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Patten Law Will Erode More Of Our Democracy

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Fiona Patten's proposed anti-vilification amendments are a supercharged 18C that threaten the legal rights of all Victorians and their freedom to engage in public debate.

The Victorian parliament is currently debating the *Racial and Religious Tolerance Amendment Bill 2019*, which was introduced into the upper house by Reason Party leader and lone representative Patten in August. The bill promises to threaten freedom of speech in the state by vastly expanding the classes of protected people under the existing anti-vilification framework.

It will stifle discussion on a range of contentious issues captured within the left's identity politics bingo card.

Currently, the *Racial and Religious Tolerance Act 2001* 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. The Patten bill would add gender, disability, and sexual orientation as new 'protected attributes'.

Just like section 18C of the federal Racial Discrimination Act, which make it unlawful to offend or insult another person because of their race, Victoria's anti-vilification laws are vaguely worded and contain no objective standard for unlawful speech. It will leave the door wide open for each judge to draw their own conclusions about what kind of conduct is likely to 'incite hatred' or 'severe ridicule'.

In reality there is no meaningful difference between an act that is likely to incite hatred and an offensive act because the standard is based on an emotional response. It is an inherently subjective exercise for a judge to determine whether an expression is likely to elicit 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. It is a poor basis for designing law, and an exceptionally poor basis for laws which restrict one of our most important freedoms.

Ambiguous laws such as these will throw into legal doubt a range of issues of contemporary debate for all Victorians, including the media, from opinion columnists and commentators like the Herald Sun's Andrew Bolt to journalists such as The Australian's Bernard Lane, who frequently writes about important but controversial gender identity issues.

Dealing with frivolous complaints mean the process is itself the punishment. The risk of

expressing an opinion will frighten people into silence. This is known as the chilling effect on free speech, and is a feature – not a bug – of so-called hate speech laws.

Ms Patten responded to criticism in *The Australian* last week that the bill is about "public hate speech that principally threatens or incites hatred and violence … limiting people's right to abuse and incite hatred and violence is not limiting free speech."

It is misleading to conflate the issue of inciting violence – which is rightly restricted among a litany of state and federal laws without controversy – with the amendments before parliament which primarily deal with inciting severe ridicule for instance. This bill is not about stopping violence – it is about stopping debate.

Our experience with the federal section 18C should tell us why we don't need an equivalent at the state level. The long running and infamous complaint made against several students at the Queensland University of Technology arising from Facebook comments about an indigenous-only computer lab on campus in 2013 exposed the failure to respect principles of natural justice and procedural fairness behind the scenes at the Australian Human Rights Commission. Is there any reason to believe that expanding the role and powers of Victoria's human rights commission, the Human Rights and Equal Opportunity Commission, won't lead to similar results?

We do know that the Patten bill seeks to give that very organisation the power to apply to the Victorian Civil and Administrative Tribunal (VCAT) to compel people to produce documents to identify online "trolls" after a vilification complaint has been made. The power to force people to give information to an authority is clearly in conflict with an individual's right to silence, and runs contrary to the traditions of common law liberties and the rule of law dating back to the sealing of the Magna Carta in 1215.

Coercive powers like these should be strictly limited, and only exercised by a proper court of law. VCAT, by their own admission, are not a court, and should not be given court-like powers.

The Andrews government has not confirmed whether it will give its support to the Patten bill, and has kicked it off into a parliamentary inquiry for review. It should realise that freedom of speech is central to human dignity and human flourishing. A functioning democratic system depends on the ability of people to put forward their views without fear of legal restriction and state punishment.

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