



CATHOLIC ARCHDIOCESE OF MELBOURNE

**Submission considering amendments to the  
Racial and Religious Tolerance Act 2001**

**20 December 2019**

**Catholic Archdiocese of Melbourne**

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## **Submission of the Catholic Archdiocese of Melbourne**

### **Proposed amendments to the Racial and Religious Tolerance Act 2001**

#### **1) About the Catholic Archdiocese of Melbourne**

The Catholic Archdiocese of Melbourne through its ministries and agencies is at the service of the people of God. Presided over by the Archbishop of Melbourne, the Archdiocese comprises around 1.1 million Catholics, and is the largest diocese in Australia with a wide variety of people, cultures and ministries, providing services and support to 210 parishes and over 334 schools, 36 hospitals, 61 aged care homes and many other pastoral and social welfare services.

#### **2) Encourage tolerance, not sow discord**

Today, people of faith in many places, including Christians, are committed to the tenets of equality, justice and peace, but at times are targets of hatred and violence. Even in Victoria, people in our faith community and others are not always treated with the dignity and respect our Australian traditions of inclusion and fairness expect.

The *Racial and Religious Tolerance Act 2001* (the Act) has been successful in providing appropriate provisions against vilification. Some proposals to dramatically alter this Act place inclusion and fairness in serious jeopardy. We suggest that where violence is being incited or defamation is involved, the current legal framework provides adequate safeguards.

One such proposal, the *Racial and Religious Tolerance Amendment Bill 2019* (the Bill), lowers the threshold for an offence and expands the grounds or attributes on which vilification may be based. This is likely to increase costly and unnecessary legal action for less serious matters.

This undermines social cohesion. It fuels the divisiveness of identity politics by increasing the negative and acrimonious focus on differences rather than promoting peaceful coexistence.

#### **3) Definitions**

- a) **Conviction for a “possibility” over a reality** – Currently the *Racial and Religious Tolerance Act 2001* requires an offender to have known and intended to vilify another party. Clause 18 (2) (b) of the Bill substitutes “**likely** to incite” for “incite”. This opens the possibility that one can be found guilty of vilification where it was only likely – a *possibility* – rather than it actually taking place. An offence must be based on reality, not on what is likely to happen.
  
- b) **Ignoring Intentions** – Clause 18 (2) (c) of the Bill alters the substance of the Act by removing the necessity for an offender to have intended harm. Expanding the definition to include “reckless” action shifts the judgement from the intention or objective of the accused, to what the arbiter of the case considers is reckless.

Intent is important in determining the degree of personal responsibility of the accused (as in the distinction between murder and manslaughter). A deliberate choice to incite hatred or violence is more serious than recklessness and is therefore a more reasonable threshold to maintain.

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- c) **Expanding protected attributes beyond race and religion** – Clause 8 of the Bill would extend the operation of the Act beyond that of race and religion. When introduced, the Act recognised the need to protect ethnic communities in Victoria among whom religion and ethnic origin are often linked. Federal legislation still does not explicitly protect religion in the same way. The Act was an attempt to guard the distinctive multicultural nature of Victoria.

Expanding those drawn under the ambit of the legislation has the effect of both diminishing the original focus of the Act from fostering multicultural respect to the contentious area of [sexual and gender identity](#).

Discrimination legislation provides significant protection for the groups that Clause 8 of the Bill would draw in. If adopted, the Bill would expand the number of people who could be expected to pursue legal action. Arguments could be made to expand the number of attributes and so further diminish its multicultural focus.

#### **4) Unintended consequences – increasing intolerance, not reducing it**

Legal action at any level is costly in terms of time, money and stress on all parties. We should not create a situation where processes intended for achieving justice are prone to misuse. Process can be used by some as weapons against those with whom one disagrees. This can do more to fuel acrimony in the community. Individuals or groups more interested in creating division would obtain the means to use the law as a sword rather than a shield. In other words, Victorian Law can become a cause of division instead of peaceful co-existence.

It can be argued that the Act has been used already in this way in [Fletcher v Salvation Army](#). While the case was dismissed and costs awarded against the complainant who was unable to pay, the Salvation Army bore the cost and used resources that could have been better used in other ways. We do not speak for the Salvation Army but we respect and admire their selfless work in our community, and would want to see any similar organisation protected by malicious and unwarranted claims, whether Christian or otherwise.

Broadening the scope of the legislation and lowering the threshold for what is considered an offence, risks causing significantly more harm than good. For these reasons, we argue that the Act should remain the same.

#### **5) Consistency**

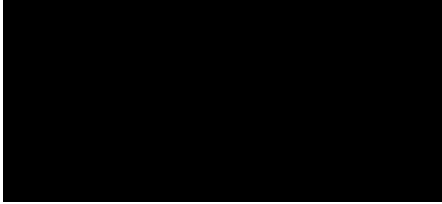
Maintaining the current definition of vilification will also serve to retain consistency with proposals federally to respect religious freedom.

An additional feature of the federal proposal is clarifying the Court's role (to which the HREOC and VCAT can be added) related to interpreting the beliefs and doctrines of religion.

A similar clarification would serve to help avoid disputes about what is and is not the content of one religion or another as happened in the [Islamic Council of Victoria v Catch the Fire](#) and [Unthank v Watchtower](#) cases at VCAT.

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The Catholic Archdiocese of Melbourne will continue to serve its mission with all in Victoria with a commitment to fairness and equity. However, we also expect a measure of fairness and equity from our law-makers with regard to religious groups, whatever their particular faith and tradition.



Most Rev Peter A. Comensoli  
Archbishop of Melbourne