

Racial and Religious Vilification Bill

No.

TABLE OF PROVISIONS

PART 1—PRELIMINARY

Clause

1. Purposes
2. Commencement
3. Definitions

PART 2—OFFENCES INVOLVING RACIAL OR RELIGIOUS VILIFICATION

4. Threats to inflict injury or destroy or damage property
5. Use of threatening or vilifying language or behaviour
6. Distribution or display of threatening or vilifying material
7. Possession of threatening or vilifying material
8. Power of municipal councils to remove certain material.

PART 3—NON-HARASSMENT ORDERS

9. Non-harassment orders
10. Application for non-harassment orders
11. Issue of summons
12. Service of application
13. Procedure in the absence of the defendant
14. Consent orders
15. Costs
16. Explanation of orders
17. Variation or revocation of order
18. Service of non-harassment orders
19. Concurrent criminal proceedings
20. Bail on arrest
21. Appeal by defendant
22. Appeal by applicant
23. Breach of order

By Authority L. V. North, Government Printer Melbourne



LEGISLATIVE COUNCIL

Read 1° 26 May 1992

(Brought in by the Honourable M. A. Lyster)

A BILL

to render unlawful certain acts or statements that vilify or threaten people on the ground of their race or religion, to empower the Magistrates' Court to make non-harassment orders and for other purposes.

Racial and Religious Vilification Act 1992

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1. *Purposes*

The purposes of this Act are—

- 5 (a) to render unlawful certain acts or statements that vilify or threaten people on the ground of their race or religion;
- 10 (b) to empower the Magistrates' Court to make an order prohibiting a person from harassing another person on the ground of that other person's race or religion;

Section headings appear in bold italics and are not part of the Act.
(See Interpretation of Legislation Act 1984.)

(c) to empower municipal councils to remove certain material from public display.

2. Commencement

This Act comes into operation on a day or days to be proclaimed.

5

3. Definitions

In this Act—

“display” means display in, or within view of, a public place;

“distribute” means distribute to the public or a section of the public; 10

“non-harassment order” means an order made under section 9;

“publish” means publish to the public or a section of the public; 15

“public place” includes—

(a) any public highway, road, street, bridge, footway, footpath, court, alley, passage or thoroughfare even if formed on private property; and 20

(b) any park, garden, reserve or other place of public recreation or resort; and

(c) any railway station, platform or carriage; and

(d) any wharf, pier or jetty; and

(e) any passenger ship or boat plying for hire; and 25

(f) any public vehicle plying for hire; and

(g) any church or chapel open to the public or any other building where divine service is being publicly held; and

(h) any State school or any land or premises used in connection with a State school; and 30

(i) any public hall, theatre or room while members of the public are assembling for, attending or

leaving a public entertainment or meeting held in the hall, theatre or room; and

(j) any market; and

(k) any auction room or mart or place while a sale by auction is taking place there; and

(l) any licensed premises or authorised premises within the meaning of the **Liquor Control Act 1987**; and

(m) any race-course, cricket ground, football ground or other place while members of the public are present or are permitted access, whether with or without payment for admission; and

(n) any place of public resort; and

(o) any open place to which the public have or are permitted access, whether with or without payment for admission;

“race” includes—

(a) colour; and

(b) ethnicity or ethnic origin; and

(c) nationality or national origin;

“written or pictorial material” means any poster, graffiti, sign, placard, newspaper, leaflet, handbill, writing, inscription, picture, drawing or other visible representation.

PART 2—OFFENCES INVOLVING RACIAL OR RELIGIOUS VILIFICATION

4. *Threats to inflict injury or destroy or damage property*

A person must not—

(a) threaten to inflict injury on, or to destroy or damage property belonging to, a person or group of persons; or

(b) incite another person or other persons to inflict injury on, or to destroy or damage property belonging to, a person or group of persons—

Racial and Religious Vilification

on the ground of the race or religion of that person or group of persons.

Penalty: 60 penalty units or imprisonment for 6 months.

5. *Use of threatening or vilifying language or behaviour*

A person must not speak to a person, or behave towards a person within that person's view, in a manner that threatens or vilifies that person on the ground of his or her race or religion. 5

Penalty: For a first offence—20 penalty units or imprisonment for 2 months; 10

For a second offence—30 penalty units or imprisonment for 3 months;

For a third or subsequent offence—60 penalty units or imprisonment for 6 months.

6. *Distribution or display of threatening or vilifying material* 15

(1) A person must not publish, distribute or display written or pictorial material that is threatening or vilifying with the intention of thereby creating, promoting or increasing hatred of any group of persons on the ground of their race or religion. 20

Penalty: 60 penalty units or imprisonment for 6 months.

(2) A person must not publish, distribute or display written or pictorial material that is threatening or vilifying with the intention of thereby intimidating any group of persons on the ground of their race or religion. 25

Penalty: 30 penalty units or imprisonment for 3 months.

7. *Possession of threatening or vilifying material*

A person must not possess written or pictorial material that is threatening or vilifying with the intention of publishing, distributing or displaying it and thereby— 30

(a) creating, promoting or increasing hatred of any group of persons on the ground of their race or religion; or

- (b) intimidating any group of persons on the ground of their race or religion.

Penalty: 30 penalty units or imprisonment for 3 months.

8. *Power of municipal councils to remove certain material*

- 5 (1) A municipal council may take any necessary action to remove from display written or pictorial material that, in the opinion of the council, is likely—
- 10 (a) to create, promote or increase hatred of any group of persons on the ground of their race or religion; or
- (b) to intimidate any group of persons on the ground of their race or religion.
- 15 (2) A municipal council may only take action under subsection (1) if it is satisfied that the material has been displayed without the consent of the person or body having authority to consent to its display in that place.
- 20 (3) The municipal council may, in a court of competent jurisdiction, recover as a debt due to it from the person or body who displayed, or authorised the display of, the material the cost of removing it from display.
- (4) Nothing in this section authorises a municipal council or a member of its staff to enter any premises for the purpose of removing material from display.

PART 3—NON-HARASSMENT ORDERS

25 **9. *Non-harassment orders***

- 30 (1) The Magistrates' Court may make an order prohibiting a person from harassing another person on the ground of that other person's race or religion if satisfied on the balance of probabilities that the person has harassed the other person on that ground and is likely to do so again.
- (2) A non-harassment order may impose any restrictions or prohibitions on the person against whom it is made that appear to the Court to be necessary or desirable in the circumstances.

10. Applications for non-harassment orders

An application for a non-harassment order may be made by—

- (a) a person claiming to have suffered harassment on the ground of his or her race or religion; or 5
- (b) any other person with the written consent of a person referred to in paragraph (a).

11. Issue of summons

On the filing of an application the registrar must issue a summons in order to compel the attendance of the defendant. 10

12. Service of application

- (1) An application must be served on the defendant.
- (2) An application is served on the defendant by—
 - (a) delivering a true copy to the defendant personally; 15
 - or
 - (b) leaving a true copy for the defendant at the defendant’s last or most usual place of residence or of business with a person who apparently resides or works there and who apparently is not less than 20
- (3) If the applicant is not the person claiming to have suffered harassment, the applicant must, as soon as practicable after the application has been filed, arrange for a copy of it to be served personally on that other person. 25
- (4) If it appears to the Magistrates’ Court by evidence on oath or by affidavit, that service cannot be promptly effected, it may make an order for substituted service.

13. Procedure in the absence of the defendant

- If— 30
 - (a) a summons has been served on the defendant; and
 - (b) the defendant fails to appear in person at the time fixed for the hearing of the application—

the Magistrates' Court may—

- (c) proceed to hear and determine the matter in the defendant's absence; or
- (d) if satisfied that it is appropriate to do so, adjourn the matter and issue a warrant to arrest the defendant and bring him or her before the Court.

5

14. Consent orders

The Magistrates' Court may make an order under this Part with the consent of all the parties to the proceeding.

10 **15. Costs**

Each party to a proceeding under this Part must bear his or her own costs of the proceeding, unless the Magistrates' Court decides that exceptional circumstances warrant otherwise in a particular case.

15 **16. Explanation of orders**

If—

- (a) the Magistrates' Court proposes to make a non-harassment order; and
- (b) the defendant is before the Court—

20

the Court must, before making the order, explain to the defendant—

- (c) the purpose, terms and effect of the proposed order; and
- (d) the consequences that may follow if the defendant fails to comply with the terms of the proposed order; and
- (e) the means by which the proposed order may be varied or revoked.

25

17. Variation or revocation of order

30

- (1) The Magistrates' Court may order the revocation or variation of a non-harassment order on an application under this section.

- (2) If a non-harassment order is in force—
- (a) a party to the proceeding in which the order was made; or
 - (b) the person in whose favour the order was made if he or she was not a party to that proceeding— 5
- may apply to the Magistrates' Court for an order varying or revoking the order.
- (3) If the applicant is not the person in whose favour the order was made or the defendant, the application may only be made with the written consent of the person in whose favour it was made. 10
- (4) The applicant must cause a copy of the application to be served personally—
- (a) on each other party to the proceeding in which the original order was made; and 15
 - (b) if the person in whose favour the original order was made was not a party to that proceeding and is not the applicant, on that person.
- (5) If it appears to the Magistrates' Court that it is not reasonably practicable to serve a copy of the application personally it may— 20
- (a) order that a copy be served by any other means which it thinks appropriate; or
 - (b) make an order for substituted service.
- 18. *Service of non-harassment orders*** 25
- (1) If a non-harassment order is made or varied by the Magistrates' Court the registrar must—
- (a) arrange for the order to be drawn up and filed in court; and
 - (b) cause a copy of the order to be served personally on the defendant; and 30
 - (c) cause a copy of the order to be forwarded—
 - (i) to each person who was a party to the proceeding; and

(ii) if the person in whose favour the order was made was not a party to the proceeding, to that person.

5 (2) If it appears to the Magistrates' Court that it is not reasonably practicable to serve a copy of an order personally, it may—

(a) order that a copy be served by any other means which it thinks appropriate; or

(b) make an order for substituted service.

10 **19. *Concurrent criminal proceedings***

(1) The Magistrates' Court may make a non-harassment order in respect of a person even though the person has been charged with an offence arising out of the same conduct as that out of which the application for the order
15 arose.

(2) The order may be made at any time before or after the commencement of a proceeding for the offence.

20. *Bail on arrest*

20 The **Bail Act 1977** applies to and in respect of a defendant to an application for a non-harassment order who has been arrested under a warrant as if he or she were an accused person charged with an offence to whom section 4 of the **Bail Act 1977** applies.

21. *Appeal by defendant*

25 (1) The defendant may appeal to the County Court against a non-harassment order or any term of such an order.

(2) The giving of notice of appeal does not stay the operation of the order but the Magistrates' Court may, on the application of the defendant, in its discretion stay the
30 operation of the order or any term of the order pending the determination of the appeal.

(3) The appellant must give notice of appeal to the person in whose favour the non-harassment order was made if

he or she was not a party to the proceeding in which it was made.

- (4) An appellant applying for a stay of operation of an order or any term of an order must give notice to the applicant for the order and any person required to be notified under sub-section (3). 5
- (5) In staying the operation of the order or any term of the order the Magistrates' Court may impose bail conditions on the appellant as though he or she were an accused person being released from custody on bail. 10
- (6) The provisions of the **Magistrates' Court Act 1989** with respect to appeals to the County Court apply to appeals under this section with any modifications and adaptations that are necessary. 15

22. Appeal by applicant

- (1) If— 15
- (a) the Magistrates' Court decides not to make a non-harassment order; or
- (b) it makes an order and the applicant is aggrieved by the terms of the order— 20
- the applicant may appeal to the County Court against the decision not to make the order or the terms of the order.
- (2) An applicant who wants to appeal must cause notice of the appeal to be given to the defendant within one month after the decision not to make an order or the making of the order by serving on— 25
- (a) the defendant; and
- (b) the registrar; and
- (c) if the person who suffered, or claims to have suffered, harassment is not the applicant, that person; and 30
- (d) the registrar of the County Court—
- notice in writing signed by the applicant of his or her intention to appeal and setting out the grounds of the appeal. 35

- 5
- (3) The County Court must proceed to re-hear the case on the appeal and may confirm, reverse or vary the decision or order of the Magistrates' Court and make any other order that the Magistrates' Court could have made and exercise any other power which it could have exercised.
- (4) The applicant may not bring any further appeal against an order made by the County Court.
- 10
- (5) The provisions of the **Magistrates' Court Act 1989** with respect to appeals to the County Court apply to appeals under this section with any modifications and adaptations that are necessary.
- 15
- (6) If the applicant for the order was a person other than the person who suffered, or claims to have suffered, harassment, the County Court must not commence or continue the hearing of the appeal if that person objects to the appeal.

23. Breach of order

20

A person against whom a non-harassment order has been made and who has been served with a copy of the order or has had an explanation of the order given to him or her in accordance with section 16, must not contravene the order in any respect.

Penalty: 60 penalty units or imprisonment for 6 months.

