



Victorian Equal Opportunity
& Human Rights Commission

Reporting racism

> What you say matters





Victorian Equal Opportunity & Human Rights Commission

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Reporting racism: What you say matters

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About the Commission

The Victorian Equal Opportunity and Human Rights Commission is an independent statutory body that has functions under the *Equal Opportunity Act 2010*, the *Racial and Religious Tolerance Act 2001* and the *Charter of Human Rights and Responsibilities Act 2006*. Our functions include resolving disputes, providing education about human rights and equality of opportunity, undertaking projects and activities aimed at eliminating discrimination and promoting human rights, conducting research, and providing legal and policy advice. In addition, the Commission reports to the Attorney-General on the operation of the Charter and, at the request of public authorities, conducts compliance reviews.

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Foreword

Over the last few months we have seen, in our state and national media, widely publicised examples of racism. These incidents give us a small insight into the real experiences of people in our community. They also counter the argument that reports of racism are exaggerated, since the evidence is so direct and confronting.

However, in preparing this report, the Commission was responding to concerns from the community that racism is most often presented this way – as isolated, exceptional events. Yet for many people, it is the daily, sometimes unconscious but persistent, racism they face, that has the most profound effect.

VicHealth research shows that while most people report that they are not regularly subjected to overtly racist abuse, their day-to-day experiences of discrimination and racism reinforce a sense of exclusion, with profound health impacts. For many of us who do not have this direct experience, it is difficult to comprehend how pervasive and distressing it can be.

This report presents people's experiences and is based on surveys, interviews and material gained through our own research. Some of the material may be confronting or offensive, but it is important that those of us with little direct experience of racism get a clearer picture of what is happening. Collating these lived experiences also helps us understand the frequency and impact – making it difficult to explain each away as a rare and isolated incident.

Importantly, while social media has been identified as a ready platform for racism, the report shows it can also be part of the solution when it provides strong examples of community members intervening and standing up to racist views.

I would like to thank all who participated in the research, particularly members of our reference group who guided and informed this report and the Commission's response to it. The group comprised representatives from the Jewish Community Council of Victoria, Islamic Council of Victoria, Australian Muslim Women's Centre for Human Rights, Victorian Multicultural Commission, Victorian Aboriginal Legal Service, the Ethnic Communities' Council of Victoria, Federation of Indian Associations Victoria, African Think Tank and Victoria Police. Thank you also to the Chair of the Commission's Board, John Searle, for chairing the reference group. I also acknowledge the work of the Commission's policy staff – Gina Squatrito and Michelle Burrell in particular, in preparing this report.

The Commission's focus in this work is on building our capacity as a community to recognise and respond to racism and other hate conduct when we see it. We aim to build an awareness that every incident – whether it be the racist rant on the train or football field or the less overt racism in the media and workplace – requires a response to counter its harmful effects, and that each and every one of us can respond.



Karen Toohey

A/g Commissioner
Victorian Equal Opportunity and
Human Rights Commission

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Executive Summary

Racism and conduct motivated by racial or religious hatred is a daily experience for too many Victorians. It can include a broad spectrum of behaviour, from low-level incidents, such as offensive gestures or name-calling, to physical assaults.

Being called “black bitch, go back to your country”, attempt to assault, had to quickly leave the scene to protect myself and my children. Was in a public place, people watching but did nothing and that’s what hurt the most: people’s passivity, don’t care attitude...¹

To collect evidence on the nature and extent of racism in Victoria, the Commission conducted an online survey, *Reporting racism: What you say matters*. We received 227 responses. The survey was complemented by interviews with a broad range of community stakeholders and a review of online content.

During our research, Victorians told the Commission that racism occurred in many parts of life: at work and school, walking down the street, catching a tram, going to the shops and playing sport.

We also found that racism is increasingly prevalent in online environments, especially through email and social media, and that the negative stereotypes about different racial groups that are portrayed in the mainstream media can create and deepen divisions within the community.

In addition to interpersonal racism, some Victorians also experience systemic discrimination. This occurs when organisations operate according to rules and policies that appear neutral, but which end up disadvantaging people from different backgrounds. Systemic discrimination can lock people out of social and economic opportunities and limit their ability to access a range of services.

1 Survey participant.

While playing soccer, players of the [opposing team] had turns calling me a “black ct”, a “gollywog”, a “monkey” and saying things along the lines of “Go back to your tree”. I could also hear sounds every time I touched the ball.²**

I work in a small private hospital ... There have been several occasions when older patients both male and female have stated very clearly that they don’t want to be looked after by ... foreign or dark skinned people.³

Was told I could not be served as I was Aboriginal.⁴

Some groups in Victoria are particularly vulnerable to racism. A recent VicHealth report found that 97 per cent of Aboriginal and Torres Strait Islander people in Victoria, and nearly two thirds of Victorians from a culturally and linguistically diverse background, had experienced racism in the previous 12 months.⁵

Both VicHealth and our study found the consequences of racism to be profound. It can undermine an individual’s sense of self-worth, leave them feeling vulnerable and isolated, and affect their physical and mental health. Members of communities targeted by racism can feel anxious, unwelcome and less confident to participate in public life and debate.

There are also tangible social and economic costs for the broader Victorian community.

Despite the broad scope of racist incidents raised with the Commission and documented in other studies, many people choose not to report their experience.

2 Survey participant.

3 Survey participant.

4 Survey participant.

5 Victorian Health Promotion Foundation, *Mental health impacts of racial discrimination in Victorian Aboriginal Communities – Experiences of racism survey: a summary* (2012) 2.

The most common reason given in our survey for making this choice was the prevailing view that nothing would be done about it. As one participant told us, “Generally, people think you’re being oversensitive and there’s no formal process that will yield any formal results”.⁶

Other obstacles to reporting include a lack of knowledge about where and how to make a complaint, a fear of victimisation or other repercussions about making a complaint, language barriers and a distrust of official institutions. For some, the limitations of the Victorian and Commonwealth legal systems to address vilification and prejudice-motivated crime can also be a significant barrier to taking action.

It is not only direct victims who experience harm from racism and who face barriers in reporting it. Racism occurs in a diverse range of public settings and its public nature means it is often witnessed. Bystanders can play a critical role in standing up to racism when it occurs, supporting the victim and challenging the perpetrator, as exemplified in a number of incidents on public transport where commuters have intervened to support victims of racial abuse.⁷

The Commission’s survey received a number of stories from bystanders who took action when they witnessed racism. However, a number of others told us of occasions when they did not know what to do or how to intervene, especially in situations where they felt threatened.

*The tram was crowded. I could see and hear the interaction but not close enough to intervene in the moment. I was also scared myself, which made me feel pathetic.*⁸

What we found

Racism is most likely to occur at work and on the street. One in three survey respondents witnessed or experienced racism at work and three out of ten witnessed or experienced it on the street.

Verbal abuse is the most common form of racism.

The majority of survey respondents did not report the racism that they experienced or witnessed.

When asked why not, the most common response was that they did not do so because they did not think anything would be done about it.

Around one in five participants said that they did not know where to report the racism or how to make a complaint.

One in five said they were afraid of potential consequences or victimisation.

For those who did report the incident, around one in three said little happened after making the report.

The way forward

Research shows that when we fail to respond to low-level racist incidents, it creates an environment where this type of behaviour is tolerated, replicated and can escalate. Indeed it is the failure to bear witness to racism and hatred that is often harshly felt by victims, who feel isolation and fear when subjected to racism in their daily lives.

While much good work is underway, our study shows that individuals, communities and organisations need greater support to understand how they can respond safely and effectively to the racism they encounter.

Both education and capacity building are necessary to ensure every Victorian understands racism is unacceptable and should be reported. It is also needed to ensure people experiencing racism are equipped to make complaints and to ensure complaints will be treated seriously and handled effectively.

Using technology to fight hate

To respond to these issues as they were raised with us during this project, the Commission launched the Anti-Hate website and campaign in September 2012.

A primary goal of the Anti-Hate campaign is to promote greater community awareness around the seriousness of racism and other prejudice-motivated conduct. In particular, the website is a tool to encourage people to share their stories of confronting racism, as well as other forms of hate, in order to build community capacity and skills to respond to incidents when they occur.

So far over 24,800 people have visited the site. Using this momentum, we will extend the campaign to include an Anti-Hate phone app in 2013.

6 Survey participant.

7 See for example Angus Thompson, ‘No to racism: Late night commuters unite against hateful rant’ *Herald Sun* (Melbourne), 12 April 2013, 7; Angus Thompson, ‘Race rant charges’ *Herald Sun* (Melbourne), 18 April 2013, 7.

8 Survey participant.

Building third party reporting

The Commission recognises that not all individuals will feel willing or able to report an incident of racism. In Victoria and elsewhere, 'third party' reporting mechanisms exist which allow recognised organisations to take reports of racism to the police and other agencies on behalf of individuals in their communities.

Our goal is to support and equip communities in Victoria to establish effective third party reporting systems. Not only can this approach help promote action in response to individual cases that would otherwise go unreported, it also helps build a clearer picture of the number and types of incidents experienced by different communities. This information can then be used to develop strategies to combat racism in the places where it is most likely to occur, and to build safer, more inclusive communities.

In the first instance, we will collaborate with Victoria Police and the Victorian Aboriginal Legal Service to trial a third party reporting system, using our Anti-Hate website as the access point. Following this initial trial, we will extend the program to other communities.

Supporting bystanders

The Commission will also promote broad community understanding about the consequences of racism and support bystanders to intervene safely. The positive response to the Anti-Hate campaign demonstrates many Victorians want to take a strong stand against racism in the places where they live, work, study and socialise.

We will partner with transport providers, schools, youth groups, sporting organisations, local governments, employers and other agencies to promote the Anti-Hate campaign messages. We will also work with government agencies, such as VicHealth, to incorporate information on safe bystander action into existing training programs.

Community education and awareness

In addition to our existing calendar of 'rights and responsibilities' awareness training for community groups, employers and service providers, we will support and deliver community awareness education programs to other groups experiencing high levels of racism.

The Commission also recognises that limited community understanding of Aboriginal identity and culture can and does lead to discrimination. In partnership with the Bunjilaka Aboriginal Cultural Centre at the Melbourne Museum, the Commission will develop an online resource to build a richer

community understanding and appreciation of Aboriginal identity, culture and history in Victoria. It will address a number of common myths and misconceptions, providing an accessible way for non-Indigenous people to find answers to questions they may feel unable to ask.

Actions

Drawing on the findings of this research project, we will build on the work we are already doing by working with community organisations, government agencies and service providers to deliver the following eight key actions in 2013–14.

1. Collaborate with Victoria Police and the Victorian Aboriginal Legal Service to trial a third party reporting system, using our anti-hate website as the access point. Following this initial trial, we intend to extend the program to other communities.
2. Extend our Anti-Hate campaign to include a phone app, in addition to the existing website.
3. Work with key agencies, including Public Transport Victoria and transport providers to support bystanders using Anti-Hate as a vehicle for bystander action.
4. Partner with schools, youth groups, sporting organisations, local governments, employers and other agencies to promote and implement the Anti-Hate campaign messages into existing programs and curriculum.
5. Work with government agencies (such as VicHealth) to incorporate information on promoting bystander action into existing training packages.
6. Develop an online resource to build a richer community understanding and appreciation of Aboriginal identity, culture and history in Victoria, and in so doing break down stereotypes and misinformation.
7. Work with community groups to deliver targeted community information sessions about rights, available avenues for redress, where and to whom to report, the potential benefits of reporting and the possible outcomes.
8. Use the evidence from our Healthy Workplaces project to develop new strategies to address discrimination in the workplace.

Chapter 1: Background

*They would say “you are at a different place now” and “become an Aussie, you ****”.⁹*

This report examines the type and prevalence of conduct motivated by racism and religious hatred in Victoria.

The Commission regularly receives stakeholder feedback and complaints from Victorians who are confronted with behaviour that is intimidating, abusive and vilifying because of their racial or religious background. In 2011–12, the Commission received 600 enquiries regarding race discrimination, and 146 enquiries about discrimination based on religious belief or activity. In addition, we received 50 enquiries regarding racial or religious vilification.¹⁰

In addition, we received 176 complaints of racial discrimination and 53 complaints of discrimination based on religious belief or activity. This equates to about nine per cent of all complaints made under the *Equal Opportunity Act 2010* in 2011–12.¹¹

Through different community consultation processes, we also receive information about examples of systemic racial and religious discrimination in Victoria. This suggests that complaints made to the Commission represent the tip of the iceberg when it comes to the daily experiences of racism that many Victorians face.

Objectives

This research seeks to understand people’s experiences of racism in Victoria.

The Commission undertook this study in order to better understand the nature, breadth and frequency of racism in Victoria, to build community understanding about these issues, to identify the barriers to reporting racism and to consider ways to build the capacity of both victims and bystanders to respond to racism when it occurs.¹²

Our project sought to:

- hear directly from Victorians about their experiences of racism
- consult with key community organisations to understand the prevalence and severity of racism experienced by members of their respective communities
- review the incidence of racism online and the ways in which these issues are treated in the media
- analyse the effectiveness of existing legislation to deal with racism
- build the capacity of community organisations to establish and implement reporting processes that respond to this type of conduct.

The project was developed with the guidance of a Reference Group, which provided constructive feedback on the scope of the project and the development of different project activities. Reference Group members also helped identify a number of key issues facing communities.

The following organisations were represented on the Reference Group, which was chaired by the Commission’s Chairperson, John Searle:

- Victoria Police
- the Jewish Community Council of Victoria
- the Islamic Council of Victoria
- the Australian Muslim Women’s Centre for Human Rights

⁹ Survey participant.

¹⁰ Victorian Equal Opportunity and Human Rights Commission, *Annual Report 2011–12* (2012) 46.

¹¹ Ibid 48.

¹² This research was undertaken under s 157 of the *Equal Opportunity Act 2010* (Vic), which enables research to be conducted where it would advance the objectives of the Act.

- the Victorian Aboriginal Legal Service
- the Ethnic Communities' Council of Victoria
- the Victorian Multicultural Commission
- the African Think Tank
- the Federation of Indian Associations Victoria.

Methodology

Survey

In order to collect both quantitative and qualitative data, the Commission conducted an online survey; *Reporting racism: What you say matters*. A copy of the survey instrument is at Appendix 1.

The survey was also available in hard copy and respondents could contact the Commission's enquiry line for assistance with completing the survey.

The survey asked respondents to describe incidents and/or behaviours they had either personally experienced or witnessed; where this behaviour had occurred; how they responded to the incident; whether the incident was reported (and if not, why not); and what their expectations would be if they did report the incident.

To promote participation in the survey, the Commission advertised in a number of community newspapers, including *The African Migrant*; *21st Century Chinese News*; *Australian Chinese News*; *The Pacific Times*; *Beyond India*; *Bharat Times*; *Indus Age*; and the *Koori Mail*.¹³ It was also promoted by email to key stakeholders and community networks, via social media, at relevant public events and in the ebulletins of the Commission and the Victorian Multicultural Commission.

Key informant interviews

To complement the survey findings, the Commission consulted with key stakeholders using a semi-structured interview format. We conducted interviews with the Victorian Aboriginal Legal Service; the Jewish Community Council of Victoria; the Islamic Council of Victoria; the African Think Tank; the Federation of Indian Associations of Victoria; the Victorian Immigrant and Refugee Women's Coalition; the Multicultural Centre for Women's Health; and the Online Hate Prevention Institute.

Review of content online

The final element of the research was to conduct a review of the nature and incidence of racial and religious hate speech online. The Commission collected material from social media sites such as Facebook, online forums, blogs, dedicated websites and articles in both the mainstream and alternative media.

Survey participation

The Commission received 227 responses to the survey. The majority of respondents (69 per cent) were aged between 25 and 55. Almost two thirds of respondents were female. The majority of respondents (59 per cent) were born in Australia.

Respondents who had immigrated to Australia were asked when they had arrived. Answers varied from 49 years ago to less than six months ago. Most respondents who were born overseas had arrived in the decade between 2000 and 2009.

Respondents were invited to describe their ethnicity, race or national origin in their own words. A total of 172 people answered this question with responses including: Aboriginal or Torres Strait Islander (15); European/European Australian (49); Anglo-Saxon/White/Caucasian Australian (25); and Asian/Asian Australian (32). Twenty nine respondents said only that they were Australian. Seven respondents identified themselves as African/African Australian, four identified as Central/South American, and three as Middle Eastern.¹⁴

Respondents were also given the option of nominating their religion. Around a third responded that they were Christian and another third responded 'N/A'. A small percentage of respondents said that they were Muslim (6.6 per cent), Jewish, Hindu or Buddhist (all less than five per cent).

¹³ This selection was based on information about those communities in Victoria that were more likely to be experiencing racism, as well as advice from an external media agency.

¹⁴ Respondents who identified as British, Scottish, or Irish were considered to be European for the purpose of the survey, unless they also indicated they were Anglo-Saxon, White or Caucasian, in which case they fell into the latter category.

Limitations of the research

The Commission's survey was based on people's perceptions of racism, was voluntary and not randomised. As a result, respondents who chose to participate were more likely to have an interest in the subject matter, creating an inherent bias. The number of survey respondents was also relatively small, limiting the representativeness of the sample.

Eight key informant interviews were conducted with peak and community organisations. The Commission understands that other groups in the community are also victims of discrimination and hate crimes, which causes serious harm to the individuals involved and the communities to which they belong. For example, people may be targeted because of their sexual orientation, gender identity, sex, age or disability. We are currently working with these communities through our Anti-Hate campaign, through targeted efforts such as Fair go, sport!, and through our other functions such as the production of Guidelines under the Equal Opportunity Act. This report, however, focuses solely on conduct motivated by racism and religious hatred.

Building on project outcomes

To complement the research, the Commission wanted to establish a forum where individuals could voice their experiences of racist behaviour. In response, the Commission launched the Anti-Hate website (antihate.vic.gov.au) and campaign in September 2012.

The Anti-Hate website provides an ongoing mechanism for people to report incidents of racism and other forms of discrimination. It also gives people practical tools and tips about how to take action when they see or experience this type of behaviour. The site provides an option for people to access the Commission's Dispute Resolution Service if they want to progress a complaint under the Equal Opportunity Act or the *Racial and Religious Tolerance Act 2001*.



Chapter 2: Understanding and addressing racism

What is racism?

In general, racism is a belief that a particular race or ethnicity is inferior or superior to others. Racial discrimination involves any act where a person is treated unfavourably because of their race, nationality, colour, descent or ethnic origin.

...Often racism presents itself in an undercurrent of offensive words, acts and gestures where no single act would be sufficient to constitute 'racial vilification' or similar offences. As we say, it's the 'vibe' of resentment and discrimination that reverberates...¹⁵

Race is a personal characteristic protected by the Equal Opportunity Act and the Racial and Religious Tolerance Act. Both Acts define it as including ethnicity, nationality, colour, descent or ancestry. This means that discrimination based on a person's culture is effectively protected.¹⁶

Religious belief or activity is also a protected characteristic under these laws.¹⁷

Race and religion may be conflated

Race and religion are personal characteristics that go to people's very identity. They are also distinct legal concepts. However, the reality is that for many people who act in a discriminatory way, or who vilify others, the legal distinction between race and religion is immaterial. What is important to them is that their targets are different to them, distinguished by the way they look or where they come from.

This means that issues of race and religion are conflated by some perpetrators who make assumptions that a person of a particular race is of a certain faith, whether this is true or not.¹⁸ For example, African Australians or people of Middle Eastern background can be targeted as 'Muslims' regardless of their faith. For victims, this mistreatment is racism because race is the feature that the perpetrator uses to select them as a target.

To reflect this complexity, when we use the terms 'racism' and 'conduct motivated by hate' in this report we are referring to the full gamut of behaviours that are motivated by racial or religious hatred (or both).

A glossary of other terms used in this report is provided on page 64.

Racism includes attitudes and conduct

Racism includes attitudes (**prejudice**), unfair treatment (**discrimination**), incitement of hatred or violence (**vilification**), racist talk and other actions based on notions of superiority or inferiority.¹⁹

Racism takes many forms including stereotyping, name calling or insults, negative commentary in the media, speeches at public assemblies, racist graffiti, property damage or abuse on the internet. In its most serious form, racism is demonstrated in behaviours and activities that embody race hate, vilification, abuse and violence – particularly experienced by groups who are visibly different because of their cultural or religious dress, skin colour or physical appearance.

¹⁵ Survey participant.

¹⁶ *Equal Opportunity Act 2010* (Vic), s 4; *Racial and Religious Tolerance Act 2001* (Vic) s 3. Race is defined in both Acts as including colour; descent or ancestry; nationality or national origin; ethnicity or ethnic origin and if two or more distinct races are collectively referred to as a race – (i) each of those distinct races; (ii) that collective race.

¹⁷ *Equal Opportunity Act 2010* (Vic), s 6; *Racial and Religious Tolerance Act 2001* (Vic) s 8.

¹⁸ The term racism is often used by people to include the ground of religion as in race, as some victims and perpetrators may not make this distinction, even though these are separate attributes under the Equal Opportunity Act. In some circumstances, the grounds may not be distinct, for example, a Jewish person is protected on the grounds of race and religion under the Act.

¹⁹ Victorian Equal Opportunity and Human Rights Commission, Background Paper: *New tensions, new tactics: communicating about racism and discrimination* (2009) 4–5.

Racism can be **interpersonal** (between people) and **systemic**.²⁰ Systemic discrimination occurs when discriminatory assumptions and patterns of behaviour become deeply ingrained in the way that organisations work and function. This can include seemingly neutral practices that, over time, become an accepted part of how things get done but which result in people from different backgrounds being excluded or unfairly disadvantaged.

One of the objectives of the Equal Opportunity Act is to identify and eliminate the causes of systemic discrimination.²¹

Is racism an issue in Australia?

*Racism includes episodes of verbal abuse but often it is quite subtle, for example, being followed in stores by security.*²²

Research confirms that racism is still prevalent in Australian society.

In 2012, VicHealth published research into the mental health impacts of racial discrimination on Aboriginal and Torres Strait Islander and culturally and linguistically diverse (CALD) communities, based on a survey in two rural and two metropolitan areas of Victoria.

Of the 755 Aboriginal and Torres Strait Islander Victorians surveyed:

- 97 per cent had experienced racism in the previous 12 months
- more than 70 per cent had experienced eight or more racist incidents
- 44 per cent reported seeing people being treated unfairly because of their race, ethnicity, culture or religion at least once a week.²³

Respondents reported being called racist names, teased or hearing offensive jokes about Aboriginal people (92 per cent); being sworn at, verbally abused or subjected to offensive gestures because of their race (84 per cent); being spat at, having an object thrown at them or being hit or threatened to be hit because of their race (67 per cent).²⁴

20 Victorian Health Promotion Foundation, *Building on our strengths - A framework to reduce race based discrimination and support diversity in Victoria* (2009) 24–26.

21 *Equal Opportunity Act 2010* (Vic) s 3(c).

22 Survey participant.

23 Victorian Health Promotion Foundation, *Mental health impacts of racial discrimination in Victorian Aboriginal Communities*, above n 5, 2.

24 Ibid.

Stakeholders and community members have told the Commission that one of the driving forces behind the racism faced by Aboriginal and Torres Strait Islander peoples in Victoria is a lack of recognition of their distinct identity.

Community members have expressed concern that owing to a history of dispossession there is a misconception among non-Indigenous people that Aboriginal language, culture and people do not exist in Victoria because the majority of Victoria's Aboriginal community is urban and mobile, and Aboriginal and Torres Strait Islander people of mixed heritage do not look like 'real' Aboriginal people seen on TV or living in remote parts of Australia. Limited community understanding of Aboriginal identity and culture can and does lead to direct and systemic discrimination. It also undermines the right of Aboriginal people to enjoy their identity and culture, which is protected under the *Charter of Human Rights and Responsibilities Act 2006* (the Charter).

A total of 1,139 people from CALD communities took part in the VicHealth survey, with nearly two thirds saying they had experienced racism in the previous 12 months. Most had experienced racism on multiple occasions, with 40 per cent experiencing six or more incidents a year.²⁵

Surveys of the general community have also revealed high levels of discrimination among certain groups. For example, a 2010 survey of 2,000 Australians found that 14 per cent – or one in seven – had experienced discrimination. This high level was maintained in 2011, but fell back slightly to 12 per cent in 2012.²⁶

The survey found that certain communities were more affected. By far the most likely to report discrimination were people of Islamic faith (31 per cent of all those that reported). One in five respondents born in Africa and the Middle East or from Asia reported discrimination.²⁷

25 Victorian Health Promotion Foundation, *Mental health impacts of racial discrimination in Victorian culturally and linguistically diverse communities – Experiences of racism survey: a summary* (2012) 2.

26 Professor Andrew Markus, *Mapping social cohesion – the Scanlon Foundation Surveys National Report* (2012) 2.

27 Ibid.

Similarly, research conducted for the Australian Human Rights Commission involving 1,584 people found that:

- two-thirds of respondents had experienced racism
- nine out of ten respondents said that racism was either extremely important or a very important issue facing individuals and Australia as a whole
- respondents reported that racism made them feel divided, like second class citizens, insecure, angry and less connected to Australia.²⁸

Some people think that racism and religious hatred only equates to physical violence. This narrow interpretation can make it easier to dismiss the idea that racism exists in Victoria or that it is not a problem requiring action. However, the reality is that racism, in its different guises, is a daily experience for too many Victorians.

In fact, it is the more subtle, lower level behaviours that can create an environment where this type of behaviour is tolerated and, in some cases, can escalate.

These lower level behaviours – such as being the target of offensive ‘jokes’ or being overlooked in a store – are likely to be experienced by people on a more regular basis. Limited avenues for redress can compound the problems.

Laws and policies to promote racial and religious equality

Commonwealth policy

In August 2012, the Australian Human Rights Commission released its *Agenda for Racial Equality 2012-16*.²⁹ This agenda aims to build racial equality by focusing on four key areas: ensuring social and economic outcomes; building a strong legal framework; preventing racism and racial hatred; and building leadership in support of Australia’s diverse community.

It is complemented by the *National Anti-Racism Strategy 2012* which sets out a series of high-level initiatives to combat interpersonal and systemic racism, as well as social exclusion experienced by CALD and Aboriginal and Torres Strait Islander communities.³⁰ Other relevant national policy frameworks include:

- the *Access and Equity Strategy*³¹
- the *Social Inclusion Agenda*³²
- the *People of Australia: Australia’s Multicultural Policy*.³³

Victorian policy

In September 2012, the Victorian Government released a statement, *The Government’s Vision for Citizenship in a Multicultural Victoria*. This launched a public submission process which closed in late October 2012 and will inform development of a new whole-of-Government multicultural affairs and citizenship policy.

Another relevant policy is Victoria Police’s *Prejudice Motivated Crime Strategy (2011-13)*. This strategy acknowledges the serious harm that prejudice-motivated crime causes to victims and to the communities to which they belong. It commits Victoria Police to work towards two key objectives:

- reducing prejudice-motivated crime in Victoria
- increasing community confidence to report prejudice-motivated crime.³⁴

28 Australian Human Rights Commission, *National Anti Racism Strategy – Consultation Report (2012)* 3–5.

29 Australian Human Rights Commission, *Agenda for Racial Equality 2012-2016 (2012)*.

30 Australian Human Rights Commission, *National Anti-Racism Strategy (2012)* <<http://www.humanrights.gov.au>> at 21 March 2013.

31 See Department of Immigration and Citizenship, *Accessible Government Services for All Annual Report (2006)* <<http://www.immi.gov.au>> at 21 March 2013.

32 See Department of the Prime Minister and Cabinet, *A Stronger, Fairer Australia (2009)* <<http://www.socialinclusion.gov.au>> at 21 March 2013.

33 Australian Government, *The People of Australia: Australia’s Multicultural Policy*, launched on 16 February 2011. <<http://www.immi.gov.au>> at 21 March 2013.

34 More detail on the *Prejudice Motivated Crime Strategy* can be found at page 47.

Laws to protect against conduct motivated by racism

Conduct motivated by racism is regulated by laws in Victoria, including the:

- *Equal Opportunity Act 2010*
- *Racial and Religious Tolerance Act 2001*
- *Charter of Human Rights and Responsibilities Act 2006*
- *Sentencing Act 1991*
- *Crimes Act 1958*
- *Summary Offences Act 1966*
- *Graffiti Prevention Act 2007*.

Relevant federal laws include the:

- *Racial Discrimination Act 1975*
- *Criminal Code Act 1995*
- *Broadcasting Services Act 1992*.

Chapter 6 discusses these laws in more detail.

International human rights standards

Australia has agreed to promote and protect the rights and freedoms set out in a range of international human rights treaties and declarations.

A number of these include provisions that prohibit discrimination based on race or religion, including the:

- *Universal Declaration of Human Rights*³⁵
- *International Covenant on Civil and Political Rights*³⁶
- *International Convention on the Elimination of All Forms of Racial Discrimination*³⁷
- *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*.³⁸

35 *Universal Declaration of Human Rights*, GA Res 217A, 3rd Sess, 183rd plen mtg, UN Doc A/810 at 71 (1948).

36 *International Covenant on Civil and Political Rights*, GA Res 2200A (XXI), 999 United Nations Treaty Series 171, Australian Treaty Series 1980 No 23, UN Doc A/6316 (1966), (entered into force for Australia 13 November 1980, except Article 41 which entered into force on 28 January 1993).

37 *International Convention on the Elimination of All Forms of Racial Discrimination*, opened for signature 7 March 1966, 660 United Nations Treaty Series 195, Australian Treaty Series 1975 No 40 (entered into force 4 January 1969, entered into force for Australia 30 October 1975 except Article 14, which entered into force for Australia on 28 January 1993).

38 *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*, GA Res 36/55, UN GAOR, 36th sess, 73rd plen mtg, UN Doc A/36/684 (1981).

Chapter 3: Racism in public life

An elderly man said to him “what smells in here, there is a terrible smell” and then made it very clear that it was directed at my colleague because of his ethnicity.³⁹

First day at work...a customer said he wouldn't take food from me because I was 'dirty'. Later that same day a customer spat at me.⁴⁰

Main findings

- 123 people reported incidents that happened to them personally. 102 people witnessed racism. 40 people saw or received racist materials.⁴¹
- Racism is most likely to occur at work and on the street. Around one in three survey respondents witnessed or experienced racism at work and three out of ten witnessed or experienced it on the street.⁴²
- Verbal abuse is the most common form of racism (reported by 57 per cent of respondents).⁴³
- One in four respondents took no action at the time of the incident. 29 per cent walked away when the incident occurred.⁴⁴
- Over half of those who witnessed or experienced racism did not report the incident. The most common reason for not reporting was a prevailing view that nothing would be done about it anyway.⁴⁵
- Concerns were raised in relation to racism and the media, especially the use of racial stereotypes, negative portrayals of communities and offensive commentary by media opinion leaders and talkback radio callers.

39 Survey participant.

40 Survey participant.

41 Respondents could give more than one answer—indicating multiple experiences of racism, or that they had personally experienced and witnessed racism against others.

Where does racism happen?

Racism in the workplace

In one month I have applied [for] at least 250-300 jobs just online...I can't even get a factory job, night shift job or a very low wage job, especially positions advertised in my field.⁴⁶

Respondents to our survey most commonly reported witnessing or experiencing racism in the workplace (32.4 per cent). They described a range of experiences, including unfair treatment when applying for work, being denied work opportunities, being subjected to inappropriate questions and comments and hearing racist jokes or derogatory comments in the workplace.

Discussions were had where the Indian accent was being used (by white colleagues) where no managers stopped the ridiculing.⁴⁷

Manager isolated me and never talked to me when he was around the office. Each morning he would come to the office, say goodbye and hello to all the workers. When I approached him, he would request [me] to email to him. At the workers' meeting he would often make comments about my accent.⁴⁸

If I weren't reliant on a work permit, I would have reported this sooner and tendered my resignation.⁴⁹

42 That is 32.2 per cent and 30.4 per cent respectively.

43 129 respondents. More than one type of behaviour could be reported.

44 23 per cent.

45 54.6 per cent. Respondents could choose more than one response.

46 Survey participant.

47 Survey participant.

48 Survey participant.

49 Survey participant.

The Federation of Indian Associations of Victoria also told the Commission that most reports of racism occurred in the workplace. As an example, they said:

*... an Indian man who was a qualified engineer with experience and authority reported that his co-workers had abused him saying things like “you f**ing Indians don’t know what is happening!”. This had a severe mental health impact for this man.*⁵⁰

The Multicultural Centre for Women’s Health said that they commonly heard concerns about difficulties accessing employment opportunities, including having job applications rejected and missing out on training and promotion. They also reported that women are concerned about confronting this discrimination because of “the fear that if you speak out, you might lose your job”.⁵¹

The Victorian Immigrant and Refugee Women’s Coalition said that in local government:

*...there are not many migrants in leadership positions and they are generally pigeon holed to certain positions ... management are often blind to the real value that refugees and migrants can bring to organisations.*⁵²

The Commission’s survey findings are consistent with the VicHealth survey on the experiences of racism of CALD and Aboriginal and Torres Strait Islander communities. In that survey 33 per cent of CALD survey participants reported experiencing racism in connection with work.⁵³ The experience was more common for Aboriginal and Torres Strait Islander participants, with 42 per cent reporting experiences of racism in employment.⁵⁴

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- 50 Key informant interview, Federation of Indian Associations of Victoria Inc.
- 51 Key informant interview, Multicultural Centre for Women’s Health.
- 52 Key informant interview, Victorian Immigrant and Refugee Women’s Coalition.
- 53 Victorian Health Promotion Foundation, ‘Mental health impacts of racial discrimination in Victorian CALD communities’, above n 25, 5.
- 54 Victorian Health Promotion Foundation, ‘Mental health impacts of racial discrimination in Victorian Aboriginal Communities’, above n 5, 4. This contrasts with findings of the Melbourne Institute of Applied Economic and Social Research who, when analysing data from the Household, Income and Labour Dynamics in Australia (HILDA) surveys of 2008 and 2010 found the incidence of perceived employment discrimination was 11.6 per cent among Indigenous job applicants, and 10.4 per cent of Indigenous employees (based on a nationally representative sample). Markus Hahn and Roger Wilkins, *Perceived Job Discrimination in Australia: Its Correlates and Consequences*, Melbourne Institute Working Paper Series, Working Paper No. 9/13 (2013) 9.

Racism on the street

I was horrified to see a sticker relating to white supremacy in my neighbourhood.⁵⁵

Survey participants commonly reported witnessing or experiencing racism on the street (30.7 per cent). This included verbal abuse, but also graffiti and occasional physical assault. Some reported being abused while driving by other drivers.

*She stopped at the intersection, blocked the traffic, ran in front of my car, and called us “F**ing Asian”...*⁵⁶

*A group of people from Indian background were walking back to their car after dinner at the Crown Casino. Whilst walking a group of young men started following them and taunting them with racially derogatory terms about their ethnic background and the colour of their skin. The group being taunted initially ignored the other group as they were scared for their physical safety. When they continued to follow one young man in the group being racially abused spoke back and was subsequently physically assaulted by the four other men.*⁵⁷

The Jewish Community Council of Victoria told us that the most common complaint they receive is verbal abuse and harassment (such as throwing eggs) outside synagogues. They also reported a rise in anti-Semitic graffiti:

*...a local resident in Armadale [had their] walls painted with large, visual graffiti ... this person was shocked by it all and felt targeted. In this situation they became fearful and questioned why they were targeted.*⁵⁸

The Islamic Council of Victoria said they had received reports of “Muslims being verbally and physically abused, such as women wearing hijabs being attacked and having their hijabs forcefully removed”.⁵⁹

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- 55 Survey participant.
- 56 Survey participant.
- 57 Survey participant.
- 58 Key informant interview, Jewish Community Council of Victoria.
- 59 Key informant interview, Islamic Council of Victoria.

The Multicultural Centre for Women's Health told us:

One elderly Asian woman reported that she had been punched in the street. A group of teenagers came up behind her. We hear reports of women being yelled at "Go back to your own country" or "Speak English". These incidents are clearly racially motivated.⁶⁰

Racism on public transport

Public transport was also identified as another common place for witnessing or experiencing racism (14.7 per cent of respondents). Examples included verbal abuse, as well as offensive graffiti on trains, trams and bus stops.⁶¹

Another incident happened to my friend last year. She is 17 years old and was catching a tram back home after school and a drunk lady ripped her hijab off her head.⁶²

While travelling in a bus, [I] just tried to help an old lady [by] offering a seat to sit down. She accepted but then turned back to me abusing, saying words about [my] colour and nationality and to go back to the country that we belong to, and lots more...⁶³

Racist comments about saving 'Australian' jobs from overseas workers graffitied along walls along public train system on Upfield line near Macaulay station.⁶⁴

Whilst on this tram I have witnessed a few situations of verbal racial abuse. On one occasion, a group of young female students of Asian background were speaking in their own language when they were verbally threatened by a female passenger. She was extremely agitated and frightening as she screamed at the students to speak English and to go back to their own country, etc, etc. The girls were so upset they got off the tram, as it appeared she was going to physically assault them as well. On another occasion, the tram driver asked that a mother secure her child properly on the tram. When the mother got off at her stop, she racially abused the tram driver, calling him "a dumb fucking gook/Asian".⁶⁵

Racism in shops and services

While shopping, an Aboriginal person that was in front of others was not served in order. I was also served prior to that person and when I said that person was before me (as others had not) the shopkeeper just asked me again what I wanted. I said "nothing thank you, I don't buy in shops that do not serve people regardless of colour or race in turn", and left.⁶⁶

Just over one in ten survey participants stated that they had experienced or witnessed racism in connection with a service provider, including retail, hospitality and health services. For example, some participants described being denied services or being served last.

Restaurant would not book us in for a function because we were an Aboriginal organisation.⁶⁷

I was told that a retailer didn't have time to see me. Since I was there ahead of other customers and I was the only one wearing hijab it seemed to me that I was singled out.⁶⁸

Yesterday my friends and I went to [a pub] for lunch - we were specifically targeted due to our nationality and had to endure prejudiced-related bullying by the bouncers of the establishment. We were victims of verbal abuse, harassment and derogatory names, insults and racial jokes.⁶⁹

One participant was shocked to see their friend subjected to blatant stereotyping in a local shop:

In 2010, a male friend (of Aboriginal descent) and myself went into a local corner store... My male friend was actually going up to the counter to ask a question about if they had any washing powder... the shop owner said "We can't sell alcohol until after 7pm so come back then".⁷⁰

The Victorian Aboriginal Legal Service reported that the "denial of access to services is the biggest area that the service receives complaints about".⁷¹ The VicHealth survey also revealed that a disturbingly high number (66 per cent) of Aboriginal Victorians experienced racism in shops and services.⁷²

60 Key informant interview, Multicultural Centre for Women's Health.

61 Incidents of racist abuse on public transport have also received increased media coverage during the research period.

62 Survey participant.

63 Survey participant.

64 Survey participant.

65 Survey participant.

66 Survey participant.

67 Survey participant.

68 Survey participant.

69 Survey participant.

70 Survey participant.

71 Survey participant.

72 Victorian Health Promotion Foundation, 'Mental health impacts of racial discrimination in Victorian Aboriginal Communities', above n 5, 2.

The Multicultural Centre for Women's Health identified several common issues that arise for international students accessing health services, which they described as "both structural racism and gender discrimination".⁷³ In particular, these issues concerned recent changes to the mandatory Overseas Student Health Cover, which now excludes maternity-related costs in the first twelve months of cover. As a result, some students said they experienced substandard care, were unable to make informed decisions due to financial pressures and reported being turned away from public hospitals.⁷⁴

The Victorian Immigrant and Refugee Women's Coalition told us broadly that:

*Women report experiencing racism in their daily lives. This may be on the bus, in the supermarket, child-care centres, just as they are going about their day-to-day business.*⁷⁵

Interactions with the police

*Me and [a] group of white boys entered an abandoned building. The white boys began vandalising. I told them to stop and was leaving when the police arrived. I as well as the white boys told them I did nothing as I was leaving. The police directed all the questions at me... I was standing away from the white boys and I was leaving - I heard one of them mumble, "If only we could have arrested that nigger".*⁷⁶

*My neighbour disturbed me by blocking my driveway, made racial comments, told me to go back to my country, verbally threatened me. I contacted the police - they came but they didn't help me. The police supported the other person who was abusive to me. The police are very racial.*⁷⁷

The Victorian Aboriginal Legal Service described significant problems with the conduct of police. Some of the issues they raised included police not responding to a family violence incident involving a Koori family, police maintaining a presence around a family's home after a family made a complaint about a police failure to respond and 'over-policing' in areas with large Aboriginal communities.⁷⁸

73 Key informant interview, Multicultural Centre for Women's Health.

74 Key informant interview, Multicultural Centre for Women's Health.

75 Key informant interview, Victorian Immigrant and Refugee Women's Coalition.

76 Survey participant.

77 Survey participant.

78 Key informant interview, Victorian Aboriginal Legal Service.

*I came out of a bar in the city and saw a woman on the ground outside. I automatically went to assist her, only to discover that she was there because of police actions. She was indigenous. [The Police's] behaviour, both physical and verbal, was rougher than it needed to be, more antagonistic, and overtly hostile. She was drunk, but so were many of the people on the streets, none of whom were being treated in this manner.*⁷⁹

The African Think Tank reported that 'racial profiling' was a major concern for African communities. Furthermore, "Africans that are victims of crime are less likely to report it to police... due to a range of factors such as language barriers, lack of confidence and lack of access to the system".⁸⁰

Racism in education

My daughter was in her maths class (year 10) ... when her classmates began discussing 'abos'. The teacher sat silent. My daughter is a quiet girl and because she does not have dark skin, many in her class do not know that she is Aboriginal. She was offended by the remarks made and disgusted that the teacher let her classmates continue their conversation.⁸¹

Just over one in ten survey respondents reported an incident that happened at school or university.⁸²

*Our children in school, especially the boys, have faced much bullying because of the long hair and wearing of head coverings.*⁸³

*At school, other students told my daughter she is black. When she asked a question to the teacher one boy told her you look different to others. Another time another boy told my daughter I wish all the Indian taxi drivers were gone from here.*⁸⁴

79 Survey participant.

80 Key informant interview, African Think Tank.

81 Survey participant.

82 Eleven per cent of respondents reported an incident occurring at school or university.

83 Survey participant.

84 Survey participant.

The Victorian Aboriginal Legal Service said that “Aboriginal kids often start to experience [racism] in the school yard [being told] ‘you’re dirty, you stink’”. They noted that while this kind of racism is difficult to change, parenting is very important in addressing this issue. They also said they had received complaints about education services, where Aboriginal students were denied access to mainstream programs and were told to access Aboriginal programs and services.⁸⁵

The National Anti-Racism Strategy also identified primary and secondary schools as a key setting where racism occurs. This was a recurring theme that came through their consultations.⁸⁶

Racism in sport

A number of respondents highlighted issues of racism at sporting events.

*While playing soccer, players of the [opposing team] had turns calling me a “black c**t”, a “gollywog”, a “monkey” and saying things along the lines of “Go back to your tree”. I could also hear sounds every time I touched the ball.⁸⁷*

During those matches I was physically intimidated, spat at and kicked many times. The referees pretended nothing happened.⁸⁸

I was called names during a number of soccer matches ... The local soccer association says that “there are no rules to prosecute the offenders”.⁸⁹

‘Anti-white’ racism

A few respondents described incidents where they were abused for being “white” and expressed the view that this type of racism was not acknowledged by authorities, including the Commission.

I am a white Australian in the retail sector. It’s not common but it’s happened a couple of times now, where a non-white customer has

called me a series of disgusting names, all beginning with the word “white”... Racism is a problem for all people here. Whites included.⁹⁰

How did the person respond?

[I] told the man that I know my place as an Australian woman and I don’t need to go anywhere.⁹¹

About one in three respondents said they spoke up or intervened in response to incidents of racism.⁹²

If I come across racist remarks I will ALWAYS speak up.⁹³

As the stickers were sold on eBay, I contacted the seller and said that this was racist material.⁹⁴

Twenty-nine per cent said they walked away when the incident occurred and 23.3 per cent took no action at all.⁹⁵ Several people who did walk away spoke about trying to protect their emotional or physical safety.

It is safer to ignore and walk away. There are many young racists out in the weekends looking for an excuse for a fight, so I have learnt that the best and safer approach is to ignore their racial taunts.⁹⁶

I’ve learnt through many past experiences of verbal racism over the 30 years that ignoring the comment/action and walking away helps me to not dwell on the experience and also disempowers the perpetrator by not giving him/her the reaction they are hoping for ...⁹⁷

I cannot do anything. If I complained, I would have been beaten up.⁹⁸

Research shows that for Aboriginal and Torres Strait Islander Victorians the most common coping mechanism is to ignore the racism or to verbally confront the perpetrator, rather than report it or make a complaint.⁹⁹ CALD respondents most commonly avoid places where they predicted that racism would take place.¹⁰⁰ Almost two-thirds of

85 Key informant interview, Victorian Aboriginal Legal Service.

86 Australian Human Rights Commission, ‘National Anti-Racism Strategy’, above n 30, 6.

87 Survey participant.

88 Survey participant.

89 Survey participant.

90 Survey participant.

91 Survey participant.

92 37 per cent. Participants could choose more than one response.

93 Survey participant.

94 Survey participant.

95 Participants could choose more than one response.

96 Survey participant.

97 Survey participant.

98 Survey participant.

99 33 and 32 per cent of the survey sample respectively. VicHealth, ‘Mental health impacts of racial discrimination in Victorian Aboriginal Communities’, above n 5, 6.

100 64 per cent of the survey sample. Victorian Health Promotion Foundation, ‘Mental health impacts of racial discrimination in Victorian culturally and linguistically diverse communities’, above n 25, 2.

Aboriginal and Torres Strait Islander respondents, and almost half of CALD respondents, “sometimes”, “often” or “very often” avoided situations because of racism.¹⁰¹

Some bystanders in our survey reported instances where they intervened directly when they saw racism occurring or reported the incident later.

I was in a queue at [a department store] ... a Muslim family with one small child was in the same queue. I could hear the conversation as I was only one person behind them. The father, who had limited English language skills, had a question about a product and the young white Australian cashier responded in a manner which immediately suggested she had an issue with them. She was rude and dismissive, and the man became agitated. At that point she openly abused the man and suggested the family should “get the hell out of Australia” if they didn’t like the situation. The female adult in the family was visibly upset as she ushered her small child out of the shop. The man was angry and at first wanted to stay and argue. His wife called him and he eventually also left the shop. They were unable to buy their items. One other customer had muttered approval of the cashier’s actions which also greatly upset the man. I offered my support for the family, by way of directly asking the cashier what the problem was, and letting the family know they had done nothing wrong ...¹⁰²

However, a number of other bystanders told the Commission that they did not know how to take action or feel confident to intervene in the situation.

The tram was crowded. I could see and hear the interaction but not close enough to intervene in the moment. I was also scared myself, which made me feel pathetic.¹⁰³

The barriers to reporting and intervening in racism are discussed in more detail in Chapter 5.

101 Victorian Health Promotion Foundation, ‘Mental health impacts of racial discrimination in Victorian Aboriginal communities’, above n 5, 6; *Ibid* 2.

102 Survey participant.

103 Survey participant.

104 Survey participant.

105 This is despite self-regulation, including the requirements of the Media, Entertainment and Arts Alliance Code of Ethics which states “Do not place unnecessary emphasis on personal characteristics, including race, ethnicity, nationality, gender, age, sexual orientation, family relationships, religious belief, or physical or intellectual disability”. <<http://www.alliance.org.au>> at 9 April 2013.

106 See for example Multicultural Centre for Women’s Health, African Think Tank.

Racism and the media

Understandably, media and journalism is all about obtaining the largest audience and therefore scandalising content makes commercial sense. However, doing so normalises racism and makes it okay for others to parrot the same behaviour.¹⁰⁴

A total of 31 survey participants raised issues in relation to racism and the media. These concerns tended to focus on use of racial stereotypes, negative portrayals of communities and offensive commentary by media opinion leaders and radio talkback listeners.¹⁰⁵ These concerns were also highlighted in interviews with key informants.¹⁰⁶

Negative stereotyping

A number of survey participants expressed concern about the impact of negative stereotyping of culturally diverse groups.

The story was about alleged ‘youth gangs’ operating in Melbourne western suburbs. The footage that ran concurrent to the voice over journalist was of a street in Sunshine. It showed images of African young men socialising in the street and implied that this was one such gang. I personally know the young men on camera. None of them are involved in any gangs, none of them had been asked for permission to be filmed and all of them were quite concerned that they were clearly recognisable and were being misrepresented.¹⁰⁷

Programs like Today Tonight and [A] Current Affair that focus on ‘foreigners’ behaving badly, stealing ‘Aussie’ jobs, scamming ‘ordinary Australians’...¹⁰⁸

‘Current affairs’ shows and the Herald Sun reporting ‘stories’ on people of Aboriginal background where they are portrayed in a negative/ helpless/ hopeless light.¹⁰⁹

The Multicultural Centre for Women’s Health emphasised that it was the failure to contextualise negative reports that was damaging:

For example, there was a recent report about international students and plagiarism – with no contextualisation of similar issues among local students or mention of the settlement issues international students face. It showed a lack of balanced reporting.¹¹⁰

107 Survey participant.

108 Survey participant.

109 Survey participant.

110 Key informant interview, Multicultural Centre for Women’s Health.

In 2009, the Australian Communications and Media Authority (ACMA) dealt with complaints about *Channel Seven News*, *TEN News at Five* and *National Nine News* segments that attributed criminal activity to African migrants. ACMA found that all three programs had breached the requirements for factual accuracy, and that Ten and Nine had breached the requirement to present news fairly and impartially. For example, ACMA found that Channel Seven News had presented CCTV footage as evidence of African gangs, when the person depicted was not African.¹¹¹

Racially offensive commentary

Talkback radio and current affairs programs were mentioned by a number of survey participants as a venue for racism.

*TV Australian Rules Football panels and talkback radio are very prone to racially offensive comments that they excuse, and claim their targets are overly sensitive, given the excuse that comments were only meant as a joke.*¹¹²

Public awareness of offensive commentary can sometimes extend beyond the program's immediate audience. In some circumstances, the reporting of racism, however balanced, can generate racist commentary within the community. For example, in 2012, the print media covered Alan Jones' apology for comments made in April 2005 that were found in 2009 to have incited serious contempt under the *Anti-Discrimination Act 1977* (NSW).¹¹³ While media coverage of the apology may have been balanced, some of the community debate that followed was arguably offensive.

Negative reporting that focuses on a person's race can also attract a range of offensive comments on the media outlets' online forums. In 2009, the Victorian Civil and Administrative Tribunal considered an application for leave to bring proceedings under the Racial and Religious Tolerance Act regarding articles in the *Bendigo Advertiser* and *Herald Sun* newspapers and their accompanying online comments.¹¹⁴ While the merits of this case were not decided, it provides an illustration of the type of comments that can be attracted by reporting about race:

111 Australian Communications and Media Authority, *Investigation Report No.1943* (2009) 7.

112 Survey participant.

113 Alan Jones described Lebanese males as "'vermin' and 'mongrels' who 'simply rape, pillage and plunder a nation that's taken them in'." Quoted in Lara Sinclair, 'Jones apologises for Lebanese vilification', *The Australian* (Canberra), 20 December 2012, 8.

Look what so called cultural diversity has done to this country. We are fighting a losing battle and very soon 'Australians' will be the minority! Maybe then we'll have a chance.

*Make allowances for them? Crap. They now live in Australia. THEY should make the bloody allowances for our culture. If you do not like it! GO BACK TO WHERE YOU CAME FROM!*¹¹⁵

However, some users also posted comments criticising or opposing racism:

*People need to wake up and accept the fact that Australia is a MULTICULTURAL country. Enough with the racism!!!*¹¹⁶

Impacts of negative reporting

One survey participant said that racist reporting had the effect of making racism appear normal. Others told us that media reporting negatively impacted on the day-to-day lives of particular communities.

For example, the African Think Tank noted that:

*The media reporting of incidents involving the African community can have the impact of inflaming situations, creating fear within the broader community and antagonising situations.*¹¹⁷

While another key informant said:

*... around the time of the international student's rally, there were many community concerns. People felt that it should have been peaceful. They were afraid that it promoted a bad image of Indians. People felt that they were looked on differently. It created fear.*¹¹⁸

A study by the Australian Muslim Women's Centre for Human Rights found that insensitive reporting affected women's physical safety. The study interviewed 600 Muslim women and found that "participants were clearly of the view that media coverage of terrorism or a sensationalist story of individual Muslims behaving badly increased women's chances of being assaulted".¹¹⁹

114 'Riots avoidable, says cleric' *Bendigo Advertiser* (Bendigo), 20 December 2012, 12.

115 *Chakraborty v Regional Publishers (Western Victoria) Pty Ltd (Anti-Discrimination)* [2009] VCAT 1862 [32].

116 Comment responding to Ninemsn staff, *A Current Affair, All-Asian Mall*, (7 November 2012) ninemsn <<http://aca.ninemsn.com.au>> at 21 March 2013.

117 See for example key informant interview, African Think Tank.

118 Key informant interview, Federation of Indian Associations of Victoria Inc.

119 Australian Muslim Women's Centre for Human Rights, *Race, Faith and Gender: Converging discriminations against Muslim women in Victoria* (2008) 45 <<http://ausmuslimwomenscentre.org.au>> at 21 March 2013.

For some prominent culturally and linguistically diverse Australians, media reports of their opinions can lead to vicious personal attacks. One told us about abusive and racist emails that were sent to him following newspaper reports about the African community.¹²⁰

Media reporting of race-related issues

While the media can be a site for prejudice and negative stereotypes, it can also be a forum for discussing and challenging racism. There were a number of media reports about racism and race-related issues during 2012, including on policy announcements and legal decisions. For example, the launch of the National Anti-Racism Strategy and a Victorian Civil and Administrative Tribunal (VCAT) decision to evict a public housing tenant after allegations of anti-Semitic behaviour by his neighbours attracted considerable media attention.¹²¹

The media also reported on a number of racist incidents throughout the year, including racist graffiti¹²², racist attacks on public transport¹²³, racist abuse at sporting matches,¹²⁴ racist attacks on individuals¹²⁵ and the display of Nazi symbols.¹²⁶

In some cases, television programs, such as the series *Dumb, Drunk and Racist* on ABC, promoted discussion of racism in print and online.¹²⁷ Tweets from South African models also promoted an opinion piece in *The Age*, which invited readers to respond to the question, "Are Australians racist?"¹²⁸



120 This is not to say that the media coverage was racist, rather that the response by individuals was based on racial hatred.

121 Fiona Hudson, 'Nazi taunts strike fear', *Herald Sun* (Melbourne), 23 August 2012, 4.

122 For example, Megan Levy, 'Vandals attack Parliament House', *The Age* (Melbourne), 1 October 2012 <<http://www.theage.com.au>> at 2 April 2013.

123 Adrian Lowe, 'Racist rants mar suburban bus ride', *The Age* (Melbourne), 21 November 2012 <<http://www.theage.com.au>> at 2 April 2013.

124 For example, 'Reds fan outed over racist abuse', *Border Mail* (Albury-Wodonga), 24 December 2012, 24.

125 For example, Editorial, 'Race hate letter shows prejudice still alive in Ballarat', *The Courier* (Ballarat), 3 June 2012.

126 Jesse Wray-McCann with John Masanauskas, 'Swastika fury in Carrum' *Mordialloc Chelsea Leader* (Melbourne), 3 February 2012.

127 For example, Melinda Houston, 'Clever, sober and compelling,' *The Age* (Melbourne), 14 June 2012.

128 Larissa Behrendt et al, 'Are Australians racist?' *The Age* (Melbourne) 13 May 2012.

Impacts of racism

I have experienced racism since I was a child in this country. But as an adult who was born and raised here, it really does hurt when this happens to you when you are walking down a local street, driving in your car, or attending your workplace and customers or colleagues make these inappropriate comments about your skin/appearance.¹²⁹

There were no specific questions in the Commission's survey about the impact of racism on the victim or witnesses. However, a few participants described avoiding situations or turning down opportunities because of concerns about racism.

*Got the job but declined the offer. Would not like to work in an environment with such work colleagues.*¹³⁰

*...after many months my mother found out that I come home crying and realized and asked me what was going on. I told her that I did not want to go to school anymore. She went and spoke to the principal at school...who told the students off but that did not make anything change. So I decided to change school in the area where I felt comfortable and safe, where people from similar background studied...I still remember and it makes me feel sad that I nearly lost my education because of it.*¹³¹

Survey respondents also spoke about the emotional impact of racism:

*I spoke up as a child to the regular racism and bullying I experienced at school but as an adult I tend to walk away with a heavy heart...as well as a deep sense of anger.*¹³²

*I felt intimidated and ashamed...*¹³³

*I would like to think I would be braver and say something if it happened again...*¹³⁴

Discrimination and vilification can cause great harm to individuals who have been targeted, as well as to the groups to which they belong. For many victims of racism and hate, this behaviour is repeated over and over again, for many on a daily basis. This reinforces and escalates the harm done to people's physical and mental health.

For example, a survey of Aboriginal Victorians found 18 per cent witnessed racism against other Aboriginal Victorians almost every day.¹³⁵ Twenty-six per cent witnessed racism at least once a week.¹³⁶

Beyond the significant harmful consequences for individuals, racist behaviour also causes resentment, shame, fear and insecurity in the targeted group.

*If speech is used to stigmatise a particular social group, to make its members feel threatened and excluded, feel that they are second class citizens, aliens and outcasts whose very presence is resented, that may be as significant a harm as the direct infliction of physical injury, and one in which is equally capable of blighting people's lives.*¹³⁷

The cumulative effect of racism – be it in public, online or in negative stereotypes perpetuated through the media – can have the impact of undermining the confidence of members of the targeted community to participate fully in public life and debate.¹³⁸

Secondly, acts of physical violence and damage to property are more likely to occur in a 'climate of hatred'. This climate is often the result of many subtle, low-level acts that, incrementally and over time, create an environment where racism is legitimised and can be allowed to escalate.

¹³⁵ Victorian Health Promotion Foundation, 'Mental health impacts of racial discrimination in Victorian Aboriginal communities', above n 5, 2.

¹³⁶ Ibid 5.

¹³⁷ Larvor and Norman (2005) cited in Alexander Brown, 'The Racial and Religious Hatred Act 2006: a Millian response' (2006) 11 *Critical review of International Social and Political Philosophy*, 10.

¹³⁸ Sally Frances Reid and Russell G Smith, 'Regulating racial hatred' (1998) *Trends and Issues in Criminal Justice no 79* <<http://www.aic.gov.au>> at 22 March 2013.

¹²⁹ Survey participant.

¹³⁰ Survey participant.

¹³¹ Survey participant.

¹³² Survey participant.

¹³³ Survey participant.

¹³⁴ Survey participant.

*A vicious and widespread hatred of a group does not spring up overnight. It builds up slowly through isolated utterances and actions, each individually perhaps trivial, but all cumulatively capable of coarsening the community's sensibility, poisoning the minds of the young, weakening the norms of civility and decency and creating a situation which it becomes a common practice to ridicule, mock, malign and show hostility to the target group and over time to others. The violence that is implicit in hate speech then comes to the fore, initially in isolated incidents, but gradually gathering a momentum of its own. If anything can be said about a group with impunity, anything can also be done to it.*¹³⁹

Thirdly, when racism is not moderated effectively, it can act as a catalyst for a more widespread climate of hatred that can infiltrate other areas of social and public life. This has impacts on people's social, health and life outcomes, as well as their ability to participate fully in community life.

*A climate of hatred can cause members of the targeted group to be more likely to face discrimination in the workplace, to be excluded from the political process and the top positions in society, to be ignored in matters of social justice, to find it more difficult to gain access to education, housing and health care, to be more likely to experience mistreatment at the hand of the police, to suffer miscarriages and so on. There are, in other words, various ways in which hatred may inhibit the individual's efforts to live a decent life and to succeed as a full member of the community.*¹⁴⁰

Conclusion

The Commission's survey and interviews found that people in Victoria experience or witness racism in a range of public settings. Many survey participants reported overt and abusive examples of interpersonal racism. Others described more "hidden" forms of discrimination, such as unfair treatment at work or from service providers. This reflects the observation by several key informants that racism occurs at the level of systems and organisations, as well as through personal interactions.

The bodies who exercise responsibility for safety and services in these settings include government departments and agencies, not-for-profit organisations and private businesses. Any response to racism in Victoria must engage with this broad range of organisations.

Our research also indicates that media representation of different groups and offensive commentary from some opinion leaders are areas of concern for Victorians, as they perpetuate a number of negative racial stereotypes. This type of reporting and commentary can create and entrench divisions between different groups in the community and, in extreme cases, lead some people to feel anxious about their personal safety and wellbeing.

139 Parekh (2006) cited in Alexander Brown, above n 137, 14.

140 Matsuda et al (1993) cited in Ibid 13.

Chapter 4: Racism online

*...if we all just killed one foreigner the problem would be done in a week, a couple a mass graves, some UN indignation, but in the end no dirty Indians...*¹⁴¹

Main findings

- There are numerous examples of racist and derogatory stereotypes perpetuated through specific websites, circulated through jokes, stories, videos and images and reposted via social media sites.
- Facebook, the most commonly used social media site, includes pages that are designed to share and encourage racist content; for example, (like this) *if you think they should Ban the burka in Australia*.
- While the majority of racist material online is probably generated by individual ‘trolls’, there are also groups who use their online presence to spread hate and to gain support for their organisations.¹⁴²
- In extreme online forums, including white supremacist groups, there are explicit expressions and encouragement of hate and violence.

141 Comment posted on the Australia Forum, Topix.com.

142 A troll is someone who posts inflammatory or off-topic messages in an online community, such as a forum, chat room, or blog, with the primary intent of provoking readers into an emotional response or of otherwise disrupting normal on-topic discussion.

143 Sensis, *Yellow social media report: what Australian people and businesses are doing with social media* (2012) 10–11. In another recent study, 76.3 per cent of Australian respondents described the internet as an important or very important source of general information. The majority of respondents also said that the internet has increased their communication with family (61.9 per cent), friends (68 per cent) and professional contacts (56 per cent). Scott Ewing and Julian Thomas, *CCi Digital Futures 2012: The internet in Australia* (ARC Centre of Excellence for Creative Industries and Innovation, 2012) 12–13, 20 <<http://apo.org.au>> at 23 March 2013.

Internet use in Australia

A 2012 study found that 84 per cent of Australian respondents used the internet at least once a day, with 62 per cent also using social media, such as Facebook and Twitter.¹⁴³ This has had a profound effect on how we access information, how we communicate and how we create and maintain our relationships.

Different people use digital technologies in different ways. A prominent market research tool classifies people based on whether they publish content, post status updates or tweets, rate or comment on other websites, organise content, join social networks or simply consume content.¹⁴⁴ These different modes of online engagement are reflected in surveys of Australian internet users.¹⁴⁵

Research looking specifically at racist websites in the United States of America notes that users range from the active (registered members, who may be creators, sustaining or supportive, or oppositional) to the passive (guests or visitors, who may be supportive, curious or oppositional).¹⁴⁶ These categories acknowledge the different ways that internet users encounter and engage with online information and groups.

144 Josh Bernoff and Jacqueline Anderson, *Social Technographics ® defined* (2010) Forrester <<http://www.slideshare.net>> at 22 March 2013.

145 For example, a recent study found that while over 95 per cent of Australian respondents used email and 56 per cent used social networking sites, only a third used message/discussion boards, and only one in ten updated personal web pages or blogs: Scott Ewing and Julian Thomas, *CCi Digital Futures 2012: The internet in Australia* (ARC Centre of Excellence for Creative Industries and Innovation, 2012) 14, 16, 37–38.

146 Jessie Daniels, *Cyber Racism* (2009) Rowman & Littlefield Publishers Inc, 50.

Examples of racism online

This section provides some examples of racism online. These examples are intended to illustrate the type of content online and how this content is produced and disseminated, and do not represent an exhaustive study.¹⁴⁷

The Commission collected material from social media sites such as Facebook, online forums, blogs and dedicated websites.

Some examples were found using a simple Google search of search terms that equate to racist or hate language, as well as terms such as 'white supremacy' and 'white power'.

Other examples were provided as case studies or referred to us via the Anti-Hate website. A number of survey respondents (37) also reported witnessing or experiencing racism on the Internet, including through social media, websites, blogs or unsolicited emails.

Examples of racist content

One analysis of online hate groups identified four common themes in the communications of these groups:

- **education** (for example, reporting racialised interpretations of news events or reinterpreting history)
- **participation** (for example, calling on a duty to participate in the group or in society)
- **invocation** (for example, statements of the racial superiority of the group)
- **indictment** (for example, demonising other groups or the government).¹⁴⁸

The writers suggested that these themes seek to reinforce the identity of the groups, respond to external threats and recruit new members.¹⁴⁹ While many racist statements are not linked to organised hate groups, this way of analysing communications and messages also helps to identify the range of racist content online.

Following are examples of different kinds of racist communication. Some comments can fit into more than one category.

147 In particular, there is little research on cyber-racism as a form of cyber-bullying among young people. Thus, while we know that 7–10 per cent of students have experienced cyber-bullying, we do not know the proportion of cyber-bullying that is motivated by racism. See <<http://www.racismnoway.com.au>> at 23 March 2013.

148 Lacy G McNamee, Brittany L Peterson and Jorge Pena, 'A call to educate, participate, invoke and indict: understanding the communication of online hate groups' (2010) 77 (2) *Communication Monographs* 257, 265.

Incitement of hatred or violence

In more extreme online forums, there are explicit expressions and encouragement of hate and violence.

I hate the boat people...send 'em packing.

I hate boongs. We should round up anyone with aboriginal blood and kill them.

Comments on Australia Forum, Topix.com

In some of these forums, derogatory and violent racist language was used frequently. The Australia Forum on Topix.com and comments following YouTube clips used particularly offensive language.

*F**ing b00ngs*

Comments after YouTube Video

*F**ing wogs*

Name of thread on Bogan.com.au

Derogatory stereotypes

There are numerous examples of racist stereotypes perpetuated through specific websites, circulated through jokes, stories, videos and images and reposted via social media sites.

An example is the 2012 Aboriginal memes page on Facebook.¹⁵⁰ Andre Oboler from the Online Hate Prevention Institute (OHPI) observes that this page made use of Australian-specific stereotypes (such as references to substance abuse), examples of 'old' racism (such as suggestions that Indigenous Australians are of lower intelligence) and dehumanisation.¹⁵¹ Similar stereotypes are perpetuated through YouTube and various online forums.

...they smelt like a glue spill at a rubbish tip. Alot [sic] of people from other countries who think we are racist towards them just need to be educated...

Comment on YouTube

Dirty filthy diseased, useless uneducated monkey like, Parasitic, unwanted, hideous scum.

Post on Australia forum on Topix.com

149 Ibid 272.

150 An internet meme is a concept that spreads between people over the internet.

151 Andre Oboler, *Aboriginal memes & online hate* (2012) Online Hate Prevention Institute, 6.13.

'Old' racism

Racial stereotypes, and the derogatory and violent language that often accompanies them, are expressions of 'old' racism. Old racism is grounded in a belief of a racial hierarchy.¹⁵²

Whites are the most superior of all races. Without us you would all just be living like animals.

Post on Australia Forum on Topix.Com

I'm racist, white and proud...

Post on bogan.com.au

Contemporary Australian values of fairness and egalitarianism make this type of overt racism less socially acceptable.¹⁵³ Arguably, many internet users would be offended by the mix of violence, profanity and blatant racism on many of these sites and forums.

'New' racism

'New' racism focuses on a cultural, rather than biological, understanding of race.¹⁵⁴ Examples of new racism online are aimed at constructing a distinct Australian culture that is irreconcilable with "foreign" cultures.

...in Australia we believe we have a democracy, but I missed the vote on whether or not we should introduce foreign races and cultures that don't share anything in common with us except that they will exist on the same soil.

Comment on YouTube

...the term "Australian Values" comprises a set of attitudes, ethics and behavioural norms as well as historical, social and political foundations, which only Australians share in this particular combination.¹⁵⁵

Why is it that we Australians are so afraid of standing up for OUR way of life in OUR country?? If people who come to live here don't like how we behave, & our lifestyles & our religion & OUR rules (or lack of them) then they can hike it back home...¹⁵⁶

Some websites, such as the QSociety website, present a supposed factual analysis of Muslim beliefs. By focusing on 'facts', the website attempts to avoid expressions of overt racism.

...Islam teaches Muslims to avoid friendship or integration with non-Muslims (who are 'infidels' or 'kafir'), leading to division of public space like Muslim-only lavatories, swimming pool sessions and prayer rooms; even calls for Muslim-only housing projects. This is apartheid and shows contempt for Australia's values of respect, tolerance and equality.¹⁵⁷

However, as the example above demonstrates, the website reframes examples of reasonable changes made by organisations to accommodate religious beliefs as demanding, intolerant, disrespectful and divisive. This undermines equal opportunity messages about indirect discrimination, while simultaneously appealing to notions of equality and fairness. The result is arguably a more subtle and pervasive form of racism.

Forums for racism online

This section analyses some of the ways in which racist content is produced and disseminated online.

The anonymity of the online environment can make it easier for individuals to make comments that they might not otherwise make in a public setting. This can establish a mutually reinforcing environment where others comment or respond in a similar fashion, creating a racially hostile online space.

Email

One survey participant told the Commission that he "received racist emails from people who think they are funny".¹⁵⁸ Another provided us with multiple examples of anti-Muslim 'jokes' and messages that were forwarded to a mass email list by an acquaintance. For example:

*They say Muslims born in Australia are Australians. Bullshit! If a dog is born in a stable, it's not a f**ing horse, is it?¹⁵⁹*

152 Victorian Equal Opportunity and Human Rights Commission, 'New tensions, new tactics', above n 19, 7.

153 Sanson (1998) cited in Robert J Donovan and Rodney Vlasis, *A review of communication components of anti-racism and pro-diversity social marketing/education campaigns* (2006) 85.

154 Victorian Equal Opportunity and Human Rights Commission, 'New tensions, new tactics', above n 19, 7.

155 QSociety of Australia Inc, *Q on: Australian Values*. QSociety of Australia <<http://www.qsociety.org.au>> at 23 March 2013.

156 Comment following *Herald Sun* online article, quoted in *Chakraborty v Regional Publishers (Western Victoria) Pty Ltd & Ors (Anti-Discrimination)* [2009] VCAT 1862 (14 September 2009) [32].

157 QSociety of Australia Inc, *Q on: why we oppose Islam for Australia*. QSociety of Australia <<http://www.qsociety.org.au>> at 23 March 2013.

158 Survey participant.

159 Email forwarded to the Commission 9 August 2012.

In 2009, the Stephen Roth Institute published a report on racism in Australia, noting that 591 out of 835 reports of anti-Semitism related to emails.¹⁶⁰

Racist email forwards are not a new phenomenon. In 2010, members of Victoria Police were investigated in relation to a forwarded email showing an Indian man being electrocuted, which a police officer described as a way to “‘fix’ the Indian student ‘problem’”.¹⁶¹

Email may be used as a method of distribution as it assumes a closed audience with similar views. However, as with comments or material posted on other online forums, emails can be forwarded or reposted via social media, making them public to thousands of people within seconds.

The Commission is also aware of racist and threatening emails sent to prominent CALD community members in Victoria following publicity about race issues or experiences of racism. This means that community members are subjected to further trauma and abuse, in addition to the original incident.

Social networking sites

The OHPI told us that “hate in social media is a problem due to the technical capacity of social media and the ability to incite and spread it in a viral manner”. They observed that most of the material they look at “has been generated mainly by individuals, or loosely organised groups, [and] there is often no ideology behind it besides that they find this derogatory material amusing”. The OHPI described the profile of these individuals as “trolls ... people who find it amusing to destroy other people’s online experience”.¹⁶²

In a parliamentary report following hearings into one particular form of racism, the Italian Parliament included a section on online hate. They noted that

160 The Stephen Roth Institute for the study of Antisemitism and Racism, Australia 2009 (2009) Tel Aviv University <<http://www.tau.ac.il>> at 23 March 2013.

161 ABC Television, ‘Racist email tests Australia-India relationship’, *ABC AM*, 11 October 2010 (Peter Cave).

162 Key informant interview, Online Hate Prevention Institute.

163 Joint Committees I (on Constitutional, Presidency of the Council of Ministers and Interior Affairs) and III (on Foreign and European Union Affairs); Parliament of Italy; *Final Report of the Fact-Finding Inquiry on Anti-Semitism: English version* (2011) 22 <<http://www.jewishresearch.org>> at 23 March 2013.

164 Ibid 24.

165 97 per cent of the 62 per cent of internet users who used social networking sites. Sensis, above n 143, 16.

“the Internet has shifted and amplified beyond imagination what was previously only a residual phenomenon, limited to graffiti on city walls and certain niche publications”¹⁶³, and that social media has led to a further “specific amplification of the phenomenon”.¹⁶⁴

Facebook

Facebook is the most popular social network site in Australia. A 2012 survey found that almost all social network users used Facebook.¹⁶⁵

The 2012 Aboriginal memes page is a high profile example of racism on Facebook.¹⁶⁶ Andre Oboler has analysed the creation of these pages and made repeated efforts to have these and similar pages removed.¹⁶⁷ He noted that the Aboriginal memes page (and the Jewish memes page that followed) “reused content that was already present on Meme Generator...and used Facebook to add capacity for viral spread and the creation of a dedicated hate community.”¹⁶⁸ This hate community spread wider than Australia, with the eventual involvement of US-based “hate activists”.¹⁶⁹

Oboler also observed that the Aboriginal memes administrators, and the coordinators of attacks on anti-hate activists, used fake profiles and the ability to re-open pages with slight name changes as a way to circumvent attempts to block or remove the pages.¹⁷⁰

There are other Facebook pages that are designed to share and encourage racist content. For example, the page (*like this*) if you think they should Ban the burka in Australia contains anti-Muslim jokes, images and comments. In February 2012, it had nearly 25,000 followers. The Jewish Council of Victoria also noted several online blogs and social media sites, such as the Jewish memes page on Facebook, and said that, “social media sites such as YouTube, Facebook and Twitter... need to take more responsibility for displaying material on their sites.”¹⁷¹

166 Between June and August 2012, a number of racist images targeting Aboriginal and Torres Strait Islander people started circulating on the internet. These typically were multimedia messages containing a picture and a text-based message.

167 Andre Oboler, ‘Aboriginal memes & online hate’, above n 151, 50.

168 Ibid.

169 Ibid 36.

170 Ibid 20-23, 28, 42-44.

171 Key informant interview, Jewish Community Council of Victoria. See also Andre Oboler, *Recognising Hate Speech: Anti-Semitism on Facebook* (2013) at <<http://ohpi.org.au>> at 23 March 2013.

One survey respondent alerted the Commission to a “public Facebook page discriminating against Mexico and Mexicans”.¹⁷² Another, working in children’s services, said that colleagues at a previous workplace “took to Facebook to state that they believed ‘no English, no entry’.”¹⁷³ A third told us about “a Facebook friend whose comment was then commented upon by other friends who agreed with him ... embarking on a racist rant against Muslims.”¹⁷⁴

YouTube

YouTube is another forum where racist material is published, which can then be promoted and disseminated through Facebook, Twitter, Google+ or email. For example, users have posted videos with racist titles and derogatory content, which then attract a thread of derogatory and racist comments.

In August 2012, the Executive Council of Australian Jewry reportedly called on YouTube to remove videos uploaded by Holocaust denier Fredrick Toben.¹⁷⁵ Around the same time, the OHPI forwarded a report to YouTube about a single user who uploaded 1,710 videos in one day, the majority of them containing racist and anti-Semitic content. These videos appear to have been uploaded by a user who had had a previous account closed.¹⁷⁶

Discussion forums

The Commission was alerted to a number of examples of racist threads within forums that, on the surface, would appear to be concerned with mainstream topics. This includes racist comments in discussion forums about the Australian stock market, cars and body building.

Hey vretts how hard is it to get an approval to enter the local aboriginal council lands where central is working and how long does it take 2 SLABS AND 3 FLAGONS, IMMEDIATE APPROVAL

Posts on stock market discussion forum

*...F**kin useless race they are. Good for f**k all. Im not racist I just hate boongs...*

Posts on car discussion forum

Get 2x the welfare payments any other person gets. Spends money on alcohol and drugs/ petrol to sniff. Always smell terrible. Taxpayers put them in new houses, they pull the floorboards out of the houses and use them as firewood...

Posts on a body-building forum

Topix

Since 2007, Topix has operated as a “network of community-edited blogs alongside automated local news aggregation”.¹⁷⁷ According to Alexa.com, Topix attracted an estimated 0.11 per cent of global internet traffic between September and December 2012.¹⁷⁸ Topix users are only identified by geography and can remain anonymous by choosing a new name for each post.¹⁷⁹ The site claims that it uses software to screen offensive content, such as racial slurs.¹⁸⁰

The Australia Forum on Topix had around 41,819 threads in December 2012. Many of these threads have relatively few comments. However, Topix threads appear to receive relatively high Google search ratings; for example, a search for ‘Sudanese Australian’ on 6 December 2012 ranked the following Australia Forum threads as the 10th result:

*Are there too many Sudanese in Australia?
(20 posts)*

*Australia welcomes Sudanese migrants
(4 posts)*

I hate Sudanese (20 posts)

The most recent 100 threads on the Australia Forum on 3 December 2012 indicated around a third referred to race or religion.

Threads viewed by the Commission included a large number of derogatory comments and stereotypes, expressions of hatred and incitement of violence. These included racial slurs directed at Aboriginal, African, Greek, Lebanese and Indian Australians, among others. While only a small number of Australians publish content in the Australia Forum, the relatively high ranking in Google searches of Topix threads makes it a prominent online space for racism.

175 Rachel Hirshfeld, ‘YouTube ‘too slow’ taking action against hate videos’, *Arutz Sheva* (online), 14 August 2012 <<http://www.israelnationalnews.com>> at 23 March 2013.

176 Andre Oboler, *Incident report and analysis: YouTube user momlvx1* (2012) Online Hate Prevention Institute, 2.

177 Mark Coddington, *Topix* (11 May 2011) Nieman Journalism Lab Encyclo <<http://www.niemanlab.org>> at 23 March 2013.

178 Alexa, *Site info topix.com* (6 December 2012) <<http://www.alexa.com/siteinfo>> at 23 March 2013.

179 A G Sulzberger, ‘In small towns, gossip moves to the web, and turns vicious’, *The New York Times* (New York), 20 September 2011, A1.

180 *Ibid.*

172 Survey participant.

173 Survey participant.

174 Survey participant.

Hate communities online

While the majority of generators of racist material online could be described as individual “trolls” or “griefers”,¹⁸¹ there are also groups and organisations who are using an online presence to spread hate.

The majority of all “hate sites” originate in the United States.¹⁸² Nevertheless, these sites still affect Victorians as they have Australian users,¹⁸³ host Australia-specific forums¹⁸⁴ and have been used as sources for local racist actions.

The most prominent online hate community is Stormfront. Jessie Daniels, an American academic and author, observed that Stormfront is an explicitly global website.¹⁸⁵ She argued that Stormfront grew dramatically between 2002 and 2009 because of their investment in cultivating a sense of a global, white community.¹⁸⁶ She wrote, “people seek out Stormfront because it resonates with a white racial frame, and they return because they enjoy a sense of community built on a collective white identity”.¹⁸⁷ An estimated 2.3 per cent of visitors to the Stormfront site in September to December 2012 were from Australia.¹⁸⁸

Global white supremacist websites can be a source of materials for local racist acts. For example, in 2005, racist posters downloaded from the White Pride Coalition’s website were displayed in streets in Sydney.¹⁸⁹ There is also the potential for sharing “strategies for targeting and terrorising selected groups”.¹⁹⁰ These forums can be used to coordinate local racist actions. For example, in 2008, *The Daily Telegraph* reported that Stormfront was being used to coordinate racist rallies on Australia Day.¹⁹¹



Local hate communities can seek legitimacy and reach through affiliation with global networks. For example, the Church of Creativity Australia, which describes itself as a “religion for White people, by White people”, advertises its membership of the Creativity Alliance Network of Websites. This website contains a mixture of local content (such as reporting on a rally by the “anti-White, communist group known as Refugee Action Collective”) and international content (such as anniversaries relating to Adolf Hitler).¹⁹²

In the opinion of the OHPI, on-line “griefers” have greater numbers and more impact in relation to online racism than organised hate groups.¹⁹³ This suggests that, while it is important to be conscious of the content and impact of white supremacist groups online, the primary focus of action in addressing racism online should centre on popular, mainstream platforms (such as Facebook and YouTube) that are used to disseminate racist content.

181 A griever is someone, usually in an online game, who intentionally, and usually repeatedly, attempts to degrade another’s experience or torment them. <<http://www.urbandictionary.com>> at 13 March 2013. A griever derives pleasure primarily or exclusively from the act of annoying other users, and as such is a particular nuisance in online gaming communities, since griefers often cannot be deterred by penalties related to in-game goals. See <<http://en.wikipedia.org>> at 23 March 2013.

182 Jessie Daniels, above n 146, 5.

183 For example, the Commission was alerted to Australian users on the Hammersmith’s website forum38.com.

184 For example, the Australia-specific content on Stormfront.org.

185 Jessie Daniels, above n 146, 42.

186 Ibid 107.

187 Ibid 109.

188 Alexa, above n 178.

189 Suvendrini Perera, ‘Race terror, Sydney, December 2005’ (2006) 5(1) *Borderlands e-journal* <<http://www.borderlands.net.au/>> at 23 March 2013.

190 Ibid.

191 Joe Hildebrand, ‘RSL slams Australia Day hijack’, *The Daily Telegraph (Online)* (Sydney), 10 January 2008 <<http://www.dailytelegraph.com.au>> at 23 March 2013.

192 See for example, Rev. C. Maygar, *Stand Against Marxist Refugee Rally*. Church of Creativity Victoria <<http://creativityvic.com/blog>> at 10 April 2013.

193 Key informant interview, Online Hate Prevention Institute.

The impact of racism online

*It was a Facebook status, used to make a joke, that a lot of people agreed with.*¹⁹⁴

Racism online can cause fear and hurt to the people who are targeted, as well as to their families and friends. When prominent community members or anti-racism campaigners are targeted with personal attacks, it can create a genuine threat to their personal safety. For example, the OHPI told the Commission that the personal contact details of anti-racism campaigners have been “published on Facebook with suggestions people phone and harass them”.¹⁹⁵ OHPI also notes that “openly targeting those who visibly oppose online hate also has an indirect effect of intimidating bystanders into remaining silent. This further enables the spread of hate, and an impression of public acceptability, through society”.¹⁹⁶

Individuals who contribute to racist online discourse can believe “that their racist attitudes are normal and accepted by society and erroneously position those who oppose racism and support multiculturalism as outside society’s norms”.¹⁹⁷ On the other hand, victims of racism online may choose to avoid further active involvement with social media, thereby limiting their freedom of expression and participation in a manner similar to how some groups who are subject to racism on the street avoid places where they may be at risk of racial taunts or hate speech.¹⁹⁸

At an organisational level, racism online can undermine public trust in public and private institutions. When people in positions of authority (as identified through their Facebook profiles) create, comment on or express support for racist Facebook pages or comments, it both normalises racism and further disenfranchises victims of racism.

At a societal level, racism online is harmful because it reinforces racist attitudes and creates an environment where the expression of racist views is seen as acceptable. According to commentators, this undermines tolerance and the “hard-won political truths about racial equality”.¹⁹⁹

194 Survey participant.

195 Key informant interview, Online Hate Prevention Institute.

196 Key informant interview, Online Hate Prevention Institute.

197 Andre Oboler, ‘Aboriginal memes & online hate’, above n 151, 30.

198 See Australian Muslim Women’s Centre for Human Rights, above n 119, 39.

199 Jessie Daniels, above n 146, 8.

200 Survey participant.

Responses to racism online

Grassroots responses

*I felt that hopefully my comments would be enough for the Facebook friends to realise that they were out of line.*²⁰⁰

While social media is used to generate and disseminate racism, it is also used to oppose it. For example, a change.org petition calling for the removal of the Aboriginal memes Facebook page attracted 20,670 supporters.²⁰¹ In December 2012, a Facebook page which mocked a 17-year-old Aboriginal boy who died after being hit by a train was removed after a change.org petition attracted more than 2,000 supporters.

The Commission launched its Anti-Hate campaign and website in 2012.²⁰² It is another example of creating an online forum to build community capacity to combat racism. Not only does the site provide individuals with an opportunity to report incidents, it also provides a place where people can share their stories on how they have intervened, or not, or when they have witnessed hate online, in public, at work or in other settings.

Monitoring racism online

The OHPI is the only dedicated organisation in Australia that specifically monitors incidents of online hate. Given the volume of hate online, the OHPI:

*... focuses its attention on collecting interesting examples and trying to isolate areas where we can create systemic improvements and try to come up with recommendations.*²⁰³

The OHPI told us that they have a plan to systematically monitor sites and collect data that other organisations can use to respond to online hate. They noted that the organisation is:

*... currently designing a solution to capture that information and assure quality control over the data. To capture this information, the public would need to be involved to assist with capturing the data...it is now an engineering challenge and a challenge to get the funding to make this a reality.*²⁰⁴

201 Jacinta O’Keefe, ‘Facebook: Immediately remove the racist page called “Aboriginal Memes”’ Petition on *change.org* (August 2012) <<http://www.change.org>> at 23 March 2013.

202 <<http://www.antihate.vic.gov.au>> at 19 April 2013.

203 Key informant interview, Online Hate Prevention Institute.

204 Key informant interview, Online Hate Prevention Institute.

A mechanism to monitor racism online and to link this to a real-world location would provide a basis for equal opportunity bodies and police to respond proactively to racism online.

Legal responses

As described in Chapter 6, Victorian and Commonwealth laws cover racial vilification and racial hatred that occurs online. The Racial and Religious Tolerance Act explicitly notes that conduct covered by the Act includes the “use of the internet or e-mail to publish or transmit statements or other material”.²⁰⁵ Online content may also be subject to stalking provisions in the Crimes Act, copyright and defamation laws and a limited degree of regulation by the Australian Communications and Media Authority.

In relation to the racial hatred provisions of the federal Racial Discrimination Act, the Federal Court of Australia found in *Jones v Toben* that placing material (including text, graphics, audio or video) on a non-password protected website was a public act covered by the Act.²⁰⁶

Building capacity to report online racism

The OHPI has highlighted a number of limitations in relation to reporting racist content to online platforms, such as Facebook. Standards for usage of Facebook are set out in that company’s Community Standards. These state that

Facebook does not permit hate speech, but distinguishes between serious and humorous speech. While we encourage you to challenge ideas, institutions, events, and practices, we do not permit individuals or groups to attack others based on their race, ethnicity, national origin, religion, sex, gender, sexual orientation, disability or medical condition... If you see something on Facebook that you believe violates our terms, you should report it to us.”²⁰⁷

According to the OHPI, Facebook’s response varies depending on the kind of breach that is reported. If the report concerns a breach of copyright, Facebook will normally remove the content. If it involves hate content targeting a living

individual, Facebook will usually respond within three to four days. However, the OHPI states that “if the hate is targeting a deceased person or a group of people, Facebook often will not react at all”.²⁰⁸

Alternative options are to place community and media pressure on Facebook to remove the page or to pursue the matter under classification regulations. The OHPI claims that if Facebook is informed that content would be refused classification in Australia, they will restrict the content from view in Australia, but not remove the content.²⁰⁹ In the case of the Aboriginal memes page (which is restricted from view in Australia), the OHPI is arguing that there has been a copyright violation with the hope of having the content removed.²¹⁰

The OHPI pointed out that responses to online hate require both technical skill and an understanding of the damage that online racism can cause. They noted that this requires significant investment and funding to build capacity in this area.²¹¹

Other responses

There is also the potential for governments to take consumer action against online platforms that fail to adequately address racism, racial hatred and racial vilification, through their procurement policies:

The true customers of social media platforms are not the users but the advertisers. The public purse is a significant customer, and its buying power should be used in line with public policy considerations. Companies that cannot meet a minimum ethical standard should be excluded from government advertising.”²¹²

The OHPI also called for greater attention on educating young people:

There is a lot of discussion about children being victims [of exposure to racist online content], yet not enough about children promoting it. The school environment is a major venue where online hate is being promoted. Teachers may not be equipped appropriately to respond accordingly. There needs to be more education and focus on the perpetrators.”²¹³

205 *Racial and Religious Tolerance Act 2001* (Vic) s 7, 8.

206 *Jones v Toben* [2002] FCA 1150 [73]-[75].

207 <<http://www.Facebook.com/communitystandards>> at 16 April 2013.

208 Key informant interview, Online Hate Prevention Institute.

209 Andre Oboler, ‘Aboriginal memes & online hate’, above n 151, 59.

210 Key informant interview, Online Hate Prevention Institute.

211 Key informant interview, Online Hate Prevention Institute.

212 Andre Oboler, ‘Aboriginal memes & online hate’, above n 151, 64.

213 Key informant interview, Online Hate Prevention Institute.

Conclusion

The internet, especially social media, is an increasingly significant forum for the creation and dissemination of racist content. In recycling, multiplying and promoting stereotypes, misinformation and division through myriad platforms, online racism contributes to a new form of public discourse, where extreme and offensive views are perceived as acceptable.

Racist views and content are not limited to the work of organised online hate groups. In fact, the more significant body of racist material online is published on popular, mainstream forums by individuals or loosely organised groups. As the Aboriginal memes page demonstrates, this material has the potential to reach wide audiences.

Responses need to address the individuals responsible for creating the content, as well as the platforms that enable racist material to be published and disseminated. Oboler has highlighted the deficiencies of the responses of Facebook and YouTube to user reports of racist content.²¹⁴ Ultimately, Australian governments have a responsibility to build relationships with these platforms and, if necessary, to legislate in order to ensure that Australian laws are respected online. This should be combined with other non-legal responses, including community education and capacity building.



214 See for example Andre Oboler, Aboriginal memes & online hate, above n 151; Andre Oboler, 'Incident report and analysis', above n 176.

Chapter 5: Reporting experiences of racism

Main findings

- The majority of survey respondents (54.6 per cent) did not report the racism they experienced or witnessed.
- When asked why not, the most common response was that people did not think anything would be done about it.
- Around one in five participants said they did not know where to report an incident or what would be involved.
- One in five said they were afraid of potential consequences or victimisation after making a report.
- For those who did report an incident, around one in three said little had happened as a result.

There seems to be an acceptance of this form of discrimination in Australia, which makes it very difficult to raise.²¹⁵

Experiences of reporting

Just under half of survey respondents (45.4 per cent) reported the racist incident they experienced or witnessed.²¹⁶ About one in 10 (28 of 227) reported the incident to their employer, while less than 10 per cent of respondents made reports to a service provider (19 of 227), school or university (9 of 227), community group (7 of 227), or local council (15 of 227).

Six respondents reported the incident to the Commission and one reported it to the Australian Human Rights Commission. A small number of respondents made reports to government agencies or peak sporting bodies.

Some people told us that they had positive experiences of reporting. This usually involved either a positive outcome or a positive interaction with the reporting body.

I asked for an apology and, through the intervention of the mediator from the Health Services Commission, I did get an apology.²¹⁷

A senior police officer investigated it to our satisfaction i.e. we believe the officer involved was counselled against discrimination.²¹⁸

The police were very receptive, particularly as there had been racial attacks against the Jewish community in Balaclava a week earlier.²¹⁹

They are currently doing an investigation and are being very supportive and open about the process.²²⁰

In contrast, around one in three respondents who had reported an incident told us that little had happened after making the report.²²¹ In one case, the person said they felt unable to continue in their work as a result.

I was told that the manager didn't mean it, yet [I] received no apology and the behaviour has continued to the point I no longer have meaningful work and am leaving the department as a result.²²²

In another case, nothing happened because of limitations in the rules of the particular sporting association. However, the complaint did serve as a catalyst to address those issues. The person who made the report received the following response:

... under our current Rules there is no provision that allows the Association to investigate these reports as they happened on the pitch and were not reported by the referees. This is a shortfall in the Association's Rules... which the

215 Survey participant.

216 That is 103 of 227 survey respondents.

217 Survey participant.

218 Survey participant.

219 Survey participant.

220 Survey participant.

221 Manual analysis of free text answers.

222 Survey participant.

*Executive believes should be addressed as a matter of urgency. The Executive is committed to modifying the Rules so that these types of incidents can be dealt with appropriately in the future.*²²³

A few respondents had reported issues to the police but further action was hampered by an inability to identify the perpetrators.

However, in many cases, the respondent simply said that nothing was done:

*The council said they would follow it up and get back to me (which they did not) and the supermarket, while expressing concern, said they couldn't do anything about it, as it was not on their property. The graffiti was eventually covered over by other graffiti.*²²⁴

*They reviewed [the racist Facebook page] but have failed to take down the page after several users reporting it.*²²⁵

*No action was taken by my manager. Eventually I left the job because I felt the organisation did not know how to handle the situation.*²²⁶

Reasons for not reporting an incident

The majority of survey respondents (54.6 per cent) did not report the racism they experienced or witnessed.

When asked why not, most people said it was because they did not think anything would happen.²²⁷

*Don't think police would be interested anyway because it was mainly verbal abuse. And it is too much trouble and a waste of time to report it because there is little that the police will do and [they are] are too busy with crimes.*²²⁸

*Main reason seems to be "What's the point?" Generally, people think you're being oversensitive and there's no formal process that will yield any formal results.*²²⁹

*I feel that I would not have been believed.*²³⁰

223 Response letter quoted by survey participant.

224 Survey participant.

225 Survey participant.

226 Survey participant.

227 41 per cent. Respondents could select more than one response.

228 Survey participant.

229 Survey participant.

230 Survey participant.

231 Survey participant.

232 Survey participant.

233 20 per cent. Respondents could select more than one response.

Another common reason for not reporting was not knowing how, where or to whom to report the incident:

*I didn't realise I could have reported it because I'm new to Australia.*²³¹

*I would have liked to report the newspaper issue, but did not know who to.*²³²

Some respondents did not want to report the incident because of potential negative impacts of reporting. Around one in five respondents said they were afraid of victimisation.²³³

*I finally can report this because I have recently left the job...*²³⁴

*...after lengthy consideration, I decided not to pursue the matter as my son's welfare comes first. The accused has had a history of physical altercation whilst playing soccer and I was afraid that if I continued with the matter, this boy may retaliate away from the field and hurt my son.*²³⁵

For a few respondents, their reluctance to report an incident of racism was about looking after their own well-being:

*I've learnt that ignoring the situation and not 'letting it get to me' is more healthy for me emotionally than to react to it by reporting it or thinking about/ruminating over it.*²³⁶

A number of studies of racism and hate crime have looked at how people respond to their experience. A major study of anti-Muslim hate crime in the United Kingdom found that a majority of attacks were not reported to police "either because of a lack of confidence in police or because victims are unaware of a police interest".²³⁷ Attacks on mosques and other Islamic institutions were not reported in some instances due to "a desire not to draw attention to the problem".²³⁸ The researchers also found that attacks on individuals were regularly not reported:

*Sometimes, interviewees suggest, that failure to report a crime to police is because of a lack of confidence in the police and other times because of a failure to appreciate that an incident merits police attention.*²³⁹

234 Survey participant.

235 Survey participant.

236 Survey participant.

237 Jonathon Githens-Mazer and Robert Lambert, *Islamophobia and anti-Muslim hate crime: a London case study* (European Muslim Research Centre, 2010) 11 <<http://centres.exeter.ac.uk>> at 25 March 2013.

238 Ibid 106-7.

239 Ibid 38.

Local barriers to reporting

A recent Australian study of Muslim women identified a range of barriers to reporting incidents of racism. These included not being aware of where to go for help or perceiving complaint processes as “confusing, difficult and lengthy... and simply too arduous”.²⁴⁰ Some respondents mentioned community taboos about speaking out or drawing attention to problems and a reluctance to speak to men or established community representatives.²⁴¹ The study found that Muslim women needed support, education, confidential advice and action by public authorities to demonstrate that their complaints would be taken seriously.²⁴²

A recent report by the Multicultural Centre for Women’s Health also touched on the reluctance of migrant and refugee women to speak up about human rights issues (including race-based discrimination). The report quotes a Bilingual Health Educator speaking about the women that she worked with:

*Some of them are still with their experiences and the way of thinking as it was back in their country of origin regarding this topic. They still think that if they complain or raise voices against someone who is breaking their right, it will not be efficient enough. The offenders will still get away with what they have done and they will be punished because they complained. The fear of punishment is deeply implanted in their memories.*²⁴³

In particular, the report suggests that migrant and refugee women fear being deported or losing their job if they make a complaint.²⁴⁴

The Victorian Aboriginal Legal Service told us that “there is a lot of mistrust in the community that nothing will be done”.²⁴⁵ They also said that government processes and relationships with communities are significant barriers to reporting:

*Paperwork terrifies people and there is a lack of trust about what government will do with the information. They are scared that if they release information to one government department, all government departments will get the information. [It’s] hard to explain to people why they should engage with the process.*²⁴⁶

240 Australian Muslim Women’s Centre for Human Rights, above n 119, 49.

241 Ibid 49-50.

242 Ibid 53.

243 Megan Wong, *Sharing our stories project: a woman to woman approach to human rights education* (2011) Multicultural Centre for Women’s Health, 13.

244 Ibid 21.

The African Think Tank noted that African victims of crime were generally less likely to make a report to police:

*This is due to a range of factors such as language barriers, lack of confidence and lack of access to the system. Many Africans don’t feel that when they do complain that these complaints are taken seriously by the police. They don’t feel like there is a level playing field.*²⁴⁷

The Jewish Community Council of Victoria said that if they are told about an issue of serious racism, they encourage the person to report the matter to police. They observed that many older people prefer not to report matters to authorities and that community members will not report incidents during the Sabbath. They also noted that they “have worked with Victoria Police to educate them around this”.²⁴⁸

The Islamic Council of Victoria identified language and communication as a potential barrier to reporting racism.²⁴⁹ The Victorian Immigrant and Refugee Women’s Coalition stressed that while women may experience racism on an almost daily basis, they “have a lot of pressures and a lot to manage in their lives, so they may not necessarily do anything about the racism”.²⁵⁰ These observations tend to support the view of the Multicultural Centre for Women’s Health that “non-reporting of racist incidents is very much ingrained within structural and institutional racism”.²⁵¹

To overcome these barriers, it is vital that complaint handling bodies, service providers and other organisations understand the reasons why people may not approach them with reports of racism and then seek to address those issues in consultation with the relevant communities.

For example, organisations could consider ways to simplify their reporting processes, address language barriers, act promptly to address straightforward concerns (such as removing racist graffiti) and promote their complaint handling service to the community. It is also important that

245 Key informant interview, Victorian Aboriginal Legal Service.

246 Key informant interview, Victorian Aboriginal Legal Service.

247 Key informant interview, African Think Tank.

248 Key informant interview, Jewish Community Council of Victoria.

249 Key informant interview, Islamic Council of Victoria.

250 Key informant interview, Victorian Immigrant and Refugee Women’s Coalition.

251 Key informant interview, Multicultural Centre for Women’s Health.

organisations work to build trust in the community that reports of racism will be treated seriously. This also requires organisations to communicate an understanding of the seriousness of racism to all members of their staff.²⁵²

However, as the Multicultural Centre for Women's Health argued, recognising that many people do not currently report racism "makes prevention all the more important".

Supporting communities to report racism

The Commission asked key informants what they thought could be done to build the capacity of communities who are affected by racism to report what is happening.

Strengthening community capacity

The Victorian Aboriginal Legal Service spoke about a joint initiative with the Commission to build the capacity of the Aboriginal community to respond to racism:

*Victorian Aboriginal Legal Services...receives a lot of lower level complaints from community members. In response, Commission staff have been coming out to our service and providing the community with information about their rights. Victorian Aboriginal Legal Service are promoting this service, so that people know that they can come and talk to Commission staff and they can help them identify if they want to take the complaint forward. Often community members feel like nothing will happen if they lodge a complaint, so we are focusing on explaining the process and what outcomes might happen.*²⁵³

This initiative demonstrates one attempt to develop cooperative relationships between organisations and to build community capacity to report incidents of racism.

Another example is the Multicultural Centre for Women's Health Human Rights Education Project. The project trained Bilingual Health Educators who ran human rights sessions involving almost 400 migrant and refugee participants.²⁵⁴

The training "was informed by a participatory, peer-to-peer model of education".²⁵⁵ Rather than being didactic, educators "encourage women to talk about their experiences and each session is tailored to the needs of the group".²⁵⁶ The Bilingual Health Educators collected the personal experiences and stories that were shared during the training sessions, with racial discrimination identified as one of three key themes.²⁵⁷

The majority of participants (84.4 per cent) said that, following the training, they would be more likely to seek information and support if they were treated unfairly.²⁵⁸ Importantly for the development of future training programs, 85 per cent of participants stated that it was very important to them to be able to talk about issues in their own language and 92 per cent said it was very important to them that women provide the information about these issues.²⁵⁹ While funding for the program has now ceased, these results demonstrate that it is an empowering and effective model for building community capacity.

Third party reporting

Third party reporting mechanisms allow people to report incidents of racist crime or racial vilification to a community organisation, rather than directly to police or a regulator. The community organisation can respond by monitoring trends, providing personal support or, in some schemes, by making a complaint or report on behalf of the affected person.

Examples of third party reporting in Victoria

The Jewish Community Council of Victoria (JCCV) is the auspice for the Community Security Group (CSG), a group of volunteers trained to deal with safety issues for the Jewish community.²⁶⁰ The CSG collects reports of anti-Semitic behaviour from community members. Since 2010, "CSG has provided this information to Victoria Police every month as part of the Prejudice Motivated Crime program".²⁶¹ This enables shared discussion of general trends. However, it does not allow the CSG

255 Key informant interview, Multicultural Centre for Women's Health.

256 Key informant interview, Multicultural Centre for Women's Health.

257 The other themes were domestic violence and health care: Megan Wong, above n 243, 34.

258 Ibid 39.

259 Ibid 38-39.

260 JCCV, *Community Security Group* (nd) <<http://www.jccv.org.au>> at 25 March 2013.

261 Key informant interview, Jewish Community Council of Victoria.

252 Key informant interview, Multicultural Centre for Women's Health.

253 Key informant interview, Victorian Aboriginal Legal Service.

254 <<http://www.mcwh.com.au>> at 25 March 2013.

to bring a complaint or report a crime on behalf of someone else. The JCCV encourage victims to report serious matters to police. However, they observed, “one of the major limitations is that the Jewish Community Council of Victoria and other organisations cannot report a complaint to Victoria Police on someone’s behalf”. They also noted that older community members were particularly reluctant to report issues to authorities.²⁶²

The Muslim Legal Network provides some guidance on its website about reporting a hate crime to police. They also encourage people to seek community support and contribute to monitoring of trends by reporting the incident through their online reporting tool.²⁶³ Once again, this tool is about community monitoring rather than facilitating third party reports or complaints.

While not a tool for reporting racism, the Anti-Violence Project of Victoria (AVP) tracks prejudice-motivated crime, homophobic harassment and violence against and within the gay, lesbian, bisexual and transgender community. AVP’s online reporting tool provides an option to include contact details and ask that AVP contact police, a sexual assault service or other organisation on the victim’s behalf. The AVP then liaises between police, in particular with Gay and Lesbian Liaison Officers in each region, and the victim.²⁶⁴

Third party reporting in the United Kingdom

The United Kingdom made extensive changes to reporting mechanisms following the landmark Inquiry into the racist murder of Stephen Lawrence in 1993.²⁶⁵ The official report, published in 1999 made 70 recommendations and called for an “overhaul of policing to restore confidence”.²⁶⁶

The Inquiry recommended that the United Kingdom establish 24-hour, non-police reporting centres to accept reports of racist incidents.²⁶⁷ A 2005 report found that most policing areas had established these centres, usually within Race Equality Councils, housing offices or Citizens Advice Bureaux. There were also some innovative examples of reporting centres being established in hospitals, leisure centres, 24-hour supermarkets and fast food outlets.²⁶⁸ The role of non-police reporting centres included reporting to the police on behalf of the victims,²⁶⁹ offering support to victims and witnesses,²⁷⁰ using reports to identify repeat victims,²⁷¹ and gathering statistical data to develop a picture of racist activity in their local area.²⁷² However, their efforts were often hampered by high staff turnover, resulting in lost skill and knowledge,²⁷³ and a lack of IT infrastructure, making data gathering an onerous task.²⁷⁴ Most police forces and local authorities also used multi-agency panels to respond to trends in racist incidents and had common reporting forms across all agencies.²⁷⁵

In 2011, the Association of Chief Police Officers launched True Vision (report-it.org.uk), a website that allows victims or third parties to report hate crimes online. Reports are referred to local police who respond within 24 hours.²⁷⁶ True Vision provides documents for organisations to establish and operate third party reporting centres.²⁷⁷ According to a 2012 policy statement, the British Government will expand True Vision to distribute information about hate crime, share local good practice and allow more voluntary groups to integrate into the national reporting system.²⁷⁸

262 Key informant interview, Jewish Community Council of Victoria.

263 Muslim Legal Network, *Community Safety Advice: reporting anti-Muslim hate crimes* (18 September 2012) <<http://www.muslimlegalnetwork.com>> 25 March 2013.

264 Anti-Violence Project, *Report violence* (2013) <<http://antiviolence.info/report-violence/>> 25 March 2013.

265 Parliament of England and Wales, *The Stephen Lawrence Inquiry, Report of an Inquiry by Sir William Macpherson of Cluny* (1999) available from <<http://www.archive.official-documents.co.uk>> at 9 April 2013. Also referred to as the “Macpherson Report”.

266 Metropolitan Police, *Stephen Lawrence Inquiry Report – Ten Years On* <<http://www.met.police.uk>> at 9 April 2013.

267 Cited in Michael Wine, ‘The Community Security Trust – best practice in combating anti-Semitic hate’ (2011) 9 *Journal of Hate Studies* 113, 116.

268 Maria Docking and Rachel Tuffin, ‘Racist incidents: progress since the Lawrence Inquiry’ (2005) 26-18. *Home Office Online Report 42/05* <<http://www.statewatch.org/>> at 18 April 2013.

269 Ibid 26.

270 Ibid 35.

271 Ibid 33.

272 Ibid 35.

273 Ibid 28.

274 Ibid 33.

275 Ibid 29.

276 Michael Wine, above n 267, 120-121.

277 For example, Association of Chief Police Officers, ‘National hate crimes reporting procedures for third party reporting centres’ *True Vision Website* <<http://www.report-it.org.uk>> at 25 March 2013.

278 HM Government, United Kingdom, *Challenge it, report it, stop it: the Government’s plan to tackle hate crime* (March 2012) 3.8.

In Northern Ireland, each district has a designated Hate Incident Minority Liaison Officer (HIMLOs) within the police service. They also have third party reporting schemes. A bilingual advocacy program was piloted in Central/East/Southern Belfast until early 2010. The advocate's role was to document unreported hate incidents, give advice and encourage victims to make a police report. The advocate could also make a third party report, with or without the victim's name.²⁷⁹

Benefits and limitations of third party reporting in the UK

There have been few formal evaluations of third party reporting schemes in the United Kingdom.

Third party reporting centres were intended to increase the accessibility of reporting, based on the rationale that "the easier it is for a victim or witness of a hate crime to report it, the more likely they are to do so".²⁸⁰ A Home Office report also observed that information-sharing among agencies was working well where there was a multi-agency panel in place and a common recording form.²⁸¹ However, the report also observed a lack of awareness of third party centres among victims and police, inconsistent training and high staff turnovers, limited involvement from schools and variation between local areas.²⁸²

A 2010 Northern Ireland study asked HIMLOs about their views on third party reporting of hate incidents. Most were positive but said that there was a need to promote these services within affected communities. The study also found that there were inconsistent approaches to hate incidents and third party reporting between police districts.²⁸³

A 2012 study reviewed one particular third party reporting centre, the Preston and Western Lancashire Racial Equality Council Race Hate Awareness (PWLREC-RHAP) and Prevention Service. This service offers individual case management (including third party reporting) and race hate prevention.²⁸⁴ The review was positive about the service and its ability to provide integrated and flexible support. The report described PWLREC-RHAP as "uniquely positioned to support victims and engage in partnerships with different agencies at all stages in the criminal justice process".²⁸⁵

One of the key features of the United Kingdom approach is that it involves a range of agencies in reporting, recording and responding to hate incidents. In 2008, the Equality and Human Rights Commission observed:

*The true value of multi-agency systems/groups lies not only in ensuring that people can report hate incidents easily, but in providing a vital link between the reporting of hate incidents and the referral for actions to partners in order to effectively respond to these incidents by supporting victims and dealing with perpetrators.*²⁸⁶

This illustrates the value of third party reporting schemes, not only in attracting more reports or complaints but also in ensuring that victims have access to an appropriate range of supports.

The Community Security Trust stressed that:

*... efforts to tackle hate crime are enhanced when minority communities have their own agencies for reporting, recording and analysing hate crimes. This particularly helps with the monitoring of hate incidents – that is, incidents that do not constitute crimes but are still motivated by prejudice or hate.*²⁸⁷

This role is enhanced when information is shared between different agencies, including police.

279 Ruari Santiago McBride and Ulf Hansson, 'The luck of the draw, a report on the experiences of trans individuals reporting hate incidents in Northern Ireland' (2010) *Institute for Conflict Research*, 105 <<http://www.conflictresearch.org.uk>> at 25 March 2013.

280 Community Security Trust, 'A guide to fighting hate crime' (2011), 12 <<http://www.thecst.org.uk>> at 25 March 2013.

281 Maria Docking and Rachel Tuffin, above n 268 29-31.

282 Ibid 27-28, 30.

283 Ruari Santiago McBride and Ulf Hansson, above n 279, 104-106.

284 Paul Iganski, *This should be in every town! Working in Partnership against hate crime: Race Hate Awareness & Prevention, findings from an evaluation* (2012) 4.

285 Ibid 9.

286 Equality and Human Rights Commission, *Tackling hate together: local partnerships approaches to tackling hate incidents in the North East of England* (2008), 41 <<http://www.equalityhumanrights.com>> at 25 March 2013.

287 Community Security Trust, *A guide to fighting hate crime* (2011) <<http://www.thecst.org.uk>> 8.

Third party reporting in other countries

A number of other countries have various types of third party reporting schemes in place.²⁸⁸

In 2010, a range of government and community partners in the Nelson/Tasman region of New Zealand launched the “Speak Out” Reporting System.²⁸⁹ Reports can be made by phone, via an online form or in person at a community centre. Reports are then referred to police or the appropriate agency. The number of reports has been lower than expected but effort has been put into promoting the service through religious and community centres.²⁹⁰

In Canada, the non-profit group Canadian Anti-Racism Education and Research (CARER) collects reports of “hate and bias activity” online for the purposes of research and monitoring. CARER encourages direct reporting to police but will also contact the victim if requested.

In the bullying sphere, another Canadian non-profit group manages the “Stop a Bully” website. The website allows students to submit anonymous reports about bullying that are then forwarded to school counsellors or principals. The website allows screen shots, links to a website or mobile phone data to be submitted with the report.²⁹¹

Keeping and sharing data about racism

Having diverse ways of reporting hate crime or racial vilification may improve rates of reporting. After that, it is important to consider how that data is used and shared.

In some countries, recording and reporting on data is mandated by law. For example, in the United States, the Federal Attorney-General is legally required to collect data about hate crimes and to publish statistics regarding hate crimes motivated by bias against “race, religion, disability, sexual orientation, ethnicity, gender or gender identity”.²⁹² Law enforcement agencies participate voluntarily in this data collection scheme by completing hate crime incident reports. These reports record details of the offence, the bias motivation, the location, the number and type of victims, the number of offenders and the race/ethnicity of the offender. The Federal Bureau of Investigations has stated that “national statistics have resulted in greater awareness and understanding of the true dimensions of the problem nationwide”.²⁹³

In the United Kingdom, the report of the Inquiry into the murder of Stephen Lawrence led to a new definition of a racist incident and a requirement on police officers to record this information. It also led to minimum data content recommendations and a recommendation that police and other agencies use common forms in order to facilitate data sharing.²⁹⁴ The majority of police forces and local authorities now have multi-agency panels in place and use a common monitoring system to work together to tackle racism.²⁹⁵

288 For example, in New Zealand, a range of partners, including the Human Rights Commission, ran a pilot study and website aimed at supporting international students in the Christchurch region. The website allowed international students to anonymously report racial harassment; however it has now been discontinued due to lack of funding. See Human Rights Commission et al, *Report It* (2009) <<http://www.report-it.org.nz>>.

289 “Speak Out” came out of research published in 2009 by the Human Rights Commission: Debbie Kohner, *Towards a reporting system for racist incidents in Nelson/Tasman: diverse communities speak* (December 2009), 13 <<http://www.hrc.co.nz>> at 25 March 2013.

290 Speak Out Nelson/Tasman, *Speak out* (2010) <<http://www.speakout.org.nz/>> at 18 April 2013.

291 Stop a bully, *about us*, (2012) <<http://www.stopabully.ca>> 25 March 2013.

292 U.S. Department of Justice, Criminal Justice Information Services Division Uniform Crime reporting Program, *Hate Crime Data Collection Guidelines and Training Manual* (2012) 3.

293 Ibid 3.

294 Maria Docking and Rachel Tuffin, above n 268 18-20.

295 Ibid 29.

Bystander approaches

I will always stand up and speak in these situations but it is not always easy to work out the best way to do so.²⁹⁶

The role of bystanders, particularly when racism occurs on public transport, has gained significant media interest in recent months. This has included incidents where bystanders have joined together to support victims, tell the perpetrator to stop, call for help, film incidents and then use social media to expose incidents when they occur.²⁹⁷

The Commission's survey also received a number of stories from bystanders who took action when they saw racism occurring. However, a number of people told us that there were occasions when they did not know what to do or how to intervene, especially in situations where they felt threatened.

I was catching the bus home one night and noticed a couple of rowdy girls drinking on the bus. The bus driver warned the girls that they couldn't drink so he took their beer off them and threw it out the door. One of the girls went mad. The bus driver was an Islander so she started calling him countless stupid names and then started to call him a monkey and swung from the handles making monkey noises. She was swearing at him constantly and her friends sat laughing and encouraging her. To my shame, no one on the bus (myself included) did anything because she was so scary and out of control. In the end, two young Indian students told her to stop being disrespectful. She then turned on them and started hurling insults at them ... What shamed me the most was that we all just sat there and tolerated it.²⁹⁸

In 2010, VicHealth published a review of bystander approaches to race-based discrimination, which discussed theoretical approaches to bystander action, identified barriers to intervention and reviewed existing bystander training programs.²⁹⁹

The study looked at the different stages that a bystander will go through when they are making a decision about whether or not to intervene. These stages include: recognising racism or discrimination; evaluating the severity of the situation; taking responsibility; evaluating skills and ability to intervene; and taking action.³⁰⁰ Using this model, the researchers found:

Bystander action is facilitated by knowledge of what constitutes racism or discrimination, coupled with an awareness of the gravity of racism and an ability to see the situation from the target's perspective. This suggests the need for public education on the nature of racism, including its subtle manifestations as well as a focus on promoting empathy and perspective-taking.³⁰¹

The researchers found that key factors influencing bystanders to intervene in a situation included:

- awareness of the benefits of intervening
- the ability to express their emotions
- confidence in their ability to intervene.³⁰²

Barriers to bystanders intervening included:

- a tendency to offer less help to people perceived as being different
- fear or anxiety about personal safety
- a belief that intervening would be ineffective
- concern about maintaining social relationships.³⁰³

To overcome these barriers, the researchers suggested that there was a need to provide education on "what constitutes racism; the morbid effects of racism (on victims, witnesses, organisations, and for society); the utility of bystander action; the likely productive effects; and the best rhetoric, tenor and tactics for different types and settings of racism".³⁰⁴

296 Survey participant.

297 See for example Angus Thompson, 'No to racism: Late night commuters unite against hateful rant' *Herald Sun* (Melbourne), 12 April 2013, 7; Caroline Zeilinski, 'It's my f---cking country: racist rant caught on camera' <<http://www.theage.com.au>> at 16 April 2013; Erin Maries, 'Unlawful ranting' *Herald Sun* (Melbourne), 19 April 2013, 14.

298 Survey participant.

299 Jacqueline Nelson et al, *Review of bystander approaches in support of preventing race-based discrimination* (2010) Victorian Health Promotion Foundation. <<http://www.vichealth.vic.gov.au>> at 25 March 2013.

300 Ibid 11.

301 Ibid 12.

302 Ibid 12-13.

303 Ibid 14-15.

304 Ibid 17.

How bystanders currently report incidents to authorities

Some bystanders may seek to intervene by reporting incidents of racism to the Commission, Victoria Police, other complaint-handling bodies or local councils. Alternatively, a person who experiences racism may report the issue to a community group or an advocacy body.

Currently, if the incident warrants attention from police, or from a complaint-handling body, the only option for bystanders or community groups may be to encourage the individual to make a complaint. This may be appropriate if the conduct was directed at the individual. However, it is less clear when the perpetrator is not identified.

The situation may also be less clear if the conduct was not directed at a particular person, such as racist posters, public lectures, or the sale of racist symbols in public places. In these cases, bystanders might feel highly aggrieved and concerned about the impact of this racism in public spaces, even though they do not belong to the targeted group.

A community or advocacy body may be able to bring a representative complaint under the Racial and Religious Tolerance Act, provided that they can demonstrate sufficient interest in the subject of the complaint. However, even with a representative complaint, it is necessary to name each individual complainant and obtain their consent to bring the complaint.³⁰⁵

Supporting bystanders

One respondent to the Commission's survey provided an illustration of the importance of having social support and knowledge about how to intervene effectively.

*I was unsure of how I would identify this man to the [football] club but, with a couple of friends, we worked out that we know his seat number and row number, and would notify the club next time it happens...if he starts up again, or if another member were to begin this abuse ... I will be reporting them. I now know how to go about it.*³⁰⁶

³⁰⁵ *Racial and Religious Tolerance Act 2001* (Vic) s 19(3). Representative complaints regarding discrimination may also be brought under sections 113-114 of the *Equal Opportunity Act 2010* (Vic).

³⁰⁶ Survey participant.

The Commission's Anti-Hate website provides a forum for people to share examples of bystander intervention:

*On our walk into work this morning we came across a wall of posters with the slogan 'white power, white pride'. We spent 10 minutes removing as much of them as we could and making sure that the message was no longer visible. As we walk this way to work nearly every morning we know that the posters had probably only been there since last night, so there was not much opportunity for that hate message to be viewed. It was a small thing to do but very satisfying.*³⁰⁷

The Commission's Anti-Hate website is a tool that seeks to build a sense of collective action and promote the idea that intervening is both achievable and socially valued. The website is not limited to racism or to particular locations where people might encounter hate. However, in the initial stages, most contributions have focused on responding to racism in public spaces, including on the street, on public transport and at school.

Organisations can also take positive steps to support bystanders to intervene when they witness racism. For example, the Australian Football League (AFL) has developed a simple way for spectators to report incidents. In 2009, the AFL, the Melbourne Cricket Ground and Etihad Stadium launched an SMS service that allows spectators to report anti-social behaviour.³⁰⁸ A recent media article about security at cricket matches indicated that the service receives 40 to 50 messages a day; however, it is unclear how many of these relate to racist behaviour.³⁰⁹

While it cannot be taken to represent all football spectators, a thread on the football website Bigfooty.com highlights some of the potential enablers and barriers to using the SMS service. Several posts indicated that they would not use the service because they are not "whiny" or "a soft, wowser snitch". Numerous other posts made jokes about "anti-social" behaviour.³¹⁰

³⁰⁷ Merrin and Nick, 'Merrin and Nick on dealing with discriminatory comments' on Victorian Equal Opportunity and Human Rights Commission, *Anti-Hate Heroes* (2012) <<http://www.antihate.vic.gov.au>> at 25 March 2013.

³⁰⁸ Australian Football League, 'Venues ensure strong experience' (Media release, 22 July 2009).

³⁰⁹ Silvester, 'When a squeeze of ketchup says behold the sauce', *The Saturday Age* (Melbourne), 29 December 2012, 24.

³¹⁰ These jokes are similar to the message received by the SMS service, 'my girlfriend isn't talking to me, can you help', quoted in *Ibid*.

However, two posts indicated that they would use the service if they had children with them. Another post said that using the service would be “better than just sitting there and letting morons ruin the game for everyone else”.³¹¹ This suggests that SMS services and other approaches that facilitate bystander intervention should be accompanied by education about the seriousness of racism and the benefits of intervening.

With family, I can speak up and challenge but with friends and strangers it's a bit harder to combat ... It'd be great to have adverts like anti-gambling ads where everyone is clear that racism is unacceptable in this country. That way those who'd like to speak out have a clear reference point and authority.³¹²

Conclusion

People who experience racism also experience significant barriers to reporting that racism. This observation is supported by previous studies and by the Commission's survey findings. Some of the systemic barriers to reporting include language difficulties, a distrust of organisations in positions of authority and limited awareness of rights, especially among Aboriginal and CALD communities. These barriers need to be addressed so these groups are able to access the supports they need and enjoy their rights to safety and non-discrimination.

Under-reporting is also an issue for government departments, as the reported figures for conduct motivated by racism do not reflect the prevalence of the problem within the community. This can affect the way the community perceives racism, as well as the resources that are allocated to tackle the issue.

The Commission's findings suggest one way to overcome these barriers is through educating people about where and how they can make reports of racism and how the organisations will deal with those reports. The introduction of third party reporting systems could also help overcome some of these barriers.

Organisations receiving reports of racism have a responsibility to act on the issues people raise. They need to communicate clearly with individuals reporting racism about what they intend to do, the progress of the complaint and the benefits of reporting this conduct. They also need to demonstrate they treat reports of racism seriously.

There is also a clear need to develop and promote safe ways for bystanders to report any racism they witness. An important first step in supporting bystanders to take action is to build awareness about the damaging impact racism has on the individuals involved and the broader community.

311 BigFooty, 'Have you ever SMS'd the Anti social behavior numbers shown on the scoreboards at the MCG & Etihad' discussion in *AFL – The Australian Football League* (6 June 2011) <<http://www.bigfooty.com>> 25 March 2013. See also, Emma Quayle, 'Racial abuse claim: police act', *The Age*, (Melbourne) 1 May 2013.

312 Survey participant.

Chapter 6: Laws responding to crime and conduct motivated by racism

Main findings

- Different jurisdictions have responded to racist conduct by implementing a range of civil remedies and criminal law responses.
- Criminal justice responses range from having specific hate crime offences through to treating racist motivation as an aggravating factor to be taken into account on sentencing. Some jurisdictions, such as the Commonwealth, do not provide specific criminal responses for hate crimes, but general criminal laws or civil remedies may cover conduct of this nature.
- Victoria has provisions for prejudice to be considered as an aggravating factor at the time of sentencing.³¹³ Furthermore, the Racial and Religious Tolerance Act includes criminal and civil remedies and other general criminal and civil laws, such as the Crimes Act or the Summary Offences Act, may also cover conduct and crimes motivated by racism.

Definitions of hate crime

Hate crime is “a crime wholly or partly motivated by, grounded in, or aggravated by, bias or prejudice towards particular groups of people”.³¹⁴

Hate crime laws typically apply to crimes “prompted by prejudice on the part of the perpetrator based on the victim’s race, ethnicity or religion, sexual orientation, disability status or gender”.³¹⁵ The key element is prejudice towards the group affiliation of the victim.

313 *Sentencing Act 1991* (Vic) s 5(2)(daaa).

314 Gail Mason, ‘Hate crime laws in Australia: Are they achieving their goals?’ (2009) 33 *Criminal Law Journal* 326, 326-327

315 Kathleen Blee, ‘Positioning Hate’ (2005) 3 *Journal of Hate Studies* 95, 97.

316 *Racial and Religious Tolerance Act 2001* (Vic) ss24-25.

Hate crimes can range from vandalism and graffiti to homicide and assault, and in some jurisdictions, including Victoria, can include instances of serious vilification.³¹⁶ Hate crimes are covered by various laws described below.

The different legislative options have not come without debate and controversy. In addition, research indicates there are some difficulties and limitations associated with these legislative responses.

Purpose of hate crime laws

Racial violence.... is a serious threat to the maintenance of a safe and decent society. It matters not from which ethnic group it proceeds. Like armed robbery and drug trafficking, it will often call for condign punishment.³¹⁷

A principal purpose of hate crime laws is to protect social cohesion.³¹⁸ This recognises that the act of attacking a person, either verbally or physically, because of their race or religion harms the victim and the wider group of people who share that identity (or presumed identity).³¹⁹ This is known as the ‘chilling effect.’³²⁰ These acts are different from other crimes

317 *R v Palmer* (Unreported, Supreme Court of Victoria, Court of Appeal Winneke ACJ, Charles and Callaway JJA, 13 September 1996).

318 Elizabeth Burney, ‘Using the Law on Racially Aggravated Offences’ (2003) *Criminal Law Review* 28, 35-36.

319 Gail Mason, above n 314, 327.

320 See for example Alberta Hate Crimes Committee, *Beyond Hate: A Resource Toolkit, Building a Community Response Plan to Counter Hate* (2012) 12. <<http://www.beyondhate.ca/index.php/homepage/pdf-toolkit>> at 18 April 2013; Valerie Pruegger, *Overview of Standards for Hate/Bias Crime Reporting and Investigation* (2008) 2 <<http://www.albertahatecrimes.ca>> at 18 April 2013; ‘Hate crimes bill supporters waiting for next year’, 13 WTHR (Indiana) (2007) <<http://www.wthr.com>> at 18 April 2013.

because they can threaten the stability of mixed communities and undermine the foundations of a tolerant and multicultural society.³²¹

Hate crime laws go further than just denouncing or deterring crime because they also condemn the underlying motivation of racism and other forms of prejudice that fuel this behaviour. They seek to reinforce values of tolerance and respect for people of all backgrounds, including minority and marginalised groups.³²² In this way, hate crime laws reflect anti discrimination and equal opportunity principles in criminal law.³²³

First, hate crime legislation expresses strong condemnation of bias crimes. Second, the condemnation of hate crimes implies a general affirmation of the societal value of the groups targeted by hate crime and a recognition of their rightful place in society. Hate crime legislation is seen as reinforcing the community's commitment to equality among all its citizens.³²⁴

If hate crimes are not adequately addressed within the community, it can send a message that this behaviour, and the sentiment that drives it, is broadly tolerated.³²⁵ This can have the effect of reinforcing such behaviour and emboldening perpetrators. It may also encourage others to engage in such attacks and can lead to an escalation in the severity of these attacks.³²⁶

A lack of appropriate action can leave victims of hate crimes feeling isolated and vulnerable. It can also heighten tensions between different racial groups in the community.

Impact of hate crimes

Personal impacts

Commentators who have examined the psychological dimension of hate crimes argue that perpetrators often view their acts as sending a message to victims that they are not welcome and do not belong in the community. This message is commonly communicated during attacks, leaving victims feeling alienated, vulnerable and isolated.³²⁷

Hate crime assaults have been described as being more violent, brutal and vicious compared with assaults that are not motivated by hate. They can also have a heightened psychological and emotional impact on the victim, undermining the person's sense of self worth and identity.³²⁸

An American study conducted by the National Institute Against Prejudice and Violence reported that victims of racist attacks experienced 21 per cent more adverse physiological and psychological symptoms than those who had suffered similar attacks that were not race-related.³²⁹ It was also reported that the hospitalisation rate for victims of hate crimes was considerably higher than that of other groups.³³⁰

Community impacts

Hate crimes also have an impact on the community to which the victim of the attack belongs. In particular, they can make members of this group feel vulnerable to future attacks, victimisation or discrimination. In addition to the specific community, hate crimes can also negatively impact on other vulnerable groups that share minority status.³³¹ This is particularly the case if the attack was motivated by an ideology that covers a number of different racial or religious groups in the community.³³²

321 Elizabeth Burney, 'Using the Law on Racially Aggravated Offences', (2003) *Criminal Law Review* 28, 35-36. These crimes may also be motivated by hate towards people with disability, Gay, Lesbian or Bi-sexual people, on the basis of gender identity and other personal characteristics.

322 Gail Mason, above n 314, 328.

323 Ibid 339.

324 Beale, 2000, quoted in Phyllis B Gertenfeld, *Hate crimes: causes, control and controversies* (2003) Sage 22.

325 Jack McDevitt, Jack Levin and Susan Bennett 'Hate crime offenders: an expanded typology' (2002) 58 (2) *Journal of Social Issues*, 305.

326 Ibid.

327 Tasmania Law Reform Institute, *Racial Vilification and Racially Motivated Offences: Issues Paper No 16* (2010), 21.

328 Manitoba Department of Justice [Canada], *Hate Motivated Crime Guideline* (2008) 5.t <<http://www.gov.mb.ca/>> at 26 March 2013.

329 Tasmania Law Reform Institute, above n 327, 21.

330 Ibid.

331 Manitoba Department of Justice [Canada], above n 328, 5.

332 Ibid.

Economic and social costs

In a multicultural country such as Australia, that embraces diversity and equality, hate crimes can undermine the key values that bind our community.³³³

*Hate crimes do more than threaten the safety of all citizens. They inflict an incalculable physical and emotional damage and tear at the very fabric of society. Crimes associated by invidious hatred towards particular groups not only harm individual victims but send a powerful message of intolerance and discrimination to all members of the group to which the victim belongs. Hate crimes can and do intimidate and disrupt entire communities and vitiate the civility that is essential to healthy democratic processes.*³³⁴

There are also economic costs to the community. In addition to the direct financial costs resulting from a hate crime, such as the victim's medical expenses, replacing property and increased surveillance, there are indirect costs to a community's reputation when crimes such as these take place. This can include impacts on tourism and other businesses.³³⁵

For example, the 2009 assaults on Indian students in Melbourne and Sydney attracted considerable media attention in India.³³⁶ A 2012 Australian Council for Educational Research found that higher education visas for Indian students fell from 34,200 in 2007-08 to 9,750 in 2011-12, with safety concerns cited as one of the reasons for this reduction.³³⁷ In 2009-10, international students brought more than \$5 billion to the Victorian economy but the sum fell to \$4.4 billion in 2011-12.³³⁸ While not all international students are from India, the President of the Federation of Indian Associations of Victoria said concerns about student safety had damaged Australia's reputation and "tainted Australia and Victoria as a racist state and country".³³⁹

333 Ibid.

334 NY [Penal] Law (consol) 485. See further [D.12] cited in Sentencing Advisory Council, *Sentencing for offences motivated by hatred or prejudice* (2009) 17.

335 Human Rights and Equal Opportunity Commission, *Racist Violence: Report of the National Inquiry into Racist Violence in Australia* (1991) 263.

336 Matt Wade, 'Attacks on Indians have had a profound effect on Australia's image' *The Sydney Morning Herald* (Sydney), 25 September 2009.

337 Benjamin Preiss, 'Indian student numbers falling' *The Sydney Morning Herald* (Sydney), 14 December 2012.

338 Ibid

339 Ibid.

Models of hate crime laws

International jurisdictions have adopted different legislative approaches to respond to hate crimes. In some jurisdictions, the criminal law deals with such conduct. In others, specific civil laws, including anti-discrimination and vilification laws, apply. A third approach includes a mix of general provisions in the criminal and civil law. In Victoria, a combination of all three approaches applies.

Criminal laws

Specific criminal justice responses are commonly assigned into three categories:

- the substantive offence model
- penalty enhancement model
- sentence aggravation model.

Substantive criminal offence model

Substantive offence models create a specific offence criminalising conduct that promotes, incites or is motivated by prejudice or group hate.

In Australia, examples can be found in state-based legislation that prohibits vilification. When these laws were first introduced they were not conceptualised as responding to hate crimes per se, however they are now commonly understood in this way.³⁴⁰ These laws operate in Victoria, New South Wales, Queensland, South Australia and the Australian Capital Territory.³⁴¹ Race and ethnicity are the only two characteristics that are covered by all the Australian jurisdictions that have these laws.³⁴²

In most cases, these vilification laws are primarily civil laws that also contain criminal offences, based on the seriousness of the act committed. Western Australia is the only Australian jurisdiction where the offence of incitement to racial hatred is situated within the criminal code.³⁴³

340 Gail Mason, above n 314, 330-331.

341 *Racial and Religious Tolerance Act 2001*(Vic) s 24-25; *Anti Discrimination Act 1977* (NSW) s 20D; *Anti-Discrimination Act 1991* (QLD) s 131A; *Racial Vilification Act 1996* (SA) s 4; *Discrimination Act 1991* (ACT) s 67.

342 Gail Mason, above n 314, 330.

343 *Criminal Code Compilation Act 1913* (WA) s 76-80D.

Victoria

In Victoria, the criminal offence of serious racial or religious vilification is found in sections 24 and 25 of the Racial and Religious Tolerance Act. Under these provisions, a person must not intentionally engage in conduct that the offender knows is likely to: incite hatred and to threaten, or incite others to threaten, physical harm; or incite serious contempt, revulsion or severe ridicule (on the basis of race or religion).

Penalty enhancement model

This model imposes additional maximum or minimum penalties for specific offences, where the conduct is motivated or aggravated by racial, religious or other forms of prejudice.³⁴⁴

A number of jurisdictions, including England and Wales in the United Kingdom and many jurisdictions in the United States have adopted this approach. The most common grounds covered are race and religion.³⁴⁵

For example, in England and Wales, section 28 of the *Crime and Disorder Act 1998* states that certain offences will be considered racially or religiously aggravated if the offender demonstrates towards the victim (either at the time of offence or immediately before or after) hostility that is based on the victim's membership or presumed membership of a racial or religious group.³⁴⁶ Sentencing enhancement provisions also apply in that jurisdiction.

Western Australia is the only domestic jurisdiction to have penalty enhancement provisions in its criminal code. These provisions were introduced in response to a spate of racist graffiti and vandalism in Perth. Sections 76-80D of the *Criminal Code Compilation Act 1913* (WA) prohibits conduct intended to, or likely to, incite racial animosity or racist harassment.³⁴⁷ This includes the possession, publication or display of vilifying material.

344 Gail Mason, above n 314, 329.

345 Ibid 330.

346 *Crime and Disorder Act 1998* (UK) s 28.

347 *Criminal Code Compilation Act 1913* (WA) ss76-80D.

348 Sentencing Advisory Council, *Sentencing for offences motivated by hatred or prejudice* (2009) 7.

349 *Criminal Justice Act 2003* (UK) s 145.

350 The Criminal Code of Canada, Part XXIII Sentencing, section 718.2.

351 *Crimes (Sentencing Procedure) Act 1999* (NSW) s 21A.

352 *Sentencing Act 1995* (NT), s 6A as amended by s 6 of the *Justice Legislation Amendment (Group Criminal Activities) Act 2006* (NT).

Sentence aggravation model

This model provides more judicial discretion by taking into account the individual's prejudice-based motive as an aggravating factor at the time of sentencing.

Variations of the sentence aggravation model can be found in New Zealand, Canada, France, Germany, Italy, Austria, Belgium, Finland, Portugal, Spain, Sweden, Switzerland, as well as England and Wales.³⁴⁸ In England and Wales, the *Criminal Justice Act 2003* provides for an increased sentence for offences which can be shown to be racially or religiously aggravated.³⁴⁹ Similar provisions are outlined in section 9(1)(h) of the *Sentencing Act 2002* (NZ) and section 718.2 in the sentencing section of the Criminal Code of Canada.³⁵⁰

Some Australian jurisdictions, including Victoria, have adopted this model:

- *Crimes (Sentencing Procedure) Act 1999* (NSW), section 21A(2)(h)³⁵¹
- *Sentencing Act 1995* (NT), section 6A³⁵²
- *Sentencing Act 1991* (Vic), section 5(2)(daaa).³⁵³

Victoria

In Victoria, the Sentencing Act provides that in sentencing an offender:

... a court must have regard to whether the offender was motivated (wholly or partly) by hatred for or prejudice against a group of people with common characteristics with which the victim was associated or with which the offender believed the victims was associated.³⁵⁴

The Act does not specify the groups that may be protected by this provision. However, in the second reading speech of the Bill introducing these amendments, it was put that the protected characteristics include religious affiliation, racial or cultural origin, sexual orientation, sex, gender identity, age, impairment or homelessness.³⁵⁵

Victoria Police subsequently released the *Prejudice Motivated Crime Strategy 2011-2013*, which was aligned to the amendments in the Sentencing Act. The Strategy provides a framework for increasing understanding within Victoria Police about crime and incidents that are motivated by prejudice. It also aims to reduce the commission of these types of acts in Victoria.

353 *Sentencing Act 1991* (Vic) s 5(2)(daaa) as amended by the Sentencing Amendment Act 2009.

354 *Sentencing Act 1991* (Vic) s 5(2)(daaa).

355 Victoria, *Parliamentary Debates*, Legislative Assembly, 17 September 2009, 3358 (Rob Hulls).

Victoria Police Prejudice Motivated Crime Strategy

The *Prejudice Motivated Crime Strategy 2010-2013* was developed to improve Victoria Police's response to crimes motivated by prejudice.

The key aims of the Strategy are:

- to increase internal understanding of prejudice motivated crime
- to increase community confidence to report prejudice motivated crimes to police
- reduce the incidence of prejudice motivated crime.

The Strategy recognises that crimes motivated by prejudice can have a deep and lasting impact, not only on direct victims, but on the community as a whole. Despite this, many crimes of this nature go unreported.

Under the Strategy, Victoria Police has improved its prejudice motivated crime data collection capabilities and is working with community groups to develop actions that will build confidence, encourage reporting and promote community safety. Education of police about prejudice motivated crime is another key focus of the Strategy and all police and protective services officers joining the organisation receive dedicated training on prejudice motivated crime. In addition, prejudice motivated crime knowledge has been integrated into a range of existing internal education frameworks.

To complement the Strategy, Victoria Police is also involved in an Australian Research Council Linkage Grant partnership project, with Monash University, the University of Sydney and the University of Queensland. Entitled *Targeted Crime and Policing Social Inclusion*, the project involves a criminological study of the policing of crimes and incidents motivated by bias, prejudice or hatred towards members of particular groups and communities. The key aims of the three year project are to explore the relationship between hate crime and social inclusion; and to develop a best-practice framework for the policing of targeted crimes and incidents.

Civil laws

Federal

Racial hatred is recognised under the *Racial Discrimination Act 1975*. Section 18C of that Act prohibits public acts that are reasonably likely to offend, insult, humiliate or intimidate another person, or a group of people, and are 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.³⁵⁶ This includes, but is not limited to, public acts such as hate speech, graffiti, broadcasting or material on the internet.

Victoria

Equal Opportunity Act 2010

Discrimination is defined in the Equal Opportunity Act as unfavourable treatment of a person in an area of public life (for example, in sport³⁵⁷) due to one of 18 personal characteristics (attributes) protected under the Act.³⁵⁸ These attributes include race and religious belief or activity.³⁵⁹ There is no racial hatred provision similar to the Commonwealth provision in section 18C of the Racial Discrimination Act described above.

Some of the behaviour described by participants in our research could potentially amount to discrimination under the Equal Opportunity Act but would be unlikely to meet the test of vilification in the Racial and Religious Tolerance Act, described below. For example, a poster in the workplace of a cartoon comparing all Muslims to terrorists – this might not incite anyone to hate Muslims, but this sort of harassment and hostile environment can amount to discrimination in employment.

³⁵⁶ *Racial Discrimination Act 1975* (Cth) s 18C.

³⁵⁷ *Equal Opportunity Act 2010* (Vic) s 71.

³⁵⁸ *Equal Opportunity Act 2010* (Vic) s 8.

³⁵⁹ *Equal Opportunity Act 2010* (Vic) s 6.

Examples of complaints to the Commission's Enquiry Line

A woman working in a café wears a hijab. Her colleague made repeated rude comments about the hijab such as claiming it will bring terrorists to the store, and questioned why the complainant had to wear the hijab. The complainant resigned because of the comments.

An employee of a car dealership reported that while at work, colleagues would make comments to him such as "all Muslims should be slaughtered" and referred to him as a terrorist. He resigned because of this treatment.

An Indian-Australian employee complained that derogatory references and taunts such as 'curry muncher' were made to him by the owner of the company and his work colleagues.

Racial and Religious Tolerance Act

Sections 7 and 8 of the Racial and Religious Tolerance Act provide for civil law remedies for unlawful vilification. The sections state that a person must not, on the ground of race or religion of another person, engage in conduct that "incites hatred against, serious contempt for or revulsion or severe ridicule of, that other person or class of persons".³⁶⁰ The person's motive in engaging in the conduct is irrelevant.³⁶¹ It is also irrelevant if race or religion is the only or dominant ground for the conduct, so long as it is a substantial ground.³⁶²

*A student at school heard the Principal's son, who is an employee of the school say, "If I had my way, I would burn you all alive" to a group of Somali students. This statement was made following a fight between students of different ethnic backgrounds. The complainant believed that the comment incited hatred, serious contempt and revulsion of Somali students.*³⁶³

360 *Racial and Religious Tolerance Act 2001* (Vic) s 7, 8.

361 *Racial and Religious Tolerance Act 2001* (Vic) s 9(1).

362 *Racial and Religious Tolerance Act 2001* (Vic) s 9 (2).

363 Complaint to Commission.

General criminal and civil laws that may capture conduct that is motivated by hate

Federal

There are no specific criminal provisions against racial vilification in any federal legislation. However there is a provision in section 80.2A of the *Criminal Code Act 1995* (Cth) that could potentially be used to impose criminal sanctions for vilification. This section makes it an offence to urge violence against a group of people on the basis of race, religion, nationality or political opinion.³⁶⁴

The Criminal Code also makes it an offence to use a carriage service to menace, harass or offend.³⁶⁵ This definition is broad enough to capture telephone services, email and SMS and may have potential application in responding to online hate conduct.

Further, under the *Broadcasting Services Act 1992* (Cth), individuals can make complaints to Australian Communications and Media Authority (ACMA) about prohibited content and ACMA has the power to issue a notice to remove the content.³⁶⁶

Victoria

Although there is no specific offence of prejudice-motivated crime in the Crimes Act, there are a range of offences that may capture this type of conduct.³⁶⁷ These include threats to kill, conduct that causes serious injury, assault, manslaughter and murder. There is also the potential to investigate online racial and religious hate speech under the stalking provisions in section 21A of the Act.

364 *Criminal Code Act 1995* (Cth) s 80.2A.

365 *Criminal Code Act 1995* (Cth) s 474.17.

Using a carriage service to menace, harass or cause offence

(1) A person is guilty of an offence if:

- (a) the person uses a carriage service; and
- (b) the person does so in a way (whether by the method of use or the content of a communication, or both) that reasonable persons would regard as being, in all the circumstances, menacing, harassing or offensive.

A Carriage service is a service for carrying communications by means of guided and/or unguided electromagnetic energy:
Telecommunications Act 1977 (Cth) s 7.

366 *Broadcasting Services Act 1992* (Cth) s 5.

367 If found guilty of these offences, the motivation of the perpetrator may be relevant on sentencing, using the penalty enhancement provisions in the Sentencing Act.

Lower level criminal conduct may also be covered by the Summary Offences Act. Section 17 prohibits “profane, indecent or obscene language, or threatening, abusive or insulting words” and also behaving in a “riotous, indecent, offensive or insulting manner” in public.³⁶⁸ This section seeks to enforce public order and decency.

In addition, the *Graffiti Prevention Act 2007* (Vic) may provide some level of protection. Section 6 provides that a person must not make graffiti that is visible from a public place if the graffiti, or any part of the graffiti, would offend a reasonable person. This does not include graffiti that is reasonable political comment.³⁶⁹

Finally, the *Personal Safety Intervention Orders Act 2010* (Vic) enables a person to apply to the Magistrates’ Court for a non-family intervention order. The court may grant the order if the person complained about has committed prohibited behaviour (such as assault, sexual assault,

harassment, property damage or interference or making a serious threat) against the applicant and is likely to continue to do so; and the prohibited behaviour would cause a reasonable person to fear for his or her safety. Harassment is defined as a course of conduct that is “demeaning, derogatory or intimidating” and includes harassment that is motivated by prejudice, such as racial taunts.³⁷⁰

However, this Act would only apply in situations where a particular individual or certain individuals had been targeted. It would not apply to behaviour directed towards a community of people. Furthermore, one-off harassment may not meet the requirements for an intervention order, as intervention orders require the court to be satisfied that the respondent is likely to continue to engage in the prohibited conduct in the future.

Figure 1: Relevant discrimination and vilification laws in Australian jurisdictions

	Discrimination	Vilification (Civil provisions)	Vilification (Criminal provisions)	Relevant sentencing laws
CTH	<i>Racial Discrimination Act 1975</i> (Cth); s9	<i>Racial Discrimination Act 1975</i> ; s18C	<i>Criminal Code Act 1995</i> (Cth); s80.2A: Imprisonment for seven years. s 474.17: Imprisonment for three years.	N/A
VIC	<i>Equal Opportunity Act 2010</i> (Vic); s6(m), s7	<i>Racial and Religious Tolerance Act 2001</i> ; ss7-8	<i>Racial and Religious Tolerance Act 2001</i> (Vic) ss24-25 Six months’ imprisonment or 60 penalty units or both	<i>Sentencing Act 1991</i> (VIC); s5(2) (daaa)
ACT	<i>Discrimination Act 1991</i> (ACT); s8	<i>Discrimination Act 1991</i> (ACT); s66	<i>Discrimination Act 1991</i> (ACT); s67: 50 penalty units	N/A
NSW	<i>Anti Discrimination Act 1977</i> (NSW); s7	<i>Anti Discrimination Act 1977</i> (NSW); s20C	<i>Anti Discrimination Act 1977</i> (NSW); s20D: 50 penalty units or six months’ imprisonment, or both	<i>Crimes (Sentencing Procedure) Act 1999</i> (NSW); s21A(2)(h)
NT	<i>Anti-Discrimination Act 1992</i> (NT); s19-20	Nil (as in other jurisdictions the <i>Racial Discrimination Act 1975</i> (Cth) applies)	Nil (as in other jurisdictions the <i>Criminal Code Act 1995</i> (Cth) applies to vilification under the <i>Racial Discrimination Act 1975</i> ; s18C)	<i>Sentencing Act 1995</i> (NT); s6A
QLD	<i>Anti Discrimination Act 1991</i> (QLD); s7(g), s9.	<i>Anti Discrimination Act 1991</i> (QLD); s124A	<i>Anti Discrimination Act 1991</i> (QLD); s131A: 70 penalty units or six months’ imprisonment	N/A

368 *Summary Offences Act 1966* (Vic) s 17(1)(c)-(d).

369 *Graffiti Prevention Act 2007* (Vic) s 6. The penalty for this offence is Level 7 imprisonment- that is two years imprisonment.

370 *Personal Safety Intervention Orders Act 2010* (Vic) s 7.

Limitations of the law

Civil law protections

Victoria has a range of legislative protections that may cover conduct that is motivated by racism. However, not all racist conduct is covered by the law, for example some low-level, day-to-day interactions that are motivated by prejudice but do not meet the definition of discrimination in the Equal Opportunity Act or vilification in the Racial and Religious Tolerance Act.

In order to establish unlawful discrimination under the Equal Opportunity Act, the unfavourable treatment must occur in an area of public life such as clubs, schools and shops, or in the workplace. The Commission's survey results and feedback from key informants demonstrate that conduct motivated by racism can occur outside these prescribed areas of public life, for example between neighbours.

In contrast, the Racial and Religious Tolerance Act can capture conduct between private individuals in some circumstances, for example, where a person vilifies their neighbour and this is heard by others.³⁷¹ If this hate talk incites those who heard it to hate, disrespect or abuse a person or group of people because of their race or religion, this will be vilification, so long as it can be reasonably expected that the vilifying talk may be heard or seen by someone else.³⁷²

However, the Racial and Religious Tolerance Act still has some limitations.³⁷³

For example, while a community or advocacy body may be able to bring a representative complaint, provided that they can demonstrate sufficient interest in the subject of the complaint, it is still necessary to name each individual complainant and obtain their consent to bring the complaint.³⁷⁴ This contrasts with the representative complaint provisions in federal discrimination law which allow advocacy bodies and representatives to lodge complaints about alleged discrimination without the need to name individual complainants or obtain their consent where a complaint is brought on behalf of two or more persons.³⁷⁵

Also, in order to pursue a complaint, an individual must be identified as the respondent. In some cases, it may not be possible to identify the person. In other cases, the person may be identifiable but the complainant may be fearful of being subject to further poor treatment or victimisation if they do complain.

In addition, the incitement test in the Act does not consider the subjective feelings or impact that the respondent's conduct had on the complainant, as the relationship between the respondent and complainant is irrelevant. Rather, what is relevant is whether the respondent's conduct incited, or was likely to incite, a third person to feel hatred towards, serious contempt for, or revulsion or ridicule of, the complainant.

Threshold of the 'incitement test'

The incitement test in the Act places an onus on the complainant to prove that the respondent's conduct incited, or was likely to incite, a third person to feel hatred towards the complainant or the particular group. The practical barriers in obtaining evidence to satisfy this legal test include:

- identifying the third person who witnessed the respondent conduct
- determining who is an ordinary audience member vis-à-vis the respondent's conduct
- proving that the ordinary reasonable audience member has been incited or was likely to be incited to hate the complainant, where there may be no information available about the audience members reaction to the impugned conduct

371 See *Khalil v Sturgess* [2005] VCAT 4446. The complainants were of Arabic descent and claimed that their neighbours vilified them by making racist comments which they heard. VCAT found that the test for religious vilification was made out.

372 However, if the person can establish that the conduct in the circumstances may reasonably be taken to indicate that the parties to the conduct desire it to be heard or seen only by themselves, an exception will apply. *Racial and Religious Tolerance Act 2001* (Vic) s 12.

373 The Act also contains some exceptions. Specifically where a person can show their conduct was reasonable, done in good faith and undertaken for discussion, reporting or as part of an artistic work; was for a genuine academic, artistic, religious or scientific purpose, or any purpose in the public interest or was meant to be private, that is, seen and heard only by them. *Racial and Religious Tolerance Act 2001* (Vic) ss 11-12.

374 *Racial and Religious Tolerance Act 2001* (Vic) s 19(3). Representative complaints regarding discrimination may also be brought under sections 113-114 of the Equal Opportunity Act 2010 (Vic).

375 *Australian Human Rights Commission Act 1986* (Cth) s 46PB(3)-(4).

- accepting that some audiences already hold hatred towards particular groups, so the group cannot be further incited³⁷⁶
- establishing a causal relationship between the complainant's race or religion where the impugned conduct does not make express reference to the complainant's race or religion.

In *Fletcher v Salvation Army Australia* [2005] VCAT 1523 at [5], Morris J said:

The key word is "incites". In its context, this does not mean "causes". Rather it carries the connotation of "inflame" or "set alight". This section is not concerned with conduct that provokes thought; it is directed at conduct that is likely to generate strong and negative passions in the ordinary person. An example of such passions would be where persons are so moved that violence might result.

By contrast, the racial hatred provisions under section 18C of the Racial Discrimination Act is not concerned with incitement, nor is it necessary to ascertain the tripartite relationship outlined above. Section 18C is focused on the relationship between the complainant and respondent and requires a reasonable person test to be applied to the conduct in question. The threshold is whether the respondent's acts are reasonably likely to "offend, insult, humiliate or intimate another person or a group of people", the focus being whether the conduct is severe enough to constitute offensive behaviour based on hatred. This approach takes into account the complainant's sense of grievance and the respondent's reason for conducting the act.³⁷⁷ It is also an objective test and considers the impact of the act on an ordinary member of the victim's group – the reasonable victim.³⁷⁸

³⁷⁶ See *Australian Macedonian Advisory Council Inc. v LIVV Pty Limited trading as Australian Macedonian Weekly (Anti-Discrimination)* [2011] VCAT 1647 (30 August 2011). The Tribunal held that the audience were Macedonian and that for the average Macedonian reader, the article was probably preaching to the converted.

³⁷⁷ If one of the reasons is the race, colour or national or ethnic origin of a person (whether or not it is the dominant reason or a substantial reason for doing the act). *Racial Discrimination Act 1975* (Cth) s 18B.

³⁷⁸ *Kelly-Country v Beers* (2004) 207 ALR 421 at [90].

When section 18C was debated in Parliament, it was made clear during the second reading speech that the section would cover "serious incidents only". The Federal Court has also interpreted section 18C as requiring conduct of a serious nature and that for conduct to offend or insult it must amount to more than mere slights.³⁷⁹

Criminal law protections

Serious vilification under the Racial and Religious Tolerance Act

There have been no successful prosecutions under the criminal provisions of the Racial and Religious Tolerance Act.³⁸⁰ This may be because the offence of serious vilification sits outside the Crimes Act and is therefore less familiar to police and prosecutors. In addition, there is a requirement that any prosecution under this section of the Act may only be commenced with the written consent of the Director of Public Prosecutions.

The penalty for serious religious or racial vilification is quite low compared to other incitement offences; six months imprisonment or 60 penalty units or both, compared to five years imprisonment for assault, or ten years imprisonment for incitement to property damage.³⁸¹ In section 321G of the Crimes Act, the maximum penalty for incitement is 15 years (if the offence is not prescribed by law), except in the case of murder or treason.³⁸² As a result, police and prosecutors may choose to charge and prosecute offenders under general criminal provisions rather than the Racial and Religious Tolerance Act.

³⁷⁹ *Creek v Cairns Post Pty Ltd* (2001) 112 FCR 352; *Jones v Scully* (2002) 120 FCR 243; *Bropho v Human Rights and Equal Opportunity Commission & WA Newspapers Ltd* (2004) 135 FCR 105.

³⁸⁰ Note however that in *Ordo Templi Orientis Inc & Anor v Devine & Anor* (Anti-Discrimination) [2007] VCAT 2470 (28 November 2007) the Tribunal made an order for a warrant to be issued to both respondents for nine months for contempt of the Tribunal for failing to remove material from a website as ordered in earlier RRTA proceedings. The two respondents served part of the nine month sentence and were released when they agreed to comply with the orders.

³⁸¹ *Crimes Act 1958* (Vic) s 321G.

³⁸² *Crimes Act 1958* (Vic) s 321I.

Sentencing Act provisions

Although there are a range of offences in the criminal law that may capture conduct motivated by racial or religious hatred, there is no specific criminal offence for prejudice-motivated crime in Victoria. However, the motivation of prejudice may be considered as a factor at sentencing under section 5(2)(daaa) to the Sentencing Act.

To the Commission's knowledge, there have been no cases where the motivation of racial or religious prejudice has been found by the Court to be an aggravating factor, and an increased penalty applied at sentencing.³⁸³ This may be because decisions in the Magistrates' Court are generally unreported. In *R v Gouros*,³⁸⁴ the Magistrates' Court found that the defendant was partially motivated by racial prejudice in committing crimes against people of similar ethnic or racial appearance, but was not satisfied that racial prejudice was an aggravating factor relevant to sentencing under the Sentencing Act.³⁸⁵

The Commission is aware that the Magistrates' Court also used section 5(2)(daaa) of the Sentencing Act when sentencing two defendants for assaulting gay men.³⁸⁶ The Magistrate found that the defendants committed the assaults because of their prejudice toward the homosexuality of the victims, and ordered custodial sentences.

383 Note that in *R v Rintoul and Sabatino* [2009] VSC 617, the court considered whether a crime was motivated by race as an aggravating factor to be taken into account when sentencing, but found that the crime was not racially motivated.

384 *R v John Gouros* [2009] VCC 1731.

385 The victims were of Indian, Pakistani and Nepalese origin.

386 *Senior Constable Emma Kerry v Billal Ali* (Unreported, Magistrates' Court of Victoria at Sunshine, Magistrate Mellas, 17 October 2011) (Case No. B10072619); *Senior Constable Emma Kerry v Hussain El Halabi* (Unreported, Magistrates' Court of Victoria at Melbourne, Magistrate Mellas, 19 December 2011) (Case No. 201113203).

387 A previous case, *Dow Jones & Company Inc v Gutnick* [2002] HCA 56 (10 December 2002), did not involve the specific issue of racial hatred on the Internet. However, the Court found that defamation laws in Victoria applied to material that was posted on the internet by a server based in America. The case established that "those who publish defamatory material on the internet are answerable before the courts of any nation where the damage to reputation has occurred" (see Kirby J at [165]). Both the *Gutnick* case and *Toben* affirm the application of domestic jurisdiction to Internet content created overseas. The application of the Racial Discrimination Act or state anti-vilification laws to overseas content has not been tested.

Protection from racism online

The *Jones v Toben* case was decided under the federal Racial Discrimination Act as it established that online content was covered by anti-discrimination law. However, the case also illustrates some of the inadequacies of this legislation in dealing promptly and effectively with racism online.³⁸⁷

The case – which involved publishing material on a website denying the holocaust occurred and claiming that Jewish people were of limited intelligence and had exaggerated the holocaust for financial gain – highlighted how complex and protracted it can be to seek redress using a legislative approach.

The original complaint was made in 1996, but the final decision of the courts was not made until 2009.³⁸⁸ Toben was jailed for three months and took down the offensive material but did not pay the order's costs.³⁸⁹

388 The original complaint was made to the Human Rights and Equal Opportunity Commission in 1996. The Commission made a determination in 1998, followed by a Federal Court of Australia decision in 2002, followed by a decision on appeal to the full court of the Federal Court of Australia in 2003, followed by contempt proceedings and further appeal. Human Rights and Equal Opportunity Commission of Australia No. H97/120 (2 November 1998); *Jones v Toben* [2002] FCA 1150; *Toben v Jones* [2002] FCAFC 158; *Toben v Jones* [2003] FCAFC 137; *Jones v Toben* [2009] FCA 354; *Jones v Toben* (No. 2) [2009] FCA 477; *Toben v Jones* [2009] FCA 585.

389 He was also ordered to remove any other material with substantially similar content. In 2006 proceedings were commenced for contempt of court for his failure to comply with these orders. After initially apologising to the court and undertaking to remove the content, Toben then advised that he would not comply or remove further material. Further proceedings were instigated concerning 28 separate charges of contempt, including specific dates on which the offending material had been viewed on the website. In its decision delivered on April 19 2009, the Federal Court found that Dr Toben was in criminal contempt of court. Not only had he failed to remove the material, but he had told others that he would not comply.

Following a further hearing in the bankruptcy court in 2010, Toben finally committed to paying legal fees in mid-2011.³⁹⁰

*The details here are important as they point to the extraordinary difficulty and expense ... that the average citizen would have in seeking redress for racism on the internet, even where there is an identifiable perpetrator, an Australian site, and an acknowledgement of the offensive material.*³⁹¹

There has been periodic discussion of the adequacy of these laws to respond to racism online; for example, in relation to the recent Aboriginal memes Facebook page.³⁹² Some commentators have suggested that civil penalty provisions should be introduced, to be administered either by the Australian Human Rights Commission or by the Australian Securities and Investment Commission, that would be activated if content in breach of the Racial Discrimination Act was still publicly available 14 days after the platform had been notified of the content.³⁹³

In the context of discussing racist content on YouTube, the Online Hate Prevention Institute suggested that there may need to be graded responses to serious violations of racial vilification laws online based on the volume of content that is published. They drew the analogy with copyright law, where violations on a commercial scale can be treated as a criminal offence.³⁹⁴ They also suggested the potential for the Australian Communications and Media Authority to be given a role to bring racial vilification complaints to the Australian Human Rights Commission.³⁹⁵

At an international level, Australia has considered but not ratified the Additional Protocol to the Council of Europe Convention on Cyber Crime, which criminalises racist and xenophobic acts committed through computer systems.³⁹⁶

390 Andrew Jakubowicz, 'Cyber Racism' in Helen Sykes (ed) *More or less: democracy and new media* (Future Leaders, 2012) 215, 231.

391 Ibid.

392 For example Andy Park, 'Racism laws fail in the world wild web', *SBS Online* (National), 17 August 2012 <<http://www.sbs.com.au>> at 26 March 2013.

393 Andre Oboler, 'Aboriginal memes & online hate', above n 151, 64.

394 Andre Oboler, 'Incident report and analysis', above n 176, 3.

395 Ibid 4.

396 *Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems, opened for signature 23 November 2001, CETS No 185 (entered into force 1 July 2004).*



Conclusion

This chapter has described the various laws that regulate racist conduct, including discrimination, vilification and hate crimes, and has considered some of their limitations. However, racism cannot be addressed by the law alone. Racist acts and attitudes are symptomatic of deeper societal issues that need to be addressed in a coordinated, multi-faceted way. It is vital that, across the state, partnerships are established and strategic action is taken so that all Victorians, regardless of their race, culture or religious beliefs, feel confident and able to fully participate in all aspects of community life and not live in fear of discriminatory conduct or violence.

An important part of that effort is to overcome the barriers to reporting racism, by victims and bystanders, so that people have confidence in the public institutions and laws established to protect them. The next chapter explores how the Commission and other agencies can work to build community capacity to report and respond to racism.

Chapter 7: The way forward

As the Commission's research and other local studies highlight, racism is a daily experience for too many Victorians. Racism happens across all parts of public life: at work, on the tram, in shops, accessing services, playing sport or going online.

Despite this, many people choose not to report the racism they experience. Some told us they do not know where to take their complaint. Some do not trust the matter will be dealt with appropriately. For others, the limitations of the Victorian and Commonwealth legal systems to address vilification or prejudice-motivated crime are a major barrier to taking action.

Of course 'bystanders' or even those not present, like me, are really 'involved'. We are all in this together.³⁹⁷

The law is a crucial tool for responding to conduct and crime motivated by racism. It also has great symbolic value, as it reflects and shapes community values around social cohesion and respect for difference. As our understanding of the nature, prevalence and impact of racism increases, it is appropriate that we start a dialogue in Victoria about how our legal system could better respond to the experiences that many people in our community face. A key part of this discussion should examine how we strike an appropriate balance between protecting free speech and protecting people from vilification.

397 Survey participant.

398 <<http://www.antihate.vic.gov.au>> at 16 April 2013.

399 <<http://www.humanrightscommission.vic.gov.au/index.php/our-projects-a-initiatives/race-discrimination-in-nightclubs-pubs-and-bars>> at 16 April 2013.

400 <<http://www.humanrightscommission.vic.gov.au/index.php/our-resources-and-publications>> at 16 April 2013.

Work already underway

Of course, laws alone are not enough to prevent racism and the burden should not fall solely on individuals to make complaints. Therefore, in addition to our responsibility for handling complaints of discrimination, the Commission has initiated a number of programs and projects to address racism.

The Commission's **Anti-Hate campaign and website** is an important element of our work to address vilification, hate and other forms of discrimination.³⁹⁸ This campaign was created working closely with the Reporting Racism Reference Group, based on data from the survey, complaints received at the Commission and academic work on preventing and responding to discrimination. The Victorian Multicultural Commission, Multicultural Arts Victoria and Victorian Government departments and agencies support the campaign.

In addition to anti-hate, we have a number of other projects underway. These include:

- Working with the City of Yarra on **Venues Against Racism**.³⁹⁹ This initiative was developed in response to complaints made to the Commission about discrimination by nightclubs in inner Melbourne. Stickers and flyers promoting support for diversity were distributed to bars and clubs, raising awareness of the law and encouraging nightclub owners to actively demonstrate their compliance by becoming a 'venue against racism'.
- Issuing **guidelines** under the Equal Opportunity Act preventing discrimination in recruitment, as well as **'Know your rights'** fact sheets and booklets for Aboriginal and Torres Strait Islander Victorians, international students and people seeking private rental accommodation, complemented by factsheets for employers regarding specific cultural groups.⁴⁰⁰

- Developing and delivering a pilot training package and train-the-trainer program that helps the Department of Families, Housing, Community Services and Indigenous Affairs and its service providers identify and address factors that may contribute to systemic racial discrimination with a focus on Aboriginal and Torres Strait Islander communities.⁴⁰¹ The Commission is also a partner in the national campaign **Racism stops with me**.
- Following our **Rights of Passage** research, working with community organisations in Dandenong and Noble Park to support positive relationships between Victoria Police and African Australian young people through key initiatives including training for youth workers on discrimination in public spaces.⁴⁰²
- Managing the VicHealth funded **Creating Healthy Workplaces** research project to reduce race-based discrimination and support cultural diversity in two Victorian workplaces. This three-year program aims to test and expand the current evidence base on workplace health interventions while reducing discrimination by changing organisational working conditions, culture and the behaviour of the workforce.

The Commission is also a member of the Victoria Police Prejudice Motivated Crime Strategy Implementation Reference Group and a member of the Advisory Group for the Darebin City Council Anti-Racism Strategy.

Our **Indigenous Engagement Program** provides a critical mechanism in which the Commission is able to connect with diverse Victorian Aboriginal communities. This has included:

- establishing a warm referral service for Victorian Aboriginal clients from the Victorian Aboriginal Legal Service (VALS) to the Commission
- providing an outreach service at the Victorian Aboriginal Legal Service
- participating in community forums on the introduction of income management in Shepparton
- conducting 'Tackling race based discrimination for the Victorian Aboriginal community' community information sessions.

401 Funded by the Department of Families, Housing, Community Services and Indigenous Affairs through the Australian Human Rights Commission under the National Anti-Racism Strategy.

402 <<http://www.humanrightscommission.vic.gov.au/index.php/our-projects-a-initiatives/past-projects/item/480-rights-of-passage>> at 16 April 2013.

The Commission is also a member of the Aboriginal Justice Forum. As part of its commitments under the Aboriginal Justice Agreement 3, the Commission is currently undertaking research on the need for culturally appropriate and effective diversionary options for Koori women in prison.⁴⁰³

The Commission also provides equal opportunity and human rights expertise to a range of government, employer and community bodies through our training and consultancy service.⁴⁰⁴ Each year the Commission delivers more than 400 education and training workshops across Victoria, including specialist courses on tackling race-based discrimination for CALD communities.

In addition to our calendar courses, the Commission has also:

- supported the **Our Community Our Rights project** (Women's Health West) – assisting young South Sudanese women understand their rights in order to advocate for themselves or others
- supported the **Australian Football League (AFL) Racial and Religious Vilification Working Group** – providing guidance, advice and analysis on initiatives aimed at better understanding, preventing and responding to vilification across all sectors of the AFL
- worked with the Muslim Legal Network and Victoria Legal Aid to deliver community information sessions to members of Victoria's Islamic communities.

The Commission also led the design, development and delivery of anti-racism training for VicHealth's LEAD Project (**Localities Embracing and Accepting Diversity**). This project was a place-based pilot project to reduce discrimination and promote diversity through coordinated actions with individuals, communities and organisations in Shepparton and Whittlesea. As well as supporting the project and its social marketing campaign, the Commission delivered workplace training in a range of sites across the localities.

In 2012, the Commission published *Locked out: Discrimination in Victoria's private rental market*, a report on the results of a survey of people's experiences in seeking private rental accommodation. We also undertook research

403 <<http://www.humanrightscommission.vic.gov.au/index.php/our-projects-a-initiatives/koori-women-and-prisons>> at 16 April 2013.

404 <<http://www.humanrightscommission.vic.gov.au/index.php/training>> at 16 April 2013.

examining the policy of public schools charging fees to children of international students. The report, entitled *In the best interests of the child?* examined the financial impacts of the policy, the amount of fees charged and the impact on families that were unable to pay the fees.⁴⁰⁵

In the same year, the Commission sponsored research on the business benefits of diversity. Conducted by Deloitte, this research demonstrated a strong connection between diversity, inclusive organisational culture and business outcomes by applying a quantitative approach to the benefits of a diverse workplace in an Australian context.⁴⁰⁶

Next steps

What is clear from our study is that individuals, communities and organisations need greater support to know how they can respond safely and effectively to the racism they encounter, wherever they encounter it.

Using technology to fight hate

A primary goal of the Anti-Hate campaign is to promote greater community awareness around the seriousness of racism and other prejudice-motivated conduct. In particular, the website is a tool to encourage people to share their stories of confronting racism, as well as other forms of hate, in order to build community capacity and skills to respond to incidents when they occur.

To date, almost 25,000 people have visited the site. To help more people connect with this campaign, we will introduce an Anti-Hate phone app in 2013.

Building third party reporting

Not all individuals feel willing or able to report an incident of racism. In Victoria and elsewhere, third party reporting mechanisms exist which allow recognised organisations to take reports of racism to the police and other agencies on behalf of individuals in their communities.

Our goal is to support and equip different communities in Victoria to establish effective third party reporting systems. Not only can this approach help promote action in response to individual cases that would otherwise go unreported, it also helps build a clearer picture of the number and types of incidents experienced by different communities.

The more we understand about the nature, prevalence and impact of racism, the better placed we will be to develop strategies to combat racism in the places where it is most likely to occur and to build safer, more inclusive communities.

In the first instance, we will collaborate with Victoria Police and the Victorian Aboriginal Legal Service to trial a third party reporting system, using our Anti-Hate website as the access point. Following this initial trial, we will extend the program to other communities.

Supporting bystanders

We have received feedback in response to the Anti-Hate campaign and through other channels, which demonstrates many Victorians want to take a strong stand against racism in the places where they live, work, study and socialise.

We will partner with transport providers, schools, youth groups, sporting organisations, local governments, employers and other agencies to promote the Anti-Hate campaign messages. We will also work with government agencies, such as VicHealth, to incorporate information on safe bystander action into existing training programs.

Community education and awareness

In addition to our existing calendar of 'rights and responsibilities' awareness training for community groups, employers and service providers, we will support and deliver community awareness education programs to other groups experiencing high levels of racism.

The Commission also recognises that limited community understanding of Aboriginal identity and culture can and does lead to discrimination. It also undermines the right of Aboriginal people to enjoy their identity and culture, which is protected by the Charter.

In partnership with the Bunjilaka Aboriginal Cultural Centre at the Melbourne Museum, the Commission will develop an online resource to build a richer community understanding and appreciation of Aboriginal identity, culture and history in Victoria. It will address a number of common myths and misconceptions, providing an accessible way for non-Indigenous people to find answers to questions they may feel unable to ask.

405 <<http://www.humanrightscommission.vic.gov.au/index.php/our-projects-a-initiatives/past-projects/item/54-school-fees-for-children-of-visa-holders>> at 16 April 2013.

406 For a copy of the report, please contact the Commission.

Actions for 2013-14

Drawing on the findings of this research project, we will build on the work we are already doing by working with community organisations, government agencies and service providers to deliver the following eight key actions in 2013-14.

1. Collaborate with Victoria Police and the Victorian Aboriginal Legal Service to trial a third party reporting system, using our Anti-Hate website as the access point. Following this initial trial, we intend to extend the program to other communities.
2. Extend our Anti-Hate campaign to include a phone app, in addition to the existing website.
3. Work with key agencies, including Public Transport Victoria and transport providers to support bystanders using Anti-Hate as a vehicle for bystander action.
4. Partner with schools, youth groups, sporting organisations, local governments, employers and other agencies to promote and implement the Anti-Hate campaign messages into existing programs and curriculum.
5. Work with government agencies (such as VicHealth) to incorporate information on promoting bystander action into existing training packages.
6. Develop an online resource to build a richer community understanding and appreciation of Aboriginal identity, culture and history in Victoria, and in so doing break down stereotypes and misinformation.
7. Work with community groups to deliver targeted community information sessions about rights, available avenues for redress, where and to whom to report, the potential benefits of reporting and the possible outcomes.
8. Use the evidence from our involvement in the Creating Healthy Workplaces project (funded by VicHealth) to develop new strategies to address discrimination in the workplace.

Appendices

Appendix 1: Survey instrument

REPORTING RACISM: WHAT YOU SAY MATTERS SURVEY

Are you reporting something:

- That happened to you
- That you witnessed
- That you have seen/been sent
- Other

Please specify

Is this incident related to (you can select both)

- racial background or ethnicity, colour
- religion

Please specify

What type of behaviour are you reporting?

- Media – Press, TV, Radio
- Internet – Blogs, YouTube, unsolicited email, website
- Social media including Facebook, Twitter etc.
- Graffiti (public space – such as a train station, street or amenity block)
- Graffiti (private property – such as damage to a house, car or business)
- Propaganda (offensively material in letterboxes; stickers flyers or posters)

- Other property crime, vandalism or damage
- Verbal abuse
- Physical abuse
- Other

Please specify

Please describe what happened – what you saw, what you heard? Was anyone else involved?
(Include details such as location, web addresses etc)

What did you do?

- Removed graffiti / cleaned
- Spoke up / intervened
- Walked away
- No action
- Other

Please specify

Would you do something different next time?

Where did this happen?

- At home
- At school/uni
- At work
- On the street
- Online (web, Facebook, twitter etc.)
- At a social occasion
- On public transport
- At a community event
- At a service provider (health, govt, bank, retail etc)
- Other

Please specify

Did you report the incident to anyone?

- Yes, community organisation/advocate
- Yes, Victoria police
- Yes, local council
- Yes, the Victorian Equal Opportunity and Human Rights Commission
- Yes, Australian Human Rights Commission
- Yes, employer
- Yes, school/uni
- Yes, service provider
- Yes, temple, synagogue, church, mosque etc.
- No, did not report
- Other

Please specify

What happened?

Why not? (You may select more than one reason)

- Did not seem important enough
- Did not know where to report
- Did not know who to report to
- Unsure of the process
- Did not want to go to the police
- Afraid of the consequences/victimisation
- Did not think anything would be done about it
- Reported a similar issue/event last time, and nothing happened
- Other

Please specify

What would you expect to happen if you made a report?

- Feedback on what the outcome was
- Evidence something happens e.g. removal of graffiti, stickers etc
- Other

Please specify

About you

What is your age:

- Under 18
- 18 to 24
- 25 to 34
- 35 to 44
- 45 to 54
- 55 to 64
- 65 and over

Are you:

- Male Female

What is race, ethnicity or national origin? (Optional)

What is your religion?

- Jewish
- Muslim
- Hindu
- Sikh
- Buddhist
- Christian
- N/A
- Other

Please specify if you wish.

Were you born in Australia?

- Yes
- No

What year and/or age did you arrive in Australia? _____

If you have recently seen any materials you would like to submit to this research, please record where and when you saw it and send us any relevant documents, emails or photos to research@veohrc.vic.gov.au.

Please provide some contextual information such as the exact location, type of material and distribution in area/community, evidence of a response (individual or community) to it.

Thank you for participating in our survey.

Please send it on to anyone you think might want to contribute.

Please note: this project is not part of a formal complaints process, rather it is research that will inform the Commission's future work around people's experience of these issues. If you would like to make a complaint about racial or religious vilification you may contact the Commission's Enquiry Line on 1300 292 153 or visit the online complaint form on our website at <http://www.humanrightscommission.vic.gov.au/complaints>.

If you have any further questions about the survey and research project, please email research@veohrc.vic.gov.au or post to

Confidential research
Victorian Equal Opportunity and Human Rights Commission
Level 3, 204 Lygon Street
Carlton Vic 3053

Your privacy

No person will be identified in the report. All information collected in this survey will be kept confidential. You do not need to provide your name or any other personal information at any stage. The Commission complies with Victorian privacy laws and the confidentiality provisions of the Equal Opportunity Act 2010. Our privacy policy is available at www.humanrightscommission.vic.gov.au/privacy.

Appendix 2: Key informants

No	Organisation	Date
1	Islamic Council of Victoria	5 September 2012
2	Jewish Community Council of Victoria	6 September 2012
3	African Think Tank	13 September 2012
4	Multicultural Centre for Women's Health	18 October 2012
5	Federation of Indian Associations of Victoria	24 October 2012
6	Victorian Immigrant and Refugee Women's Coalition	25 October 2012
7	Online Hate Prevention Institute	26 October 2012
8	Victorian Aboriginal Legal Service	27 November 2012

Glossary

Discrimination

Under the Equal Opportunity Act, discrimination is defined as the unfavourable treatment of a person in an area of public life based on a protected attribute (including race or religion). Unlawful discrimination can be direct or indirect.

Direct discrimination

Direct discrimination occurs if a person treats or proposes to treat a person with an attribute unfavourably because of that attribute in an area of public life.⁴⁰⁷

Indirect discrimination

Indirect discrimination may occur if a person imposes or proposes to impose a requirement, condition or practice that has, or is likely to have, the effect of disadvantaging people with a protected attributes and this condition is not reasonable.⁴⁰⁸

Hate speech

Words or symbols that are derogatory or offensive on the basis of race, religion, sexual orientation and so on. Some commentators have argued that hate speech is also dangerous and harmful and may have many of the same effects as hate crimes (psychological trauma, adverse impact on the community). It may foster an atmosphere in which bias motivated violence is encouraged subtly or explicitly.⁴⁰⁹

Prejudice

'An aversive or hostile attitude towards a person who belongs to a group, simply because he or she belongs to that group, and is therefore presumed to have the objectionable qualities ascribed to that group.'⁴¹⁰

Prejudice-motivated crime

A crime motivated by prejudice or hatred towards a person or a group because of a particular characteristic such as sexual orientation, gender identity, religion, race, sex, age, disability or homelessness'.⁴¹¹

Racial or religious vilification

Behaviour that incites hatred against, serious contempt for, or revulsion or severe ridicule against another person because of their race or religion.⁴¹²

Systemic discrimination

Discrimination can become systemic when entrenched or institutional patterns or behaviours affect a range of people. These behaviours and actions can form part of organisational culture that may be reinforced by policies or procedure.

407 *Equal Opportunity Act 2010* (Vic) s 8.

408 *Equal Opportunity Act 2010* (Vic) s 9.

409 Phyllis B Gerstenfeld 'Hate crimes: causes, control and controversies' (2003) Sage California, 23, 23.

410 Gordon W Allport, *The nature of prejudice* (1954) Addison Wesley Publishing Company Inc, 7.

411 Victoria Police, Prejudice Motivated Crime Strategy 2011-13.

412 *Racial and Religious Tolerance Act 2001* (Vic) s 7, 8.



Victorian Equal Opportunity
& Human Rights Commission

Contact us

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Fax	1300 891 858
Hearing impaired (TTY)	1300 289 621
Interpreters	1300 152 494
Email	information@veohrc.vic.gov.au
Website	humanrightscommission.vic.gov.au