



Stopping hate in its tracks (Part II)

Supplementary joint submission to the Victorian Government's Anti-Vilification Protections Inquiry in response to the rise in racially motivated incidents during the COVID-19 pandemic

12 June 2020

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Content warning

This submission refers to media reports of racist and highly offensive language. The decision has been made to include verbatim quotations in order to demonstrate the serious and harmful nature of the incidents to the Committee.

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Thank you

Thank you to the Asian Australian Alliance for sharing data and examples of reports of racism made through their public reporting tool. For more information about their work, or to report racism directed towards Asian people in Australia during the COVID-19 pandemic, please visit this website:

<https://www.surveymonkey.com/r/AsianAustralian>

The authors of this submission acknowledge the people of the Kulin Nation, the traditional owners of the unceded land on which our Victorian offices sit, and the ongoing work of Aboriginal and Torres Strait Islander peoples, communities and organisations to unravel the injustices imposed on First Nations people since colonisation.

1. Executive Summary

1. This submission is made by the Human Rights Law Centre, Asian Australian Alliance, Anti Defamation Commission, GetUp!, Victorian Trades Hall Council and Asylum Seeker Resource Centre in response to the invitation by the Victorian Parliament Legal and Social Issues Committee (the **Committee**) overseeing the Inquiry into Anti-vilification protections (the **Inquiry**) for supplementary submissions on the rise in racially motivated incidents during the COVID-19 pandemic.
2. It has been widely reported that since the start of the COVID-19 pandemic in early 2020, “Asian-Australians have been verbally and physically assaulted, refused service, received death threats and had their properties damaged.”¹
3. A reporting tool created by activist and writer Erin Chew, media outlet Being Asian Australian and advocacy network the Asian Australian Alliance, has collected almost 400 reports of racial abuse nationally since its launch in early April 2020.² Approximately 90 per cent of these incidents were not reported to police.³ A sample of de-identified reports made to the Asian Australian Alliance reporting tool are included throughout this submission.
4. The Australian Human Rights Commission has reported that a third of racial discrimination complaints in February were explicitly related to COVID-19, as were just under a quarter of complaints in March. In February, the Australian Human Rights Commission also recorded the highest monthly number of racial discrimination complaints this financial year.⁴
5. The Victorian Equal Opportunity and Human Rights Commission has reported that, in April, they received eight times more enquiries about racial vilification than in the same period last year, and that the use of their online Community Reporting tool has more than doubled since early March 2020.⁵
6. The rise in hate conduct targeted at people from Asian backgrounds is not a new phenomenon, and rather forms part of the pattern of ongoing and persistent hate in parts of

¹ Jason Fang, Samuel Yang and Christina Zhou, “Coronavirus has fuelled racism against Asian-Australians, but why isn't official data showing it?” *ABC News* (online) 5 May 2020 available at <<https://www.abc.net.au/news/2020-05-05/coronavirus-racist-attacks-asian-australians-missing-data/12211630?nw=0>>

² Max Koslowski, “Almost 400 anti-China attacks since pandemic began” *The Sydney Morning Herald* (online) 7 June 2020 available at <<https://www.smh.com.au/politics/federal/almost-400-anti-china-attacks-since-pandemic-began-20200607-p550a8.html>>. See also Ben Schneiders and Clay Lucas, “Asian-Australian groups report surge in racist abuse, assaults during pandemic” *The Age* (online) 13 May 2020 available at <<https://www.theage.com.au/politics/victoria/asian-australian-groups-report-surge-in-racist-abuse-assaults-during-pandemic-20200512-p54s6f.html?fbclid=IwAR2K8AUmVvckxBg3pz46PKUWHro9VpMGqrlInPU6HjRfhtADhdOck--7Zc>>

³ Max Koslowski, “Almost 400 anti-China attacks since pandemic began” *The Sydney Morning Herald* (online) 7 June 2020 available at <<https://www.smh.com.au/politics/federal/almost-400-anti-china-attacks-since-pandemic-began-20200607-p550a8.html>>

⁴ “Australians urged to ‘show kindness’ amid reports of COVID-19 racial discrimination complains” *ABC News* (online) 3 April 2020 available at <<https://www.abc.net.au/news/2020-04-03/racism-covid-19-coronavirus-outbreak-commissioner-discrimination/12117738>>

⁵ Victorian Human Rights & Equal Opportunity Commission, “All Victorians should live free from hate’ – our statement on reforming anti-vilification protections” (online) 27 May 2020 available at <www.humanrightscommission.vic.gov.au/home/news-and-events/commission-news/item/1908-all-victorians-should-live-free-from-hate-%E2%80%93-our-statement-on-reforming-anti-vilification-protections>

the Victorian community. Recent events add to the numerous examples of Islamophobia, anti-Semitism, homophobia, transphobia, misogyny and hate towards people living with disability.

7. The focus of this submission is to explore case studies of hate conduct that have been reported in the media since the COVID-19 pandemic hit Australia, including a brief analysis of how the current legal protections in the *Racial and Religious Tolerance Act 2001 (Vic)* (**RRTA**) are inadequate to address these.
8. The Human Rights Law Centre, Anti Defamation Commission, GetUp!, Victorian Trades Hall Council and Asylum Seeker Resource Centre previously made a joint submission to the Inquiry on 31 January 2020 (**Annexure A**) and provided evidence to the Committee on 11 March 2020. Our position in relation to the need for the urgent implementation of a holistic package of education, prevention strategies and law reform has not changed.
9. The organisations making this submission still argue for expanded, best-practice anti-hate laws that extend beyond vilification and that include:
 - (a) expanding the list of protected attributes to include race, religious belief or activity, gender, sexual orientation, gender identity and gender expression, sex characteristics, HIV/AIDS status and disability;
 - (b) improved protections against vilification based on a better civil test;
 - (c) enacting new protections against hate-based conduct based on a harm-based civil test;
 - (d) enacting a better criminal test for serious vilification;
 - (e) enacting a new criminal offence prohibiting the public display of vilifying and intimidating materials, including the swastika;
 - (f) considering the enactment of a new criminal offence prohibiting conduct that is intended or is reasonably likely to cause a person to have a reasonable fear for their safety or security of property; and
 - (g) expanding the definition of conduct captured by anti-vilification laws.
10. The recent events highlighted in this supplementary submission demonstrate the need for the Victorian Government to take immediate steps to enact the above, best practice anti-hate laws in order to stop hate in its tracks.

2. Civil test for vilification

11. Recent events have highlighted the weakness of section 7 of the RRTA, which provides that a person must not engage in conduct that incites hatred against, serious contempt for, or revulsion or severe ridicule of, a person or class of persons on the basis of their race. To

prove a contravention, a person must show that a third party – who might be unidentifiable – has been incited to hatred or other strong emotions because of another person’s conduct.

2.1 Examples of potential vilification

12. On 1 April 2020, a woman was recorded hurling racist abuse at another woman serving customers, including footage showing her saying: “fucking germ, fuck off” and “why don’t you fucking go back to China and keep your disease over there, you fucking idiot”.⁶ While the woman targeted by the abuse was recording it on her phone, she also captured footage that showed a man physically assaulting her by shoving her and taking her phone. The woman alleges that the man threatened to smash her windows, and in the days following the incident, she received “anonymous phone calls, harassing text messages and threatening voicemails”.⁷
13. Since February 2020, other racially motivated harassment has been reported in metropolitan and regional areas of Victoria. Examples include:
 - (a) a Melbourne City councillor being harassed while carrying boxes of donated face masks into Town Hall. He reported a lady said “who did you steal those off... That'd be right, stealing and sending it back to China”. The masks had been donated by Chinese businesses for distribution to city charities;⁸
 - (b) a Geelong doctor had “abuse hurled” at him while standing in line for takeaway food;⁹
 - (c) owners of a local IGA in Tongala suffered “barrage of abuse from customers”;¹⁰
 - (d) a woman of Asian heritage in Altona was yelled at in the street, and was also confronted by two men while pushing her 16-month-old baby in a stroller;¹¹
 - (e) a man was surrounded and taunted by four men on a train in Melbourne, fearing for his physical safety, until another stranger intervened;¹²

⁶ Samuel Yang, “Video shows Chinese woman being racially attacked in Melbourne over coronavirus”, *ABC News* (online) 6 May 2020 available at <<https://www.abc.net.au/news/2020-05-06/coronavirus-woman-racist-attack-in-melbourne/12216854?nw=0>>

⁷ Samuel Yang, “Video shows Chinese woman being racially attacked in Melbourne over coronavirus”, *ABC News* (online) 6 May 2020 available at <<https://www.abc.net.au/news/2020-05-06/coronavirus-woman-racist-attack-in-melbourne/12216854?nw=0>>

⁸ Ben Schneiders and Clay Lucas, “Asian-Australian groups report surge in racist abuse, assaults during pandemic” *The Age* (online) 13 May 2020 available at <<https://www.theage.com.au/politics/victoria/asian-australian-groups-report-surge-in-racist-abuse-assaults-during-pandemic-20200512-p54s6f.html?fbclid=IwAR2K8AUmVvckxBg3pz46PKUWHro9VpMGgIrlnPU6HjRfhctADhdOck--7Zc>>

⁹ “Doctor calls for unity during coronavirus pandemic after being targeted in racist attack” *ABC News* (online) 20 April 2020 available at <<https://www.abc.net.au/news/2020-04-20/coronavirus-geelong-doctor-calls-for-unity-after-racist-attack/12164282>>

¹⁰ Rhiannon Tuffield and Tyrone Dalton, “COVID-19-branded racist vandalism appears as second Nazi flag pops up in regional Victoria”, *ABC Shepparton* (online) 13 April 2020 available at <<https://www.abc.net.au/news/2020-04-13/coronavirus-racism-blamed-nazi-flag-appears-in-regional-victoria/12145166>>

¹¹ “Coronavirus pandemic sparks racist attacks against Asian Australians”, *The Conversation Hour* (ABC Radio Melbourne, 12 May 2020) 0:00:10 – 0:00:40 <<https://www.abc.net.au/radio/melbourne/programs/theconversationhour/the-conversation-hour-coronavirus-racism-asian-australians/12218028>>

¹² Matthew Doran, “Coronavirus-fuelled racism prompts debate on whether Australia’s laws are strong enough to protect victims”, *ABC News* (online) 7 May 2020 available at <<https://www.abc.net.au/news/2020-05-07/coronavirus-fuelled-racism-prompts-debate-on-australia-law/12220816?nw=0>>

- (f) a Victorian bus driver was abused by a passenger and accused of bringing COVID-19 to Australia;¹³
- (g) an ABC Asia-Pacific journalist was verbally abused at a shopping centre by a stranger yelling “coronavirus” at her;¹⁴
- (h) a Chinese international student was verbally abused while wearing a mask while waiting at a tram stop in Kew;¹⁵
- (i) a woman of Chinese heritage found hate mail in her letterbox made with newspaper clippings, telling her that China had endangered the world;¹⁶
- (j) an elderly woman of Asian heritage was “mock punched” and called an “illegal, germ-spreading cunt”;¹⁷
- (k) a man working in community services says he is no longer referred to by his name at work, but simply called “Coronavirus”.¹⁸

The old lady shouted that Channel Nine's 60 minutes and Australian news informed her that Chinese people are “fucking filthy animals who eat bats”. She spat at me and told me that “the Chinese government and Chinese people are taking over Australia because the news reporters told her so.”

- Report to the Asian Australian Alliance reporting tool

I was yelled at and told "stop bringing diseases into our country you fucking Asian. Go back to your country" when I was going to my local supermarket with my child.

- Report to the Asian Australian Alliance reporting tool

2.2 Legal analysis

14. From the above examples, it appears that people are not aware that racial vilification is unlawful, or if they are aware, the current laws are not having a deterrent effect.

¹³ Naaman Zhou, “Survey of COVID-19 racism against Asian Australians records 178 incidents in two weeks” *The Guardian* (online) 17 April 2020 available at <<https://www.theguardian.com/world/2020/apr/17/survey-of-covid-19-racism-against-asian-australians-records-178-incidents-in-two-weeks>>

¹⁴ ‘Coronavirus pandemic sparks racist attacks against Asian Australians’, *The Conversation Hour* (ABC Radio Melbourne, 12 May 2020) 0:37:49 – 0:38:11 <<https://www.abc.net.au/radio/melbourne/programs/theconversationhour/the-conversation-hour-coronavirus-racism-asian-australians/12218028>>

¹⁵ “Australians urged to ‘show kindness’ amid reports of COVID-19 racial discrimination complains” *ABC News* (online) 3 April 2020 available at <<https://www.abc.net.au/news/2020-04-03/racism-covid-19-coronavirus-outbreak-commissioner-discrimination/12117738>>

¹⁶ ‘Coronavirus pandemic sparks racist attacks against Asian Australians’, *The Conversation Hour* (ABC Radio Melbourne, 12 May 2020) 0:24:15 – 0:24:34 <<https://www.abc.net.au/radio/melbourne/programs/theconversationhour/the-conversation-hour-coronavirus-racism-asian-australians/12218028>>

¹⁷ ‘Coronavirus pandemic sparks racist attacks against Asian Australians’, *The Conversation Hour* (ABC Radio Melbourne, 12 May 2020) 0:19:10 – 0:19:22 <<https://www.abc.net.au/radio/melbourne/programs/theconversationhour/the-conversation-hour-coronavirus-racism-asian-australians/12218028>>

¹⁸ ‘Coronavirus pandemic sparks racist attacks against Asian Australians’, *The Conversation Hour* (ABC Radio Melbourne, 12 May 2020) 0:41:12 – 0:41:25 <<https://www.abc.net.au/radio/melbourne/programs/theconversationhour/the-conversation-hour-coronavirus-racism-asian-australians/12218028>>

15. These examples also highlight the limitations of the current Victorian legal framework. The legal test in section 7 of the RRTA sets the bar too high, by requiring a person to prove that a third party has been incited to hatred. This, by itself, also places the emphasis in the wrong place – whether a third party has been incited to hatred – in circumstances where the emphasis should be the experience of, and the impact on, the victim of the vilifying conduct and their community.
16. This demonstrates the need to reform the incitement provision so that it provides that a person must not engage in conduct that **expresses or is reasonably likely in the circumstances** to incite hatred, serious contempt for, revulsion or severe ridicule of a person or group of persons on the basis of one or more of the protected attributes set out above
17. The above alarming case examples also highlight the need for the Victorian Government to enact a separate harm-based protection against hate-based conduct, in which it should be unlawful for a person to do an act, otherwise than in private, if:
 - (a) the act is reasonably likely, in all of the circumstances, to offend, insult, humiliate or intimidate another person or group of people; and
 - (b) the act is done because of one or more protected attribute(s) of the other person or of some or all of the people in the group.

3. Criminal test for serious vilification

18. While it is appropriate that criminal offences should only apply to the most serious conduct, the current test for serious vilification in the RRTA sets too high a threshold by requiring Victoria Police to demonstrate incitement and a threat of physical harm to a person or property.

3.1 Examples of potential serious vilification

19. On 15 April 2020, two female international students were assaulted on Elizabeth Street in Melbourne, resulting in minor injuries.¹⁹ The students were attacked by two women, with footage of the incident showing the perpetrators screaming: “coronavirus... get the fuck out of our country you don't belong here”. The perpetrators repeatedly punched, dragged to the ground and kicked the victims. One of the women allegedly said: “we are going to kill you”.²⁰

¹⁹ Jason Fang, Samuel Yang and Christina Zhou, “Coronavirus has fuelled racism against Asian-Australians, but why isn't official data showing it?” *ABC News* (online) 5 May 2020 available at <<https://www.abc.net.au/news/2020-05-05/coronavirus-racist-attacks-asian-australians-missing-data/12211630?nw=0>>; “Doctor calls for unity during coronavirus pandemic after being targeted in racist attack” *ABC News* (online) 20 April 2020 available at <<https://www.abc.net.au/news/2020-04-20/coronavirus-geelong-doctor-calls-for-unity-after-racist-attack/12164282>>; Tate Papworth, “Woman charged over alleged international student bashing” *The Age* (online) 19 April 2020 available at <<https://www.theage.com.au/national/victoria/woman-charged-over-alleged-international-student-bashing-20200419-p5417o.html>>

²⁰ Naaman Zhou, “Survey of COVID-19 racism against Asian Australians records 178 incidents in two weeks” *The Guardian* (online) 17 April 2020 available at <<https://www.theguardian.com/world/2020/apr/17/survey-of-covid-19-racism-against-asian-australians-records-178-incidents-in-two-weeks>>

20. One of the alleged perpetrators has been identified by Victoria Police, and charged with recklessly causing injury and committing an indictable offence while on bail. We are not aware of any charges being laid pursuant to the RRTA in relation to this alleged offending.
21. A number of other physical assaults have been reported, including:
- (a) a woman driving in Caulfield had eggs, burgers and rubbish thrown at her by a car full of young men who also yelled racial abuse at her, including: “go back home”, “go back to where you came, you dirty cunt”, “dirty monkey”, “you’re disgusting” and “we don’t like your face”;²¹
 - (b) a man with Asian heritage was deliberately coughed on by a middle-aged woman, and reported receiving verbal abuse from strangers such as “Asians will get you sick, bro”, “fuck off”, “what’s that smell?”, “go home?” and being called “coronavirus”;²²
 - (c) a Chinese woman was concussed after almost being run over by a car, when the occupants of the car threw a bottle at her;²³
 - (d) a woman of Asian heritage wearing a face mask was forcibly shoved and elbowed by a man near Melbourne Central;²⁴
 - (e) a Chinese woman was walking to work when a man blocked her way, yelled at her and spat on the ground in front of her.²⁵

Told to stay away from them because I’m Asian so I have coronavirus. Told that it was my people who brought the virus over here. Attempted to kick me. Called me an Asian slut and an Asian dog. Told me to go eat a bat. Threatened me with a knife. Spat in my face getting spit in my left eye.

- Report to the Asian Australian Alliance reporting tool

3.2 Legal analysis

22. Section 24 of the RRTA creates the offence of serious racial vilification, which provides that a person must not, on the basis of the race of another person or class of persons, intentionally engage in conduct that the offender knows is likely:

²¹ ‘Coronavirus pandemic sparks racist attacks against Asian Australians’, The Conversation Hour (ABC Radio Melbourne, 12 May 2020) 0:14:30 – 0:15:47 <<https://www.abc.net.au/radio/melbourne/programs/theconversationhour/the-conversation-hour-coronavirus-racism-asian-australians/12218028>>

²² ‘Coronavirus pandemic sparks racist attacks against Asian Australians’, The Conversation Hour (ABC Radio Melbourne, 12 May 2020) 0:05:00 – 0:05:44 <<https://www.abc.net.au/radio/melbourne/programs/theconversationhour/the-conversation-hour-coronavirus-racism-asian-australians/12218028>>

²³ ‘Coronavirus pandemic sparks racist attacks against Asian Australians’, The Conversation Hour (ABC Radio Melbourne, 12 May 2020) 0:09:19 – 0:09:32 <<https://www.abc.net.au/radio/melbourne/programs/theconversationhour/the-conversation-hour-coronavirus-racism-asian-australians/12218028>>

²⁴ ‘Coronavirus pandemic sparks racist attacks against Asian Australians’, The Conversation Hour (ABC Radio Melbourne, 12 May 2020) 0:36:39-0:36:47 <<https://www.abc.net.au/radio/melbourne/programs/theconversationhour/the-conversation-hour-coronavirus-racism-asian-australians/12218028>>

²⁵ ‘Coronavirus pandemic sparks racist attacks against Asian Australians’, The Conversation Hour (ABC Radio Melbourne, 12 May 2020) 0:48:52-0:49:25 <<https://www.abc.net.au/radio/melbourne/programs/theconversationhour/the-conversation-hour-coronavirus-racism-asian-australians/12218028>>

- (a) to incite hatred against that other person or class of persons; **and**
 - (b) to threaten, or incite others to threaten, physical harm towards that other person or class of persons or the property of that other person or class of persons.
23. Despite the clear racial motivation of the attacks set out above, we are not aware of any charges being laid by Victoria Police pursuant to this provision of the RRTA.
24. This is likely because of the extremely high threshold that requires the police to demonstrate incitement **and** a threat of physical harm to person or property.
25. As a result, the threshold should be lowered by:
- (a) amending the fault element to “intentionally or recklessly”, to cover circumstances where there is a significant risk that a person’s conduct is likely to incite hatred, but who proceeded with that conduct notwithstanding that risk;
 - (b) replacing the subjective test of conduct that “the offender knows is likely to incite” with an objective test of conduct that “is likely to incite”; and
 - (c) prohibiting threats **or** incitement (rather than threats **and** incitement), so that conduct is captured which incites hatred against another person or class of persons on the basis of the protected attribute(s) or that threatens violence or property damage to another person or class of persons on the basis of the protected attributes.

4. Public display of vilification materials

26. Recent events have also highlighted the increasing use of the Nazi Swastika, which is a symbol that represents hate, genocide and trauma for many people around the world, including members of Victoria’s Jewish community. It has also become a calling card for white supremacist groups and the Far Right.
27. On 13 April 2020, it was reported that a flag showing a Nazi Swastika and “#COVID19” written on it, as well as two Chinese flags, had been raised on a telecommunications tower in Kyabram in regional Victoria.²⁶ This was the second time a Nazi Swastika flag had been flown in plain sight in rural Victoria this year.
28. On 21 May 2020, Nazi Swastikas and other offensive symbols were spray painted on the golf course at the Cranbourne Golf Club in Melbourne’s suburbs.²⁷ Cranbourne Golf Club was formed in the 1950s by a group of Jewish golfers who were blocked from joining other clubs. The vandalism also included homophobic slurs.

²⁶ Rhiannon Tuffield and Tyrone Dalton, “COVID-19-branded racist vandalism appears as second Nazi flag pops up in regional Victoria”, *ABC Shepparton* (online) 13 April 2020 available at <<https://www.abc.net.au/news/2020-04-13/coronavirus-racism-blamed-nazi-flag-appears-in-regional-victoria/12145166>>

²⁷ Rachel Eddie, “Golf Club vandals spray swastikas on fourth green in ‘chilling’ attack”, *The Age* (online) 21 May 2020 available at <<https://www.theage.com.au/national/victoria/golf-club-vandals-spray-swastikas-on-fourth-green-in-chilling-attack-20200521-p54v5t.html>>

29. The enactment of laws that prohibit the public display of hateful materials is important, both as a deterrent and because it would enable members of Victoria Police to take action in response to incidents like these.
30. We reiterate our recommendation that the Victorian Government should create a criminal offence prohibiting the public display of vilifying and intimidating material, like the Nazi Swastika. This, however, must form part of a holistic package of reforms that addresses the different ways in which hate-related behaviour manifests, and must also be accompanied by strategies – including public awareness campaigns, education resources and more effective data collection – to change the deep-seated attitudes that feed hate-related behaviour.