



SUBMISSION

—

Inquiry into Anti-Vilification Protections

Contents

Introduction	3
About the Commission	4
Our multicultural diversity	5
Protections for our diversity	6
Concerning trends – globally and locally	7
Community & stakeholder feedback	9
Recommendations	11

Introduction

The Victorian Multicultural Commission welcomes the opportunity to contribute to the Victorian Parliament inquiry into current anti-vilification laws, their possible expansion and the extension of protections to classes of people not currently protected under the existing Act.

Submission summary

- Communities are genuinely concerned about the prevalence and rise of vilification.
- National and international research indicates racism contributes to isolation, poorer health including mental health, feelings of vulnerability and it undermines peoples' sense of belonging and ability to participate in the wider community.
- Consensus that there is a profound under-reporting of hate conduct and vilification due to a number of reasons.
- While there was awareness of the existence of legislation there was limited knowledge of the protections and redress available.
- Freedom of expression is important but not an absolute.
- Support the expansion of attributes to protect more people.
- Support the need to address and respond to online hate.
- Improve data collection on incidents of vilification and hatred.
- Improve support for victims of vilification/hatred.
- An ongoing community education and awareness program is essential as legislation alone cannot solve this issue.

About the Commission

The Commission is an independent statutory body, established in 1983 and constituted under the *Multicultural Victoria Act 2011*. The Commission is a primary conduit between Victoria's culturally, religiously and linguistically diverse communities and government. We hold consultations, forums and roundtables with culturally, religiously and linguistically diverse communities to understand the issues they face. We then work together to identify and recommend potential solutions for consideration by government, departments and agencies.

The Commission's consultation mediums include:

- Eight Regional Advisory Councils (RACs) across Victoria – three metropolitan and five regional. Each RAC comprises up to 50 members drawn from the local area to represent their community. Members include community leaders and advocates, local residents, local government representatives, businesses and service providers from non-government organisations.
- The Multifaith Advisory Group – a consultative body of more than 20 faith representatives.
- Roundtable of experts from the multicultural sector.
- A range of other consultations that the Commission holds that are either community specific or place based.

In preparing this submission the VMC consulted the eight RACs and held a series of consultations with specific communities and stakeholders.

Our multicultural diversity

Victoria is one of the most culturally diverse and successful multicultural societies in the world.

Migration has resulted in increasing diversity with the 2016 Census showing that 49.1 per cent of Victoria's population having either been born overseas or having at least one parent who was born overseas. This proportion of the population has increased significantly from 43.6 per cent in 2006 and based on the current demographic trends, is projected to increase further.

26 per cent of Victoria's population spoke a language other than English at home, a rise from 20.4 per cent in 2006 (Census data). The proportion of the overseas-born in Victoria who come from non-main English-speaking countries is 77.7 per cent, the highest for all Australian states and territories.¹

Some of Victoria's faith communities also witnessed significant increases in population between the 2011 and 2016 Census, including Sikhism (increase of 79.2 per cent); Hinduism (increase of 62.3 per cent); and Islam (increase of 29 per cent).

¹ Demographic data can be found at vic.gov.au/discover-victorias-diverse-population

Protections for our diversity

There are considerable social, cultural and economic benefits arising from strengthening our multicultural diversity. As reported through the Scanlon Foundation's Social Cohesion Mapping report, approximately 85 per cent of respondents agreed or strongly agreed that multiculturalism has been good for Australia.

Our success in developing a relatively successful multicultural and socially cohesive society has been the product of a combination of factors including collaborative leadership at the political and community levels, and a range of targeted policies, programs and legislation, designed to facilitate inclusion, equality of opportunity and a sense of belonging.

Given our increasing diversity, Victoria must continue to be at the forefront of protecting human rights and inclusion.

The *Racial and Religious Tolerance Act (2001)* was enacted to provide protections to our culturally and religiously diverse Victorians from the incitement of hatred and vilification. But as Hansard recorded at the time, it was widely acknowledged that legislation was an important tool in setting societal standards, but that it alone cannot redress hate motivated crimes and vilification and that education is critical and complementary to attaining social cohesion objectives.

As such, it is timely to review the existing protections that are in place given that much has changed since 2001. Such changes include:

- The spread of online social media platforms, which while providing greater opportunities for communication and networking have also provided platforms for the dissemination of misinformation, hate and division.
- A range of overseas and local incidents which have had profound impacts on every aspect of Victoria's society.

Concerning trends – globally and locally

While support for multiculturalism has been strong, there are concerning trends that have been widely reported. Further, local and international research highlights the negative impact of racism on the social-economic wellbeing and future health of those targeted by racism. Some of the local evidence that illustrates the concerning trends includes:

- Scanlon Foundation’s 2019 Mapping Social Cohesion Survey which found:
 - 19% of Australian’s experienced discrimination based on their skin colour, ethnic origin or religion in the past 12 months (42% of Muslims, 38% of Hindu’s, 24% of Buddhists – 29% of those with non-English speaking backgrounds compared to 17% of those born in Australia).
 - 24% of those surveyed had negative attitudes towards Muslims (approx. 40% of those surveyed online).
- One third of students surveyed in Australian schools reported being victims of racial discrimination²
- Reports from various communities, including Islamic, Jewish and African communities on experiences of racism and discrimination
- A major Islamophobia study, *Implications of Islamophobia in the Australian landscape* (December 2019, Charles Sturt University, Lead author Dr Derya Iner) found:
 - 349 alleged incidents of Islamophobia had been reported to the register between 2016 and 2017.
 - More than 70 per cent of the victims were female and almost all were wearing a hijab or scarf.
 - in only 10 cases was it reported that a bystander stopped to help the victim.
 - 41 per cent of reports lodged with the register were made by witnesses, not the victim.
 - An increase in severe attacks requiring hospitalisation, which jumped from 2 per cent to 5 per cent
- A 2010 Australian Human Rights Commission report on African Australians: Human Rights and Social Inclusion Issues identified a range of experiences of violence and harassment experienced by African Australians, which took different forms. From occasional incidents of serious assault to more frequent examples of racial abuse and threatening behaviour, as well as damage to mosques and churches.³
- This report also found that “while a large number of African Australians said they felt increasingly concerned about racist violence being directed at them, their family and those in their community, most were not confident that it could be properly dealt with by law enforcement authorities”. The reasons for non-reporting included a fear of authorities, often based on perceptions of police from their country of origin, and a fear of being seen to ‘make trouble’.
- A survey conducted by Vic Health (2007), measured psychological distress as indicative of participants’ risk of mental illness. The findings found:
 - People who experienced the most racism also recorded the most severe psychological distress scores.
 - Over 40% of those who experienced nine or more incidents of racism recorded high or very high psychological distress scores.

2 Priest, N, Chong, S, Truong, M, Sharif, M, Dunn, K, Paradies, Y, Nelson, J, Alam, O, Ward, A & Kavanagh, A, 2019, Findings from the Speak Out Against Racism (SOAR) Student and Staff Surveys, available at: csm.cass.anu.edu.au/sites/default/files/docs/2019/9/Summary_of_findings_2017_SOAR_student_and_staff_surveys.pdf

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

- Almost 40% worried at least a few times a month that their family and friends would be victims of racism, demonstrating that the impact of racism spreads beyond the person directly targeted.
- People who experienced racism in shops, government and public transport settings were significantly more likely than others to experience high or very high psychological distress.

Community & Stakeholder Feedback

A broad summary of the feedback that the Commission received through the consultations it conducted in recent months including through its RACs and targeted roundtable discussions with community representatives, leaders and expert stakeholders highlighted the following:

Prevalence and impact of Racism

- Communities are genuinely concerned about the prevalence of racism, vilification and discrimination – overt, subtle and systemic.
- The need to address and respond to online hate.
- That racism can contribute to: isolation of individuals, groups and communities; poorer health including mental health; feelings of vulnerability; an undermined sense of belonging; and ability to participate in the wider community.
- Consensus that there is profound under-reporting of hate conduct and vilification due to various reasons / factors.

Awareness

- While aware of the existence of legislation, there is limited knowledge of:
 - the differences between discrimination and vilification; and
 - the protections and complaint mechanisms available.

Concerns with the Existing Legislation

- There are barriers to using the RRTA including:
 - the legal tests used;
 - the threshold for breaching the RRTA being too high
- The tests fail to consider the harm caused to individuals, targeted communities and broader society but rather require proof that hate conduct has incited extreme negative emotions in an often-unidentifiable audience.
- There are barriers to the dispute resolution process, including:
 - that the Victorian Human Rights and Equal Opportunity Commission does not have the legal authority to identify unknown respondents; and
 - that the RRTA does not allow representative complaints without identifying individual complainants (unlike the provisions in the Commonwealth's *Racial Discrimination Act*).
- There are barriers to criminal enforcement of the RRTA, including that the offences are not included in the *Crimes Act* and there are alternative offences that are easier to prosecute but do not recognise the specific context and impact of hate-motivated crime.
- The burden of enforcement under the RRTA is on individuals to make a complaint or report hate crime to police.

Freedom of Expression

- Freedom of expression is a critically important right that requires protection, but it is not an absolute and that an appropriate balance is required to protect against vilification and the incitement of hatred and/or violence.

Expansion of Attributes

- There is broad support for the expansion of attributes to protect more people and that other jurisdictions have expanded relevant legislation to be more inclusive compared with Victoria's existing legislation.
- An understanding that should the attributes covered be expanded that rather than having additional legislation that there would be a need to streamline and consolidate the legislation.

Areas of improvement

Legislation

- The need to strengthen both civil and criminal law responses, including the insertion of vilification offences within the Crimes Act to promote stronger enforcement against hate crime.

Community Awareness / Education & Strengthening Policy & Programmatic Responses

- Legislation alone cannot address racism, vilification and hate motivated crimes.
- A more comprehensive and sustained policy, programmatic and community education suite of initiatives are required to:
 - set community standards
 - bring about behavioural change
 - empowering communities,
 - addressing the barriers to reporting,
 - promoting the celebration of diversity,
 - improving the response to hate, particularly online hate, and
 - strengthening research, data collation, monitoring and reporting.
- Community awareness and education needs to be developed in partnership with the community and stakeholders, including VEOHRC and the VMC.

More Broadly

- The need to improve data collection on incidents of vilification and hatred.
- The need to improve support for victims of vilification/hatred.

Recommendations

The VMC:

1. Supports the expansion of attributes to protect more people by including gender, gender identity, sexual orientation, sex characteristics and disability.
2. Recommends better protections that address and respond to online hate.
3. Advocates for improved data collection on incidents of vilification and hatred including improved outcome measures and indicators that more effectively monitor the effectiveness of legislation, programs and services.
4. Recommends the improvement of appropriate support for victims of vilification/hatred.
5. Recommends that relevant stakeholders implement an ongoing community education and awareness program covering both awareness of racism, vilification, hate crimes and their impacts on individuals and communities as well as how to utilise avenues of redress.
6. Recommends that health and mental health impacts of racism be better acknowledged and responded to within justice, policing, health, human services, employment and education portfolios and sectors.
7. Freedom of expression is a critically important right that requires protection, but it is not an absolute and that an appropriate balance is required to protect against vilification and the incitement of hatred and/or violence.

Legislation:

8. To streamline legislation, and on the assumption that the attributes covered would be expanded, that Victoria's vilification laws should be consolidated, possibly within the Equal Opportunity Act 2010 as part of a suite of laws to promote diversity and equality in Victoria.
9. A harm-based civil provision should be introduced that focuses on the harm caused by hate conduct rather than incitement of a third party.
10. The threshold for the serious vilification offences should be lowered and simplified.
11. The serious vilification offences should be incorporated in the Crimes Act to promote stronger enforcement of hate crime in Victoria.
12. The burden of enforcement should be shifted from individuals by empowering the Victorian Human Rights and Equal Opportunity Commission to more effectively regulate vilification and by introducing a positive duty for organisations to take proactive steps to prevent vilification.
13. Expansion of the definition of hate conduct to include Actions against a person in addition to incitement against a group of people.

03 9651 5901
info@vmc.vic.gov.au
multiculturalcommission.vic.gov.au

Level 3, 1 Macarthur Street, Melbourne,
VIC 3000

VICTORIAN
multicultural
commission
strengthening our community

