LAWS AGAINST INCITING RACIAL OR RELIGIOUS VILIFICATION IN QUEENSLAND AND AUSTRALIA: THE ANTI-DISCRIMINATION AMENDMENT BILL 2001

RESEARCH BULLETIN NO 1/01

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The Anti-Discrimination Amendment Bill 2000 was introduced into the Queensland Parliament on 9 November 2000 but lapsed when Parliament was dissolved on 23 January 2001 prior to the 17 February election; however, following the re-election of the Labor Government, Cabinet approval for anti-vilification legislation was announced on 5 March 2001. The Anti-Discrimination Amendment Bill 2001 was subsequently introduced into the Legislative Assembly by the Premier and the Minister for Trade on 22 March 2001, fulfilling an election commitment made to re-introduce the legislation as a matter of priority under a re-elected Labor government. The Anti-Discrimination Amendment Bill 2001, the main purpose of which is to “enact new racial and religious vilification laws”, is identical to the Bill previously introduced in November 2000.

These moves to reform the law with respect to this matter are a result of promises made by the Labor Party prior to the 1998 election and the perceived failure of the current provisions to effectively deal with the continuing existence of racial and religious vilification in the community. This Bulletin examines the issue of vilification, the effectiveness of current provisions to address it and proposals for reform. The focus of the Bulletin is on racial and religious vilification. Legislative controls on vilification of persons or groups based on other issues such as sexual orientation or disability are not specifically addressed in this Bulletin, although it is noted that some Australian jurisdictions have enacted legislation in these areas.
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1 INTRODUCTION

On 9 November 2000, the Honourable Matt Foley MP, the then Attorney-General and Minister for Justice and Minister for the Arts, introduced the Anti-Discrimination Amendment Bill 2000 into the Queensland Parliament in order to “enact new racial and religious vilification laws”. The current provisions dealing with this issue were intended to be repealed and replaced by provisions very similar to those that operate in NSW and the ACT. The Anti-Discrimination Amendment Bill 2000 lapsed when Parliament was dissolved on 23 January 2001 prior to the 17 February election; however, following the re-election of the Labor Government, Cabinet approval for anti-vilification legislation was announced on 5 March 2001. The Anti-Discrimination Amendment Bill 2001 was subsequently introduced into the Legislative Assembly by the Premier and the Minister for Trade, Hon PD Beattie MP, on 22 March 2001, fulfilling an election commitment made to re-introduce the legislation as a matter of priority under a re-elected Labor government. The Anti Discrimination Amendment Bill 2001 is identical to the Bill previously introduced in November 2000.

These moves to reform the law with respect to this matter are a result of promises made by the Labor Party prior to the 1998 election and the perceived failure of the current provisions to effectively deal with the continuing existence of racial and religious vilification in the community. This Bulletin examines the issue of vilification, the effectiveness of current provisions to address it and proposals, or other models that may provide guidance for reform. The focus of the Bulletin is on racial and religious vilification. Legislative controls on vilification of persons or groups based on other issues such as sexual orientation or disability are not

1 Hon MJ Foley MP, Attorney-General and Minister for Justice and the Arts, Anti-Discrimination Amendment Bill 2000 (Qld), Second Reading Speech, Queensland Parliamentary Debates, 9 November 2000, pp 4176-77 at p 4176.


specifically addressed in this Bulletin, although it is noted that some Australian jurisdictions have enacted legislation in these areas.

Appendix A to this Bulletin provides Ministerial Media Statements and news articles about the proposed Queensland legislation, and general commentary on the issues of racial and religious vilification, including the use of the Internet to publish vilificatory material.

2 BACKGROUND

Racial and religious vilification has been defined to include:

… all acts, conduct, behaviour or activity involving the defamation of individuals and groups on the ground of their colour, race or ethnic or national origins [or their religious backgrounds or convictions], as well as those which constitute the incitement or stirring up of hatred or other emotions of hostility and enmity against these individuals and groups.

These acts of vilification can cause their victims “to fear for their safety, feel intimidated, suffer detriment to their psychological and mental health and withdraw from participating in society and the political process”. In addition, such acts and speech may have a broader effect on society as a whole. They may work to undermine those principles of freedom, equality and dignity that are central to the effective running of a democratic society. They are “intentionally divisive” and open the way to the occurrence of violence, and discrimination against, individuals and the groups of which they are members.

While there is little debate that acts of vilification are detrimental to a community, much discussion exists regarding how best to deal with this problem. One main point of discussion centres around whether or not legislative measures to curb race-

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5 See, for example, Anti-Discrimination Act 1977 (NSW), ss 38R-38T (transgender vilification), ss 49ZS – 49ZTA (homosexual vilification), ss 49ZXA-49ZXC (HIV/AIDS vilification); Anti-Discrimination Act 1998 (Tas) s 19 (b)&(c) (inciting hatred on the grounds of disability, sexual orientation or lawful sexual activity).


8 Grant and Dean, ‘Regulating Race Hate Speech: A proposal for criminal law reform’, para 5.
hate speech deny a right of free speech. International law provides some indication of how a balance is required to be struck in this area. The International Convention on the Elimination of All Forms of Racial Discrimination “requires all signatories to take action against the incitement to racial violence, discrimination or hostility” 9 In addition, Article 20 of the International Covenant on Civil and Political Rights (ICCPR) states that:

Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

On the other hand, Article 19 of the ICCPR provides for a fundamental right of freedom of expression where the exercise of this right may only be restricted where it is “provided by law” and is necessary:

a) for respect of the rights or reputations of others; or
b) for the protection of national security or of public order, or of public health or morals.

There has also been much debate in Australia with respect to this perceived conflict of rights. On the one hand, while deploring the existence of racial and religious vilification, those opposing legislative responses to vilification argue that such measures can act to effectively censor speech. As explained by the New South Wales Reform Commission in its review of anti-discrimination legislation in that state, the traditional justification for freedom of speech is that, “if dissenting views are restricted, a general climate of repression may develop, eroding democracy and leading to the abuse of other human rights”. 10 Proponents of freedom of speech take the view that “in a democracy, all views, no matter how unpalatable, have a right to be heard” and must be allowed to “stand or fall on their merits”. 11 They further state that it is better to allow such hatred to be expressed publicly so that the wider community can directly address the inaccuracy of such views.

In response, many proponents of anti-vilification laws state that, unfortunately, this counter to racist hate speech does not always occur and that educating the public is not always an easy task. This is especially so because those most likely to be subject to acts of vilification are often “those least likely to feel empowered to


In addition, they argue that such legislative measures do not in fact limit speech any more than is currently considered “reasonable”. For example, laws relating to blackmail, obscenity, blasphemy, defamation, copyright, the use of insulting words, sedition, contempt of court or Parliament, official secrecy, censorship and incitement all currently restrict one’s ability to speak freely and this occurs without fundamentally damaging the democratic framework of our society. NSW has had both civil and criminal anti-vilification provisions in effect since 1989 and these laws do not appear to place any undue limit on freedom of speech in that state. As the NSW Equal Opportunity Tribunal has itself asserted, in drafting these provisions, the government acted to:

avoid the likelihood of interference with freedom of expression, and that, in any event, the right to free expression “has never been an absolute or unequivocal right.”

3 CURRENT QUEENSLAND LAW

3.1 SECTION 126 OF THE ANTI-DISCRIMINATION ACT

Under Section 126 of the Anti-Discrimination Act 1991 (Qld), a person must not incite unlawful discrimination against a person, or incite any other contravention of the Anti-Discrimination Act 1991 (Qld), through the advocacy of racial or religious hatred or hostility. The maximum penalty that may be imposed is 35 penalty units (currently $2625) for an individual and 170 penalty units (currently $12,750) for a corporation.

Under the current Act, a complaint is made to the Anti-Discrimination Commissioner who decides whether or not to investigate the matter and may

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15 White, p 245.

attempt to resolve it through a conciliation process involving both parties (Chapter 7). If the matter cannot be decided in conciliation, it can then be referred to the Anti-Discrimination Tribunal to decide the matter and determine whether any action should be taken (Section 166).

In its 1999–2000 Annual Report, the Anti-Discrimination Commission Queensland reported that:

The first complaint under section 126 of the Queensland Anti-Discrimination Act 1991 – Incitement to Racial or Religious Hatred was successfully conciliated. It was argued that by advocating racial hatred the respondent had incited unlawful discrimination. An aboriginal woman complained that she had read racist comments about herself in written communication between two health care providers. The recipient of the racist commentary could influence or be involved in any determination about the woman qualifying for a pension. The Commission accepted the complaint as satisfying the stringent requirements under section 126, where racist commentary must also go one step further and be characterised as inciting others to breach the Act. In this case, the racist commentary could be viewed as an attempt to influence another person to provide a service in a discriminatory way. The respondent published an apology in the local paper and paid compensation to the woman.17

3.2 OTHER LEGISLATION

Other Queensland legislative provisions may also be helpful in dealing with certain acts that may occur with acts of racial or religious vilification. These include, for example, provisions relating to the making of threats,18 graffiti,19 assault,20 the use or publication of abusive words21 and defamation.22 It is also important to note that the Queensland media is self-regulated and governed by codes of conduct. All

18 Queensland Criminal Code, sections 359 and 75(1)(b).
19 Queensland Criminal Code, section 469.
20 Queensland Criminal Code, section 335.
21 Vagrants, Gaming and Other Offences Act 1931 (Qld), sections 7 and 7A.
22 See the Defamation Act 1899 (Qld).
print, radio and broadcast media operate under rules that prohibit the propagation of racial or religious hatred.

However, questions have been raised as to the overall effectiveness of any of these provisions to deal with the problem of potential racial or religious vilification in Queensland.

4 LEGISLATION IN OTHER AUSTRALIAN JURISDICTIONS

4.1 NSW AND ACT LAWS

New South Wales was the first state to introduce legislative controls on racial vilification, as a result of amendments made to the state’s Anti-Discrimination Act in 1989.

The racial vilification provisions in the NSW Anti-Discrimination Act 1977 create both civil and criminal sanctions. Section 20C(1) makes it unlawful for a person, by a public act, to “incite hatred towards, serious contempt for, or severe ridicule of” another person or group of persons because of their race. Certain exemptions are provided for acts that amount to fair reporting, or are subject to an absolute privilege, or are done reasonably and in good faith for academic, artistic, scientific or research purposes or for any other purposes in the public interest (Section 20C(2)). Section 20D(1) provides criminal sanctions for more serious racial vilification (eg where threats of physical harm towards property or persons are involved, or others are incited to threaten physical harm). Consent to bring an action against a person under section 20D(1) must be given by the NSW Attorney-General (Section 20D(2)).

The provisions in the ACT Discrimination Act 1991 are virtually identical to those operating in NSW. However, in the ACT the consent of the Attorney-General is not required to institute a prosecution.


24 White, p 237.


See the Anti-Discrimination (Racial Vilification) Amendment Act 1989 (NSW).

While the focus of the NSW legislation is on attempting to use conciliation measures to deal with complaints of this type, several cases have been brought before the NSW Equal Opportunity Tribunal (now known as the Equal Opportunity Division of the Administrative Decisions Tribunal of NSW) to be finally determined. Given that proposals have been made to introduce legislation, similar to that in operation in NSW, into Queensland, these cases may provide some insight into how such laws might be applied here.

4.2 NSW CASE LAW

4.2.1 Harou-Sourdon v TCN Channel Nine Pty Ltd (1994) EOC 92-604

A complaint of racial vilification was made with respect to comments made by Clive Robertson regarding people of French origin which were broadcast on national television in 1994. It was alleged that the words, “I thought the French had class. I knew they weren’t too good on personal hygiene, but I thought at least they had class” were used by Robertson to introduce a news segment and that they were vilifying people of French origin. The Tribunal dismissed the complaint as being misconceived and lacking in substance. Commenting on this case, McNamara has stated: “Perhaps the primary significance of the decision is that it has helped to allay fears that the racial vilification provisions would be ‘abused’ and extended to conduct with which the law was not designed to deal”.

4.2.2 Wagga Wagga Aboriginal Action Group v Eldridge (1995) EOC 92-701

This complaint was made against a Wagga Wagga City Councillor, Jim Eldridge, regarding comments he made about Aboriginal persons on several occasions, including at the local launch of the International Year of the Indigenous People. On this particular occasion, he used the terms, “half-caste radicals” and “savages” in relation to Aboriginal people and claimed white people in the city had been subject to a “reign of terror” for 30 years. The Tribunal found that Eldridge had committed an offence of racial vilification and ordered him to refrain from

27 cited in McNamara, ‘Responding to Hate in a Multicultural Society: Forms of Legal Intervention’, and Reid and Smith, p 3.

28 McNamara, ‘Responding to Hate in a Multicultural Society: Forms of Legal Intervention’.
continuing or repeating the unlawful conduct, to publish an apology and to pay $3000 in damages.\textsuperscript{29}

\textbf{4.2.3 Patten v State of New South Wales, [1995] NSWEOT, Nos 90-91, 21 January 1997.}

This case involved comments made by two officers of the NSW Police Force regarding an Aboriginal man, Wesley Patten, as part of the documentary program, Cop It Sweet, which was broadcast on national television. The complainant, Mr Patten, was awarded $25,000 for being publicly treated with contempt during the course of an incident broadcast on the ABC in which he was referred to as a “coon”.\textsuperscript{30}

\textbf{4.2.4 2001 Updates}

In January 2001, the Administrative Decisions Tribunal fined a Sydney man who called his Mauritian-born neighbour a “black bitch” and a “bloody wog” $5000 for racial vilification.\textsuperscript{31}

In March 2001, the NSW Police Service and nine of its officers were ordered to apologise and to pay $30,000 compensation to the family of an Aboriginal man after the Administrative Decisions Tribunal ruled that he was assaulted and racially vilified during an arrest following a car chase in 1993.\textsuperscript{32}

\textbf{4.3 COMMONWEALTH LEGISLATION}

The Commonwealth \textit{Racial Discrimination Act 1975} was amended by the \textit{Racial Hatred Act 1995 (Cth)} to introduce civil provisions to deal with racial vilification. \textbf{Section 18C(1)} states that it is unlawful to do an act (otherwise than in private) if:

\textsuperscript{29} cited in McNamara, ‘Responding to Hate in a Multicultural Society: Forms of Legal Intervention’, and Reid and Smith, p 4.

\textsuperscript{30} cited in Reid and Smith, p 4.


(a) the act is reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate another person or a group of people; and
(b) the act is done because of the race, colour or national or ethnic origin of the other person or of some or all of the people in the group.

Section 18D outlines the acts that are exempted from the coverage of section 18C. They are acts said or done reasonably and in good faith:

• for artistic purposes;
• in the course of a debate or discussion for academic, artistic or scientific purposes or for any other genuine purpose in the public interest;
• to fairly and accurately report matters of public interest; and
• to make fair comment if the comment is genuinely believed.

The exemptions are similar to those in the NSW and ACT Acts. Residents in all states and territories of Australia have the option to bring a complaint under this Act.

4.4 WESTERN AUSTRALIA

Western Australia’s response to the racial vilification issue is unusual in that legislation has been enacted containing only criminal sanctions. The most serious offences are contained in sections 77 and 78 of the Western Australian Criminal Code. Section 77 makes it an offence to possess threatening or abusive material intended to be published or displayed. The person must also intend to create or promote racial hatred by publishing or displaying that material. Section 78 creates an offence for the actual publication or display of that material with the same intention. Sections 79 and 80 create less serious offences of the possession and the display of such material, respectively. These two sections apply when the person intends only to harass a racial group. As the definitions of “display” and “publish” in s 76 of the Code make clear, all of the vilification offences must be made to the public or to a section of the public.

33 White, pp 236-7.
34 White, p 239.
4.5 **SOUTH AUSTRALIA**

With the *Racial Vilification Act 1996* (SA), the South Australian government enacted civil and criminal provisions to address racial vilification in that state. **Section 4** of that Act creates the criminal offence of racial vilification. The section states that:

> 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.

This section is identical to the criminal offence contained in the NSW and ACT Acts. The offence can only be prosecuted with the consent of the Director of Public Prosecutions (**Section 5** of the 1996 Act). **Section 7** of the 1996 Act inserted into the *Wrongs Act 1936* (SA) **section 37** which creates the civil wrong of “an act of racial victimisation that results in detriment”. An “act of racial victimisation” is defined in similar terms to the civil offence provision present in the NSW and ACT legislation. “Detriment” is defined to mean any “injury, damage or loss” or “distress in the nature of intimidation, harassment or humiliation”. Exemptions are also similar to those provided by other Australian jurisdictions and cover:

- the publication of a fair report;
- the publication of material that would be absolutely privileged in a defamation action; or
- a reasonable act, done in good faith, for academic, artistic, scientific or research purposes, or for other purposes in the public interest (**Section 37**, *Wrongs Act 1936* (SA)).

**Section 6** of the 1996 Act also explicitly provides for an award of damages of up to $40,000 for an individual, or organisation representing a group, found to have been vilified.

4.6 **TASMANIA**

The Tasmanian *Anti-Discrimination Act 1998* also contains racial and religious vilification provisions. **Section 19** of that Act states that:

> a) A person, by a public act, must not incite hatred towards, serious contempt for, or severe ridicule of, a person or a group of persons on the ground of -
> b) the race of the person or any member of the group; ...
4.7 VICTORIA

The Victorian Government recently announced plans to introduce its own provisions to deal with vilification in that State. Current proposals aim to cover behaviour that:

- incites racial or religious hatred;
- seriously offends, insults or humiliates a person or group;
- threatens or intimidates a person or group; or
- threatens the property of a person or group.

The proposed laws would also provide for similar exemptions as exist in the other jurisdictions of Australia.

A Discussion Paper and Model Bill were released for comment in December 2000, with submissions to be received by February 2001. In March, the Minister assisting the Premier on Multicultural Affairs announced changes being considered by the Government to meet the needs of church and legal groups prior to the proposed Bill being introduced into Parliament. The key changes under consideration were:

An extension of exemptions for academic, scientific and artistic debate to include religious discussion

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The addition of a preamble to the legislation

Tightening the definition of intent.

A number of news articles discussing the proposed Victorian legislative changes are included in Appendix B to this Bulletin.

5 PROBLEMS WITH CURRENT QUEENSLAND LAW

A high onus of proof has been blamed for the alleged ineffectiveness of the Queensland legislation. The heavy burden to prove a case of racial or religious vilification lies in the fact that a complainant must prove both elements of the offence (i.e., that the person about whom the complaint is made advocated religious or racial hatred, and that this hatred incited others to act in a manner contrary to the Anti-Discrimination Act). For example, Anti-Discrimination Commissioner, Karen Walters, has stated that the Act, as it currently stands, “won’t cover anti-Semitic publications unless those publications go that one step further and say, ‘Therefore don’t employ Jews, or don’t do any business with non-whites’.” This is unnecessarily onerous because “a person inciting others to commit violence or another unlawful act against a racial group is necessarily advocating hatred against the target race”. In the opinion of authors Grant and Dean, the current requirement of the Anti-Discrimination Act “… therefore adds an unnecessary burden on the prosecution without contributing to the establishment of the overall criminality of the offence”.

In addition, these authors of a recent analysis of how existing Queensland legislation might be used to combat racial vilification state that, while it could be argued that Queensland law is adequate to address “vilifying speech, regardless of its form, when directed specifically at an individual”, there is an “absence of effective provisions for addressing race hate speech directed at general groups”.


39 eg White, p 237.


41 Grant and Dean, ‘Regulating Race Hate Speech: A proposal for criminal law reform’, para 55.

42 Grant and Dean, ‘Regulating Race Hate Speech: A proposal for criminal law reform’, para 55.

43 Grant and Dean, ‘Regulating Race Hate Speech: A proposal for criminal law reform’, para 36.

44 Grant and Dean, ‘Regulating Race Hate Speech: A proposal for criminal law reform’, para 35.
They do, however, state that, other than section 126 of the Anti-Discrimination Act 1991 (Qld), none of the existing provisions take into account the racial or religious element of the acts. For example, in the case of section 359 of the Queensland Criminal Code, which deals with the making of threats, it would appear that this provision would only be able to be used where the threat is being made to a particular individual, not to a group. The restraining orders available under the Peace and Good Behaviour Act 1982 (Qld) would also not be available except where the offender actually threatened a particular complainant. The graffiti provision (section 469 of the Criminal Code), while it would apply to all forms of graffiti, does not take into account the fact that graffiti vilifying a group on the basis of race or religion is arguably of a different character to general graffiti, in that it “is accompanied by an intent to intimidate … its targets”. Likewise, the various offence provisions in the Vagrants, Gaming and Other Offences Act 1931 (Qld), regarding the use or publication of abusive, threatening or offensive words, and the criminal defamation provisions in the Defamation Act 1899 (Qld), do not account for the racial motivation of the attacks. The sedition and unlawful procession provisions are hampered by dated drafting and sections 206 and 207 of the Criminal Code, relating to offering violence to officiating ministers of religion and disturbing religious worship, arguably have inappropriate penalties. Section 206 creates a series of misdemeanours to prohibit persons from using threats of force or violence to interfere or attempt to obstruct a minister of religion from performing his or her religious duties. The maximum penalty for a breach is two years imprisonment.

Section 207 provides that it is a simple offence to, without lawful justification, disquiet or disturb any meeting of persons lawfully assembled for religious worship or to assault any person so assembled or the officiating minister. The maximum penalty in this case is two months imprisonment or a fine of $10. As explained by Grant and Dean:

... the maximum penalties appear entirely inappropriate. ... the general threats provision in section 359 of the Criminal Code provides for a maximum five years imprisonment if a person is found guilty of using threats to prevent or hinder a person from doing any act which he or she is lawfully entitled to do. There appears no justification for reducing the maximum penalty to two years (as occurs in section 206) merely because the act which the perpetrator seeks to stop is the administering of a legal ceremony.

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45 Grant and Dean, ‘Regulating Race Hate Speech: A proposal for criminal law reform’, para 20.
46 Grant and Dean, ‘Regulating Race Hate Speech: A proposal for criminal law reform’, para 27.
Likewise, while the maximum penalty prescribed under s 207 is only two months imprisonment, a common assault charge under s 335 of the Criminal Code invokes a three year penalty.47

6 PROPOSALS FOR CHANGE TO QUEENSLAND LEGISLATION – THE ANTI-DISCRIMINATION AMENDMENT BILL 2001

The Anti-Discrimination Amendment Bill 2001 proposes to introduce provisions to deal with racial and religious vilification that are modelled on the NSW racial vilification provisions in the Anti-Discrimination Act 1977. Clause 8 of the Bill, which inserts proposed new s 124A into the Anti-Discrimination Act 1991 (Qld), makes unlawful public acts that incite hatred towards, serious contempt for, or severe ridicule of a person or group on the basis of race or religion. Criminal sanctions will apply to the offence of serious racial or religious vilification which involves the additional element of threatening, or inciting others to threaten, physical harm towards a person or group or their property: Clause 9, inserting proposed new s 126. Additionally, an element of the offence under proposed new s 126 is that a person must knowingly or recklessly incite the hatred towards, serious contempt for or severe ridicule of, the person or group. The maximum penalty that may be imposed under proposed new s 126 will be 70 penalty units (currently, $525048) or six months imprisonment, in the case of an individual and 350 penalty units (currently, $26,25049), in the case of a corporation. Prosecution will be by way of summary proceedings on the complaint of the Anti-Discrimination Commissioner.50

Exemptions to proposed new s 124A are:

- Publication of Fair Reporting;
- Publication of material in circumstances in which the publication would be subject to a defence of absolute privilege in defamation law; and
- Acts done reasonably, and in good faith, for academic, artistic, scientific or research purposes or other purposes in the public interest, including public discussion or debate.

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47 Grant and Dean, ‘Regulating Race Hate Speech: A proposal for criminal law reform’, para 28.

48 Penalties and Sentences Act 1992 (Qld), s 5.

49 Penalties and Sentences Act 1992 (Qld), s 5.

50 Explanatory Notes, Anti-Discrimination Amendment Bill 2001 (Qld), p 2.
However, these exemptions do not apply to the offence of serious racial or religious vilification.51

Proposed new s 126A, inserted by Clause 9, provides that a complaint under proposed new s 126 (i.e. a complaint of serious racial or religious vilification) may be treated either as a complaint under proposed new s 124A and therefore amenable to civil remedies or a complaint under s 126, liable to criminal sanctions, or both.52

Although the Anti-Discrimination Amendment Bill 2001 is modelled on the NSW legislation, there are several differences between the NSW provisions and the Qld Bill, as discussed below.

• The Queensland provisions will apply to acts that advocate religious, as well as racial, hatred.

• Fraser says the anti-vilification provisions in the NSW Anti-Discrimination Act allow for a criminal prosecution for inciting racial hatred on the Web.53 However, the addition of electronic forms of communication as a form of communication covered by the Qld Bill (proposed new s 4A(1)(a), inserted by Clause 5) makes explicit the application of these provisions to the Internet.

• The proposed Queensland criminal offence of serious vilification includes an additional element that the incitement was done “knowingly or recklessly”.

• While consent to bring a case of serious vilification in NSW must be given by the Attorney-General, the Queensland proposals provide for a prosecution by way of summary proceeding upon the complaint of the Anti-Discrimination Commissioner.54

51 Anti-Discrimination Amendment Bill 2001 (Qld), Hon PD Beattie MP, Second Reading Speech, p 68.

52 Explanatory Notes, Anti-Discrimination Amendment Bill 2001 (Qld), p 5.

53 David Fraser, Senior Lecturer in Law, University of Sydney cited in ‘Making cyber hate a crime’, Sydney Morning Herald, 24 March 2000.

54 Anti-Discrimination Amendment Bill 2001 (Qld), Explanatory Notes, p 2.
7 INTERPRETATION OF ANTI-VILIFICATION LAWS IN OTHER AUSTRALIAN JURISDICTIONS

7.1 THAT THE ACT IN QUESTION MUST BE A ‘PUBLIC’ ACT.

The NSW provisions only cover public acts of vilification. The interpretation given to the term ‘public act’, derived from Australian and international case law, is that an act is ‘public’ where it is “reasonable to foresee that members of the public could be capable of hearing or seeing the act” not that a person actually did see or hear the vilification. Commentators have suggested that this definition provides no clear distinction between public and private acts. For example, are statements made at a private function in the presence of a large number of people a private or public act? Or would instances which occur in public but to which only the victim is a witness be private or public acts? It would seem that for the conduct to be “observable by the public”, a member of the public must be present. However, the effect of the vilification is not minimised for the victim simply because it is not heard by the public. Likewise, where there is an incitement to threaten persons with violence, many have argued that there should be no need for the conduct to occur in public. While such cases would be covered by other existing criminal provisions, they do not necessarily account for the hatred that is part of such an act of vilification. In the New South Wales context, the NSW Law Reform Commission, after considering these issues, recommended that the NSW Anti-Discrimination Act be amended in the following way: “… that the reference in the vilification provisions to ‘the public’ should be deleted, but that the communication should be one which is intended or likely to be received by someone other than a member of the group being vilified.”


At the federal level, the approach taken by the Commonwealth Racial Discrimination Act (s 18C) is to make it unlawful to do certain prescribed acts (see Part 4.3 of this Bulletin), otherwise than in private. An act is taken not to be done in private if it:

- Causes words, sounds, images or writing to be communicated to the public; or
- Is done in a public place; or
- Is done in the sight or hearing of people who are in a public place.

“Public place” is then defined in the Act to include: “any place to which the public have access as of right or by invitation, whether express or implied and whether or not a charge is made for admission to the place”: s 18C(3).

### 7.2 DISSEMINATION OF VILIFYING MATERIAL

The definition of “public act” in the NSW Anti-Discrimination Act 1977 includes:

... the distribution or dissemination of any matter to the public with knowledge that the matter promotes or expresses hatred towards, serious contempt for, or severe ridicule of, a person or group of persons on the ground of the race of the person or members of the group: s 20B(c).

As explained by the New South Wales Law Reform Commission:

This definition appears to have been designed to deal with the distribution of handouts and leaflets either in public places or through mailboxes. The requirement that the person knew that the material was vilifying prevents those innocently distributing material, without being aware of its contents, from being liable.

Similarly, the definition of public act in proposed new s 4A of the Anti-Discrimination Act, as inserted by Clause 5 of the Bill, provides that a public act will not include the distribution or dissemination of any material to the public if the person distributing it did not know, and could not reasonably be expected to know, its content.

### 7.3 THE REQUIREMENT OF ‘INCITEMENT’.

The Explanatory Notes to the Queensland Anti-Discrimination Amendment Bill 2001 specifically state that, to prosecute a person under proposed new section

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124A, proof is not required that a person was actually incited to act. The test will be “an objective one based on a hypothetical listener or viewer”. The NSW Tribunal has adopted the practice of drawing the ordinary meaning of words from the Macquarie Dictionary to determine what is meant by the words used in the legislation. Thus, in *Harou-Sourdon v TCN Channel Nine Pty Ltd*, ‘incitement’ was defined as “to urge on; stimulate or prompt to action”. In NSW, the appropriate standard accepted is that of a “hypothetical objective listener who is not immune from susceptibility to incitement nor holding racially prejudiced views”. Some commentators have suggested that this test is unworkable because a person who does not hold racially prejudiced views could not, in any circumstances, be incited to hate others on the basis of race.

### 7.4 Scope of Exemptions

While the legislation currently operating in the various jurisdictions of Australia provides for similar exemptions to the coverage of their vilification laws, the provision of these exemptions is not without criticism. It has been suggested that it may be possible for the exemptions to “provide a defence to the most extreme racists, who are truly convinced of the truth of ‘white supremacy’”. In addition, arguments have been made that the exemptions, relating to academic, artistic and scientific commentary, allow the “racist acts of social elites” to be privileged over those of a more crude variety even though such statements may indeed cause greater harm. Exemptions for artistic works also raise difficulties for a court if they

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64 Anti-Discrimination Amendment Bill 2001 (Qld), *Explanatory Notes*, p 5.


67 Grant and Dean, ‘Regulating Race Hate Speech: A proposal for criminal law reform’, para 51.

68 Grant and Dean, ‘Regulating Race Hate Speech: A proposal for criminal law reform’, para 51.

69 Jones, p 219.

are called to make a distinction between what is a legitimate artistic work or that which uses art “as a pretence” to hide its vilifying message.\textsuperscript{71}

\textsuperscript{71} Jones, p 219.
APPENDIX A

MINISTERIAL MEDIA STATEMENT

Premier & Trade
The HON. PETER BEATTIE MP
22 March 2001

Beattie true to his word on new racial vilification laws

The first Bill Queensland Premier Peter Beattie introduced to the newly elected State Parliament today will outlaw the use of racial and religious hatred to incite violence.

Mr Beattie told Parliament that introducing the Anti-discrimination Amendment Bill 2001 honoured his promise to introduce the Bill as a matter of priority under a re-elected Labor Government.

"Multiculturalism is the strength of Queensland and the strength of Australia," Mr Beattie told Parliament.

"My Government is totally committed to multiculturalism and this bill protects it."

The Amendments to Queensland’s Anti-Discrimination Act were originally introduced to State Parliament in November last year but did not reach its third reading. The new Bill, which was reintroduced today, makes unlawful any public statement that incites:

- Hatred towards,
- Serious contempt for, or
- Severe ridicule of,

a person or group on the basis of race or religion.

"It is a clear statement - both to the small minority of violent racists, and to overseas observers concerned about recent racism in Australia - that this type of damaging behaviour has no place in our community," Mr Beattie said.

Under the proposed legislation, people who publicly incite hatred by threatening violence on racial or religious grounds could face jail.

The maximum fine for an individual convicted of serious racial or religious vilification will be $5250 or six months imprisonment, or in the case of a corporation, a fine of $26,250.

"The legislation applies only to serious matters - that is, to statements that incite hatred, serious contempt or severe ridicule," Mr Beattie said.

The legislation is modelled on New South Wales laws - the longest established such laws in Australia.
MINISTERIAL MEDIA STATEMENT

Premier & Trade

The HON. PETER BEATTIE MP

5 March 2001

Tough sentences for threatening violence on racial grounds

People who publicly incite hatred by threatening violence on racial or religious grounds could face jail under the Anti-Discrimination Amendment Bill which has been given the go-ahead by State Cabinet today.

"In the case of serious offences of racial or religious vilification where someone threatens, or incites others to threaten, physical harm towards a person or group or their property, the matter will go before the courts," said Premier Peter Beattie.

"The maximum fine for an individual convicted of serious racial or religious vilification will be more than $5,000 or six months' imprisonment, or in the case of a corporation, a fine of more than $26,000.

"We need to send a strong message that such behaviour is unacceptable in Queensland because multiculturalism is a great strength.

"The legislation will target all public forms of racial and religious hatred, including speech, writing, displays, signs, gestures, graffiti and electronic forms of communication.

"The intention is not to deny people freedom of speech or stifle debate on issues of public importance, but to prohibit acts that undermine the social stability and cohesion of our community."

Attorney-General and Justice Minister Rod Welford said the Bill strengthened existing protections against racial and religious vilification with provisions for both civil remedies and criminal sanctions.

In the first instance complaints of vilification will be dealt with by the Anti-Discrimination Commission where the emphasis, as with existing legislation, will be on conciliation.

Mr Welford said a number of safeguards would be put in place to strike a balance between an individual's right to freedom of speech and the right to live free from racial and religious vilification.

"The laws only apply to public, not private, acts and there will be a number of exceptions to the general rule based on traditional defences that apply in defamation law," he said.

Queensland's legislation is modelled on New South Wales laws - the longest established such laws in Australia.
<table>
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<tr>
<th>Title</th>
<th>Disciples of hate (Editorial)</th>
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<tr>
<td>Source</td>
<td>SUNDAY MAIL</td>
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THERE is no place in Queensland society for shadowy groups that preach messages of racial hatred. They are nothing more than refuges for sick and cowardly minds. The Ku Klux Klan, or its scruffy homegrown imitators, and such bodies as the so-called World Church of the Creator offer nothing but hatred, violence and mischief. They prey upon fear, anger and prejudice but give absolutely nothing positive in return. But, because of them, and similar hateful groups, the Queensland Government is forced to rush through legislation requiring us all to behave in a manner that should be dictated by nothing more than good manners and old-fashioned common sense.

The Queensland legislation is relatively moderate and, for better or worse, does not address such issues as vilification over sexuality, gender or disability. It is, says Premier Peter Beattie, a "commitment to multiculturalism that does not deal with those other principles". It is also a commitment to a "fair go" for all Queenslanders. Susan Booth, of the Anti-Discrimination Commission, says the legislation will not make it an offence to tell a racist joke.

However, the truth is that all such legislation to moderate behaviour is open to potential abuse by vexatious or petty litigants. The challenge will be to frame and to administer legislation that gives effective controls over incitement to hatred or violence without curtailing reasonable freedom of speech.

There is no escaping the fact that anti-vilification legislation has the potential to intrude on all our lives. However, those who are affronted by the new laws should direct their anger at the purveyors of hate and the disciples of violence who openly abuse our hard-won and cherished freedoms of expression.
Leonie Fleiszig was shocked when she clicked open an e-mail at the Makor Jewish Community Library in Caulfield one morning. "Preserve your f----- Jewishness elsewhere," began a stream of obscene and racist abuse. Ms Fleiszig recovered quickly.

"I'm Jewish, we take it in our stride," she says.

But the incident was one that cyber-hate experts warn is becoming more common in Australia. Several weeks ago, a group of Jewish young adults in Sydney received an e-mail that finished with, "you do not deserve to breathe the same air as the rest of us."

The national vice-president of the Executive Council of Australian Jewry, Jeremy Jones, says that two years ago several Holocaust survivors posted notices on the Internet seeking to contact relatives and others who might have information about their family histories.

They were horrified when the replies included "mocking Holocaust denials" and veiled threats.

The Internet's cheap and accessible delivery system has a dark side, and its shadow is growing.

The number of sites promoting hate has more than doubled to 3000 in the past year, according to the Nazi-hunting organisation the Simon Wiesenthal Centre.

Cyber-hate experts say the World-Wide Web has breathed life into previously isolated and disparate far-right and extremist groups.

White supremacists and neo-Nazis around the world today can easily find like-minded people, discuss tactics by e-mail, have real-time, members-only access to chatrooms, and feature extremist literature on their websites.

A racist in the backblocks of rural Australia now can feel as if he or she is a soldier in a global white supremacist movement at the click of a mouse.

Danny Ben-Moshe, of the B'nai B'rith Anti-Defamation Commission, describes the phenomenon as the globalisation of hate.

Within a broader debate about freedom of speech, pressure is increasing from groups such as the Anti-Defamation Commission for Australia to take a tougher stand against racism on the Net. Similar pressure led to a French judge this week ordering Internet company Yahoo! to stop French users from accessing its online Nazi memorabilia auction sites. French laws prohibit the sale or display of racist symbols and Yahoo! was given three months to block such access or face daily fines of $25,000. Internet experts say the landmark ruling could be difficult to implement and may be a setback for online international commerce.

In June, the Australian Jewish News reported that 66 Nazi memorabilia
items being auctioned on the Yahoo! site originated in Australia or New Zealand. While the auctions and neo-Nazi Internet sites are repugnant and upsetting to many people, David Goldman, of the United-States group HateWatch, is more concerned about the use of the Internet to attack individuals and other sites. In the US - and increasingly in Australia, according to Mr Goldman - hate groups have posted on the Internet photographs of people they do not like, their addresses, phone numbers, car registrations, and neighbors' details. Some of these are linked to bomb-making or gun-shop sites. Other intimidatory tactics have included signing up people to 2000 or 3000 sex or paedophilia sites, posting false information using real names to discussion groups and e-mailing individuals with abusive messages.

Mr Goldman says Hammerskin Nation in the US is a violent, well-organised racist skinhead group whose Internet site provided members with hacking software that could crash servers. The group's Australian chapter is called the Southern Cross Hammerskins. Its site, until recently, said it promoted "white pride, white loyalty, white heritage and white power". Like many hate sites, it has been shut down and has changed addresses several times. At least one local Internet service provider removed it several years ago after learning of its content. Most recently, the site has operated from a New Jersey, US, address, but appears to have been taken offline in past weeks. However, Hammerskin Nation now has its own server based in Britain that will be able to host the websites of its members in Australia and elsewhere.

Blood and Honor, part of another international skinhead group that has been banned in Germany, also has a local website. It targets a young audience through "white power" music. The so-called "independent voice of rock against communism" site has had about 11,500 visitors.

The Anti-Defamation Commission's Mr Ben-Moshe says Australia has several dozen Internet sites that concern it, some of which use overseas Internet service providers to circumvent Australian laws and regulations. There are between 500 and 1000 Internet service providers in Australia. Several internationally recognised racist groups have websites and links to associated Australian groups. They include the Ku Klux Klan and the World Church of the Creator, whose member Benjamin Smith went on a shooting rampage in the US last year.

Other sites that concern cyber-watch groups are operated by National Action, Bible Believers, the League of Rights, various Christian Identity groups, Lock, Stock and Barrel, and the Citizens Electoral Council. The Australian National News of the Day (@notd) site, run by Pauline Hanson's former webmaster Scott Balson, is targeted by Mr Ben-Moshe for running articles by US National Alliance leader William Pierce, "probably the most serious and dangerous ideologue in the white-supremacist world".

The site was moved overseas to avoid being restricted by new Internet regulations introduced at the start of the year. Mr Balson told Insight he made the move because he considered the new regulations to be blatant censorship by the Federal Government. He says he stopped running the site in March because it was too time-consuming.
Over its four years of documenting the views of people "from the Right side of politics", it had received more than four million visits and had not attracted complaints about offensive material other than those promoted by the Anti-Defamation Commission, he said. Mr Balson believes he has been singled out because he is a critic of the Anti-Defamation Commission’s methods.

The right to place Holocaust-denial and racist material on the Internet will be tested in the Federal Court in a case involving Dr Fredrick Toben’s Adelaide Institute. The Human Rights and Equal Opportunity Commission found in October that the institute had breached the Racial Discrimination Act by publishing material on its website that was “vilifactory, bullying, insulting and offensive” to Jewish people. It ordered Dr Toben to remove the contents and apologise to members of the Jewish community.

The Federal Court action was brought by Mr Jones and the Executive Council of Australian Jewry after Dr Toben refused to comply with the human rights commission’s determination. If the Federal Court confirms the commission’s findings it is likely that other sites will be brought before the human rights commission. A date has not yet been set for the matter. Dr Toben - whose Adelaide Institute site denies the existence of the Holocaust - justifies his site on freedom of speech grounds.

"We had the communists being hunted down in the '50s by Menzies and now we are being hunted down by this group," Dr Toben says. "Dissent is not permitted any more”.

Mr Balson says the number of extremist sites is small and that the Internet should be let alone. People should be able to decide what they want to read: "It is the only platform left today where people can discuss views and opinions openly in a highly controlled mainstream media. This open discussion is very healthy”.

But Mr Ben-Moshe argues that there is no absolute freedom of speech. Libel, anti-discrimination and other laws curbed the right of people to say certain things.

As well as racial hate laws, Internet service providers are subject to Office of Film and Literature classifications administered by the Australian Broadcasting Authority and a voluntary code of practice under the Internet Industry Association.

Cyber-watch groups say these deal with pornographic rather than hate material. Mr Ben-Moshe says the Anti-Defamation Commission recently alerted the ABA to racist material and it had replied that it did not fall under its guidelines. The manager of online content regulation with the ABA, Stephen Nugent, confirmed that the film classifications used were more concerned with child pornography and explicit sexual material than hate speech.

Mr Ben-Moshe says some service providers had removed offensive material when it was brought to their attention but others refused, saying it was not illegal. He favored a licensing system for providers. But Internet Industry Association chairman Patrick Fair says:

"I think we’re regulated enough, thanks very much".
He believes most providers do not want offensive material on sites they host and remove them once they are told about them. The global nature of the Internet, argues David Goldman, makes national responses lame. He is not convinced that censorship is the answer and would like to see a multi-pronged international approach, beginning with discussions between law enforcement, civil rights groups, media, and legislators.
It is more important to answer racist propaganda than to censor it, Katharine Gelber writes. The problem highlighted by racist propaganda on the internet or in traditional media is not one of figuring out clever ways to prevent these bigots' views from being heard. Rather, it is the more complex question of ensuring that the harm occasioned by such propaganda is responded to.

No matter how attractive censorship may sound, it does nothing to remove such views from society (and in fact a strong argument exists that it grants them greater credence than they would otherwise enjoy). Neither does censorship address those who are harmed by the ideas of racist extremists the members of minority groups who are bashed or persecuted as a result.

Like censorship, other perpetrator-focused remedies may be misdirected. Two media outlets in NSW have been found to be in breach of racial vilification laws, which provide for apologies, retractions, the implementation of anti-discrimination policies or fines where someone has made comments that are capable of inciting hatred, serious contempt or severe ridicule of a person on the grounds of their race.

The Australian Financial Review has been criticised by the Administrative Decisions Tribunal for publishing an article that stereotyped Palestinians as untrustworthy, vicious thugs. In a separate case, Alan Jones, who denies any racism, has been ordered by the tribunal to make an on-air apology after it found he had suggested Aborigines make bad tenants because they smell and look like skunks, are dishevelled and drunk.

The proliferation of such stereotypes is more than simply unhelpful in the process of imparting information. It is harmful to those people who come to be regarded in the broader community as vicious thugs or drunk skunks simply by virtue of their race. Racist stereotypes can contribute to a climate of justifying violence and discrimination against racially marginalised groups. However, the question of ameliorating the harm caused to marginalised communities is, by and large, unaddressed in policy responses that are geared towards the imposition of punitive measures against transgressors.

Whether on radio, in newspapers or on the internet, the central problem with racism remains its harm. This implies that the key and most difficult element needed in developing a policy response to racist hatred is the involvement of the communities subject to the racist and harmful ideas under question in responding to, contradicting and counteracting the effects of the hatred. The generation of a response is a much more comprehensive way of holding accountable those who espouse racist and bigoted views because it allows the rest of the community to be informed as to the divergent views available, then to make up their own minds which to believe.
The same holds for the internet, where racist sites proliferate. In calling for a restriction of internet usage, Alan Gold (Opinion, July 31) shows an overly confident reliance on the usefulness of censorship. A desire to limit the internet to acceptable uses may sound, at first hearing, like a refreshing call for sensibility as well as the application of standards to the internet that are already accepted in international and Australian law. But there are significant problems, such as enforcement.

With internet use expanding at an exponential rate and the ability to create a website residing in millions of people's armchairs, it is difficult to imagine how racist information may be secured against prying eyes. One of my university students told me that her family, which installed Net Nanny on their home computer, had to delete the program because it prevented their 14-year-old daughter from writing a school project on sexual harassment. Every time the student typed in the word sex, Net Nanny threatened to close down her entire computer. Artificial intelligence is not yet sufficiently developed to be able to differentiate between sites that use similar language but that put forward totally divergent views and opinions on an issue.

Whatever the technology, the basic principle remains. As abhorrent as many of us find racist propaganda, it is more important to answer it than to censor it. In answering it, communities are given the opportunity to point out its lack of base in fact, its reliance on stereotypes that do not reflect the diversity of the community it claims to portray, and the real and substantial harm caused by the propaganda. Answering it is not always easy, of course. Often those most subject to racist attacks are those least likely to feel empowered to respond. Hate speech often renders its victims unable to speak back. Perhaps, then, there is a role here for anti-discrimination policy. It may not be enough to exhort communities to answer back when they are prevented from doing so by real life events. Instead, policy could be designed to assist victimised communities to speak back. This kind of response-oriented approach would be a more comprehensive, realistic and enforceable policy approach to hate propaganda than censorship however well-intentioned. In this way, anti-discrimination law could be used to empower rather than to punish.

Katharine Gelber is a tutor in government and international relations at the University of Sydney.
Title  Making cyber hate a crime.
Source   Sydney Morning Herald
Date Issue  24/03/00

Publishers of Australian Web sites who incite racial hatred or encourage cyber-stalking may be liable for criminal prosecution. David Fraser, a senior lecturer in law at the University of Sydney, says the anti-vilification provisions in the NSW Anti-Discrimination Act allow for criminal prosecution for inciting racial hatred on the Web.

"If a Web site exists in Australia, there's no reason why traditional anti-vilification laws can't be applied," he says.

Section 20C of the act makes it "unlawful for a person, by a public act, to incite hatred towards, serious contempt for, or severe ridicule of, a person or group of persons on the ground of the race of the person or members of the group". Fraser says no legislative changes are required to extend the anti-vilification provisions to material published on the Internet. However, he believes the effectiveness of the legislation is in question:

"The legislation is not generally punitive ... it's more based on education and arbitration. And only when these things are exhausted is there any [criminal sanction]"].

Anyone convicted of racial vilification under Section 20D of the act faces up to six months in prison - but the Attorney-General must agree to any prosecution under that section. Fraser says some Australian hate groups are publishing on Web sites in the United States, where they can shelter behind constitutional guarantees of free speech which are much stronger than in Australia. Cyber-stalkers may also be liable for prosecution under the NSW Crimes Act, according to Fraser, who says section 562AB of that act - designed for domestic violence cases - may be extended to allow prosecution for cyber-stalking. He says there is a possibility that if someone was being harassed in a personal campaign on a Web site, action could be taken under the stalking provisions. But he believes it would be difficult to mount such a prosecution if the offending Web site was based outside NSW.

Fraser also sees the possibility of prosecutions of Internet service providers whose servers carry race-hate sites. "The idea is to make the provider responsible for the hate speech that appears on their service and force them to shut down their relationship with the customer," he says.
NEWS that the Beattie Government has put the issue of introducing tougher racial vilification laws back on the political agenda is music to Karen Walters's ears. Walters is Queensland's Anti-Discrimination Commissioner and since her appointment 2-1/2 years ago, she has lobbied loudly for such laws to be introduced - but with little success. But despite this, she has lost neither her voice, nor her optimistic outlook, on the issue.

"A whole series of administrations have dragged the chain, but there's no two ways about it, these laws are needed," she says. "The comments of the Premier, Peter Beattie, and Matt Foley, the Attorney-General, have given me renewed optimism. "It is heartening to see that they have declared their hand and indicated they are keen to follow through."

Foley said yesterday that after discussions with Beattie he had asked his department to "look at options", and to draw up legislative proposals for anti-race hate laws to put to the Government "in a couple of months".

"The law should be there to deal with the social evils of the day," he said. "The Anti-Discrimination Commissioner has raised this issue for some time and I think it is incumbent on any responsible government to have a look at it." He said no single event had prompted the Government's move. It was more a reaction to a perceived general upsurge of racial abuse and intolerance that has accompanied the rise of One Nation in the past few years.

Some, however, may consider it timely after last week's claim that the white supremacist organisation, the Ku Klux Klan, has established a branch in Queensland. Also, there have been reports from several schools on Brisbane's southside of racist vilification of students from Serbian families because of the war in Yugoslavia.

But the Opposition claims the Government is "over-reacting" and likely to "raise more racial issues than it solves" with any new legislation. Opposition justice spokesman Lawrence Springborg says existing provisions under the state's Criminal Code and Section 126 of the Anti-Discrimination Act, coupled with federal race vilification laws, are adequate to deal with race hatred.

"We live in probably one of the most racially tolerant societies in the world," he says. "And I'm not convinced that there are such broad issues out there of racial vilification or hatred that really require specific state legislation.

"There has been no evidence produced by the Attorney-General. This idea is, frankly, akin to using a sledgehammer to crack a peanut." Springborg says the "sledgehammer" argument was one which prompted the Coalition to back away from introducing new racial vilification laws when it was in power.

In 1997, Coalition attorney-general Denver Beanland proposed sweeping reforms which would specifically punish racists responsible for threats or graffiti which targeted ethnic communities. The proposals included the
provision of up to seven years' jail for those found guilty of "writings or representations" which "threaten, offend or abuse persons of any identifiable racial identity, religious affiliation or ethnic identity". They also recommended jailing people for up to six months for speaking out or distributing material which threatened to harm people of identifiable groups or their property. The proposed reforms were welcomed by Walters and by various community groups, including the Ethnic Communities Council, but denounced by civil libertarians as "unacceptable interference" to freedom of speech.

When they went before Cabinet in May last year, they were rejected. Ethnic groups claimed the backdown was associated with Coalition moves to allocate preferences to One Nation ahead of the ALP in the state election. Foley has echoed that line, saying it's clear from Springborg's "hypocritical" comments that the Coalition's justice policy is still hostage to One Nation. He also dismissed the notion that the existing Criminal Code and Anti-Discrimination Act have the teeth to specifically tackle race hatred. "Section 126 of the Anti-Discrimination Act is so tightly circumscribed that it is not effective," he says. Walters agrees. "It is really cumbersome and difficult to enforce," she says. "Basically it prohibits any person from advocating racial or religious hatred by inciting a breach of the Act.

But it has limitations. "For example, it won't cover anti-Semitic publications unless those publications go that one step further and say, 'Therefore don't employ Jews, or don't do any business with non-whites'." She says that since the Anti-Discrimination Act was introduced in Queensland in 1991, there has never been a complaint which fell within the jurisdiction of Section 126.

"That's where the gap is," she says. "That section can't address vilifying acts of racist hatred that attack, and are repugnant and offensive to the group of people that is being singled out.

"That is why I have been lobbying successive state governments." She says while it is not possible to quantify how many acts of vilification in Queensland have not been investigated because of limitations in existing laws, an examination of interstate complaints supports the case for new legislation here.

In the six years since New South Wales introduced anti-vilification laws, its anti-discrimination board had received more than 500 complaints, while in the federal sphere, more than 300 complaints had been received by the Human Rights and Equal Opportunities Commission in the past two years. Walters argues that the absence of an office of the HREOC in Queensland is further reason to introduce state laws.

"Anyone across the state wanting to lodge a complaint under federal laws has to go to the Sydney head office," she says. "We have a responsibility to acknowledge that that poses major impracticalities for people trying to assert human rights in this state." She rejects the civil liberties argument that vilification laws are an unjustifiable constraint to free speech.

"Freedom of speech has never been an absolute right," she says. "It has always been subject to constraints in defamation laws, in privacy laws at the federal level.
"All racial vilification laws will do is put another limit, another parameter around it (freedom of speech)."

Although Foley has not indicated whether any new vilification laws would include criminal penalties as well as civil sanctions, Walters supports both. And she disputes suggestions that the push for new laws is simply a response to political correctness and contradictory to the notion that we are a tolerant democracy. "I think racial vilification laws are very consistent with us being a tolerant community," she says. "This is very reasonable legislation. It's not political correctness gone mad, we're not rabid zealots out here enforcing the law like thought police.

"What laws do is basically put on record that as a society we embrace and celebrate the fundamental principles of diversity and multiculturalism, but there is an upper limit of what we will allow as reasonable commentary about people purely on the basis of their racial or ethnic origin."
Queensland is founded on fundamental beliefs which make us a free society, committed to democracy and equality before the law. The State Government’s proposal to strengthen racial hatred laws results in a conflict between free speech and our commitment to tolerance and fairness. The laws’ collective aim is to safeguard racial tolerance by prohibiting speech which incites racial hatred and violence. Free speech is fundamental to a free society.

But it is not absolute, and we accept there are restraints to protect individuals and the public in laws such as those concerned with defamation and the ban on tobacco advertising. Other laws insist that manufacturers do not make false and misleading claims about products. If false claims are made, then the producer can face both fines from regulatory authorities such as the Australian Competition and Consumer Commission and court action from consumers.

Yet, when it comes to laws which aim to protect both individuals and the public from the consequences of racial vilification, we seem to feel less certain that the restriction on free speech is justified. Maybe this is because the laws are wrongly thought to be a form of political correctness which will stop proper debate.

Racial hatred laws have been in place in all states and federally for many years. Generally, they do not impose criminal penalties but rather allow a person who has been the victim of racial abuse to take a complaint to the Human Rights Commission. Criminal penalties relate only to cases where there is an incitement to violence against an individual or a group because of their race. The laws have not stopped people telling Irish jokes or debating what the proper level of immigration should be or whether programmes to target Aboriginal disadvantage are working or not. Not one radio talkback host has been convicted nor has public debate been restricted.

But what the laws have done is provide many hundreds of individuals with a remedy when they have been taunted at work or denied a fair go for no other reason than the colour of their skin or the sound of their accent. It is hard for a law to change someone’s attitude. There will always be racists whatever the law says. But a law can modify behaviour and can make a statement that as a society we believe in tolerance and fairness and will not stand for racial hatred.

Michael Lavarch is special counsel to law firm Dunhill Madden Butler and was Federal Attorney-General in the Keating government.
Does Premier Peter Beattie want us to think what a fine anti-racist fellow he is?. Or does he want to advance the tolerance which is such an important characteristic of Australian society?. The two goals are not necessarily compatible. In the past few years there have been a number of moral panics about racism, accompanied by self-serving calls from predictable quarters for more government action to deal with the problem. These panics are invariably based on questionable grounds. Either a few nasty statements or incidents are blown out of all proportion, or the definition of racism is expanded to cover a range of new sins. In the wake of last week’s revelations about the Ku Klux Klan’s presence in the state, the Premier has stated that tougher anti-racial hatred laws are on the “drawing board”. But we already possess laws against threatening behaviour and incitement to violence. New or tougher legislation is not going to solve the problem. Indeed, if I were running an extremist organisation I would welcome such legislation as offering wonderful opportunities for publicity and martyrdom.

If we are really witnessing an increase in racial intolerance, as the Queensland Anti-Discrimination Commissioner and her comrades claim, perhaps it is time to ask whether the whole anti-racist apparatus that has grown up in the past couple of decades is counter-productive. We have been asking the wrong questions. What we should be considering is how post-World War II Australia managed to integrate millions of people from many backgrounds while retaining a degree of social and political harmony that is rare in today’s world. Or why the great majority of contemporary Australians acknowledge that great wrongs were inflicted on Aborigines in the past, and now wish to make amends. I would contend that this enviable level of tolerance is not the result of direct government laws or interventions.

Although it sticks in the craw of the anti-racist industry to admit it, this tolerance is very largely the product of the cultural values and institutions and the historical experiences of the mainstream Australian population. Beattie’s Government should forget about new legislation and give careful consideration to Hastie’s Law (named after the Englishman of their own political persuasion who formulated it): “In any society racism will increase in direct proportion to the number of people who are given well-paid and prestigious positions to discover it.”

Ron Brunton is an anthropologist with the Institute of Public Affairs on the Sunshine Coast.

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The Anti-Discrimination Amendment Bill 2001

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APPENDIX B

Title Political correctness threatens to become law.
Author George Pell
Source AGE
Date Issue 16/03/01

There should be one law for everyone on vilification. Christians would be ill-advised to support legislation that could be used to prevent or inhibit Christian teaching, while leaving racists and the enemies of religion, who are artists or academics, exempt and free to vilify. It is not clear why Victoria needs an additional broad-brush bill on racial and religious vilification. There has been no recent upsurge of strife. What social evils have provoked this proposed legislation?

Free speech is for us an ancient right. It is essential for a genuine democracy, and Christians need to be free to preach all of the gospel, including those messages some find offensive for example on forgiveness, social justice, marriage and sexuality, life issues. Political correctness cannot and should not be legislated. It is probably true that large Christian churches are better able to protect themselves than small minority groups, racial or religious, even if during the past five years there has been more criticism of Catholics than of all other religious groups combined. Not all this criticism was justified; some was calumny, more of it repetitious and disproportionate, but people should be free to criticise. When speech remains free, offence, insult and humiliation cannot be banished.

The truth can sometimes hurt, just as falsehood always does. But only in strictly limited situations should the law attempt to punish for hurt feelings. Unfortunately, at the moment there is an increasing divide in Australia between the haves and the have-nots, between the powerful and those who feel powerless and irrelevant. However, under our system of government, all citizens have the right to their say on important questions, not merely politicians, artists and academics. Citizens rightly resent any attempt to limit their free speech more than the free speech of their "betters". It is quite unfair that the deliberate conduct of the artist or politician is exempted, but the clumsy contribution of the less-educated is made criminal.

If any serious movement for racial or religious persecution were to gain momentum, I have no doubt it would be led and nourished by certain misguided politicians, academics and artists. In 1992, the Kirner government proposed similar legislation. My predecessor, Archbishop Little, was very critical of the proposal. He said such legislation might drive the issue of racial and religious vilification underground, leave it untried by discussion and "aid the cause of the proponents of such vilification by making martyrs of them". In 1994, the Keating government introduced a racial hatred bill. On May 31, 1994, The Age said in its editorial:

"For all their diversity, the scores of ethnic groups who make up this country managed to live in relative harmony. Why then muddy the waters with a
racial vilification bill that, however well-intentioned, is not needed, and which may bring more problems than it solves?"

The situation in Australia has now moved on. The Commonwealth and some states have legislation against racial vilification, which, expressly or otherwise, covers religious vilification. It is alleged there is a gap in Victorian law, especially as it touches on hate-mail over the Internet, and where the vilification does not cause persons to fear for their safety. The model bill as proposed has something of the ambit claim about it. Its scope is broader than the New South Wales legislation. Criminal law always includes consideration of the intention of the agent, but this model proposes criminal sanctions where an intent to vilify is not required. No wonder one government legal adviser conceded this was "a blunt instrument".

The threshold permitting police intervention has not been determined on the six levels of vilification, which range from deliberately inciting hatred and threatening physical harm through to seriously offending, insulting or humiliating a person or persons. There is provision for a "representative complainant" to assist those unwilling to complain themselves. There should be one law for all, except for the ancient parliamentary privilege for speech inside our parliaments.

The law against vilification should be restricted to penalties for inciting racial and religious hatred and threatening physical harm to persons or property. Inciting hatred should be no more acceptable in the art world or academic discussion than it would be in a pulpit. Would Eminem's lyrics be artistically exempt? He sings of killing women, nuns and gays, carving them up like cantaloupes. His turgid incoherence is a return to barbarism, grossly offensive and pornographic, with not a flicker of intelligent vulgarity or salacious charm. He is at the top of our lists, with seven million copies of his CD being sold in the US. He clearly falls within any definition of vilification. The coarsening of sensibilities among his fans is already profound. He should not be exempt from legal challenge.

This model bill is well intentioned, but, as presently written, it will do more harm than good, inhibiting discussion and encouraging vexatious complainants. But there is scope for tight, clear legislation to curb the worst expressions of hate wherever they might be found including the entertainment industry.

George Pell is the Catholic Archbishop of Melbourne.
'Sticks and stones may break my bones but names will never hurt me'. So runs a piece of misguided schoolyard wisdom. Of course, the opposite is true. Words are powerful weapons; broken bones heal. Psychological abuse can scar for life. Name-calling is designed to hurt; it's intended to cut and bruise more deeply than any stone or stick. Many people have been brought to tears and bullied into submission through fear of being ridiculed or made to feel different. This is especially the experience of migrants - suffering in silence (mostly) as their accent or their food or their name or their place of birth becomes the source of fun in the brew-room. More obviously, and more tragically, the experience is far worse if you happen to have skin that is not a lighter shade of pink.

Herein lies the destructive power of vilification; using a person's natural identity as the raw material for abuse. Taking what makes someone different and using it against them. Coercion and exclusion of this kind takes many forms, but vilification on the basis of race, religion, gender etc is extremely destructive for individuals and society alike. It certainly takes place in the schoolyard, but it is evident everywhere. Ask the AFL - it responded to what was taking place on the field of play. Name-calling does hurt, and the racial and religious tolerance bill is a serious attempt by the Bracks Government to help eradicate such vilification in Victoria.

Unbelievably, some groups, including some in the Christian community, have raised the fear that this legislation cuts across the right to freely proclaim one's religion. It does nothing of the sort. We need to remember that the right to free speech does not include the right to vilify or encourage hatred of others based on their race or religion. "Rights" are always held in balance and tension. Freedom always carries with it responsibility. The proposed legislation has sparked a well-orchestrated fear campaign by groups that want the legislation quashed. In all of this, the voices of victims of racial and religious vilification have largely been ignored and the consequences of being vilified played down.

The legislation is clearly aimed at those who believe that expressing hatred and intimidating others on the basis of race or religion is acceptable. Serious incidents of racial and religious hatred do happen in Australia and in Victoria. However, news of these incidents is not well publicised and many incidents go unreported, often because victims feel powerless. In late 1996, a group of skinheads stood outside a Kew synagogue handing out leaflets that vilified Jewish people. One of the passersby was a survivor of the Holocaust. When the police were called, they declined to attend, saying it was not illegal to hand out bits of paper. I know of Aboriginal members of the Uniting Church being subjected to vilification, including racial hate mail. As recently as last year, the Human Rights and Equal Opportunity Commission found that a woman in Tasmania had disseminated material that was bound to "offend,
insult, humiliate and intimidate" Jewish people. The commission ordered her to apologise and to stop handing out the leaflets. She refused to comply.

I mention the above in response to calls for the State Government to limit the proposed legislation only to conciliation. Conciliation will not work for people whose way of seeing and interpreting the world is through racial or religious hatred. Only criminal sanctions will allow victims recourse against such people. There are many groups propagating racial or religious hatred on the basis of religious belief. The expression of religious belief must not become a shield for racial or religious hatred. Leaders of religious communities must be aware that religion takes its place in the context of a complex, balanced and harmonious society. Therefore, religious communities committed to building the preconditions for peace would condemn racial or religious vilification, not find reasons to make it possible.

Reverend David Pargeter is director of social justice and world mission for the Uniting Church in Australia, Synod of Victoria.
What is in the racial and religious vilification bill? Under the bill it would become unlawful to vilify a person or group on the basis of their race or religion. To achieve this the proposed legislation defines the sort of conduct that would constitute vilification. Basically, any action that was reasonably likely to severely offend, insult, humiliate or intimidate a person or group on the grounds of race or religion would be outlawed. It could include speeches, articles, the wearing of symbols or uniforms, graffiti, telephone calls or internet messages.

What sort of penalties would it impose? People and groups who vilify others could be subject to a combination of civil and criminal action, with fines of up to $6000 and imprisonment for up to six months.

What prompted the bill? The Labor Party went to the last state election with a policy to introduce racial and religious vilification laws because of a perceived need to bring Victoria into line with most other states and the Commonwealth, which already have such laws. The only other jurisdiction without racial vilification provisions is the Northern Territory.

What stage is it at? The government released proposed legislation for public comment in December and community consultations were completed last month. The government is now drafting its final legislation to go before this session of parliament. It will most likely be introduced in late May.

So is this the end of the Irish joke? The government says it is not its intention to stop people telling jokes or making impolite remarks. A stand-up comedian who tells a race-based joke might offend some people, but as long as it was told in good faith the comedian could be exempt from prosecution. If, however, the joke was told as part of a performance intended to humiliate, intimidate or abuse a person or group on racial or religious grounds, it could contravene the law. Would a performance of Corpus Christi - which portrayed Jesus as a gay and outraged many Christians - go ahead? It’s hard to say.

The proposed laws provide exemptions for artistic performances as long as they are done reasonably and in good faith. But it would be open to individuals or organisations to lodge complaints with the Equal Opportunity Commission, and the play’s producers would be required make a case as to why their work should be exempt from the law.

What’s the argument in favor? Everybody has a right to participate in the community and live without fear of abuse because of their background or beliefs. The argument against? Among the concerns raised by opponents of the proposed bill is that it would impinge on freedom of speech, could be used to threaten or intimidate people, is unnecessary and could prevent open debate of religious issues.

So who’s for it?

Victorian Government
Victorian Ethnic Communities Council
B’nai B’rith Anti-Defamation Commission
Islamic Council of Victoria
Uniting Church
Assembly of God
Churches of Christ
Catholic Education Office, although Archbishop George Pell has signalled opposition
Against?
Liberty Victoria
Returned Services League
Mildura MP Russell Savate
Compiled by ADRIAN ROLLINS
Title Changes planned on state slur law
Author Adrian Rollins
Source AGE
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The Victorian Government will make significant changes to its proposed racial and religious vilification laws to meet the concerns of church and legal groups. But it signalled its determination to proceed with the controversial bill despite strong reservations held by two key independent MPs and the opposition. The Minister Assisting the Premier on Multicultural Affairs, John Pandazopoulos, yesterday outlined changes being considered by the government before the proposed bill is introduced in parliament.

He said the key changes were:

An extension of exemptions for academic, scientific and artistic debate to include religious discussion

The addition of a preamble.

Tightening the definition of intent.

"There will be changes," Mr Pandazopoulos said. "We respect the feedback we have got from the community".

In December the government released its proposed legislation for comment. It has been surprised that most submissions have focused on the issue of religious vilification rather than racial issues. Mr Pandazopoulos said many religious leaders and groups had raised concerns that public religious debates could be prohibited under the proposed measures. The minister said many submissions had also suggested a preamble to spell out the purpose of the legislation and emphasise the need to conciliate and resolve issues amicably rather than resorting to legal sanctions. There had been "reasonable" debate about whether the definition of intent in the area of criminal vilification was too broad and would "catch more than it was intended to do".

Mr Pandazopoulos said discussions would be held with church representatives to draw up changes to the proposed legislation before consultations with the three independent MPs and the opposition. But both Gippsland West MP Susan Davies and fellow independent Craig Ingram said yesterday they would be seeking talks with the government soon to discuss major concerns with the proposed bill. Ms Davies said she was concerned about provisions allowing a third party to lodge a complaint on someone’s behalf and the possibility that the legislation could promote division rather than reduce it.

Mr Ingram, the member for Gippsland East, said he did not support the bill in its present form. He was particularly concerned about provisions regarding the need to prove intent. Prospects of the bill becoming law are uncertain; the opposition has signalled serious concerns about it in its current form. Opposition Leader Denis Napthine said that, in principle, the Liberal Party supported racial and religious vilification legislation.

"The current draft bill has got some serious flaws in it and we have to get the legislation right," he said. Dr Napthine criticised the handling of public debate on the bill by Mr Pandazopoulos, saying he had acted "inappropriately"
by claiming the Liberal Party was opposed to such legislation. Mr Pandazopoulos said much of the debate had been ill-informed and had failed to recognise that the Commonwealth and almost every other state had similar laws. The minister said the only new provisions in the proposed law were to allow third parties to lodge complaints on behalf of another. Mr Pandazopoulos said the legislation would most likely be introduced in parliament in late May.
Racial and religious violence is relatively uncommon in Australia, but no society is immune from hatred and its consequences. Incidents of racially motivated hatred and violence humiliate, denigrate and destroy the quality of life for those Australians who are its victims. Nor is the problem insignificant - a survey conducted as part of the 1991 Inquiry into Racist Violence in Australia found that a majority of recent migrants to this country could cite at least some incidents of racist violence or harassment to which they had been subjected. The intimidation, which invariably targets the most vulnerable members of our community - racial and religious minorities - requires a sound and proportionate legislative response to protect all members of our society.

The purpose of the Victorian Government's proposed racial and religious tolerance bill is to give legal recourse to victims of the deliberate public encouragement of racial hatred. Similar legislation exists in all other Australian states and in many Commonwealth countries including Canada, Britain and New Zealand. With the introduction of each similar piece of legislation in Australia and abroad, there have been claims the initiative would suppress rights to free speech. In no case has this eventuated. Public debate has not been inhibited, nor has discussion of contentious social or political issues, in any of these jurisdictions.

Freedom of speech is a very important right, but there is no such thing as absolute freedom of speech. Laws regarding defamation, incitement, obscenity and false advertising already temper freedom of speech, and while these laws remain on the books it cannot be seriously argued that the protection of freedom of speech per se is in itself a reason to oppose racial hatred laws. Expressions that cause damage to the community have been outlawed because the right of the community to be protected from these abuses is stronger than the right to absolute freedom of speech.

Some argue that the only approach to combating racial hatred should be to educate the community on the importance of tolerance. Education is important, but the two strategies are not mutually exclusive. Further, the existence of legislation performs an educative function in signalling community attitudes towards vilifying behavior, in addition to filling a much needed gap in our legislative regime. For example, it is illegal to incite someone to commit a specific crime, but incitement to commit crimes against a racial or religious group would not necessarily be sufficiently specific to fall foul of the law, even if the commission of a crime immediately followed the incitement. Similarly, accosting someone and yelling that you were going to kill that person would be assault, but yelling that you would kill all Asians, Aboriginals, Arabs or Jews might not be.

Importantly, the proposed bill also provides for the introduction of criminal sanctions of up to six months' jail for the deliberate public promotion of ethnic or religious hatred. This is crucial if the law is to have the desired deterrent effect. Although some critics argue that proposed remedies are too harsh, by
international standards the Victorian legislation is moderate. The UK Race Relations Act holds that if a person publishes or distributes written matter, or uses language in a public place which is threatening, abusive or insulting against any racial group, the penalty can be as high as two years imprisonment.

In the Criminal Code of Canada, a penalty of up to five years’ imprisonment applies for those who advocate or promote genocide. It is important to note there are many exemptions in the Victorian legislation. These ensure reasonable behaviour such as private conduct, academic, artistic or scientific activity, fair and accurate reporting and debate in good faith about issues of public interest, are not inadvertently caught. Despite this, unfortunately some fringe elements in Victoria have sought to create community anxiety and fear about this legislation. One of the most vocal has been the Citizens Electoral Council, the Australian arm of the American political cult associated with convicted fraudster Lyndon LaRouche, which has made endless false claims about the proposed reforms.

Opposition has also come from members of some Christian churches, particularly in rural Victoria, who apparently have been misinformed that the bill’s provision against vilification on the grounds of religion will restrict their ability to preach their religious message or evangelise. They should be reassured that similar legislation has not had this effect anywhere else in the world, and there is nothing in the bill that would restrict preaching that, for instance, those not sharing one's beliefs will be damned in the afterlife.

The proposed legislation is an important and just initiative to protect decent Victorians from extremist bullies and racists. The principle of legislative protection from the worst excesses of racist incitement, harassment and vilification deserves the support of the Victorian community. It is wrong that Victoria, the most multicultural state, is the only state that has no such legislative regime. Britain and Canada have had their legislation in place since 1976 and 1970 respectively, and all other Australian states and the Commonwealth passed similar laws in the 1990s. Victoria has a responsibility to protect the human dignity and rights of all in our community. The bill deserves the support of all members of Parliament. Combating racism and the harm it causes requires more than lip service.

Dr Colin Rubenstein is executive director of the Australia/Israel & Jewish Affairs Council and a member of the Council for Multicultural Australia.
In the High Court in London on Friday, a newspaper editor demanded the right to freedom of speech, and the associated right to freedom of the press. It was news to most readers of The Guardian that Britain has laws that effectively deny these things, but it does. The Guardian and its sister paper, The Observer, have published editorials calling for abolition of the monarchy, and urging people to become involved in the campaign for a republic. Under Britain's Treason Felony Act, proclaimed in 1848, however, anyone who calls in print for the overthow of the monarchy can be imprisoned for life.

The Guardian's editor, Alan Trusbridge, trusting that this legislative relic of an undemocratic era would not be invoked, informed Britain's Attorney-General, Lord Williams, of the content of the paper's editorial on the eve of publication, and asked for an assurance that he and other Guardian journalists would not be prosecuted if they advocated constitutional change by peaceful means only. Lord Williams replied that no such assurance could be given, so Trusbridge and one of the paper's columnists, Polly Toynbee, have filed a claim against Williams, arguing that the Treason Felony Act violates the European Convention on Human Rights, which guarantees free speech.

Apart from the intrinsic interest of the case, the action taken by Trusbridge and Toynbee also illuminates a debate now taking place in Victoria, where the Bracks Government is proposing to outlaw racial or religious vilification. Critics of such legislation claim that it would violate the commonly accepted right of free speech, but a comparison with the British act that has tripped up Trusbridge and Toynbee reveals why such claims are specious. The Guardian journalists are confronted by a real curb on freedom of speech: a law that says that someone cannot assert and argue for a point of view, irrespective of the fact that, in doing so, they are not disturbing public order or infringing anyone else's rights. It is a law aimed at the suppression of debate and of opinions considered unacceptable by the powerful, and it is precisely the sort of law that the democratic reformers of earlier centuries objected to when they demanded freedom of speech.

But what, in contrast, does Victoria's anti-vilification bill seek to do? To prohibit the incitement of racial or religious hatred, and to prohibit behavior that insults, intimidates or humiliates a person or group, or which threatens the property of a person or group. Just what right of free speech is supposedly being infringed here? The right to say "Vote for John Howard because ..." or "Don't vote for John Howard because ..."? The right to argue that the Pope is wrong to condemn abortion? The right to say that Australia should or should not, negotiate a treaty with its indigenous peoples? None of these matters of contention, or any of the other religious, political and social questions that commonly divide people, is going to be removed from public debate by an anti-vilification law. On the contrary, a well-drafted anti-vilification law ought to encourage more people to participate in social and political debate, because it seeks to dispel the atmosphere of intimidation that sometimes stops people being heard.
What such laws would prohibit is the kind of racial taunt that caused Nicky Winmar, in a famous incident, to raise his St Kilda guernsey and point defiantly to the color of his skin. Winmar confronted those who were trying to intimidate him, but for every Winmar who is able to respond to intimidation in this way there are many who cannot. What anti-vilification laws seek to do is build a society where they do not have to live with humiliation. Yes, such an aim can never be completely achieved and, yes, such laws need careful drafting because the courts and tribunals that apply them need to be able to rule that a remark that carries an offensive meaning in some contexts does not necessarily do so in all. None of these things, however, makes anti-vilification laws uniquely difficult to devise and live with. Those who feel such laws are impossible to live with need to explain why the law should indulge their hatred of their fellow citizens.
Title: Proposed race laws allow a harmless joke
Author: Adrian Rollins
Source: AGE
Date Issue: 15/12/00

People whose standard joke begins with "Did you hear the one about ...?" need not fear. Premier Steve Bracks yesterday sought to assure joke-tellers and stand-up comedians that racial vilification laws proposed by his government were not aimed at preventing the sort of jokes that are standard fare in many pubs, restaurants and homes. Instead, the Premier said, the government wanted to send a message that racial and religious taunts deliberately aimed at causing hurt and harm would not be tolerated. He said that, despite living in Australia's most multicultural state, many Victorians still experienced racial and religious abuse and harassment.

"We can never be complacent about racism," he said. "The right of freedom of speech is not absolute. Words are not always harmless. They can be a serious attack on a victim's emotional and psychological health".

Aboriginal AFL footballer Jeff Farmer said he had suffered racial taunts "designed to really get at you, and sometimes they do". He called on Victorians to carefully consider the laws. Under the government proposals, certain behavior could incur fines of up to $6000 and six months' imprisonment for individuals or $30,000 for a corporation. Offending behavior was that which:

- Incited racial or religious hatred.
- Seriously offended, insulted or humiliated a person or group.
- Threatened or intimidated a person or group.
- Threatened the property of a person or group.

The proposed laws would exempt private conversations, performances including stand-up comedy, and academic and scientific debate. The minister assisting the Premier on multicultural affairs, John Pandazopoulos, said Victoria was the only Australian state without any provisions against racial vilification. Victorian Equal Opportunity Commissioner Di Sisely said the laws would enable people subject to racial attacks to seek some redress.

"Very often people are only looking for some acknowledgment of the hurt done and an apology," she said. Opposition Leader Denis Napthine said the proposed laws had to be balanced against the right to free speech. Dr Napthine said the opposition would consider the law in detail before deciding whether to support it.

The government has released the legislation and a discussion paper on the issue for public discussion until the end of February.