

# **City of Greater Dandenong**

**SUBMISSION TO THE LEGAL AND  
SOCIAL ISSUES COMMITTEE OF THE  
LEGISLATIVE ASSEMBLY**

**INQUIRY INTO ANTI-VILIFICATION  
PROTECTIONS**

**17 December 2019**

## Table of Content:

<b>Background</b>	<b>3</b>
<b>Introduction:</b>	<b>4</b>
<b>The City of Greater Dandenong</b>	<b>4</b>
<b>Social cohesion and racial and religious tolerance in Australia</b>	<b>4</b>
<b>The effectiveness of the Racial and Religious Tolerance Act 2001</b>	<b>5</b>
<b>The effectiveness of law enforcement in addressing online offending</b>	<b>6</b>
<b>Extension of protection to classes of people not currently protected under the existing Act</b>	<b>7</b>
<b>Conclusion</b>	<b>8</b>

## Background

On 12 September 2019 the Victorian Government referred Victoria's anti-vilification laws, including the *Racial and Tolerance Act 2001*, to the Legal and Social Issues Committee of the Legislative Assembly, with reference to:

1. The effectiveness of the operation of the Racial and Religious Tolerance Act 2001 (the Act) in delivering upon its purposes;
2. The success or otherwise of enforcement of the Act, and the appropriateness of sanctions in delivering upon the Act's purposes;
3. Interaction between the Act and other state and Commonwealth legislation;
4. Comparisons in the operation of the Victorian Act with legislation in other jurisdictions;
5. The role of state legislation in addressing online vilification;
6. The effectiveness of current approaches to law enforcement in addressing online offending;
7. Any evidence of increasing vilification and hate conduct in Victoria;
8. Possible extension of protections or expansion of protection to classes of people not currently protected under the existing Act;
9. Any work underway to engage with social media and technology companies to protect Victorians from vilification.

The Legal and Social Issues Committee requested interested parties to provide submissions which address these terms of reference by 20 December 2019.

The following is the City of Greater Dandenong's submission to the inquiry.

## Introduction:

### The City of Greater Dandenong

The City of Greater Dandenong is the most multicultural and diverse municipality in Australia with residents from 157 birthplaces and 64 per cent of its population born overseas, representing all faiths and religions practiced in Australia. There are over 200 languages and dialects spoken within the municipality.

Social cohesion, which often refers to the sense of belonging amongst community members, and the relationships that consist between those members, plays an integral role in fostering a culture of respect and harmony in Greater Dandenong.

Council has been instrumental in achieving a remarkably high level of social cohesion, through a multi-pronged approach. This has included the implementation of its *Community Wellbeing Plan 2017-21*, the establishment of the Multicultural and People Seeking Asylum Advisory Committee, and through continued and sustained advocacy efforts aimed at protecting and strengthening the rights of minorities.

### Social cohesion and racial and religious tolerance in Australia

Australian state and federal legislations have played an integral part in achieving a high degree of social cohesion. Real and lasting change has been brought about by anti-discrimination and equal opportunity laws, as well as, by amendments made to the *Marriage Act 1961*, which enabled same-sex couples to legally recognise their union.

However, there remain fractures within our society that current legislations struggle to or simply cannot resolve. It is not uncommon for any form of racial and/or faith related vilification to percolate through to members of our community on a daily basis, even in the presence of the *Racial and Religious Tolerance Act 2001*.

During the lead up to the 2018 Victorian state election, we saw heightened rates of anti-black racist discourse being employed by state and federal politicians, the media and other mainstream Australian institutions. The 'African gangs' narrative targeted many members of the Dandenong community based on ethnicity and race, conflating blackness with criminality. Nobody was held to account for producing and reproducing this racist narrative.

The prevalence of online vilification has taken these social tensions to centre stage, where we see women, the LGBTIQ+ community and people with disabilities disproportionately being abused and vilified. Yet, currently, these groups are not afforded the same protections from harmful abuse as those granted for race and religion.

To ensure that Australia maintains a high degree of social cohesion and harmony, the Victorian Government must look at appropriate avenues that address the persistent vilification that many segments of our community continue to experience. If found to be appropriate, legislative change should be pursued to protect minority groups, and effectively support inclusion and social harmony.

Anti-vilification laws set an important bar as to the type of conduct that will not be tolerated in Australian society. Greater Dandenong welcomes the Legal and Social Issues Committee's inquiry into anti-vilification, and as a model for multicultural communities is well placed to make a submission to the inquiry.

## The effectiveness of the Racial and Religious Tolerance Act 2001

Anti-vilification legislation exists in most Australian jurisdictions, and has been in place in Victoria for almost two decades with the introduction of the *Racial and Religious Tolerance Act 2001*. Although the Act prohibits behaviour that incites or encourages hatred, serious contempt, revulsion or severe ridicule against another person or group of people because of their race and/or religion, members of our community continue to be on the sharp end of racial abuse.

The Australian Bureau of Statistics estimated that 18 per cent of Victorians experienced racism in the last year, with the rate increasing to 26 per cent for people from Sub-Saharan Africa.<sup>1</sup> Greater Dandenong is home to a significant number of people from Sub-Saharan and East Africa, therefore many of our community members are being exposed to such hate speech. Similar hate is directed towards people of Muslim and Jewish faiths.

And, whilst these numbers are high and increasing, historically there has only ever been one successful conviction under this Act. In 17 years since 2001, there have been on average 17 complaints per year of racial vilification and 15 per year of religious vilification in Victoria. Most complaints are dealt with privately under the Victorian Equal Opportunity and Human Rights Commission's civil dispute resolution powers, generally via mediation. During this period there have only ever been three successful cases of vilification at VCAT and only one case of serious vilification prosecuted in the Magistrates Court.

The extremely low rates of complaints, and even lower rate of conviction, can be partly explained by the high threshold for contravening the Act. The legal test for vilification under the Act is different from the dictionary definition of vilification, which is to 'speak evil of, defame, traduce'. Instead, the Act focuses on whether the vilification had 'incited' hatred to any third party that may have been witness to the hate speech.

Proving whether abusive, humiliating, and degrading language had incited hatred amongst a group of people has shown to be very difficult to achieve, and explains the low conviction rate. It also highlights that the onus of responsibility lies with the victim to prove that others were incited by the hate speech. This burden of proof places the defendant often in a better position, who more often than not, enjoys a higher social status compared to the plaintiff.<sup>2</sup> The existence or act of vilification or hate speech in itself should be adequate for the law to prosecute the offender.

---

<sup>1</sup> Department of Health and Human Services, 2017, Racism in Victoria and what it means for the health of Victorians, Victorian Government, available at <<https://www2.health.vic.gov.au/public-health/population-health-systems/health-status-of-victorians/survey-data-and-reports/racism-in-victoria>>

<sup>2</sup> Ibid

## The effectiveness of law enforcement in addressing online offending

Rates of online racism have increasingly become part of the internet mainstream, with 35 per cent of Australian internet users sadly having witnessed such behaviour on social media sites and the comments sections of news articles.<sup>3</sup> Research has shown that users feel more emboldened to engage in anti-social behaviour when online, due to the anonymity that is available to them in a virtual environment.<sup>4</sup>

Although the Act does expressly prohibit an individual from engaging in racial or religious vilification on the internet or via email, the legislation does little in addressing the anonymity of online trolls. Therefore, law enforcement to-date has been relatively weak in apprehending online offenders.

Greater Dandenong Council acknowledges the proposed amendments to the Act that were introduced to the Legislative Assembly earlier this year, which seeks to uncover the identities of racist perpetrators. If successful, the amendments would grant extended powers to the Victorian Equal Opportunity and Human Rights Commission to be able to request information from any relevant person or business to identify online trolls once a vilification complaint has been made against them.

---

<sup>3</sup> Mason, Gail & Czapski, Natalie, 2017, Regulating Cyber-Racism, *Melbourne University Law Review*, vol 41, iss 1

<sup>4</sup> Ibid

## Extension of protection to classes of people not currently protected under the existing Act

The Greater Dandenong Council supports diversity and our policies significantly align with the extended list of protected attributes to be included by the Act to include gender, disability, sexual orientation, gender identity, and sex characteristics and health status. An inclusion of these attributes reflects the intercultural make up of both the Greater Dandenong and wider Victorian community.

For instance, 11 per cent of Australians are of diverse sexual orientation, sex or gender identity.<sup>5</sup> Sadly, however, 61 per cent of LGBTIQ young people reported experiencing verbal homophobic abuse.<sup>6</sup> It becomes unsurprising then, that gay, lesbian, bisexual and transgender people are three times more likely to experience depression compared to the broader population.<sup>7</sup>

By extending the Act to include attributes such as gender identity and sexual orientation, the Victorian Government will be sending a strong message to the wider community that verbal abuse directed at women and the LGBTIQ community will no longer be accepted.

---

<sup>5</sup> Australian Human Rights Commission, 2014, Face the facts: Lesbian, gay, bisexual, trans and intersex people, available at <[https://imb.uq.edu.au/files/20271/AHRC\\_LGBTI\\_factsheet.pdf](https://imb.uq.edu.au/files/20271/AHRC_LGBTI_factsheet.pdf)>

<sup>6</sup> Ibid

<sup>7</sup> Ibid

## Conclusion

To conclude, the Greater Dandenong Council acknowledges the proposed amendments to the *Racial and Religious Tolerance Act 2001* which seek to extend the list of attributes to include gender, disability, sexual orientation, gender identity, sex characteristics and the inclusion of HIV and AIDS as further attributes.

We also acknowledge that modifications to the Act's threshold test for vilification would also be important for some members of the community, as they would decrease the burden of proof required when taking legal action against hate speech.

The Greater Dandenong Council are supporters of freedom of expression and diversity. We recognise the negative effects that hate speech and vilification have on social cohesion and harmony and we appreciate the Committee taking this submission into consideration in their inquiry into the *Racial and Religious Tolerance Act 2001*.