AUSTRALIAN FEMINISTS FOR WOMEN'S RIGHTS

Submission to the Victorian Dept of Justice and Community Safety concerning proposed changes to Victoria's anti-vilification laws

Australian Feminists for Women's Rights (AF4WR) welcome the opportunity to provide feedback on the proposed changes. We are an incorporated association of left-wing feminists who campaign for the sex-based rights of women and girls, within the broader struggle for a more just and equal society.

We welcome the long-overdue inclusion of sex as a protected category in the proposed legislation. The worrying development of an online misogynistic culture that is increasingly overt is a matter of concern and has not to date been seriously addressed by any Australian government. Women (especially young women) are now routinely vilified and threatened, often in a highly sexualising way (Chemaly 2019; Regehr et al 2024), because of their views—or simply because they are female. The proposed legislation thus could provide an opportunity to address these most egregious forms of vilification of women, provided the concerns outlined below are addressed.

The first of our concerns is that in recent years in Australia the category of gender identity has been privileged over the category of sex in legislation, by human rights bodies, by various public institutions including schools and health services, and has led to a number of high-profile court cases. We see nothing in the proposed legislation that affords priority to the sex-based rights of women and to protections of women from the sorts of vilifications to which we referred above, of which many occur, unprovoked, precisely in the name of "gender identity".

Second, we are astonished by the inclusion of "drag queens" in the "gender identity" category even though drag is not an *identity* nor an *attribute* but a performative *practice* (and one wonders why drag *kings* would not also be included in that case). It is to say the least bizarre that a choice of costume should be legally framed as an identity and protected on that basis. We thus question the rationale for inclusion of this specific category as a protected "attribute".

Third, we are concerned about possible interpretations of the proposed legislation that may be biased or be informed by the political agendas of influential and well-moneyed lobby groups. We note in particular that there is no satisfactory legal definition in Australia of the terms *hatred, revulsion, severe ridicule* or *serious contempt*. Even the "reasonable person" standard generally applied in cases of legal interpretation of such terms when determinations are made concerning complaints is subject to the opinions of those making such determinations.

We further note that *private* acts are covered by the legislation. The overview document is somewhat confusing, all we have to go on is the following:

> Conduct might be considered public even if it occurs on private property or at a place not open to the general public. This might include public conduct that occurs in a school or workplace (overview document, item 6.4, p. 16).

We thus infer that the intended meaning of *private* in the proposed legislation is actually semi-public, within a specific institutional setting. We thus question the use of "private" as a blanket descriptor in the document as it could be open to misleading interpretations.

The overview document does maintain existing exemptions from the Racial and Religious Tolerance Act (2001) that the current Bill proposes to amend, in order to balance potential overreach, as set out in 6.5, p. 17. We are relieved that academic and scientific endeavour and, for example, satirical and other comedy performances remain protected freedom of opinion and expression. However, we are troubled by the inclusion of the word "genuine" to qualify "any purpose that is in the public interest".

How the "public interest" is determined is, again, a matter of politics, including governmental and institutional commitment to transparent and evidence-based decision making informed by widespread community engagement.

For example, between 2001 and 2015 successive Federal governments adopted the staggeringly high number of 82 "anti-terrorism" laws, many of which seriously impeded freedom of expression (McGarrity and Blackbourn 2019). Various state "anti-protest" laws have similarly had a chilling effect on this freedom, and the minimal protections of freedom of expression that exist in Australia tend to fracture easily in the case of particularly controversial issues, resulting in the shutting down of public debate (Gelber 2017).

Further concerns have been expressed about censorship through no-platforming, which has now permeated public institutions such as our respected national broadcaster. Tate (2023), in an article on freedom of expression and the politics of hate speech and no-platforming, cites Stan Grant's March, 2022 eviction from the Australian Broadcasting Corporation's debate panel program *Q+A* of an audience member who expressed an unpopular and controversial view. Tate cites both liberal political philosophy and various decisions and statements by Australia's High Court in defence of the importance of free speech for the functioning of a robust democracy. He writes: "freedom of speech makes possible a full examination of ideas and a canvassing of all possible opinions, with the result that, from this free exchange, 'truth' is more likely to emerge" (p. 81).

Similarly, in her fourth Boyer Lecture "The Importance of Doubt" in November 2023, quantum physicist and former Australian of the Year Professor Michelle Simmons expressed concerns about the current conformist culture in which people are reluctant to express doubt or criticise dominant views, even when they privately disagree with them. Rather than testing truth claims for themselves, they too readily accept received wisdom (even if it is not "wise" at all). She

stresses the importance of doubt, of critical thinking, in short, of our capacity—and freedom—to debate ideas as fundamental to the discovery of truth and to the growth of knowledge.

How, then, is the "genuineness" of interventions in the public arena to be assessed in the area of controversial issues? How is the law to see inside people's heads to make value judgments on their motivations? How are those tasked with assessing vilification complaints under the proposed legislation to step outside political bias concerning what is deemed to be (or not be) in the "public interest" and allow the salutary presence of doubt as advocated by Simmons to inform their decisions?

More generally, we are deeply concerned about a creeping authoritarianism combined with a double standard in our political culture and indeed our laws. Women who make statements of fact (such as "only women [that is female people] can breastfeed") can now be taken to court for vilification, as is currently the case for Jasmine Sussex in Queensland, while males (with or without a "woman" gender identity) can routinely vilify women on social media, both individually and collectively, and suffer no consequences for doing so.

A case in point is the current defamation action taken by Moira Deeming MP against John Pesutto (Lib), leader of the Victorian opposition at the time of writing. Pesutto, along with then Premier Daniel Andrews (ALP) and national Greens leader Adam Bandt, among others, vilified Deeming and other women for speaking up for women's sex-based rights in Melbourne in March 2023. Although the Federal Court hearings are still in train at the time of writing, Pesutto has admitted make misleading press statements after the Melbourne rally and appears to have been more disposed to believe propaganda published by men on a Nazi website than statements from a female MP in his own party.

These cases, along with the proposed increase of maximum penalties in the Bill to include imprisonment, raise serious concerns that in the current political climate, women who speak up for their rights, or express opinions contrary to the dominant doxa, are going to become criminalised. In a context in which women already face widespread vilification, workplace sanctions or loss of employment, and onerous court proceedings, it takes considerable courage for women to speak up. They do so because they feel duty bound to stand up for their rights and those of their children. Without strong safeguards of freedom of opinion and expression, legislation such as the proposed Bill is likely to have the effect of further silencing women.

We would thus like to see far more robust checks and balances attached to the proposed legislation so as not to elevate "cancel culture" to an institutional level, in which women are punished for holding opinions that run contrary to dominant views, or even simply for making statements of fact.

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