



PO Box A147
Sydney South
NSW 1235
www.alhr.org.au

27 April 2021

The Hon Daniel Andrews MP
Premier
Office of the Premier of Victoria
1 Treasury Place
Melbourne VIC 3002

CC: The Hon. Jaclyn Symes MP, Attorney-General

Dear Premier,

Victorian Parliament's Legal and Social Issues Committee's findings and recommendations regarding the *Racial and Religious Tolerance Act 2001* (Vic)

Australian Lawyers for Human Rights (**ALHR**) writes to express its support for the findings of the Victorian Parliament's Legal and Social Issues Committee (**the Committee**) that the *Racial and Religious Tolerance Act 2001* (Vic) has failed in its twin purposes of promoting racial and religious tolerance, and providing redress for victims.

Specifically, the Committee observed that harassment and vilification both remain commonplace for Indigenous and African Victorians, and that instances of islamophobia and antisemitism are on the rise, while women, LGBTIQ+, and Victorians with disabilities also reported experiences of vilification. Moreover, the Committee noted an increase in racial threats and vilification directed at Asian communities during the COVID-19 pandemic. Accordingly, in the Committee's view, *'it is essential that the Victorian Government implement legislative reform and complementary prevention-based strategies to reduce and eliminate vilification in Victoria'*.¹

ALHR urges the Victorian Government to adopt all 36 of the Committee's recommendations, in order to ensure that Victoria's laws are consistent with international human rights law standards.

¹ See: https://www.parliament.vic.gov.au/images/stories/committees/lpic-LA/Inquiry_into_Anti-Vilification_Protections_/Media/3_MAR_2021_Committee_calls_to_extend_anti_vilification_protections.pdf

Key recommendations from the Committee include²:

- Extending anti-vilification protections to include women, LGBTIQ+ people, people with HIV/AIDS, and people with disabilities.
- Streamlining the regime by moving vilification protections into the *Equal Opportunity Act 2010* (Vic) (EO Act).
- Introducing a harm-based provision to assess vilification from the victim's perspective.
- Extending the Victorian Equal Opportunity and Human Rights Commission's enforcement and investigative powers.
- Introducing a positive duty on organisations to take reasonable and proportionate measures to eliminate vilification.
- Introducing a 'recklessness' provision to lower the threshold for criminal conduct, and reviewing maximum sentences so they are commensurate with other criminal offences.
- Amending the civil incitement test from 'conduct that incites' to 'conduct that is likely to incite'.
- Funding culturally appropriate services with a view to providing legal information, counselling and support to targeted communities; increasing funding to community legal centres for litigation by victims of vilification including by representative action; and funding school and community-based education programs.
- Making it generally unlawful to display Nazi symbols.

Human rights can only be enjoyed within any country through legislation which protects human rights – or which restricts activities that breach human rights.

The Committee's recommendations are supported by international human rights laws and norms.

Article 19 of the International Covenant on Civil and Political Rights³ (ICCPR) refers to the importance of freedom of expression, but provides that the right to freedom of expression 'carries with it special duties and responsibilities'.

Article 19(3) of the ICCPR places a clear limitation on the freedom of expression in relation to the respect for the reputation of others. The following article, Article 20, explicitly states that '[a]ny advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law'.

In addition:

- Article 26 of the ICCPR enshrines the right to be free from discrimination, (including racist discrimination)

² Ibid.

³ UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171

- the Preamble to the ICCPR clarifies that all rights are about protecting “the inherent dignity of the human person” (which would be diminished by racist speech)
- Article 17(1) of the ICCPR enshrines the right to protection from attacks on honour and reputation

Article 20(2) of the ICCPR specifies that states must prohibit ‘advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence’.⁴ Pursuant to the *Convention against Torture and Other Cruel Inhumane or Degrading Treatment or Punishment (CAT)*, Australia is obliged to prevent acts of cruel, inhumane or degrading treatment (including vilification).⁵

The *Convention of the Rights of Persons with Disabilities (CRPD)* likewise states that no person shall be subjected to cruel or degrading treatment,⁶ and requires states to ‘take all effective, legislative, administrative, judicial or other measures to prevent persons living with disabilities from being subjected to cruel or degrading treatment’.⁷ The *CRPD* emphasises that state parties must undertake to raise awareness throughout society regarding persons with disabilities, and to foster respect for the rights and dignity of persons with disabilities.⁸ State parties must also combat harmful practices, such as vilification, relating to persons with disabilities.⁹ Additionally, article 16(5) of the *CRPD* requires Australia to put in place ‘effective legislative and legislative policies, including women and child focused legislation and policies, to ensure that instances of exploitation, violence and abuse against persons with disabilities are identified, investigated and where appropriate prosecuted’.

The Declaration on the Elimination of Violence against Women requires states to ensure that women are entitled to the equal enjoyment and protection of all human rights including the right not to be subjected to cruel or degrading treatment or punishment.¹⁰

In addition, article 4(a) of the *International Convention on the Elimination of All Forms of Racial Discrimination (CERD)* requires signatories to introduce offences for the ‘dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin’.¹¹

⁴ Ibid. art 20(2)

⁵ ART 16(1) CAT .

⁶ *Convention of the Rights of Persons with Disabilities*, opened for signature 13 December 2006, 2515 UNTS 3 (entered into force 3 May 2008).

⁷ Ibid, art 15(2).

⁸ Ibid, art 8(a).

⁹ CRPD, above n 3, art 8(b).

¹⁰ *Declaration on the Elimination of Violence against Women*, Proclaimed by the General Assembly Resolution 48/104 of 20 December 1993, art 3(h).

¹¹ *International Convention on the Elimination of All Forms of Racial Discrimination*, opened for signature 21 December 1965, 660 UNTS 165 (entered into force 4 January 1969).



Substantial international authority supports the extension of protection to sexual orientation, even when not explicitly specified in the provisions of some treaties. The case of *Toonen v Australia* found the *ICCPR* reference to sex in article 2 and the right of privacy in article 17 include sexual orientation.¹² LGBTIQ+ vilification is hateful, cruel and harmful and warrants the strongest legal sanctions. Victoria can and should be a leader in this area of human rights protection

ALHR therefore calls upon the Victorian Government to implement the Committee's recommendations by introducing amendments to the EO Act within the current term of parliament.. This would modernise Victoria's laws in a manner consistent with international standards and community expectations regarding every person's right to live free from discrimination and hate speech.

We look forward to the Victorian Government's response to the Committee's recommendations. If you would like to discuss any of these matters further, please contact ALHR's Victorian Convenors by email at vic@alhr.org.au

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Kerry Weste', is placed over a light blue rectangular background.

Kerry Weste
President
president@alhr.org.au

Bianca Failla
Victorian Co-Convenor
vic@alhr.org.au

Elise Almond
Victorian Co-Convenor
vic@alhr.org.au

Emily McDonald
Victorian Co-Convenor
vic@alhr.org.au

About ALHR

ALHR was established in 1993 and is a national association of Australian solicitors, barristers, academics, judicial officers and law students who practise and promote international human rights law in Australia. ALHR has active and engaged National, State and Territory committees and Specialist National Thematic committees. Through advocacy, media engagement, education, networking, research and training, ALHR promotes, practices and protects universally accepted standards of human rights throughout Australia and overseas.

¹² Human Rights Committee, *Toonen v Australia*, Communication No. 488/1992, UN Doc CCPR/C/50/D/488/92 (1992).