

limited to 7 days; that legal representation be provided to the detainee along set guidelines; the provision of protection against self incrimination for the provision of information in relation to a terrorist offence; and that persons under the age of 18 be excluded from the operation of the legislation.

Of particular note were the comments of the Joint Parliamentary Committee chairman, David Jull MP, who stated in relation to the ASIO Bill that "In its original form it would undermine key legal rights and erode the civil liberties that make Australia a leading democracy".¹⁵ He further commented that in the fight against terrorism civil liberties must not be compromised.

Update

The legislative package which included *The Security Legislation Amendment (Terrorism) Bill 2002* [No.2], *Suppression of the*

Financing of Terrorism Bill 2002, *Border Security Legislation Amendment Bill 2002* and *the Telecommunications Interception Legislation Amendment Bill 2002* was passed by the Senate on 27 June 2002 and were assented to on 5 July 2002. The *Criminal Code Amendment (Suppression of Terrorist Bombings) Bill 2002* was passed by the Senate on 27 June 2002 and assented to on 3 July 2002.

Debate in relation to the most contentious Bill, the ASIO Bill, has been postponed until the Senate sits again on 19 August 2002. ■

1. Report of the Senate Legal and Constitutional Legislation Committee into the Security Legislation Amendment (Terrorism) Bill 2002 (No. 2) & Related Bills, p 20

2. Ibid.

3. Division 101, *Security Legislation Amendment Terrorism Bill 2002* (No.2)

4. Division 102, *Security Legislation Amendment Terrorism Bill 2002* (No.2)

5. Section 34D, *Australian Security Intelligence*

Organisation Amendment (Terrorism) Bill 2002

6. Sections 34D & 34G of the *Australian Security Intelligence Organisation Amendment (Terrorism) Bill 2002*

7. Senate Legal and Constitutional Committee, Consideration of Legislation Referred to the Committee, Security Legislation Amendment (Terrorism) Bill 2002[No.2], Suppression of the Financing of Terrorism Bill 2002, Criminal Code Amendment (Suppression of Terrorist Bombings) Bill 2002, Border Security Legislation Amendment Bill 2002, Telecommunications Interception Legislation Amendment Bill 2002, May 2002, p 32ff

8. Senate Legal and Constitutional Committee, p 40ff

9. Senate Legal and Constitutional Committee, p 45ff

10. Senate Legal and Constitutional Committee, p 47

11. Senate Legal and Constitutional Committee, p 29ff

12. Parliamentary Committee on ASIO, ASIS and DSD, ADVISORY REPORT ON THE ASIO LEGISLATION AMENDMENT (TERRORISM) BILL 2002, May 2002, p 39ff

13. Parliamentary Committee on ASIO, ASIS and DSD, ADVISORY REPORT ON THE ASIO LEGISLATION AMENDMENT (TERRORISM) BILL 2002, May 2002, p 43

14. Press Release, "Government and Labour huddle as Democrats dig in over Anti-Terrorist law" 16 May 2002, Senator Brian Greig

15. The Age, 6 June 2002 p.4

Racial and Religious Tolerance Act 2001:

An overview for practitioners

Joanna McCarthy, Articled Clerk, Minter Ellison

Legislative prohibitions on racial and religious vilification have often provoked considerable debate about how to achieve an appropriate balance between the right to free speech, on the one hand, and the right to protection against the harmful effects of hate speech, on the other. The Racial and Religious Tolerance Act 2001 (Vic) ("Act") reflects the recent efforts of the Victorian legislature to strike such a balance.

The Act came into operation on 1 January 2002. It imposes both civil and criminal sanctions for perpetrators of racial hatred, whilst providing a defence for reasonable conduct done in good faith for the purpose of genuine debate.

The Act prohibits persons from engaging in conduct that incites hatred against, serious contempt for, or revulsion or severe ridicule of another person or class of persons, on the ground of their race or religion.¹ However, such conduct is only unlawful where it occurs in public, or in private in circumstances that could reasonably be expected to be heard or observed by a third party.² The perpetrator's motive is irrelevant, and race and religion need not be the dominant ground for their conduct, so long as it is a substantial ground.³

Aggrieved persons or their representatives may lodge a written complaint with the Equal Opportunity Commission of Victoria ("EOCV").⁴ The EOCV must attempt to resolve complaints according to the conciliation and arbitration procedures set out in the *Equal Opportunity Act 1995* (Vic).⁵ A person must not be victimised for having foreshadowed, brought or supported a complaint.⁶

No cases have yet been decided under the new Act. However, the Victorian Office of Multicultural Affairs has provided examples of behaviour that it believes may be covered by the Act. These include:

- writing racist graffiti in public places or in a workplace;
- making racist speeches at a public rally;
- displaying racist posters or stickers in a public place or in a workplace;
- racist or religious vilifying abuse in a public place or in a workplace; and
- offensive racist comments in a publication including internet, e-mail and workplace intranet and e-mail.⁷

In the interests of free speech, the legislation does not apply to conduct that is engaged in reasonably and in good faith in relation to:

- an artistic work or performance;
- a statement, publication, discussion or debate in any genuine academic, artistic, religious or scientific purpose or any purpose in the public interest; or
- a fair or accurate report on a matter of public interest.⁸

The inclusion of this defence may go some way towards allaying the concerns of civil libertarians that racial vilification laws will unduly inhibit robust public debate.⁹

The new legislation complements and extends the existing federal provisions in the *Racial Discrimination Act 1975* (Cth)¹⁰ ("RDA") which impose civil, but not criminal, penalties for the incitement of racial hatred.¹¹ By contrast, the new Victorian legislation imposes criminal penalties of up to six months' imprisonment for intentional acts which the offender knows are likely to incite serious hatred, contempt, revulsion or ridicule.¹² Such cases are referred to the Victoria Police after initial assessment by the EOCV.

Crucially, the Act places an onus on employers to ensure that racial and religious tolerance is maintained in the workplace. As with the existing anti-discrimination laws, the Act provides that an employer or

principal will be vicariously liable for the conduct of an employee or agent who engages in vilification and/or victimisation. A defence exists if it can be shown that they took 'reasonable precautions' to prevent such contraventions. At the very least, this means that employers must incorporate into their existing anti-discrimination policies an acknowledgment that racial and religious vilification at work is unacceptable and will not be tolerated. The policy must be communicated to employees and included in their ongoing anti-discrimination training. Managers should vigilantly monitor and quickly deal with any unacceptable behaviour. It is also advisable for organisations to develop an

impartial complaints resolution process by which employees can bring their grievances to the attention of management. These steps will minimise the employer's exposure to liability, whilst ideally ensuring a more harmonious workplace.

Further information about the new Act can be obtained at www.mau.vic.gov.au, or by contacting the EOCV. ■

1. *Racial and Religious Tolerance Act 2001* (Vic) ss 7 & 8.
2. *Ibid* ss 11 & 12.
3. *Ibid* s 9.
4. *Ibid* ss 19 & 20.
5. *Equal Opportunity Act 1995* (Vic) Divisions 2 to 7 of Part 7.

6. *Racial and Religious Tolerance Act 2001* (Vic) ss 13 & 14.
7. See Victorian Office of Multicultural Affairs, 'Employer Guidelines – Racial and Religious Tolerance', available at www.mau.vic.gov.au.
8. *Racial and Religious Tolerance Act 2001* (Vic) s 11.
9. See for example, the concerns expressed by Liberty Victoria, 'Racial and Religious Tolerance: A Response to the Discussion Paper' (7 March 2001), available at http://libertyvictoria.org.au/docs/racial_religious_tolerance.pdf.
10. As amended by the *Racial Hatred Act 1995* (Cth).
11. Article 4(a) of the International Convention on the Elimination of All Forms of Racial Discrimination requires signatories to impose criminal sanctions for racial vilification. At the time of signing, the Australian government argued that the existing criminal laws would cover serious acts of racial hatred, and that any further sanctions would unduly limit freedom of speech.
12. *Racial and Religious Tolerance Act 2001* (Vic) s 24.

The Arts law centre of Australia

Selina Sawaya, Corporate solicitor, The University of Melbourne

The Arts Law Centre of Australia ("Arts Law") is a national community legal centre for the arts. Arts Law was established in 1983 by Shane Simpson (now of Simpsons Solicitors in Sydney), in recognition that artists have legal and commercial needs as professionals.

Arts Law is a not for profit company limited by guarantee which was set up with the support of the Australia Council. Arts Law is funded by the Commonwealth Government (through the Australia Council), the Australian Film Commission and a number of other State arts funding bodies.

Arts Law provides legal and business advice on a wide range of matters including contracts, copyright, business names and structures, defamation, insurance, employment, passing off, trade practices, agency, privacy, obscenity and moral rights.

According to Elizabeth Beal, who is the Supervising Legal Officer at Arts Law, the objective of Arts Law is to provide practical and accessible legal services, resources and advocacy for artists and arts organisations. Ms Beal says that Arts Law's services and resources are targeted at artists and arts organisations that need immediate legal assistance that they could not otherwise afford.

Arts Law has a large panel of volunteer specialist lawyers around Australia. Legal advice is provided through a telephone legal advice service and through a face-to-face national legal advice night service, which is held in Sydney, Melbourne, Adelaide, Perth, Hobart and Darwin.

Ms Beal says that many of the volunteers are young lawyers. She says there are also many law students who work as daytime volunteers and law graduates who work as legal assistants during the face-to-face advice sessions. Some of the work that young lawyers are involved with includes giving legal advice (for those with appropriate experience – generally two years post admission), taking notes at face-to-face advice sessions, recording details of requests for legal advice during the telephone advice sessions, research and writing articles for the Arts Law quarterly newsletter.

Ms Beal says that the most significant issue that artists face today is their ability to make a living through the practice of their art. Ms Beal states that the relevant legal issues for artists include the right and ability to negotiate equitable remuneration for their work, setting up suitable business structures to work within, determining their legal obligations in relation to taxation (especially the goods and services tax) and public liability insurance. Another important legal issue for artists is the protection and furtherance of both their reputation and income earning abilities through access to specialist legal advice in areas such as digital rights, moral rights and defamation. Ms Beal notes that Arts Law is currently receiving an increased number of queries in relation to indigenous cultural intellectual property and public liability insurance.

Since the establishment of Arts Law almost twenty years ago, Ms Beal says that there have been a number of important

changes in the area of arts law. Ms Beal outlined the main changes as follows:

- Professional training courses have been established at tertiary institutions which provide education and training in the practical skills required for professional arts practice.
- There has been an improvement in education and awareness of the professional arts practitioner, which has led to an increase in the level of respect afforded to those working in the arts and acknowledgment that artists make a real economic and cultural contribution to society.
- The skill base of lawyers working in the area of arts law has greatly improved due to hundreds of volunteer lawyers participating in and contributing to the work of Arts Law. Ms Beal says that appropriate training of arts and entertainment lawyers can only occur through practice and training, which the volunteers at Arts Law receive, as they are exposed to numerous legal issues faced by artists.
- The addition of moral rights and digital agenda amendments to the *Copyright Act 1968* (Cth) has been significant in the area of arts law as principal areas of concern for artists have always been copyright protection and negotiating contracts.

If you would like to volunteer at Arts Law or if you would like any further information, you can contact Arts Law on tel: 1800 221 457 or at artslaw@artslaw.com.au or you can visit their website at www.artslaw.com.au. ■