

# Racial and Religious Tolerance Bill

## Circulation Print

### EXPLANATORY MEMORANDUM

#### General

##### Objectives of the Legislation

The Racial and Religious Tolerance Bill aims to prevent racial and religious vilification damaging the cohesion and harmony of Victoria's culturally diverse community. In common with the laws of all of the other Australian States, the Australian Capital Territory and the Commonwealth, the Bill will prohibit racial vilification. Religious vilification will also be prohibited.

The Racial and Religious Tolerance Bill contains provisions that—

- prohibit vilification of people on the grounds of race or religion, subject to specified exceptions;
- provide a means of civil redress for victims of racial or religious vilification under the existing mechanism for conciliation of complaints under the **Equal Opportunity Act 1995**;
- exempt from liability conduct engaged in reasonably and in good faith for the purposes of discussion or debate of any matter in the public interest or for a genuine academic, artistic, religious or scientific purpose;
- provide an offence for the incitement of racial hatred;
- prohibit victimisation of a person who makes a complaint of racial or religious vilification or takes required action in connection with any proceedings before a court or tribunal under this Bill;
- make consequential amendments to the **Equal Opportunity Act 1995**.

By applying these measures, the Bill will promote the following objects—

- provide a way for the victims of racial and religious vilification to obtain civil redress which is inexpensive and accessible;
- prohibit extreme behaviour that denies the right of Victorians of all racial backgrounds and religious beliefs to participate as equals in the community;

- promote conciliation to resolve civil complaints and be a means of overcoming prejudice and ignorance;
- strike a balance by prohibiting racial and religious vilification while still ensuring that freedom of expression can be exercised.

### **The Operation of the Bill**

The term "racial and religious vilification" describes any sort of conduct which communicates serious racial and religious intolerance. Vilification includes communications that malign, abuse or seriously derogate other people or groups of people because of their racial background or religious beliefs and practices. It can include intimidation, damage to property, graffiti and expressions of hatred or contempt by messages over the internet. It is damaging not only to the individuals or groups vilified, but also to the cohesion and harmony of a culturally diverse society.

The Bill will prohibit extreme conduct which promotes and urges the strongest feelings of revulsion, hatred or dislike of a person or group on the ground of the racial background or religious beliefs and practices of that person or group. Engaging in prohibited conduct can give cause for a civil complaint. This prohibition is balanced by exceptions to liability which are designed to strike a balance between the right to freedom of expression and the right to freedom from racial and religious vilification.

An exception is provided for conduct or discussion that is engaged in "reasonably and in good faith" in the course of a discussion of religious issues, in an artistic performance, for a genuine academic, artistic or scientific purpose or for any matter that is within the public interest. These nominated areas of discussion are intended to have a broad meaning. For example, the discussion of religious issues includes a statement of religious belief, religious instruction and discussion concerning the conduct and practices of religious bodies. Similarly, the discussion of matters in the public interest would include discussion of any public affairs with which the community may be concerned.

There is also an exception for private conduct or discussion.

This Bill will be a separate piece of legislation entailing consequential amendments to the **Equal Opportunity Act 1995**. The mechanism under the **Equal Opportunity Act 1995** for the conciliation of civil complaints about racial and religious vilification before the Equal Opportunity Commission and the determination of claims for compensation before the Victorian Civil and Administrative Tribunal under that Act will be adopted. In Victoria, complaints about racial vilification currently can only be dealt with under Commonwealth legislation. These complaints must be referred to the Human Rights and Equal Opportunity Commission in Sydney.

The Bill also creates a criminal offence of racial and religious vilification. The criminal offence is specified to apply only to the most extreme behaviour. This is behaviour that actively urges or promotes hatred or revulsion towards a person or group on the ground of their racial background or religious beliefs and practices. This behaviour involves threatening harm to persons or property or inciting others to threaten such harm. A prosecution will be by way of summary proceeding in the Magistrates' Court.

### Clause Notes

The Preamble states both the background and reasons for the enactment of the proposed Act. It acknowledges the importance of freedom of expression, the democratic value of the equal participation of all citizens in society and the desire of Parliament to support racial and religious tolerance.

### PART 1—PRELIMINARY

- Clause 1 states the purposes of the Act.
- Clause 2 is the commencement provision. The Act will commence operation on a day to be proclaimed. Any provision not proclaimed to commence before 1 January 2002 will commence on that day.
- Clause 3 defines certain words or expressions used in this Act—
- the words and expressions "child", "detriment", "employee", "employer", "impairment", "parent", "race" and "Tribunal" either refer to, or replicate, the definitions in the **Equal Opportunity Act 1995**.
  - the definition of "complaint" refers to a complaint lodged with the Equal Opportunity Commission under section 20 of this Act.
  - the definition of "religious belief or activity" replicates the definition of that expression in the **Equal Opportunity Act 1995** which refers to a "lawful" religious belief. A "lawful" religious belief or activity refers to beliefs or practices which are not contrary to the current law.
- Clause 4 states the objects of this Act. This provision requires the Act to be interpreted in a manner which gives effect to—
- the equal participation of every person in a society which values freedom of expression;

- the right to engage in discussion of any matter in the public interest or comment on artistic expression, discuss religious issues or join in academic debate;
- promoting conciliation and resolving disputes between those who vilify others on the ground of their race or religious beliefs and those persons who are vilified.

- Clause 5 specifies that a contravention of this Act does not create any separate civil or criminal liability, except as created by this Act.
- Clause 6 provides for the Act to bind the Crown.

## **PART 2—UNLAWFUL CONDUCT**

### **Division 1—Unlawful Vilification**

- Clause 7 specifies the conduct required to constitute racial vilification. Conduct that incites feelings of hatred against, serious contempt for, revulsion or severe ridicule of a person or class of persons on the ground of the race of that person or class of persons is prohibited. This conduct may be constituted by a single act or a series of acts over time and may include communications using the internet.

It is not necessary that the conduct occur in Victoria.  
For example, a message may be sent from outside Victoria to vilify a person or group living in Victoria.

In this provision, a "class of persons" refers to a collection or group of persons who are regarded as having certain common attributes or traits.

When such conduct occurs, the person or group vilified can seek civil redress by making a complaint under this Act.

- Clause 8 specifies the conduct required to constitute religious vilification. Conduct that incites feelings of hatred against, serious contempt for, revulsion or severe ridicule of, a person or class of persons on the ground of the religious belief or activity of that person or class of persons is prohibited. This conduct may be constituted by a single act or a series of acts over time and may include communications using the internet.

It is not necessary that the conduct occur in Victoria.  
For example, a message may be sent from outside Victoria to vilify a person or group living in Victoria.

In this provision, a "class of persons" refers to a collection or group of persons who are regarded as having certain common attributes or traits.

When such conduct occurs, the person or group vilified can seek civil redress by making a complaint under this Act.

- Clause 9 states that in determining whether a person has contravened clause 7 or 8, the motive for the conduct is irrelevant. It is also irrelevant whether the race or religious belief or activity of the vilified person or group was the only or dominant ground for the conduct.
- Clause 10 provides that an incorrect assumption made by a person engaging in vilifying conduct concerning the race or religious belief or activity of another person or class of persons is irrelevant in determining whether the person contravened clause 7 or 8. For example, if a person vilifies a group of persons in the mistaken belief that they are of Indian origin, that person's behaviour will not be excused because the group were of a different racial origin.
- Clause 11 provides an exception in relation to certain kinds of conduct. Conduct is excepted from liability if it is engaged in reasonably and in good faith in the course of an artistic performance, in the course of a discussion or statement of a matter in the public interest or for a genuine academic, artistic, religious or scientific purpose. The exception is available to any person who engages in discussion or debate for one of these purposes. The provision is not confined to discussion by artists, academics, scientists or reporting by the media. The onus lies on the person who claims an exception to prove that the exception applies.
- This provision requires, on an objective review, that the conduct must have been engaged in "reasonably and in good faith". The exception will not apply to conduct or statements which are immoderate or inflammatory. For example, the exception will not protect academic debate which, when objectively considered, appears designed to be inflammatory or offensive to an ethnic or religious group.
- The provision also requires that a statement genuinely made for an academic, artistic, religious or scientific purpose must, when objectively considered, be made for the true purpose of that discussion. The exception will not apply to conduct disguised as

discussion for one of these purposes if it is not engaged in reasonably and in good faith. For example, a member of a religious body cannot use the exception for religious discussion to racially vilify an ethnic group.

Clause 12 provides an exception for private conduct. Conduct or a conversation occurring in circumstances in which the parties can be taken to have intended it to be seen or heard only by themselves, and no-one else, will escape liability. The intention of the parties is determined objectively, taking into consideration of all the circumstances in which the conduct or conversation took place.

The onus lies on the person who claims the exception to prove that the exception applies.

## **Division 2—Other Unlawful Conduct**

Clause 13 prohibits victimisation.

Clause 14 defines victimisation as subjecting a person to detriment or threatening to do so because that person has lodged a complaint or has taken any necessary step to pursue a complaint under this Act. It is only necessary that the action by the person is a substantial ground for the detriment to which the person is subjected.

Clause 15 prohibits the encouragement, authorisation or assistance of a person to contravene the prohibitions on vilification and victimisation in Part 2.

Clause 16 provides that a person, who has encouraged, authorised or assisted another person to contravene the prohibitions on vilification and victimisation in Part 2, will also be taken to have contravened those prohibitions. A complaint can also be lodged against that person in accordance with this Act.

Clause 17 provides that an employer or principal will be vicariously liable for the conduct of an employee or agent which contravenes a prohibition on vilification and victimisation in Part 2.

Clause 18 provides that an employer or principal will not be vicariously liable for contravention of the prohibitions on vilification and victimisation by an employee or agent if the employer or

principal proves that he or she took reasonable precautions to prevent the contraventions.

### **PART 3—COMPLAINTS AND CONCILIATION**

- Clause 19 sets out who may complain to the Commission concerning a contravention of Part 2. Any person may lodge a complaint concerning conduct in relation to that person. Children or people with an impairment can have another person make the complaint on their behalf. A person can also authorise another person who was subject to the same conduct which contravened Part 2 to lodge a complaint on their behalf. Representative bodies can bring complaints on behalf of a person if they are authorised by that person and have an interest in the subject matter of the complaint.
- Clause 20 states that a complaint is made by lodging written particulars of the alleged contravention of Part 2 of this Act with the Commission.
- Clause 21 requires the Commission to assist complainants in formulating their complaints.
- Clause 22 provides for the liability of unincorporated associations. A complaint against an unincorporated association about a contravention of the prohibitions on vilification and victimisation in Part 2 of this Act may be made in the name of the president, secretary or other similar officer of that body. The named officer to the proceedings can be changed as circumstances require.
- Clause 23 applies certain provisions of the **Equal Opportunity Act 1995** to ensure that the mechanisms for the conciliation and determination of complaints under that Act apply to a complaint under this Act. These provisions are applied with modifications to ensure that they are appropriate for vilification complaints. These modifications extend the time periods in the **Equal Opportunity Act 1995** for the handling of representative complaints under this Act.

### **PART 4—SERIOUS VILIFICATION OFFENCES**

- Clause 24 creates an offence of serious racial vilification. Conduct that incites hatred against a person or group on the ground of the person's or group's race and threatens (or incites others to

threaten) physical harm to the person or group or their property, is an offence. The prescribed maximum penalty is 60 penalty units or 6 months imprisonment or both (300 penalty units in the case of a body corporate).

In addition, conduct that incites feelings of serious contempt for, or revulsion or severe ridicule of, a person or group on the ground of the race of that person or group, is an offence. The prescribed maximum penalty is 60 penalty units or 6 months imprisonment or both (300 penalty units in the case of a body corporate).

In this provision, a "class of persons" refers to a collection or group of persons who are regarded as having certain common attributes or traits.

These offences refer to the extreme forms of conduct which promote and urge the strongest forms of dislike towards a person or group because the race of the person or group. The offender must intend the conduct in the knowledge that the promotion of these feelings of extreme dislike will be the likely result of the conduct. This conduct may include communications using the internet.

Clause 25 creates an offence of serious religious vilification. Conduct that incites hatred against a person or group on the ground of the person's or group's religious beliefs or activities and threatens (or incites others to threaten) physical harm to the person or group or their property, is an offence. The prescribed maximum penalty is 60 penalty units or 6 months imprisonment or both (300 penalty units in the case of a body corporate).

In addition, conduct that incites feelings of serious contempt for, or revulsion or severe ridicule of, a person or group on the ground of the religious beliefs or activities of that person or group, is an offence. The prescribed maximum penalty is 60 penalty units or 6 months imprisonment or both (300 penalty units in the case of a body corporate).

In this provision, a "class of persons" refers to a collection or group of persons who are regarded as having certain common attributes or traits.

This offence refers to the extreme forms of conduct which promote and urge the strongest forms of dislike towards a person or group because of their the religious beliefs or activities.



The offender must intend the conduct in the knowledge that the promotion of these feelings of extreme dislike will be the likely result of the conduct. This conduct may include communications using the internet.

- Clause 26 provides that an incorrect assumption made by a person engaging in vilifying conduct concerning the race or religious beliefs or activities of another person or class of persons is irrelevant in determining whether the person committed an offence against clause 24 or 25. For example, if a person vilifies a group of persons in the mistaken belief that they are of Indian origin, the person's behaviour will not be excused because the group were of a different racial origin.
- Clause 27 provides for the liability of corporate bodies for an offence under Part 4. Each officer of the corporation who directed or permitted the commission of the offence by the corporation is also guilty of an offence. A body corporate is taken to have engaged in the conduct constituting the offence and to have had the intention to commit the offence if the conduct was performed by one of its senior officers who had the requisite intention. This presumption will not apply if the body corporate establishes that it took reasonable precautions to avoid that conduct.
- Clause 28 provides that section 465 of the **Crimes Act 1958** applies to the offences in clauses 24 and 25 as if they were indictable offences. This ensures that the power to obtain a search warrant in respect of an indictable offence extends to the offences in Part 4 of this Act.

## **PART 5—CONSEQUENTIAL AMENDMENTS TO THE EQUAL OPPORTUNITY ACT 1995**

- Clause 29 substitutes a now obsolete expression in the **Equal Opportunity Act 1995**.
- Clause 30 amends the **Equal Opportunity Act 1995** to ensure that the investigatory powers under that Act can be used by the Commission to investigate a contravention of Part 2 of this Act.

Clause 31 ensures that the education programs undertaken by the Commission include the elimination of racial and religious vilification.