



ISLAMIC COUNCIL OF VICTORIA

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**Submission to the  
Department of Justice  
and Community  
Safety: Victorian  
Government's  
proposed reforms  
relating to Victoria's  
Anti-Vilification  
protections**

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The Islamic Council of Victoria (ICV) welcomes the opportunity to make a submission to the Department of Justice and Community Safety (DJCS) in relation to the Victorian Government's proposed reforms of Victoria's Anti-Vilification protections. As the peak representative body for Muslims in Victoria, the ICV's mission is to protect and advance the rights of its constituents throughout Victoria. It is from this perspective that we write this submission.

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## INTRODUCTION

1. The Islamic Council of Victoria (ICV) is the peak Muslim body in Victoria representing over 270,000 Muslims and 76 member societies. The ICV provides advocacy and social welfare services while leading state and national initiatives through community consultations and advice to the Victorian and Federal Governments.
2. The ICV works to support all Victorian Muslims to have a strong sense of belonging and respect for all. Its work contributes to the strengthening of social bonds between and amongst the numerous diverse communities which in turn builds a more respectful, cohesive and resilient society.
3. This submission is based on the ICV's ongoing community consultations over the past two years. These consultations have been focussed on Muslim and multicultural community groups, Muslim faith communities and, more broadly, Muslims in Victoria and Australia. Here, the ICV particularly seeks to represent the views of female and young Victorian Muslims.
4. Whilst the ICV applauds the DJCS for proposing reforms, the ICV expresses concern on behalf of the Muslim community about the extension of the current Racial and Religious Tolerance Act (RRTA) to include other 'protected attributes' such as HIV/AIDS status, and LGTBQ+ identities. We believe this would weaken the emphasis needed to protect against religious and racial hate. The ICV is in support of the inclusion of sex because of the known intersectionality between biological sex and racial and religious intolerance.
5. In a climate of rising tension and negativity towards Muslims, the ICV firmly believes it is important to retain the key focus on racial and religious vilification in the RRTA and to further reinforce it.
6. The ICV believes that there are other mechanisms that could be used to deal with hate directed towards people with these other attributes, and that this would be more effective than seeking to expand the current RRTA such that it becomes a weakened catch-all law.

7. This submission to the DJCS will explain the ICV's views with respect to the questions posed in the Stage One Consultation Paper (Protecting More Victorians From Vilification).

## **PART ONE - PROTECTING MORE VICTORIANS FROM VILIFICATION**

### **A. The ICV's views on the current protections for race and religion**

8. Racial vilification and religious vilification are protected under sections 7 and 8 of the *Racial and Religious Vilification Act 2001 (Vic)*.<sup>1</sup>
9. Pursuant to these protections, conduct that incites hatred against an individual on religious or racial grounds is unlawful, where a vilified person must select one category: either racial or religious vilification, but not both.
10. Data collected by the Islamophobia Register affirms that Islamophobia is a form of 'anti-Muslim racism', where anti-Muslim hate incidents were 'associated with other characteristics that make people vulnerable, such as gender, age and race'.<sup>2</sup> In this way, a key limitation of the current Act is that it does not take into account situations where a victim suffers racial and religious vilification concurrently.
11. Therefore, the ICV proposes that the Act should be strengthened to enable people to make a report on the basis of both categories of religious and racial vilification.

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<sup>1</sup> *Racial and Religious Vilification Act 2001 (Vic)*.

<sup>2</sup> Mason G. and Asquith N Islamophobia within the Hate Crime Framework in Iner, Derya, ed. Islamophobia in Australia Report II (2017-2018) Sydney: Charles Sturt University and ISRA 2019.

## B. Government's proposal to extend current protections beyond race and religion

12. The ICV acknowledges that there are many types of hatred and prejudice, not just racial and religious offences. We acknowledge that Islamophobia has much in common with other forms of racism and prejudice, and the need for protection of other attributes that are impacted by hate crime such as gender and disability.

13. According to the Islamophobia Register, vilification targeted Muslims' religious appearance has 'increase[d]' from '61% to 67%'.<sup>3</sup> These alarming statistics highlight the ubiquitous climate of intense hostility that takes place almost daily in Victoria towards Muslims.

14. In light of this, the ICV believes it is important to retain the key focus of the Victorian Act on racial and religious vilification and to further strengthen it. Therefore, the emphasis of this submission has been on retaining and strengthening the racial and religious focus of the Act to protect religious groups from prejudice motivated hate crime.<sup>4</sup>

15. Whilst the ICV would support a complementary Anti-vilification Protection Act and other legal frameworks, we advocate for the retention and strengthening of the current *Racial and Religious Tolerance Act 2001 (Vic)*.

### **DISABILITIES, HIV/AIDS, LGBTQ+**

16. The DJCS Inquiry recommended extending civil and criminal protections beyond race and religion to Victorians who often experience vilification based on LGBTQ+ status or identity, gender, disability and HIV/AIDS status.

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<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

17. The ICV is forthrightly against vilifying behaviour towards vulnerable communities such as those with disabilities who can suffer violence, mental health issues, and homelessness.
18. However, the ICV is gravely concerned at the prospective extension of anti-vilification protected attributes. By creating a broad list of protected attributes, the reforms would in effect dilute the focus of the Act which is designed to protect religion and race.
19. In response to the current climate of hostility which pervades the social and civic participation of Victorian Muslims, the ICV believes it is necessary to retain and strengthen the racial and religious focus of the Act to protect religious groups from prejudice motivated hate crime.
20. Hence, we advocate for the retention and strengthening of the current *Racial and Religious Tolerance Act 2001 (Vic)*.

## PROTECTIONS BASED ON SEX

### C. Do you have any views on how the anti-vilification protections should apply to protect people based on sex?

21. The ICV endorses extending anti-vilification protections to protect individuals where they are discriminated against based on gender or biological sex to be precise. We note that vilification on grounds of gender often occurs in association with the victim's race or religion. Indeed, Muslim women have been an ongoing target for prejudice and discrimination in the form of dislike, hostility, and unjust behaviour according to the Resilient Women Project.<sup>5</sup>
22. Their vilification ranges from receiving pervasive and unwarranted hostility to physical and verbal abuse in the public sphere. Typical comments for the Resilient Women Project are: 'Islamophobia affects us on a daily basis' and 'it's mentally and emotionally exhausting'. As one Muslim woman of colour reflects, 'it's a daily battle

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<sup>5</sup> Resilient Women Project – Muslim Women and their Experiences of Prejudice, 2019 A Kailahi, Semsisi Kailahi and Tatjana Bosevska, Synod of Victoria and Tasmania, Uniting Church in Australia ('*Resilient Women Project*').

because you're constantly on the spot and you constantly have to prove your humanity'.<sup>6</sup>

23. Moreover, the ICV believes that when applying these protections, the intersectionality of gender, race and religion should be considered an aggravating factor when complaints are made under the *Racial and Religious Tolerance Act 2001*. This would reinforce the purpose of protecting against prejudice to the Muslim community.

## TARGETED GROUPS

D. Do you have any views on how the anti-vilification protections should apply to protect people who are associated with targeted groups?

24. Anti-vilification protections should aim to promote social cohesion and the ability for individuals and loved ones who are part of or support marginalised communities to live without fear of vilification.

25. Whilst fundamentally the ICV supports the concept of protecting those associated with targeted groups, it reiterates its position that it should only apply in this Act to the scope of religion, race and its intersection with gender.

26. Often, it is the immediate families of those vilified on the basis of religion and race who are concurrently affected, highlighting the need to protect third parties. Indeed, prejudice and violence have a long-term impact on women and their immediate families and children who often witness such abuse directed at their mothers, grandmothers, sisters and aunties.

27. One of the first public reports to list cases of growing anti-Muslim public harassment in Melbourne was the ECCV Social Cohesion Report: On the Road with Muslim Mothers that listed typical incidents. The Report recounts one such incident:<sup>7</sup>

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<sup>6</sup> Ibid.

<sup>7</sup> On the Road with Australian Muslim Mothers, ECCV social Cohesion Policy Brief, Ethnic Communities Council of Victoria 2015 at <https://apo.org.au/sites/default/files/resource-files/2015/11/apo-nid58313-1122731.pdf> accessed 1 January 2020.

"As I took my daughter for a drive in the car and we had to stop at a red light but the car behind us kept tooting the horn. The driver wound the window down and shouted abuse about Muslims and migrants."

These comments indicate the undue vilification inflicted towards individuals associated with targeted Muslims, and how it can extend to family members.

28. Therefore, the ICV advocates for strengthened protections for vulnerable people from different religious backgrounds.

## COMPLAINTS - ONE OR MORE ATTRIBUTES

E. Do you have any views on clarifying the law to ensure individuals can make vilification complaints based on one or more attributes?

29. Under the current law, a vilified person must select one category of either racial or religious vilification.

30. The ICV believes that the compounding of abuse experienced by the victim who has been vilified on the basis of multiple protected attributes - race, religion, and gender - should be considered when clarifying the law.

31. The ICV believes this is not sufficiently covered by the Act and should be considered from a victim impact perspective. For quite some time, Muslim women have been an ongoing target for prejudice and discrimination in the form of dislike, hostility, and unjust behaviour according to the Resilient Women Project.<sup>8</sup> They receive pervasive and unwarranted hostility, physical and verbal abuse in the public sphere.

32. Children and young people of the Islamic faith are particularly vulnerable to the harmful effects of hate speech and abuse. Prejudice and violence have a long-term impact on children and their immediate families and children who often witness such abuse directed at their mothers, grandmothers, sisters, and aunts.<sup>9</sup>

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<sup>8</sup> *Resilient Women Project* (n 3).

<sup>9</sup> *Ibid.*



33. In this way, the ICV proposes that the law should be clarified to ensure vilified individuals can make a complaint based on the attributes of race, religion, and gender.

## PART TWO - CRIMINAL ANTI-VILIFICATION PROTECTIONS

F. What do you think about adopting the NSW definition of 'public act' under section 93Z(5) of the Crimes Act 1900 for the criminal serious vilification offence?

34. The ICV recommends expanding the definition of 'conduct' in the Act so that it covers any form of public communication including broadcasting and communicating through social media, speaking, and the distribution of any material in public.

35. Therefore, the NSW definition of 'public act' under s. 93Z(5) is befitting for criminal serious vilification offences.

## G. Changes to Criminal Offences

36. Foremost, the ICV echoes VEOHRC's recommendation that the offence for racial and religious vilification be made a provision in the *Crimes Act 1958 (Vic)*.

37. The ICV also proposes an additional deeming provision to the effect that the aggravating factor of 'motivated by hatred or prejudice' be presumed to apply to an offence under this provision. This can be then taken into consideration by the Director of Public Prosecutions when determining how appropriate a serious vilification charge is for prosecution before the Courts. We discuss this further below.

38. The ICV concurs with VEOHRC in that the existing criminal offence threshold should be amended to lower the threshold for criminal incitement.

39. Under the current law, conduct that is likely to incite hatred, serious contempt, revulsion, or severe ridicule and threaten harm or damage to property renders vilification serious enough to warrant a criminal penalty.

40. The ICV supports making unlawful conduct that either incites others or threatens physical harm as opposed to both elements needing to be present. Having the

offence similar to civil contraventions would ensure the criminal offence threshold is lowered and ensure greater protection of the Muslim community.

41. Further, the ICV advocates for creating two separate criminal offences; namely, one requiring either incitement or threat as requisite elements and the other offence for both incitement and threat.

42. This would ensure that for more serious crimes involving incitement and threats to Muslims on the basis of race and religion, there are more serious punishments.

43. Moreover, the ICV supports the broadening of criminal offences to include reckless conduct as opposed to merely intentional conduct.

#### H. Should the Director of Public Prosecutions' approval continue to be required before a serious vilification matter can proceed to court? Why / why not?

44. The ICV broadly supports the current process whereby prosecutions for serious vilification proceed on the approval of the Director of Public Prosecutions (DPP). There is a clear message sent to the Victorian community as to the seriousness of criminal vilification.

45. The ICV notes with caution, however, how DPP consideration of a prosecution being 'in the public interest' may hinder robust prosecution of criminal vilification. This consideration ultimately involves a judgement call from senior OPP prosecutors, and the ICV is hopeful that the DPP appreciates the gravity of criminal behaviour which vilifies Muslims and members of other religions or racial groups when deciding whether to proceed with a prosecution.

#### I. Should the maximum penalty for criminal serious vilification offences be increased? If so, what should the maximum penalty be for an offence: i. requiring incitement or threat ii. requiring incitement and threat?

46. The ICV asserts that a strength of the Victorian Act is its capacity to prosecute with both civil and criminal sanctions.

47. Current sanctions in the Act for the offences of 'serious racial vilification' and 'serious religious vilification' carry maximum penalties of 300 penalty units in the case of a body corporate. For all other cases, it carries 60 penalty units, imprisonment for 6 months or both.
48. The ICV advocates that there must be consistency in terms of penalties for similar crimes regardless of whether they are prosecuted under criminal laws or otherwise. As such the ICV recommends that penalties for offences in the Act should be increased in line with comparable offences in Victoria and other inter-state jurisdictions.
49. For incitements or threats, the ICV recommends retaining the 60 penalty units and 6 months for individuals, and 300 penalty units for body corporates.
50. For incitements and threats, the ICV recommends 14 years imprisonment or 60 penalty units for individuals and up to \$50,000 for body corporates. This reflects Western Australia's imprisonment terms for intentional conduct and would adequately deter individuals and body corporates from engaging in both serious racial and religious vilification.

### **PART THREE - CIVIL ANTI-VILIFICATION PROTECTIONS**

J. Do you have any views on changing the current legal test to prove incitement-based vilification, to clarify that a person's behaviour or conduct is against the law if it is likely to incite hate speech or conduct?

51. The ICV believes the existing civil offence threshold should be amended to lower the threshold for incitement-based vilification.
52. Under the current law, the civil test for vilification requires that the complainant prove that a third party was incited to hatred by the conduct. This places an unreasonable

burden on the victim of the vilification to establish proof of incitement of serious negative emotions and hatred in a third party who is often unidentifiable.<sup>10</sup>

53. As such, the ICV concurs that the current test should be replaced with an objective test of conduct that 'is likely to incite' hate speech or conduct. This would improve the operational effectiveness of the Act.

54. The ICV further recommends that the current law is made clearer regarding the matter of serious vilification against a group as opposed to an individual. The Muslim community is often the victim of hate speech directed at Muslims overall or the religion of Islam (which is often a euphemism for anti-Muslim hatred) which enables and incites hate acts against individuals.

### K. Do you have any views on introducing a new harm-based vilification protection?

55. The ICV believes that a harm-based test is befitting as the focus is on the impact of offensive conduct, and its harm from the perspective of a reasonable person or group of persons.

56. The ICV further supports the DJCS for considering the historical and socio-economic positions of the parties involved, and any power imbalances among them in determining the standard of what is reasonable.

57. By creating an alternative pathway for victims of vilification beyond proving third party incitement, more individuals who are unjustly vilified are able to receive justice.

58. The ICV further agrees with using the definition of 'because of' from section 18C of the *Racial Discrimination Act 1975* (Cth) when proving that the hate speech or conduct is done 'because of' a person or group's protected attribute.<sup>11</sup>

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<sup>10</sup> Debbie Mortimer SC of the Victorian Bar, "Vilification legislation – is it worth the trouble?" [https://www.monash.edu/\\_\\_data/assets/pdf\\_file/0007/138292/mortimer-paper.pdf](https://www.monash.edu/__data/assets/pdf_file/0007/138292/mortimer-paper.pdf) accessed 1 January 2020.

<sup>11</sup> Racial Discrimination Act 1975 (Cth) s. 18C.

## L. Do you have any views on the proposed exceptions to harm-based vilification?

59. The ICV accepts the exceptions in the Act for public conduct that is reasonable and done in good faith.

## M. Do you have any views on allowing anyone affected by harm-based vilification (including those against whom it is directed, and those in a targeted group) to be able to make a complaint to VEOHRC and VCAT?

60. The ICV supports that anyone who is harmed by the conduct could bring a complaint to VEOHRC for dispute resolution, including conciliation, and/or apply to VCAT for a hearing.

## N. Do you have any views on the remedies available for vilification complaints made to VEOHRC and VCAT? Do you have any views on clarifying that VCAT may order a person to take down online vilifying material?

61. The ICV supports the remedies available for vilification complaints made to VEOHRC and VCAT, and further agrees with the clarification that VCAT may order a person to take down online vilifying material.

## O. Do you have any views on retaining the existing ban on incitement-based vilification alongside introducing a new harm-based vilification protection?

62. The ICV agrees with retaining the incitement-based vilification ban with its alterations and introducing the new harm-based vilification protection. These would both enable more victims of vilification to seek justice.

## P. Do you have any views on defining a 'public act' (similar to section 93Z(5) of the Crimes Act 1900 (NSW)) to make it clearer that only public acts are covered

by anti-vilification laws? Also on retaining the private conduct exception and religious purpose exception?

63. The ICV recommends the definition of 'conduct' in the Act so that it covers any form of public communication including broadcasting and communicating through social media, speaking, and the distribution of any material in public.
64. Therefore, the NSW definition of 'public act' under s. 93Z(5) is befitting to make it clearer that only public acts are covered by anti-vilification laws.
65. Moreover, the ICV retains its stance that the private conduct exception should remain.
66. The ICV further concurs that the current religious exception rules apply when occurring in good faith and for the test that 'good faith' depends on whether the person who engaged in the conduct has a subjective belief that the conduct was necessary or desirable to achieve a genuine religious purpose.

Q. Do you have any views on amending the public interest exception, in order to provide that a person's conduct is not vilification if they establish that it (reasonably and in good faith) was for a genuine purpose in the public interest? Is there any other conduct or activity that should be covered by an exception to vilification that is currently not?

67. The ICV supports the amendment of the public interest exception so as to require a genuine purpose in the public interest argument.

R. Do you have any views on providing VEOHRC with the power to request information to help people identify who vilified them?

68. The ICV endorses VEOHRC receiving the power to request information to help individuals identify who has vilified them as it acts as a deterrence against subsequent offending when their identity is exposed.

## S. Do you have any views on whether representative organisations should be able to make a complaint to VEOHRC on behalf of an unnamed person or group who have experienced vilification?

69. Under the current law, a third party is not permitted to pursue redress on behalf of a victim of serious vilification. As such, representative organisations such as the ICV are not able to raise an anti-vilification complaint on behalf of an individual that is seriously vilified.
70. The ICV functions to represent the Muslim Community within Victoria and empower Muslims who are marginalised on the basis of their religion, race and gender. By preventing third party advocacy bodies such as the ICV from pursuing redress, victims of serious vilification are bound to stay silent. Many individuals are discouraged from making a complaint due to fear and concern about the difficulties they will face by doing so. This results in a serious lack of reporting which sets back efforts to tackle serious vilification.
71. Therefore, the ICV proposes that third parties are enabled to make a complaint on behalf of victims of serious vilification.

## T. Do you have any views on requiring a statutory review of the anti-vilification laws to be commenced in five years?

72. The ICV wholeheartedly supports requiring a statutory review of the anti-vilification laws to be conducted in five years, and on a periodic basis thereafter.

## V. Do you have any views on extending VEOHRC's powers to address systemic vilification?

73. The ICV supports extending VEOHRC's powers to address systemic vilification so long as it is confined within the scope of race, religion, and gender.

## CONCLUSION

74. Ultimately, the ICV supports the DJCS in retaining the *Racial and Religious Tolerance Act 2001* as an important legislative instrument that protects the freedom of people in Victoria to live without undue vilification on the basis of race and religion.
75. However, the ICV is fundamentally against extending the protected attributes in the Act as it would dilute the focus on protecting against racial and religious hatred when it is increasing in our community.
76. The ICV supports the inclusion of gender when intertwined with the anti-vilification protected attributes of race and religion. Further, the ICV applauds the DJIS for seeking to strengthen criminal and civil protections and making the law more accessible for the victims by removing barriers to reporting.
77. The ICV firmly believes that retaining and strengthening the current RRTA supports social cohesion and will lead to reduced vilification of the Muslim community.