



ISLAMIC COUNCIL OF VICTORIA

**Submission to the Department of Justice
and Community Safety on the *‘Overview
of proposed anti-vilification protections for
all Victorians’* consultation paper**

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Submission to the Department of Justice and Community Safety on the *‘Overview of proposed anti-vilification protections for all Victorians’* consultation paper

The Islamic Council of Victoria (ICV) welcomes the opportunity to make a further submission to the Department of Justice and Community Safety (DJCS) in relation to the Victorian Government’s review of 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 and Australia. It is from this perspective that we write this submission.

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Submission to the Department of Justice and Community Safety on the ‘Overview of proposed anti-vilification protections for all Victorians’ consultation paper

Introduction

Since the Victorian Government commenced its review of the state’s anti-vilification laws, the ICV has been consulted on several occasions and made submissions on various proposals and stages of reform. In these submissions, we have highlighted the prevalence of Islamophobia within Victoria, which, unfortunately, remains a consistent challenge for the state’s Muslim community. Incidents of Islamophobia have continued to be reported consistently, and have tended to spike at alarming and unprecedented rates following significant global events and inflammatory media coverage.

The Islamophobia Register Australia reported that in the month following Israel’s invasion of Gaza in 2023, the organisation saw a thirteen-fold increase in reports of Islamophobic incidents.¹ The Islamophobia Register noted “a direct correlation” between overseas conflicts and “divisive political rhetoric surrounding them” and incidents of Islamophobia locally.² The Executive Director of the Register stated “the staggering rate at which reports of offline Islamophobia have increased in the last week is unprecedented in the Register’s 9-year history of operation and is deeply troubling. What makes it even more concerning is that we know that the majority of incidents of Islamophobia are never reported.”³

Furthermore, the Islamophobia register noted that in the weeks following the Bondi Junction attack, a mass murder committed by an individual with no affiliation to Islam but suggested in early media reports to be an ‘Islamist terrorist,’ reports of Islamophobia had risen by 720% compared to the average week in 2024.⁴ Between 2023 and 2024, the Register recorded a 39-fold increase in Islamophobic incidents on university campuses.⁵

¹ Menchie Khairuddin, ‘Islamophobic reports up thirteen-fold since October,’ *The Third Sector*, 30 November 2023, <https://www.thirdsector.com.au/islamophobic-reports-up-thirteen-fold-since-october-7th/>.

² Islamophobia Register Australia, *Reports of Islamophobia continuing to increase at staggering rate - now ten-fold post Israel/Palestine escalations* (Press Release), 23 October 2023, https://islamophobia.com.au/wp-content/uploads/2023/10/Islamophobia-Register_23-OCT-Press-Release.docx-1.pdf.

³ Ibid.

⁴ Islamophobia Register Australia, *720% Increase in Incidents Reported* (Social Media Post, 24 April 2024) https://www.instagram.com/p/C6IrND0yb_e/.

⁵ Islamophobia Register Australia, *Increase in Islamophobic incidents on Australian University Campuses* (Press Release) 24 May 2024, https://islamophobia.com.au/wp-content/uploads/2024/05/Islamophobia-Register-Australia_24-MAY-Press-Release.pdf.

Submission to the Department of Justice and Community Safety on the ‘Overview of proposed anti-vilification protections for all Victorians’ consultation paper

The rates of vilification experienced by Victoria’s Muslim community, alongside other racial and religious minority groups, demonstrate the ongoing need for a tailored and robust legislative framework to address these common forms of discrimination. Victoria’s anti-vilification framework must contain strong protections and penalties, and recognise the complexities, the unique drivers, and consequences of different forms of vilification, maintaining its strong focus on preventing discrimination on the basis of race and/or religion. For this reason, we maintain the view presented in our previous submissions that the *Racial and Religious Tolerance Act* (RTTA) should remain in force, offering a robust stand-alone framework to address these prevalent forms of discrimination. This submission will explain the ICV’s key recommendations in relation to the Department’s most recent Consultation Paper, from this standpoint.

Recommendation 1:

The ICV maintains that protection from discrimination on racial and religious grounds should remain under its own distinct act. This would appropriately emphasise the prevalence and harm of these forms of vilification, as well as allow for suitable, tailored responses to vilification on these grounds.

The ICV supports, in principle, the proposal to expand vilification offences and measures to ensure that legislation appropriately acknowledges the gravity of discrimination offences. However, as recommended in our previous submissions to the Victorian government’s review,⁶ the ICV maintains that repealing the *Racial and Religious Tolerance Act* (RTTA) is not a suitable way to strengthen anti-vilification protections. The RTTA is an essential element of Victoria’s anti-vilification and anti-discrimination legislative response, and ought to remain as such.

The RTTA serves a distinct purpose that cannot be understated. The RTTA is fundamentally drafted to respond to serious vilification on the basis of race or religion. The ICV’s view is that the best way to

⁶ Islamic Council of Victoria, *Submission to the Department of Justice and Community Safety: Victorian Government’s Proposed Reforms Relating to Anti-Vilification Protections* (2023), https://icv.org.au/wp-content/uploads/2023/12/ICV-Submission_-Anti-Vilification-Protections-Consultation.pdf, [4] - [6]; *Submission by the Islamic Council of Victoria (ICV) to the Inquiry into Anti-Vilification protections of the Parliament of Victoria* (2020), <https://icv.org.au/wp-content/uploads/2023/12/Final-ICV-submission-on-Inquiry-into-Anti-vilification-Protections-Jan-31-2020.pdf>, 1.

Submission to the Department of Justice and Community Safety on the ‘Overview of proposed anti-vilification protections for all Victorians’ consultation paper

respond to these forms of discrimination would be to strengthen the operational effectiveness of the RTTA, rather than insert race and religion amidst a range of other protected attributes by an amendment to the *Equal Opportunity Act 2010* (EOA). Indeed, many of the operational reforms proposed in the Department’s consultation paper would work to improve existing gaps and strengthen the RTTA’s efficacy.

An Act whose sole purpose is to respond to racial and religious vilification sends a strong message that vilification on these grounds fundamentally damages the sense of belonging of victims and their communities, and reduces their ability to participate in the community socially, economically and culturally.

In the ICV’s 2020 submission to the Legislative Assembly’s Legal and Social Issues Committee, we recalled that the RTTA was enacted following Victoria’s commitment to “strong legislative protection against racial and religious hate and abuse” and that it was “vital to continue the work that has served the Victorian community so well”.⁷ Although there is still room for improvement in how the Act operates, it would be unwise to wholly repeal the RTTA.

In fact, the RTTA has been fertile ground over more than two decades in providing valuable lessons for optimising our response to racial and religious vilification. From the RTTA stems learnings around what ought to be the elements of a serious vilification offence (i.e. creating an incitement offence alongside a threat offence) and how we capture online content.

Despite disappointing rates of successful prosecution following investigation, these learnings are the first steps in improving the legislation. It has been the ICV’s hope throughout the government’s review that this process of refinement would continue into the future, not be undermined by conglomerating civil protections in the EOA. There is no “one size fits all” response to vilification, and a single provision in the EOA that responds to vilification on the basis of eight different protected attributes adversely affects the ability of the law to respond to vilification of any one type. Legislative responses to vilification and

⁷ Islamic Council of Victoria, *Submission by the Islamic Council of Victoria (ICV) to the Inquiry into Anti-Vilification protections of the Parliament of Victoria* (2020), <https://icv.org.au/wp-content/uploads/2023/12/Final-ICV-submission-on-Inquiry-into-Anti-vilification-Protections-Jan-31-2020.pdf>, 2.

Submission to the Department of Justice and Community Safety on the *‘Overview of proposed anti-vilification protections for all Victorians’* consultation paper

discrimination are the products of a decades-long refinement process, underpinned by a strong evidence base and continuous community consultation and law reform.

For many years, Victoria was the only state that outlawed religious vilification and discrimination on the basis of religion. Now most states have laws against religious vilification, but we do not have a federal Commonwealth law outlawing religious vilification. Some of these jurisdictions have incorporated these protections into existing anti-discrimination provisions, as is proposed in Victoria, while others have stand-alone laws. We believe that religious communities across Australia would largely consider the latter the better approach, as it is conducive to targeted law reform where necessary, and carries strong symbolic significance.

The RRTA has long recognised the prevalence and damage of racial and religious discrimination in Australian society, and the unique factors which drive and exacerbate vilification on these grounds. In response to growing divisions within Victorian society, now is not the time to abandon an Act which has been developed through years of consultation and reform specific to the experience of racial and religious vilification.

Recommendation 2:

The ICV supports the Department’s proposal to clarify that complaints can be made based on multiple protected attributes. We recommend that when applying the relevant protections, the intersectionality of protected factors, particularly race, religion and gender, should be considered an aggravating factor in anti-vilification offences. This is because individuals experiencing this intersectional vilification often experience compounded harm, distress and victimisation.

The ICV welcomes the proposed clarification that vilification can happen on the basis of multiple protected attributes. As we have highlighted in our previous submissions, vilification against Muslims in Australia most often occurs on the basis of multiple factors, with Islamophobia being described by experts as a form of ‘anti-Muslim racism,’ rather than exclusively religious discrimination, where anti-Muslim

Submission to the Department of Justice and Community Safety on the ‘Overview of proposed anti-vilification protections for all Victorians’ consultation paper

hate incidents are typically “associated with other characteristics that make people vulnerable, such as gender, age and race.”⁸

Importantly, though not exclusively, Muslim women have in particular been subject to alarming rates of hostility and abuse based on the intersection of race, religion and gender. According to the Resilient Women Project, Muslim women have reported that “Islamophobia affects [Muslim women] on a daily basis” and that “it is mentally and emotionally exhausting”.⁹ Often, where the vilification is based on more than one attribute, the effect on the victim is compounded, causing greater psychological distress and contributing to pervasive barriers to social well-being.

However, mere clarification of intersectionality is insufficient. As stated in our 2023 submission to the DJCS, the ICV believes that where vilification is found to have occurred on the basis of multiple factors, the intersectionality of protected attributes should be considered an aggravating factor in the investigation or prosecution of the offence, due to the compounded harm caused to victims.

Recommendation 3:

The ICV supports the introduction of measures to remove barriers to prosecuting vilification offences and ensure that penalties appropriately reflect the gravity and harm caused by these offences.

3.1 We support the separation of criminal vilification offences into the distinct categories of incitement and threat offences. We believe this would facilitate prosecutions and access to justice for victims, and ease the difficulties associated with prosecution under the current RRTA.

We believe that by removing the requirement to prove both incitement and a threat within a single offence, the two distinct categories would make it easier to prosecute offences. In our 2020 submission, the ICV noted that Australian anti-vilification laws are rarely enforced and seldom result in convictions

⁸ Mason G. and Asquith N. *Islamophobia within the Hate Crime Framework in Iner, Derya, ed. Islamophobia in Australia Report II (2017-2018)* (Report, 2019) Charles Sturt University and ISRA, 20.

⁹ Kailahi A., Kailahi S., Bosevska T., *Resilient Women Project: Muslim Women and their Experience of Prejudice* (Report, 2019), 138.

Submission to the Department of Justice and Community Safety on the ‘Overview of proposed anti-vilification protections for all Victorians’ consultation paper

for hate crimes, as the threshold for prosecution is set too high.¹⁰ This change would reduce the burden on prosecutors and increase the likelihood of successful legal action, as each offence would have clearer, more specific and less subjective elements to prove.

3.2 We support the introduction of higher maximum penalties.

The ICV also believes that penalties should be tailored to reflect the gravity of each offence, ensuring proportionate consequences for incitement and threats. We therefore welcome the imposition of higher maximum penalties. We accept that threat offences should have a higher maximum penalty than incitement, as these offences invariably and directly cause harm or distress to a particular victim.

3.3 We support changing how prosecutions are commenced.

The ICV also supports the removal of the requirement of the Director of Public Prosecution’s consent to commence proceedings, on the basis that this would make prosecutions more accessible and remove unnecessary barriers to justice.

Recommendation 4:

The ICV supports the introduction of enhanced civil protections to facilitate access to justice where criminal prosecution is not available or a criminal offence has not occurred.

The ICV supports the modification of civil protections as outlined in section 6.3 of the Consultation Paper. We believe these changes would contribute to making litigation and remedies more accessible, thereby facilitating access to justice for victims of vilification.

The ICV supports the proposal outlined in section 6.3.1 of the Consultation Paper to modify the existing incitement-based protection. We are pleased that this proposal which we have supported in our previous submissions has been maintained. Replacing the current test with the objective standard of conduct that ‘is likely to incite’ hatred is favourable, as proving the intentions and motivations of someone who was

¹⁰ Islamic Council of Victoria, *Submission by the Islamic Council of Victoria (ICV) to the Inquiry into Anti-Vilification protections of the Parliament of Victoria* (2020), <https://icv.org.au/wp-content/uploads/2023/12/Final-ICV-submission-on-Inquiry-into-Anti-vilification-Protections-Jan-31-2020.pdf>, 9.

Submission to the Department of Justice and Community Safety on the ‘Overview of proposed anti-vilification protections for all Victorians’ consultation paper

incited to commit a hate crime is often impossible in court. This modification would ensure that the provision outlaws conduct that is objectively harmful and socially unacceptable, regardless of whether it actually incited additional harm or hatred.

The ICV also supports the introduction of a new harm-based protection, as advocated for in our previous submissions.¹¹ The harm-based test is beneficial for redressing the harm caused to victims and appropriately focuses on the impact of offensive conduct from the perspective of victims. We appreciate the wording of section 102D of the amendment bill, namely the use of an objective standard of conduct “reasonably likely, in all the circumstances, to be hateful or seriously contemptuous of, or reviling or severely ridiculing.” This objective standard creates clarity, making it easier for victims to pursue a claim, and once again, prohibits and censures conduct that is objectively harmful and unacceptable.

Recommendation 5:

The ICV supports the inclusion of exceptions for genuine political or religious purposes.

The ICV categorically opposes vilifying behaviour towards vulnerable communities. However, given the broad scope of protections proposed under the EOA, and the fact that conduct done in private can also constitute a violation of the Act, we support the continuation of exceptions for a “genuine...religious purpose” under s 102G(b) of the Amendment Bill. It is crucial that the right of individuals to freely engage in religious practice, including worship and religious teaching, is protected and respected. Families and religious institutions engaging with children must also be free to raise and teach children within the bounds of religious rules.

For the same reason, the ICV supports the introduction of the ‘genuine political purpose’ defence for incitement offences in principle, recognising its role in protecting legitimate political expression and

¹¹ Islamic Council of Victoria, *Submission to the Department of Justice and Community Safety: Victorian Government’s Proposed Reforms Relating to Anti-Vilification Protections* (2023), [https://icv.org.au/wp-content/uploads/2023/12/ICV-Submission -Anti-Vilification-Protections-Consultation.pdf](https://icv.org.au/wp-content/uploads/2023/12/ICV-Submission-Anti-Vilification-Protections-Consultation.pdf), [55]; *Submission by the Islamic Council of Victoria (ICV) to the Inquiry into Anti-Vilification protections of the Parliament of Victoria* (2020), <https://icv.org.au/wp-content/uploads/2023/12/Final-ICV-submission-on-Inquiry-into-Anti-vilification-Protections-Jan-31-2020.pdf>, 10.

Submission to the Department of Justice and Community Safety on the *‘Overview of proposed anti-vilification protections for all Victorians’* consultation paper

values. However, we are concerned about the potential for this defence to be misused, particularly since ‘political purposes’ often involve public conduct. Misuse of this defence has the potential to allow individuals openly preaching or inciting hate to evade responsibility by hiding behind a claimed political purpose. To prevent this, the ICV emphasises the need for safeguards to ensure the defence is not exploited and remains narrowly applied.

Conclusion

In conclusion, the ICV strongly advocates for the preservation and enhancement of Victoria’s anti-vilification framework, particularly the Racial and Religious Tolerance Act (RTTA), which has provided vital protection to communities vulnerable to racial and religious discrimination. The ICV’s recommendations focus on ensuring that any legislative reforms maintain distinct and robust protections against racial and religious vilification, strengthen the operational effectiveness of existing laws, and provide clear avenues for justice and redress for victims.

We urge the Department of Justice and Community Safety to consider these recommendations, particularly in light of the growing instances of Islamophobia and other forms of racial and religious vilification within Victoria. Tailored legislative responses are essential to address the unique drivers of hate and discrimination against vulnerable communities.