



VMIAC Submission in response to the Victorian Department of Justice and Community Safety's Consultation Paper 'Protecting more Victorians from vilification – Implementing the Anti-vilification Inquiry'

2 October 2023

## *Acknowledgement*

*VMIAC works across Victoria and acknowledges the Traditional Custodians of the lands.*

*We acknowledge Victoria's First Nations communities, cultures and pay our respects to Elders past, present and future.*

*We acknowledge that Aboriginal and Torres Strait Islanders are the Traditional Owners of the lands we call Australia. We acknowledge and respect Aboriginal and Torres Strait Islanders' cultural, spiritual, physical, and emotional connection with their land, waters, and communities.*

*We acknowledge that First Nations sovereignty over this land was never ceded.*

*VMIAC supports the Uluru Statement from the Heart.*

## Key Recommendations

**Recommendation 1:** That Government strengthen the anti-vilification provisions by amending them as follows:

- a. Changing the language of the legislation so that the test is whether the conduct or behaviour could reasonably incite hatred, serious contempt, revulsion or severe ridicule of someone in a protected category, instead of the current laws that require the conduct does incite hatred.
- b. Including in the legislation a provision relating to the harm that is caused to the person who is subject to vilification.

**Recommendation 2:** That Government adopt the recommendation from the Parliamentary Inquiry that anti-vilification legislation is streamlined with the Equal Opportunity Act 2010 (Vic) ('the EOA') to:

- a. Capitalise on the better-known protections of this Act to increase knowledge of anti-vilification laws, and
- b. Ensure the Victorian Equal Opportunity and Human Rights Commission ('VEOHRC') has all the powers set out under EOA so that it has increased capacity to respond to vilification.

**Recommendation 3:** Increase the protected attributes as proposed, to include:

- a. Disability
- b. Mental health
- c. The LGBTIQ community
- d. Women
- e. People living with HIV/AIDS
- f. People living with Hepatitis C

**Recommendation 4:** Government increase funding to VEOHRC to enable it to properly give effect to these protections.

**Recommendation 5:** Create a stand-alone category for Mental Health (as distinct from other forms of disability) to properly protect this group and recognise the different ways in which people with mental health issues are vulnerable to vilification.

**Recommendation 6:** Co-design the definitions for each protected category to ensure they are clear and relevant with relevant stakeholder groups.

**Recommendation 7:** Amend anti-vilification laws to:

- clarify people can make a complaint based on vilification that targets more than one attribute
- ensure sufficient recognition and recourse for the cumulative impacts of vilification based on multiple attributes is included.

## About VMIAC

The Victorian Mental Illness Awareness Council (VMIAC) is the peak body run by and for Victorian mental health consumers. By *mental health consumers* VMIAC means people with lived experience of mental health challenges, trauma, or emotional distress, who may have accessed mental health services or services with the purpose to support their mental and emotional wellbeing.

Our vision is a world where all consumers stand proud, live a life with their choices honoured and their rights upheld, and where these principles are embedded in all aspects of society.

VMIAC support extends state-wide. We provide individual and systemic advocacy to consumers with psychosocial disabilities, using a rights-based approach, to ensure their rights and freedoms are exercised.

VMIAC's program of work includes leading:

- systemic policy advocacy and campaigning
- consumer lived experience-led individual advocacy support
- consumer lived experience-led NDIS-related information and support
- training and consumer lived experience capacity development
- a Lived and Living Experience Workforce (LLEW) program
- consumer lived experience community engagement events and opportunities
- consumer lived experience-led research and research project support
- consumer lived experience secondary consultations
- operation of a state-wide consumer register

## VMIAC Response to Consultation questions

### 1. a. Do you have any views on the current protections for race and religion?

VMIAC believe that current religious and race-based protections are inadequate, with very few successful civil cases before the Victorian Civil and Administrative Tribunal and even fewer successful criminal prosecutions for serious vilification<sup>1</sup>. The legal “bar” is too high, meaning the protection for the community is too low<sup>2</sup>. At present, Victoria’s laws do not do enough to protect many marginalised communities from hate we have seen displayed in the Victorian community.

Vilification causes harm to those who are subjected to it, sometimes significant harm. VMIAC believe the law needs to increase focus on harm vilification causes in addition to its potential to incite hate and hate crime.

We support calls for the vilification law reform and the government’s in-principle commitment to meet those calls.

**Recommendation 1:** *That Government strengthen the anti-vilification provisions by amending them as follows:*

- c. *Changing the language of the legislation so that the test is whether the conduct or behaviour could reasonably incite hatred, serious contempt, revulsion or severe ridicule of someone in a protected category, instead of the current laws that require the conduct does incite hatred.*
- d. *Including in the legislation a provision relating to the harm that is caused to the person who is subject to vilification.*

**Recommendation 2:** *That Government adopt the recommendation from the Parliamentary Inquiry that anti-vilification legislation is streamlined with the Equal Opportunity Act 2010 (Vic) (‘the EOA’) to:*

- c. *Capitalise on the better-known protections of this Act to increase knowledge of anti-vilification laws, and*
- d. *Ensure that the Victorian Equal Opportunity and Human Rights Commission (‘VEOHRC’) has all the powers set out under EOA so that it has increased capacity to respond to vilification.*

### *b. Government proposes to extend current protections beyond race and religion. What do you think this should look like?*

VMIAC share concerns arising from the 2021 Parliamentary Inquiry into Victoria’s Anti-Vilification Frameworks (Parliamentary Inquiry) that significant reform was needed to protect our community from hate and violence<sup>3</sup>. The Racial and Religious Tolerance Act 2001 (Vic) (RRTA) only protects people against vilification based on race and religion. Other communities, including people with disabilities, lesbian, gay, bisexual people, trans and gender diverse

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<sup>1</sup> To see the mental health impacts of racial discrimination, see: Yin Paradies et al, ‘Racism as a Determinant of Health: A Systematic Review and Meta-Analysis’ (2015) 10(9) *PLoS one* e0138511; Angeline Ferdinand, Yin Paradies and Margaret Kelaher, *Mental Health Impacts of Racial Discrimination in Victorian Aboriginal Communities* (Deakin University, 2013).

<sup>2</sup> Legal and Social Issues Committee (n 2) 112–123.

<sup>3</sup> Legal and Social Issues Committee, *Inquiry into Anti-Vilification Protections* (Parliament of Victoria, 2021) <[https://www.parliament.vic.gov.au/images/stories/committees/SCLSI/Inquiry\\_into\\_Homelessness\\_in\\_Victoria/Report/LCLSIC\\_59-06\\_Homelessness\\_in\\_Vic\\_Final\\_report.pdf](https://www.parliament.vic.gov.au/images/stories/committees/SCLSI/Inquiry_into_Homelessness_in_Victoria/Report/LCLSIC_59-06_Homelessness_in_Vic_Final_report.pdf)>.

people, women, intersex people and people with a positive HIV/AIDS or Hepatitis C<sup>4</sup> status, are not protected.

Vilification, alongside discrimination, is a significant cause of mental distress within the community and has been identified as having particular impacts for specific cohorts. For instance, we welcome the Victorian Government's additional funding for the LGBTIQ+ specialist mental health care,<sup>5</sup> which gives effect to a recommendation under the Parliamentary Inquiry<sup>6</sup>. However, this investment will not be cost effective in environments whereby disproportionate levels of vilification towards particular groups continues to exacerbate threats of violence, high distress, and suicidality.

Compounding this, is that people experiencing distress as a consequence of vilification remain open to vilification based on their mental health status<sup>7</sup> as this is not a protected attribute under the Racial and Religious Tolerance Act<sup>8</sup>.

VMIAC also request a stand-alone mental health attribute under vilification law.

Attributes which cover people with disabilities, lesbian, gay, bisexual people<sup>9</sup>, trans and gender diverse people,<sup>10</sup> women, intersex people, and people with a positive HIV/AIDS<sup>11</sup> or Hepatitis C<sup>12</sup> status should also be pursued this year and within this budget cycle. Furthermore, we urge commensurate funding to be reinstated for the Victorian Equal Opportunity and Human Rights Commission to give effect to these protections<sup>13</sup>.

**Recommendation 3:** *Increase the protected attributes as proposed, to include:*

- a. *Disability*
- b. *Mental health*
- c. *The LGBTIQ community*
- d. *Women*
- e. *People living with HIV/AIDS*
- f. *People living with Hepatitis C*

**Recommendation 4:** *Government increase funding to VEOHRC to enable it to properly give effect to these protections.*

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<sup>4</sup> Such protections are provided in New South Wales: *Anti-Discrimination Act 1977* (NSW) s 49A(3).

<sup>5</sup> Mind Australia, 'Mental Health Support Bolstered for the LGBTIQ+ Community', *Mind Australia* (30 March 2023) <<https://www.mindaustralia.org.au/mental-health-support-bolstered-lgbtqi-community>>.

<sup>6</sup> Recommendation 27: Legal and Social Issues Committee (n 2).

<sup>7</sup> Simon Katterl, 'Words That Hurt: Why Mental Health Stigma Is Often Vilification and Requires Legal Protection' (2023) 0(0) *Alternative Law Journal* 1.

<sup>8</sup> It will be covered under a future attribute of disability, but this may not carry visibility for people experiencing mental health vilification.

<sup>9</sup> To see mental health stats as they relate to this community, see: LGBTIQ+ Health Australia, *Snapshot of Mental Health and Suicide Prevention Statistics for LGBTIQ+ People* (LGBTIQ+ Health Australia, October 2021).

<sup>10</sup> For evidence of the mental health inequities as they relate to this community, see: Ingrid Bretherton et al, 'The Health and Well-Being of Transgender Australians: A National Community Survey' (2021) 8(1) *LGBT health* 42.

<sup>11</sup> For stigma and discrimination as it impacts this community, see: John B Pryor and Glenn D Reeder, 'HIV-Related Stigma' [2011] *HIV/AIDS in the post-HAART era: Manifestations, treatment, and epidemiology* 790; Sean Slavin et al, *The HIV Stigma Audit : Community Report* (National Association of People Living with HIV/AIDS, 2013) <[https://napwha.org.au/files/napwa\\_stigma\\_audit\\_report.pdf](https://napwha.org.au/files/napwa_stigma_audit_report.pdf)>.

<sup>12</sup> Such protections are provided in New South Wales: *Anti-Discrimination Act 1977* (NSW) s 49A(3). To see the impacts of stigma on these communities, see: hepatitis Australia, *Real Lives and Reducing Hepatitis Related Stigma and Discrimination* (Submission on systemic barriers and stigma and discrimination experienced by people affected by hepatitis B or hepatitis C in accessing health services for hepatitis B, hepatitis C and/or HIV prevention, care or treatment., 2017) <<https://removingbarriers.ashm.org.au/wp-content/uploads/2017/01/Hepatitis-Australia-Stigma-and-Discrimination.pdf>>; Rui Tato Marinho and David Pires Barreira, 'Hepatitis C, Stigma and Cure' (2013) 19(40) *World Journal of Gastroenterology: WJG* 6703.

<sup>13</sup> Recommendation 19: Legal and Social Issues Committee (n 1).

## 2. Do you have any views on how the anti-vilification protections should apply to people with disability?

VMIAC note the proposed inclusion of mental health within the category of 'disability'. However, people with mental health issues or psychological distress often don't see themselves as having a disability. For those who do experience mental health issues and distress, it generally isn't static and may fluctuate over time. Mental health, by its nature, is not a consistent state – even in people considered mentally healthy. Regardless of where on the spectrum someone falls, this contributes to the challenges many people living with mental health issues face seeing their own experience as a 'disability', thereby highlighting the differences between 'mental health status' and 'disability' as categories.

If people fail to see mental health as a protected attribute because they don't see it as a 'disability', they may not be aware they are protected. In addition, those who breach the law may not realise mental health is a protected attribute, meaning the law will do little to deter vilification against those experiencing mental health challenges. By including it as a separate category in legislation, the experience of those with mental health issues and distress will be recognised and elevated.

Furthermore, in relation to vilification, the circumstances faced by people experiencing mental health issues are unique to those who experience other forms of disability. Mental health status can be both a target, and an impact of vilification. An example of the latter being anxiety and/or depression which is experienced by people who face racial vilification<sup>14</sup>. However, vilification cannot cause other disability. Furthermore, for those who experience vilification on the grounds of mental health status, their mental health may worsen. This is not the same for any other protected attribute and is something that should be acknowledged.

Stigma, prejudice, and discrimination, which create the environment for vilification, are also experienced in a unique way by people with mental health issues than by those with many other disabilities. The media often portrays people who experience mental health issues or distress as 'dangerous' in ways that can breach anti-vilification laws.

There is often greater stigma toward people who experience mental health issues than those who experience physical disabilities<sup>15</sup>. People who experience mental health challenges can be subject to prejudicial ideas they are dangerous, responsible for their struggles, or even subjected to anger or beliefs they do not deserve help<sup>16</sup>. Given the Racial and Religious Tolerance Act 2001 requires that conduct in question incites 'hatred or other relevant emotions' that are so strong or negative, violence might result<sup>17</sup>, it is not inconceivable that media or other public discourse could amount to vilification. Anger and fear are emotions that could conceivably lead to hostile or aggressive behaviour, including physical harm, and are often expressed towards people with mental health issues. This is not the same for most other types of disability, which unlike mental health issues, are not associated with dangerousness and criminality.

**Recommendation 5:** *Create a stand-alone category for Mental Health (as distinct from other forms of disability) to properly protect this group and recognise the different ways in which people with mental health issues are vulnerable to vilification.*

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<sup>14</sup> Victorian Equal Opportunity and Human Rights Commission, Submission no. 51 to Legislative Assembly Legal and Social Issues Committee, Parliament of Victoria, *Parliamentary Inquiry into Anti-Vilification Protections* (31 January 2020) 44.

<sup>15</sup> Patrick Corrigan and Amy Watson, 'Understanding the Impact of Stigma on People with Mental Illness' (2002) 1(1) *World Psychiatry* 16,

<sup>16</sup> *Ibid.*

<sup>17</sup> *Catch the Fire Ministries Inc v Islamic Council of Victoria Inc* [2006] VSCA 284, 67.

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

Mental health issues intersect with many of the other proposed protected attributes in quite different ways to disability. For example, women are twice as likely as men to experience mental health issues<sup>18</sup>, as are people from LGBTIQ+ communities<sup>19</sup>. Additionally, just as mental health intersects with other protected categories in a number of ways, it also intersects with disability. Experiencing discrimination and avoidance based on disability is associated with poorer mental health and significant distress<sup>20</sup>.

VMIAC believe greater protection can be provided to people who experience mental health issues and distress by differentiating this group from those experiencing disability within reforms by enabling:

- more community awareness of mental health as a specific protected attribute
- clarity of response to, and a greater understanding of the unique ways people with mental health issues can experience vilification
- better understanding of how mental health interacts with other protected attributes.
- acknowledgement of the cumulative impact of vilification targeting intersecting attributes (which was recommended by the Parliamentary Inquiry<sup>21</sup>).

**Recommendation 6:** *Co-design the definitions for each protected category to ensure they are clear and relevant with relevant stakeholder groups.*

**Recommendation 7:** *Amend anti-vilification laws to:*

- *clarify people can make a complaint based on vilification that targets more than one attribute*
- *ensure sufficient recognition and recourse for the cumulative impacts of vilification based on multiple attributes is included.*

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<sup>18</sup> Gender Equity Victoria, Submission to the Royal Commission into Victoria's Mental Health System (27 June 2019) 4.

<sup>19</sup> National LGBTI Alliance, *Snapshot of Mental Health and Suicide Prevention Statistics for LGBTI People* (Report, February 2020) 3.

<sup>20</sup> Jeromey Temple et al, 'Discrimination and avoidance due to disability in Australia: evidence from a National Cross Sectional Survey' (2018) 18 *BMC Public Health* 1347, 1348.

<sup>21</sup> Legislative Assembly Legal and Social Issues Committee, Parliament of Victoria, *Parliamentary Inquiry into Anti-Vilification Protections* (Final Report, 2 September 2021) 60.