



Submission
to the
Legislative Assembly Legal and Social Issues Committee
Inquiry into Victoria's Anti-Vilification Protections

20 December 2019

JobWatch acknowledges the Aboriginal and Torres Strait Islander peoples of this nation. We acknowledge the traditional custodians of the lands on which we are located and where we conduct our business. We pay our respects to ancestors, and Elders, past, present and emerging.

Employment Rights Information for Workers

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1. About JobWatch

Job Watch Inc. (**JobWatch**) is an employment rights community legal centre which is committed to improving the lives of workers, particularly the most vulnerable and disadvantaged. It is an independent, not-for-profit organisation which is a member of the Federation of Community Legal Centres (Victoria) and Community Legal Centres Australia.

JobWatch was established in 1980 and is the only service of its type in Victoria, Queensland and Tasmania. The centre is funded by Victorian and Federal funding bodies to do the following:

- a) Provide information and referrals to workers from Victoria, Queensland and Tasmania via a free and confidential telephone information service (**TIS**);
- b) Engage in community legal education through a variety of publications and interactive seminars aimed at workers, students, lawyers, community groups and other appropriate organisations;
- c) Represent and advise vulnerable and disadvantaged workers across all employment law jurisdictions; and
- d) Conduct law reform work with a view to promoting workplace justice and equity for all workers.

Since 1999, JobWatch has maintained a comprehensive database of the callers who contact our telephone informational service. To date we have collected approximately 192,000 caller records with each record usually canvassing multiple workplace problems including, for example, contract negotiation, discrimination, bullying and unfair dismissal. Our database allows us to follow trends and report on our callers' experiences, including the workplace problems they face and what remedies, if any, they may have available at any given time. JobWatch currently responds to approximately 10,000 calls per year. The vast majority of our callers are not union members and cannot afford to get assistance from a private lawyer.

This submission is based on the experiences of callers to JobWatch's TIS and clients of JobWatch's legal practice. De-identified case studies of callers to JobWatch's TIS and/or legal practice clients have been utilised to highlight particular issues.

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2. Introduction

JobWatch welcomes the opportunity to make a submission to the Legislative Assembly Legal and Social Issues Committee, regarding the inquiry into current anti-vilification laws in Victoria. JobWatch is pleased to contribute to the inquiry in response to the recent introduction of the *Racial and Religious Tolerance Amendment Bill 2019*.

JobWatch notes that the Terms of Reference instruct the Committee to consider the effectiveness and success of the operation of the *Racial and Religious Tolerance Act 2001 (the Act)* in delivering on its purposes, as well as the interaction between similar legislation in the different jurisdictions of Australia. Additionally, this submission will also consider whether the legislation covers online vilification and the effectiveness of its enforcement and coverage in light of any increased evidence around online vilification. JobWatch will also consider any evidence of increasing vilification and hate conduct in Victoria, based on calls to our TIS.

JobWatch agrees with Fiona Patten's (MP) submission for the introduction of a new anti-vilification Bill which would supersede the Act. The current effect of the Act is confined to racial and religious vilification. However, we agree that this should be extended to additional vilification protections on the basis of gender, disability, sexual orientation, gender identity and sex characteristics.

Currently, only racial and religious vilification are rendered unlawful by ss 7 and 8 of the Act, which provide that:

7 Racial vilification unlawful

(1) A person must not, on the ground of the race of another person or class of persons, engage in conduct that incites hatred against, serious contempt for, or revulsion or severe ridicule of, that other person or class of persons.¹

8 Religious vilification unlawful

(1) A person must not, on the ground of the religious belief or activity of another person or class of persons, engage in conduct that incites hatred against, serious contempt for, or revulsion or severe ridicule of, that other person or class of persons.²

2.1 The difference between unlawful discrimination and vilification under present laws

Discrimination and vilification are two very different things.

Under the *Equal Opportunity Act 2010 (Vic)*, direct discrimination occurs when someone is treated less favourably because of a protected attribute (such as sex, race or religion) in an area of public life that is

¹ *Racial and Religious Tolerance Act 2001 (Vic)* s7(1).

² *Racial and Religious Tolerance Act 2001 (Vic)* s8(1).

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proscribed (such as employment). Indirect discrimination, instead, occurs when a condition, requirement or practice that is unreasonable is imposed (or proposed) and it has a disproportionate impact on people with one of the protected attributes (e.g., sex, race or religion).

On the other hand, for an act to amount to vilification in Victoria it must be a *public act* that *incites hatred, serious contempt, revulsion or severe ridicule* based on a person's *race or religion*. This may take the form of website and social media comments.³ Vilification will not be made out if it could 'reasonably be seen that the conduct would only be seen by the parties to the conduct'⁴ but, if the parties ought to have expected that their conduct may have been seen or heard by anyone else, the private conduct exception will not apply.

2.2 Who may make a vilification claim under the Act at present?

Under s19 of the Act, the individual who has been affected, a person on behalf of the individual or a representative body on behalf of a named person or persons may make a vilification claim.⁵

2.3 Effect of making a vilification claim under the Act

A finding of vilification under the Act can result in up to 6 months' imprisonment.⁶ In 17 years of the Act's existence, there have been on average 17 complaints per year of racial vilification and 15 complaints per year of religious vilification in Victoria. However, there have only ever been 3 successful cases of vilification at VCAT and only one case of serious vilification prosecuted in the Magistrates' Court of Victoria.⁷

2.4 The role of state legislation in addressing online vilification

It is important that laws change and evolve to meet the changing habits of society. With more and more people actively engaging with online posts and publications, there is a growing need to regulate the use (and potential misuse) of online publications.

In our view, our current laws need to be updated in order to adequately regulate the flow of online content. Specifically, Victorians need to be better protected from online acts that incite hatred, serious contempt, revulsion or ridicule based on the attributes of gender, disability, sexual orientation, gender identity and sex characteristics, as well as race and religion.

3. The current Act is inadequate

The current Act does not adequately protect Victorians. It only offers a limited protection for a select group of people, and disregards many vulnerable groups of Victorians (e.g. women, people with a disability and members of the LGBTI community).

³ *Racial and Religious Tolerance Act 2001 (Vic)*.

⁴ *Ibid* s12.

⁵ *Ibid* s19(1)-(3).

⁶ *Ibid* s24.

⁷ Fiona Pattern, 'Critics misunderstand vilification bill amendment', *The Age* (online, October 3 2019)

<https://www.theage.com.au/national/victoria/critics-misunderstand-vilification-bill-amendment-20191003-p52x7l.html>.

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We support the move to broaden the protections against vilification to a greater number of vulnerable Victorians. Moreover, we agree that the continued development of social media has led to a cloak of anonymity, enabling people to write whatever they want online without fear of repercussions. We are of the firm view that Victoria currently has insufficient methods of dealing with social media abuse under the Act and accordingly legislative change is needed to better protect vulnerable Victorians against online vilification.⁸ The proposed Bill, if passed, will modernize a nearly 20-year-old law that is largely ill-equipped to deal with current day vilification issues.⁹

4. Case studies

The following de-identified case studies, taken from JobWatch's TIS and client database, highlight the need to expand Victoria's anti-vilification protections:

4.1 Tracey – Gender

Tracey was employed as an apprentice mechanic. She was highly distressed when she contacted JobWatch, as she had just been dismissed from her job. Tracey worked almost entirely with men. She described her workplace as a "boys club." She had been subjected to verbal abuse over the 12 month period of her employment with her colleagues victimizing her on a daily basis calling her names such as "dumb bitch," "drama queen" and a "fucking slut". Tracey told JobWatch about one particular incident in which the men she worked with spent the day calling her derogatory, sexist names before attempting to set her on fire. Tracey was very afraid and upset. She felt unsafe. She described having stomach ulcers and anxiety as a result of the treatment she had endured.

4.2 Jennifer – Gender

Jennifer called JobWatch after experiencing various forms of abuse over a period of 3 years in her employment. She believed that the harassment was directly linked to her being a woman. She described being regularly shouted at in an aggressive and intimidating manner by her male managers; being physically pushed by one of her colleagues; and being sexually harassed by one of her managers. She felt alone and afraid and called us complaining of both physical and psychological symptoms, including heart palpitations, nausea and anxiety.

4.3 Duncan – Sexual Orientation

Duncan called JobWatch after his employer (who was his ex-wife's brother) requested that he submit his resignation. This occurred immediately following Duncan's outing that he was gay. Duncan was subjected to various forms of verbal and psychological abuse stemming from his homosexuality. Duncan was ridiculed and called names on numerous occasions including labels such as 'poofter'.

⁸ For example, research conducted by Amnesty International shows that around 30% of women aged between 18 and 55 have received online abuse or harassment, with 37% reporting fears for their physical safety: Poll Reveals Alarming Impact of Online Abuse Against Women - Amnesty International Australia" *Amnesty International Australia* (Webpage, 2018).

⁹ Liam Elphick, *Victoria's new anti-vilification bill strikes the right balance in targeting online abuse* (11 September 2019) The Conversation <https://theconversation.com/victorias-new-anti-vilification-bill-strikes-the-right-balance-in-targeting-online-abuse-123014>.

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4.4 Lucas – Disability

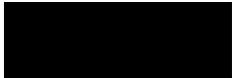
Lucas was an individual who had experienced quite a difficult time at his place of employment. Lucas works as a tradesman and had been experiencing a significant amount of verbal abuse and threatening behaviour from colleagues when first calling JobWatch. Lucas advised that he was called a number of terrible names including things like “dumb fuck” and “gay”. It was advised that his colleagues are also warning others not to talk to this individual and encouraging further bullying behaviour and behaviour that incited hatred amongst the team towards Lucas. Additionally, the apprentice Lucas was training threatened to stab him on a particular occasion.

This is a difficult situation for Lucas, as suffers from a mental disability mainly in the form of psychosis which his work colleagues are aware of. It seemed clear that it was because of this disability that his work colleagues continued to vilifying him on those ground. They would aggravate him on purpose knowing that he may not be able to control his anger, and call him names that indicated that he was stupid and unwelcome. Lucas advised that those bullying him know he is sick and allow it to happen and participate in it collectively.

5. Conclusion

JobWatch supports the proposed Bill and urged the Victorian Government to vote in favour of expanding the anti-vilification protections beyond race and religion.

Yours sincerely,



Gabrielle Marchetti
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