

# INCITING HATRED OR MERELY ENGAGING IN RELIGIOUS DEBATE?

## The need for religious vilification laws

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Arab Muslim Australians have recently been subject to extensive and harmful religious vilification and hate speech<sup>1</sup> — a form of psychic violence which strikes fear into those it targets, and causes lasting psychological harm. Religious hate speech is also isolating entire groups of Arab Muslim Australians from participating in public life.

The severity of the incitement of hatred against religious groups is undeniable,<sup>2</sup> yet experiences of religious vilification continue to be trivialised by many in the wider community. The downplaying of the significance of religious vilification is evident in public debate on how to address this problem. Tackling religious hate speech through the use of law has been controversial. In particular, the arguments of those opposed to religious vilification laws suggest a distinct disregard for the harmful impact of religious vilification. In most States proposed legal remedies have been rejected on the basis that because religion concerns people's beliefs and ideas, religious vilification ought to be seen as a form of criticism rather than abuse.<sup>3</sup> Perceived as a form of debate, religious hate speech is often also deemed harmless and contrasted with racial vilification which is accepted to be harmful. No matter how attractive the drawing of this distinction may be, it is not consistent with actual experiences of religious hate speech, which reveal that vilification is damaging regardless of whether it is racial or religious.

This article argues that debates about the need for religious vilification laws fail to consider the harmful experience of religious hate speech. The damaging impact of religious vilification is outlined to illustrate the obvious need to devise strategies to address the problem. Dealing with the damaging impact of religious hate speech may be achieved through legal and non-legal strategies. However, since the enactment of specific laws constitutes a powerful statement about the social unacceptability of such behaviour and provides the impetus for the enactment of non-legal strategies, arguably the use of law ought to be seen as a necessary first step to addressing the problem of religious vilification. This article evaluates the reasons for the current lack of religious vilification laws. It also examines the justifications given for not enacting such laws in the light of evidence of the harmful impact of religious hate speech, and highlights a neglect for the consideration of victims' experiences.

### The impact of religious vilification

In the last five years there has been a marked increase in hostility against Arab Muslim Australians.<sup>4</sup> Events such as September 11 and the Bali bombings appear to have ignited dormant tensions between Arab Muslim Australians and the wider community. Increased incidents of verbal and physical abuse, such as pulling off hi-jabs, may be attributed to the unfounded belief that Muslims in Australia share responsibility for Islamist acts of terrorism, or are terrorists themselves. The recent rise and prevalence of anti-Muslim hostility has been documented by numerous organisations. For example, the Australian Arabic Council recorded a twenty-fold increase in complaints,<sup>5</sup> and most recently the Human Rights and Equal Opportunity Commission's *Isma-Listen* report noted that one-third of people had experienced hostility 'a lot more', and one-third 'a bit more'.<sup>6</sup> Both the Australian Arabic Council and *Isma-Listen* found that some Arab Muslim Australians experienced such abuse daily.

Vilification against Arab Muslim Australians may be characterised as an experience of terror. As described in the *Isma-Listen* report, public attacks from the wider community transform the Australian landscape of many victims into one of fear. When perpetrated frequently, even trivial forms of vilification can generate a strong sense of intimidation. For example, a common experience documented in the *Isma-Listen* report provides:

Everywhere you go you have a constant fear that someone's going to attack you, or you expect that everywhere you go someone's going to be racist to you ... We are citizens of Australia not strangers. We just want security because we are not feeling safe or secure at all. We walk in the street and we are afraid; we go into train stations and we are afraid; wherever we go we are afraid.<sup>7</sup>

Such anti-Muslim hostility in the form of hate speech strikes fear into those it targets and causes psychological harm to the individual and the group. Williams describes hate speech as 'spirit murder' for the reason that the messages of inferiority that hate speech sends are often absorbed and damage a person's self worth.<sup>8</sup> Hate speech may also cause some victims to reject their own identities. Young Arab Muslim Australians, who make up over 50% of the Muslim population,<sup>9</sup> are especially vulnerable to the harmful effects of religious hate speech and make the damage inflicted on the group even more significant.

Religious hate speech also isolates Arab Muslim Australians from public life. Victims alter their lifestyles,

#### REFERENCES

1. Human Rights and Equal Opportunity Commission (HREOC), *Isma-Listen: National Consultations on Eliminating Prejudice Against Arab and Muslim Australians* (2004) [2.2.1.1], [2.2.3].
2. *Ibid* [2.1].
3. See Norman Aisbett, 'Hatred Laws a Vexed Issue', *The West Australian* (Perth), 13 November 2004, 47.
4. Human Rights and Equal Opportunity Commission, *Living with Racism: The Experience and Reporting by Arab Muslim Australians of Discrimination, Abuse and Violence Since 11 September 2001* (2004) 16.
5. See Australian Arabic Council, *Impact of the Israeli-Palestinian Crisis on Arabic Australians* (2002) <www.aac.org.au/media.php?ArtID=7> at 2 June 2005.
6. HREOC, *Isma-Listen*, above n 1, Independent Research: Part I Survey.
7. *Ibid*, [3.1.1].
8. Melinda Jones, 'Empowering Victims of Racism By Outlawing Spirit-Murder' (1994) 19(1) *Australian Journal of Human Rights* 1, 10 where she cites Patricia Williams.
9. HREOC, *Isma-Listen*, above n 1, [1.2.2.2].

... proposed legal remedies have been rejected on the basis that because religion concerns people's beliefs and ideas, religious vilification ought to be seen as a form of criticism rather than abuse.

particularly in the areas of school and work, in order to avoid the terrorising effect of religious vilification.<sup>10</sup> For example, the *Isma-Listen* report showed that many victims avoided going out, especially if they were alone. Some participants did not even want to turn the television on because they felt the media was frequently complicit in perpetuating negative attitudes against Muslims in Australia. One participant in the *Isma-Listen* report remarked: 'It makes me feel as though the whole world is against me. I don't want to switch on the news.'<sup>11</sup> In this way, religious vilification may be said to exclude sizeable sectors of society from participating in Australian life.<sup>12</sup>

The above examples illustrate how hate speech against religious groups constitutes a serious social problem because it induces fear and isolates them. Though not always physically apparent, the harm caused to individuals can be very real and lasting. Religious hate speech also damages the group at which it is directed, isolating and marginalising entire communities. Ultimately religious vilification denies members of targeted groups the right to be free from abuse, and to enjoy security, equality and human dignity.<sup>13</sup> Therefore, given the extensive damage inflicted by the incitement of hatred against Arab Muslim Australians, religious hate speech needs to be recognised as a pressing social problem.

### Addressing the religious vilification problem

There is an urgent need to devise suitable ways to combat the problem of religious vilification discussed above. Professor Jayasuriya argues that the creation of appropriate solutions should be preceded by the identification of goals.<sup>14</sup> It is generally accepted that there are three key objectives which most appropriately address the problem of religious hate speech.<sup>15</sup> These are to educate the wider community, and to protect and empower groups targeted by religious hate speech. It is necessary to educate the wider community in order to eradicate the ignorance which generates hate speech. Targeted groups on the other hand also need to be protected from the abuse inflicted by religious vilification, and empowered to counter the marginalising effect of religious hate speech.

Educating potential and actual perpetrators, and empowering and protecting the victims of religious vilification can be achieved through the use of non-legal strategies. For example, the development of programs promoting dialogue between different faith communities has significant potential to educate.<sup>16</sup>

The creation of interfaith programs may provide an open space through which people from differing backgrounds can learn about and become familiar with each other's cultural and religious differences. These interfaith programs can be placed in a variety of settings such as workplaces, schools and clubs. The creation of such forums through which people of various religious and cultural backgrounds can interact may also serve to provide marginalised groups with a voice — empowering communities which may have been silenced by religious vilification.<sup>17</sup>

These goals can also be achieved through legal means.<sup>18</sup> For example, the enactment of religious vilification laws provides an invaluable tool for dealing with religious hate speech by enabling people who feel that they have been vilified to lodge a complaint with the relevant equal opportunity body, seek a civil remedy through the court system against the offender, or file a charge initiating the prosecution of perpetrators. Legal remedies may provide victims with the opportunity to have their experiences heard. In vindicating a victim's story favourable findings may also be empowering. The very existence of religious vilification laws would have great symbolic significance because it would send a message of inclusion to marginalised groups and would denounce and challenge the acceptability of religious hate speech.

The authority and symbolic value of legal remedies suggests that the law ought to take a leading role in addressing the problem of religious hate speech and in the initiation of widespread change.<sup>19</sup> Importantly, the enactment of religious vilification laws can serve to highlight the problem and to provide the necessary impetus for the development and implementation of non-legal educational strategies. Legislative intervention is also essential given the current everyday prevalence of religious vilification. For all these reasons, it is urged that legislative intervention must be recognised as an essential first step to addressing religious vilification.

### Evaluating opposition to legal solutions

It has been argued that Australian governments have generally failed to protect Arab Muslim Australians from vilification.<sup>20</sup> The legal protection that is currently available is minimal. Although all state, territory and federal laws protect against racial vilification, they do not protect Arab Muslim Australians who tend to be categorised as a religious group.

10. *Ibid.*, [3.2].

11. *Ibid.*, [5.3.1].

12. M Matsuda, 'Public Response to Hate Speech: Considering the Victim's Story' (1989) 87 *Michigan Law Review* 2320.

13. *Ibid.* 2374.

14. Laksiri Jayasuriya, *The Law and Racism: Some Reflections on the Australian Experience* (1995) 16.

15. See Australian Arabic Council, *Where to From Here? Strategies to Combat Racial Vilification* (2001) <[www.aac.org.au/media.php?ArtID=7](http://www.aac.org.au/media.php?ArtID=7)> at 2 June 2005.

16. See, eg. Equal Opportunity Commission of Victoria, *Diversity Victoria Education Kit* (2000) <[www.standuptoracism.com.au/pdf/diversityvictoriaeducationkit.pdf](http://www.standuptoracism.com.au/pdf/diversityvictoriaeducationkit.pdf)> at 2 June 2005.

17. *Ibid.*

18. Jayasuriya, above n 14, 15.

19. *Ibid.*

20. HREOC, *Isma-Listen*, above n 1, [5.1.1.2].

Despite numerous recommendations<sup>21</sup> most Australian States do not have religious vilification laws.<sup>22</sup> Parliamentary debates, media reports and responses to community consultations, reveal that the perception that hate speech is harmless is a central reason why religious vilification laws have not been adopted. The assumption that hate speech against religious groups does no harm is embodied within the common belief that the offending speech is a form of religious debate and criticism. For example, in response to the proposed federal religious vilification laws, an overwhelming number of submissions argued that no matter how offensive, religious vilification is still merely a form of criticism. A submission embodying this common response stated:

I admit to some sympathy with the claim that the passing of a law such as the Racial Hatred Bill (Racial Vilification Bill) would send a clear message of community expectations, as would a similar law re religious hatred. However ... I see dangers to gradual quarantining of areas of speech from the public arena, however offensive the message, however attractive the cause. I want us to forge a culture which confronts words with words.<sup>23</sup>

Similarly, the assumption that religious vilification is simply a form of criticism was reproduced in one organisation's response to Western Australia's 2004 *Racial and Religious Vilification Consultation Papers* proposing religious vilification laws.<sup>24</sup> In the submission the organisation's Director argued that religious vilification laws 'could lead to real restrictions in the rights of people to express their religious ideals, views and values they hold dear — on the basis that someone from another religious system might find such views offensive'.<sup>25</sup>

Following the Western Australian consultation, the equating of religious hate speech with religious opinion was again evident in Premier Gallop's justification for his government's failure to enact religious vilification laws. Premier Gallop stated that, although 'the need for racial vilification legislation was universally supported ... in terms of religion, it's highly divisive ... one person's religious affirmation can be someone else's vilification'.<sup>26</sup>

A factor shared by all the above cited reasons for opposing the enactment of religious vilification laws is that they arguably reveal a consistent failure to appreciate the harmful effects of religious hate speech discussed earlier.

### Religious vilification is just as harmful as racial vilification

The assumption that religious vilification is not damaging is also often justified as distinguishing it from racial vilification. There is a consensus that racial vilification is harmful because it makes negative assumptions about people on the basis of their appearance. It is also deemed irrational because a person has no choice over their skin colour and because a person's skin colour cannot be said to determine their behaviour or personality. In contrast, religion is generally seen to relate to a person's beliefs rather than their appearance. Consequently, because it is said to be directed at a person's 'chosen' beliefs and not at the person, religious vilification is not deemed to be irrational since religious adherence is seen to be a choice.

When the impact of religious hate speech is taken into account, however, it becomes clear that religious vilification is just as harmful as racial vilification. It has even been suggested that vilification against a religious group is a form of racism.<sup>27</sup> Just like racial vilification, it may be said that religious hate speech is based on perceived differences. For example, the *Isma-Listen* report found that visible religious differences in the form of a hi-jab or turban were the main characteristics that triggered abuse against Arab Muslim Australians.<sup>28</sup> On this basis verbal attacks against Arab Muslim Australians may often be directed against the physical manifestation of their religious identity, and not at their religious beliefs. When vilification targets a person's religious group identity, it denigrates that person's self worth, causing as much damage as racial vilification. On this basis it may be said that recognising the harm occasioned by religious vilification prevents it from being equated with religious debate and distinguishes it from racial vilification.

The failure to recognise the detrimental impact of religious hate speech has also caused the actual goals of religious vilification laws to be misunderstood. While an appreciation of the damaging nature of religious vilification highlights the need to protect religious adherents from abuse, the lack of such recognition has meant that laws proposing to regulate hate speech have tended to be seen as laws interfering with religious belief. When religious vilification laws are seen as laws interfering with religion, it follows that religious vilification laws are also seen as laws protecting religions. Such a misplaced conception of

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21. See, eg, Human Rights and Equal Opportunity Commission, *Article 18: Freedom of Religion and Belief* (1998); Racial and Religious Hatred Bill 2003 [No.2] (Cth); Equal Opportunity Commission of Western Australia, *Racial and Religious Vilification Consultation Paper* (2004); Equal Opportunity Commission of South Australia, *Urgent Government Action Needed to Counter Racial and Religious Vilification in Wake of War in Iraq* (2003) <[www.eoc.sa.gov.au/access/iraq.html](http://www.eoc.sa.gov.au/access/iraq.html)> at 2 June 2005.

22. Except in Victoria with its enactment of the *Racial and Religious Tolerance Act 2001* (ss 8, 25), in Queensland with its enactment of the *Anti-Discrimination Amendment Act 2001* (ss 124A, 131A) and in Tasmania with the *Anti-Discrimination Act 1998* (s 19(d)) (there are no equivalent criminal laws).

23. HROEC, *Article 18*, above n 21, 131 citing Ewan Gellert Submission R/112.

24. Concerned Christian Growth Ministries Inc, *Submission: Racial and Religious Vilification* (2004) 3 <<http://www.ccgcm.org.au/articles/article-0099.htm>> at 22 May 2005.

25. *Ibid.*

26. Norman Aisbett, "'Hypocrisy' to drop religious hate redress", *The West Australian* (Perth), 10 November 2004, 32.

27. See, eg, Abdelfattah Amor, 'Racial Discrimination and Religious Discrimination: Identification and Measures' UN Doc A/CONF.189/PC.1/7, 13 April 2000; T Solomon, 'Problems in Drafting Legislation Against Racist Activities' (1994) 19 *Australian Journal of Human Rights* 1.

28. HROEC, *Isma-Listen*, above n 1, 3.