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## Coronavirus: Cover For A Fresh Attack On Free Speech In Victoria

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Victorians have experienced an unprecedented trashing of their rights and liberties in response to the coronavirus pandemic, but now the temporary problem is being used as an excuse to impose new and permanent limits to their freedom of speech.

The recent call to expand hate speech laws comes in the context of an ongoing parliamentary inquiry into the Racial and Religious Tolerance Amendment Bill.

This bill was introduced into the Victorian parliament in August 2019 and as drafted promises to expand and supercharge anti-vilification laws.

In an email recently sent to anyone who has already participated in that inquiry, the Legal and Social Issues Committee announced that it was extending the inquiry to consider the impacts of the coronavirus.

In the email Committee chairman, Labor MP Natalie Suleyman, claimed that “the need to examine the effectiveness of Victoria’s anti-vilification laws has become even more apparent with the reported rise in racially motivated incidents resulting from the pandemic.”

The “reported rise in racially motivated incidents” almost certainly refers to claims made by the Australian Human Rights Commission and shared to the ABC in April that one in four people who reported racial discrimination in February and March linked it to the coronavirus pandemic.

However, this is a vague claim and the raw numbers were not released. The claim as reported by the ABC refers to “racial discrimination” which includes but is distinct from racial vilification complaints made under Section 18C of the Racial Discrimination Act 1975 which prohibits public acts which offend, insult, humiliate, or intimidate another person because of their race or ethnic origin.

Regardless of the validity of the number, it is true that any instances of abuse on racial grounds is a human and moral failure and it may be the case that the distress and anxiety related to the pandemic has manifested in poor social behaviour.

However, it cannot be assumed that every claim of discrimination is valid. Anti-discrimination commissions are generally required to inquire into all complaints that are submitted to them regardless of whether or not they are frivolous or vexatious.

Mixing the claims of COVID-related abuse with the Victorian parliamentary inquiry is a transparent attempt to strengthen the case for expanding anti-vilification laws in the state.



And yet the amendments before parliament are not directed towards COVID- related events. Legislation tends to be written in general terms, and general terms will apply more broadly than the specific harms they are intended to address.

The bill being considered by parliament would lower the threshold for making complaints of serious vilification, give the Victorian Equal Opportunity and Human Rights Commission new information gathering powers to violate a person's right to silence, and would add gender, disability, and sexual orientation as new 'protected attributes' under the Racial and Religious Tolerance Act 2001.

This law currently makes it unlawful for a person to engage in conduct that 'incites hatred against, serious contempt for, or revulsion or severe ridicule' of another person because of their race or religious belief or activity.

Just like Section 18C, Victoria's anti-vilification laws are vaguely worded and don't refer to an objective standard for unlawful speech. It will leave the door open for a judge to draw their own conclusions about what kind of speech is 'likely to' 'incite hatred' or 'severe ridicule'.

There is no meaningful difference between an act that is likely to incite hatred and an offensive act because it is based on the subjective assessment of whether an expression is likely to evoke an emotional reaction in another person. Subjective laws mean you can never be sure when you will be deemed to be breaking the law since you can't anticipate how the law will be applied.

If you are driving 112km in a 100km zone, you know that you are over the limit. In this case, the offending person won't actually know if they're committing an offence, because 'likely to' is so broad.

It is a poor basis for designing laws, and an exceptionally poor basis for laws which restrict one of our most important freedoms.

Since all complaints are heard and investigated, dealing with the process can itself be the process. The risk of expressing an opinion will frighten people into silence.

This chilling on speech is a feature of all anti-vilification laws and will be a feature of the Victorian amendments. Those pushing for greater powers for anti-discrimination commissions or expanded anti-vilification laws have not proven that the current laws have failed or that the proposed laws are relevant to the problem they seek to address.

Victorians should be deeply sceptical of any attempt to use the coronavirus to achieve lasting and unrelated policy goals, especially those that would curtail their liberties and freedom of speech.



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