

Submission to Inquiry on Anti-Vilification Protections

Name: Nicholas Michael Butler

[REDACTED]

[REDACTED]

I do not seek confidentiality and give complete permission for the committee to publish my submission online in full.

This submission quotes many of my own previous writings on this topic.

Introduction

Thank you for the opportunity to contribute to the Inquiry on Anti-Vilification Protections.

This inquiry was set up in response to a private members bill introduced by MLC Fiona Patten of the Reason Party to amend the Racial and Religious Tolerance Act 2001.

This submission will heavily focus on the following terms of reference:

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. The effectiveness of current approaches to law enforcement in addressing online offending.

It will incidentally touch on the following terms of reference:

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.

The bill's substantive amendments would do nine things:

1. They would add sex, gender, gender identity, disability and sexual orientation to the list of protected attributes to the civil law (s 7);
2. They would add sex, gender, gender identity, disability and sexual orientation to the list of protected attributes to the criminal law surrounding threatening vilification (s 24(1));
3. They would add sex, gender, gender identity, disability and sexual orientation to the list of protected attributes to the criminal law surrounding non-threatening vilification (s 24(2));
4. They would remove religious belief or activity from the list of protected attributes in the civil law (repeal of s 8);
5. They would remove religious belief or activity from the list of protected attributes in the criminal law surrounding threatening vilification (repeal of s 25(1));
6. They would remove religious belief or activity from the list of protected attributes in the criminal law surrounding non-threatening vilification (repeal of s 25(2));
7. They would change the standard for actionable vilification in the civil law (s 7) from "incites" hatred, serious contempt, or revulsion or severe ridicule, to "is likely to incite" those feelings;
8. They would change the standard for actionable threatening vilification in the criminal law (s 24(1)) from intentional conduct to intentional or reckless conduct, and remove the requirement that the offender know that the conduct is likely to threaten physical harm or incite others to threaten physical harm;
9. They would change the standard for actionable non-threatening vilification in the criminal law (s 24(2)) by removing the requirement that the offender know that the conduct is likely to incite serious contempt, revulsion or severe ridicule, and establishing that the mere likelihood of incitement renders it actionable, while keeping the requirement that the offender intentionally engage in the conduct.

I would like to begin with a number of clarifications about freedom of speech in general, to distinguish them from other principles in this debate.

I accept that hate speech can be harmful. That is not in doubt. We should not assume that the exposure and subsequent ridicule and censure of hate is the only consequence that will ever arise from its expression. I certainly believe that this is the predominant consequence of exposing hate, but at the same time, we must not discount the possibility that a person exposed to the hateful argument may, rather than finding it ridiculous and being more educated in the stupidity of hate, instead be sucked in by the argument and become hateful themselves. And quite obviously, the more hateful people exist in a society, the higher the chance of hate violence being committed against fellow members of that society.

Thus, I would rather it not be said. But if it is going to be said, it is better that it be said in public than in private, for reasons I outline in section 8 of this submission. It does not logically follow from the establishment that hate speech can be harmful that it should be prohibited. Government prohibition is its own separate policy as well, with its own set of attendant harms and benefits, and there's no reason to assume it will necessarily make a problem better. There are many things that society deems harmful, such as recreational drug use, yet despite this recognition, many people do not support its criminalisation, as they also recognise that it does not fix the problem. Hate speech should be treated the same way. To put it simply: hate speech is bad, but the legal policy of allowing it to be said is good.

I would also like to respond to some truly logically pathetic attempts to twist freedom of speech in favour of anti-vilification laws:

- One such argument is to define freedom of speech as excluding speech that someone doesn't like, and then finding a reason to justify this after the fact, rather than a pre-existing principle on freedom of speech deciding this exemption. One often says "I believe in freedom of speech, but freedom of speech doesn't mean freedom to [insert whatever it is that that person doesn't like]." To make such an argument is not to reach a reasoned conclusion about the meaning of freedom of speech. Rather, it is to identify whatever speech the person doesn't like, carving out an arbitrary exception to freedom of speech for this speech, and then call that exception a different principle. It's not.
- Another talking point used to defend censorship is that "rights comes with responsibilities". That's true, but it doesn't mean what those who point it out to defend hate speech laws argue it means. "Rights come with responsibilities" means that while you have your rights, you also have the responsibility to not violate other people's rights, as they have rights too. Instead, proponents of hate speech laws have distorted the responsibility as a requirement to exercise the right responsibly. This is inconsistent. A right is something that you're entitled to, and is therefore not contingent on any other conditions being fulfilled. Imposing the requirement to exercise it "responsibly" renders it not a right. In fact, the proper understanding of rights coming with responsibilities works against hate speech laws. One has the responsibility not to violate other people's rights, including their right to freedom of speech, and hate speech laws violate this right.

I feel compelled to make one more point: hate violence is not a flaw unique to societies that have freedom of speech. It is a feature - a sad, tragic feature - of every society that has ever existed. However, world history shows that as societies get more free, including with regard to speech, they get less violent. For all but the blink of an eye in human history, all societies have been authoritarian and unequal, but a minority within them have sought to make them into what they are today. For the same period of time, this minority was censored and persecuted, but in many countries today, they won. If these societies can improve despite the censorship of those who wish to improve them, then surely these societies can avoid regression once the old minority becomes the majority and is free to speak, even if the new minority of bigots is also free to.

1. Are anti-vilification laws a morally justifiable form of aggression against their targets?

Every criminal prohibition that a parliament passes into law must grapple with the question of if it will create more problems than it solves. Because speech is such an omnipresent, ubiquitous and natural part of life, the risk of this outcome is especially true when it comes to censorship.

Legislators, cabinet ministers and all politicians must be forever mindful that whenever the resources of the state are deployed in a manner that is coercive against a person, or restricts their liberty, this is a form of aggression. As a general rule that all free societies live by, it is not acceptable to engage in aggression against another person without sufficient justification. Furthermore, the onus of providing the justification falls on the person wishing to be aggressive. If I wish to punch someone in the face, the onus is not on them to explain why I must not do that, and should they fail, I gain the right to do so.

This reality is especially true when dealing with aggression by a government. Some naively insist that because the government's authority is well-established and commonly accepted, it should be relieved of this obligation. There could hardly be a more perfect example of being conditioned by one's environment to accept the unacceptable. To take such a view is to accept that might equals right. If the government is not obliged to justify its aggression against its own citizens, it instantly becomes a body of tyranny deserving of citizens' resistance. A government not obliged to justify its own aggression is a government that already had the power to do actions we only associate with dictatorships and authoritarian regimes. A government that does not have to justify its aggression is a government claiming the authority to detain citizens arbitrarily, including for political reasons. None of this would be acceptable to either the citizens of Victoria, nor those who govern it. However, its unacceptability depends on a strict and absolute application of the principle that those who claim a right to aggression must justify it themselves.

So can anti-vilification laws be justified? However well-intentioned they are, however genuinely they may be aimed at stopping hate, they nonetheless represent a form of state aggression against the citizens. Those accused of wrongdoing under anti-vilification laws are often forced to face a government body to defend their claim, sometimes even against a criminal charge. If found guilty of a breach, they face sanctions that they have no choice in complying with lest they incur further aggression. The justification offered for placing these burdens at citizens is irrelevant to the question of if they are aggression in the first place. They, and the laws giving rise to them, most certainly are. Thus, the government must justify the aggression of anti-vilification laws. A truly inviolable principle does not yield to the good intentions behind an attempted breach of it.

Aggression is only justified if it is necessary to serve the rights of others that are both in conflict with the conduct subject to the aggression, and should take priority over the conduct subject to the aggression. So what rights of others do justify the aggression of anti-vilification laws?

1. Advocating or encouraging violence against disfavoured people or groups. This is intended to incite others to commit that violence. It is for this reason that such behaviour is prohibited: society cannot tolerate violence being committed against its citizens. Such behaviour is not prohibited because it is often done through speech. But once again, the fact that it is done through speech doesn't render it lawful when it would otherwise be unlawful. No one would question the prosecution of a person who, while carrying a pitchfork and a torch, led an angry mob on a march to a minority group's community center, which the mob proceeded to burn down. Even if the leader of the march did not participate in the arson himself, he would still be prosecuted for inciting the arson. If he said no words and held no placard during the march, then he would have incited the arson without making any speech. It makes no sense to think that a person who intends to achieve the exact same result, especially if successful in achieving it, through words should avoid prosecution. The plan and intention to cause violence - similar to a conspiracy plot to commit violence - is the reason that advocating, encouraging or instructing the commission of unlawful violence is illegal, not because of any speech. This demonstrates that outlawing this behaviour does not attack freedom of speech.
2. Making threats of unlawful violence. A threat of unlawful violence is intended to impose a well-founded fear of violence on the subject of the threat. Although these threats are often made with words, they may also be made without words, such as by gesturing menacingly to the subject of the threat, leaving malicious or dangerous objects at the place of residence of the subject, or by brandishing a deadly tool in the direction of the subject. It is due to the well-founded fear of violence imposed on the subject that threats are illegal: they are not something that people should have to tolerate, and were they tolerated, they would threaten the security of society by making its members much more paranoid and fearful of violence, and therefore more willing to use violence when it may be unnecessary and unjustified. A threat is not made illegal because words are used to make it. However, the use of words cannot make an otherwise unlawful activity lawful. The fact that threats are outlawed due to the well-founded fear they impose on their subjects - whether that's imposed by words or not - and not due to the fact that some threats are made by words, demonstrates that outlawing threats of unlawful violence does not attack freedom of speech.
3. Physically intimidating another person when face-to-face with them. Society can't tolerate its citizens physically intimidate each other. This would make society a considerably more violent and fearful place. For example, a person who directs a tirade of obscene language towards another person when face-to-face with that person is (in a manner similar to threats of violence) creating a well-founded fear of violence in the person. This doesn't have to be done by speech. A person who stalks another person - a

clear act of physical intimidation - would unquestionably be breaking the law. There's no reason why the same behaviour should be legal just because it is accompanied by speech. There is no risk of violating freedom of speech with such a prohibition. A person would be free to make the exact same comments that accompanied the physical presence in the person's vicinity in other contexts. While illegal in the context of physical intimidation, it is not made illegal because of the words themselves. The fact that it is only legal in the context of physical intimidation means there is no threat to freedom of speech, as speech in any other context is not threatened by such a prohibition.

To use an analogy from the science of chemistry: if one was attempting to make a substance with a pH of exactly 7 (neither acidic nor basic), and in the process, added too much of an acid, it would not be possible to return the substance to a pH of 7 by adding only other neutral substances. The addition of a base would be required. But the addition of the base is not to make the substance basic: it's to make it neutral by cancelling out acidity. Similarly, the use of aggression in the form of anti-vilification law is not to lead to a state of aggression overall: it's to return the state of society to neutral by cancelling out the initial aggression. Furthermore, while it is possible that the negative effects of anti-vilification laws extend to such laws that target these three behaviours, the harms inherent in the behaviours are so manifestly and directly dangerous and harmful that even if that is the case, the practical case favours legislating against these behaviours. We obviously wouldn't legalise murder for fear that criminalising it "drives it underground" and makes it worse.

To the extent that anti-vilification laws are targeted to specifically this conduct, they can be justified. But no further.

2. Are anti-vilification laws an effective means of combatting hate?

While much support for anti-vilification laws is driven by the good intention of wishing to see less hate in society, it is possible to oppose anti-vilification laws, as I do, out of a desire to see less hate in society, not more. The available evidence bears out that anti-vilification laws do not reduce hatred against minority groups. Instead, by censoring a person from being able to speak if their speech is thought to be hateful against a group of people, a person censored may very well blame the group that the law was ostensibly trying to protect as responsible for their censorship. This may in turn lead to the person coming to bear the hostility to the group that the law was trying to prevent, and the experience with past anti-vilification complaints bears this out.

2.1 Don't Mess with Marriage and Julian Porteous

When the legalisation of same-sex marriage in Australia first became a serious possibility in 2015, it sent conservatives into a tailspin. On June 3, the Catholic Church produced a "pastoral letter" outlining why it opposed the proposed reform.¹ It was distributed in Catholic schools, and while I obviously was not in agreement with it, and found the arguments laughable, I found it very difficult to detect hostility to LGBTI people in it. On the contrary, the language was deliberately gentle. But there was one line in the letter that alarmed LGBTI advocates. With reference to ideal family models for children, page 13 of the booklet claimed: "'Messing with marriage', therefore, is also 'messing with kids'." As much as it pains me to say this, some of those advocates responded the way they know best: with demands for censorship. Lobbying group Australian Marriage Equality put out a media release claiming that the letter "likely violates anti-bias law". That "anti-bias law" would be section 17 of the Tasmanian Anti-Discrimination Act, which states that a person "must not engage in any conduct which offends, humiliates, intimidates, insults or ridicules another person" on the basis of a total of 13 attributes, including sexual orientation. Unlawful conduct engaged in by a school may sound alarming at first, but it's not so alarming when you consider that the law is one making it to illegal to do anything that offends anyone on the basis that certain characteristics have led that person to be offended.

Then-AME national director Rodney Croome stated: "I urge everyone who finds it offensive and inappropriate, including teachers, parents and students, to complain to the Anti-Discrimination Commissioner, Robin Banks."² In September of 2015, Martine Delaney, a transgender rights activist and a federal candidate for the Australian Greens at the 2016 election, took up Croome's offer. In November, the

¹ Catholic Bishops of Australia, *Don't Mess With Marriage*, June 3, 2015, <https://www.catholic.org.au/same-sex-attraction/marriage-pastoral-letter/file>

² Out In Perth, *Debate heats up over Catholic traditional marriage booklet*, June 25, 2015, <https://www.outinperth.com/debate-heats-up-over-catholic-traditional-marriage-booklet/>

anti-discrimination commissioner ruled that the church had a case to answer.³ In May 2016, the complaint was withdrawn.⁴

Here is where the test of the efficacy of anti-vilification laws is applied: did this complaint expose the Catholic Church's homophobia, cause people to recoil from it, and increase tolerance of LGBTI people? To answer this question, we can look to how people reacted to the complaint.

We can look to an article in *The Australian* newspaper by Anglican Archbishop of Sydney Glenn Davies from March 31, 2017. (A year and a half after the complaint was filed. As it turns out, people have long memories of their liberty being denied.) The article, which broadly alleged intolerance by supporters of same-sex marriage and discussed the complaint, argued that "the campaign for same-sex marriage is not sailing on a raft of rainbows but on a barge of bullies."⁵

Or we can look to an article from *the very next day* (I guess this kind of censorship doesn't go unnoticed by the targeted community) in the Daily Telegraph newspaper by columnist Piers Akerman. This article, which pretty much made the exact same argument, proclaimed the "sad truth that those who so recently claimed to be the bullied are now among the world's greatest bullies. None more so than the alphabetical jumble of the gender confused in their pursuit of the destruction of the ancient and revered traditional form of marriage."⁶

Or we can look to an article in the conservative magazine *Quadrant*, from June 28, 2017. *Quadrant* editor Roger Franklin wrote that "Tasmania's Anti-Discrimination Commissioner, who hounded Catholic bishops on behalf of a transsexual Green, raises deeply disturbing questions of where [same-sex marriage] might lead[.]"⁷

Does anyone notice a pattern starting to emerge here? A pattern of use of pejorative language about LGBTI people when this example of censorship is discussed? What might this be indicative of? Did these conservative commentators suddenly recoil at the Catholic Church's doctrines on marriage and sexuality when they were the subject of an anti-discrimination complaint? Or did they double down, with their views in fact entrenched even further, because in addition to their pre-existing views about marriage and sexuality, they now believed that LGBTI people are intolerant as well?

Clearly the latter was what was happening. Although the consequence was unintended, it was hardly unpredictable. Proponents of anti-vilification laws fail to understand how one's behaviour is influenced by their beliefs, their attitudes and their emotions. They ignore these important factors, instead placing all of their faith that people's speech can be constrained in the ability of the law to constrain it. But human beings need to speak, and speak they will. Speak is such a natural and inevitable part of life that it can rarely be constrained by laws. For one thing, anti-vilification laws are just too obscure to always be grabbing people's attention. They're not an example of an obvious law that people can know exists just through guessing and common sense, such as laws against murder and assault. They rarely lie in the back of one's mind when one is speaking.

2.2 Aboriginal delinquency and Bill Leak

On July 25, 2016, the Australian Broadcasting Corporation's flagship investigate journalism program *Four Corners* broadcast its episode "Australia's Shame". The episode was an exposé of the conditions of youth detention in Australia's Northern Territory, where detainees are disproportionately Aboriginal. What *Four Corners* found was so appalling that the episode must be watched in order to be believed. The country was

³ Australian Broadcasting Corporation, *Anti-discrimination complaint 'an attempt to silence' the Church over same-sex marriage, Hobart Archbishop says*, September 28, 2015, <https://www.abc.net.au/news/2015-09-28/anti-discrimination-complaint-an-attempt-to-silence-the-church/6810276>

⁴ Special Broadcasting Service, *Same-sex marriage discrimination case ends*, May 5, 2016, <https://www.sbs.com.au/news/same-sex-marriage-discrimination-case-ends>

⁵ Glenn Davies, *Beware the barge of bullies trumpeting diversity*, March 31, 2017, <http://www.theaustralian.com.au/opinion/beware-the-berge-of-bullies-trumpeting-diversity/news-story/ab37e4c742c24b3506b1287e93e4303d&memtype=registered>

⁶ Piers Akerman, *Gender big brothers control our thoughts*, April 1, 2017, <https://www.dailytelegraph.com.au/news/opinion/piers-akerman-gender-big-brothers-control-our-thoughts/news-story/4fead8a3fdf3a53b331b88cb220f1fa9>

⁷ Roger Franklin, *Religious Faith vs 'Community Standards'*, June 28, 2017, <https://quadrant.org.au/opinion/qed/2017/06/ssm-community-standards/>

collectively shocked by the revelations, as an episode of political discussion program *Q&A* immediately following *Four Corners* reflected. The very next day, the federal government announced that a Royal Commission would investigate youth detention in the Northern Territory.

But there were exceptions to this reaction. On August 4, cartoonist for *The Australian* Bill Leak published his take on the issue of youth justice. His cartoon of that day depicted a responsible Aboriginal policeman, an irresponsible Aboriginal father, and the father's delinquent son in an outback setting. The policeman was returning the son to the father. "You'll have to sit down and talk to your son about personal responsibility," he told the father. Barefoot, and holding a can of Victoria Bitter (an Australian beer), the father replied, "Yeah righto, what's his name?"

This depiction of an Aboriginal person behaving in such an irresponsible manner understandably upset a few people. But as with the case of the Catholic Church in Tasmania, it also elicited demands for censorship. Then-Race Discrimination Commissioner Tim Soutphommasane posted on his Facebook page: "If there are Aboriginal Australians who have been racially offended, insulted, humiliated or intimidated, they can consider lodging a complaint under the Racial Discrimination Act with the Commission."⁸

In October, a complaint was indeed filed. Exacerbating the problem of censorship was the way the complaint was handled by the Australian Human Rights Commission. One such problem was that a complaint can only be dismissed if it is "trivial, vexatious, misconceived or lacking in substance."⁹ Although the complaint was, according to legal experts (with whom I agree), unlikely to succeed in court, this was not a ground on which the AHRC could dismiss it.

This, obviously, is not the Commission's fault. It had a legal obligation to investigate. But it is the Commission's fault that it did not follow the law. The law under which the complaint was filed is section 18C of the Racial Discrimination Act. Section 18C makes it illegal to do anything in public that is reasonably likely to offend, insult, humiliate or intimidate another person, if it is done because of the race, colour or national or ethnic origin of the person. This is a bad law, for the simple reason that offending someone is a very easy thing to do, and for the reason that doing something on the grounds of race is not limited to outright racist acts and abuse, but inherently includes any discussion regarding race or ethnicity.

Towards the end of 2016 and the start of 2017, section 18C came under severe criticism from various politicians and media commentators. Amidst this criticism, then-president of the AHRC Gillian Triggs told a Senate committee that Leak could have had his complaint dismissed himself under section 18D, which provides certain exceptions. "Had he responded by making a good faith point, we would almost certainly have ended the matter precisely at that moment," she said. "Despite these two requests to him to justify an 18D basis for the cartoon, we received no response." One problem: this was just not true. Leak's lawyers did submit an 18D defence to the Commission.¹⁰ Nonetheless, it was not acted upon.

And, predictably, this criticism tipped into racism. Two articles in the Daily Telegraph, one from October 17 by columnist Tim Blair, and one from November 5 from Piers Akerman, mocked Soutphommasane's name. The articles claimed that he'd "be a 23-point certainty for the board game hall of fame if only Scrabble allowed proper nouns,"¹¹ and nicknamed him "Soup Spoon".¹²

In November 2016, the complaint was withdrawn by the complainant, who believed that Leak was "uncooperative", and was worried that the complaint would create a martyr for free speech. Leak responded to the withdrawal with a reminder of what could have happened to someone else subjected to such a

⁸ Tim Soutphommasane - Race Discrimination Commissioner, August 4, 2016, <https://www.facebook.com/rdc.tim.soutphommasane/posts/1219825684746926>

⁹ Media Watch, October 24, 2016, <https://www.abc.net.au/mediawatch/episodes/the-oz-defends-right-to-offend/9972840>

¹⁰ Andrew Bolt, *Let's end this farcical game of race*, March 1, 2017, <https://www.heraldsun.com.au/news/opinion/andrew-bolt/andrew-bolt-lets-end-this-farcical-game-of-race/news-story/acd5ed91855003a83586edd3ecbf8d4b>

¹¹ Tim Blair, *Just wild about Bill Leak's cartoon: Time to muzzle the Human Rights Commission*, October 17, 2016, <https://www.dailytelegraph.com.au/news/opinion/just-wild-about-bill-leaks-cartoon-time-to-muzzle-the-human-rights-commission/news-story/85a270266b2adb55c8281f3bc6e4be2d>

¹² Piers Akerman, *We've hit a Triggs-er point on mind control*, November 5, 2016, <https://www.dailytelegraph.com.au/news/opinion/piers-akerman-weve-hit-a-triggser-point-on-mind-control/news-story/04f0a57bbf8fd016e3be18bcf0d17d6e>

complaint. "I've got News Corp backing me legally," he said. "But if I was a private citizen, this would have cost me an absolute fortune." Ominously, he continued: "She has put me through a month or so of incredible stress. She never met me, she doesn't have to justify anything she does, no one asked her any questions and it doesn't cost her a cent. As a consequence my life has been thrown into utter chaos."¹³

Why was this ominous? On March 10, 2017, Leak died at age 61 from heart trouble. Did the stress of the complaint exacerbate his heart problems and contribute to his death? Conservatives thought so. Herald Sun columnist Andrew Bolt wrote that Leak was "hounded and stressed to the very end by stupidly vindictive legal action through the Human Rights Commission over his cartooning."¹⁴ Blogger Sinclair Davidson wrote that Leak "was hounded to his death by a properly established government agency in pursuance of objectives that are abhorrent to western civilised standards."¹⁵ *Quadrant* writer James Allan wrote that "died of a massive heart attack after being dragged through a kangaroo pseudo-court by a bunch of jumped up, overpaid taxpayer-funded officials[.]"¹⁶

And, once again, conservative anger tipped over into racially-charged rhetoric. Roger Franklin called Soutphommasane a "race pimp and sinecured Labor hack".

2.3 War crimes memorials

On the 6th of August 2016, a memorial was installed in the courtyard of the Ashfield Uniting Church in Sydney, carrying the inscription:

In memory of the history of suffering of the young girls and women known as "Comfort Women" who were forced into sexual slavery by the military of the government of Imperial Japan.

We hope for the restoration of honour for the victim through an official apology and legal reparations by the Japanese government and that such violence and crimes against humanity by war never be repeated in the future.

6th August 2016

Sydney Korean-Australians and their Australia's friends for human rights and everlasting peace.

The Korean Council for the Women Drafted for Military Sexual Slavery by Japan.

Seongnam Citizens Republic of Korea¹⁷

Three qualifiers were inserted into its attribution of blame: the atrocities were by the military, they were by the government, and they were in the Imperial era. Even without these qualifiers, the inscription could not have been reasonably read as blaming all Japanese people for what was done during the Second World War. But nonetheless, a group calling itself the Australia-Japan Community Network filed a complaint with the Australian Human Rights Commission against the memorial.¹⁸ The complaint claimed that the "hurtful historical symbol is detrimental to the local community and will only result in generating offence and racial hate," as well as that those hosting the memorial have "offended, insulted, humiliated and intimidated the applicants because of their race, national and ethnic origin".

¹³ Adam Gartrell, *Racial discrimination complaint against cartoonist Bill Leak dropped*, November 12, 2016, <https://www.smh.com.au/politics/federal/racial-discrimination-complaint-against-cartoonist-bill-leak-dropped-20161112-gsnsj9.html>

¹⁴ Andrew Bolt, *Bill Leak dies*, March 10, 2017, <https://www.heraldsun.com.au/blogs/andrew-bolt/bill-leak-dies/news-story/aae287d576bab6f6e3378b0638728a30>

¹⁵ Sinclair Davidson, *The Australian Human Rights Commission has blood on its hands*, March 10, 2017, <http://catallaxyfiles.com/2017/03/10/the-australian-human-rights-commission-has-blood-on-its-hands/>

¹⁶ James Allan, *If Only Turnbull Had Bill Leak's Spine*, March 10, 2017 <https://quadrant.org.au/opinion/qed/2017/03/turnbull-bills-principles-spine/>

¹⁷ Ben Hills, *A Fight To Remember*, March 31, 2017, <https://www.sbs.com.au/topics/voices/feature/fight-remember>

¹⁸ Hayden Cooper, *Japanese group launches 18C racial discrimination case over 'comfort women' memorial*, January 3, 2017, <https://www.abc.net.au/news/2016-12-14/japanese-group-launches-18c-case-against-uniting-church/8117234>

In May of 2017, the Commission dismissed the complaint on the grounds that it was “misconceived and/or lacking in substance.”¹⁹ But this offers no reassurance that free speech was not under attack. How would Reverend Bill Crews, a man in his 70s and a true humanitarian who spends a huge amount of his time in charitable work, be able to defend this complaint? What admirable work would he have to cease to find the time to defend it? Could his advanced age lead him to a fate that conservatives alleged was suffered by Bill Leak? In light of all of these potential costs, many people would just consider it easier and simpler to submit. In that situation, even without any adverse legal judgement, free speech would be lost.

Nor did the complaint’s dismissal assist to alleviate the resentment towards Japanese people that some commentators clearly felt. Andrew Bolt wrote: “Now Japanese use our race law against a war memorial”.²⁰ MP for the Division of Dawson George Christensen blamed “a Japanese ethnic group” for the complaint.²¹ In emphasising ethnicity, not politics, Christensen made clear what he was feeling.

2.4 The Nazi Pug

On April 11, 2016, Scottish YouTube comedian Marcus Meecham, known as Count Dankula, uploaded his video “M8 Yer Dugs A Nazi”, starring Buddha, his girlfriend’s pug, to YouTube. He explained that he was trying to turn Buddha “into the least cute thing that I could think of”, in response to his girlfriend’s assertions of Buddha’s cuteness.

“Buddha, you want to gas the Jews?” he asked the pug. He repeated the phrase more than 20 times during the video, getting Buddha to react and look at him. He also called “Sieg Heil!” to the pug, and Buddha would raise its paw in response, à la a Nazi salute.

Some people thought it was funny. Other people thought it was offensive. Unfortunately, included in the second group were the local police. Count Dankula was arrested on April 28, and later charged with a breach of s 127(1)(a) of the Communications Act 2003, which prohibits “send[ing] by means of a public electronic communications network a message or other matter that is grossly offensive or of an indecent, obscene or menacing character”.²²

Throughout the trial in 2017, Ephraim Borowski, the direct of the Scottish Council of Jewish Communities, testified in favour of the prosecution. His input into the case was very poorly received by the same people that the case was trying to send a message to. Following Meecham’s conviction in March 2018, the Council released a statement detailing the abuse it had received:

“Each time the case appeared in court, SCoJeC received a large number of abusive messages by e-mail, telephone, Facebook, and Twitter, many of which were frankly antisemitic. In the hours since the verdict, we have received well over a hundred such messages.”²³

This abuse was not the result of the video. It was the result of the prosecution of Meecham, and of their support for the prosecution. A prosecution that did not make those sending the message reconsider their support for the evil of antisemitism, but instead tipped them over from thinking it into expressing it. Maybe it was just sheer anger. Maybe they made an (entirely indefensible) argument in their minds that, if a Jewish organisation was supporting the prosecution of a fellow (perceived) antisemite, abusing that organisation was justified by self-defence. Whatever it was, Meecham’s prosecution increased antisemitism, rather than reducing it.

¹⁹ Ben Hills, *A Fight To Remember*

²⁰ Andrew Bolt, *Now Japanese use our race law against a war memorial*, December 15, 2016, <http://www.heraldsun.com.au/blogs/andrew-bolt/now-japanese-use-our-race-law-against-a-war-memorial/news-story/aa72967bca77db1deec121be2d026cdc>

²¹ George Christensen, December 14, 2016, <https://www.facebook.com/gchristensenmp/posts/1148752868512973>

²² Communications Act 2003, section 127, <https://www.legislation.gov.uk/ukpga/2003/21/section/127>

²³ Scottish Council of Jewish Communities, SCoJeC welcomes verdict in "Nazi dog" case, March 21, 2018, https://www.scojec.org/news/2018/18iii_aidrie_verdict.html

2.5 Catch the Fire Ministries - resentment spills over into violence

Victoria's Racial and Religious Tolerance Act, the amendment of which is debated by this inquiry, came into effect on June 27, 2001. The law (as you of course are aware) makes it illegal to incite hatred against, serious contempt for, or revulsion or severe ridicule of a person because of their race, religious belief, or religious activity. The laws passed despite, in March of that year, the chairman of what was then Victoria's Equal Opportunity Commission commenting: "I am not aware of any conclusive evidence that suggests that discrimination is increasing." The chairman was proven correct when, in the first year of the laws operation, there were a mere five complaints of religious vilification across the whole state. But if complaints weren't coming by themselves, then the EOC committed to making them come. It hired a woman named May Helou from the Islamic Council of Victoria, whose job was to confirm that "Arabic and Muslim communities are aware of their rights under anti-discrimination laws" and give "support to people wishing to make a complaint". Unfortunately, Helou devised specific targets for her legal activism: she told three Muslim Victorians to attend a looming seminar on the topic of Islam and jihad hosted by Christian pastor Danny Nalliah, and secondarily, his colleague Daniel Scot.

On March 9, 2002, Nalliah gave his seminar on Islam and jihad. Less than six months after September 11, 2001, it was an important topic that was being discussed. Though what exactly was said is disputed (there was disagreement between the tribunal of first instance and the court of appeal on the findings of fact), it's undeniable, and could probably have been predicted, that a conservative Christian would argue that the proper understanding of Islamic doctrines is that they support terrorism. Thus, those Muslim Victorians conscripted by the EOC to attend got exactly what the EOC was hoping for: that they would be offended. One attendant told the subsequent hearing that "he was very upset and shocked at what he heard and was in tears for a few minutes". (If exposure to certain material is going to trigger this effect in a person, I would advise that that person avoid exposure to it, as opposed to deliberately seeking it out.) A complaint was formally made to the EOC under the Racial and Religious Tolerance Act's section 8. When conciliation failed, the case moved to the Victorian Civil and Administrative Tribunal. A full trial was conducted at VCAT, and on December 22, 2004, the VCAT judge ruled that the Act had been breached. Six months later, on June 22, 2005, the judge ordered that Nalliah and his organisation take out two ads in two major Victorian newspapers announcing that he had breached the Act - advertising that would have cost \$68,000.²⁴

And how did this go down? Well, as the ABC reported, the decision "did little to engender religious harmony." Outside VCAT, a Muslim man, either a complainant or a supporter of the complainants, told a woman: "Please understand this. We are fellow Australians. You're treating us as something hostile, something different, but we're not." The woman replied: "You are different. You make the women go around all covered up, that's not right."²⁵

Indeed, the situation between the Christians and the Muslims was so volatile that, as Andrew Bolt reported, "scuffles broke out on the courtroom steps and the pastors took along guards."²⁶ These scuffles were not over what was said. They were over being sued for it. It's almost as if free speech allows disagreements to be solved through negotiation, leaving us with no choice but to fight when negotiation becomes impossible.

2.6 Data confirms the examples

Every year, the Australian Human Rights Commission publishes a report on its operations, including how many complaints it receives under section 18C of the Racial Discrimination Act, which it designates as "racial hatred" complaints. When counted by ground (as opposed to area), the number of complaints received by the Commission each financial year when measured is as follows:

- FY 2010-11: 121 complaints²⁷

²⁴ Andrew Bolt, *Pastors' toil and trouble*, December 20, 2006, <http://www.heraldsun.com.au/archive/opinion/pastors-toil-and-trouble/news-story/141ee6c23c44d5f603f0de91fc1358d1>

²⁵ The World Today, *Christian group ordered to apologise for vilifying Muslims*, June 22, 2005, <http://www.abc.net.au/worldtoday/content/2005/s1398137.htm>

²⁶ Andrew Bolt, *Pastors' toil and trouble*

²⁷ Australian Human Rights Commission, *Annual Report 2010 - 2011*, p. 108, https://www.humanrights.gov.au/sites/default/files/content/pdf/about/publications/annual_reports/2010_2011/AHRC_AnnualReport10-11_Final.pdf

- FY 2011-12: 121 complaints²⁸
- FY 2012-13: 192 complaints²⁹
- FY 2013-14: 116 complaints³⁰
- FY 2014-15: 116 complaints³¹
- FY 2015-16: 77 complaints³²
- FY 2016-17: 159 complaints³³

(However, with the exceptions of 2010-11 and 2011-12, the number of racial hatred complaints by both ground and area are the same.)

In 2016-17, the bulk of media discussion around the QUT case took place, and the complaints against Bill Leak and Sydney Uniting Church were filed, leading to even more discussion. At the same time, complaints to the Commission more than doubled.

It is unlikely that increased awareness about the right to complain under 18C is responsible for the spike. In 2013-14, the federal government attempted to repeal the law for the first time. This also generated significant interest and media discussion, yet complaints actually fell in that period compared to the previous year. The most likely theory is that resentment about being censored led to more people lashing out.

Not incidentally, this theory has been endorsed by Tim Soutphommasane. In his last speech as Race Discrimination Commissioner in August 2018, he noted that “the debates about 18C have nonetheless been difficult for people who experience racism. They have opened the door to prejudice, intolerance and hatred.”³⁴ I completely agree, and my solution is to remove the source of the prejudice, intolerance and hatred. Unfortunately, his is to have even more laws.³⁵

None of this should be surprising. If, as some hate speech law proponents claim, the world is so dangerously vulnerable to something like hate speech that government prohibition is necessary, how can it simultaneously be so utopianly perfect that hate speech laws will have exactly their desired effect? The resentment of being censored that is intrinsic to human nature will guarantee unintended negative consequences. I want to reduce harm, but I want to reduce all harm, not just the harm caused by hate speech. Taking the position that only the harm that comes from the thing you don’t like is worth preventing sets up an “ends justify the means” mentality, where any raft of horrors can be justified in your quest, because hey, at least they don’t spring from what you’re trying to stamp out.

3. Do anti-vilification laws prevent violence?

I must admit, I find it frustrating when otherwise intelligent people make assumptions that anti-vilification laws reduce violence. The evidence shows that they are either ineffective, or make violence worse, by telling extremist-minded people, who may be inclined to violence, that there is no point or hope in having their grievances addressed through speech. Naturally, they will turn to other methods of having their grievances addressed.

²⁸ Australian Human Rights Commission, *Annual Report 2011 - 2012*, p. 133, https://www.humanrights.gov.au/sites/default/files/content/pdf/about/publications/annual_reports/2011_2012/AHRC_AnnualReport11-12_Final.pdf

²⁹ Australian Human Rights Commission, *Annual Report 2012 - 2013*, p. 132, https://www.humanrights.gov.au/sites/default/files/document/publication/ahrc_annual_report_2012-13.pdf

³⁰ Australian Human Rights Commission, *Annual Report 2013 - 2014*, p. 138, https://www.humanrights.gov.au/sites/default/files/document/publication/ahrc_annual_report_2013-14v2.pdf

³¹ Australian Human Rights Commission, *Annual Report 2014 - 2015*, p. 142, https://www.humanrights.gov.au/sites/default/files/document/publication/AHRC_Annual%20Report%202014-15_Web%20version.pdf

³² Australian Human Rights Commission, *2015 - 2016 Complaint statistics*, p. 10, <https://www.humanrights.gov.au/sites/default/files/AHRC%202015%20-%202016%20Complaint%20Statistics.pdf>

³³ Australian Human Rights Commission, *2016 - 2017 Complaint statistics*, p. 10, https://www.humanrights.gov.au/sites/default/files/AHRC_Complaints_AR_Stats_Tables%202016-2017.pdf

³⁴ Tim Soutphommasane, *Confronting the Return of Race Politics*, August 6, 2018, <https://www.humanrights.gov.au/about/news/speeches/confronting-return-race-politics>

³⁵ Tim Soutphommasane, March 18, 2019, <https://twitter.com/timsout/status/1107764720163942400>

Not every example I will list in this section is specifically related to anti-vilification laws; some are concerned with other mechanisms of censorship. But this is irrelevant. Whether it takes the form of an anti-vilification law or not, censorship makes extremist-minded people feel even more victimised than they already feel, and makes them believe that violence is justified self-defence, rather than aggression, more than they already do.

3.1 Christchurch - ineffective

The horrific terrorist shootings at two mosques in Christchurch, New Zealand, on March 15, 2019, prompted some people to conclude that freedom of speech was not an acceptable mode of combating hate speech. This is understandable but misguided. Less understandable, however, was the take of Tim Soutphommasane, who tweeted that “this is what you open up when the government attacks race hate laws and defends a right to be a bigot”³⁶ - blaming the government’s efforts to repeal section 18C for the murder of 51 people. Apart from not being able to explain why, given 18C remains on the books, it is the solution rather than the problem, the thesis that anti-vilification laws could have prevented the shooting does not fit the evidence. Every country that the shooter visited during his radicalisation has anti-vilification laws.

Article 216(2) of Turkey’s Penal Code provides that “A person who publicly degrades a section of the public on grounds of social class, race, religion, sect, gender or regional differences shall be sentenced to a penalty of imprisonment for a term of six months to one year.”

Article 624(4) of France’s Penal Code prohibits “private insult towards a person or group of people by reason of their origin or their belonging or non-belonging, real or supposed, to an ethnicity, a nation, a race or a religion.”

Article 505(2) of Pakistan’s Penal Code provides that “Whoever makes, publishes or circulates any statement or report containing rumour or alarming news with intent to create or promote, or which is likely to create or promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, shall be punished with imprisonment for a term which may extend to seven years and with fine.”

Article 162(1) of Bulgaria’s Penal Code provides that “An individual who preaches or abets to racial, national or ethnical hostility, hatred or racial discrimination through the means of communication as the press, mass media, electronic information systems or through the use of another means, is subjected to a penalty of imprisonment for a term up to four years, a fine from five to ten thousand BGN and public execration.” Article 164(1) says much the same for religion.

Article 322 of Hungary’s Penal Code provides that “Any person who, before the public at large, incites violence or hatred against: a) the Hungarian nation; b) any national, ethnic, racial or religious group or a member of such a group; or c) certain societal groups or a member of such a group, in particular on the grounds of disability, gender identity or sexual orientation is guilty of a felony punishable by imprisonment not exceeding three years.”

Article 510(2) of Spain’s Penal Code provides that “Those who, with knowledge of its falseness or reckless disregard for the truth, were to distribute defamatory information on groups or associations in relation to their ideology, religion or belief, belonging an ethnic group or race, national origin, gender sex, sexual preference, illness or handicap shall be punished with the same penalty.”

Article 240(b) of Portugal’s Penal Code provides that “Anyone who, in a public assembly, in a writing purported to be divulged or by any means of mass communication; defames or insults a person or group of persons because of his race or ethnic or national origin or religion, specially through the negation of war crimes or of crimes against peace and humanity; intending to incite to racial or religious discrimination or to encourage it, is punishable with imprisonment from 6 months to 5 years.”

The problem is not a lack of anti-vilification laws. They’re in every country he visited. The problem is that they are ineffective. Nor is this inefficacy the result of a failure to enforce them: as the Independent (UK) has

³⁶ Tim Soutphommasane, March 16, 2019, <https://twitter.com/timsout/status/1107065952292618240>

noted: “[French commentator Renaud] Camus [whose ideas greatly contributed to the shooter’s radicalisation and manifesto] has been convicted for racial hatred. Similar media personalities include Éric Zemmour. Despite receiving punishments from judges for offences such as inciting racial and religious hatred, particularly against Muslim communities, Zemmour remains a regular on French TV screens and radio programmes, and in newspapers columns.”³⁷ Had the Christchurch shooter observed or witnessed a prosecution of Camus or Éric Zemmour, he probably would have viewed them as truth-tellers under attack, blamed Muslims for their prosecution, and become even more extreme.

3.2 Tommy Robinson - counter-productive

I’m aware that the mere mention of that name would make many reading this submission alarmed, and for good reason. Robinson, the former leader of the English Defence League between 2009 and 2013, has a sordid history of far-right activism and rhetoric.³⁸ Despite his time with anti-extremist group Quilliam, he seems to always feel a pull back in that direction, despite some moderation. But nonetheless: defending freedom of speech properly means defending it for him as well.

Of course, Robinson has a raft of legitimate criminal convictions, including convictions for violent assaults.³⁹ None of this is a violation of freedom of speech. However, government agents in the United Kingdom, desperate to curb his freedom of speech for fear of the far-right, has made him a target for censorship. For example, in 2016, he was charged with “inciting racial hatred” for displaying a flag saying “F**k ISIS”, though the charges were dropped.⁴⁰

More recently, Robinson found a cause in activism against gangs that were found to have systematically raped thousands of young girls in the United Kingdom between 1997 and 2013, gangs that, due to their Muslim identity, were ignored by authorities for fear of being called racist or Islamophobic. One less wise way he found to do this was to film outside the trials of those charged with these offences and yell at them, for which he received a conviction for contempt of court in 2017, as well as a suspended sentence.

In May of 2018, he repeated this stunt, which risked causing a mistrial if the defence could convince the judge that his behaviour had threatened the trial’s fairness. Some punishment for this would have been in order. However, what happened next was a massive overreaction and violation of due process: “The police turned up in a van and swiftly arrested Robinson for “breach of the peace.” Within hours Robinson had been put before one Judge Geoffrey Marson, who in under five minutes tried, convicted, and sentenced Robinson to 13 months. He was immediately taken to prison.” Not only was he convicted and sentenced so harshly so quickly, “a reporting ban was put on any mention of Robinson’s arrest, swift trial, and conviction”⁴¹ Although prosecuting his ridiculous stunt would have been legitimate, it is clear, especially when past actions of censorship are considered, that part of the motivation for his prosecution was political.

And his supporters noticed. On June 9, 2018, hundreds of them protested against his imprisonment. Some of them threw Nazi salutes.⁴² 20 police officers were injured by crowd violence.⁴³ At least seven protesters were

³⁷ Nabila Ramdani, *Of course the Christchurch suspect was radicalised in France – the country is a haven for Islamophobia*, March 18, 2019, <https://www.independent.co.uk/voices/christchurch-attack-terror-mosque-france-islamophobia-brenton-tarrant-a8827891.html>

³⁸ Sunny Hundal, *Tommy Robinson may have quit the EDL – but he's no Gandhi*, October 9, 2013, <https://www.theguardian.com/commentisfree/2013/oct/08/tommy-robinson-quit-edl-extreme>

³⁹ Matt Rowland Hill, *Who is the real Tommy Robinson?*, October 18, 2013, <https://www.telegraph.co.uk/news/politics/10389954/Who-is-the-real-Tommy-Robinson.html>

⁴⁰ Jacob Bojesson, *British Man Accused Of ‘Inciting Racial Hatred’ For Posing With ‘F*** ISIS’ Flag*, July 1, 2016, <https://dailycaller.com/2016/07/01/british-man-accused-of-inciting-racial-hatred-for-posing-with-f-isis-flag/>

⁴¹ Douglas Murray, *Tommy Robinson Drew Attention to ‘Grooming Gangs.’ Britain Has Persecuted Him.*, May 31, 2018, <https://www.nationalreview.com/2018/05/tommy-robinson-grooming-gangs-britain-persecutes-journalist/>

⁴² Lizzie Dearden, *Tommy Robinson supporters perform Nazi salutes at violent London protest, amid warnings of return to racist street movements*, June 11, 2018, <https://www.independent.co.uk/news/uk/crime/tommy-robinson-free-protest-nazi-salutes-london-violence-police-arrests-attacks-prison-a8393566.html>

⁴³ Rebeca Speare-Cole, *Police appeal to identify 10 people after more than 20 officers injured at ‘Free Tommy Robinson’ rally in Westminster*, November 13, 2019, <https://www.standard.co.uk/news/crime/police-appeal-to-identify-10-people-after-more-than-20-officers-injured-at-free-tommy-robinson-rally-a4286331.html>

jailed.⁴⁴ Anti-fascist activists warned that “the racist right are using Robinson to reorganise,” and that the rally was “the first serious attempt since the collapse of the English Defence League (EDL) to develop a racist street movement and give it a political form.”⁴⁵

So yes, that worked well.

The actions of UK government agents in targeting Robinson did not improve community relations and decrease tensions and violence. It bottled tensions up until they exploded violently.

3.3 Northern Ireland - counter-productive and deadly

The Troubles in Northern Ireland came to an end in 1998, after more than 3600 people were killed. The conflict, between mostly Protestant British loyalists and mostly Catholic Irish nationalists, began in 1969 after communal violence between the two sects, sparked when Protestant gangs attacked Catholic civil rights marches, which protested against the quasi-apartheid against Catholics and Irish nationalists in the country. On the loyalist sides, paramilitary groups included the Ulster Defence Association and the Ulster Volunteer Force, while on the republican side, the biggest paramilitary group was the Provisional Irish Republican Army. The PIRA disbanded after the conflict ended in 1998, but a group of militants opposed to the peace process broke off and called itself the Real IRA, which in recent years has become known as the New IRA.

In March 2018, a group of Irish nationalists in the Creggan district of Derry, a heavily Catholic/nationalist area, attempted to stage a march in commemoration of the 1916 Easter Rising, an unsuccessful armed revolution against British rule in Ireland, which was entirely part of the UK at the time. The Police Service of Northern Ireland tried to shut them down (and arrested six men at another illegal parade).

The result? “Police in Northern Ireland have been attacked with petrol bombs and other missiles after they tried to stop an illegal dissident Irish republican parade.”⁴⁶

It gets worse. In April 2019, a raid by Northern Ireland police in Creggan to seize weapons from militant republicans led to similar violence. Unfortunately, this time, a New IRA member shot at police and accidentally struck and killed journalist Lyra McKee.

There’s no way of knowing for sure that the events of 2018 contributed to the murder of McKee in 2019. But we can be sure that they didn’t help. They didn’t make Northern Ireland more peaceful. And given the long memories of extremists and thugs, it seems almost impossible they didn’t still carry the anger of the 2018 shutdown with them when they murdered an innocent journalist a year later.

3.4 Norway - the full scale of the horror

Anti-vilification laws are generally targeted at reducing far-right violence, but on July 22, 2011, they contributed not only to violence, but terrorism. Right-wing extremist Anders Breivik first bombed government offices in Oslo, killing 8 people, then travelled to Utøya Island where a youth camp held by the Norwegian Labor Party was being held, killing 69 more. It is widely known that Breivik held the Labor Party responsible for a perceived Muslim invasion of Norway.

What is less widely known is that Breivik was driven in no small part to commit his atrocious act by censorship. Two different parts of his manifesto read as follows:

“Needless to say; the growing numbers of nationalists in W. Europe are systematically being ridiculed, silenced and persecuted by the current cultural Marxist/multiculturalist political establishments.”

⁴⁴ British Broadcasting Corporation, *Seven jailed over London 'free Tommy Robinson' protest*, September 27, 2019, <https://www.bbc.com/news/uk-england-49856298>

⁴⁵ Ian Cobain, *Far right reorganising for Tommy Robinson protests, say activists* June 20, 2018, <https://www.theguardian.com/uk-news/2018/jun/19/far-right-reorganising-for-tommy-robinson-protests-say-activists>

⁴⁶ Henry McDonald, *Police attacked during dissident republican parade in Derry*, April 3, 2018, <https://www.theguardian.com/uk-news/2018/apr/02/northern-ireland-six-men-appear-court-irish-dissident-republican-parade-lurgan>

“This Eurabian policy, expressed in obscure wording, is conducted at the highest political levels and coordinated over the whole of the European Union. It spreads an anti- American and anti-Semitic Euro-Arab sub-culture into the fiber of every social, media and cultural sector. Dissidents are silenced or boycotted. Sometimes they are fired from their jobs, victims of a totalitarian "correctness" imposed mainly by the academic, media and political sectors.”⁴⁷

All up, the word “silenced” appears in the manifesto 14 times, “censored” 9 times, and most importantly, “hate speech” 17 times, as revealed by using the “Find” tool on a computer. Furthermore, Norway has hate speech laws based on the attribute that caused him to commit his attacks - religion.⁴⁸

Fat lot of good they did.

4. Does the power of the state to censor stop with anti-vilification laws?

Those who believe that the answer to any social problem can be found in the exercise of state power never fail to forget one thing: that depends on state power being exercised in the way they believe will solve the problem. There’s precisely zero reason to believe that this will be the case.

Once the state has the power to censor, a necessary prerequisite to make anti-vilification laws possible, there’s no reason that the exercise of that power must end with anti-vilification laws. Reprehensible as hate speech is, be it racist, misogynistic or homophobic, we need better reasons than mere immorality or offensiveness to justify making any kind of speech illegal. Even where taking offence at it is justified and warranted, this still doesn't cut it. And it’s not just because of the unjustified aggression is using the force of law to punish people for speech. It’s in order to protect our own liberty. No individual is the only political player. Other people have political influence as well, and they also have opinions as to what is offensive and immoral. And if the prevailing culture and ethos is that offensive and immoral speech should be made illegal, this sets the precedent and gives them the opportunity to make illegal speech that they find offensive and immoral. Try as anti-vilification law proponents may to distinguish their justified sensitivities from the unjustified sensitivities of other would-be censors, this is pointless. If the ideological opponents of those opposed to hate speech have the political power and the desire to censor speech they don’t like, they will. The fact that their sensitivities are misguided will be no barrier to that. Power does not care about what is moral.

The right of Australian governments to censor speech has led to a great deal of actual or threatened censorship beyond that of anti-vilification laws. It has led to:

- police raids on journalists that report government plans to increase spying power over Australian citizens;⁴⁹
- the very next day, police raids on journalists that report on war crimes committed by Australian soldiers in Afghanistan;⁵⁰
- the possible prosecution of the previous two categories of journalists;⁵¹
- bills introduced to the House of Representatives to prohibit the burning of the Australian (and other) flag(s);⁵²
- codes of conduct prohibiting public servants from engaging in political discussion;⁵³

⁴⁷ Andrew Berwick (pseudonym), *2083: A European Declaration of Independence*, https://fas.org/programs/tap/_docs/2083_-_A_European_Declaration_of_Independence.pdf

⁴⁸ Almindelig borgerlig Straffelov (Straffeloven), Anden Del. Forbrydelser, § 135 a, https://lovdata.no/dokument/NLO/lov/1902-05-22-10/KAPITTEL_2-6

⁴⁹ Paul Karp, *Federal police raid home of News Corp journalist Annika Smethurst*, June 4, 2019, <https://www.theguardian.com/australia-news/2019/jun/04/federal-police-raid-home-of-news-corp-journalist-annika-smethurst>

⁵⁰ British Broadcasting Corporation, *ABC raid: Outcry as Australian police search public broadcaster*, June 5, 2019, <https://www.bbc.com/news/world-australia-48522729>

⁵¹ Amy Remeikis, *Christian Porter says he can't guarantee he wouldn't prosecute journalists*, October 20, 2019, <https://www.theguardian.com/australia-news/2019/oct/20/christian-porter-says-he-cant-guarantee-he-wouldnt-prosecute-journalists>

⁵² Josh Butler, *George Christensen Introduces Flag Burning Bill*, July 15, 2016, https://www.huffingtonpost.com.au/2016/02/28/christensen-flag-burning_n_9344694.html

⁵³ Elizabeth Byrne, *Public servant loses free speech High Court case over tweets criticising government policies*, August 8, 2019, <https://www.abc.net.au/news/2019-08-07/high-court-free-speech-public-service--banerji-decision/11377990>

- section 42 of the Border Force Act, which severely restricts doctors from discussing the health of refugees;⁵⁴
- workers at public broadcasters losing their jobs for criticising Anzac soldiers (who are all dead) in their own time outside their workplace;⁵⁵
- censorship of both sides of the abortion debate:
 - censorship of the pro-life side through “safe zone” laws that criminalise a great deal of communication about abortion within, generally, 150 metres of an abortion clinic (a law that is far broader than what would be necessary to prohibit harassment of women);⁵⁶
 - censorship of the pro-choice side through university discipline procedures against students who protested against anti-abortion activism at the University of Sydney, at the urging of right-wing NSW Labor MLC Greg Donnelly;⁵⁷
 - the sacking of a Cricket Australia worker who criticised the Tasmanian government’s policies on abortion, following pressure from socially conservative MHA Michael Ferguson;⁵⁸
- a bill by the Tasmanian government to restrict the usage of non-government-designated names for certain natural landmarks, in my view a transparent attempt to crack down on the use of Aboriginal names;⁵⁹
- and a threat from the Australian government to prohibit protests against companies whose practices damage the environment if the effect is to deter other companies from doing business with them.⁶⁰

Every time a government passes a new law to censor, all the other laws already on the books get a new justification for their continued existence. Those who wish to defend the old laws have a new law to point to as a precedent that supports the old laws. They can very simply ask: “If it’s okay to allow censorship in that instance, is it not okay to allow it in this instance?” This government, thankfully, is a progressive, left-wing government, but it should not use those credentials as a justification for authoritarianism. Many of the examples that I listed would appall this government, I have no doubt. But they should not surprise it. No one should be surprised that, when given the power to censor, governments use it for their own interests, not just for anti-vilification laws.

5. Does censorship operate in retaliatory cycles?

Short answer: yes.

Some such cycles are short term. But others can take place over decades.

5.1 University of Sydney

In the previous section I mentioned the censorship of pro-choice students at the University of Sydney. While the real drama begins in 2018, it has its origins in 2012, when LifeChoice Australia was registered as a club at the University. A mere five days after it was registered, pro-choice activists tried to get it deregistered. The Student Union Board voted against deregistration 36 to 34.⁶¹

⁵⁴ Australian Border Force Act 2015, section 42, http://www5.austlii.edu.au/au/legis/cth/consol_act/abfa2015225/s42.html

⁵⁵ Amanda Meade, *SBS sports reporter Scott McIntyre sacked over 'despicable' Anzac tweets*, April 26, 2015, <https://www.theguardian.com/media/2015/apr/26/sbs-sports-reporter-scott-mcintyre-sacked-over-direspectful-anzac-tweets>

⁵⁶ Elizabeth Byrne, *Anti-abortion activists lose High Court challenge to laws banning protests outside clinics*, April 10, 2019, <https://www.abc.net.au/news/2019-04-10/anti-abortion-protestors-lose-high-court-bid/10987714>

⁵⁷ Gina Rushton, *A Student Just Sent This Letter To An Anti-Abortion Politician Who Wanted Her Disciplined Over An Abortion Rights Protest*, September 6, 2018, <https://www.buzzfeed.com/ginarushton/anti-abortion-protest-university-sydney-greg-donnelly>

⁵⁸ Rhiana Whitson, *Cricket Tasmania boss told Angela Williamson the Premier was lying to her, court documents allege*, August 30, 2018, <https://www.abc.net.au/news/2018-08-30/williamson-sacking-came-after-cricket-aust-spoke-to-premier/10177316>

⁵⁹ Central Australian Aboriginal Media Association, *Tasmanian place name bill a form of 'cultural genocide' - Heather Sculthorpe*, September 17, 2019, <https://caama.com.au/news/2019/tasmanian-place-name-bill-a-form-of-cultural-genocide-heather-sculthorpe>

⁶⁰ Paul Karp, *Scott Morrison threatens crackdown on protesters who would 'deny liberty'*, November 1, 2019, <https://www.theguardian.com/australia-news/2019/nov/01/scott-morrison-threatens-crackdown-on-secondary-boycotts-of-mining-companies>

⁶¹ Sydney Morning Herald, *Student union to fund anti-abortion group*, June 6, 2012, <https://www.smh.com.au/national/nsw/student-union-to-fund-anti-abortion-group-20120606-1zwf0.html>

On March 2, 2018, during the university's orientation week, students of the University's Wom*n's Collective (their asterisk, not mine) protested the stall, and bragged about their efforts to shut down the club, with one member saying "We tried to get it deregistered a lot of times, similar to German cockroaches, but for some f**king reason they just keep going."⁶² They thus announced their own intolerance and their own support for censorship, but this was all a legitimate exercise of freedom of speech. Unfortunately, on March 13, the university received complaints about their behaviour, and the students were investigated.

Greg Donnelly wrote to Vice Chancellor Michael Spence three separate times, on March 16, May 16, and June 14, urging him to take action to punish the protesters.⁶³ On June 21, he spoke in the New South Wales parliament about the matter. Hours later, LCA unfortunately trashed any ability of its own to claim support for freedom of speech by approvingly posting a video of Donnelly's speech on its Facebook page.⁶⁴

Then in July, Donnelly wrote to every member of the University Senate and Chancellor Belinda Hutchinson, seeking the students' punishment.⁶⁵ And he got it: University administrators decided to suspend Ward for a semester.⁶⁶ The situation condemned by the protesters back in March - that LCA was allowed to be a university club - had become reality, only in the other direction. Suddenly it was the WC that was being threatened. Its members had learned a hard lesson: that if the power to censor speech exists, no one is immune from its wrath. The University might be one of the most left-wing places in the country, but all it took was a few administrators with enough hostility to the pro-choice message, or sympathy to the anti-abortion message, to shut them down.

This was eventually reversed, with the students getting only a warning,⁶⁷ but even that is problematic. And it was problematic partly because it precipitated another violation of freedom of speech. In September, the Liberal Party club at the university brought sex therapist Bettina Arndt, who rejects the claim that university campuses have a serious problem with sexual assault, to speak. Members of the Wom*n's Collective protested it, including some who had been involved in the first protest but this time, they became physically obstructive and blocked people trying to get in. This is not freedom of speech, and this time, they faced legitimate punishment.⁶⁸

After the protest, Madeline Ward and Jessica Syed, who were involved in both sagas, defended their actions against Arndt's speech in a Guardian article. "Earlier this year, Labor MLC Greg Donnelly tried to involve himself in a confidential investigation concerning three Sydney university students who participated in a pro-choice protest during orientation week," they wrote. "In a speech to the New South Wales Legislative Assembly, as well as in a series of letters, he lobbied the university's vice-chancellor and senate to serve them a harsh penalty." They also noted that their experience "betrays a flaw in the conservative push for free speech," because "it's clear that the extent of free speech that they are willing to afford progressive movements comes with a caveat of doing so as quietly and politely as possible."⁶⁹

Ward and Syed clearly felt aggressed against by Donnelly, which they were right to feel, because he was aggressive. And what was the entirely predictable outcome? They felt driven to fight back. To defend themselves. To resist. And unfortunately, they became so consumed by the aggression against them that they reacted with aggression of their own. Their genuine suffering at the hands of censorship convinced them that any response they returned would be a legitimate defensive response. But it wasn't.

⁶² LifeChoice Australia, June 21, 2018, <https://www.facebook.com/LifeChoiceAu/videos/405143479966169/>

⁶³ *Ibid.*

⁶⁴ *Ibid.*

⁶⁵ Remy Varga, *Abortion issue simmers at the University of Sydney*, July 10, 2018, <https://www.theaustralian.com.au/higher-education/abortion-issue-simmers-at-the-university-of-sydney/news-story/10da380f71830d88ffdcc80d767b5cfl>

⁶⁶ Gina Rushton, *A Student Just Sent This Letter To An Anti-Abortion Politician Who Wanted Her Disciplined Over An Abortion Rights Protest*

⁶⁷ *Ibid.*

⁶⁸ Bettina Arndt, *Finally, Sydney University moves against the anti free speech brigade*, June 5, 2019, <https://www.spectator.com.au/2019/06/bettina-arndt-finally-sydney-university-moves-against-the-anti-free-speech-brigade/>

⁶⁹ Jessica Syed and Madeline Ward, *Free speech for some: when conservative hypocrisy meets student activism*, September 27, 2018, <https://www.theguardian.com/commentisfree/2018/sep/27/free-speech-for-some-when-conservative-hypocrisy-meets-student-activism>

5.2 Tasmania

The example at the University of Sydney took place over a few months, but censorship in Tasmania has undergone a cycle spanning decades.

In 1988, when homosexuality remained a criminal offence in the state, LGBTI activists established a stall at the Salamanca Market in the Tasmanian capital of Hobart, to distribute literature and collect signatures on petitions for decriminalisation. The local council eventually tried to ban the stall because it was - guess what - “offensive”, as well as political. Those running the stall were threatened with arrest if they continued to run the stall. But they continued, and they were indeed arrested. Beginning on October 22 and ending in December, 130 people had been arrested. Those arrested did not only include those running the stall, but those running other stalls who displayed the petitions, as well as mere observers. As is common practice among authoritarian governments (which the council and state government at the time indeed were), journalists were not allowed to cover the saga.⁷⁰

In 1997, developments in the federal parliament and the moral force behind the campaign became so strong that homosexuality was decriminalised. In 1998, Tasmania passed a comprehensive anti-discrimination act, an act which represented a conscious effort by the Tasmanian government, which was by now much more progressive, to purge the state’s history of homophobic persecution. The bill included a prohibition on inciting hatred, serious contempt, or severe ridicule of a person, language very similar to that in the Victorian legislation. As then-federal Human Rights Commissioner Chris Sidoti noted, “this bill and the recent repeal of the provisions of the Tasmanian Criminal Code dealing with homosexuality represent significant advances in human rights in your State.” Labor Member of the House of Assembly for Denison Judy Jackson said in Parliament that “without gay law reform it would have been inconsistent to have allowed people not to be discriminated against on the grounds of their sexual orientation when it was against the law in this State to express your without orientation.” Greens MLA and eventual federal Senator Christine Milne argued that Tasmania was “known for two things overseas: one for our fantastic wilderness and campaigns such as the Franklin River campaign and, secondly, for being the one place where discrimination against gays was still rife,” but that the anti-discrimination bill would “add to the healing and the reconciliation process.”⁷¹

This is section 19 of the Tasmanian Anti-Discrimination Act, which deals with incitement of hatred. It’s not a good law, but it’s better than what in 2013 became section 17 of the Act, which prohibits “any conduct which offends, humiliates, intimidates, insults or ridicules another person” on the basis of certain attributes (though section 55 of the Act provides certain exceptions to both sections). The Australian Christian Lobby argued that it “would have had serious implications on religious freedom” and “would threaten free speech and open dialogue”.⁷²

Bottom line: When conservatives wielded political and cultural power in Tasmania, they used to shut down speech they didn’t like. When they lost it, they pleaded for free speech and tolerance. It took 25 years for this shift to happen, but it did. None of us may realise it immediately, but beliefs we hold that are popular may not always be. And if, or when, they no longer are, it is then, and only then, that we will realise the importance of freedom of speech. But Tasmanian conservatives, through their campaign of persecution, had given their former victims absolutely no reason to grant that freedom to their former persecutors. When Julian Porteous was subject to his complaint, they learned that lesson the hard way.

What was happening was that conservatives, because of their past behaviour, had created a reputation for themselves as eternal persecutors and aggressors that censoring them was no longer seen as the retaliatory aggression that it is. Instead, it was seen as a defensive measure against a beast that was yearning to once again rear its ugly head. Even an act as benign as expressing an opinion was seen as a thrashing of that head. When Rodney Croome urged the complaint back in 2015, he said that “any principal or teacher who exposes

⁷⁰ Australian Lesbian and Gay Archives, 1988: *The Battle of Salamanca*, <https://alga.org.au/2012/1604>

⁷¹ Parliament of Tasmania Hansard, Wednesday 20 May 1998 - Part 2 - Pages 44 - 91, <http://www.parliament.tas.gov.au/ParliamentSearch/isysquery/2a60d1ce-3697-49c6-8302-1b27a77e2d2c/1/doc/H20MAY2.pdf>

⁷² Australian Christian Lobby, *MR: Proposed changes to anti-discrimination laws in Tas jeopardise human rights*, June 25, 2013, <https://www.acl.org.au/mr-proposed-changes-to-anti-discrimination-laws-in-tas-jeopardise-human-rights>

vulnerable children to such damaging messages not only violates their duty of care, but is a danger to students.”⁷³

Naturally, Croome was dismissive of Porteous’ situation, describing his “umbrage at being asked to attend a mediation” as “hardly the basis for good law making.”⁷⁴ But while I wish more people were receptive to complaints by conservatives of their freedom of speech being violated, it’s impossible to deny that conservatives’ abhorrent and violent censorship of LGBTI advocates in the past has caused many to believe that denying them freedom is impossible. Indeed, opponents of expanding freedom of religion have already pointing to conservatives’ terrible behaviour regarding LGBTI issues to argued that their freedom should not be expanded. For example, a December 13, 2017 article in *The Guardian* asks “Why extend the church's ‘freedom’ when it's abused what it already has?”⁷⁵

5.3 Conservative politics: A new frontier for anti-vilification laws?

Indeed, anti-vilification laws are lending legitimacy to a new push by social conservatives, who are facing the loss of previously held political power, to protect themselves from criticism over their stances on issues such as religion and same-sex marriage. Especially the November 15, 2017 plebiscite result in favour of marriage equality, they have branded themselves as a minority group deserving of anti-vilification protection. Columnist Miranda Devine wrote that the “Yes vote means a new minority needs protection”,⁷⁶ and a No voter told the UK’s *Catholic Herald* that “I have never felt so much in the minority as I have today.”⁷⁷

- In March of 2017, the Australian Christian Lobby demanded that the federal government legislate to change section 18C of the Racial Discrimination Act to include opponents of same-sex marriage as a protected group.⁷⁸
- In June of 2018, the Coptic Archbishop of Melbourne Anba Suriel demanded government intervention to remove upside-down crosses at a Dark Mofu exhibition in Hobart, which he considered a Satanic symbol.⁷⁹ He was supported by former Australian Christian Lobby managing director, failed Coalition for Marriage director, and failed Australian Conservatives Senate candidate Lyle Shelton.⁸⁰
- In July of 2018, then-Veterans’ Affairs Minister Dan Tehan called for religious discrimination to address the following perceived problems: “the forces of political correctness continually marginalis[ing] and dismiss[ing] contributions to debate informed by a reasonable religious belief”, and “journalist Peter FitzSimons [...] describing people of faith as being “brainwashed”.⁸¹ Of course, to use speech to marginalise or dismiss an idea, or to call someone brainwash, is freedom of speech, that Tehan wants banned.
- In September of 2018, Catholic Weekly writer and Director for Public Affairs and Engagement for the Archdiocese of Sydney Monica Doumit criticised the (non-custodial) sentence issued to a Christian vandal who defaced a mural of George Michael painted in a Jesus-like style, and lamented the lack of religious

⁷³ Out In Perth, *Debate heats up over Catholic traditional marriage booklet*

⁷⁴ Rodney Croome, May 9, 2017, <https://www.facebook.com/rodney.croome/posts/10154400778601811>

⁷⁵ Richard Ackland, *Why extend the church's ‘freedom’ when it's abused what it already has?*, December 13, 2017, <https://www.theguardian.com/australia-news/2017/dec/14/dont-extend-churches-freedom-when-theyve-abused-those-they-already-have>

⁷⁶ Miranda Devine, *Yes vote means a new minority needs protection*, November 19, 2017, <http://www.dailytelegraph.com.au/rendezview/yes-vote-means-a-new-minority-needs-protection/news-story/3ae65b7f6e1093222c5dcfea18b58bbe>

⁷⁷ Natasha Marsh, *Australia has voted for gay marriage – and religious freedom is already in peril*, November 23, 2017, <https://catholicherald.co.uk/commentandblogs/2017/11/23/australia-has-voted-for-marriage-and-religious-freedom-is-already-in-peril/>

⁷⁸ Lyle Shelton, *Why is harassment okay for some but not others?*, March 21, 2017, https://www.acl.org.au/why_is_harassment_okay_for_some_but_not_others

⁷⁹ Anba Suriel, *An Insult to the People of the Cross: Sacrilegious Symbols Have No Place in Hobart*, June 8, 2018, <https://www.abc.net.au/religion/an-insult-to-the-people-of-the-cross-sacrilegious-symbols-have-n/10094654>

⁸⁰ Lyle Shelton, June 9, 2018, <https://twitter.com/LyleShelton/status/1005702251665506304>

⁸¹ Dan Tehan, *Religious discrimination act would protect Australian freedoms*, July 7, 2018, <https://www.theaustralian.com.au/news/inquirer/religious-discrimination-act-would-protect-australian-freedoms/news-story/5a6f9856b40acddb46e10b394a988cd8?login=1>

vilification laws in New South Wales, describing it as a “lack of legal recourse for Christians and other people of faith who have been ridiculed, vilified or discriminated against.”⁸² Of course, painting a mural on your own property is free speech.

- In October of 2018, a Change.org petition seeking the Australian Communications and Media Authority to ban an organ donation ad that satirised the crucifixion of Jesus. amassed more than 27,000 signatures.⁸³
- In June of 2019, Tehan doubled down on his support for de fact blasphemy laws, saying that religious discrimination laws were needed because “what isn’t clear at the moment is how we define the boundaries of what we should be free to say, and what we shouldn’t, especially when it comes to our religious faith.”⁸⁴
- In July of 2019, Freedom for Faith executive director Michael Kellahan revealed that his organisation had recommended to the government that “there actually be a religious freedom commissioner, so that these kind of things won’t just be dealt with by seeing human rights of people of faith being treated as kind of a second class right, **that these kinds of complaints be taken seriously.** We’re not talking about **full-blown** blasphemy laws, or something like that, but we are saying that **there does need some kind of recognition that these beliefs are reasonable, they shouldn’t just be mocked like that.**” (emphasis added)⁸⁵ Apparently he only wants partially-blown blasphemy laws.
- On August 4, 2019, Labor Senator Kristina Keneally demanded that critics of the Christian or Islamic religions be banned from entering Australia.⁸⁶ Keneally is not a conservative, but that’s the point: demand for blasphemy law and this absurd demand that religion be respected is so high that it extends even to left-leaning people in some instances.
- On August 20, 2019, Australian Catholic University Senior Research Fellow Kevin Donnelly demanded legislation to protect Christians’ “inherent right to express their views without vilification and condemnation.”⁸⁷ Those last four words, if legislated, would mean censoring their critics.
- On August 22, 2019, Liberal MP Julian Neeser gave a speech in which he reported that his constituents had reported “the media” as a threat to religious freedom.⁸⁸ In essence, they claim that their freedom is under attack because they can’t force media outlets not to criticise their religion.
- In September of 2019, a petition calling on the removal of artwork considered blasphemous at Griffith University, as well as “all disrespectful ads which are mocking Christianity”, addressed to Prime Minister Scott Morrison, amassed more than 38,000 signatures.⁸⁹

⁸² Monica Doumit, *NSW laws that discriminate against Christians*, September 4, 2018, <https://www.catholicweekly.com.au/nsw-laws-that-discriminate-against-christians/>

⁸³ Dané Craill, *Remove the ad using Jesus on the Cross to promote organ donation.*, <https://www.change.org/p/acma-freetvaus-remove-the-ad-using-jesus-on-the-cross-to-promote-organ-donation?fbclid=IwAR3JbFIsUQLW-OiXiSmYjqY-gCZfNUiib50hW2ztjNF-E24iEVqlVK0S2mU>

⁸⁴ Q&A, June 24, 2019

⁸⁵ Vision Christian Radio, Twenty20, July 9, 2019

⁸⁶ Kristina Keneally, August 4, 2019, <https://twitter.com/KKeneally/status/1158244116368519169>

⁸⁷ Kevin Donnelly, *Religious freedom: can the PM stay true to his word?*, August 20, 2019, <https://www.catholicweekly.com.au/religious-freedom-can-the-pm-stay-true-to-his-word/>

⁸⁸ Julian Leeser, *Address to the St Thomas More Society*, August 22, 2019 https://www.julianleeser.com.au/sites/default/files/downloads/Julian%20Leeser%20MP%20Address%20to%20the%20St%20Thomas%20More%20Society_0.pdf?fbclid=IwAR2GZMkbQXiXvwmLabYnNi-aUuaZ9MLGHuAQANZjQH_TDb0YQ3gnKbeY6Q

⁸⁹ Milan Maksimovic, *Protect our faith and stop all disrespectful ads which are mocking Christianity*, https://www.change.org/p/scott-morrison-protect-our-faith-and-stop-all-disrespectful-ads-which-are-mocking-christianity?recruiter=906085803&utm_source=share_petition&utm_campaign=psf_combo_share_initial.pacific_abi_gmail_send.variation.pacific_abi_select_all_contacts.select_all.pacific_email_copy_en_gb_4.v1.pacific_email_copy_en_us_3.control.pacific_email_copy_en_us_5.v1.lightning_share_by_medium_message.control.lightning_2primary_share_options_more.control&utm_medium=whatsapp&fbclid=IwAR0VxE4OoBgafKkXL4aod2FU9NWdGNGQj9Bqh3dSE6W_uok7BRXiQZJp4ew

- In October of 2019, broadcaster Kyle Sandilands was subjected to an anti-religious vilification complaint in the Australian Capital Territory for comments he made about the Virgin Mary.⁹⁰

Once anti-vilification laws were adopted on the grounds of other attributes, it was inevitable that social and religious conservatives would ask “other groups are protected. Why aren’t we?” As the marriage plebiscite demonstrates, they are a minority, and on occasion, No vote advocates faced violence for their positions (though LGBTI people and Yes vote advocates faced more). These two criteria are often cited as sufficient to justify anti-vilification laws. If they are, then No voters should be protected by them. But I, and many others, find this patently absurd. The double standard cannot be logically maintained. It can only be resolved by not having them to begin with, except where they deal with the three behaviours listed in the first question.

When faced with censorship of speech that they like and that they don’t like, some people respond to this argument by forfeiting their own freedom so that the freedoms of others might be forfeited. But most respond with utter hypocrisy: bending over backwards to explain why the censorship they like is legitimate and the speech it targets not so, while making the opposite argument for the censorship they don’t like. The result is a never-ending cycle of censorship, where both sides play by one set of rules while demanding the other side plays by a different set of rules. Where both sides view censorship of themselves as unjustified aggression but view censorship by themselves as justified self-defence against aggression. Where both sides fear that the other will crush them unless they crush them first. Every law for censorship gives these activists legitimacy, and contributes to a hostile, adversarial political climate where ideological opposites turn into enemies. Disagreements are settled not by negotiation, but by force. It should be needless to say that this is not ideal.

6. Does censorship target the minorities that hate speech laws are supposed to protect?

Once again, yes.

In 1987, the University of Michigan implemented hate speech codes on its campus in response to serious racist incidents on the campus. Given the considerably more racist culture of the time, this was more understandable than it would be today. But it still proved to be a bad idea. The code was in effect for 18 months before a court ruled it was a violation of the First Amendment to the United States Constitution. In that time, white students accused black students of violating the code in no less than 20 cases. The American Civil Liberties Union said at the time that “speech codes don’t really serve the interests of persecuted groups. The First Amendment does.” Truer words than this are rarely spoken. Freedom of speech ensures that minorities can hold bigots to account through condemning their bigotry and explaining why it is wrong. The laws intended to protect them can quickly turn into laws that prohibit them from doing that.⁹¹

In 2007, an Irish republican living in Northern Ireland was convicted of “disorderly behaviour” for shouting “tíocfaidh ár lá” at a police officer. The Irish phrase means “our day will come”, referring to a future prospect of the reunification of Northern Ireland with the Republic of Ireland. In 2007, Northern Ireland had just emerged from the Troubles, which began when Protestant mobs tried to use violence to censor Catholic demands for equal rights. Against this background, it seems a perfectly stupid idea to repeat the practice, albeit by the force of the law, rather than the force of the gun. But so keen were the courts of United Kingdom to protect their state agents from offence that it decided this was a risk worth taking. (Even though it wasn’t technically an anti-vilification law that the republican was convicted under, anti-disorderly behaviour laws, like anti-vilification laws, represent the power of the state to censor. They are problematic for the same reason.)⁹²

In April 2010, a British atheist was convicted of “causing religiously aggravated intentional harassment, alarm or distress” and given a six-month suspended jail sentence and a five-year anti-social behaviour. His crime? He left cartoons critical of Christianity and Islam in the religious room of Liverpool Airport. Incredibly, the atheist was also a survivor of child sexual abuse at the hands of a Catholic priest, so it’s hardly surprising that he had some negative feelings about religion. But again, the right of religious people to

⁹⁰ Brett Lackey, *Kyle Sandilands is 'investigated by the human rights commissioner' after complaints about his Virgin Mary joke*, October 19, 2019, <https://www.dailymail.co.uk/news/article-7590977/Kyle-Sandilands-investigated-human-rights-commissioner-Virgin-Mary-joke.html>

⁹¹ Conor Friedersdorf, *Free Speech Is No Diversion*, November 12, 2015, <https://www.theatlantic.com/politics/archive/2015/11/race-and-the-anti-free-speech-diversion/415254/>

⁹² Alan Erwin, *Teacher convicted of shouting abuse in Irish at police*, February 27, 2007, <https://www.independent.ie/irish-news/teacher-convicted-of-shouting-abuse-in-irish-at-police-26277857.html>

not have their religious feelings hurt (a standard only applied to religious feelings) was held to be more important than the right to criticise religion. Though the most ironic part of the case is that had he brought a Bible or a Qur'an into the room - both books with passages that advocate genocide against those outside the faith - he would not have run into any trouble. But saying that *all* religions are wrong in the form of a satirical cartoon was somehow deemed worse than saying *other* religions are wrong in the form of calls to genocide.⁹³

In March 2012, a British Muslim teenager was arrested, and later fined and ordered to do community service, for writing on Facebook "All soldiers should DIE & go to HELL! THE LOWLIFE FOKKIN SCUM! gotta problem go cry at your soldiers grave & wish him hell because that where he is going." This was deemed to constitute a "racially aggravated public order offence". Now, what more proof could possibly be needed that anti-vilification laws were open to abuse then redefining soldiers - *soldiers* - as a race? Or redefining "public order" as "people getting angry in Facebook debates"?⁹⁴

In July 2015, a Croatian court ordered LGBTI organisation Zagreb Pride to pay approximately 5,414 euros for putting Karolina Vidović Krišto, a Croatian TV commentator who has made numerous homophobic public comments, on their "annual list of candidates for the most homophobic person of the year in 2013". The court ruled that the organisation violated her "personal honour and dignity". Of course, one might say the same things about Krišto's comments as well, but we should hardly be surprised that this wasn't the case. We should hardly be surprised that, in a conservative country sympathetic to opinions like hers about homosexuality, the power to censor would not be wielded against the homophobic majority, but against the homophobic minority. (If proponents of anti-vilification laws believe, as many do, that the minorities they are trying to protect with those laws are the victims of a hostile government and society, then why on Earth would they want to entrust to that government and society the responsibility of enforcing censorship?)⁹⁵

In September 2015, three members of Sydney's Community Action Against Homophobia were fined or issued with court attendance notices for chanting "f**k [Christian Democratic Party NSW MP] Fred Nile" during a counter-protest against a rally led by Nile against same-sex marriage. These days, not very many people are offended by the word "f**k" (and in Australia, barely any at all), and in any event, why did the police not target the anti-same-sex marriage protesters? Weren't their placards calling for LGBTI people to "repent and be baptised" offensive? And given that it was them who disrupted the pro-same-sex marriage rally,⁹⁶ wouldn't they be a legitimate target for an actual "public order" fine? But the idea seems to be that you can spout religious nonsense in favour of denying people equal legal rights (as you should be able to do), but say the word "f**k" in response and you're in trouble.⁹⁷

In October 2015, France's highest court of appeals upheld convictions against pro-Palestinian activists for wearing T-shirts that read "Long live Palestine, boycott Israel." They were ruled to have violated a law criminalising conduct that "provokes discrimination, hatred or violence toward a person or group of people on grounds of their origin, their belonging or their not belonging to an ethnic group, a nation, a race or a certain religion." Whatever one thinks of BDS, this court ruling essentially establishes that French people have no right to educate each other about Israel's legitimate crimes if it "provokes discrimination, hatred or violence" against Israel.⁹⁸

In September 2016, a black man in the United States was charged with "ethnic intimidation" for calling police officers who were arresting him "Nazis", "skinheads" and "Gestapo". The authorities deemed the

⁹³ BBC News, *John Lennon Airport sexual image atheist gets Asbo*, April 23, 2010, http://news.bbc.co.uk/2/hi/uk_news/england/merseyside/8640048.stm

⁹⁴ Richard Seymour, *Azhar Ahmed – charged with treason over Facebook comments?*, March 16, 2012, <https://www.theguardian.com/commentisfree/libertycentral/2012/mar/15/azhar-ahmed-treason-army-facebook-comments>

⁹⁵ Zagreb Pride, *Backlash against Freedom of Speech: Attack on Zagreb Pride*, July 13, 2015, <http://www.zagreb-pride.net/en/backlash-on-the-freedom-of-speech-attack-on-zagreb-pride/>

⁹⁶ Paul Farrell, *Rally opposing marriage equality clashes with counter-protesters in Sydney*, September 20, 2015, <https://www.theguardian.com/australia-news/2015/sep/20/rally-opposing-marriage-equality-clashes-with-counter-protesters-in-sydney>

⁹⁷ Elyse Methven, *Is it OK to use the f-word in political protest?*, November 3, 2016, <https://theconversation.com/is-it-ok-to-use-the-f-word-in-political-protest-67705>

⁹⁸ Jewish Telegraphic Agency, *French high court confirms BDS activists' discrimination convictions*, October 23, 2015, <https://www.jta.org/2015/10/23/news-opinion/world/frances-highest-court-confirms-bds-activists-discrimination-convictions>

remarks to be anti-white slurs. Arresting a man whom you have totally subdued and have complete control of because he let you know he wasn't happy about it is self-evidently stupid.⁹⁹

In November 2016, a French court fined Laure Pora, a French LGBTI activist, 2300 euros for describing Ludovine de La Rochère, leader of the anti-same-sex marriage organisation La Manif Pour Tous (The Rally For All) as a “homophobe”. In other words, the Croatian case all over again.¹⁰⁰

In March 2017, prosecutors in Poland charged the Center for Monitoring Racist and Xenophobic Behavior with various crimes at the urging of far-right Catholic priest Jacek Międlar. Międlar bragged about getting the organisation prosecuted on his blog, of which a Google Translation reads:

“In February this year, at the request of the prosecutor's office in Białystok, the police searched the center, and the following month, prosecutors from Warsaw responded positively to our request and two proceedings were instituted: the center's deletion and **hate speech** (Article 257 k.k.)” (emphasis added)

The organisation was in trouble because it was committing “hate speech” against people like Międlar: a cursory view of his Twitter account reveals (sometimes even without English translation) a man consumed by homophobia, anti-Muslim hatred, and especially antisemitism. Every November 11, tens, if not hundreds, of thousands of Poles turn out for the nationalist March for Independence. They are the overwhelming majority in Poland, yet despite this (or more accurately, because of it), those critical of their beliefs were the ones targeted.¹⁰¹

In November 2017, teachers in the Spanish autonomous region of Catalonia were ordered to be investigated by a Spanish court for criticising police violence during the operation to stop the October 1 referendum on Catalan independence, violence which injured over 700 Catalonians. Officially, they were investigated for “hate speech”. Combating resentment that you caused by attacking people by attacking those same people a second time? An interesting strategy, to put it euphemistically.¹⁰²

In January 2018, Jewish students in Vienna were charged by police there for unfurling an Israeli flag at an anti-Israel rally, despite the unfurling being in response to chants of the antisemitic Islamist battle cry of “Jews, remember Khaybar, the army of Muhammed is returning.” Police alleged that the flag was “extremely provocative” and “produced considerable offense”. “Khaybar” refers to a battle fought in 629 between Muslim soldiers and the Jews native to the Khaybar Oasis. The Muslims won, and 93 Jews were killed. So I think that threatening Jews with death is a far more provocative and offensive gesture than displaying a Jewish country's flag in response. But who's surprised that Europe decided, once again, to target its Jews while coddling their enemies?¹⁰³

In April of 2019, the United States Court of Appeals for the Fifth Circuit allowed a lawsuit to proceed against Black Lives Matter activist DeRay McKesson, for leading a protest at which someone else assaulted a police officer. The decision defied clear and unambiguous First Amendment precedent, but the Court is widely

⁹⁹ Robby Soave, *Cops Arrested a Black Man. He Called Them Nazis, So He Was Charged With a Hate Crime.*, June 29 2018, <https://reason.com/blog/2018/06/29/hate-crime-cops-nazi-black-man>

¹⁰⁰ Nico Lang, *French hate crime ruling sets a dangerous precedent for LGBT people: It's now illegal to call someone a "homophobe" in France*, November 8, 2016, <https://www.salon.com/2016/11/07/french-hate-crime-ruling-sets-a-dangerous-precedent-for-lgbt-people-it-is-now-illegal-to-call-someone-a-homophobe-in-france/>

¹⁰¹ Jacek Międlar, *NASZ SUKCES! Trwa delegalizacja OMZRiK. Sprawami zajmują się prokuratury! Kto prowadzi postępowanie?*, May 5, 2017, <http://jacekmiedlar.pl/2017/05/05/sukces-trwa-delegalizacja-omzrik-sprawami-zajmuja-sie-prokuratury-kto-prowadzi-postepowanie/> The original Polish is: “W lutym bieżącego roku, na wniosek białostockiej prokuratury policja przeszukała ośrodek, zaś w następnym miesiącu, prokuratury z Warszawy pozytywnie odpowiedziały na nasz wniosek i wszczęto dwa postępowania: o delegalizację ośrodka i mowę nienawiści (art. 257 k.k.).”

¹⁰² Catalan News, *Teachers charged with hate speech remain under investigation*, November 7, 2017, <http://www.catalannews.com/society-science/item/teachers-charged-with-hate-speech-remain-under-investigation>

¹⁰³ Benjamin Weinthal, *Vienna Police Charge Three Men For Waving Israeli Flag At Rally* January 10, 2018, <http://www.jpost.com/International/Vienna-police-charge-3-men-for-waving-Israeli-flag-at-rally-533313>

considered to be the most conservative in the country. Once it threw away the First Amendment, it came after minorities first.¹⁰⁴

7. Do anti-vilification laws harm mental health?

Hate speech can obviously harm mental health, and therefore, it's appropriate to prohibit vilification of people where they are a captive audience to their vilification, which is the case in the face-to-face harassment I discuss in section 1. Beyond this, however, anti-vilification laws may make this problem worse.

Anti-vilification laws create a fragile mental state in the people that they are trying to protect. They teach those people that they aren't safe and equal in dignity unless other people are legally prohibited from saying anything they find offensive. Before large numbers of people believed this, they were a lot happier. They were a lot happier knowing that even if someone said something that they found bigoted or offensive, they could get on with their life and not have to worry about it. That didn't mean they would never feel offended for even a fleeting moment, but they could forget about it very quickly and not have it affect them.

Anti-vilification laws have changed this. They've told the people they're trying to protect that they're wrong to react with indifference to being offended. They've told them that if someone says something that offends them, it is so serious that it warrants the government's involvement. And this attitude has become widely accepted in our culture. If you seriously believed that being offended was that serious, of course it would upset you so much. It would only make sense to be so upset.

We need to recognise this principle: the degree to which a person has exhibited moral turpitude - for example, with a bigoted comment - does not need to be the degree to which we feel upset by it. Of course, if it's something serious, like a physical assault, then we do need to feel upset. We can't pretend that there is no injustice in the world just in order to never be upset by anything. But if we confine what we consider to be a serious injustice narrowly enough to exclude nasty comments, we'll be a lot happier. If we don't, then our resilience and mental health will be in danger.

There is both anecdotal and academic evidence that this decline in resilience is already happening. In the notorious QUT case, where non-indigenous students at the Queensland University of Technology were sued by an indigenous academic for criticising the school's policy of allowing racially segregated computer rooms, complainant Cindy Prior claimed that she suffered "offence, embarrassment, humiliation and psychiatric injury" over reading Facebook posts written by students that she ejected from an indigenous-only computer lab that were critical of their ejection. One read "Just got kicked out of the unsigned indigenous computer room. QUT stopping segregation with segregation." Another read "I wonder where the white supremacist computer lab is."¹⁰⁵ The idea that such benign, if sarcastic, criticism of a very questionable policy could make a reasonable person suffer what Prior said she has suffered is absurd. Such suffering can only occur once a person has been hypersensitised to speech they find offensive.

In the anti-vilification complaint filed against Kyle Sandilands for his Virgin Mary comments, the complainant said: "I was sickened to hear what he said and I know that many members of my community were and remain traumatised."¹⁰⁶

As for academic evidence: A book by social psychologist Jean Twenge released in August 2017 "analyzes four large national datasets that track the mental health of teenagers and college students."¹⁰⁷ It finds that "as soon as the data [on mental health] includes iGen (short for internet generation)—those born after roughly 1994—the rates of anxiety, depression, loneliness, and suicide spike upward."¹⁰⁸

¹⁰⁴ Garrett Epps, *Speech Rights for Trump, but Not DeRay Mckesson*, April 30, 2019, <https://www.theatlantic.com/ideas/archive/2019/04/doe-v-mckesson-lawsuit-black-lives-matter/588346/>

¹⁰⁵ Frank Chung, *QUT embroiled in 'segregation' furore*, February 6, 2016, <http://www.news.com.au/finance/work/careers/qut-embroiled-in-segregation-furore/news-story/dcdf3b57557aaf98576207f0ea7944e>

¹⁰⁶ Brett Lackey, *Kyle Sandilands is 'investigated by the human rights commissioner' after complaints about his Virgin Mary joke*

¹⁰⁷ Jonathan Haidt and Greg Lukianoff, *Why It's a Bad Idea to Tell Students Words Are Violence*, July 18, 2017, https://www.theatlantic.com/education/archive/2017/07/why-its-a-bad-idea-to-tell-students-words-are-violence/533970/?utm_source=atlib

¹⁰⁸ *Ibid.*

What could be at least a reason for this? As explained by Jonathan Haidt and Greg Lukianoff:

“If students are repeatedly told that *numerical disparities are proof of systemic discrimination, and a clumsy or insensitive question is an act of aggression (a “microaggression”), and words are sometimes acts of violence that will shorten your life*, then it begins to make sense that they would worry about their safety, chronically, even within some of America’s most welcoming and protective institutions.”¹⁰⁹ (emphasis original)

The idea that hate speech laws harm mental health may be further supported by research on a related concept: trigger warnings. A trigger warning alerts consumers of media to potentially distressing content before they consume the media. Intended to protect the mental health of vulnerable people, they may actually make mental health worse, as a study in the *Journal of Behavior Therapy and Experimental Psychiatry* found.¹¹⁰ Obviously trigger warnings are not the same thing as hate speech laws, so the extent to which this finding is relevant for hate speech laws is questionable. But both operate in a similar way in one respect: they suggest that encountering offensive speech or material is so distressing that one must be protected from them. Therefore, they may both increase one’s sensitivity to the material. Thus, the findings regarding trigger warnings may be relevant to the effects of hate speech laws.

8. Do anti-vilification laws assist in the spread of hateful ideas?

There is good reason to believe that this is not the case either.

8.1 Driving speech underground

One assumption that is often made regarding anti-vilification laws is that if they are effective and can be enforced, the spread of hateful ideas will be stopped. This is a grave miscalculation: it conflates legal effectiveness with practical effectiveness. If a law has teeth, and is enforced as opposed to ignored, it is legally effective. But this is a very different thing to being practically effective, or doing what they are intended to do in society.

Anti-vilification laws may very well stop the expression of hateful ideas in public. But this does not mean that they will stop their expression in private. And driving hateful ideas to private expression only is dangerous. If, for fear of prosecution or a lawsuit, someone who holds hateful views expresses them only in private, to like-minded people, then what has happened is that they have been cut off from people who oppose their ideas, and, if they heard them, would have the chance to respond and criticise them. This would be a moderating influence on the person holding the hateful ideas, and could prevent radicalisation to a dangerous degree. But instead, expressing their ideas only to like-minded people, and getting only like-minded opinions in turn, they will be affected by the phenomenon of group polarisation, where one’s views get more extreme when they are reinforced with no exposure to difference of opinions. They become less understanding and tolerant of difference, and more open to violence against that different. When we say that anti-vilification laws “drive hateful ideas underground”, we sometimes forget to mention that this is a problem because they won’t stay underground. The perpetrators of recent far-right terrorist attacks against a synagogue in Pittsburgh (11 Jews dead), mosques in Christchurch (51 Muslims dead), and shopping centres in El Paso (22 people dead, mostly Latinos), spent time immersed in far-right echo chambers. While anti-vilification laws didn’t necessarily contribute to those attacks (and certainly didn’t in Pittsburgh and El Paso, due to America’s First Amendment), they do make echo chambers worse, which in turn make more dangerous manifestation of hate more likely.

But Victoria has seen a recent example of this echo chamber being broken, to the detriment of the far-right, and to the benefit of everyone else. In January, a neo-Nazi rally of about 100 people was held at St Kilda beach in response to criminal behaviour by a small number of young Sudanese Australians. It was a truly disgusting display, replete with Nazi salutes and Waffen-SS merchandise. But it would have been even worse had some potential attendants been not allowed to speak their grievances. The Sydney Morning Herald reported after that rally that organiser Neil Erikson “says the “mums and dads” who turned out in 2015 don’t

¹⁰⁹ *Ibid.*

¹¹⁰ Robby Soave, *New Study: Trigger Warnings Might Make People Less Resilient to Trauma*, July 30, 2018, <https://reason.com/blog/2018/07/30/new-study-finds-trigger-warnings-might-m>

want to come to rallies any more because they feel their concerns are being heard by Canberra.”¹¹¹ Of course, were anti-vilification laws to have the effect of deterring them from expressing their concerns to Canberra, they may have chosen to express them in another way. (There is no inconsistency in that they would be deterred from contacting politicians by anti-vilification laws, but not attending a rally, as the mere presence at the rally would not breach any law, while speaking with a politician may be.)

8.2 Deterring the wrong people

But while some people who harbour hateful views will move to speaking only in private, others will not. Many extremists believe that they are fighting a cosmic, existential battle against their “enemy”, and legal trouble for anti-vilification violations is a price they’re willing to pay. (Many actually relish the experience, convinced that they are martyrs for their cause.) However, citizens without such views, who are more moderate, and who do not devote their lives to a political cause, will prefer to keep quiet to avoid the trouble. This is a problem because moderate people are not the people we need to be concerned about when it comes to spreading hate. But if they are deterred from speaking about a controversial issue because of an anti-vilification law, what this has done is hand complete control of the narrative over that controversial issue to those extremists who choose to defy the law. Even if the opinions that moderate citizens would like to express would not actually violate the law, they may nonetheless self-censor for fear that it could get them in trouble. Even the threat of a mere complaint could be enough to trigger this self-censorship.

The effect of this is that when a person first encounters a controversial and sensitive issue, that may be used by far-right groups to recruit, the far-right may be the only one talking about it. As such, they will have free rein to, for example, give out of context facts to explain certain problems, and propose disgusting policies to fix certain problems. Professor of psychology at Harvard University Steven Pinker has used the example of crime rates among African Americans to make this point.¹¹² While they are higher than those of European Americans, this is not because the former group is inferior to the latter group. It’s because of centuries of violent persecution against African Americans. However, a reluctance to even acknowledge the higher crime rates to begin with means that this point cannot be effectively made. This can have deadly consequences: the Charleston church shooter of 2015 was radicalised after reading statistics about crime. Anti-vilification laws make people more reluctant to acknowledge realities that are necessary to far-right narratives surrounding those realities to be refuted.

9. Conclusion and recommendations

9.1 Summary

Anti-vilification laws:

- are not morally justified (except for laws targeted against making threats of violence, advocating or encouraging violence, or harassing or abusing people to their face);
- make extremists more hateful, not less;
- prompt extremists to resort to violence, once they believe that speech is pointless;
- rely on the power of the state to censor to be implemented, which allows for other forms of censorship to be implemented;
- lead to cycles of retributive censorship between ideological opponents, making society more hostile and adversarial;
- target the minorities they’re ostensibly supposed to protect;
- harm the mental health of people they’re ostensibly supposed to protect;
- and assist in the spread of hateful ideas.

However, where they are targeted against making threats of violence, advocating or encouraging violence, or harassing or abusing people to their face, the behaviour they prohibit is so harmful (and is not a form of free speech) that they should be prohibited, as the benefits of prohibition outweigh the potential downsides in those instances.

¹¹¹ Max Koslowski, *How Australia's far-right were divided and conquered - by themselves*, January 11, 2019, <https://www.smh.com.au/politics/federal/how-australia-s-far-right-were-divided-and-conquered-by-themselves-20190108-p50qcb.html>

¹¹² Learn Liberty, *Political Correctness is Redpilling America*, January 2, 2018, <https://www.youtube.com/watch?v=kTiRnbNT5uE&t=4s>

9.2 Recommendations

1. The addition of sex, gender, gender identity, disability and sexual orientation to the list of protected attributes in the civil law (s 7) should be **opposed**. This is a general expansion of anti-vilification laws beyond the three behaviours I've listed.
2. The addition of sex, gender, gender identity, disability and sexual orientation to the list of protected attributes in the criminal law surrounding threatening vilification (s 24(1)) should be **supported**. Violent threats are one of the three behaviours I've listed that should be prohibited.
3. The addition of sex, gender, gender identity, disability and sexual orientation to the list of protected attributes in the criminal law surrounding non-threatening vilification (s 24(2)) should be **opposed**. It is a serious act of aggression to **criminally** punish a person who has not made a threat or incited violence.
4. The removal of religious belief or activity from the list of protected attributes in the civil law (repeal of s 8) should be **supported**. This is a contraction of anti-vilification law that does not concern the three behaviours I've listed, as well as the repeal of de facto blasphemy law.
5. The removal of religious belief or activity from the list of protected attributes in the criminal law surrounding threatening vilification (repeal of s 25(1)) should be **opposed**. Violent threats are one of the three behaviours I've listed that should be prohibited.
6. The removal of religious belief or activity from the list of protected attributes in the criminal law surrounding non-threatening vilification (repeal of s 25(2)) should be **supported**. This is a contraction of anti-vilification law that does not concern the three behaviours I've listed, as well as the repeal of **criminal** de facto blasphemy law (even worse than s 8).
7. The change of the standard for actionable vilification in the civil law (s 7) from conduct that "incites" hatred, serious contempt, or revulsion or severe ridicule, to conduct that "is likely to incite" those feelings should be **supported**. My preference is that s 7 be repealed entirely, but if it is not to be, this would improve the section. It would bring in an objective standard to assessing civil vilification claims, so they can't be judged according to an unreasonable person reacting to something innocuous.
8. The change of the standard for actionable threatening vilification in the criminal law (s 24(1)) from intentional conduct to intentional or reckless conduct, and the removal of the requirement that the offender know that the conduct is likely to threaten physical harm or incite others to threaten physical harm, should be **supported**. Advocating or encouraging violence should have an objective standard. The intention of the person inciting the violence is irrelevant to the effect of such incitement. A person should not be permitted to claim ignorance of the meaning and effect of their words as a defence to a charge of incitement.
9. The change of the standard for actionable non-threatening vilification in the criminal law (s 24(2)) by removing the requirement that the offender know that the conduct is likely to incite serious contempt revulsion or severe ridicule, and establishing that the mere likelihood of incitement renders it actionable, should be **opposed**. This is a general expansion of anti-vilification laws beyond the three behaviours I've listed, and is especially serious because it deals with **criminal** law.