Strengthening Victoria's laws to prevent hate and harm

Submission in response to Consultation on Strengthening Victoria's laws against hate speech and hate conduct, Papers 1 – 3 by the Department of Justice and Community Safety

20 October 2023

Victorian Aboriginal Legal Service & Victoria Legal Aid

This submission was written on the land of the Wurundjeri and Boon Wurrung people of the Kulin Nation. We acknowledge and pay our respects to Aboriginal and Torres Strait Islander peoples and traditional owners throughout Victoria, including elders past, present and emerging.

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About Victorian Aboriginal Legal Service and Victoria Legal Aid

Victorian Aboriginal Legal Service (**VALS**) is an Aboriginal Community Controlled Organisation (**ACCO**) with 50 years of experience providing culturally safe legal and community justice services to Aboriginal communities across Victoria. VALS is committed to caring for the safety and psychological well-being of clients, their families and communities and respecting the cultural diversity, values and beliefs of our clients. Our vision is to ensure that Aboriginal Victorians are treated with true justice before the law, our human rights are respected, and we have the choice to live a life of the quality we wish. Through our Civil and Human rights Practice, we act for clients with discrimination matters.

Victoria Legal Aid (**VLA**) is a statutory authority established under the *Legal Aid Act 1978* (Vic). We are responsible for providing information, advice, and assistance in response to a broad range of legal problems. We provide statewide assistance to people every day and night in courts and tribunals in Victoria across both federal and state jurisdictions. We assist people with legal problems in a range of areas including criminal law, family breakdown, child protection, family violence, mental health, discrimination, disability, tenancy, fines, social security, immigration, guardianship and administration, debt, and assistance for victims of crime. We do this through our specialist legal teams and allied professionals, working with our legal assistance sector partners in the private profession, community legal centres, and Aboriginal community-controlled organisations.

VLA is the leading provider of legal advice and advocacy to people seeking assistance with discrimination matters in Victoria. Through our Equality Law Program, we provide telephone and in-person advice services in addition to representation in legal proceedings. In the past year, we provided over 1,300 legal advices on discrimination, sexual harassment, victimisation and vilification. VLA has direct practice experience providing legal assistance on vilification under the *Racial and Religious Tolerance Act 2001* (Vic) (**RRTA**), as well as relevant criminal law expertise on how current criminal offences operate.

www.legalaid.vic.gov.au www.vals.org.au

Executive Summary

VALS and VLA welcome the opportunity to contribute to the Department of Justice and Community Safety's (**DJCS**) current consultation on *Strengthening Victoria's laws against hate speech and hate conduct* (**the Consultation**) and advocate for better anti-vilification protections in Victoria. This submission supplements our previous joint submission to the Victorian Parliamentary Inquiry into Anti-Vilification protections (**Inquiry submission**),[1] and responds to the three consultation papers on:

- Protecting more Victorians from vilification (Paper 1);
- Criminal anti-vilification protections (Paper 2); and
- Civil anti-vilification protections (Paper 3).

Informed by our work with people experiencing hate speech and hate conduct across Victoria, VALS' and VLA's position is that more Victorians should be protected from vilification on the basis of their protected attributes. We emphasise the need for clear and accessible civil and criminal law processes for people who experience vilification to address the harm caused to them.

We strongly support harmonising anti-vilification protections by including civil protections and offences in the *Equal Opportunity Act 2010* (Vic) (**EOA**) and moving criminal anti-vilification provisions to the *Crimes Act 1958* (Vic) (**Crimes Act**). The Victorian Equal Opportunity and Human Rights Commission (**VEOHRC**) should be given the necessary preventative and investigative powers to support strong anti-vilification protections, and a positive duty should be introduced that extends existing obligations under the EOA to eliminate discrimination and sexual harassment to vilification.

Informed by our practice, we support the existence of a single criminal vilification offence to address serious conduct, while addressing the risks of increased criminalisation of specific marginalised groups.

Legislative reform must be accompanied by education, training and broad cultural change initiatives to bolster prevention and address the root causes of hate speech and hate conduct. Proposed law reforms in relation to anti-vilification should complement any broader proposed reforms that relate to, and are interconnected with, addressing hate speech and hate conduct, including the Yoorrook Justice Commission's recent report into Victoria's Child Protection and Criminal Justice Systems,[2] and the development of the Victorian Anti-Racism Strategy and related activities.[3]

Addressing hate speech and hate conduct goes to the heart of promoting a welcoming, harmonious society and ensuring individuals do not experience fear or exclusion because of who they are. Implementing the proposed law reform must live up to the promise of the Parliamentary Inquiry and the calls from the community for strengthened and more effective protections against hate speech and conduct, to promote inclusion and celebrate diversity.

[1] Victoria Legal Aid and Victorian Aboriginal Legal Service, *Fair and accessible anti-vilification protections for all Victorians* (Submission to the Victorian Parliamentary Inquiry into Anti-Vilification Protections, 31 January 2020).
[2] Cf. *Yoorrook for Justice: Report into Victoria's Child Protection and Criminal Justice Systems*.
[3] Cf. *Anti-Racism Taskforce | Victorian Government (www.vic.gov.au)*.

List of recommendations

Our 21 recommendations for reform are informed by our legal work and client experiences, which highlight gaps in the law and issues with current legal protections and enforcement processes. These recommendations are included in more detail throughout the submission.

Strengthening protections based on attributes

1. Extend the current anti-vilification protections beyond race and religion, by covering the following attributes:
   - People with a disability, using the same terms and related definitions in the EOA, save for a further amendment to the definition of disability to include people living with HIV/AIDS and other blood borne diseases;
   - Gender, gender identity, sex characteristics and sexual orientation using the same terms and related definitions in the EOA; and
   - The attribute of personal association, using the same terms and related definitions in the EOA.
2. Introduce an express provision to clarify that people can make vilification complaints based on one or more attribute, to apply to anti-vilification laws and other forms of discrimination covered under the EOA.

Civil anti-vilification provisions

3. Anti-vilification protections should be harmonised by including civil protections and offences in the EOA and moving criminal anti-vilification provisions to the Crimes Act.
4. A new harm-based test should be introduced for civil vilification that is modelled on existing harm-based tests under section 18C of the *Racial Discrimination Act 1975* (Cth) (**RDA**) and subsection 17(1) of the *Anti-Discrimination Act 1998* (Tas) – namely the act is reasonably likely, in all the circumstances, to insult, humiliate or intimidate another person or a group of people.
5. An incitement-based test is not required if a clear and broad harm-based test is introduced. However, if an incitement-based test is retained in addition to a harm-based test, it should cover conduct that expresses or is likely in the circumstances to incite hatred towards, serious contempt of, severe ridicule towards or revulsion of, a person or people with a protected attribute.
6. Amend the test for civil vilification to cover conduct engaged in 'because of' a person's protected attribute and characteristics of an attribute, consistent with existing EOA protections for discrimination.
7. Change the religious purpose exception to specify the forms of religious expression covered, with a definition that reflects the manifestation of freedom of religion and belief under article 18 of the International Covenant on Civil and Political Rights to mean religious "worship, observance, practice and teaching", consistent with the *Charter of Human Rights and Responsibilities 2006* (Vic) (**Charter**).
8. Amend the public interest exception to clarify that it includes "any genuine purpose in the public interest."

9. Include a definition of a public act in Victorian civil anti-vilification laws to encompass conduct that "can be seen or heard by" the public, as well as conduct "to" the public. The existing definition of private conduct should be retained.
10. Victoria's anti-vilification laws should allow representative complaints without the need to identify all complainants, modelled on section 46PB of the *Australian Human Rights Commission Act 1986* (Cth) which allows representative complaints that 'describe or otherwise identify the class members' without naming them.
11. Victoria's anti-vilification laws should be amended to expressly extend liability for authorising or assisting vilification or victimisation consistent with liability for other unlawful conduct under the EOA.
12. VEOHRC and the Victorian Civil and Administrative Tribunal (**VCAT**) should be provided with a broad suite of powers to make orders and issue remedies in response to claims, including to address systemic issues.
13. VEOHRC should be given the power to direct any person to provide information to assist with identifying the person who is believed to have engaged in vilification, and VEOHRC should be able to enforce that direction by filing it with VCAT.

Criminal anti-vilification provisions

14. Multiple criminal offences should not be created to reflect degrees of seriousness, and the presence of aggravating features are more appropriately dealt with by a court and reflected in sentencing.
15. Criminal serious vilification offences should be limited to 'public acts,' which should encompass conduct that 'can be seen or heard by the public'.
16. A new criminal offence that prohibits conduct that is likely to incite hatred, serious contempt, revulsion or severe ridicule should not be introduced.
17. The current test for criminal vilification should be simplified by prohibiting conduct that the person knows is likely 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.
18. The current test for criminal vilification should not be expanded to introduce a fault element of recklessness.
19. Maximum penalties applicable to the criminal offence of serious vilification should be reviewed so that they are consistent with similar offences in the *Crimes Act*.

Cultural change and accountability

20. A positive duty for organisations to take reasonable and proportionate steps to prevent vilification, as is currently the case for discrimination, sexual harassment and victimisation matters under the EOA should be introduced.
21. VEOHRC's prevention and investigation powers should be extended to vilification matters, to support the systems change needed to strengthen anti-vilification protections.
22. There should be continued prioritisation and resourcing of anti-vilification reforms that support:

- Cultural change to address the drivers of hateful conduct and hate speech;
- Systems change including appropriate and ongoing research, training and community education;
- Funding of collaborative service design to increase legal services, including in relation to strategic litigation, to build case law supporting anti-vilification reforms; and
- Broader law reform related to anti-vilification as recommended by the Yoorrook Justice Commission.

Impact of hate speech on our clients

Our combined practice experience confirms that people are too commonly targeted by hate speech and hate conduct in our community. In our experience, and as reflected in the Final Report of the Parliamentary Inquiry into Anti-vilification Protections (**Inquiry Report**),[4] it is minority groups who continue to disproportionately experience vilification, including Aboriginal and Torres Strait Islander peoples, people from migrant or culturally and linguistically diverse backgrounds, minority religious groups, people living with disabilities and members of the LGBTIQ+ communities.

In the years since the 2021 Inquiry, we have continued to advise clients who have been victims of hateful, derogatory speech on the basis of their race, nationality, colour and ethnicity, or their gender identity or sexual orientation. This speech takes place in the workplace, in public places (including in schools and in both professional and amateur sporting industries), online and in the provision of goods and services. In many instances, we see hate speech accompanied by other forms of discriminatory treatment in workplaces and service settings.

Groups of people who are subjected to hate speech are diverse. Their experiences of vilification are not uniform; the impact on an individual may be influenced by a range of other factors (e.g. their age, the frequency of experiences of vilification) and intersecting attributes.

Our clients generally experience serious distress, feelings of humiliation and worthlessness and mental health deterioration that can impact on their ability to participate in the workforce and our communities more broadly, undermining a person's feeling of safety and inclusion in society. These experiences are detailed in our 2020 joint submission that outlines six client stories highlighting the urgent need for reform, and impact of hateful conduct.

First Nations experiences of hate speech

First Nations people are disproportionality impacted by racial discrimination and vilification, which takes place in workplaces, in public, online, in social housing contexts, and in the provision of goods and services, including health services.

First Nations people also experience racial abuse and discrimination in their interactions with police and other actors within the criminal legal and youth justice systems, as well as other government service providers.[5] In the context of the 2023 referendum, First Nations communities and advocates have experienced even higher rates of discrimination and vilification,[6] causing both individual and collective harm, and highlighting the critical need for stronger legal protections.

The impacts of this hateful conduct are broadly felt and cumulative on First Nations people. In our previous submission, Charmaine told her story of vilification and highlighted:

> *'This incident of racism is not in isolation, but has a cumulative affect and impacts my self-esteem, my mental health (I'm stolen generation)*

[4] Cf. Chapter 3, *Inquiry into anti-vilification protections* (Parliament of Victoria, 2021).
[5] Cf. VALS (2021). *Submission to the National Anti-Racism Framework consultation*.
[6] See for example, the experience of Senator Lidia Thorpe, and reporting by 13YARN, a crisis support line for Aboriginal and Torres Strait Islander peoples, that they experienced a significant surge in calls due to the rise in racism and subsequent psychological harm to First Nations people. Cf., for example, First Nations support workers report a rise in racism ahead of Voice referendum - ABC News

and my sense of safety in public. Having experienced years of racial vilification, this incident adds to the burden of yet another assault, another wounding, another stripping of dignity and safety."[7]

Expanding protection of anti-vilification laws

Protected attributes

Extending current protections beyond race and religion[8]

In our practice, we see clients seeking advice on hate speech they have been subjected to based on characteristics other than race or religion. We routinely advise clients seeking advice about discrimination on the basis of disability, sexual orientation and gender identity, who also describe being subject to hate speech.

Consistent with our 2020 submission and given the prevalence of hate speech experienced by people not currently protected under existing Victorian anti-vilification law, we support the proposal that the law should be amended to capture conduct based on additional characteristics.

Disability[9]

Anti-vilification protections should be extended to people with disabilities and the definition of people with a disability should replicate the definition in section 4 of the EOA for consistency. This would also align with the recommendation 4.30(b) of the Disability Royal Commission, that "states and territories that already have legislation imposing criminal penalties for vilification of people on grounds that do not include disability should extend the legislation to vilification of people on the ground of disability."[10]

In relation to people living with HIV/AIDS,[11] the definition of disability under section 4 of the EOA currently includes 'the presence in the body of organisms that may cause disease' which would include people living with HIV/AIDS. To make the recognition clear to those protected, the definition of disability for the purposes of disability vilification should expressly include people living with HIV/AIDS and other blood borne diseases, which should be replicated for the purposes of all EOA provisions relating to disability for consistency.

LGBTIQ+ communities[12]

Anti-vilification protections should be extended to the LGBTIQ+ community, using the same terms and related definitions in the EOA,[13] namely gender identity, sex characteristics, and

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[7] Page 5 of 2020 joint submission

[8] Response to Consultation Paper 1, Question 1:
   a. Do you have any views on the current protections for race and religion?
   b. Government proposes to extend current protections beyond race and religion. What do you think this should look like?

[9] Response to Consultation Paper 1, Question 2: Do you have any views on how the anti-vilification protections should apply to people with disability?

[10] Cf. Tabled documents | Document 3449 (aph.gov.au)

[11] Response to Consultation Paper 1, Question 3: Do you have any views on how the anti-vilification protections should apply to people living with HIV/AIDS?

[12] Response to Consultation Paper 1, Question 4: Do you have any views on how the anti-vilification protections should apply to LGBTIQ+ communities?

[13] EOA s 4, 6.

sexual orientation. This approach would ensure consistency with both the EOA and best practice, as established by the Yogyakarta Principles.[14]

Sex[15]

We support prohibiting gender-based vilification, particularly against women and gender diverse people who face high levels of such conduct. In the Inquiry Report, there was broad consensus among the submissions by stakeholders to use a gender-based concept of sex, such as gender, gender identity, gender expression and gender non-conformity across the different proposed protected characteristics.[16]

Noting our previous recommendation that protections should be extended to the attributes of gender identity, sex characteristics, and sexual orientation, we recommend that the definitions in section 6 of the EOA should be replicated, and that it is sufficient for the protection from gender-based vilification to replicate the existing attribute of sex in the EOA.

Personal association[17]

The anti-vilification protections for people associated with targeted groups should replicate the attribute of personal association in section 6 of the EOA for consistency. This would include, for instance, family members, partners or advocates of the person with the relevant attribute.

Complaints based on more than one attribute[18]

We support the introduction of a clear ground in the EOA that provides for complaints about vilification on the basis of one or more attribute.

In our Inquiry submission, we noted that experiences of vilification are not uniform; the impact on an individual may be influenced by a range of other factors (e.g. their age, the frequency of experiences of vilification) and intersecting attributes.[19] Presently, a claim of vilification on multiple bases is not expressly prohibited, and pleadings may be brought in the alternative to reflect multiple attributes. However, this fails to recognise how vilification may intersect across protected characteristics with uniquely harmful consequences. The structure of discrimination law, and the disaggregating of different identities, is inconsistent with how identity is lived, and discrimination is experienced in practice.[20]

We agree with the Report's acknowledgement that allowing individuals to make a complaint on the basis of more than one attribute, would allow the compounding effects of vilification

[14] International Commission of Jurists, *The Yogyakarta Principles Plus 10 - Additional Principles and State Obligation on the Application of International Human Rights Law in Relation to Sexual Orientation, Gender Expression and Sex Characteristics to Complement the Yogyakarta Principles*, 10 November 2017, 6.
[15] Response to Consultation Paper 1, Question5: Do you have any views on how the anti-vilification protections should apply to protect people based on sex?
[16] Legislative Assembly Legal and Social Issues Committee, Parliament of Victoria, *Inquiry into Anti-vilification Protections* (Final Report, March 2021), 57.
[17] Response to Consultation Paper 1, Question 6: Do you have any views on how the anti-vilification protections should apply to protect people who are associated with targeted groups?
[18] Response to Consultation Paper 1, Question 7: Do you have any views on clarifying the law to ensure individuals can make vilification complaints based on one or more attributes?
[19] Victoria Legal Aid and Victorian Aboriginal Legal Service, *Fair and accessible anti-vilification protections for all Victorians* (Submission to the Victorian Parliamentary Inquiry into Anti-Vilification Protections, 31 January 2020), 2.
[20] Alysia Blackham and Jeromey Temple, 'Intersectional Discrimination in Australia: An Empirical Critique of the Legal Framework' (2020) 43(3) *University of New South Wales Law Journal*, 7-8.

on the basis of multiple protected attributes, such as race and gender, to be recognised.[21] Anti-vilification protections should allow vilification complaints based on one or more attributes, and also require decision-makers to consider the uniquely harmful impact of vilification in particular circumstances, including where a person is vilified on the basis of multiple, intersecting attributes.[22]

For consistency, this approach should be replicated in the EOA in relation to other forms of prohibited conduct such as discrimination, by clarifying that complaints based on multiple attributes can be brought, with consideration given to transitional provisions.

Recommendation 1: Extend the current anti-vilification protections beyond race and religion, by covering the following attributes:

- **People with a disability, using the same terms and related definitions in the EOA, save for a further amendment to the definition of disability to include people living with HIV/AIDS and other blood borne diseases;**
- **Gender, gender identity, sex characteristics and sexual orientation using the same terms and related definitions in the EOA; and**
- **The attribute of personal association, using the same terms and related definitions in the EOA.**

Recommendation 2: Introduce an express provision to clarify that people can make vilification complaints based on one or more attribute, to apply to anti-vilification laws and other forms of discrimination covered under the EOA.

Harmonising laws

We support moving the civil provisions in the RRTA into the EOA as it enhances public awareness, accessibility, and clarity, ensuring that all the civil provisions relating to equality for persons with protected attributes are in the same legislation.

Additionally, the Report recommend that the Victorian Government duplicate criminal anti-vilification offence provisions in the *Crimes Act.*[23] We understand the government intends to further consider this recommendation, and the options available to increase awareness of the criminal provisions.[24] However, the consultation refers to moving the civil anti-vilification laws but does not refer to the criminal provisions.

As we stated in our Inquiry submission, we support moving (rather than duplicating) the criminal provisions into the Crimes Act to clearly indicate that they are criminal offences and increase their visibility to investigating police officers. Any amendments in this regard should occur concurrently to those resulting from this consultation.

[21] Legislative Assembly Legal and Social Issues Committee, Parliament of Victoria, *Inquiry into Anti-vilification Protections* (Final Report, March 2021), 58-59.
[22] This would include for example, relevant persons who would be subject to a positive duty to prevent vilification needing to take reasonable measures to prevent such conduct. Our submission considers below in more detail the proposal that the section 15 of the EOA positive duty be extended to the vilification provisions.
[23] Ibid, recommendation 23.
[24] Victorian Government response into Anti-Vilification Protections (https://www.vic.gov.au/response-inquiry-anti-vilification-protections).

Recommendation 3: Anti-vilification protections should be harmonised by including civil protections and offences in the EOA and moving criminal anti-vilification provisions to the Crimes Act.

Protections under Civil Law

The civil test for vilification

Harm-based test[25]

A new clear harm-based test should be created that reflects the experience of victims of vilification and how it has impacted them. It is critical to address the failure of current Victorian vilification laws to provide protection to people against harmful race-based public conduct.

As stated in our 2020 submission, it is our view that Victoria's anti-vilification laws should include a harm-based test modelled on existing harm-based tests under section 18C of the *Racial Discrimination Act 1975* (Cth) (**RDA**) and subsection 17(1) of the *Anti-Discrimination Act 1998* (Tas) – namely the act is reasonably likely, in all the circumstances, to insult, humiliate or intimidate another person or a group of people. This protection should apply to all protected attributes listed above. It is our view that there exists a body of case law whereby judicial interpretation had limited the application to serious conduct, and that this would address concerns regarding the perception of 'offends' or 'insults'.

We note that the Inquiry recommended the adoption of a harm-based test for vilification that made conduct unlawful where 'a reasonable person would consider hateful, seriously contemptuous, or reviling or seriously ridiculing of a person or a class of persons'. We have several concerns with this test: firstly, that it does not focus on the harm to persons as intended; and secondly that it would set a too high threshold for establishing unlawful conduct.

It is our view that, as currently framed, the recommended test by the Inquiry is not a harm-based test. The terms *'hateful, seriously contemptuous, reviling or seriously ridiculing'* focus on the nature of the conduct, rather than how the conduct affects the party receiving it. In practice, this test would assess whether a reasonable person would consider that the conduct was *'hateful, seriously contemptuous, reviling or seriously ridiculing'* of the target group, rather than the likely impact of the conduct on a member of the targeted group.

This proposed test also fails to explicitly require that all the circumstances are considered, which is necessary to properly assess the gravity and impact of the conduct. Accordingly, it does not sufficiently shift focus from the nature of the conduct to the impact of the conduct, therefore limiting any additional protection compared to the current test. In our Inquiry submission we highlighted an example of an Aboriginal client who experienced difficulty in bringing a racial vilification claim under the current incitement offence given the high

[25] Response to Consultation Paper 3, Question 2: Do you have any views on introducing a new harm-based vilification protection?

threshold. Offensive comments were directed at our client and caused him humiliation, which we believe a harm-based test would address.[26]

In relation to the thresholds for establishing unlawful conduct, we are concerned with the wording of test proposed. There is a high degree of similarity between the language of the proposed harm-based test and the current incitement provisions under the RRTA. Sections 7 and 8 of the RRTA focus on conduct that incites 'hatred,' 'serious contempt,' 'revulsion' or 'severe ridicule.' This is compared to conduct that is 'hateful, seriously contemptuous, reviling or severely ridiculing' under the proposed harm-based test. The current incitement test has been interpreted as only applying to extreme conduct, whereas one of the intentions of a harm-based test was to create a lower threshold. It would therefore be inconsistent with that intention to have a threshold similar to the current incitement offence.

Recommendation 4: A new harm-based test should be introduced for civil vilification that is modelled on existing harm-based tests under section 18C of the *Racial Discrimination Act 1975* (Cth) (RTA) and subsection 17(1) of the *Anti-Discrimination Act 1998* (Tas) – namely the act is reasonably likely, in all the circumstances, to insult, humiliate or intimidate another person or a group of people.

Incitement-based test[27]

In our view, a harm-based test modelled on section 18C will provide the broadest and most appropriate protection for those harmed by vilifying conduct and speech. We do not consider it necessary to retain an incitement-based test, whether in its current or in an amended form. This is because the test should cover and protect not only persons directly targeted, but also the group of people, for example a racial group, people with certain disabilities, or transgender people. It is unclear what circumstance might arise where a person could demonstrate that conduct would likely incite a third party to certain conduct, and could not also demonstrate that the conduct seriously offended, seriously insulted, humiliated or intimidated a reasonable member of the targeted group.

Whilst we understand that the focus of the two tests is different, we are concerned that having two separate legal tests would create additional complexity, as impacted individuals would need to determine whether either or both were applicable to their circumstances. In practice, this may mean pleading both options in the alternative, even where the utility of the incitement-based test may be negligible.

Our experience working with clients is that they find discrimination and anti-vilification laws complex and difficult to understand, particularly where they may have multiple claims involving discrimination and vilification. We therefore believe it is important to simplify the anti-vilification laws by having one civil harm-based test.

If the incitement-based test is retained, we strongly advocate for the threshold to be made lower to overcome the existing barriers to people bringing claims of vilification. As stated in our 2020 submission, we support the findings of the ACT Law Reform Advisory Council

[26] See pages 9-10, Victoria Legal Aid and Victorian Aboriginal Legal Service, *Fair and accessible anti-vilification protections for all Victorians* (Submission to the Victorian Parliamentary Inquiry into Anti-Vilification Protections, 31 January 2020).

[27] Response to Consultation Paper 3, Question 1: 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?

(**LRAC**) in an inquiry into the *Discrimination Act 1991* (ACT) in 2015 that vilification should be amended to cover "conduct that expresses, or is likely in the circumstances to incite, hatred towards, serious contempt of, severe ridicule towards or revulsion of, a person or people with a protected attribute."[28] If retained, the test for civil incitement should be amended in this way in Victoria to remove this barrier to proving vilification has occurred. This test should provide protection to all the attributes listed above.

Recommendation 5: An incitement-based test is not required if a clear and broad harm-based test is introduced. However, if an incitement-based test is retained in addition to a harm-based test, it should cover conduct that expresses or is likely in the circumstances to incite hatred towards, serious contempt of, severe ridicule towards or revulsion of, a person or people with a protected attribute.

Conduct that is engaged in 'because of' a person's protected attribute[29]

We support amendment to a civil test for vilification to cover conduct engaged in 'because of' a person's protected attribute to ensure focus of the test on the harm caused to the person vilified rather than another group or person. As stated in Consultation Paper 3, if adopted, Victorian courts would have the benefit of existing case law to interpret this wording. Simplifying the wording of the test in this way would also make the legal protection easier for our clients to understand and more accessible to those who need it most.

We also recommend that the test expressly include conduct that is engaged in because of a characteristic of an attribute, rather than conduct because of the attribute itself, to overcome issues other jurisdictions have raised as barriers to successful claims of vilification.

It is our view that the 'because of' test for vilification provisions replicate the discrimination provisions under section 7(2) of the EOA.

We propose the protection for vilification should state:

> *Vilification because of an attribute includes vilification on the basis -*
>
> *a) that a person has that attribute or had it at any time, whether or not they had it at the time of the vilification;*
>
> *b) of a characteristic that a person with that attribute generally has;*
>
> *c) of a characteristic that is generally imputed to a person with that attribute;*
>
> d) *that a person is presumed to have that attribute or to have had it at any time.*

Recommendation 6: Amend the test for civil vilification to cover conduct engaged in 'because of' a person's protected attribute and characteristics of an attribute, consistent with existing EOA protections for discrimination.

[28] ACT Law Reform Advisory Council, Inquiry into the Discrimination Act 1991 (ACT) (Final Report, March 2015) p96.

[29] Response to Consultation Paper 3, Question 3: Do you have any views on the proposed requirement that hate speech or conduct must have been done 'because of' a person or group's protected attribute for it to amount to harm-based vilification?

Exceptions[30]

While we agree there is a role for exceptions to ensure proper application of anti-vilification laws, we consider the need for exceptions to be clearly and narrowly defined. We do not have concerns with exceptions for cultural or education purposes, exceptions for opposition to Nazism and related ideologies and exceptions for people with tattoos of hateful words or symbols, based on our practice experience.

Clarifying the religious purpose exception[31]

We support changing the religious purpose exception to specify the forms of religious expression covered, consistent with the *Charter of Human Rights and Responsibilities Act 2006* (Vic) (**Charter**) – option 1 considered by Consultation Paper 3.

The current religious purpose exception must be changed to reflect the manifestation of freedom of religion and belief under article 18 of the International Covenant on Civil and Political Rights to mean religious "worship, observance, practice and teaching".

Leaving the term undefined creates significant uncertainty as to the scope of the exception and fails to provide sufficient protection for people engaging with religious organisations and individuals. Replicating the definition from the Charter provides an appropriate balance between the freedom of religion and freedom of speech, and the rights of communities impacted by vilification, and provides consistency in the interpretation and application of these laws.

Recommendation 7: Change the religious purpose exception to specify the forms of religious expression covered, with a definition that reflects the manifestation of freedom of religion and belief under article 18 of the International Covenant on Civil and Political Rights to mean religious "worship, observance, practice and teaching", consistent with the Charter.

Ensuring the public interest exception is fit for purpose[32]

We support the amendment of the public interest exception to clarify that it includes "any genuine purpose in the public interest" to ensure it is in line with a similar exception in section 18D of the RDA.

Recommendation 8: Amend the public interest exception to clarify that it includes "any genuine purpose in the public interest".

[30] Response to Consultation Paper 3, Question 4: Do you have any views on the proposed exceptions to harm-based vilification? Is there any other conduct or activity that should be included as an exception?

[31] Response to Consultation Paper 3, Question 11: Do you have any views on whether to:

a. Change the religious purpose exception to specify the forms of religious expression covered, consistent with the *Charter of Human Rights and Responsibilities Act 2006* (Vic)? or
b. Retain the current religious purpose exception?

[32] Response to Consultation Paper 3, Question 12: Do you have any views on the proposed exceptions to harm-based vilification? Is there any other conduct or activity that should be included as an exception?

Public and private acts[33]

A definition of a public act should be included in Victorian civil anti-vilification laws to encompass conduct that "can be seen or heard by" the public, as well as conduct "to" the public.

We are concerned that adopting, as outlined in the Inquiry's recommendation and Consultation Paper 3, the definition of 'public act' similarly to section 93Z (5) of the *Crimes Act 1900* (NSW) might limit the scope of conduct that should properly be covered by anti-vilification provisions.

Section 93Z(5)(a) provides that public act includes:

> *"any form of communication **to the public** (including speaking, writing, displaying notices, playing of recorded material, and communicating through social media and other electronic methods)"* (our emphasis added)

Our concern is that it might be argued that certain conduct is not "to" the public, even though it could be clearly seen or heard by the public. While section 93Z(5)(b) captures observable conduct, rather than conduct "to" the public, this provision is directed at actions and gestures, rather than communication.

Implementing this recommendation from the Inquiry Report could unintentionally narrow the scope of 'public act'. Accordingly, and to ensure that the protection is not narrowed, the definition of 'public act' should encompass conduct that "can be seen or heard by" the public, as well as "to" the public. Separately, we support retention of the existing definition of private conduct.

Recommendation 9: Include a definition of a 'public act' in Victorian civil anti-vilification laws to encompass conduct that "can be seen or heard by" the public, as well as conduct "to" the public. The existing definition of private conduct should be retained.

Providing for representative complaints[34]

As stated in our 2020 submission, to protect against victimisation and encourage reporting, Victoria's anti-vilification laws should allow representative complaints without the need to identify all complainants. This could be modelled on section 46PB of the *Australian Human Rights Commission Act 1986* (Cth) (**AHRCA**) which allows representative complaints that 'describe or otherwise identify the class members' without naming them. This enables action to be taken on behalf of a group of people without all of them needing to endure the stress and exposure of a legal proceeding.

[33] Response to Consultation Paper 3, Questions 9 and 10: 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? And do you have any views on retaining the private conduct exception to clarify what conduct is not captured by anti-vilification laws?

[34] Response to Consultation Paper 3, Question 15: 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?

Consultation paper 3 articulates some potential challenges with complaints made without the need to name an individual complainant, in relation to anonymity.[35] While we acknowledge these concerns, they should not preclude complaints of this nature from being made.

Modelling the provision on section 46PB of the AHRCA would alleviate many of the concerns. This provision provides that *"In describing or otherwise identifying the class members, it is not necessary to name them or specify how many there are."* This means that a complaint would not be required to name class members, but it does not prohibit the discussion of issues relating to those class members.

It is our view that the evidentiary basis for concerns in Consultation Paper 3, that fewer 'anonymous' complaints will proceed to conciliation, or resolve at conciliation, is unclear. In our practice experience, the engagement of respondents to the conciliation process can vary regardless of the nature of the complaint, the nature of the complainant, or the amount of detail provided about the complaint. It may be appropriate for VEOHRC to subsequently report on the efficacy of 'anonymous' complaints as part of the review process.

In terms of settlement outcomes, there can be approaches to agree outcomes that accommodate both the representative and class members – for example in-principle settlement terms that were subsequently signed by class members, or 'class action style' compensation from which class members could apply individually. We consider there is benefit in VEOHRC developing and providing guidance for the public on bringing representative complaints in line with their support for the introduction of representative complaints, and the role VEOHRC plays in supporting and delivering education.

Recommendation 10: Victoria's anti-vilification laws should allow representative complaints without the need to identify all complainants, modelled on section 46PB of the *Australian Human Rights Commission Act 1986* (Cth) which allows representative complaints that 'describe or otherwise identify the class members' without naming them.

Authorising or assisting vilification

In our Inquiry submission, we recommended that Victoria's anti-vilification laws should be amended to expressly extend liability for authorising or assisting vilification or victimisation to corporations (in addition to natural persons and unincorporated associations in the current provision). The key reason for this recommendation was to ensure social media platforms play an active role as intermediaries to identify, monitor and respond to online vilification.

We acknowledge that the Report proposed other responses to this issue, including developing a strategy to reduce online vilification, advocating for Commonwealth coordination of a legal framework, and implementing the positive duty. These are important recommendations to drive systemic change.

However, based on our practice experience, extending liability for authorising or assisting vilification is an additional mechanism that can assist individual complainants in circumstances where there are legal complexities around liability. This could be achieved by extending the current provision under Part 7 of the EOA regarding authorising or assisting

[35] Report, pp 124-5.

unlawful conduct to the vilification provisions. Further consideration should be given to implementing this amendment concurrently with those resulting from this consultation.

Recommendation 11: Victoria's anti-vilification laws should be amended to expressly extend liability for authorising or assisting vilification or victimisation, consistent with liability for other unlawful conduct under the EOA.

Remedies

VEOHRC and the Victorian Civil and Administrative Tribunal (**VCAT or the Tribunal**) should have a broad range of powers in types of remedies and orders that may be made, including to address systemic issues by, for example, requiring an organisation to provide training to staff on appropriate behaviours. A broad range of powers is appropriate to address the significant harm experienced by people subject to vilification. We advise clients who have suffered substantial mental harm, humiliation and fear as a result of the vilification they have been subjected to. Our Inquiry submission provided an example of the impact of racial vilification on an Aboriginal person in terms of humiliation, belittling and fear during an incident.[36] We support recognition of the orders that can be made by the Tribunal, including confirmation that a takedown of online material can ordered.

We note that the existing provision, replicated in the EOA, provides that the Tribunal can order that a person do anything specified in the order with a view to redressing any loss, damage or injury suffered by the applicant as a result of the contravention,[37] and this provision has been interpreted liberally, including requiring staff training, a written apology, amending a policy and reassessment of an insurance premium.[38]

Any recognition of the types of orders the Tribunal can make under this provision should not be limiting and should make it clear that the Tribunal has a broad discretion in terms of the types of orders made.

Recommendation 12: VEOHRC and VCAT should be provided with a broad suite of powers to make orders and issue remedies in response to claims including to address systemic issues.

VEOHRC's powers to direct information be provided

We believe that it is important that VEOHRC has strong and clear enforcement powers to ensure that the legislative provisions provide substantive protection, a deterrent to vilification, and contribute to cultural change.

We support that VEOHRC should have a power to direct any person to provide information to assist with identifying the person they believe has vilified them, and that VEOHRC could enforce that direction by filing it with VCAT. This was the form of proposal made by VEOHRC to the Parliamentary Inquiry and recommended by the Parliamentary Inquiry. It would also be consistent with other powers of VEOHRC to direct the provision of

[36] See page 5, Victoria Legal Aid and Victorian Aboriginal Legal Service, *Fair and accessible anti-vilification protections for all Victorians* (Submission to the Victorian Parliamentary Inquiry into Anti-Vilification Protections, 31 January 2020).
[37] RRTA, s23C.
[38] See in seriatum *Slattery v Manningham City Council [2013] VCAT 1869*; *Flekac v Australian Cable and Telephony Pty Ltd [2003] VCAT 2012*; *South v RVBA [2001] VCAT 207*; *Dulhunty v Guild Insurance Limited [2012] VCAT 1651*.

information.[39] We do not believe that a power to "request" information as proposed in the consultation paper is sufficiently robust, as for this request to be enforceable, the Commission would then need to seek an order from VCAT. This will create delays in obtaining information, reducing the overall efficiency of the complaints process. We also wish to highlight that this power would be particularly important in the context of online social media where some persons using the services sometimes attempt to remain anonymous, and there is evidence that certain organisations hosting the service have refused to provide information about persons making vilifying comments.

Recommendation 13: VEOHRC should be given the power to direct any person to provide information to assist with identifying the person who is believed to have engaged in vilification, and VEOHRC should be able to enforce that direction by filing it with VCAT.

Increasing the effectiveness of criminal anti-vilification provisions

We support strengthening the existing criminal framework for serious vilification offences through creating a single offence covering a wider range of protected attributes, simplifying the elements of offences, and harmonising the anti-vilification laws with existing criminal legislation.

Avoid creating multiple criminal offences

We do not support creating multiple criminal offences to reflect varying degrees of seriousness.

Introducing two separate vilification offences will create unnecessary complexity, and will be difficult to distinguish, given that the proposed offences contain overlapping elements. Our view is that it would be more effective to have a single offence which carries a maximum penalty that can encompass the varying degrees of seriousness. This would mean that where there is an offence that includes a threat of harm alongside incitement of hatred and serious contempt for a particular community, the presence of the incitement of hatred, its context and gravity, can be taken into account as an aggravating factor by the sentencing magistrate and the seriousness of the offence can be reflected by the sentence.

Recommendation 14: Multiple criminal offences should not be created to reflect degrees of seriousness, and the presence of aggravating features are more appropriately dealt with by a court and reflected in sentencing.

Public act[40]

We support the requirement that serious vilification require the accused person to engage in a 'public act'. In line with the discussion of public and private acts with respect to civil protections above, we consider the definition of 'public act' should encompass conduct that "can be seen or heard by" the public, as well as "to" the public.

[39] See section 36, *Change or Suppression (Conversion) Practices Prohibition Act 2021* (Vic).
[40] Response to Consultation Paper 2, Question 1: 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?

We consider that this appropriately ensures that there is effective criminalisation of serious vilification that occurs in online spaces while simultaneously ensuring that conversations intended to be private are not criminalised.

Recommendation 15: Criminal serious vilification offences should be limited to 'public acts,' which should encompass conduct that 'can be seen or heard by the public.'

Prohibiting conduct that likely incites others or threatens physical harm[41]

We do not support the proposal of a distinct criminal offence that prohibits conduct that is likely to incite hatred, serious contempt, revulsion or severe ridicule and would be similar to the proposed civil incitement provision. While this conduct is significantly serious and may be appropriately addressed through civil protections, our view is that in order to attract a criminal penalty, the prohibited conduct should involve an aspect of violence, such as threats or incitement of harm to people or damage to property. The requirement for presence of threat or incitement of physical harm or harm to property is an approach adopted in other Australian jurisdictions, including New South Wales[42] and South Australia.[43]

We agree the current test which requires that prosecution establish that conduct is both likely to incite hatred *and* threaten, or incite ithers to threaten, physical harm or damage to property, is too complex and requires prosecution to prove many elements.

The test could be simplified by removing the first limb and prohibiting conduct that the person knows is likely 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."*

Recommendation 16: A new criminal offence that prohibits conduct that is likely to incite hatred, serious contempt, revulsion or severe ridicule should not be introduced.

Recommendation 17: The current test for criminal vilification should be simplified by prohibiting conduct that the person knows is likely 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.

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[41] Response to Consultation Paper 2, Question 2:
a. What are your views on having a criminal offence that is similar to the civil contraventions?
b. The Inquiry recommends a criminal offence that requires incitement **or** threat (but not both). What are your views on this approach?
c. What are your views on creating two criminal offences with different levels of seriousness:
   i. an offence requiring incitement **or** threat, and
   ii. an offence requiring incitement **and** threat?

[42] The test in section 93Z of *Criminal Code 1900* (NSW) is "a person who by a public act intentionally or recklessly threatens or incites violence towards a person or group of persons" on the grounds of [protected attribute].

[43] The test at section 4 of the *Racial Vilification Act 1994* (SA) is "A person must not, by a public act, incite hatred towards, serious contempt for, or severe ridicule of, a person or group of persons on the ground of their race by—
(a) threatening physical harm to the person, or members of the group, or to property of the person or members of the group; or
(b) inciting others to threaten physical harm to the person, or members of the group, or to property of the person or members of the group."

Including a fault element of recklessness[44]

We do not support expanding the current test to introduce a fault element of recklessness. We are concerned that this will disproportionately impact marginalised groups rather than target extreme conduct intended to vilify communities with protected attributes.

For example, in VLA's practice experience, people who experience homelessness are more susceptible to police attention because they occupy and live in public places.[45] The public-facing nature of these offences increases the likelihood of policing and enforcement for this cohort of people. We are also concerned about the potential disproportionate impact of this proposal on Aboriginal and Torres Strait Islander people, because of systemic racism and the increased likelihood of being charged with public-facing offences. Finally, we are concerned that broadening the fault element may also criminalise people with cognitive disability, people experiencing mental health issues and young people, who may engage in conduct in online or public spaces without fully comprehending the consequences or impact of that conduct.

While we acknowledge that introducing the element of recklessness may make a charge easier to prove, it is our view that the criminal offence of serious vilification should target serious conduct in circumstances where a person intentionally seeks to incite or threaten violence on the basis of a protected attribute.

Recommendation 18: The current test for criminal vilification should not be expanded to introduce a fault element of recklessness.

Director of Public Prosecutions approval to commence criminal prosecution[46]

The Inquiry Report identified the requirement for the Director of Public Prosecutions (**DPP**) to consent to a prosecution as a possible factor in the low number of successful prosecutions of the serious vilification offence and recommended that there be review of this requirement.

Our view is that if DPP consent is to remain a requirement, consideration should be given to the development of specialist expertise and specific guidance to the DPP on the nature and impact of serious vilification. Similarly, if the requirement for DPP consent is removed, consideration should be given to appropriate safeguards to ensure that the police understand the nature of conduct captured by the offence, and charges are laid appropriately and not disproportionately impacting vulnerable communities.

Maximum penalty[47]

We consider it appropriate to review the maximum penalties applicable to the criminal offence of serious vilification to make it consistent with similar offences in the Crimes Act. Offences such as causing injury recklessly, threats to inflict serious injury, conduct

[44] Response to Consultation Paper 2, Question 3: What are your views on broadening the criminal offence to include reckless behaviour?
[45] Victoria Legal Aid, 2020, *Submission to Victorian Parliamentary Inquiry into Homelessness*, p 6.
[46] Response to Consultation Paper 2, Question 4: Should the Director of Public Prosecutions' approval continue to be required before a serious vilification matter can proceed to court? Why / why not?
[47] Response to Consultation Paper 2, Question 5: 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?

endangering persons, and assault, for example, all carry a maximum penalty of five years' imprisonment.

Recommendation 19: Maximum penalties applicable to the criminal offence of serious vilification should reviewed to be consistent with similar offences in the Crimes Act.

Prevention of hateful conduct and speech

Positive duty

We support the introduction of a positive duty for organisations to take reasonable and proportionate steps to prevent vilification, as is currently the case for discrimination, sexual harassment and victimisation matters under the EOA. We welcome this recommendation by the Inquiry and the government's in-principle support. We are concerned that the positive duty is not referred to in the current consultation as we consider it relevant and essential to proposed legislative anti-vilification reform.

A positive duty should replicate the existing positive duty applicable to the relevant duty holders in relation to discrimination and sexual harassment under the EOA. In particular we submit that the positive duty should apply to vilification in the same areas of public life under Part 4 of the EOA (employment, education, the provision of goods and services, accommodation, clubs, sport and local government). We also submit that Part 7 of the EOA should apply in the same way in terms of duty holders, including liability for those assisting or authorising vilification. Such a positive duty would be particularly important in relation to organisations that can control the publication and removal of vilifying conduct such as social media platforms, and other media organisations.

Any amendments in this regard should occur concurrently to those resulting from this consultation, and we would welcome the opportunity to further consult on the extent and scope of the positive duty.

Recommendation 20: A positive duty for organisations to take reasonable and proportionate steps to prevent vilification, as is currently the case for discrimination, sexual harassment and victimisation matters under the EOA should be introduced.

Preventative and investigative powers of VEOHRC[48]

We fully support the proposals to expand the powers of VEOHRC to prevent and investigate issues of vilification.

In relation to preventative powers, we support issuing practice guidelines; intervening in civil and criminal proceedings; conducting voluntary reviews of organisations' programs and practices; providing advice to organisations on preparing a voluntary action plan; and conducting research.

We also support the introduction of investigation powers, but as stated in our Inquiry submission, those investigation powers should be broadened from the existing powers for vilification and all other unlawful conduct. These should provide that VEOHRC can instigate an investigation on its own motion without the current procedural requirements in section

[48] Responding to Consultation Paper 3, Question 18: Do you have any views on extending VEOHRC's powers to address systemic vilification? and Consultation Paper 3, Question 19: Do you have any views on providing VEOHRC with investigative powers for anti-vilification matters?

127 of the EOA and restore previous provisions that existed prior to 2011 for all investigations, including by enabling VEOHRC to enter into enforceable undertakings and issuing compliance notices. Such robust investigation powers should be consistent with the new enforcement powers of the Australian Human Rights Commission regarding conducting inquiries into compliance with the positive duty to prevent sexual harassment. These powers include issuing compliance notices, applying to the federal courts for an order to direct compliance with a compliance notice, and entering into enforceable undertakings which will come into force on 12 December 2023.

Such powers would be important to ensure not only that there is consistency with VEOHRC powers in relation to other issues of equality such as discrimination and sexual harassment, but also to enable VEOHRC to take a more systemic approach in addressing issues of vilification, for example where it involves the conduct of an organisation or affects large numbers of people.

Recommendation 21: VEOHRC's powers in relation to prevention and investigation should be expanded on issues of vilification to support the systems change needed to support stronger anti-vilification protections.

Cultural change

We appreciate this consultation relates specifically to law reform; however, it is important to reiterate that a robust response to the problem of hate speech and hate conduct must include consideration of non-legal preventative measures that tackle the root drivers of hate speech and hate conduct, including:

- Funding for ongoing research;
- Education (including resourcing of community education initiatives);
- Public awareness campaigns; and
- Training for Victoria Police and key stakeholders.

It will be critical to ensure that legislative reforms align with non-legislative reforms set out in the whole-of-government Anti-Racism Strategy (currently being developed) and vice-versa. Please see our previous submission for further information and recommendations.

Funding for strategic litigation

In addition, the final Inquiry Report recommended that the Victorian Government fund organisations such VLA and the VALS to engage in strategic litigation on vilification matters to enhance awareness of anti-vilification laws, increase the body of case law and further minimise the onus on individuals.[49] We welcome this recommendation and the government's in-principle support;[50] using our practice and evidence base through strategic litigation and advocacy is one of the key ways we are able to promote the voices of clients and address the impacts of discrimination, systemic injustices and inequality for clients and communities.

Additional funding related to anti-vilification work will facilitate capacity for our organisations to represent clients where appropriate, drawing upon our experience in strategic litigation and expertise in discrimination law.

[49] Parliament of Victoria (March 2021). Inquiry into Anti-vilification Protections. Recommendation 28, p195.
[50] Victorian Government response into Anti-Vilification Protections | vic.gov.au (www.vic.gov.au)

As part of further funding consideration by government, we recommend that a collaborative service design process is undertaken to maximise effectiveness and efficiency, and accessibility for clients.

Consideration of broader law reform related to anti-vilification

The Yoorrook Justice Commission recommended that the EOA be urgently amended to prohibit race and other forms of discrimination in the administration of State laws and programs, including all functions performed by Victoria Police, Corrections Victoria and child protection authorities.[51] Yoorrook indicated that the government should immediately commence work to implement the urgent recommendations made in their report so that they could be achieved over the following 12 months.

The amendments to the EOA proposed by Yoorrook are outside the scope of this Consultation. However, noting in particular VALS' role as an ACCO, which provides legal advice and representation to Aboriginal and Torres Strait Islander peoples in Victoria, we take this opportunity to reiterate our support to the implementation of these recommendations as soon as is practicable within or before the proposed timeframe.

We would welcome the opportunity to consult on these amendments based on our legal practice experience.

Recommendation 22: There should be continued prioritisation and resourcing of anti-vilification reforms that support:

- **cultural change to address the drivers of hateful conduct and speech;**
- **systems change including appropriate and ongoing research, training and community education;**
- **funding of collaborative service design to increase legal services, including in relation to strategic litigation, to build case law supporting anti-vilification reforms; and**
- **broader law reform related to anti-vilification as recommended by the Yoorrook Justice Commission.**

[51] Yoorrook Justice Commission (2023). Report into Victoria's Child Protection and Criminal Justice Systems. Yoorrook-for-justice-report.pdf. Recommendation 29.