

Vilification and hate speech

NGO Coalition Fact Sheet 13 (LOIPR 21)

Racial vilification

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Racial vilification remains prevalent, with over 1 in 5 Australians experiencing racial vilification and 1 in 20 reporting being attacked for racial reasons. In 2016, 20 per cent of respondents to a national survey on social cohesion reported experiencing discrimination on the basis of skin colour, ethnic origin or religion in some form, up from 15 per cent in 2015.

Research suggests that those who have been subject to racial vilification can experience fear, intimidation, diminished self-esteem and alienation.

The federal law provides it is unlawful to act in a way that is reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate person on the basis of race. Only religious groups belonging to a recognised racial group are protected, so recognised ethno-religious groups such as Jewish and Sikh people can use section 18C to complain of vilification, but other religious groups such as Christian, Hindu and Muslim people are not protected. Exemptions apply to conduct done “reasonably and in good faith” for a genuine academic, artistic, scientific or public interest purpose, as well as any fair and accurate reporting or commenting on an act or statement done for one of these purposes.

The Government has sought to repeal and/or dilute the vilification protections despite widespread opposition.

Australia should:

- **introduce protections against religious vilification;**
- **abandon attempts to repeal and/or dilute racial vilification laws; and**
- **encourage Australian community leaders and politicians to exercise their freedom of speech to identify and condemn racially hateful and discriminatory speech where it occurs in public.**

Vilification on the basis of sexual orientation, gender identity and intersex status

Vilification on the basis of sexual orientation, gender identity and intersex status is not protected under federal anti-discrimination laws or the majority of state and territory anti-vilification laws. New South Wales and the Australian Capital Territory prohibit serious homophobic vilification, vilification on transgender grounds and HIV/AIDS vilification. Tasmania has civil anti-vilification protections on the grounds of sexual orientation or lawful sexual activity.

In September 2017, the Commonwealth Government introduced vilification protections on the basis of sexual orientation, gender identity, intersex status and religious conviction for the duration of the marriage law postal survey, but these vilification protections only apply from 14 September 2017 to 15 November 2017.^[iii]

- **Australia should ensure federal law protects against against vilification on the basis of sexual orientation, gender identity and intersex status.**

SOURCES:

[i] *Anti-Discrimination Act 1977* (NSW) s 49ZS-49ZTA, s 38R-38T, 49ZXA-49ZXC; *Criminal Code 2002* (ACT) s 750).

[ii] *Anti-Discrimination Act 1998* (Tas) s 19).

[iii] *Marriage Law Survey (Additional Safeguards) Act 2017* (Cth).