



Uniting Church in Australia
SYNOD OF VICTORIA AND TASMANIA

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Submission from the Synod of Victoria and Tasmania, Uniting Church in Australia to the Victorian Legislative Assembly Legal and Social Issues Committee inquiry into Anti-Vilification Protections

20 December 2019

The Synod of Victoria and Tasmania, Uniting Church in Australia welcomes this opportunity to provide a submission to the Legislative Assembly Legal and Social Issues Committee inquiry into Anti-Vilification Protections. The Synod has been a strong supporter of the *Racial and Religious Tolerance Act 2001* and advocated in support of its passage through the Victorian Parliament.

From its foundation in 1977, the Uniting Church proclaimed its commitment to a balance between freedom of speech and other fundamental human rights. These rights included not to be discriminated against in a harmful manner, stating in its 'Statement to the Nation' at the inaugural National Assembly:

We pledge ourselves to seek the correction of injustices wherever they occur. We will work for the eradication of poverty and racism within our society and beyond. We affirm the rights of all people to equal educational opportunities, adequate health care, freedom of speech, employment or dignity in unemployment if work is not available. We will oppose all forms of discrimination which infringe basic rights and freedoms.

In the Uniting Church's view, Christian thought sees freedom of speech is part of a broader understanding of human well-being. It is not to be a tool to inflict harm, but preferably one that should be used in the service of God and the greater good of our neighbours.

The Uniting Church seeks to bring God's vision of a reconciled and renewed world into the present, to reflect God's love for everyone, work for justice and peace and follow the example and teachings of Jesus Christ. Jesus taught what it means to love one's neighbour and one's enemy and whom himself challenged the systems and structures of oppression in his society. We are called to act with integrity, ensuring that our words and our deeds are aligned.

The Uniting Church affirmed its commitment to cultural diversity in the statement adopted by the Fourth Assembly in 1985, *The Uniting Church is a Multicultural Church*. This statement remembers that Jesus Christ "made peace between people of every race, culture and class". It states that such unity is "a goal to be achieved as we commit ourselves to one fellowship to achieve justice, affirm

one another's cultures, and care for any who are the victims of racial discrimination, fear and economic exploitation".

In 1988 the annual Synod meeting of approximately 400 representatives from congregations across Victoria resolved (Resolution 88.5.3.2) to request that Uniting Church members dissociate themselves from the League of Rights because of that organisation's policies "which promote white supremacy and anti-Semitism."

In 1996 the Synod of Victoria Standing Committee resolved (Resolution 96/26.1) that "the Uniting Church, Synod of Victoria calls upon Christians and all Australian citizens to speak boldly against racism in any form."

In 1998, the annual Synod of members from across all Presbyteries resolved that the Synod acknowledged the value of a multicultural society and reaffirmed the Synod to be a multicultural Synod. Members were encouraged to "take every opportunity, both publicly and privately, to demonstrate and actively promote friendliness and neighbourliness of people of races, cultures, religions and languages other than our own."

The 2005 meeting of nearly 400 representatives of the Uniting Church across Victoria and Tasmania resolved:

05.4.3.3 The Synod resolved:

- (a) That it is opposed to the incitement of hatred against people on any basis, including that of religion;
- (b) To acknowledge and welcome open dialogue between faiths, including critique and criticism, provided that such dialogue seeks to be respectful, accurate and objective, is open to gaining new understandings, and is willing to admit errors;
- (c) To support the *Racial and Religious Tolerance Act 2001* as achieving a balance between being a 'safety net' for preventing incitement to hatred of people based on their race or religion, while allowing for legitimate freedom of speech;
- (d) To advise the Premier and Leader of the Opposition and all Members of Parliament in Victoria of this resolution.

The Synod has detected a much lower level of organised activities to incite racial and religious hatred in Victoria after the passage of the Act. However, the observation is not based on any systemic research. We are drawing a distinction between activities inciting racial and religious hatred carried out by people organised into a group with an identity and actions motivated by racial or religious hatred carried out by individuals in the community.

It is challenging to assess the counterfactual of what level of activities seeking to incite racial and religious hatred would have occurred in Victoria if the law had not been in place. This is true of almost any law that seeks to deter harmful human behaviour.

The Synod supports the continuation of the *Racial and Religious Tolerance Act 2001*. As per the 2005 resolution, the Synod would be open to an amendment of the law to prevent the incitement of hatred on other grounds. These additional areas could include gender identity and sexuality.

1) The effectiveness of the operation of the Racial and Religious Tolerance Act 2001 (the Act) in delivering upon its purposes;

An environment of hate and hostility towards a group of people increases the likelihood of physical attack against such people, have their property attacked and be discriminated against. It is likely to cause members of that community to live in fear.

The *Racial and Religious Tolerance Act 2001* is a small part of what is needed in the Victoria community to deter racial and religious hatred. It provides an avenue of recourse to address the behaviour of those that would incite hatred against others. Shifting the views of such people can be very difficult. The Victorian Government to right to provide a legislative tool that seeks to restrain and deter such behaviour.

The Act saw the successful prosecution of far-right activists Blair Cottrell, Neil Erikson and Christopher Neil Shortis in 2017 over a 2015 mock beheading video directed at opposing the approval of the construction of a mosque in Bendigo.¹ The beheading involved a dummy made of pillows with red liquid squirting from its neck to shouts of 'Allah Akbar'. The mock heading video was posted on the Facebook page of the United Patriots Front on 4 October 2015 under 'Cultural Diversity Comes to Bendigo'.² On 19 December 2019 Chief Judge Peter Kidd upheld the conviction under section 25(2) of the *Racial and Religious Tolerance Act 2001* and a \$2,000 fine against Blair Cottrell.³ Chief Judge Kidd concluded:⁴

327. The only inference available is that the mock beheading scene was intended to whip up extreme negative feelings in the audience about Muslims, including fear, loathing, disgust and alarm.

328. The violent pantomime, coupled with the stated desire of the appellant to ensure attendance at the rally all drive me to conclude that the appellant intended that the target audience feel serious contempt for, revulsion, and severe ridicule for Muslims as a result.

The Victorian Equal Opportunity and Human Rights Commission reported in their 2018-2019 annual report the number of complaints they received relating to race was 188, and the number related to religious belief or activity was 56.⁵ However, the number of complaints that relate to racial and religious vilification received by the Commission are minimal, as shown in Table 1.

Table 1. Complaints made to the Victorian Equal Opportunity and Human Rights Commission under the *Racial and Religious Tolerance Act 2001*.⁶

Type of Complaint	2003/2004	2016/2017	2017/2018	2018/2019
Racial Vilification	20	3	4	4
Religious Vilification	8	5	14	5
Both Racial and Religious Vilification	4			

¹ Tessa Akerman, 'Blair Cottrell fails to overturn effigy beheading conviction', *The Australian*, 19 December 2019.

² Blair Cottrell v Erin Ross, County Court of Victoria, 19 December 2019, 50.

³ Blair Cottrell v Erin Ross, County Court of Victoria, 19 December 2019.

⁴ Blair Cottrell v Erin Ross, County Court of Victoria, 19 December 2019, 64.

⁵ Victorian Equal Opportunity and Human Rights Commission, '2018-2019 Annual Report', 10.

⁶ Victorian Equal Opportunity and Human Rights Commission, '2018-2019 Annual Report', 114-115.

Any complaints mechanism will always only receive a fraction of the actions in the community that would be actionable. There are many barriers to a person making a complaint. Firstly, they need to know where to complain to. They also need to know the harmful behaviour they have been the target of is something they can complain about. Further, they need to be motivated enough to make a complaint. They may fail to do so out of a lack of self-confidence, feelings of being intimidated, a lack of faith that the process will result in a worthwhile outcome and a range of other reasons why a person may decide not to complain. The Australian Institute of Criminology pointed out that complaints mechanisms to address racial hatred can act as a significant barrier to people from non-English speaking backgrounds.⁷

Further, the bar to make a complaint under the *Racial and Religious Tolerance Act 2001* is very high. It must involve a person inciting or encouraging hatred, serious contempt, revulsion or severe ridicule against another person or group of people because of their race and/or religion. Complaints cannot be made under this law against those that express hatred directly at a person based on their race or religion.

The Synod was unable to locate any formal review of the operation of the *Racial and Religious Tolerance Act 2001*. However, there have been several reviews of the broadly equivalent section 20D of the NSW *Anti-Discrimination Act 1972*. The 1999 review by the NSW Law Reform Commission found that section 20D struck an effective balance between dealing with vilification without imposing unwarranted restrictions on free speech.⁸

In 2009 Nicholas Cowdery AM QC, the then NSW Director of Public Prosecutions, provided a paper suggesting reforms to the section 20D of the NSW *Anti-Discrimination Act 1972* to make it easier to mount a prosecution.

In 2013 the NSW Standing Committee on Law and Justice reviewed section 20D of the NSW *Anti-Discrimination Act 1972*. Concern was raised that there had been an absence of prosecutions under the section.⁹ Between 1992 and 2013, 11 referrals had been made by the Anti-Discrimination Board of NSW to the NSW Office of the Director of Public Prosecutions relating to cases of serious racial vilification. The Office of the Director of Public Prosecutions referred two of those cases to the NSW police for further investigation. The results of the investigations did not produce enough evidence to warrant a prosecution of the offence in the view of the Office of the Director of Public Prosecutions.¹⁰ The Committee formed the view that the effectiveness of section 20D was hindered by several procedural impediments and made recommendations to overcome them.¹¹ In response to the report of the Parliamentary Committee, the NSW Government conducted further consultation in the community. The result was that on 5 June 2018 the NSW Government informed the Parliament it

⁷ Adam Graycar, 'Regulating Racial Hatred. Trends and Issues No 79', The Australian Institute of Criminology, 1998, 6.

⁸ NSW Standing Committee on Law and Justice, 'Racial vilification law in New South Wales', Report 50, 2013, 16.

⁹ NSW Standing Committee on Law and Justice, 'Racial vilification law in New South Wales', Report 50, 2013, 23-26.

¹⁰ NSW Standing Committee on Law and Justice, 'Racial vilification law in New South Wales', Report 50, 2013, 12.

¹¹ NSW Standing Committee on Law and Justice, 'Racial vilification law in New South Wales', Report 50, 2013, 26.

planned to repeal the criminal provisions of the *Anti-Discrimination Act 1972* and insert a new vilification offence in the *NSW Crimes Act 1900*.¹² The amendments would:

- Broaden the grounds for vilification to include 'religious belief or affiliation, or absence thereof';
- Dealing with 'threatening violence' in addition to 'inciting violence'; and
- Increasing the maximum penalties for the offence.

The increase in the penalty for the offence to a maximum three years in prison would remove the NSW procedural requirement that prosecutions for summary offences must be commenced within six months of the date the offence took place.¹³

The Synod would argue that the effectiveness of anti-vilification laws is what activities to incite hatred it has deterred from happening, rather than the number of prosecutions. The International Commission of Jurists Australia made the same point to the NSW Parliamentary Committee.¹⁴ This is a very difficult measure of success to determine. Indicators are likely to be the lack of activities by organised hate groups within the jurisdiction where such groups were more active prior to the introduction of the law.

The Synod recommends amending the *Racial and Religious Tolerance Act 2001* so that anyone exposed to material or actions that breach sections 7 and 8 can make a complaint to the Commission. Under the legislation at the moment only the targets of the vilification may seek recourse. This has meant that members of the Uniting Church in Victoria have been subjected to material from 'Christian' groups that seek to vilify other religions, especially Islam, that appear to have the intention to create fear, prejudice and hatred towards members of those religions. Such material has the potential to undermine the mostly peaceful multicultural and interfaith community that exists in Victoria.

Our initial response to such material is to attempt to persuade such groups to cease with its distribution. However, it is not possible to reason with some of these groups. We are then left with no direct recourse to such material. Our only recourse then is to pass the material on to the peak bodies of the religions being vilified for them to make a complaint under the legislation. The situation is far from ideal. It means that the 'Christian' groups then portray themselves as martyrs to a conspiracy by the State Government, the Victorian Equal Opportunity and Human Rights Commission and other faiths. The situation has the potential perverse effect of increasing their influence and support. Ideally, where attempts at informal dialogue fail, we would like to be able to make a formal complaint under the legislation when our members are targeted for distribution of material, where such material breaches sections 7 or 8 of the Act. Such provision would then not allow such groups to claim they are being persecuted by other faiths. They would be seen to be challenged by members of their religion.

In effect, the Act means that individuals and groups are free to spread material with the intention of inciting racial and/or religious hatred and prejudice provided that such material is not provided to people who are the targets of the vilification.

¹² Mark Speakman, Attorney General, Correspondence to David Blunt, Clerk of the Parliaments, NSW Legislative Council, 5 June 2018.

¹³ Mark Speakman, Attorney General, Correspondence to David Blunt, Clerk of the Parliaments, NSW Legislative Council, 5 June 2018.

¹⁴ NSW Standing Committee on Law and Justice, 'Racial vilification law in New South Wales', Report 50, 2013, 25.

In addition, there is a need for a broader range of activities to address racial and religious hatred in the community. As pointed out by the organisation 'Life After Hate', creating and expanding effective programs to get home-grown far-right racists to find the off-ramp from hate is, overall, an understudied, underfunded and neglected area.¹⁵ Former white supremacist Tony McAleer argues in his experience, adherence to racist beliefs is more often sparked by a flawed search for identity and purpose than by a deeply held belief.¹⁶

2) The success or otherwise of enforcement of the Act, and the appropriateness of sanctions in delivering upon the Act's purposes;

The Synod is not in a position to be able to make a thorough analysis of the success of the Act. However, the Synod notes that some of the Christian groups that previously, in our opinion, promoted hostility towards Muslims in Victoria no longer appear to be operating. Saltshakers appear to no longer have a website (which used to be www.saltshakers.org.au). Catch the Fire Ministries were stripped of their charity status by the Australian Charities and Not-for-profits Commission effective 1 January 2014¹⁷, which was revealed on 13 January 2017.¹⁸ They have rebranded as Reformation Harvest Fire Ministries, but do not appear to be a registered charity in their new incarnation.

3) Interaction between the Act and other state and Commonwealth legislation;

In the case of *Blair Cottrell v Erin Ross*, Chief Judge Peter Kidd found that section 25(2) of the *Racial and Religious Tolerance Act 2001* was constitutionally valid.¹⁹

4) Comparisons in the operation of the Victorian Act with legislation in other jurisdictions;

5) The role of state legislation in addressing online vilification.

The Synod recommends the repeal of Section 12 under Part 2 of the Act, providing an exemption for private conduct. Such an exemption seems unnecessary and sends an inappropriate message to the community and makes it easier for groups involved in inciting racial and religious hatred to use closed social media groups for their activities. Given sections 7 and 8 deal with incitement, rather than the expression of hatred, serious contempt, revulsion or severe ridicule, conduct that is not incitement is already exempt. However, section 12 means that a private meeting of similar minded people for the purpose of inciting hatred of others on the basis of their race or religion could not be subject to a complaint under Part 3 of the Act. The same would apply to a closed group discussion on social media. Thus, currently, Part 2 of the Act could be taken to send a message to the community that inciting hatred against others on the basis of their race or religion is acceptable provided it is done in private, including via closed social media groups, and provided that it does not go so far as to attract criminal prosecution under Part 4 of the Act.

If section 12 were repealed, it could be replaced by a safeguard clause providing an exemption from complaint where the complainant entrapped the respondent.

¹⁵ Eric Westervelt, 'Is there a cure for hate?', NPR, 6 November 2018, <https://www.npr.org/2018/11/06/663773514/is-there-a-cure-for-hate>

¹⁶ Eric Westervelt, 'Is there a cure for hate?', NPR, 6 November 2018, <https://www.npr.org/2018/11/06/663773514/is-there-a-cure-for-hate>

¹⁷ <https://www.acnc.gov.au/charity/5c0f750bb1b5b1ec8b3ea8039c2a035c#overview>

¹⁸ <https://www.acnc.gov.au/raise-concern/regulating-charities/action-taken-against-charities>

¹⁹ *Blair Cottrell v Erin Ross*, County Court of Victoria, 19 December 2019, 2.

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

7) Any evidence of increasing vilification and hate conduct in Victoria;

Fortunately, larger scale and organised incitement to racial and religious hatred are relatively rare in Victoria, with notable exceptions. An example of such larger-scale activity was the racist 'Reclaim St Kilda' rally in January 2019.²⁰ Further, the United Patriots Front has more than 30,000 followers on Facebook.²¹ However, it needs to be acknowledged that it is easy for people to follow a Facebook page and then have very little interaction with it. Thus the number of active followers of the United Patriots Front is likely to be far less than 30,000.

At the same time, there is a much larger number of incidents by individuals or small informal groups that express racial and religious hatred towards members of minority communities. For example, the Executive Council of Australian Jewry's annual report catalogues antisemitic incidents and attacks, including those that originate in Victoria.²² The report includes the case of a Victorian who posts online calling for the killing of Jews.²³

Similarly, the Islamophobia Register Australia reports on incidents of attacks and abuse of Muslims in the Australian community.²⁴ The 2019 report of 202 Islamophobic attacks recorded for 2016-2017, 12% occurred in Victoria.²⁵

8) Possible extension of protections or expansion of protection to classes of people not currently protected under the existing Act;

As noted above, the Synod would be open to an extension of the provisions of the *Racial and Religious Tolerance Act 2001* to prevent the incitement of hatred against other groups of people for reasons such as gender identity and sexuality.

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²⁰ Debbie Cutherston and Matilda Boseley, 'Police out in force for angry clashes in far-right rally in St Kilda', *The Age*, 5 January 2019, <https://www.theage.com.au/national/victoria/police-out-in-force-for-angry-clashes-in-far-right-rally-in-st-kilda-20190105-p50pr1.html>

²¹ Blair Cottrell v Erin Ross, County Court of Victoria, 19 December 2019, 51.

²² Executive Council of Australian Jewry, 'Report on Antisemitism in Australia 2019, 1 October 2018 – 30 September 2019', 2019, <http://www.ecaj.org.au/wp-content/uploads/2019/11/ECAJ-Antisemitism-Report-2019.pdf>

²³ Executive Council of Australian Jewry, 'Report on Antisemitism in Australia 2019, 1 October 2018 – 30 September 2019', 2019, 123, <http://www.ecaj.org.au/wp-content/uploads/2019/11/ECAJ-Antisemitism-Report-2019.pdf>

²⁴ Derya Iner, 'Islamophobia in Australia – II (2016-2017)', Charles Sturt University, ISRA and the Islamophobia Register Australia, 2019, <http://www.islamophobia.com.au/wp-content/uploads/2019/11/Islamophobia-Report-2019LOW-Res.pdf>

²⁵ Derya Iner, 'Islamophobia in Australia – II (2016-2017)', Charles Sturt University, ISRA and the Islamophobia Register Australia, 2019, 74, <http://www.islamophobia.com.au/wp-content/uploads/2019/11/Islamophobia-Report-2019LOW-Res.pdf>