

December 2019

VCOSS response to the Legislative Assembly Legal and Social Issues Committee Inquiry into Anti-Vilification Protections

The Victorian Council of Social Service (VCOSS) welcomes the opportunity to respond to the Victorian Parliament Legal and Social Issues Committee's Inquiry into Anti-Vilification Protections.

As the peak body for social and community services in Victoria, and an advocate for a sustainable, fair and equitable society, VCOSS is supportive of Victoria's anti-vilification laws being expanded and strengthened to provide greater protections for more Victorians.

Vilification and hate can have devastating and long-lasting impacts on individual wellbeing, including physical and mental health and labour market participation. At a societal level, vilification and hate divides and damages our community, erodes equality and creates an economic burden.

Just three people have ever been convicted under the current *Racial and Religious Tolerance Act 2001 (Vic)*, despite Victoria Police data showing about three offences per day are motivated by prejudice¹.

While we need a multi-faceted approach to tackling vilification and hate, it is important that the legal remedies at our disposal are robust. In this submission, VCOSS makes the following recommendations.

RECOMMENDATIONS

- Expand protections to more people and communities
- Respond to the evolution of online abuse
- Address unfinished business in protecting human rights
- Make all avenues for support accessible
- Drive behaviour change across the board

¹ H Cohen, 'Hate crime laws rarely used by Australian authorities, police figures reveal', ABC News, 3 May 2019.

Expanding protections to more people and communities

We endorse the expansion of anti-vilification protections to support more people and communities, in particular, people with disability, women and the LGBTIQ+ community.

These groups often experience significant and sustained vilification and hate, and are not protected by the current anti-vilification laws. Expanding protection to these communities would bring Victoria into line with other states and territories, and more importantly, would respond to the growing hate experienced by these groups.

The prevalence and persistence of vilification and hate, and the correlation with violence experienced by people with disability, women and the LGBTIQ+ community, cannot be ignored.

One in four people with disability in Australia aged over 15 have experienced some form of discrimination, and 47 per cent have experienced violence².

Of 910 complaints to the Victorian Equal Opportunity and Human Rights Commission³ over the past financial year, 595 or 65 per cent were in relation to disability discrimination. In Tasmania, where anti-vilification laws protect people with disability and broader protected groups, disability was identified as the highest attribute for discrimination and prohibited conduct complaints⁴.

Over 64 per cent of LGBTIQ+ people aged 16 to 27 have experienced verbal abuse based on their sexual orientation, gender identity or intersex status⁵, which contributed to increased isolation, depression, thoughts of self-harm, suicidal ideation, and suicide. Six in ten LGBTIQ+ people experience verbal homophobic abuse and two in 10 experience physical violence⁶.

Gendered hate speech is pervasive in Australian society, including the media and social media, however it is not consistently or adequately recognised by law⁷. A survey by Amnesty International found that three in 10 Australian women have experienced online abuse or harassment, with two-fifths (42 per cent) identifying the abuse or harassment as being misogynistic or sexist in nature⁸.

² Australian Institute of Health and Welfare, *'People with disability in Australia'*, September 2019, www.aihw.gov.au/reports/disability/people-with-disability-in-australia/justice-and-safety/disability-discrimination, accessed 19 December 2019.

³ Victorian Equal Opportunity and Human Rights Commission, *Annual Report 2018-19*, October 2019.

⁴ Equal Opportunity Tasmania, *Annual Report 2018-19*, September 2019.

⁵ Young and Well Cooperative Research Centre, *Growing Up Queer: Issues Facing Young Australians Who Are Gender Variant and Sexuality Diverse*, February 2014

⁶ Australian Human Rights Commission, *'Face the facts: lesbian, gay, bisexual, trans and intersex people'*, 2014.

⁷ T D'Souza et al, *'Harming with words: The failure of Australian law to prohibit gendered hate speech'*, UNSW Law Journal, September 2018, www.unswlawjournal.unsw.edu.au/wp-content/uploads/2018/09/DSouza-et-al.pdf, accessed 19 September 2019.

⁸ Amnesty International, *'Australia: Poll reveals alarming impact of online abuse against women'*, www.amnesty.org.au/australia-poll-reveals-alarming-impact-online-abuse-women, accessed 19 September 2019.

More than a third of women who experienced this type of abuse and harassment reported fearing for their physical safety. One in three women have experienced violence by the age of 15, and one in five women has experienced sexual violence⁹. A range of studies have consistently identified correlations between values and attitudes than normalise violence against women and acts of gender-based violence¹⁰.

Responding to the evolution of online abuse

We support measures that would increase powers to identify and prosecute online vilification and hate.

While the online environment provides greater opportunities for people to communicate and connect than ever before, digital spaces are often unsafe and unequal¹¹. Online hate speech hinders, silences and marginalises people and communities from participating safely, sharing their views and feeling respected.

Recent research shows Australian women experience alarmingly high levels of online abuse that is often related to their gender, race and/or sexual orientation¹².

Online hate speech has significant impacts on individuals' mental health, confidence and sense of safety, and has a dangerous and damaging ripple effect throughout our community.

While anti-discrimination laws and other areas of the law cover harassment, discrimination, stalking and cyberbullying, gaps remain regarding hate speech in the online context. The individualised nature of online hate speech and anonymity makes these crimes difficult to prosecute, and current provisions do not empower authorities to identify people who are the source of a vilification complaint.

Addressing unfinished business in protecting human rights

This inquiry is a welcome step towards stronger legal protections for people and communities. But there is more to be done, including addressing unfinished business in strengthening Victoria's Human Rights Charter.

Human rights set minimum standards for treating people fairly and respectfully; but these standards are eroded by loopholes in current protections.

⁹ Our Watch, 'Facts and figures', www.ourwatch.org.au/Understanding-Violence/Facts-and-figures, accessed 19 September 2019.

¹⁰ A de Silva, 'Words CAN harm us: The need for gender vilification provisions in Victoria law', *Law Institute Journal August 2014*, www.liv.asn.au/LIV-Home/Practice-Resources/Law-Institute-Journal/Archived-Issues/LIJ-August-2014/Words-CAN-harm-us--The-need-for-gender-vilificatio, accessed 19 September 2019; T D'Souza et al, 'Harming with words: The failure of Australian law to prohibit gendered hate speech', *UNSW Law Journal*, September 2018,

www.unswlawjournal.unsw.edu.au/wp-content/uploads/2018/09/DSouza-et-al.pdf, accessed 19 September, page 27. 2019.

¹¹ EA Lane, 'Rape threats and cyberhate? Vote no to the new digital divide', *The Conversation*, 22 June 2019, www.theconversation.com/rape-threats-and-cyberhate-vote-no-to-the-new-digital-divide-43388, accessed 19 September 2019.

¹² Amnesty International, 'Australia: Poll reveals alarming impact of online abuse against women', www.amnesty.org.au/australia-poll-reveals-alarming-impact-online-abuse-women, accessed 19 September 2019.

The most recent Charter review in 2015 recommended building a more enduring Victorian human rights culture by strengthening the Charter's scope and operation, and including stronger remedies and more rights. However, little progress on its recommendations has been made. Exemptions in the Equal Opportunity Act also continue to allow discrimination against members of the LGBTIQ+ community, particularly around their employment in religious schools.

The Victorian Government should build upon its track record of addressing inequities and discrimination by progressing work on the Racial and Religious Tolerance Act, the Equal Opportunity Act and the Human Rights Charter to ensure the human rights of all Victorians are comprehensively protected and promoted.

Making all avenues for support accessible

The processes for pursuing legal protections and outcomes regarding discrimination, vilification and hate must be made accessible to ensure people can exercise their rights.

People who experience disadvantage and marginalisation, including First Nations people, culturally and linguistically diverse communities, LGBTIQ+ people, young people, women and people with disability are likely to face greater barriers in engaging with Victoria's human rights laws.

Targeted community engagement and tailored, culturally safe and gender-sensitive support will be crucial components in delivering strong and meaningful protections.

Driving behavior change across the board

We recommend expanded anti-vilification laws are supported by behavior change initiatives.

We want a Victoria that is fair, inclusive, welcoming and kind, where people feel safe and supported in their community. Vilification is at the extreme end of discriminatory and harmful behaviours and beliefs that marginalise, isolate and exclude people and groups in our community.

In addition to a review of anti-vilification protections, there is an opportunity for the Victorian Government to support complementary and preventative measures that drive behaviour change. While the Victoria's anti-vilification laws relate to public conduct, it is crucial to consider the cumulative and societal impact of conversations that occur behind closed doors.

Expanded anti-vilification laws present an opportunity to boost protections, send a powerful message and start important community conversations about how we can make our state a safe, equal and fair place for everyone.

