Legal Doctrines Applied to Online Hate Speech

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Introduction

The application of legal doctrines to the problem of online hate speech, particularly in social media, is of growing importance to both the legal profession and society. In just a few years, social media has become a mainstream form of communication and opened mass communication to the public. It has greatly increased both the ability of individuals to communicate and the impact of those communications. In Australia, and internationally, the law is trying to catch up.

In this paper we begin with a consideration of cybercrime, extracting principles and ideas from the literature. This includes the key idea of 'online / offline consistency',[1] and the exception that applies when online conduct is more prevalent, or changes in nature, from its offline counterpart.[2] Next we consider the general nature of hate speech and arguments in favour of its criminalisation, as well as the specific nature of online hate speech in social media. With this as background we consider hate speech provisions in four Australian jurisdictions, comparing them to an international standard set out in the *Additional Protocol*.[3]

The paper concludes by highlighting the need for international consistency, the usefulness of the Additional Protocol to achieve this, and the suitability of Western Australia's approach to hate crime as a means to achieve this within Australia.

Hate Speech as Cybercrime

The introduction of new technologies, be it the automobile or digital technology, creates both new ways of perpetrating crime and new ways of avoiding detection.[4] Legal doctrines concerning these challenges exist in an area known as cybercrime. In applying legal doctrines to online hate speech we begin with an understanding of cybercrime and the interaction between the Internet and the law.

Cybercrime Principles

There are three types of cybercrime: those where technology is the target of crime; 'existing offences where the computer is a tool used to commit the crime'; and those where the computer is incidental but provides evidence of the crime.[5] Examples of the second form of cybercrime include 'child pornography, stalking, criminal copyright infringement and fraud'. [6] Online Hate Speech falls within this second form of cybercrime.

A key concept of cybercrime is the idea of 'online / offline consistency' which holds that the regulation of online conduct should be equivalent to the regulation of offline conduct.[7] This can be divided into three specific principles: *generality, inclusion* and *appropriate adaptation.*

The *principle of generality* holds that where possible existing laws which are not specific to the online environment should be relied upon.[8] The *principle of inclusion* holds that conduct which is criminal offline should not escape criminality simply by moving to the online environment.[9] This principle rejects both 'internet exceptionalism', which claims regulation of the internet is either impossible or undesirable,[10] and the idea that the online norms can 'supersede the standard rules of society'.[11] The *principle of appropriate adaptation* holds that conduct which is not criminal offline should only be criminalised online if the change in environment has 'an impact on the nature of the conduct or its prevalence' which necessitates a criminal response.[12] In the limited space where it applies, this approach adopts the idea of 'Internet contextualism' which argues that laws affecting

the Internet should take account of the Internet's design attributes.[13]

Another relevant concept is the *principle of necessary criminalisation* which holds that a criminal response to a course of conduct is only necessary if: (1) the conduct impacts upon the public interest and compensation would be an inappropriate or insufficient remedy, (2) responses short of the criminal law would be 'ineffective, impractical or insufficient', and (3) the offense is clear in scope and effect and is enforceable.[14] The *principle of necessary criminalisation* is a general criminal law principle which takes on a cybercriminal aspect in light of the need to consider differences between the online conduct and its offline counterpart and the differences in the available non-criminal responses. This aids in determining whether a criminal response is necessitated under the *principle of appropriate adaptation*.

The different nature and prevalence of online conduct, compared to its offline counterpart, may, under the *principle of appropriate adaptation*, require criminalisation of some forms of online conduct whose offline counterparts are not criminalised. Under the *principle of necessary criminalisation* this can also occur where non-criminal responses may be effective in relation to offline conduct, but are ineffective or inapplicable to the online conduct. In both cases specific laws related to the online environment would be required, creating an exception to the *principle of generality*.

The change in the nature and prevalence of some conduct may mean that, in its online form, the conduct can be more effectively dealt with through non-criminal measures. This reduces the justification for the application of the criminal law. Removal of criminal coverage would, however, be at odds with the *principle of inclusion*. This apparent conflict is resolvable by retaining the criminal law's applicability online, but rarely requiring its enforcement in light of other effective responses.

Another principle in cybercrime is the distinction between 'virtual crime' and 'real online crime'. Virtual crime is 'misconduct that draws social significance from its meaning in virtual reality' and which will normally 'have no resonance with criminal statutes'.[15] This is despite victims of 'virtual crimes' being subjected to 'real psychological, social and financial harms'.[16] An example is rape in a 'virtual world' which is considered 'at most, a description of a rape',[17] meaning no crime is committed.

Real online crime draws social significance from its mere communication and will have resonance with criminal statutes regardless of the communication medium. Virtual child exploitation material is one example, which as Clough notes, 'can produce many of the same types of harm as actual child pornography'.[18] This idea is supported by McLachlin CJ who stated that child exploitation material 'is harmful whether it involves real children in its production or whether it is a product of the imagination' as in either form it 'fosters and communicates the same harmful, dehumanizing and degrading message'.[19]

There is debate on whether real online crime is more or less harmful than offline crime. This can impact whether new laws are needed if offline laws are ineffective online. This has particular relevance when 41% of the complaints about racism received by the Australian Human Rights Commission in 2012-2013 were due to cyber-racism.[20]

In the past it has been argued that real online crime is much less harmful than real world crime. One commentator, after noting he personally 'felt attacked' and was deeply jarred after a racial attack in a virtual world,[21] nevertheless stated there was less risk of harm online given: '[o]ne's physical body is never at risk';[22] the ability to easily exit an online world reduces the risks to mental welfare;[23] and reputational safety can be provided through anonymity or pseudo-anonymity.[24] This view is now dated in the context of social media platforms like Facebook and LinkedIn. Such platforms are increasingly tied to the real world, are relied upon as a primary form of communication regarding offline activities, and have the capacity to significantly impact relationships, employment and reputation.[25]

The Nature of Hate Speech

An understanding of the general nature of hate speech, and the ways in which online hate speech may differ from it, is essential to the application of 'online / offline consistency' and the *principle of appropriate adaptation*.

The aim of hate speech is to embed two messages into 'the permanent visible fabric of society'.[26] The first message is to victims and says, '[d]on't be fooled into thinking you are welcome here';[27] the second is to the rest of society saying, '[w]e know some of you agree that these people are not wanted here... know that you are not alone... there are enough of us around to make sure these people are not welcome... [and] to draw attention to what these people are really like'.[28]

According to Waldron, embedding the twin messages of hate into the fabric of society removes victims' 'assurance that there will be no need to face hostility, violence, discrimination, or exclusion by others' in their daily lives.[29] There is also a wider damage to the public good of an inclusive society. The Victorian Parliament highlighted this damage when they said that vilification of minorities 'diminishes their dignity, sense of self-worth and belonging to the community', and that this in turn 'reduces their ability to contribute to, or fully participate in, all social, political, economic and cultural aspects of society as equals'.[30] The damage to the 'public good of inclusiveness' is both 'socially and legally significant'.[31] The public interest test that forms part of the *principle of necessary criminalisation* is therefore met.

Concerns about "digital hate" date at least to the mid 1980's,[32] and laws against Internet hate are now common

internationally.[33] The Internet enabled those who have previously had limited visibility, achieved through the labour intensive local distribution of fliers, to reach a global audience.[34] As one court described it, the 'slow, insidious effect of a relatively isolated bigoted commentary... has now changed to a form of communication having a widespread circulation'.[35] This increases the 'environmental threat to social peace'.[36] In cybercrime terms, online hate speech is a 'real online crime' rather than a 'virtual crime' as it draws social significance from its mere communication which is itself harmful to society.

The higher visibility and quantity of hate speech online can be understood through the *routine activity approach* to crime opportunity. This approach holds that crime requires a convergence of three elements: motivated offenders, suitable opportunities or targets, and the absence of capable guardians.[37] Online 'community platforms' provide a 'convergence of offenders and victims in the absence of a capable guardian'.[38] As the most popular form of online community, social media platforms pose a particular risk.

Hate speech in social media is also different in nature to its offline counterpart; it takes the form of 'hate 2.0', a generalisation of the concept of 'Antisemitism 2.0'. [39] 'Antisemitism 2.0', and by extension 'Hate 2.0', aims to create 'social acceptability' allowing the content to 'be spread, public resistance lowered, and hate networks rapidly established.'[40] The resulting normalisation of hate speech in society and the growth in networks spreading hate speech content are both significant.

The social media world is an artificial environment created from the content that users share. Speech creates the fabric of the online world, and users have the power to literally embed the twin messages of hate speech into the fabric of the online society. The nature of hate speech therefore changes and becomes far more direct. The repeated passive observance of such messages results in normalisation, removing any social stigma. Hate speech is rendered no more than another opinion.[41] This allows the hate to be openly expressed not only online, but also in daily life.

Hate speech in social media, in the absence of effective control mechanisms, is a much greater 'environmental threat to social peace' than hate speech in an offline context. A criminal response may be justified under the *principle of appropriate adaptation*. A criminal response also sends an important educative message to counter the normalisation of hate that occurs through Hate 2.0.

Laws Covering Hate Speech

In this section the *Additional Protocol*, the only regional instrument specifically focused on online racist content,[42] is introduced. The legislation of the Commonwealth, NSW, Victoria and Western Australia are considered and compared to the requirements of the *Additional Protocol*.

Australian legislation does not use the term 'hate speech', however, by looking at a definition of 'hate speech' it is possible to identify a set of laws countering hate speech. One useful definition is 'speech or expression which is capable of instilling or inciting hatred of, or prejudice towards, a person or group of people on a specified ground including race, nationality, ethnicity, country of origin, ethno-religious identity, religion, sexuality, gender identity or gender'.[43] Laws that respond to the incitement of hatred or engendering of prejudice on any of these nine grounds therefore form part of the legal response to hate speech.

The coverage of the different grounds of hate speech varies across Australia's jurisdictions.[44] Racial vilification is the only form of hate speech to have almost complete coverage.[45] None of Australia's hate speech provisions are exclusively focused on the online environment.

The Additional Protocol

The *Additional Protocol to the Convention on cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems,*[46] was introduced as a separate legal instrument after the United States opposed the inclusion of provisions against cyber-racism in the *Convention on Cybercrime.*[47] Australia has ratified the *Convention on Cybercrime* in 2012,[48] but it is yet to sign the *Additional Protocol*.[49]

The *Additional Protocol* has five substantive provisions, each of which calls for criminalisation under national laws for particular conduct. Article 3 relates to the 'dissemination of racist and xenophobic material through computer systems'; article 4 relates to 'racist and xenophobic threats'; article 5 relates to 'racist and xenophobic motivated insult'; article 6 relates to 'denial, gross minimisation, approval or justification of genocide or crimes against humanity'; and article 7 relates to 'aiding and abetting' in relation to the first four types of conduct.

The *Additional Protocol* respects 'online / offline consistency' by providing opt out clauses for provisions that conflict with established national laws. It promotes 'online / offline consistency' by differentiating the online crime on the basis of its differing nature and prevalence and therefore justifying the need for additional and specific laws, while ensuring those laws don't directly contradict existing legal principles.

The Commonwealth

The *Racial Discrimination Act 1975* (Cth) is based on the Commonwealth's 'external affairs' power to implement treaty obligations under the *International Convention on the Elimination of All Forms of Racial Discrimination*.[50] The treaty allows for criminalisation of racially based hate speech,[51] but implementation efforts to this effect were rejected by the Senate in 1974.[52] Under the 1995 amendment,s racial hatred became unlawful but not illegal.[53] The cause of action under Commonwealth law therefore rests in the civil law.[54] It is

found in section 18C of the *Racial Discrimination Act* 1975 (Cth), which states:

> It is unlawful for a person to do an act, otherwise than in private, if:
>
> (a) the act is reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate another person or a group of people; and
>
> (b) the act is 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.[55]

Section 18C(2) holds that 'an act is taken not to be done in private if it... causes words, sounds, images or writing to be communicated to the public'.[56] Online hate speech, except in the form of private messages, would usually meet this requirement.

In 2012 Tony Abbot stated that '[t]he Coalition will repeal Section 18C in its current form' and that the test for prohibiting racial hatred should be similar to the common law tests requiring incitement that causes fear.[57] This focus on the harm to individuals ignores the harm to the public good of inclusivity that is inherent in hate speech. A Government consultation into s 18C is under way and the future of s 18C is unclear.

The Commonwealth provisions may be insufficient to meet the requirements of the *Additional Protocol*. They fail to provide criminalisation, so compliance would rest on the effectiveness of s 18C as an alternative response.

Victoria

Victoria's *Racial and Religious Tolerance Act 2001* covers both racial vilification and religious vilification and treats them identically. The vilification is declared unlawful, opening the way for civil action, and serious vilification is made an offence.

Racial vilification is made unlawful under Section 7:

> 'A person must not, on the ground of the race of another person or class of persons, engage in conduct that incites hatred against, serious contempt for, or revulsion or severe ridicule of, that other person or class of persons'.[58]

Section 8 is identical, but with 'religious belief or activity' substituted for 'race'.

Serious racial vilification is made an offence under section 24:

> (1) A person (the offender) must not, on the ground of the race of another person or class of persons, intentionally engage in conduct that the offender knows is likely— (a) to incite hatred against that other person or class of persons; and (b) to threaten, or incite others to threaten, physical harm towards that other person or class of persons or the property of that other person or class of persons.
>
> (2) A person (the offender) must not, on the ground of the race of another person or class of persons, intentionally engage in conduct that the offender knows is likely to incite serious contempt for, or revulsion or severe ridicule of, that other person or class of persons.

The first provision covers the interest of the individual, and the second the public good of an inclusive society. A range of exceptions apply.[59] Serious religious vilification is made an offence in section 25 using the same wording as religion vilification, but with 'religious belief or activity' again substituted for 'race'.

An effort to specifically address online hate speech has been made through a note in each of the provisions stating that '"engage in conduct" includes use of the internet or e-mail to publish or transmit statements or other material'.[60] This is an application of the *principle of generality* and the *principle of inclusion* to ensure the online space is not excluded.

Victoria is closer to compliance with the *Additional Protocol*. The intentional 'dissemination of racist and xenophobic material through computer systems' is criminalised as serious racial vilification under s 24(2) meeting the requirement of art 3. The criminalisation of serious racial vilification under s 24(1) meets the requirements of art 4 regarding 'racist and xenophobic motivated threats'. Articles 5, 6 and 7 are not met by the Victorian legislation.

New South Wales

The *Anti-Discrimination Act 1977* (NSW) contains provisions against Racial Vilification,[61] Transgender Vilification,[62] Homosexual Vilification,[63] and HIV / AIDS Vilification.[64] In each case vilification is declared unlawful, opening the way for civil remedies, and serious vilification is declared a criminal offence.

The vilification provisions make it 'unlawful for a person, by a public act, to incite hatred towards, serious contempt for, or severe ridicule of' a person, or group of people, described by each provision.[65] A range of exceptions apply.[66]

Serious vilification has the same requirements as vilification,[67] but additionally requires the public act to involve 'threatening physical harm towards, or towards any property of, the person or group of persons',[68] or 'inciting others' to threaten such harm.[69] There are no exemptions.

The legislation differs from that of Victoria in two important ways: first, the NSW provisions do not explicitly take account of the public good of an inclusive society; second, serious vilification does not, without the threat of violence, cover intentional incitement. Article 4 of the Additional Protocol regarding 'racist and xenophobic motivated threats' is therefore met, but not articles 3, 5, 6 or 7.

Western Australia

Western Australia is the only jurisdiction in Australia to have criminal sanctions but no civil sanction for racial vilification.[70] Before 2005 the State had limited provisions,[71] which were described as 'perhaps the most narrowly applicable anti-vilification law nationally'.[72] A public consultation initiated by the Premier highlighted the public good of an inclusive society stating that, 'intolerance belittles us as a community and impacts upon the harmony of our society' while also committing to make 'every effort to remove the concern and fear of people who are the targets of racial and religious vilification'.[73] Civil remedies were mooted,[74] and rejected,[75] and criminal penalties were increased.

The current provisions are in Ch XI of the Criminal Code (WA). Four provisions relate to *incitement to racial hatred* and four relate to *racist harassment*. In each case there is a serious provision for conduct with intent of achieving the prohibited outcome (i.e. harassment or vilification), and a lesser offense for conduct that was *likely* to cause that outcome. The remaining four provisions relate to offences for the possession of material for the purpose of committing the first four offences.

The most serious offence is 'conduct intended to incite racial animosity or racist harassment',[76] or possession of material for this purpose.[77] This meets the requirement of art 3 of the *Additional Protocol*. Conduct 'likely to incite racial animosity or racist harassment',[78] or possession of material for this purpose,[79] is the next most serious. Equally serious is 'conduct intended to racially harass',[80] or the possession of material for this purpose.[81] This meets the requirements of art 5 of the *Additional Protocol*. Least serious is 'conduct likely to racially harass',[82] or possession of material for this purpose.[83] For those offences which don't require intent,[84] a number of defences are available.[85]

A range of other offences can involve 'circumstances of racial aggravation' when the offender expresses hostility to a victim on the basis of their race before, during or immediately after committing an offence,[86] or where the crime is motivated by the victim's race.[87] The affected offences include common assault,[88] assault causing bodily harm,[89] assault with intent,[90] threats,[91] and criminal damage;[92] this implements art 4 of the *Additional Protocol*.

The Western Australian provisions are well suited to the social media environment where possession may be a preferable charge to conduct and may avoid the need to obtain formal evidence from overseas jurisdictions. Despite their suitability, the provisions were originally a response to 'a perceived rise in racist activities... most commonly in the form of racist posters and graffiti'.[93] The legislation demonstrates that the *principle of generality* can be applied in the area of hate speech and dedicated legislation largely avoided.

The provisions, as shown, meet the requirements of the *Additional Protocol* regarding art 3, 4, and 5. Article 7 is met by s 7 of the *Criminal Code Act 1913* (WA) which provides general sanctions for 'aiding and abetting' an offence. Article 6, which relates to the 'denial, gross minimisation, approval or justification of genocide or crimes against humanity' is not specifically allowed for under the Western Australian legislation. Paragraph 2 of art 6, however, provides that the offence may require the intent to 'incite hatred, discrimination or violence' against a group on the basis of race. If this is required, the existing provisions will cover this article implicitly.

The Western Australian provisions are as close as any Australian Jurisdiction comes to compliance with the *Additional Protocol.* They also demonstrate the educative effect of criminal provisions; their introduction led to a decrease in the number of incidents of severe racial attacks, despite an absence of convictions.[94]

Conclusion

In this paper we have considered online hate speech from the perspective of cybercrime. Principles and ideas related to cybercrime have been introduced. The nature of hate speech, and the differing nature of online hate speech have been discussed. The *Additional Protocol to the Convention on Cybercrime* has been briefly introduced and a range of Australian legislative provisions have been contrasted and compared to the Additional Protocol.

In tackling hate speech we need to not only protect individuals, but also protect the wider good of an inclusive society. To achieve this, the criminal law is needed as a final response to online hate speech and provides a necessary and 'powerful educative effect'.[95] As Australia considers possible changes to racial hatred legislation, the growing problem of cyber-racism should not be forgotten. For practical reasons international consistency is essential for tackling cyber-racism and the *Additional Protocol* provides an effective means to achieve this. Australia should actively consider ratifying the *Additional Protocol*, and if it does, Western Australia's laws provide a useful model for local implementation.

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[1] President's Working Group on Unlawful Conduct on the Internet, *The Electronic Frontier: The challenge of unlawful conduct involving the use of the Internet* (2000) 11.

[2] Jonathan Clough, Principles of Cybercrime (Cambridge University Press, 2010) 16.

[3] *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 28 January 2003 (entered into force 1 March 2006) ('*Additional Protocol*')

[4] Clough, above n ii, 3; *Brooks v US,* 267 US 432, 438-9 (1925)

[5] Computer Crime and Intellectual Property Section, US Department of Justice, *The National Information Infrastructure*

Protection Act of 1996: Legislative Analysis (10 June 1998) <http://www.irational.org/APD/CCIPS/1030_anal.html>; Clough, above n 2, 10.

[6] Clough, above n ii, 10.

[7] President's Working Group on Unlawful Conduct on the Internet, above n i, 11.

[8] Clough, above n ii, 15.

[9] Neal Kumar Katyal, 'Criminal law in cyberspace' (2001) 149 *University of Pennsylvania Law Review* 1003, 1005-7.

[10] Richard S Whitt, 'A Deference to Protocol: Fashioning a Three-Dimensional Public Policy Framework for the Internet Age' (2013) 31 *Cardozo Arts and Entertainment Law Journal* 689, 696; Tim Wu, 'Is Internet Exceptonalism Dead?' in Berin Szoka and Adam Marcus (eds), *The Next Digital Decade– Essays On The Future Of the Internet* (Tech Freedom, 2010) 179, 180.

[11] F. Gregory Lastowka and Dan Hunter, 'Virtual Crimes' (2004-5) 49 *New York Law School Law Review* 293, 305.

[12] Clough, above n ii, 16.

[13] Whitt, above n x, 697, 740.

[14] Clough, above n ii, 16.

[15] Orin S. Kerr, 'Criminal Law in virtual worlds' (2008) *University of Chicago Legal Forum* 415, 418.

[16] Lastowka and Hunter, above n xi, 298.

[17] Clough, above n ii, 18.

[18] Ibid 272.

[19] *R v Sharpe* [2001] 1 SCR 45,[136] (McLachlin CJ) (Canada).

[20] Kate Emery, "Social Media Driving Racism", *The West Australian*, 27 January 2014 <https://au.news.yahoo.com/thewest/latest/a/21068988/social-media-driving-racism/>.

[21] Jerry Kang, 'Cyber-Race' (2000) 113 *Harvard Law Review* 1130, 1134.

[22] Ibid 1161.

[23] Ibid.

[24] Ibid 1161—1162.

[25] Andre Oboler, Kristopher Welsh and Lito Cruze, 'The danger of big data: Social media as computational social science' (2013) 12(7) *First Monday* 1, 3 <http://firstmonday.org/ojs/index.php/fm/article/view/3993/3269>.

[26] Jeremy Waldron, The Harm in Hate Speech (*Harvard University Press*, 2012) 2—3.

[27] Ibid 2.

[28] Ibid 2-3.

[29] Ibid 4.

[30] *Racial and Religious Tolerance Act 2001* (Vic), Preamble para 3.

[31] Ibid.

[32] Yaman Akdeniz, 'Introduction' in *Legal instruments for combating racism on the Internet* (Council of Europe Publishing, 2009) 8.

[33] Abraham H. Foxman and Christopher Wolf, *Viral Hate: Containing its spread on the Internet* (Palgrave Macmillan, 2013) 59.

[34] Akdeniz, above n xxxiii, 8.

[35] Ibid; *Warman v Harrison*, 2006 CHRT 30, [46] (Canada).

[36] Waldron, above n xxvi, 4.

[37] Clough, above n ii, 5; L. Cohen and M. Felson, 'Social change and crime rate trends: A routine activity approach' (1979) 44 *American Sociological Review* 588, 589; Marcus Felson and Ronald V. Clarke, 'Opportunity Makes the Thief: Practical theory for crime prevention' (Police Research Series Paper 98, Home Office, 1998) 4.

[38] Sheridan Morris, *The future of netcrime now: Part 1 – threats and challenges*, Home Office Online Report 62/04 (2004) 19.

[39] Andre Oboler, 'Online Antisemitism 2.0. "Social Antisemitism on the Social Web"' (Post-Holocaust and Anti-Semitism Series No 67, The Jerusalem Center for Public Affairs, 1 April 2008) <http://jcpa.org/article/online-antisemitism-2-0-social-antisemitism-on-the-social-web/>.

[40] Ibid.

[41] Joint Committees I (on Constitutional, Presidency of the Council of Ministers and Interior Affairs) and III (on Foreign and European Union Affairs), Chamber of Deputies (Italy), *Final Report of the Fact-Finding Inquiry on Anti-Semitism* (2011) 26.

[42] Akdeniz, above n xxxiii, 15.

[43] Katharine Gelber and Adrienne Stone, 'Introduction' in Katharine Gelber and Adrienne Stone (eds), *Hate speech and freedom of speech in Australia* (The Federation Press, 2008) xiii.

[44] For coverage see, Gareth Griffith, *Racial vilification laws: the Bolt case from a State perspective* (October 2011) NSW Parliamentary Library Research Service, 1 <http://www.parliament.nsw.gov.au/prod/parlment/publications.nsf/key/RacialvilificationlawstheBoltcasefromaStateperspective/$File/Racial+vilification+laws+E+Brief.pdf>

[45] Only the jurisdiction of the Northern Territory has no specific coverage for racial vilification; Ibid.

[46] opened for signature 28 January 2003 (entered into force 1 March 2006)('*Additional Protocol*'); Akdeniz, above n xxxiii, 10.

[47] *Convention on Cybercrime*, opened for signature 23 November 2001, ETS No 185 (entered into force 1 July 2004).

[48] Council of Europe, *Convention on Cybercrime CETS No 185* (20 October 2013) <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=185&CL=ENG>

[49] Council of Europe, *Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems CETS No 189* (20 October 2013) <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=189&CM=8&DF=20/10/2013&CL=ENG>.

[50] Australian Constitution s 51(xxix); *International Convention on the Elimination of All Forms of Racial Discrimination*, opened for signature 21 December 1965, 660 UNTS 195 (entered into force 4 January 1969); Tony Blackshield and George Williams, *Australian Constitutional Law and* Theory (Federation Press, 5th ed, 2010) 359.

[51] *International Convention on the Elimination of All Forms of Racial Discrimination*, opened for signature 21 December 1965, 660 UNTS 195 (entered into force 4 January 1969) art 4.

[52] Andre Oboler, 'Time to Regulate Internet Hate with a New Approach?' (2010) 13 *Internet Law Bulletin* 102, 103.

[53] Ibid.

[54] Ibid.

[55] *Racial Discrimination Act* 1975 (Cth) s 18C(1).

[56] Ibid s 18C(2).

[57] Tony Abbot, Address to the Institute of Public Affairs, Sydney, 6 August 2012 http://www.tonyabbott.com.au/LatestNews/Speeches/tabid/88/articleType/ArticleView/articleId/8833/Address-to-the-Institute-of-Public-Affairs-Sydney.aspx

[58] *Racial and Religious Tolerance Act 2001* (Vic) s 7.

[59] Ibid ss 11—12.

[60] Ibid s 7, s 8, s 24, s 25.

[61] *Anti-Discrimination Act 1977* (NSW) s 20C, s 20D.

[62] Ibid s 38S, s 38T.

[63] Ibid s 49ZT, s 49ZTA.

[64] Ibid s 49ZXB, s 49ZXC.

[65] Ibid s 20C(1), s 38S(1), s 49ZT(1), s 49ZXB(1).

[66] Ibid s 20C(1)(c), s 38S(1)(c), s 49ZT(1)(c), s 49ZXB(1)(c).

[67] Ibid s 20D(1), s 38T(1), s 49ZTA(1), s 49ZXC(1).

[68] Ibid s 20D(1)(a), s 38T(1)(a), s 49ZTA(1)(a), s 49ZXC(1)(a).

[69] Ibid s 20D(1)(b), s 38T(1)(b), s 49ZTA(1)(b), s 49ZXC(1)(b).

[70] Race Discrimination Unit, above n 60.

[71] Race Discrimination Unit, above n 60.

[72] Gelber, above n xliii, 170.

[73] Geoff Gallop, 'Foreword' in Equal Opportunity Commission and Office of Multicultural Interests, *Racial and Religious Vilification Consultation Paper* (August 2004) 5.

[74] Equal Opportunity Commission and Office of Multicultural Interests, above n 149, 41.

[75] Griffith, above n xliv, 4.

[76] *Criminal Code Act 1913* (WA) s 77.

[77] Ibid s 79.

[78] Ibid s 78.

[79] Ibid s 80.

[80] Ibid s 80A.

[81] Ibid s 80C.

[82] Ibid s 80B.

[83] Ibid s 80D.

[84] Ibid s 78, s 80, s 80B, s 80D.

[85] Ibid s 80G.

[86] Ibid s 80I(a).

[87] Ibid s 80I(b).

[88] Ibid s 313.

[89] Ibid s 317.

[90] Ibid s 317A.

[91] Ibid s 338B.

[92] Ibid s 444.

[93] Katharine Gelber, *Speaking Back: The Free Speech versus hate speech debate* (John Benjamins Publishing Company, 2002) 170.

[94] Ibid.

[95] Equal Opportunity Commission and Office of Multicultural Interests, above n 149, 38.