



AUSTRALIAN MUSLIM WOMEN'S CENTRE FOR HUMAN RIGHTS
Equality without Exception

**Submission to the Victorian Government Anti-Vilification
Protections Inquiry**

31 January 2020

Contents

1. About us
2. Acknowledgment of Country
3. The Rise of Hate
4. Response to the Inquiry into anti-vilification protections
5. Responses to the Terms of Reference
6. Recommendations

About us

This submission has been developed by the Australian Muslim Women's Centre for Human Rights (AMWCHR). AMWCHR is an organisation of Muslim women leading change in our own communities to advance the rights and status of Muslim women in Australia. This submission is based on over 25 years of experience providing one to one support to Muslim women and children, developing and delivering community education and capacity building programs to raise awareness and shift attitudes within Muslim communities. We also work as advocates, researching, publishing and offering training and consultation, to increase sector capacity to recognise and respond to the needs of Muslim women.

As a leading voice for Muslim women's rights in Australia we work to challenge the most immediate and pertinent challenges Muslim women face every day. We promote the rights of Muslim women to enable self-determination, recognising the inherent agency that already exists, bringing issues of inequality and disadvantage to light. AMWCHR works with individuals, the community and government to advocate for equality within the Australian context.

This submission is designed to contribute greater awareness and understanding of the unique challenges and barriers facing Muslim women engaging in Australian society face, and their increased vulnerabilities with the rise in hate and Islamophobia.

Acknowledgment of Country

This submission recognises that gender, race and religion intersect to create multiple forms of discrimination and violence against Muslim women, particularly in the context of growing Islamophobia. It also recognises that preventing prejudice in all forms is bound to the struggles of Aboriginal and Torres Strait Islander communities and before we can successfully tackle issues within our own communities, we must address the ongoing impacts of colonisation, systemic racism and discrimination in all its forms in this country.

The AMWCHR acknowledges the Aboriginal and Torres Strait Islander peoples of this nation. We acknowledge the traditional custodians of the lands on which our centre is located and where we conduct our work. We pay our respects to ancestors and Elders, past and present. AMWCHR is committed to honouring Aboriginal and Torres Strait Islander peoples' unique cultural and spiritual relationships to the land, waters and seas and their rich contribution to society.

The Rise of Hate

Hateful conduct is on the rise in Victoria. AMWCHR has conducted extensive research¹ specifically exploring Muslim women's experience of racism and its impact on them. The incremental impact of racism on Muslim women's sense of safety, particularly in public places, continues to erode their social participation and sense of belonging in Australia.

In 2010, the United Nations Committee on the Elimination of Racial Discrimination noted with concern reports from Australia that highlighted "ongoing issues of discrimination and inequity...experienced by members of certain minority communities including African communities, people of Asian, Middle Eastern and Muslim backgrounds, and in particular Muslim women".² This submission is designed to increase the Anti-Vilification Protections Inquiry (**Inquiry**)'s understanding of the unique experience of Muslim women, which has ultimately rendered 'invisible' the vilification and continued targeting of our community in Australia. Muslim women continue to face unique challenges to their participation in Australian society. Some of these are similar to those of newly arrived Culturally and Linguistically Diverse, refugee and migrant communities, while others are part of their highly politicised identity as Muslims and Muslim women.

The latest *Islamophobia in Australia* reports³ offer a multi-faceted analysis of verified incidents reported to the Islamophobia Register Australia by victims, proxies and witnesses in the two-year period of 2016-2017. It is a continuation of the first Islamophobia in Australia Report published in 2017, which was widely cited and formed a consensus that Islamophobia is an uncontested phenomenon in Australia that is on the rise and continuing unabated.

Racism is now considered to be core to current manifestations of Islamophobia, constructing Muslims as 'others', characterised by 'incivility, inferiority and incompatibility'⁴. Racism and Islamophobia are now realities of the Australian Muslim experience.⁵

Islamophobia in its various manifestations is rife, as documented in the first Islamophobia report, 243 incidents were reported in a 16-month period, while in the second report 349 incidents were reported over a 24-month time period. When looking at offline incidents, the most recent report found that half

¹ Race, Faith and Gender: Converging Discrimination Against Muslim Women in Victoria, The Ongoing of September 11, 2001. Final Report (2008), available here: http://ausmuslimwomenscentre.org.au/wp-content/uploads/2012/10/IWWCV_Race-Faith-report.pdf.

² Committee on the Elimination of Racial Discrimination Seventy-seventh session. 2010. Concluding observations of the Committee on the Elimination of Racial Discrimination for Australia.

³ See Derya Iner (ed), *Islamophobia in Australia* (2014-2015), Charles Sturt University and ISRA (2016) (available here: www.islamophobia.com.au/Islamophobia-in-Australia-ISRA-Academic-Report.pdf) and Derya Iner (ed), *Islamophobia in Australia Report II* (2017-2018), Charles Sturt University and ISRA (2019) (available here: <http://www.islamophobia.com.au/wp-content/uploads/2019/12/Islamophobia-Report-2019-2.pdf>).

⁴ Kevin M Dunn., NataschaKlocker and Tanya Salabay (2007). *Contemporary racism and Islamophobia in Australia: racialising religion*, *Ethnicities* 7(4): 564–589.

⁵ Shahrām Akbarzadeh, *The Muslim Question in Australia: Islamophobia and Muslim Alienation*, *Journal of Muslim Minority Affairs*, 36:3, 323-333, DOI: [10.1080/13602004.2016.1212493](https://doi.org/10.1080/13602004.2016.1212493)

of the cases considered involved hate speech, while one-quarter consisted of vandalism and physical attacks.⁶

Gender disparity was in force in both offline and online cases in both Islamophobia reports. Muslim women continue to be the main targets of offline Islamophobia (78%), bearing the brunt of public antipathy, including insulting and misogynistic remarks. Muslim women are particularly vulnerable as 'soft targets' especially in the immediate aftermath of an incident. Women are also targeted more in public spaces with perpetrators becoming more brazen in the current political climate.

Muslim women and children are particularly susceptible to hate conduct. Of the 113 female victims, 96 percent were wearing a hijab, 57 percent were unaccompanied and 11 percent were with their children.⁷ AMWCHR welcomes this Inquiry as an opportunity to outline recommendations for reform to not only strengthen the legislative framework in Victoria to enable communities to access mechanisms for redress but to advocate for increased investment in prevention and education programs around community awareness raising as one of the main ways to tackle this issue.

Racist laws and policies have played a key role in shaping the nation we live in today. Aboriginal and Torres Strait Islander people have been subjected to colonisation, land dispossession, the Frontier Wars, Stolen Generations, mass-imprisonment and live with the ongoing impacts of these laws and policies. Racism – and its application in the form of vilification conduct – continues to be a serious and ongoing problem, which can significantly impact the lives of those who experience it. The impact of race discrimination and prejudice is real, is becoming more pervasive, and can be deeply traumatic for the individuals who experience it.⁸

Muslim women are particularly vulnerable in this context as the current political climate only further enables discrimination against them. The political rhetoric has unsurprisingly filtered down from the very top echelons of our government and has created an increasingly hostile environment for Muslim women in all aspects of their lives.

In addition to the increased discrimination that Muslim women face – other marginalised minority groups in Australia share similar experiences.

A major Victorian political party ran a racist, dog-whistling election campaign, with a focus on "African gangs" as a "political tactic".⁹ This followed disproportionate media coverage following an incident at

⁶ Derya Iner (ed), Islamophobia in Australia Report II (2017-2018), Charles Sturt University and ISRA (2019), 7 (available here: <http://www.islamophobia.com.au/wp-content/uploads/2019/12/Islamophobia-Report-2019-2.pdf>).

⁷ Derya Iner (ed), Islamophobia in Australia Report II (2017-2018), Charles Sturt University and ISRA (2019), 6 (available here: <http://www.islamophobia.com.au/wp-content/uploads/2019/12/Islamophobia-Report-2019-2.pdf>).

⁸ Joint Standing Committee on Migration Report, 2013 National Inquiry into migration and multiculturalism in Australia.

⁹ Noel Towell and Benjamin Preiss, "Revealed: how African gangs crime campaign backfired on Victorian Liberals", *The Age* (online), 20 November 2019 <www.theage.com.au/politics/victoria/revealed-how-african-gangs-panic-backfired-on-victorian-liberals-20191120-p53c9v.html>

the 2016 Moomba festival. Since then, young South Sudanese-Australians have faced increased racial abuse.¹⁰

A Federal Senator referenced “the final solution” when calling for “a plebiscite to allow the Australian people to decide whether they want wholesale non-English speaking immigrants from the third world, and particularly whether they want any Muslims”.¹¹ Another Senator wore a burqa into parliament as a stunt, and warned that Australia is in danger of being “swamped by Muslims”.¹² The Minister for Home Affairs described the children of the Biloela Tamil family facing deportation as “anchor babies”.¹³

Sixty four percent of LGBTIQ+ people between the ages of 16 and 27 have been subject to verbal abuse on the basis of their sexual orientation, gender identity or intersex status.¹⁴ The marriage equality postal survey provided a platform for a small number people and groups to loudly vilify members of LGBTIQ+ communities, with members of those communities subjected to homophobic slurs, property vandalism and multiple reports of physical assault.¹⁵

Since that campaign, there has been a rise in transphobic discourse in some mainstream media publications, blatantly ignoring the available scientific evidence that strongly endorses supporting transgender children through social and medical transition to improve their mental health outcomes.¹⁶

The internet is also providing a platform for vilification conduct to thrive. There are a myriad of examples of vilification, from the social media backlash against Adam Goodes being named as a brand ambassador for David Jones¹⁷ to the abhorrent way Yassmin Abdel-Magied was treated, including very real death threats sent to her home, when she spoke truth to power in questioning how Australia selectively chooses to remember history. She has since fled the country to ensure her ongoing safety and to live free from continued vilification in mainstream media and real life.

These examples are not exhaustive but illustrate the devastating and real-world consequences of what can happen when hate conduct is allowed to go unchecked.

¹⁰ Centre for Multicultural Youth, *Don't drag me into this: Growing up South Sudanese in Victoria*, 31 October 2018 (available at: <https://www.cmy.net.au/sites/default/files/publication-documents/Don%27t%20Drag%20Me%20Into%20This%20-%20Research%20Report%20Oct%202018%20FINAL.pdf>)

¹¹ Katharine Murphy and Amy Remeikis, “Australian senator calls for ‘final solution to immigration problem’”, *The Guardian* (online), 14 August 2018 <www.theguardian.com/australia-news/2018/aug/14/australian-senator-calls-for-final-solution-to-immigration-problem>

¹² “Hanson warns of being ‘swamped by Muslims’”, *SBS News* (online), 15 September 2016 <www.sbs.com.au/news/hanson-warns-of-being-swamped-by-muslims>

¹³ Paul Karp, “Peter Dutton says Biloela Tamil children are ‘anchor babies’ used to help case”, *The Guardian* (online), 12 September 2019 <www.theguardian.com/australia-news/2019/sep/12/peter-dutton-says-biloela-tamil-children-are-anchor-babies-used-to-help-case>

¹⁴ Kerry Robinson, Peter Bansel, Nida Denson, Georgia Ovensen and Cristyn Davies, “Growing Up Queer: Issues Facing Young Australians Who Are Gender Variant and Sexuality Diverse”, Young and Well Cooperative Research Centre, Melbourne (available at: www.twenty10.org.au/wp-content/uploads/2016/04/Robinson-et-al.-2014-Growing-up-Queer.pdf)

¹⁵ Human Rights Law Centre, “[End the Hate: Responding to hate speech and violence against the LGBTI community](https://www.hrlc.org.au/reports/end-the-hate)”, 13 December 2018 (available at: <https://www.hrlc.org.au/reports/end-the-hate>)

¹⁶ Joan Westenberg, “New birth certificate laws spark anti-trans campaign”, *The Saturday Paper* (online), 17 August 2019 <www.thesaturdaypaper.com.au/news/politics/2019/08/17/new-birth-certificate-laws-spark-anti-trans-campaign/15659640008617>

¹⁷ Patricia Karvelas, *The racists are exposed, now let's end the stalking of Adam Goodes*, *ABC News* (online), 20 October 2015 <www.abc.net.au/news/2015-10-20/karvelas-the-racists-are-exposed/6867926>

Hateful conduct is on the rise and going largely unchecked in Australia but this is not just happening here. It is part of a broader international trend. In 2016, 50 people were murdered and 53 were wounded while at a gay night club in Orlando, Florida. Only last year, 51 Muslim people attending Friday Prayers at Al Noor Mosque and Linwood Islamic Centre in Christchurch, New Zealand were murdered by a white supremacist. Recently across the USA, there has been a spate of anti-Semitic attacks on places of worship and killings.

The above analysis is even more concerning in the context of low reporting rates for vilification. Since 2001, when the *Racial and Religious Tolerance Act 2001 (RRTA)* commenced, there have been few complaints of racial vilification, only two successful cases of vilification before the Victorian Civil and Administrative Tribunal (**VCAT**) and only one prosecution of serious vilification by Victoria Police. This is in circumstances where Victoria Police data provided by the Crime Statistics Agency shows that, for the period between July 2018 and June 2019, there were 582 victim reports related to offences where Victoria Police recorded a 'prejudicially motivated crime', plus 81 organisations who made victim reports.

Lack of awareness about the RRTA and its operation among certain sections of the Australian community, particularly CALD communities may explain to some extent why there may be an under-reporting of racism, with many declining to lodge complaints when they experience racial discrimination or vilification.

Hateful conduct is harmful and contrary to democratic values. It reduces a person's or group of people's ability to contribute to, or fully participate in, society as equals and diminishes their dignity, sense of self-worth and belonging to the broader community.

Hateful conduct can be addressed through education, prevention strategies and best practice laws that are accessible to affected people and communities that hold individual perpetrators to account.

This Inquiry presents a unique opportunity for the Victorian Government to enact best practice anti-hate laws that promote a diverse, safe and harmonious community, that will stop hate in its tracks but creates a socially cohesive and inclusive society for all Australians – not just for a select few.

This submission argues that Victoria's current laws are deficient and addresses what best practice laws should ideally look like.

Response to the Inquiry into anti-vilification protections

The law has a critical role to play in preventing and addressing hateful conduct and is an important tool that should complement education and early intervention strategies to stop hateful conduct occurring in the first instance.

As set out above, the current legal framework is not working. There have been few complaints of racial vilification, only two successful cases of vilification brought before VCAT and only one prosecution of serious religious vilification. There have been no criminal prosecutions of racial vilification under the RRTA. This is in circumstances where hateful conduct is rife.

Understanding hate speech and how vilification plays out for Muslim women requires an intersectional and gendered lens that views violence against women as occurring within a highly politicised context. Muslim women continue to be targeted in public spaces where most perpetrators (73%) are men. From this point of view sexual and gender-based vilification against women needs to be understood from the intersection of racism, colonisation, classism, sexual orientation and gender identity, ethnicity, nationality, religion, dis/ability and age. Understanding these multiple intersections of oppression facing Muslim women in this way highlights how systemic gaps place particular groups of women at higher risk.

In addition to the migration and settlement-related issues that affect participation in Australian society, Muslim women are confronted with unique challenges where research shows that racial discrimination contributes to social and economic disadvantage, both because of their position in the current political climate and because often their religious identity surpasses cultural identity.

This Inquiry provides an opportunity for the Victorian Government to remedy this deficiency.

Victoria currently prohibits vilification and serious vilification through the RRTA. The RRTA defines vilification as conduct that incites hatred against, or serious contempt for, or revulsion or severe ridicule of, a person or class of persons based on a particular protected attribute.

The purposes of the RRTA are to promote racial and religious tolerance by prohibiting certain conduct involving the vilification of persons 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.

The RRTA has, however, been largely ineffective at meeting these purposes for a number of reasons, including:

- (a) The legal test for demonstrating that a person has 'incited hatred' is difficult to prove;
- (b) The law has limited its focus to circumstances where a person has intentionally incited a third party to hatred and has not paid much attention to the harm caused to a person targeted by offensive conduct that might not meet the high threshold test for 'inciting hatred'.
- (c) It has been inaccessible to vilified people, as evidenced through its lack of use.

AMWCHR recommends an expanded, best-practice anti-hate laws that extend beyond vilification and that include:

- a) Expanding the list of protected attributes to include race, religious belief or activity, national or ethnic origin, gender, sexual orientation, gender identity and gender expression, sex characteristics, HIV/AIDS status and disability;
- b) Enacting a better civil test for vilification and enacting a new harm-based test;
- c) Enacting a better criminal test for serious vilification; and
- d) Expanding the definition of conduct.

During 2019, Fiona Patten of the Reason Party introduced the *Racial and Religious Tolerance Amendment Bill 2019* into the Victorian Parliament (**the Patten Bill**). In short, it sought to:

- a) extend the attributes protected by anti-vilification laws from race and religion to a broader range of attributes;
- b) amend the civil test for vilification, to include conduct that 'is likely to incite'; and
- c) amend the criminal test for serious vilification offences to include 'reckless' conduct and replace the subjective test for this conduct with an objective one.

2. While the amendments set out in the Patten Bill are a step in the right direction, it is our submission that they do not go far enough.

Effectiveness of current laws

The law has a critical role to play in preventing and addressing hateful conduct and is an important tool that should complement education and early intervention strategies to stop hateful conduct occurring in the first instance.

The *Charter of Human Rights and Responsibilities Act 2006* (Vic) (**the Charter**) provides that all Victorian's have the right to equality before the law and to enjoy their human rights without discrimination.¹⁸ More broadly, International human rights law provides that the right to equality and non-discrimination constitute basic and general principles relating to the protection of all human rights.¹⁹ Australia is a signatory to all these treaties and the obligations within them extend federally and to every state and territory government.

Article 19 of the *International Covenant on Civil and Political Rights* (**ICCPR**) explains the balance between the right to freedom of expression and other rights, by providing that everyone shall have the

¹⁸ *Charter of Human Rights and Responsibilities Act 2006* (Vic), s 8.

¹⁹ These obligations arise under the International Covenant on Civil and Political Rights (**ICCPR**), the International Covenant on Economic, Social and Cultural Rights (**ICESCR**), the International Convention on the Elimination of All Forms of Racial Discrimination (**CERD**), the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of Persons with Disabilities and the Convention on the Rights of the Child.

right to freedom of expression subject to certain restrictions that are provided by law and are necessary:

- (a) for respect of the rights or reputations of others;
- (b) for the protection of national security or of public order, or of public health or morals.

Article 20 of the ICCPR contains mandatory limitations on freedom of expression, and requires countries, subject to reservation/declaration, to outlaw vilification of persons on national, racial or religious grounds. Australia has made a declaration in relation to Article 20 to the effect that existing federal and state legislation is regarded as adequate, and that Australia reserves the right not to introduce any further legislation on these matters.

Article 26 of the ICCPR provides that 'all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status'.

Article 4(a) of the UN Committee on the Elimination of Racial Discrimination (**CERD**) requires countries to criminalise all dissemination of ideas based on racial superiority or hatred and incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any racial or ethnic groups. Australia has made a reservation in relation to Article 4(a).

CERD notes that racial discrimination does not always affect women and men equally or in the same way. Women may also be further hindered by a lack of access to remedies and complaint mechanisms for racial discrimination because of gender-related impediments, such as gender bias in the legal system and discrimination against women in private spheres of life.

In order to fully realise these rights in Victoria, the current law needs to be amended to protect a broader range of attributes. The legal tests for vilification also need to be amended to help make the laws more accessible and improve their effectiveness.

The need to protect broader attributes

The RRTA currently only provides protection to people or classes of people on the basis of their race and religious belief or activities. Hateful conduct effects, and has profound negative impacts on, other groups of people not currently protected by the RRTA.

The Victorian Government should amend the law so that the categories of protection are expanded to include the following attributes:

- Race;
- Religious belief or activity;
- Gender;

- Sexual orientation;
- Gender identity and gender expression;
- Sex characteristics;
- HIV/AIDS status; and
- Disability.

Best practice definitions of the newly protected attributes should be finalised in consultation with stakeholders from effected communities.

If 'national or ethnic origin' is not included as a standalone protected attribute, the broad definition of 'race' that is currently in the RRTA should be retained to include colour, descent or ancestry, nationality or national origin, ethnicity or ethnic origin.

The law should also protect someone who has a personal association with a person who is identified by reference to any of above protected attributes, for example, parents or advocates, by including a provision similar to section 6(q) of the *Equal Opportunity Act 2010* (Vic).

Attributes protected in other jurisdictions

The introduction of many of the above listed attributes were sought in the Patten Bill, which recommended that gender, disability, sexual orientation, gender identity and sex characteristics be added to the RRTA as protected attributes.²⁰

Extending anti-vilification protections to additional groups of people is consistent with the approach adopted in other Australian states and territories:

- a) Sexual orientation is protected in NSW, the ACT, QLD and Tasmania.
- b) Gender identity is protected in NSW, the ACT, QLD and Tasmania.
- c) Sex characteristics are protected in the ACT ('intersex status') and Tasmania ('intersex variations of sex characteristics').
- d) Gender is protected in Tasmania (for the purposes of the provisions in section 17(1) of the Tasmanian *Anti-Discrimination Act 1998*).
- e) Disability is protected in the ACT and Tasmania.
- f) HIV/AIDS status is protected in NSW and the ACT.
- g) Lawful sexual activity, age, marital status, relationship status, pregnancy, breastfeeding, parental status and family responsibilities are protected in Tasmania.
- h) Race is protected in federal laws, NSW, ACT, Qld, Tasmania and WA.
- i) Religion is protected in the ACT, Qld and Tasmania.

Extending anti-vilification protections to additional groups of people is also consistent with the approach being adopted overseas:

²⁰ Racial and Religious Tolerance Amendment Bill 2019 (Vic), s 1.

- a) in the United Kingdom, protected attributes include race, religion and sexual orientation;
- b) in Canada, protected attributes include colour, race, religion, national or ethnic origin, age, sex, sexual orientation, gender identity or expression and mental or physical disability; and
- c) in South Africa, protected attributes include race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language, birth, HIV/AIDS status and any other ground where discrimination causes or perpetuates systemic disadvantage, undermines human dignity or adversely affects equal enjoyment of rights in a serious manner.

Intersectionality

Intersectionality is the overlap of various attributes – for example, race, religion and gender – that contributes to the specific type of oppression and discrimination experienced by a person. The term was coined by Kimberlé Crenshaw in her work helping to explain the particular forms of systemic oppression experienced by African-American women.²¹

People who experience vilification on the basis of more than one attribute are uniquely disadvantaged and should be able to complain about that conduct on the basis of their intersectional experience, as opposed to complaining on the basis of a singular attribute.

For example, a Muslim woman who is subjected to vilifying conduct targeted at her because she is a Muslim **and** identifies as a woman **of colour** should be able to bring **one** complaint that captures all of those protected attributes, rather than needing to isolate a particular attribute and bring only one cause of action.

In amending anti-hate laws, the Victorian Government should consider how to draft legislation that recognises the reality of intersectional hateful conduct and that makes the complaint process straightforward for people who identify with multiple protected attributes.

For the avoidance of doubt, any potential to bring intersectional complaints should not undermine the ability for people to bring claims based on individual attributes or to run complaints based on individual attributes in the alternative to intersectional complaints.

Best practice laws to prevent hate

The RRTA currently provides protection to people or classes of people on the basis of their race or religious belief or activities. There are civil protections that aim to address conduct that incites hatred against others and there are criminal provisions that aim to address serious vilification where part of the conduct includes threatening physical harm to others.

²¹ See eg, Kimberle Crenshaw, "Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics" (1989) *University of Chicago Legal Forum*.

This submission proposes:

- Enacting a better civil test for vilification;
- Enacting a new protection against hateful conduct based on a harm-based civil test;
- Enacting a better criminal test for serious vilification;
- Enacting a new criminal offence prohibiting conduct that is intended or is reasonably likely to cause a person to have a reasonable fear for their safety or security of property; and
- Expanding the definition of the conduct captured by anti-vilification laws.

Change the name of the Act

If there is to be a standalone Act, the current name of the Act – the *Racial and Religious Tolerance Act* – needs to change or any other Act containing these protections should not include ‘Tolerance’ in its title. In order to address the increasing levels of hateful conduct, we need to move past the rhetoric where we simply tolerate the existence of others and instead promote respect for, understanding, acceptance and ultimately the celebration of, diversity.

Enact better civil tests for vilification

Current laws

Sections 7 and 8 of the RRTA currently provide that a person must not engage in conduct that incites hatred against, serious contempt for, or revulsion or severe ridicule of, a person or class of persons on the basis of their race or religion.

To prove a contravention of these provisions, a person must show that a third party – who might be unidentifiable – has been incited to hatred or other strong emotions because of another person’s conduct.

Exemptions exist if the conduct was done reasonably and in good faith:

- in the performance, exhibition or distribution of an artistic work; or
- in the course of any statement, publication, discussion or debate made or held, or any other conduct engaged in, for:
 - (i) any genuine academic, artistic, religious or scientific purpose; or
 - (ii) any purpose that is in the public interest; or
- in making or publishing a fair and accurate report of any event or matter of public interest (**the public conduct exemption**).²²

²² *Racial and Religious Tolerance Act 2001 (Vic)*, s 11.

An exemption also exists for conduct done in private (**the private conduct exemption**).²³ This places the onus on a respondent to prove objectively that conduct was intended to be private.

In the 17 years the RRTA has been in effect, few complaints of vilification have been made pursuant to these sections. This is because of a myriad of factors, which are compounded by a legal test that sets the bar too high by requiring a person to prove that a third party has been incited to hatred.

These provisions by themselves also place the emphasis in the wrong place – whether a third party has been incited to hatred – in circumstances where the emphasis should be the experience of, and the impact on, the person who has been subjected to vilifying conduct and their community.

Proposed changes to current laws²⁴

A reformed civil incitement test for vilification

The existing incitement provisions in sections 7 and 8 of the RRTA should be amended.

There should be a reformed incitement provision that provides that a person must not engage in conduct that **expresses or is reasonably likely in the circumstances** to incite hatred, serious contempt for, revulsion or severe ridicule of a person or group of persons on the basis of one or more of the protected attributes set out above.

This is consistent with recommendation 17.1 of the ACT Law Reform Advisory Council's Review of the *Discrimination Act 1991* (ACT).

The Victorian Government should retain a civil incitement provision aimed at preventing the incitement of hatred against others for consistency with other states and territories, which all have civil incitement provisions. This would also be consistent with the requirement in Article 20 of the ICCPR to outlaw vilification of persons on national, racial or religious grounds. This submission notes that Tasmania has retained a civil incitement provision in addition to also enacting a complementary, harm-based test, which is set out below.

Enact a separate protection against hate-based conduct using a harm-based civil test

In addition to reforming the incitement civil test for vilification, the Victorian Government should enact a separate harm-based protection against hate-based test that prohibits offensive conduct. Pursuant to that provision, it should be unlawful for a person to do an act, otherwise than in private, if:

- a) the act is reasonably likely, in all of the circumstances, to offend, insult, humiliate or intimidate another person or group of people; and
- b) the act is done because of one or more protected attribute of the other person or of some or all of the people in the group.

²³ *Racial and Religious Tolerance Act 2001* (Vic), s 12.

²⁴ The legal test section of AMWCHR's submission are informed by the 'Stopping hate in its tracks' submission to the Anti-Vilification Protections Inquiry prepared by the Human Rights Law Centre on behalf of a coalition of organisations.

This would create a standalone provision where the focus is on the impact of hate-based conduct, and the harm caused by that conduct, on a particular person or group of persons, not whether a third party has been incited to hatred.

Whether a provision like this is contravened would be judged by a court according to a reasonable person of the targeted group. This is because, in *Eatock v Bolt* [2011] FCA 1103 (which looked at the interpretation of the equivalent federal provision), it was found that:

- a) the reference to 'person' is to be interpreted as a reference to an identified person (or persons) that the conduct in question was directed at;²⁵ and
- b) the assessment as to the likelihood of people within a group being offended by an act directed at them in a general sense, is to be interpreted by reference to a representative member or members of the group.²⁶

This means that people wishing to rely on the harm based test would no longer need to demonstrate that a third party has been incited to hatred, but would be required to show that it was likely that a reasonable person of the targeted group would have been offended, insulted, humiliated or intimidated by the conduct. This is important because it is people from targeted groups that suffer the impacts of hate, not the Australian community as a whole. It is inappropriate for a member of the Australian community who has never had the degrading experience – for example being called a terrorist or being told that they don't belong here and to go back to where they came from – to understand the impact of such statements and the harm, fear and sense of exclusion they create.

This proposal is similar, but slightly narrower, than laws that have been introduced in Tasmania. In Tasmania, a person must not engage in conduct which offends, humiliates, intimidates, insults or ridicules another person on the basis of a protected attribute in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that person would be offended, humiliated, intimidated, insulted or ridiculed.²⁷

At the federal level, equivalent harm-based laws have been interpreted sensibly by the courts and are reasonably effective in operation. To contravene the provision, conduct must have “profound and serious effects”, which are “not to be likened to mere slights”.²⁸ While the word 'offend' could have a wider meaning than the other terms used, it must be interpreted with the words chosen as its partners.²⁹

To the extent the Victorian Government might have concerns regarding the language of the harm-based test proposed in this submission, those concerns could be mitigated by codifying the sensible way that the equivalent section has been interpreted at the federal level and confirm that the separate protection against hate-based conduct only applies to conduct that has a profound and serious effect, not to conduct that has only a minor or slight effect.

²⁵ *Eatock v Bolt* [2011] FCA 1103, [246].

²⁶ *Eatock v Bolt* [2011] FCA 1103, [251].

²⁷ *Anti-Discrimination Act 1988* (Tas), s 17(1).

²⁸ *Creek v Cairns Post Pty Ltd* [2001] FCA 1007.

²⁹ *Eatock v Bolt* [2011] FCA 1103.

Conduct captured

The term 'conduct' in both civil provisions should adopt the reformed definition of 'public act' under section 93Z(5) of the *Crimes Act 1900* (NSW) so that it includes:

- a) any form of communication (including speaking, writing, displaying notices, playing of recorded material, broadcasting and communicating through social media and other electronic methods) to the public;
- b) any conduct (including actions and gestures and the wearing or display of clothing, signs, flags, emblems and insignia) observable by the public; and
- c) the distribution or dissemination of any matter to the public.

For the avoidance of doubt, an act may be a public act even if it occurs on private land.

Exemptions

The current private conduct exemption and public conduct exemptions in the RRTA should apply to both of the above civil provisions, subject to amending the exception for "any purpose in the public interest" to "any **genuine** purpose in the public interest" consistent with the wording in the equivalent federal provision.³⁰

The definition of 'religious purpose' in the exemption should also be narrowed and replaced with a definition that reflects the manifestation of freedom of religion and belief under Article 18 of the ICCPR to "worship, observance, practice and teaching".

Enact better criminal tests for serious vilification

Current laws

Section 24 and 25 of the RRTA currently provide that a person must not, on the basis of the race or religion of another person or class of persons, intentionally engage in conduct that the offender knows is likely:

- (a) to incite hatred against that other person or class of persons; **and**
- (b) to threaten, or incite others to threaten, physical harm towards that other person or class of persons or the property of that other person or class of persons.³¹

A person also must not, on the ground of the race or religion of another person or class of persons, intentionally engage in conduct that the offender knows is likely to incite serious contempt for, or revulsion or severe ridicule of, that other person or class of persons.³²

There are no exemptions to these provisions.

³⁰ *Racial Discrimination Act 1975* (Cth), s 18D.

³¹ *Racial and Religious Tolerance Act 2001* (Vic), ss 24(1) and 25(1).

³² *Racial and Religious Tolerance Act 2001* (Vic), ss 24(2) and 25(2).

These sections of the RRTA set an extremely high threshold to meet by requiring a person to demonstrate incitement and a threat of physical harm to person or property.

To our knowledge, there has only been one prosecution of serious vilification by Victoria Police, whereby Blair Cottrell, the former United Patriots Front leader, was convicted of inciting hatred, contempt and ridicule of Muslims after making a 2015 video beheading of a dummy in protest of a Bendigo mosque.

Proposed changes to current laws

A reformed criminal vilification test

The law should be amended so that there is a single criminal offence that prohibits serious vilification on the ground of the protected attributes set out above.

The threshold for that criminal offence should be lowered. This should be done by:

- a) amending the fault element to 'intentionally **or recklessly**', to cover circumstances where there is a significant risk that a person's conduct is likely to incite hatred, but who proceeded with that conduct notwithstanding that risk;
- b) replacing the subjective test of conduct that 'the offender knows is likely to incite' with an objective test of conduct that 'is likely to incite'; and
- c) prohibiting threats **or** incitement (rather than threats **and** incitement), so that conduct is captured which incites hatred against another person or class of persons on the basis of the protected attribute(s) **or** threatens violence or property damage to another person or class of persons.

Conduct captured

The term 'conduct' in the criminal provision should adopt the reformed definition of 'public act' under section 93Z(5) of the *Crimes Act 1900* (NSW), as set out above.

Exemptions

The criminal offence should include an exception for 'private conduct' modelled on the private conduct exception for the civil protections, as set out above.

Awareness raising

The Victorian Government should duplicate the criminal vilification offence in the *Crimes Act 1958* (Vic) to raise its visibility within Victoria Police.

Police must also be provided with improved education and training so that they can better identify and respond to cases of serious vilification. They also need to be provided with cultural intelligence, unconscious bias and sensitivity training to take complaints and reports of vilification seriously.

Education and training should also be provided to prosecutors and judges to raise awareness of, and support the consistent application of, the prejudice-motivated sentencing provision in the *Sentencing Act 1991* (Vic).

Specific provision on causing a person to have a reasonable fear

The Victorian Government should also consider introducing an offence to criminalise hate conduct that is intended or is reasonably likely to cause a person to have a reasonable fear for their safety or security of property.

In this regard, during the Inquiry into Racial Vilification Law in NSW, Professors Simon Rice and Neil Rees recommended introducing a criminal offence in NSW that prohibits an act that:

is intended, or is reasonably likely, to cause a person to have a reasonable fear in the circumstances for their own safety or security of property, or for the safety or security of property of their family or associates.³³

An offence like this would require proof either of intent to generate fear in another person or that a reasonable person would be aware of the likelihood that fear would be caused.

As explained by Professor Simon Rice and Professor Neil Rees, “the alternative to intent – a reasonable person’s awareness of the likelihood – ensures that a perpetrator of racial vilification is not able to rely on their own lack of awareness, insight or wilful blindness as to the effect of their conduct, or on a belief that what they said was true”.³⁴

The intention of the ‘reasonable fear’ test is to shift the focus away from incitement of a third party to the objective harm that results from an offender’s conduct.

Striking the right balance

The right to freedom of expression is an essential component of a democratic society and should be limited only to the extent that can be justified by an open and democratic society.

The proposed laws set out above do not unreasonably burden the right to freedom of expression. They only apply to public conduct and are subject to exemptions that apply to conduct done reasonably and in good faith in a number of appropriate circumstances.

Further, hateful conduct is not a form of expression protected by the implied freedom of political communication, which comes from judicial interpretation of the Constitution, nor is it protected by the right to freedom of expression set out in section 15 of the Charter.

In the recent case of *Cottrell v Ross* [2019] VCC 2142, Chief Judge Kidd found that:

³³ Professor Simon Rice and Professor Neil Rees, Submission to the Legislative Council Law and Justice Committee Inquiry into Racial Vilification Law in NSW, 19 March 2013, 2.

³⁴ Professor Simon Rice and Professor Neil Rees, Submission to the Legislative Council Law and Justice Committee Inquiry into Racial Vilification Law in NSW, 19 March 2013, 12.

the preponderance of views in the authorities support the position that anti-vilification or anti-discrimination legislation of this kind [the RRTA] does not burden the freedom of communication about government and political matters, but rather promotes civil political discourse.³⁵

Anti-hate legislation like the RRTA promotes civil political discourse by setting parameters to enhance communications about government and political matters in a civilised, diverse democracy which values all its members, irrespective of their attributes.³⁶

Anti-vilification legislation also attempts to ensure that all people are able to exercise their freedom of expression, recognising that hateful conduct diminishes that right for people and groups of people who are targeted by vilifying conduct. As said by Chief Judge Kidd:

racial and religious vilification speech – especially of an extreme kind – is antithetical to the fundamental principles of equality, democratic pluralism and respect for individual dignity which lie at the heart of the protection of human rights. Such legislation positively promotes people of different religions to participate in public life and discourse, free from vilification.³⁷

The amendments proposed in this submission are aimed at prohibiting hateful conduct, not at stifling political discussion. Outside of hateful conduct, people are free to communicate with each other and representatives about political matters and hold governments to account. People are free to express their views about others, or activities of others, in any way whatsoever, provided they do so in a manner that does not:

- a) incite hatred, serious contempt for, revulsion or severe ridicule a person or group of persons on the basis of a protected attribute;
- b) offend, insult, humiliate or intimidate a person or group of persons on the basis of a protected attribute; or
- c) threaten violence or property damage against a person or group of persons on the basis of a protected attribute.

Improved enforcement provisions

In order to make the laws easier to enforce, the law should be amended to allow for representative complaints. Currently, the RRTA relies on individual people making individual complaints which can expose them to further vilifying conduct.

The law should be amended to allow representative complaints with the ability to suppress the identity of complainants in appropriate contexts. This would help to encourage affected people to come forward. This could be modelled on section 46PB of the *Australian Human Rights Commission Act 1986* (Cth), which allows representative complaints that ‘describe or otherwise identify the class members’.

³⁵ *Cottrell v Ross* [2019] VCC 2142 [145], citing *Sunol v Collier (No 2)* (2012) 289 ALR 128, [89]; *Durston v Anti-Discrimination Tribunal (No 2)* [2018] TASSC 48, [36]-[46], [49]; *Owen v Menzies* (2012) 293 ALR 571, [72]; *Eatoock v Bolt* (2011) 197 FCR 261, [239] where Bromberg J extracts *R v Keegstra* [1990] 3 SCR 697, 764 (iii).

³⁶ See *Owen v Menzies* (2012) 293 ALR 571, [72].

³⁷ See *Cottrell v Ross* [2019] VCC 2142, [98].

The Victorian Equal Opportunity and Human Rights Commission (**the Commission**) should be given broader enforcement powers. The law should be amended so that the Commission is empowered with a range of regulatory functions and powers to address hateful conduct in the Victorian community. This should include reinstating the Commission's full range of regulatory powers and functions, including powers to undertake own motion public inquiries and investigate serious matters than indicate a possible contravention of anti-hate laws.

Addressing online vilification

For the purposes of the current RRTA, 'engage in conduct' includes the use of the internet or email to publish or transmit statements or other materials.

In addition, the *Criminal Code Act 1995* (Cth) makes it is an offence to menace, harass or cause offence using a 'carriage service'. There is also a web of federal and state laws that prohibit threats to kill, threats to cause serious harm and stalking that apply to online conduct.

The Patten Bill seeks to grant new powers to the Commission to apply to VCAT for orders so that they are able to request information from any relevant person or business (such as Facebook or Twitter) to identify online 'trolls' after a vilification complaint has been made. Such requests could require, for instance, social media companies to hand over information on individuals who engage in online abuse through 'anonymous' accounts. We support this.

In addition, section 15 of the RRTA should be amended to extend liability for authorising or assisting vilification or victimisation to corporations (in addition to natural persons and unincorporated associations in the current provision).

Engaging with social media and technology companies

1. The eSafety Commissioner

- Under *the Broadcasting Services Act 1992*, the eSafety Commissioner (**eSafety**) deals with complaints about prohibited and potentially prohibited online content, with powers to issue a takedown or cessation notice when the content or live stream is hosted or streamed in Australia.
- After the Christchurch terrorist attacks on 15 March 2019, eSafety reached out to the major social media platforms to understand what measures they were taking to prevent the proliferation of the terrorist video and related inflammatory and harmful content.
- Some websites blocked by internet service providers (**ISPs**) took down material independently or as a result of eSafety's intervention.

- On 9 September 2019, eSafety directed ISPs to block access to eight websites that continued to provide access to the terrorist video or the manifesto of the alleged perpetrator. It was the first time eSafety exercised the power to direct blocking of content.
- eSafety reports that it is continuing to work closely with the industry, including ISPs and social media companies, to develop an additional protocol for the rapid removal of extreme terrorist or violent criminal material.³⁸

2. The Criminal Code Amendment (Sharing of Abhorrent Violent Material) Act 2019

- In the wake of the Christchurch terrorist attacks, the Federal Government enacted the Criminal Code Amendment (Sharing of Abhorrent Violent Material) Act 2019 (**Act**), which amends the Criminal Code Act 1995 (Cth) (Criminal Code) and came into force on 6 April 2019³⁹
- The changes to the Criminal Code apply to ISPs, content service providers and hosting service providers anywhere in the world, including websites, social media platforms and content management/cloud solutions providers
- The Act regulates abhorrent violent material, being audio and/or visual material that records or streams offensive abhorrent violent conduct
- The Act creates 2 new kinds of offences under the Criminal Code:
 - Failure by a service provider to notify the Australian Federal Police, within a reasonable time, that abhorrent violent material relating to conduct which is occurring, or has occurred, in Australia is accessible on a service.
 - Failure by a service provider to expeditiously remove, or cease to host, abhorrent violent material that is accessible within Australia
- The Act is intended to complement the existing take-down and referral procedures for online content under Schedules 5 and 7 of the *Broadcasting Services Act 1992* (Cth).
- The Act also creates a new regime which enables the eSafety Commissioner to issue a notice that, at the time the notice was issued, a specified content or hosting service could be used to access abhorrent violent material.
- The Act is, on its face, a direct response to the Christchurch attacks. However, it is also part of a broader global trend to regulate the activities of online platforms, as seen in the ACCC's Digital Platforms Inquiry and the United Kingdom's Online Harms White Paper (see below).

³⁸ <https://www.esafety.gov.au/about-us/newsroom/protecting-australians-terrorist-material-online>

³⁹ <https://www.legislation.gov.au/Details/C2019A00038>

- 'The Act aims to stop the spread of abhorrent violent content but does not address the underlying cause of the violence itself. There remains a question whether regulatory reform would be more appropriately targeted at laws governing hate speech and racial discrimination'.⁴⁰

3. Federal government response to the ACCC Digital Platforms Inquiry

- In December 2017, Australian Competition and Consumer Commission (the ACCC) was directed to consider the impact of online search engines, social media and digital content aggregators (digital platforms) on competition in the media and advertising services markets.
- Among its recommendation was Recommendation 15: Digital Platforms Code to counter disinformation:

'Digital platforms with more than one million monthly active users in Australia should implement an industry code of conduct to govern the handling of complaints about disinformation (inaccurate information created and spread with the intent to cause harm) in relation to news and journalism, or content presented as news and journalism, on their services. Application of the code should be restricted to complaints about disinformation that meet a 'serious public detriment' threshold as defined in the code. The code should also outline actions that constitute suitable responses to complaints, up to and including the take-down of particularly harmful material.'

- It proposed that the code should be registered with and enforced by an independent regulator, such as the Australian Communications and Media Authority
- The Government released its response to the Digital Platforms Inquiry's final report on 12 December 2019, announcing new powers and investment for the ACCC, updates to the Privacy Act and an updated regulatory framework for media.⁴¹ A newly announced digital unit within the ACCC will spearhead the action
- The Government's main proposal for disinformation is a voluntary code of conduct between online platforms and media, taking lessons from similar codes overseas. This is considered a weak approach that Facebook and other online platforms are unlikely to take seriously.⁴²
- The Government has cited the European Union's Code of Practice on Disinformation as a reference point. This Code of Practice was developed in April 2018 with a wide range of subjects to pursue, including transparency in political advertising, takedown of fraudulent accounts and tackling campaigns of disinformation. Online platforms including Facebook signed the code and developed voluntary roadmaps for their approaches. Signatories also

⁴⁰ <https://www.bakermckenzie.com/en/insight/publications/2019/04/unprecedented-penalties-for-enabling>

⁴¹ <https://treasury.gov.au/publication/p2019-41708>

⁴² https://www.tai.org.au/sites/default/files/P849%20CRT_ACCC%20Digital%20Platforms%20Inquiry%20response%20%5Bpdf%5D.pdf

presented self-assessment reports which outline their progress against their roadmaps and code objectives.

4. The Council of Attorneys-General

- The Council of Attorneys-General (CAG) assists the Council of Australian Governments by developing a national and Trans-Tasman focus on maintaining and promoting best practice in law reform. The CAG consists of Attorneys-General from the Australian Government, all states and territories, and the New Zealand Minister for Justice
- Their communique of November 2019 advised that 'Participants agreed to include the regulation of online harmful content as a standing agenda item at future CAG meetings to enable CAG to play an important oversight role and inform future cooperative work to ensure all Australians are protected from the full range of harmful online content.'⁴³

5. The 'Christchurch Call'

- On May 15 2019, New Zealand Prime Minister, Jacinda Ardern, and French President, Emmanuel Macron brought together heads of state and government and leaders from the tech sector to adopt a global pledge named the 'Christchurch Call'.⁴⁴ Australia was a founding supporter of the 'Christchurch Call'.
- The Christchurch Call outlines collective, voluntary commitments from governments and ISPs aimed at boosting efforts to keep internet platforms from being used to spread hate, organise extremist groups and broadcast attacks.
- By 26 September 2019, the total number of country and company supporters of the 'Christchurch Call' had reached 58.

6. UK Online Harms White Paper

- According to its foreword, the UK Online Harms White Paper 'puts forward ambitious plans for a new system of accountability and oversight for tech companies. It says that 'Although other countries have introduced regulation to address specific types of harm, this is the first attempt globally to address a comprehensive spectrum of online harms in a single and coherent way.'⁴⁵
- *Published jointly by the UK government's Department for Digital, Media, Culture and Sport and the Home Office*, it proposes a new regulatory framework for online safety with an arm's-length

⁴³ <https://www.ag.gov.au/About/CommitteesandCouncils/Council-of-Attorneys-General/Documents/Council-of-Attorneys-General-communique-November-2019.pdf>

⁴⁴ <https://www.christchurchcall.com/call.html>

⁴⁵ <https://www.gov.uk/government/consultations/online-harms-white-paper/online-harms-white-paper>

regulator that would be responsible for setting and enforcing rules prohibiting speech that is illegal (hate crimes) or socially damaging (cyberbullying and intimidation)

- It has been said that ‘While the white paper only applies to the U.K., it offers the rest of us the opportunity to think realistically about what public regulation of social media should look like... For all its flaws, the white paper is a responsible, if incomplete, attempt to address real social issues.’⁴⁶

7. Harmful Digital Communications Act

The *Harmful Digital Communications Act 2015* (New Zealand) (**HDCA New Zealand**) aims to deter, prevent and mitigate harm caused by digital communications and to provide victims of harmful digital communications with a quick and efficient means of redress. Principle 10 reads as follows: ‘*A digital communication should not denigrate a person by reason of his or her colour, race, ethnic or national origins, religion, gender, sexual orientation or disability*’.⁴⁷ Incitement of third parties is unnecessary to be shown, which is a key difference from many other hate speech provisions reviewed. Instead, only denigration of an individual on one of the listed grounds needs to be shown.

The HDCA New Zealand allows a person to make a complaint to Netsafe, the approved agency, and work towards resolution. If resolution cannot be reached, Netsafe alerts the person of their right to apply to the District Court for an order as an affected individual who has suffered or will suffer harm as a result of the digital communication.⁴⁸ The content can be ordered removed, an apology ordered published or criminal liability assigned where intention to cause harm and the harm resulted is established. The HDCA New Zealand is not confined to one on one communication - it includes the realm of cyberspace and could be interpreted as including social media platforms on the basis of a recent court case.⁴⁹

Regarding online content hosts, they must notify a user who posted harmful content to take it down within 48 hours once Netsafe provides notice of a complaint to the online content host. An online content host will be protected from civil and criminal liability provided they undertake such steps.⁵⁰

⁴⁶ <https://theconversation.com/what-the-u-k-s-online-harms-white-paper-teaches-us-about-internet-regulation-115337>

⁴⁷ *Harmful Digital Communications Act 2015* (New Zealand), s 6 ‘principle 10’.

⁴⁸ *Ibid* ss 19, 21, 22.

⁴⁹ *R v Partha Uyer* [2016] NZDC 23957 [29].

⁵⁰ *Harmful Digital Communications Act 2015* (New Zealand), ss 23, 24.

The need to prevent hate-based conduct

The rise of vilification conduct is partly because the broader community ignores or accepts its presence and tolerates an increasingly discriminatory discourse. Prejudice and hostility are ‘part and parcel’ of veiled Muslim women’s everyday lives. This internalisation and normalisation place the onus of coping on the victim instead of addressing the systemic violence and inequality which perpetuates prejudice behaviour. As a result, many Muslim women have opted to mitigate any potential prejudicial violence by keeping a low profile and retreating to their homes or becoming less visibly Muslim by removing their coverings.⁵¹

The Victorian Government needs to accept this reality in order to properly reckon with it and must urgently work with communities who experience hate to design strategies to prevent it.

Any law reform efforts must be accompanied by the Victorian Government working with communities who are targeted by hateful conduct to develop strategies – including public awareness campaigns and education resources, reporting tools and more effective data collection – to change the deep-seated, negative attitudes that feed hate-related behaviour.

While Victoria’s anti-vilification laws relate to public conduct, it is crucial to also consider the cumulative and societal impact of conversations that occur behind closed doors.

Part of preventing vilifying conduct includes building a more enduring Victorian human rights culture. The most recent review of the Charter in 2015 said this could be done by strengthening the Charter’s scope and operation, including stronger remedies and more rights. The Victorian Government has, however, made little progress on recommendations that were made through that review process. Strengthening the scope and operation of the Charter could go a long way towards creating a culture in Victoria where people better understand and respect each other’s rights.

Recommendations

This report makes the following recommendations to improve social inclusion, reduce racism and vilification of Muslim communities in Australia:

- Co-design alongside the Muslim community, especially women to support, strengthen and develop anti-racism education programs.
- Consult, engage and collaborate with women directly and not overly rely on ‘religious leaders’ or representatives to frame the issue.
- Create a Muslim survival kit that provides information about reporting tools and empowers Muslims, particularly Muslim women to report incidents when they occur.
- Implement a community education strategy for the general public on Muslims and Muslim women.
- Invest additional resources into community led services for ethnic and cultural minority communities to ensure those communities receive specific and appropriate services.

⁵¹ Allen, C 2010, *Islamophobia*, University of Birmingham, UK, Asghate.

- Establish a Centre Against Racism that monitors and evaluates the impact of racism and that designs education programs for the general public and targeted communities.
- A support program that provides information, support, and counselling to Muslim women and their children who may be affected by racism.
- A community awareness-raising strategy to develop awareness within the Muslim community of the incremental impact of racism and to support the community's capacity to challenge and contextualise experiences of racism.
- Improve the accessibility of racism and discrimination complaints mechanisms.
- Provide training for police and public transport staff to better understand, identify and deal with mundane and everyday racisms.
- Capacity building, leadership and mentoring initiatives that promote Muslim women in community roles in the broader society.
- Counselling and support services be made available to address the impact of racism on Muslim women.
- Develop awareness of screening by health professionals for the effects and impacts of racism on Muslim women and their children.
- Empathy training and a pamphlet to make bystanders aware of their options in situations of racism.
- Government funding need to consciously encourage the wider community to work with Muslims in community development projects.
- Establish guidelines and standards for the collection and handling of hate crime data and hate incident data in order to standardize the definition and the interpretation, by law enforcement, of hate crimes.
- Develop a public awareness campaign to promote diversity and inclusion.
- Conduct a public review of best practice worldwide in relation to combating cyber racism.
- Ensure counter-terrorism measures comply with international human rights law obligations and do not discriminate either directly or indirectly on the basis of race, colour, descent or national or ethnic origin.