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Inquiry into the *Racial and Religious Tolerance Act 2001* (Vic)

This supplementary submission responds to the invitation by the Legislative Assembly's Legal & Social Issues Committee for additional input regarding Victoria's anti-vilification laws in relation to COVID-19.

We endorse the Committee's alertness to instances of vilification that are apparent in recent months. The following pages comment on specific concerns and offer further comments on related matters, such as community understanding of responsibilities and action by 'gateway' businesses such as Facebook.

In summary, from the perspective of anti-vilification COVID-19 has provided a 'glass half full'.

The pandemic (and official responses to that pandemic) has resulted in vilification of people on the basis of their ethnicity or other attributes.

Importantly, COVID-19 has also demonstrated that the operators of social media platforms such as Facebook have the capability to act in the community's interests by filtering noxious communication regarding health. We consider that platform operators can and should be encouraged by Australian governments to behave responsibly and not abuse their social licence. Prompt and effective responses by the platforms to promoters of hatred is achievable and is a legitimate cost of business for entities whose profits dwarf the revenue of traditional print/broadcast media.

We are happy to discuss aspects of the supplementary submission.

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Supplementary Submission

Vilification during COVID-19: Known Unknowns

It is clear from anecdotal reports, media coverage of specific incidents, monitoring of social network platforms and statements by human rights offices and other bodies regarding queries/complaints that there has been ethno-religious and other vilification as people react to the disease and to public health practice such as closure of public/private venues.

As we note below, much of that vilification has been targeted at people who are deemed

- not to be Australian (including people of Chinese, Thai, Malay or African ethnicity) and/or deemed
- to be responsible for COVID-19 and consequent public health practice that restricts freedoms or results in job loss and other economic hardship.

It is clear that the vilification has taken a range of forms, including expression in social network services such as Facebook, graffiti on residential or other premises, and face to face slurs in retail or other precincts.

Much of that vilification has been directed at Victoria's Chinese community but as noted above has encompassed other groups, including claims that the disease is caused or spread by gay people. Some of the vilification reiterates traditional hatespeech and objectification of minorities, with the Jewish community being perennially blamed for each era's discontent. Some morphs traditional populist conspiracy belief systems, with for example incoherent racist assertions that COVID-19 was manufactured and deliberately propagated to benefit particular financiers (Rothschilds, Rockefellers, Soros, Cohen) or the 'deep state' that is opposed by Victoria's 'sovereign citizens'.

We are unaware of comprehensive and authoritative statistics regarding the incidence and severity of vilification in relation to COVID-19. The Committee is in essence faced with 'known unknowns'. It is clear that there is ongoing and COVID-specific vilification. There are indications that vilification has increased in the past three months, perhaps unsurprising given distress during the "Great Disruption of 2020". However there is no comprehensive reporting, for several reasons.

One reason for the lack of comprehensive hard data is that people find it hard to report: the channels for providing information to various governments and advocates are confusing and sometimes difficult to access.

Another reason is that there are perceptions (substantive or otherwise) that nothing will be done in response to complaints regarding vilification, meaning that there is no point making a complaint. Those perceptions are of real concern. They require action by governments at the Commonwealth and state/territory level. They also, very importantly, require action by gateways such as Facebook, YouTube and Twitter, which we discuss below.

Labelling: Words Matter

We note that much initial reporting and discussion regarding COVID-19 was implicitly couched in terms of ethnicity, for example references to 'the Wuhan Virus' or 'China Flu' or 'Wuhan Pandemic'. Officials and traditional media organisations have commendably come to refer to COVID or coronavirus, neutral labels that emphasise the disease rather than its presumed place of origin.

Unfortunately that neutrality has not been embraced in parts of social media, significant because – as we noted in the preceding submission – social network platforms such as Facebook, Twitter, Tumblr and TikTok are rapidly replacing traditional media as the main source of information for many people.

Those platforms serve to legitimate values and expressions that are contrary to the wellbeing of minority communities. Their populist legitimisation of fear and hatred is also contrary to the state's economic interests, given the significance of international tourism and education for Victoria's economy. The 2020 Disruption will pass but future hatespeech and other discrimination will deter non-citizens from visiting, residing and investing in the state.

We thus commend statements by the Victorian government that do not adopt the populist anti-China rhetoric of figures such as George Christensen. China's ongoing disregard of human rights and fundamental problems with economic governance *are* properly condemned but there is no benefit in reverting to the 'Yellow Peril' memes of last century.

Disinformation: Education is the best disinfectant

It is tempting to think of vilification as restricted to ethno-religious identity or to a short period of economic disruption. We consider that it is more useful to understand it as often associated with anxieties or controversies based on disregard of facts. Vilification can be mitigated by sustained education, delivered through both schools and other channels for community awareness.

Education serves as the best disinfectant for many fears, misunderstandings and hatreds. There is disagreement within the legal and medical communities about a future spike in COVID-19 infections and about the future incidence of pandemic diseases. A key tool for public health will however be vaccination. One aspect of the vilification noted above has been disinformation about vaccination.

It is desirable that the Victorian government should reinforce community understanding of vaccination, in particular communication that Australians have responsibilities rather than merely a freedom to forgo fact-based medicine because they are fans of homeopathy and other 'alternative' regimes that are of no therapeutic value.

It is also desirable that non-government bodies should set an example. Sporting organisations shape community understandings of what is acceptable. Regrettably they have often ignored that responsibility or only belatedly stepped up to leadership after a period of equivocation. We have seen that with the slow response to vilification by Israel Folau and more recently in the NRL's permissiveness regarding elite athletes who choose not to be vaccinated. The former encourages further vilification. The latter reinforces the legitimacy of the anti-vax movement, a movement that results in harm to vulnerable minors and adults alike. Organisations that put money ahead of public health or signal that they do not have to play by the rules in relation to misogyny, domestic violence or other abhorrent behaviour should not be endorsed by governments.

Community education has a role to play in dealing with the propagation of fake health claims for profit or political benefit. Examples include a device marketed by celebrity chef Pete Evans and claims made by Donald Trump and Clive Palmer. We consider that there is value in emphasising –

- statements by the Government and by MPs (including under the protection of parliamentary privilege) that directly address fake health claims
- timely action by state and Commonwealth consumer protection regulators, something that requires appropriate resourcing and prioritisation in an

environment where key watchdogs are under-fed and in some instances view their mission as industry support rather than consumer protection

- a reinforcement of community understanding through a stronger emphasis in the primary and secondary school curriculum on critical thinking
- leadership by traditional media in actively critiquing rather than simply propagating fake health news, thereby justifying both their social licence and calls for government restriction of free riding by social network services (currently under examination by the Australian Competition & Consumer Commission).

A corollary of that leadership role is discussed below.

Learning from COVID-19: Platform Operator Responsibility

In our preceding submission and in other writing we have noted that social platforms such as Facebook, Twitter, Instagram and YouTube are rapidly replacing traditional media (free to air broadcast and print groups) as the dominant sources for the dissemination of information about social norms, politics, medicine, culture and law.

The platforms customarily rely on the claim that they are merely conduits for communication by individuals in an environment where free speech – construed very broadly – is so paramount that regulation is impermissible. They have also claimed that acting as a gatekeeper by removing wrongful comment is technically not possible (a claim that is demonstrably not correct) or is excessively onerous.

In thinking about vilification we suggest that the platforms have both the responsibility and the scope to filter content that harms. COVID-19 is salient because the leading operators have pre-empted government regulation by being seen to remove fake health information from the platforms, albeit after benefiting from propagation of such information during the past decade and having been unresponsive to complaints by consumer advocates, clinicians and others.

Some of that removal concerns advertisements for fake cures. It has not been comprehensive but removal shows there is technical capacity and corporate willingness in particular circumstances, which we highlight below.

Some removal is broader than automated deletion of advertisements for harmful products. We note that platforms have begun to restrict content from conspiracists such as David Icke and Alex Jones.

Icke – proponent of a coded anti-semitism and claims that 5G mobile networks are linked to COVID – has for example been restricted by both Facebook and YouTube for violating the policies of those platforms prohibiting content that disputes the existence and transmission of COVID.

Why have the platforms chosen to act responsibly in relation to COVID? One reason is concern about community backlash against corporate irresponsibility that places profit above public health. Action has in essence been determined by public relations values rather than altruism, the same imperative that has resulted in Facebook establishing a misreported ‘supreme court’ to deal with complaints.

A more substantive reason is that the platform operators, such as Google and Facebook, are seeking to pre-empt regulation that will directly affect both their power and profitability. As of May 2020 the platforms generate profits through advertising that dwarf the revenue of Australia’s ailing commercial media groups and the funding of the two public sector broadcasters. The Australian Competition & Consumer Commission this week released a

concept paper regarding a draft mandatory code of conduct to address bargaining power imbalances. Concerns regarding platform power have been recurrently articulated by regulators, for example in the Commission's major *Digital Platforms* report.

COVID demonstrates that platform operators can be persuaded to operate more responsibly (and on a timely basis) in addressing vilification. A substantive reduction of claims regarding COVID provides a model for action to reduce other fake health news and to reduce vilification. Platforms should not escape responsibility on the basis that they are merely conduits. They benefit from the dissemination of content. They have control over what is disseminated. Hatespeech is just as pernicious to individuals and the community as fake cancer cures, bogus COVID remedies and tobacco products.

Regulating speech: Free to behave responsibly, not to propagate harm

We refer specifically to tobacco because Australian law for several decades has restricted advertising of those products. In our preceding submission we noted that there is no absolute freedom of speech in Australia. (Contrary to misunderstandings by some Victorian protesters and online critics of the state government's response to COVID, there is no absolute freedom in the United States).

Much content is legitimately prohibited on the basis that its production and consumption is harmful. A salient example is child pornography. Much content is restricted, with for example rules regarding fraudulent claims of medical or other professional expertise, advertising of tobacco products and bogus medications, email/sms spam and defamation of individuals. Contrary to perceptions in parts of the community there are broadly accepted rules restricting protests and restricting advocacy in public spaces, notably legislation providing for 'safe zones' surrounding fertility services. Neither commerce nor opinion grant a licence to harm.

Public responses to the state government's physical distancing regime as part of COVID demonstrate two things that are relevant to the state's anti-vilification regime.

The first is that an unknown but vocal number of people misunderstand Australian law and assert an unrestricted freedom of speech based on a populist misreading of United States federal law. That misunderstanding should be addressed through education and through ongoing articulation by the Government that rights, fictive or otherwise, are accompanied by responsibilities.

The second is that some disregard of policies regarding COVID is accompanied by vilification, with for example claims that restrictions under COVID are being used to reinforce the power of specific ethno-religious groups in a strategy to dominate the Australian economy.

Such claims resonate among people who are persuaded by proponents of the far left and far right in Australia, affirming their 'conspiracy bubble' and fostering action such as the anti-semitic and anti-Islam graffiti we noted in the preceding submission. It is appropriate to require platform operators to comply with Australian law (given that they enjoy substantial benefits from Australian markets) and to minimise the disseminate of hatespeech by fringe political groups.

That minimisation necessitates operators adequately resourcing complaint handling to enable timely responses to complainants and early takedown of egregious content or group sites, along with banning of individuals who engage in vilification on the basis of gender, sexual affinity, ethnicity or religious affiliation. Research into the propagation of fake political news indicates that such restriction will not be exhaustive but, if actioned without long delays, will serve to inhibit dissemination on those and other platforms.