternative path for complainants that focuses on the harm done to the complainant by the conduct.**

#### Racial and religious classifications

Another limitation of the Act is that it does not take into account situations where a victim suffers both racial and religious vilification. Currently a vilified person must select one category of either racial or religious vilification. Muslims in Victoria and across Australia are not a homogenous group. They are made up of significant cultural and linguistic diversity from about 70 culturally diverse backgrounds and countries of origin.<sup>26</sup> Faith, identity and ethnicity are intertwined according to Australian sociologist Dr Abe Ata.<sup>27</sup> In fact the Muslim community is a good example of a multicultural microcosm within the Victorian and Australian society. To be effective the Act should be strengthened to enable people to make a report on the basis of both categories of religious and racial vilification.

#### Recommendation

<sup>24</sup> Victorian Equal Opportunity and Human Rights Commission Fact Sheets 1 on reforming hate laws: How does the RRTA work?

<sup>25</sup> Victorian Equal Opportunity and Human Rights Commission Fact Sheets 1 on reforming hate laws: How does the RRTA work?

<sup>26</sup> ICV 2018-19 Annual Report

<sup>27</sup> Abe W Ata Religious and Ethnic Identity – an Australian Study, 1990

**5. That the Racial and Religious Tolerance Act 2001 allow both categories of racial and religious vilification to apply when a person makes a report of abuse.**

#### **Greater focus on intersectionality of gender, race and religion**

The ICV believes that the compounding of suffering experienced by the victim who has been vilified on basis of multiple protected attributes - race, religion, and gender – should be considered. The ICV believes this is not sufficiently covered by the Act and should be considered from a victim impact perspective.

For quite some time Muslim women have been an on-going target for prejudice and discrimination in the form of dislike, hostility and unjust behaviour according to the Resilient Women Project.<sup>28</sup> They receive disproportionate hostility, physical and verbal abuse in the public sphere. Typical comments for the Resilient Women Project are: “Islamophobia affects us on a daily basis”, and “it’s mentally and emotionally exhausting.” Muslim women of colour have said, ‘it’s a daily battle because you’re constantly on the spot and you constantly have to prove your humanity.’<sup>29</sup>

Children and young people from Muslim backgrounds are particularly vulnerable to the harmful effects of hate speech and abuse. Prejudice and violence have a long-term impact on women and on their immediate families and children who often witness such abuse directed at their mothers, grandmothers, sisters and aunties.<sup>30</sup>

#### **Recommendation**

**6. That the intersectionality of gender, race and religion be considered an aggravating factor when complaints are made under the Racial and Religious Tolerance Act 2001.**

### **TOR 2: THE SUCCESS OR OTHERWISE OF ENFORCEMENT OF THE ACT, AND THE APPROPRIATENESS OF SANCTIONS IN DELIVERING UPON THE ACT’S PURPOSES.**

#### **Improved incident reporting and data collection by Victoria Police**

The ICV commends the Victoria Police for their work so far around their Prejudice Motivated Crime Strategy; in holding offenders accountable; and the tireless work of their community liaison officers. However, moving forward the ICV believes the successful enforcement of the Act depends on more effective reporting and recording procedures of hate crimes used by the police. Currently, it is at the discretion of the police officer whether the hate incident is recorded as a hate crime. The mandatory recording of Prejudice Motivated Crime is important to build community trust in the value of reporting; to facilitate any subsequent court decision-making by magistrates; and for accurate data collection.

<sup>28</sup> Resilient Women Project – Muslim Women and their Experiences of Prejudice, 2019 A Kailahi, Semsisi Kailahi and Tatjana Bosevska, Synod of Victoria and Tasmania, Uniting Church in Australia.

<sup>29</sup> Ibid page 7 – see reference above

<sup>30</sup> Resilient Women Project – Muslim Women and their Experiences of Prejudice, 2019 A Kailahi, Semsisi Kailahi and Tatjana Bosevska, Synod of Victoria and Tasmania, Uniting Church in Australia.



The ICV understands that Victoria Police crime recording systems include categories around racial and religious vilification that are optional. Currently when a person reports an incident of anti-Muslim abuse, the frontline police officers fill in check boxes to record crimes. There is no mandatory requirement to always fill them in. When police record prejudice motivated crimes they may choose either the racial offences category or the religious offences, and they are not required to include the details of the incident reported. We believe the current offence categories in the reporting forms do not include sufficient categories to reflect the gravity of the religious vilification incidents reported and are therefore not geared towards successful prosecution. This then discourages the reporting of anti-Muslim abuse and diminishes public trust in the police.<sup>31</sup> Australian research shows that prejudice motivated crime is less likely to be reported to police than other crimes.<sup>32</sup>

Many hate crimes do not appear in court due to lack of reporting and less than accurate recording. Professor Mason, Australian criminology expert at the University of Sydney, suggests under-recording of hate crimes by police<sup>33</sup> is due to officers not adequately trained to identify and record a crime that is motivated by prejudice. Nevertheless, frontline police are still the best placed to apply vilification legislation rules as they are often the first contact for reporting victim impact incidents of anti-Muslim abuse. Improved front line police engagement is in line with the victim-centric policing policies<sup>34</sup> that focusses on the needs of the victim as a person who has suffered from an offence.

The ICV advocates for additional training for frontline police officers to improve their skills and competencies to confidently identify and accurately record prejudice motivated crime. We believe that Victoria Police would benefit from the recent and extensive work of the Islamophobia Register<sup>35</sup> in particular around analysing, identifying and defining hate speech behaviour. This report is a useful resource for police cultural competence training as it includes psychological charts and scales that describe easily understood examples anti-Muslim hate conduct; real-life behavioural examples; and emotional response reactions. We believe these accessible frameworks and examples set up a useful structure that Victoria Police could consider for developing improved skill and competency training for more accurately identifying anti-Muslim abuse and hate speech crime.

Accurate crime data educates the public and reduces vilification. The ICV applauds the Crime Statistics Agency Victoria (CSA) for its transparent data collection about reported racial and religious bias crimes that is currently made available to the public.<sup>36</sup> We understand that the CSA obtains its data from incidents or crimes recorded by Victoria Police in the Law Enforcement Assistance

<sup>31</sup> Mason G and Moran L. (2019) Bias crime policing: "The graveyard shift". International Journal for Crime, Justice and social Democracy 8(2): 1-16 DOI: 10.5204/ijcjsd. v8i2.1137

<sup>32</sup> Wiedlitzka et al 2018 in Mason and Moran 2019

<sup>33</sup> ABC Media release: Hate crime laws rarely used by Australian authorities, police figures reveal. Background Briefing by Hagar Cohen and Scott Mitchell 3 may 2019 <https://www.abc.net.au/news/2019-05-03/hate-crimes-rarely-prosecuted-in-australia/11055938> accessed 1 January 2020

<sup>34</sup> Victoria Police 2015. Future Directions for Victim-Centric Policing

<sup>35</sup> Iner, Derya, ed. Islamophobia in Australia Report II (2017-2018) Sydney: Charles Sturt University and ISRA 2019

<sup>36</sup> Crime Statistics Agency Victorian website How data is collected and processed at <https://www.crimestatistics.vic.gov.au/about-the-data/how-the-data-is-collected-and-processed> accessed 28 January 2020

Program (LEAP) database. Anecdotal ICV feedback suggests CSA data on hate crime is too low and does not accurately reflect the rates of abuse in Muslim and minority communities. To overcome misrepresentation of prejudice motivated crime due to under-reporting and under-recording, the ICV suggests that human rights organisations such as VEOHRC and Victoria Police commit to enhanced sharing of data on reports of racial and religious vilification with the CSA to better reflect the scope and nature of racial and religious vilification.

Currently many Victorians who identify as Muslims have no avenues for recourse if they are not satisfied with the way the Act is enforced into police reporting and recording procedures. Independent and impartial complaints mechanisms in other areas such as through the Health Complaints Commissioner, provide valuable feedback that lead to quality improvements to services. The ICV believes that such a mechanism will improve public confidence in the enforcement of the Act and provide a means for impacted parties to have their concerns addressed.

#### **Recommendations**

**7. That frontline officers in Victoria Police receive the necessary procedures, resources and training to identify, accurately record and register, and investigate prejudice motivated crimes.**

**8. That the recording of racial and religious hate crimes by Victoria Police be made mandatory with the inclusion of additional mandatory offence classifications that reflect racial and religious vilification.**

**9. That the Victorian Government consider establishing an impartial complaints mechanism and agency. This agency could be responsible for investigating complaints mishandled by Victoria Police. It could also review and provide recommendations to address the under-reporting of prejudice-motivated incidents and crimes.**

#### **Replicating criminal provisions in the Crimes Act**

A strength of the Victorian Act is its capacity to prosecute with both civil and criminal sanctions. Current sanctions in the Act for the offences of 'serious racial vilification' and 'serious religious vilification' carry maximum penalties of 300 penalty units in the case of a body corporate, and in other cases 60 penalty units, imprisonment for 6 months or both. There should be consistency in terms of penalties for similar crimes regardless of whether they are prosecuted under criminal laws or otherwise. As such the ICV recommends that penalties for offences in the Act should be increased in line with comparable offences in Victoria and other inter-state jurisdictions.

An important issue is improved implementation by Victoria Police of criminal sanctions for serious racial and religious vilification. Generally, police handle criminal matters and are more conversant with criminal laws. That suggests they would be more likely investigate and prosecute serious vilification if it was covered by the Crimes Act rather than the Racial and Religious Tolerance Act (2001).

The ICV recommends that the civil and criminal remedies remain with the Victorian Act and that criminal provisions be replicated in the Crimes Act (Vic) to facilitate police to investigate and prosecute, and ultimately prevent, religious hate crime. Prosecution improves community confidence in police and makes reporting legislation more accessible<sup>37</sup>. The ICV believes that effective racial and religious hate crime prevention requires a range of responses.

#### Recommendation

**10. That the criminal provisions be retained in the Racial and Religious Tolerance Act 2001 and be replicated in the Crimes Act (Vic) for a more accessible range of prosecution responses. And that the criminal sanctions for serious racial and religious vilification in the Act are made consistent with comparable crimes.**

### TOR 3: INTERACTION BETWEEN THE ACT AND OTHER STATE AND COMMONWEALTH LEGISLATION

#### The Australian Racial Discrimination Act 1975 does not include religious discrimination

The protections under the Commonwealth Racial Discrimination Act 1975 Section 18C covers offensive behaviour based on race, colour or national or ethnic origin. The Australian courts have found certain religious groups, such as Jewish people, have a common ethno-religious origin, and therefore fall within the protections under the Racial Discrimination Act 1975 for example:

- The case of *Jones v Toben* [2002] held that a website which contained Holocaust denial material was reasonably likely to offend and insult Australian Jewish people.<sup>38</sup>

However, anti-Muslim vilification is not covered by the Racial Discrimination Act 1975. Australian Muslims are vulnerable due to the fact they are readily identifiable by their names, dress, appearance and attendance at places of worship, yet have no effective protection at the federal level from vilifying speech or conduct. As it currently stands, this Federal Act does not provide any protection to Australian Muslims against vilification based on their religious identity as the legislation does not extend to religion<sup>39</sup>.

The ICV therefore recommends that it is vital to retain the Racial and Religious Tolerance Act 2001 (Vic) to provide protection to Australian Muslims in a climate of increasing public abuse and vilification.

<sup>37</sup> Mason, G. McCulloch J and Maher J Policing Prejudice Motivated Crime – a Research Study at [https://www.researchgate.net/publication/287660894\\_Policing\\_Prejudice\\_Motivated\\_Crime\\_A\\_Research\\_Case\\_Study/link/56a6a87308ae0fd8b3fc720b/download](https://www.researchgate.net/publication/287660894_Policing_Prejudice_Motivated_Crime_A_Research_Case_Study/link/56a6a87308ae0fd8b3fc720b/download) accessed 1 January 2020

<sup>38</sup> Exposure Draft Religious Discrimination Bill – a joint submission made by a number of national and state-based organisations involved in the Australian Muslim community to the Australian Government 2 October 2019, page 27

<sup>39</sup> Exposure Draft Religious Discrimination Bill – a joint submission made by a number of national and state-based organisations involved in the Australian Muslim community to the Australian Government 2 October 2019, page 15



#### **TOR 4: COMPARISONS IN THE OPERATION OF THE VICTORIAN ACT WITH LEGISLATION IN OTHER JURISDICTIONS**

Our response in this section covers Australian legislative comparisons across states and territories, as well as an international initiative that provides a well-established third-party reporting model worth considering.

##### **Comparisons with other States and Territories**

On a global level Australia's prejudice motivated crime legislation is still fairly young. Victorian and Australian religious vilification laws are still to be tested and bolstered perhaps with incremental amendments, rather than diluted with major changes as proposed in the Amendment Bill 2019, as courts so far have only a few cases to use as guides and models for legal decision-making.

Racial and religious legislation is reinforced across four jurisdictions in Australia that have civil religious vilification provisions: the Australian Capital Territory (ACT), Queensland, Tasmania and Victoria<sup>40</sup>. However, there is evidence that the effectiveness of the religious vilification protection still requires further testing and strengthening in some of these jurisdictions especially in the ACT and Queensland. For example:

- The ACT offers protection against vilification on the basis of "religious conviction". Whether the scope of "religious conviction" extends to religious identity and activity for instance wearing a hijab is still to be tested.
- Queensland has both civil and criminal protections for religious vilification. However, the case of *Deen v Lamb* [2001] in its Anti-Discrimination Act 1991 ruled that statements concerning Muslims and the Quran in an electioneering pamphlet were not religious vilification as the candidate did not intend to incite hatred or contempt.
- In Tasmania the *Anti-Discrimination Act 1998* sent a clear message by offering some civil protection in the case of *Youssef v Khani* [2006] where the Respondent was ordered to publish a written apology or pay \$1500 in damages in relation to comments that were considered to incite hatred.
- In Victoria the Racial and Religious Tolerance Act 2001 offers the most secure protection so far for the Australian Muslim community on the ground of race or religious belief or activity and 'to provide a means of redress for the victims of racial or religious vilification'.

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<sup>40</sup> Schedule 2: Analysis of Existing Laws - Prohibitions on religious hate speech in Commonwealth, state and territory laws on pages 27-39 in Exposure Draft Religious Discrimination Bill October 2019 a joint submission of the Australian Muslim community to the Australian Government at <https://www.ag.gov.au/Consultations/Documents/religious-freedom-bills/submissions/Australian%20Muslim%20Advocacy%20Network%20and%20others.pdf> accessed 1 January 2020

Similar legislation does not provide protection against religious vilification in other Australian jurisdictions. In New South Wales the Anti-discrimination Act 1977, based on race, ethnic, national or ethno-religious origin was found to include groups such as Jewish people or Sikhs, but not Muslims. The Northern Territory, South Australia and Western Australia prohibit vilification on the basis of race but not religion. There are currently no vilification protections in the Northern Territory. Western Australian courts ruled in favour of vilification against Jewish people in the case of *O'Connell v The State of Western Australia* [2012] but this would not apply to Australian Muslims.

In summary and in a climate of increasing racism, Australian research shows that the more similar legislation exists across jurisdictions, the greater the reinforcement and capacity for governments to reduce racism and religious vilification<sup>41</sup>. The ICV presents this as a case to retain and strengthen the racial and religious purpose of the current Victorian Act rather than bring in the changes proposed in the Amendment Bill 2019 that would, in effect, abolish the current Act in favour of a new "Elimination of Vilification Act." We believe the Victorian Act has underpinned our multicultural harmony for two decades. The integrity of the Victorian Act must be maintained to address racial and religious vilification with increasing clarity and strength and provides a leadership model for other jurisdictions.

### Third party reporting

Third party reporting is one approach used internationally to circumvent the limitations of police reporting of bias crime. This approach would encourage more reporting by putting the interests of the victims at the heart of policing and to assist police to take action against offenders and reduce hate crime. True Vision<sup>42</sup> is such a mechanism, introduced in the United Kingdom (UK) to allow people to report prejudice motivated crime through an online portal as an alternative to reporting directly to the police, and it is closely supported by the police. Racial and religious hate crimes can be reported by a victim, a witness or on behalf of someone by using a self-reporting online form.<sup>43</sup>

True Vision is effective and well-established. For example, a letter from the Assistant Chief Constable of the Police Service of Northern Ireland<sup>44</sup> expressing solidarity with Muslims in the UK and elsewhere, was published on the True Vision website following the heart-breaking anti-Muslim attack in Christchurch, New Zealand in March 2019. It indicated his support for other religious minority groups such as Sikhs and Hindus and encouraged people to make use of online religious hate crime reporting tools on the True Vision website as well as through their local police.

<sup>41</sup> Susann Wiedlitzka 2016 The Legislative Context of Prejudice Motivated Victimisation – Perceptions of Police Legitimacy and Citizen Decisions to Report Hate Crime Incidents PhD thesis University of Queensland

<sup>42</sup> True Vision Online portal at website <http://www.report-it.org.uk/home> accessed 1 January 2020

<sup>43</sup> True Vision online portal information and reporting pack for – "Race/religion Hate Crime Reporting Form – English language" at webpage [http://www.report-it.org.uk/files/true\\_vision\\_self\\_reporting\\_form\\_-\\_english.pdf](http://www.report-it.org.uk/files/true_vision_self_reporting_form_-_english.pdf) accessed 1 January 2020

<sup>44</sup> Letter from Mark Hamilton, Assistant Chief Constable of the Police Service of Northern Ireland dated 16 March 2019 regarding the New Zealand attack on True Vision webpage [http://report-it.org.uk/letter\\_from\\_acc\\_hamilton\\_regarding\\_the\\_new\\_zeal](http://report-it.org.uk/letter_from_acc_hamilton_regarding_the_new_zeal) accessed 1 January 2020

Accordingly, Australian criminology research<sup>45</sup> indicates that recorded bias crime in the UK is higher than in other nations.

The ICV advocates for the introduction of third-party reporting in Victoria to facilitate the operation of the Victorian Act.

#### Recommendation

**11. That the Victorian Government consider third-party reporting mechanisms hosted in trusted community organisations such as the Islamic Council of Victoria or the Islamophobia Register, as an additional avenue for reporting prejudice motivated crime to the police.**

## TOR 5: THE ROLE OF STATE LEGISLATION IN ADDRESSING ONLINE VILIFICATION

### Impact of anti-Muslim online hate on households, children and young people

In recent years Australian Muslims have been subject to an onslaught of anti-Muslim online hate messages.<sup>46</sup> Vilification does not just exist in the physical world but is even more prevalent online. Such online hate was not as prolific two decades when the Act was set up. Muslim women in particular have been relentlessly pursued with online hate speech. For example, the founder of the Islamophobia Register was mercilessly targeted with online abuse.

Online anti-Muslim vilification is widespread on social media. The ICV is concerned about the impact of online Islamophobia given the widespread Internet culture in Australian households and particularly among children and young people. There were 147 online cases of anti-Muslim abuse reported in the Islamophobia in Australia Report II and the majority (63%) were on Facebook.<sup>47</sup>

Research by the Australian Office of the eSafety Commissioner and the Australian Department of Education and Training into young people and social cohesion shows that a high proportion of youth encounter inappropriate and hateful online content. The majority of children surveyed (53%) were targets or witnesses of anti-Muslim hate, which was the most dominate hate type found online<sup>48</sup>.

<sup>45</sup> Giannasi 2015 in Mason G and Moran L. (2019) Bias crime policing: "The graveyard shift". International Journal for Crime, Justice and social Democracy 8(2): 1-16 DOI: 10.5204/ijcsd.v8i2.1137

<sup>46</sup> Obeler A. Islamophobia on the Internet: The Growth of Online Hate Targeting Muslims in Gail Mason and Natalie Czapski, 'Regulating Cyber-Racism' 2017 41(1) Melbourne University Law Review (advance) at [https://law.unimelb.edu.au/data/assets/pdf\\_file/0014/2471000/Mason-and-Czapski-411-Advance.pdf](https://law.unimelb.edu.au/data/assets/pdf_file/0014/2471000/Mason-and-Czapski-411-Advance.pdf) accessed 28 January 2020 accessed January 1 2020

<sup>47</sup> Iner, Derya, ed. Islamophobia in Australia Report II (2017-2018) Sydney: Charles Sturt University and ISRA 2019

<sup>48</sup> eSafety Commissioner, Australian Government Online hate, bullying and violence webpage at <https://www.esafety.gov.au/about-us/research/young-people-social-cohesion/online-hate-bullying-violence> accessed 7 January 2020

In 2016-17 the highest proportion of internet users in Australia were young people aged 15 to 17 years and social networking was rated their most popular activity.<sup>49</sup>

In Victoria the prevalence of anti-Muslim online communication is extensive and far-reaching. For example, the Victoria University report on mapping far-right networks in Victoria<sup>50</sup> lists and analyses hundreds of anti-Islam online social media posts and comments. Such online abuse carries the risk of escalation to violence.

### **Setting standards for unacceptable online abuse**

Whilst it is difficult to regulate the Internet, the ICV believes that legislation plays an important role in addressing online vilification. Facebook is the leading platform for anti-Muslim abuse according to Australian and international studies<sup>51</sup>. Where members of the ICV have engaged with Facebook to report excessive and vile anti-Muslim online abuse and request its removal, there has been little or no recourse to action. Social media companies such as Facebook have a responsibility to ensure that the content posted on their platforms are in line with community standards and do not breach vilification and hate speech laws. The likes of Facebook should be compelled by law to regularly review and strengthen their online content standards and procedures for moderating online content and removing offensive material in a timely manner. Further, social media platforms should be compelled by legislation to support the effective investigation of online vilification by providing details about the offending parties who are currently shielded by fake or ghost online profiles. We recommend that VEHC should be able to request information from any relevant platform such as Facebook or Twitter to identify social media “trolls” after a vilification complaint has been made.

The creation of Victorian legislative standards in the Act for unacceptable hate speech online would enable the ICV and others to request that social media platforms moderate abusive online content in a way that reflects those standards. Victorian research<sup>52</sup> indicates that such legislation would encourage online reporting by educating Internet users, and especially young people, to identify and respond to online racial commentary and equip them to better understand appropriate standards of online behaviour.

In summary, the ICV proposes that the Victorian Act should be updated to reflect the unique nature of online hate and vilification and the magnification of abuse and vilification that happens online. The Act needs to recognise that online hate creates an overwhelmingly toxic environment which can inspire people to commit serious criminal offenses. As such, appropriate civil and criminal codes of prosecution should be considered for online vilification.

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<sup>49</sup> eSafety Commissioner, Australian Government Online hate, bullying and violence webpage at <https://www.esafety.gov.au/about-us/research/young-people-social-cohesion/online-hate-bullying-violence> accessed 7 January 2020

<sup>50</sup> Peucker, M., Smith, D., and Iqbal, M. (2018). *Mapping Networks and Narratives of Far-Right Movements in Victoria*. Melbourne: Victoria University

<sup>51</sup> Iner, Derya, ed. *Islamophobia in Australia Report II (2017-2018)* Sydney: Charles Sturt University and ISRA 2019 page 109

<sup>52</sup> Gail Mason and Natalie Czapski, ‘Regulating Cyber-Racism’ 2017 41(1) Melbourne University Law Review (advance)

#### Recommendation

**12. That the Racial and Religious Tolerance Act 2001 provides a set of standards and sanctions for unacceptable online hate content that vilifies racial and religious groups, and legislates for such offensive content to be reported, taken down or filtered.**

#### TOR 6: THE EFFECTIVENESS OF CURRENT APPROACHES TO LAW ENFORCEMENT IN ADDRESSING ONLINE OFFENDING

The Islamophobia Register<sup>53</sup> is a small but important non-profit organisation founded in 2014. It is the first of its kind in Australia to provide a unique platform where anti-Muslim online incidents are reported, recorded and analysed.

The website True Vision in the United Kingdom provides a mechanism for defining and reporting illegal online hate content and Internet hate crime to the police<sup>54</sup>.

The ICV is aware of current limitations in law enforcement in addressing online offending. As a way forward we propose a pilot project in partnership with the Islamic Council of Victoria, other Victorian religious online hate reporting agencies, law enforcement and human rights agencies to develop strategies to reduce harm caused by religious online offending.

#### Recommendation

**13. That the Victorian Governments continues to partner with Muslim community organisations such as the Islamic Council of Victoria, law enforcement and human rights agencies to collect evidence and develop a strategy to reduce online Islamophobic offending in Victoria.**

#### TOR 7: ANY EVIDENCE OF INCREASING VILIFICATION AND HATE CONDUCT IN VICTORIA

Islamophobia and anti-Muslim abuse are rampant in Victoria. To some extent this has not been taken seriously due to lack of quality data. This has been remedied to some degree by the Islamophobia Register that has produced two key reports<sup>55</sup> and provides a unique platform where anti-Muslim online incidents are reported, recorded, and analysed with many of the cases reported from Victoria.

<sup>53</sup> The Islamophobia Register Australia website <https://www.islamophobia.com.au/> accessed 1 January 2020

<sup>54</sup> Internet hate crime on True Vision website at [http://report-it.org.uk/reporting\\_internet\\_hate\\_crime](http://report-it.org.uk/reporting_internet_hate_crime) accessed 1 January 2020

<sup>55</sup> Iner, Derya, ed. Islamophobia in Australia Report I (2014-15) and Report II (2017-2018) Sydney: Charles Sturt University and ISRA 2019 refer to page 13



### **Evidence of increasing anti-Muslim vilification**

- The second *Islamophobia in Australia* report<sup>56</sup> cites 349 incidents reported in 24 months (2017-18) up from 243 incidents were reported in the first *Report* 2014-2015.
- This and previous reports indicate only the 'tip of an iceberg', as under-reporting of hate crimes and related incidents is an ongoing problem worldwide.

### **Public visibility of threats**

- In the second report there was a 30 per cent increase in harassment in places guarded by security officers and surveillance (60 per cent of incidents).<sup>57</sup>
- It is concerning that perpetrators were not deterred by the public visibility of their attacks and appear to be encouraged by the vulnerability of their targets, with 57 per cent of female victims being unaccompanied at the time.<sup>58</sup>
- The presence of security guards and cameras in shopping centres did not deter people from abusing and harassing Muslims. Ineffective security against attacks on Muslims in public places is disturbing.<sup>59</sup>

### **The most vulnerable are targeted**

- Mostly Muslim women (79.6%) and girls wearing the hijab are being targeted with verbal abuse, profanities, physical intimidation and death threats.<sup>60</sup> Their children (47.7%) are indirect targets.<sup>61</sup>
- 14% of cases were unaccompanied children. Children's cases are under-reported
- Insults targeting Muslims' religious appearance were the highest with a slight increase of 61% to 67% in the present report.<sup>62</sup>
- Abuse included death threats.

<sup>56</sup> Iner, Derya, ed. *Islamophobia in Australia Report II (2017-2018)* Sydney: Charles Sturt University and ISRA 2019

<sup>57</sup> Iner, Derya, ed. *Islamophobia in Australia Report II (2017-2018)* Sydney: Charles Sturt University and ISRA 2019

<sup>58</sup> Summary by CSU (Charles Sturt University) News of Iner, Derya, ed. *Islamophobia in Australia Report II (2017-2018)* Sydney: Charles Sturt University and ISRA 2019 at <https://news.csu.edu.au/latest-news/islamophobia-continues-in-australia-2019-report> accessed 1 January 2020

<sup>59</sup> Iner, Derya, ed. *Islamophobia in Australia Report I (2014-15)* and *Report II (2017-2018)* Sydney: Charles Sturt University and ISRA 2019 refer to page 13

<sup>60</sup> Iner, Derya, ed. *Islamophobia in Australia Report I (2014-15)* and *Report II (2017-2018)* Sydney: Charles Sturt University and ISRA 2019 refer to page 9

<sup>61</sup> Iner, Derya, ed. *Islamophobia in Australia Report I (2014-15)* and *Report II (2017-2018)* Sydney: Charles Sturt University and ISRA 2019 refer to page 5

<sup>62</sup> Summary by CSU (Charles Sturt University) News of Iner, Derya, ed. *Islamophobia in Australia Report II (2017-2018)* Sydney: Charles Sturt University and ISRA 2019 at <https://news.csu.edu.au/latest-news/islamophobia-continues-in-australia-2019-report> accessed 1 January 2020

## Normalised abuse

- Anti-Muslim abuse is so widespread and no longer seen as isolated incidents that it risks being 'normalised'.
- Reported incidents include bullying at school or work, insults against women wearing the hijab, to physical attacks involving brutal violence in shops, carparks and public transport.<sup>63</sup>
- Victims experience hate speech as part of a continuum of public disrespect and discrimination.
- When hate speech is not acknowledged and condemned by authorities it becomes normalised. Anti-Muslim sentiment is somehow considered acceptable.<sup>64</sup>

ICV is concerned that such public desensitisation is a form of tacit permission for bad behaviour and is normalising Islamophobia. One of the first public reports to list cases of growing anti-Muslim public harassment in Melbourne was the ECCV Social Cohesion Report: On the Road with Muslim Mothers<sup>65</sup> that listed typical incidents as:

*"I took my daughter for a drive in the car and we had to stop at a red light but the car behind us kept tooting the horn. The driver wound the window down and shouted abuse about Muslims and migrants."*

*"When we moved into our house and the next-door neighbours found out we were Muslims they used to hit our car with banana peels and apples when we went shopping"*

*"My daughter was coming home from university in the train and ... a man wearing a nice suit sitting near her... said some bad words to her. She was wearing a headscarf."*

## Escalating harassment

- In the latest Islamophobia in Australia report, out of 202 offline cases, 60% were verbal abuse, 11% involved property damage and 5% were violent.<sup>66</sup>
- Islamophobia occurs on a continuum.<sup>67</sup> Hate speech can be understood as the initial stage of hate crime that leads to more physically violent abuse.
- Hate speech provides support to the anti-Islam far-right movements in Victoria (Peuker et al 2018). These groups use extensive anti-Muslim hate speech to disseminate lies, prejudice

<sup>63</sup> Iner, Derya, ed. Islamophobia in Australia Report I (2014-15) and Report II (2017-2018) Sydney: Charles Sturt University and ISRA 2019 refer to pages 6-7

<sup>64</sup> Jakubowicz et al 2017 in Iner, Derya, ed. Islamophobia in Australia Report II (2017-2018) Sydney: Charles Sturt University and ISRA 2019

<sup>65</sup> On the Road with Australian Muslim Mothers, ECCV social Cohesion Policy Brief, Ethnic Communities Council of Victoria 2015 at <https://apo.org.au/sites/default/files/resource-files/2015/11/apo-nid58313-1122731.pdf> accessed 1 January 2020

<sup>66</sup> Iner, Derya, ed. Islamophobia in Australia Report I (2014-15) and Report II (2017-2018) Sydney: Charles Sturt University and ISRA 2019

<sup>67</sup> Noble 2009 in Iner, Derya, ed. Islamophobia in Australia Report II (2017-2018) Sydney: Charles Sturt University and ISRA 2019



and hatred against Victoria's Muslim community. To illustrate, interactions from 12 far-right groups, largely with anti-Islamic online social media posts, reached a total of 591,393 individual users who interacted a total of 3,776,282 times across Facebook.<sup>68</sup>

In a climate of rising tension and negativity towards Muslims it is increasingly important to retain the key focus on racial and religious vilification in the Victorian Act and to further strengthen it.

#### **TOR 8: POSSIBLE EXTENSION OF PROTECTIONS OR EXPANSION OF PROTECTION TO CLASSES OF PEOPLE NOT CURRENTLY PROTECTED UNDER THE EXISTING ACT.**

The ICV acknowledges that there are many types of hatred and prejudice, not just racial and religious offences. We acknowledge that Islamophobia has much in common with other forms of racism and prejudice. We acknowledge the need for protection of other attributes that are impacted by hate crime such as gender, sexuality and disability.

In response to the current climate of intense hostility that takes place almost daily in Victoria towards self-declared Muslims the emphasis of this submission has been on retaining and strengthening the racial and religious focus of the Act to protect religious groups from prejudice motivated hate crime. That was the focus of our community consultations.

As a community-based organisation, the people working and volunteering at the ICV endeavour to practice inclusivity and compassion for all disadvantaged and minority groups. We are against any form of hatred and vilification against all groups.

Whilst we would support a complementary Anti-vilification Protection Act, we advocate for the retention and strengthening of the current Racial and Religious Tolerance Act 2001 (Vic).

#### **TOR 9: ANY WORK UNDERWAY TO ENGAGE WITH SOCIAL MEDIA AND TECHNOLOGY COMPANIES TO PROTECT VICTORIANS FROM VILIFICATION**

##### **Evaluation of intersection of racial and religious legislation and digital technology**

The ICV acknowledges the ongoing and overwhelming challenges of effective regulation of racial and religious vilification on the Internet. Recent Australian research<sup>69</sup> indicates that addressing online anti-Muslim and racial abuse lies at a crossroad of different legal domains such as state, territory and federal racial and religious legislation, and digital regulation. The ICV believes that any work that engages social media, anti-vilification legislation and digital technology requires, first and foremost, a comprehensive evaluation of these channels. For suggested solutions please refer to our comments in TOR #5 of this submission.

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<sup>68</sup> Peuker, M., Smith, D., and Iqbal, M. (2018). *Mapping Networks and Narratives of Far-Right Movements in Victoria*. Melbourne: Victoria University page 4

<sup>69</sup> Gail Mason and Natalie Czapski, 'Regulating Cyber-Racism' 2017 41(1) Melbourne University Law Review (advance)

In conclusion we would be pleased to respond to any questions or provide further information and explanation relating to the matters raised in this submission.

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