

**Korean Society of Victoria Australia Inc.**

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**Legal and Social Issues Committee - Legislative Assembly**

Parliament of Victoria, Spring Street, East Melbourne VIC 3002

We would like to express gratitude for your acceptance and consideration of our tardy submission in relation to the amendment bill to the current Racial and Religious Tolerance Act 2001 (the RRTA). Upon managing large responses from our community members and other stakeholders pertaining to this matter, we have collated and summarised this submission for your consideration.

By way of background, Korean Society of Victoria (“KSV”) is an organization that represents collective interests of Koreans residing in the State of Victoria. KSV seeks to make positive contributions to communities in Victoria and Australia with the constitutional aims to:

- Advance the Korean culture; and
- Promote reconciliation, mutual respect, and tolerance between groups of individuals living in Australia.

**Racism in Victoria**

Victorian Government, in its submission, acknowledges that hateful conduct and vilification are present in Victoria and that the exposure to vilification and hateful conduct appears to be more prevalent towards Aboriginal people, people from culturally and linguistically diverse backgrounds, people from particular faiths. We note there has been a number of reports on incidents alleging racism-motivated crimes amid Covid-19. KSV received a report where a

Korean woman was allegedly assaulted by a group of two (2) men and two (2) women whilst being called derogatory comments based on her race.

A recent study found that one third (1/3) of students reported being the victims of racial discrimination by their peers in Australian government schools.<sup>1</sup> This figure indicates the serious degree of discrimination that is fundamentally rooted in the Australian society. It is alarming and more so for young children given that experiences of racism can also have detrimental long-term health effects, both mentally and physically.<sup>2</sup>

The vast majority of Australians, being 85% of the survey respondents, continue to support multiculturalism.<sup>3</sup> Hateful conduct is not only inconsistent with the preference of the consensus, but harms others, isolates communities, and causes divisions threatening an inclusive society. KSV assumes a vital role in conjunction with other ethnic communities in combatting these issues and enhancing multiculturalism in Victoria.

## **RRTA**

RRTA provides avenues of protection for individuals to seek redress in respect of vilification based on our race or religion. It allows civil remedies whereby the Victorian Equal Opportunity and Human Rights Commission (VEOHRC) assists people with complaints and dispute resolution process. The Victorian Civil and Administrative Tribunal (VCAT) may hear the civil complaints if they seek review.

Sections 8 and 9 make it unlawful for a person to engage in conduct that ‘*incites hatred against, serious contempt for, or revulsion or severe ridicule*’ of another person because of their race, religious belief or activity. In addition to civil remedies, the RRTA also criminalises serious racial and religious vilification under sections 24 and 25. The criminal offences can be investigated by Victoria Police but are strictly limited to extreme behaviours.

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<sup>1</sup> Priest, N, Chong, S, Truong, M, Sharif, M, Dunn, K, Paradies, Y, Nelson, J, Alam, O, Ward, A & Kavanagh, A, 2019, *Findings from the Speak Out Against Racism Student and Staff Surveys*, available at: [https://csrc.cass.anu.edu.au/sites/default/files/docs/2019/9/Summary\\_of\\_findings\\_2017\\_SOAR\\_student\\_and\\_staff\\_surveys.pdf](https://csrc.cass.anu.edu.au/sites/default/files/docs/2019/9/Summary_of_findings_2017_SOAR_student_and_staff_surveys.pdf)

<sup>2</sup> Victorian Government, *Victorian Aboriginal Affairs Framework 2018-2023*, available at [https://content.vic.gov.au/sites/default/files/2019-09/Victorian-Aboriginal-Affairs-Framework\\_1.pdf](https://content.vic.gov.au/sites/default/files/2019-09/Victorian-Aboriginal-Affairs-Framework_1.pdf)

<sup>3</sup> Andrew Markus, *Mapping Social Cohesion 2019*, Scanlon Foundation Research Institute, Australian Multicultural Foundation, Monash University, p.72, available at <https://scanloninstitute.org.au/report2019>

## **Limitations of the RRTA**

We emphasise the figures that indicate the RRTA has been under-utilized. For example, in the past two (2) decades of its operation, there has only been:

- 295 complaints of racial vilification;
- 264 complaints of religious vilification;
- 2 successful cases of vilification before the VCAT; and
- 3 persons convicted of serious vilification by the Office of Public Prosecutions.

The figures are made around the same time when experiences of racial and religious discrimination have been reported to be rising<sup>4</sup> and three (3) offences per day are committed with prejudicial motivations according to Victoria Police.<sup>5</sup> The lack of litigation under the law is not necessarily a problem in itself, but it may be a problem in indicating that people who need protection against vilification may not be obtaining it. We consider that the RRTA is ineffective in its current form, which would fail to protect ethnic or religious communities when falling victims to racial or religious vilification. We submit our recommendations for the RRTA to achieve its intended benefits in the society.

## **Key Consideration in our Recommendations**

We have considered that the RRTA, if and when amended, would not inadvertently restrict a person's right freedom of expression and implied freedom of political communication. We have also noted that living in an open, democratic society requires mutual respect, balance and recognition that we all have rights and responsibilities to one another, which in turns requires the RRTA to be more effective than its current version.

## **Recommendation – Revisiting the Incitement Test**

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<sup>4</sup> Wyn, Khan & Dadvand, 2018, *Multicultural Youth Australia Census Status Report 2017/18*, Melbourne: Youth Research Centre, University of Melbourne, available at

[https://education.unimelb.edu.au/\\_data/assets/pdf\\_file/0011/2972036/MY-Aust-Report-17-18.pdf](https://education.unimelb.edu.au/_data/assets/pdf_file/0011/2972036/MY-Aust-Report-17-18.pdf)

<sup>5</sup> H Cohen, *Hate crime laws rarely used by Australian authorities, police figures reveal*, ABC News, 3 May 2019, available at <https://www.abc.net.au/news/2019-05-03/hate-crimes-rarely-prosecuted-in-australia/11055938>

The current threshold is nevertheless too high of a bar and thus a difficult barrier to the effective use of the legislation whether civil or criminal.<sup>6</sup> We refer to an obiter by the Victorian Court of Appeal - *the alleged conduct must incite 'extreme responses.'*<sup>7</sup>

KSV endorses the recommendation by the Victorian Government and the Law Institute of Victoria (LIV) that the RRTA adopts the Commonwealth or Tasmanian models:

*'If the conduct is reasonably likely in all the circumstances, to offend, insult, humiliate or intimidate a reasonable member of the target group.'*

### **Recommendation - Codifying serious vilification into Crimes Act**

We acknowledge that it is practically difficult to prove that crimes are motivated by the factors that are captured in the RRTA. If the crimes can be proven to be serious in their degree, we call for stricter punishment to deter other members of the society from committing the similar crimes.

In NSW, offences of serious vilification in Anti-Discrimination Act 1977 had been replaced with section 93Z into Crimes Act 1900. It now criminalizes an offence of *publicly threatening or inciting violence on grounds of race, religion, sexual orientation, gender identity or intersex or HIV/AIDS status a person.*

We call for the NSW version of stricter punishment for serious vilifications based on one's race or religion.

### **Recommendation – Regulating Online Vilification**

There has been a dramatic expansion of the internet and digital platforms in lives of Victorians since the commencement of the RRTA in 2001. The internet offers for anonymous comment, which can free individuals from a sense of social limits and civility. Given the impact derogatory comments, vilification and hateful speeches on targeted parties, there is a clear need for legal control in this area. With the current regulatory regime, KSV agrees with other stakeholders that there are impediments to providing redress in the realm of racial and

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<sup>6</sup> Submission by Victorian Government to the Inquiry to this Amendment Bill.

<sup>7</sup> *Catch the Fire Ministries Inc v Islamic Council of Victoria Inc* [2006] VSCA 284, 34 and 173.

religious discrimination. We submit that the Victorian Parliament work collaboratively and lead other States for nationwide regulation of online hate.

### **Conclusion**

Anti-racism campaigns are being held across the world even though the participants fear for community transmission of the Coronavirus. They are desperately expressing their discontent at racial inequality, and it is an obligation of the legislatures to address their concerns. One effective way would be through making adequate amendments to the RRTA. We look forward to continuing to see that Victoria remains an inclusive and harmonious society.

*[SGD]*

President: **Sohwon Kim**, FCPA, MPA, LTML, on behalf of the KSV

*[SGD]*

Vice-President: **James Bae**, BCom, LLB, on behalf of the KSV

*[SGD]*

External Affairs Adviser: **Karen Kim**, BMus, MBA, on behalf of the KSV