

Racial and Religious Tolerance Act 2001

Act No. 47/2001

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Victoria

No. 47 of 2001

Racial and Religious Tolerance Act 2001[†]

[Assented to 27 June 2001]

Preamble

1. The Parliament recognises that freedom of expression is an essential component of a democratic society and that this freedom should be limited only to the extent that can be justified by an open and democratic society. The right of all citizens to participate equally in society is also an important value of a democratic society.
2. The people of Victoria come from diverse ethnic and Indigenous backgrounds and observe many different religious beliefs and practices. The majority of Victorians embrace the benefits provided by this cultural diversity and are proud that people of these diverse ethnic, Indigenous and religious backgrounds live together harmoniously in Victoria.

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3. However, some Victorians are vilified on the ground of their race or their religious belief or activity. Vilifying conduct is contrary to democratic values because of its effect on people of diverse ethnic, Indigenous and religious backgrounds. It diminishes their dignity, sense of self-worth and belonging to the community. It also reduces their ability to contribute to, or fully participate in, all social, political, economic and cultural aspects of society as equals, thus reducing the benefit that diversity brings to the community.
 4. It is therefore desirable that the Parliament enact law for the people of Victoria that supports racial and religious tolerance.

The Parliament of Victoria therefore enacts as follows:

PART 1—PRELIMINARY

1. *Purposes*

The purposes of this Act are—

- (a) to promote racial and religious tolerance by prohibiting certain conduct involving the vilification of persons on the ground of race or religious belief or activity;
- (b) to provide a means of redress for the victims of racial or religious vilification;
- (c) to make consequential amendments to the **Equal Opportunity Act 1995**.

2. *Commencement*

- (1) Subject to sub-section (2), this Act comes into operation on a day or days to be proclaimed.
- (2) If a provision referred to in sub-section (1) does not come into operation before 1 January 2002, it comes into operation on that day.

3. Definitions

In this Act—

"child" means a person under the age of 18 years;

"Commission" means the Equal Opportunity Commission;

"complaint" means a complaint lodged under section 20;

"detriment" includes humiliation and denigration;

"employee" has the same meaning as in the **Equal Opportunity Act 1995**;

"employer" has the same meaning as in the **Equal Opportunity Act 1995**;

"impairment" has the same meaning as in the **Equal Opportunity Act 1995**;

"parent" includes—

- (a) step-parent;
- (b) adoptive parent;
- (c) foster parent;
- (d) guardian;

"person"—

- (a) in relation to a natural person, means a person of any age; and
- (b) except in Part 4, includes an unincorporated association;

"race" includes—

- (a) colour;
 - (b) descent or ancestry;
 - (c) nationality or national origin;
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- (d) ethnicity or ethnic origin;
 - (e) if 2 or more distinct races are collectively referred to as a race—
 - (i) each of those distinct races;
 - (ii) that collective race;

"religious belief or activity" means—

- (a) holding or not holding a lawful religious belief or view;
- (b) engaging in, not engaging in or refusing to engage in a lawful religious activity;

"Tribunal" means Victorian Civil and Administrative Tribunal established by the **Victorian Civil and Administrative Tribunal Act 1998**.

4. Objects of Act

- (1) The objects of this Act are—
 - (a) to promote the full and equal participation of every person in a society that values freedom of expression and is an open and multicultural democracy;
 - (b) to maintain the right of all Victorians to engage in robust discussion of any matter of public interest or to engage in, or comment on, any form of artistic expression, discussion of religious issues or academic debate where such discussion, expression, debate or comment does not vilify or marginalise any person or class of persons;
 - (c) to promote conciliation and resolve tensions between persons who (as a result of their ignorance of the attributes of others and the effect that their conduct may have on others) vilify others on the ground of race or

religious belief or activity and those who are vilified.

- (2) It is the intention of the Parliament that the provisions of this Act are interpreted so as to further the objects set out in sub-section (1).

5. *Contravention does not create civil or criminal liability*

A contravention of this Act does not create any civil or criminal liability except to the extent expressly provided by this Act.

6. *Act binds the Crown*

This Act binds the Crown in right of Victoria and, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

PART 2—UNLAWFUL CONDUCT

Division 1—Unlawful Vilification

7. *Racial vilification unlawful*

- (1) A person must not, on the ground of the race of another person or class of persons, engage in conduct that incites hatred against, serious contempt for, or revulsion or severe ridicule of, that other person or class of persons.
- (2) For the purposes of sub-section (1), conduct—
 - (a) may be constituted by a single occasion or by a number of occasions over a period of time; and
 - (b) may occur in or outside Victoria.

Note: "**engage in conduct**" includes use of the internet or e-mail to publish or transmit statements or other material.

8. *Religious vilification unlawful*

- (1) A person must not, on the ground of the religious belief or activity of another person or class of persons, engage in conduct that incites hatred against, serious contempt for, or revulsion or severe ridicule of, that other person or class of persons.

Note: "**engage in conduct**" includes use of the internet or e-mail to publish or transmit statements or other material.

- (2) For the purposes of sub-section (1), conduct—
 - (a) may be constituted by a single occasion or by a number of occasions over a period of time; and
 - (b) may occur in or outside Victoria.

9. *Motive and dominant ground irrelevant*

- (1) In determining whether a person has contravened section 7 or 8, the person's motive in engaging in any conduct is irrelevant.
- (2) In determining whether a person has contravened section 7 or 8, it is irrelevant whether or not the race or religious belief or activity of another person or class of persons is the only or dominant ground for the conduct, so long as it is a substantial ground.

10. *Incorrect assumption as to race or religious belief or activity*

In determining whether a person has contravened section 7 or 8, it is irrelevant whether or not the person made an assumption about the race or religious belief or activity of another person or class of persons that was incorrect at the time that the contravention is alleged to have taken place.

11. *Exceptions—public conduct*

A person does not contravene section 7 or 8 if the person establishes that the person's conduct was engaged in reasonably and in good faith—

- (a) in the performance, exhibition or distribution of an artistic work; or
- (b) in the course of any statement, publication, discussion or debate made or held, or any other conduct engaged in, for—
 - (i) any genuine academic, artistic, religious or scientific purpose; or
 - (ii) any purpose that is in the public interest; or
- (c) in making or publishing a fair and accurate report of any event or matter of public interest.

12. *Exceptions—private conduct*

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- (1) A person does not contravene section 7 or 8 if the person establishes that the person engaged in the conduct in circumstances that may reasonably be taken to indicate that the parties to the conduct desire it to be heard or seen only by themselves.
- (2) Sub-section (1) does not apply in relation to conduct in any circumstances in which the parties to the conduct ought reasonably to expect that it may be heard or seen by someone else.

Division 2—Other Unlawful Conduct

13. *Prohibition of victimisation*

A person must not victimise another person.

14. *What is victimisation?*

- (1) A person victimises another person if the person subjects or threatens to subject the other person to any detriment because the other person, or a person associated (whether as a relative or otherwise) with the other person—
 - (a) has made a complaint against any person;
 - (b) has brought any other proceedings under this Act against any person;
 - (c) has given evidence or information, or produced a document, in connection with any proceedings under this Act;
 - (d) has attended a compulsory conference at the Tribunal;
 - (e) has otherwise done anything in accordance with this Act in relation to any person;
 - (f) has alleged that any person has contravened a provision of this Act, unless the allegation is false and was not made in good faith;

- (g) has refused to do anything that would contravene a provision of this Act—
or because the person believes that the other person or the associate has done or intends to do any of those things.
- (2) It is sufficient for sub-section (1)(f) that the allegation states the conduct that would constitute the contravention, without actually stating that this Act, or a provision of this Act, has been contravened.
- (3) In determining whether a person victimises another person it is irrelevant—
- (a) whether or not a factor in sub-section (1) is the only or dominant ground for the treatment or threatened treatment, so long as it is a substantial ground;
 - (b) whether the person acts alone or in association with any other person.

15. *Prohibition of authorising or assisting vilification or victimisation*

A person must not request, instruct, induce, encourage, authorise or assist another person to contravene a provision of this Part.

16. *Liability of person who authorises or assists*

If, as a result of a person doing any of the things specified in section 15, the other person contravenes a provision of this Part—

- (a) a complaint about the contravention may be lodged against either or both of those persons; and
 - (b) for the purposes of the complaint, both of them must be taken to have contravened the provision.
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17. *Vicarious liability of employers and principals*

If a person in the course of employment or while acting as an agent contravenes a provision of this Part, both the person and the employer or principal must be taken to have contravened the provision, and a complaint about the contravention may be lodged against either or both of them.

18. *Exception to vicarious liability*

An employer or principal is not vicariously liable for a contravention of a provision of this Part by an employee or agent if the employer or principal proves, on the balance of probabilities, that the employer or principal took reasonable precautions to prevent the employee or agent contravening this Part.

PART 3—COMPLAINTS AND CONCILIATION

19. Who may complain?

- (1) The following may complain to the Commission—
 - (a) a person who claims that another person has contravened a provision of Part 2 in relation to that person;
 - (b) if that person is unable to complain because of impairment—
 - (i) a person authorised by that person to act on his or her behalf; or
 - (ii) if that person is unable to authorise another person, any other person on his or her behalf;
 - (c) if that person is a child—
 - (i) the child; or
 - (ii) a parent of the child on the child's behalf; or
 - (iii) if the Commission is satisfied that the child or a parent of the child consents, any other person on the child's behalf.
 - (2) A person may complain on behalf of the person and another person or persons if the Commission is satisfied that—
 - (a) each person named in the complaint—
 - (i) is entitled to complain under subsection (1)(a); and
 - (ii) has consented to the complaint being made on the person's behalf; and
 - (b) the alleged contravention arises out of the same conduct.
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- (3) A representative body may complain to the Commission on behalf of a named person or persons if the Commission is satisfied that—
- (a) each person named in the complaint—
 - (i) is entitled to complain under sub-section (1)(a); and
 - (ii) has consented to the complaint being made by the body on the person's behalf; and
 - (b) the representative body has a sufficient interest in the complaint; and
 - (c) the alleged contravention arises out of the same conduct.
- (4) A representative body has sufficient interest in a complaint if the conduct that constitutes the alleged contravention is a matter of genuine concern to the body because of the way conduct of that nature adversely affects or has the potential adversely to affect the interests of the body or the interests or welfare of the persons it represents.
- (5) An authorisation under sub-section (1)(b)(i) may be given—
- (a) in writing; or
 - (b) in any other manner approved by the Commission.
- (6) Two or more people may complain jointly.
- (7) It is not necessary for the alleged contravention to relate exclusively to the complainant.
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20. How to complain

- (1) A person complains to the Commission by lodging a written complaint with the Commission by hand, fax, e-mail or other electronic communication or post.
- (2) A complaint must set out details of the alleged contravention.

21. Commission must assist complainants

The Commission must assist a complainant in formulating the complaint.

22. Complaints against unincorporated associations

- (1) A complaint about a contravention of a provision of Part 2 by an unincorporated association may be lodged against the association in the name of its president, secretary or other similar officer.
- (2) The death, resignation or removal of the person named in a complaint in accordance with sub-section (1) does not affect the continuity of the proceeding and it may be continued against the association in the name of that person's replacement.

23. Application of Equal Opportunity Act 1995

- (1) Divisions 2 to 7 of Part 7 of the **Equal Opportunity Act 1995** apply to any complaint made under this Act as if it were a complaint lodged under section 105 of that Act.
 - (2) For the purposes of sub-section (1), a reference in Divisions 2 to 7 of Part 7 of the **Equal Opportunity Act 1995** to a complainant includes, in relation to a complaint lodged by a representative body, a reference to the representative body.
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(3) In relation to a complaint lodged by—

(a) a representative body; or

(b) a person referred to in section 19(2)—

all periods of time referred to in Divisions 2 and 4 of Part 7 of the **Equal Opportunity Act 1995** (other than the periods of time referred to in sections 108(1)(c) and 110(1) of that Act) are doubled.

PART 4—SERIOUS VILIFICATION OFFENCES

24. *Offence of serious racial vilification*

- (1) A person (the offender) must not, on the ground of the race of another person or class of persons, intentionally engage in conduct that the offender knows is likely—
- (a) to incite hatred against that other person or class of persons; and
 - (b) to threaten, or incite others to threaten, physical harm towards that other person or class of persons or the property of that other person or class of persons.

Note: "**engage in conduct**" includes use of the internet or e-mail to publish or transmit statements or other material.

Penalty: In the case of a body corporate,
300 penalty units;

In any other case, imprisonment for
6 months or 60 penalty units or both.

- (2) A person (the offender) must not, on the ground of the race of another person or class of persons, intentionally engage in conduct that the offender knows is likely to incite serious contempt for, or revulsion or severe ridicule of, that other person or class of persons.

Note: "**engage in conduct**" includes use of the internet or e-mail to publish or transmit statements or other material.

Penalty: In the case of a body corporate,
300 penalty units;

In any other case, imprisonment for
6 months or 60 penalty units or both.

- (3) For the purposes of sub-sections (1) and (2),
conduct—

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- (a) may be constituted by a single occasion or by a number of occasions over a period of time; and
 - (b) may occur in or outside Victoria.
- (4) A prosecution for an offence against sub-section (1) or (2) must not be commenced without the written consent of the Director of Public Prosecutions.

25. *Offence of serious religious vilification*

- (1) A person (the offender) must not, on the ground of the religious belief or activity of another person or class of persons, intentionally engage in conduct that the offender knows is likely—
- (a) to incite hatred against that other person or class of persons; and
 - (b) to threaten, or incite others to threaten, physical harm towards that other person or class of persons or the property of that other person or class of persons.

Note: "**engage in conduct**" includes use of the internet or e-mail to publish or transmit statements or other material.

Penalty: In the case of a body corporate,
300 penalty units;

In any other case, imprisonment for
6 months or 60 penalty units or both.

- (2) A person must not, on the ground of the religious belief or activity of another person or class of persons, knowingly engage in conduct with the intention of inciting serious contempt for, or revulsion or severe ridicule of, that other person or class of persons.

Note: "**engage in conduct**" includes use of the internet or e-mail to publish or transmit statements or other material.

Penalty: In the case of a body corporate,
300 penalty units;

In any other case, imprisonment for
6 months or 60 penalty units or both.

- (3) For the purposes of sub-sections (1) and (2),
conduct—
- (a) may be constituted by a single occasion or
by a number of occasions over a period of
time; and
 - (b) may occur in or outside Victoria.
- (4) A prosecution for an offence against sub-section
(1) or (2) must not be commenced without the
written consent of the Director of Public
Prosecutions.

**26. *Incorrect assumption as to race or religious belief or
activity***

In determining whether a person has committed an
offence against section 24 or 25, it is irrelevant
whether or not the person made an assumption
about the race or religious belief or activity of
another person or class of persons that was
incorrect at the time that the offence is alleged to
have been committed.

27. *Liability of body corporate*

- (1) If a body corporate is guilty of an offence against
this Part, each officer of the body corporate who
knowingly directed, authorised or permitted the
commission of the offence by the body corporate,
is also guilty of an offence against this Part.
 - (2) Nothing in sub-section (1) affects any liability
imposed on a body corporate for an offence
committed by it against this Part.
 - (3) If, in a proceeding for an offence against this Part,
it is necessary to establish the state of mind of a
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body corporate in relation to particular conduct, it is sufficient to show that—

- (a) the conduct was engaged in by an employee, agent or officer of the body corporate within the scope of his or her actual authority; and
 - (b) the employee, agent or officer had that state of mind.
- (4) If an employee, agent or officer of a body corporate engages in conduct on behalf of the body corporate within the scope of his or her actual authority, the body corporate must be taken, for the purposes of a prosecution for an offence against this Part, also to have engaged in the conduct unless the body corporate establishes that it took reasonable precautions to avoid the conduct.
- (5) In this section "**officer**", in relation to a body corporate, means—
- (a) a director, secretary or executive officer of the body corporate; or
 - (b) any person in accordance with whose directions or instructions the directors of the body corporate are accustomed to act; or
 - (c) a person substantially concerned in the management of the body corporate.

28. Issue of search warrant by magistrate

Section 465 of the **Crimes Act 1958** applies to and in respect of an offence against section 24 or 25 of this Act as if it were an indictable offence.

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

See:
Act No.
42/1995.
Reprint No. 3
as at
1 July 1998
and
amending
Act Nos
21/2000 and
52/2000.
LawToday:
www.dms.
dpc.vic.
gov.au

29. *Victimisation*

In section 97(1)(d) of the **Equal Opportunity Act 1995** for "preliminary conference under Part 7" **substitute** "compulsory conference at the Tribunal".

30. *Investigations by the Commission*

- (1) In section 156 of the **Equal Opportunity Act 1995**, in sub-sections (1), (2) and (3) after "6" **insert** "of this Act or Part 2 of the **Racial and Religious Tolerance Act 2001**".
- (2) In section 158(2) of the **Equal Opportunity Act 1995**, after "6" **insert** "of this Act or Part 2 of the **Racial and Religious Tolerance Act 2001**".
- (3) In section 159 of the **Equal Opportunity Act 1995**, in sub-sections (1) and (2) after "6" **insert** "of this Act or Part 2 of the **Racial and Religious Tolerance Act 2001**".

31. *Commission's education and research functions*

In section 162(1)(a) of the **Equal Opportunity Act 1995** for "and sexual harassment" **substitute** ", sexual harassment and vilification on the ground of race or religious belief or activity".

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Endnotes

ENDNOTES

† *Minister's second reading speech—*

Legislative Assembly: 17 May 2001

Legislative Council: 7 June 2001

The long title for the Bill for this Act was "to promote racial and religious tolerance by prohibiting the vilification of persons on the ground of race or religious belief or activity, to amend the **Equal Opportunity Act 1995** and for other purposes."

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