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Submission on Victoria's laws against hate speech and hate conduct

Feminist Legal Clinic Inc. is a community legal service focused on advancing the human rights of women and girls. We welcome the opportunity to make this submission.

The existing vilification protections are at once both too broad and too narrow. Attempting to outlaw 'severe ridicule' is an unreasonable incursion on free speech and even if extended to all the attributes proposed will not come close to stopping cruel and hateful behaviour. For example, ridiculing someone for having a physical feature beyond their control will remain legal, unless it can be regarded as a racial attribute or disability. Where multiple attributes are involved, it may be impossible to establish that it was a protected attribute that attracted the ridicule or contempt.

In our experience, bullies are inclined to use vilification laws to persecute their ideological opponents, while true victims are less likely to access these protections. We are particularly concerned about laws that effectively shield religion and gender identity from severe ridicule. This is potentially protecting harmful ideologies that may themselves be responsible for spreading hatred and contempt for those who do not conform with their precepts. Women, as a class, regularly fall victim to the hatred and contempt spread by gender identity ideology, and by many religious orthodoxies. Perversely, if women attempt to defend themselves from the misogynist claims made by adherents to these ideologies, they are the ones likely to face claims of vilification.

Gender identity ideology and many religious belief systems work to define women in a manner that is inherently misogynist and is too often given the imprimatur of the state. Indeed, too often this misogynist material is being actively taught in schools – for example, the notion that 'woman' is an 'identity' that can be assumed or discarded at will is currently being taught under the banner of 'inclusivity' in many schools. In the context of religious instruction, children are still being taught that women are created from the rib of man and should submit to male authority. The Victorian Government should take care that its efforts to stop hateful or unkind behaviour are not, in fact, empowering patriarchal bullying on a societal scale. There should be no offence in severely ridiculing that which is not only ridiculous but positively harmful.

However, inciting violence, regardless of the attribute to which it is directed, should be unlawful. To constitute an offence, there should be an explicit incitement to violence, or a direct threat of harm, or use of force to hurt or damage someone or their property. This should be unlawful regardless of the ‘attribute’ attracting the hateful conduct. It is impossible to enumerate all the possible attributes that may attract violent hatred.

There should not be any exceptions from these laws for religious groups or others. There can be no justification for inciting violence and it can never be considered in the public interest to do so.

On the other hand, legislative provisions banning hate speech are likely to do more harm than good and the government must instead focus on public education campaigns rather than applying the heavy hand of the law. These laws operate as an unacceptable constraint on freedom of speech. Vilification laws should be repealed rather than extended.

The powers of VEOHRC and VCAT should also not be expanded in any way while they are in the thrall of damaging and fraudulent gender identity ideology. These bodies certainly should not be given censorship powers.

Our position on this issue is informed by our experience assisting women who are critical of gender identity ideology and who have thereby become major targets of hate speech and hate conduct. Rather than being protected by the law, existing vilification provisions have been actively used as a weapon against women who protest and expose the harmful impacts of extreme trans activism on the human rights of women and children (see for example, *Clinch v Rep (No. 2) (Discrimination)* [2020] ACAT 68).

These women are extensively vilified, and human rights agencies have failed to recognise their views as a political opinion and thereby a protected attribute, and have instead effectively endorsed the refusal of goods and services to them (see *KI v The Retail Store* [2023] TASCAT 10).

‘Kill TERFs’ is a popular rallying cry of extreme trans rights activists and feminists who are critical of gender identity ideology frequently receive violent threats – both online and in person at rallies and other women’s sex-based rights events. We are yet to hear of any legal action being taken against those responsible for these menacing and abusive interactions. Recently, a Victorian woman who publicly expressed opposition to gender identity ideology was the victim of a physical attack by a trans rights activist in a public place, with many witnesses. The assault resulted in permanent and disabling injury, but the police were sluggish to charge and prosecute the perpetrator, who ultimately escaped without conviction and received only a five-month bond. This incident also received no mainstream coverage due to a reluctance by media outlets to publish reports that reflect negatively on the transgender community.¹

¹ <https://reduxx.info/exclusive-australian-woman-left-disabled-following-attack-by-trans-activist/>
<https://reduxx.info/he-got-away-with-it-trans-activist-sentenced-to-just-five-months-good-behavior-after-leaving-woman-permanently-disabled/>

Abuse of women who oppose gender identity ideology does not stop at vilification – they are also sacked, defunded, censored and otherwise silenced if they persist in expressing what was until recently the unremarkable view that sex is a biological reality, is binary by nature and cannot be changed. Not only have our human rights agencies failed to protect women with these views from persecution, they are actively facilitating it.

In this context we would ardently oppose any expansion of the powers of these agencies, and the proposed embellishment of Victoria's anti-vilification laws, lest they be used to further silence and oppress women.

Yours faithfully



Anna Kerr

Principal Solicitor

Feminist Legal Clinic Inc.

Organization in Special Consultative Status with the Economic and Social Council (ECOSOC) since 2023.