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Department of Justice and Community Safety
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To whom it may concern

Strengthening Victoria's law against hate speech and hate conduct Stage 3 – civil anti-vilification protections

The Municipal Association of Victoria (MAV) is the peak representative and advocacy body for Victoria's 79 councils. The MAV was formed in 1879 and the *Municipal Association Act 1907* appointed the MAV the official voice of local government in Victoria.

Today, the MAV is a driving and influential force behind a strong and strategically positioned local government sector. Our role is to represent and advocate the interests of local government, lobby for a 'fairer deal' for councils, raise the sector's profile, ensure its long-term security, and provide policy advice, strategic advice, capacity building programs and insurance services to local government.

A key responsibility of Victorian councils is strategically planning for the health, wellbeing, safety, connection to culture, and participation of their communities. Councils take a whole-of-community, whole-of-system approach to building community strength and addressing the underlying causes of inequity and vulnerability.

Another key concern to the MAV is the safety and wellbeing of the local government sector in Victoria. This includes council staff, councillors, and people considering standing for election to council. Each of these cohorts require adequate safeguards to be in place, including the evolving online and social media environments, to support their safety in civic leadership.

In Victoria, people are protected from vilification because of their race and religion under the *Racial and Religious Tolerance Act 2001* (Vic). However, under current laws people who are vilified for reasons other than race and religion, such as their sex, gender identity, sexual orientation, disability are not protected. Vilification is more commonly called 'hate speech', although this often includes a broader range of behaviour than is currently against the law. In recent months, there have been high profile threats to councillors and council officers that could be categorised in the areas being considered as part of this consultation.

It is with this lens that MAV welcomes the opportunity to provide a submission to the Stage 3 consultation on *Strengthening Victoria's law against hate speech and hate conduct through civil anti-vilification protections*. The MAV has limited its commentary to the first five proposed reforms outlined in the consultation.



1. Changing the legal test for proving incitement-based vilification – proposed reform 1

The MAV firmly asserts that all Victorians have a right to feel safe and accepted where they live, work and in their broader communities, regardless of gender and/or sex, sexual orientation, gender identity and/or expression, sex characteristics and/or intersex status and disability attributes. The MAV recognises that community members with these attributes are more likely to experience intimidation and discrimination, often through sustained efforts by a minority of people, that can result in long-term, cumulative harm. These harmful actions can take many forms including on social media, public protests, and derogatory graffiti.

The proposal to change the current legal test for proving incitement-based vilification to make the law clearer will potentially support people from communities that currently aren't 'protected' to understand what vilification is and may encourage them to make a complaint.

2. Restricting what people say or do based on the harm they cause - proposed reform 2

In 2023, Victorian councils have been subjected to major disruptions of their activities, including council meetings and community events, by organised protestors and anti-government groups. Council staff and councillors have experienced aggression, violence, and threats of violence from these protestors, which has been deemed as high-risk by Victoria Police. As a result, council business across the state, including public access to in-person council meetings and events such as Drag Storytime in libraries, have been cancelled.

Civic participation in local democracy is critical to robust, healthy and inclusive communities. Councils being forced to cancel community facing events has significantly impacted the LGBTQIA+ community, and the broader community, as these events increase visibility and celebrate diversity for all. Arguably, these protestors have targeted councils as they are the most accessible tier of government.

The reform 2 proposes that *a new harm-based vilification protection be introduced to restrict people from saying or doing things that would cause harm to others*. This proposal also includes exceptions to the anti-vilification laws to protect freedom of expression and religion and ensures that legitimate activities in the public interest are not against the law. The MAV is supportive of this proposed change and the proposed protections. In addition, it makes sense to align Victoria with other jurisdictions including the Commonwealth which already have provisions to protect against harm-based vilification.

3 Clarifying that vilification is a 'public act' – proposed reform 3

The MAV is interested in the recommendation to make it clearer that vilification requires a public act to have taken place, using the definition currently used in New South Wales. This would align Victoria's laws with other jurisdictions whose laws define the term 'public act' and do not extend to private conduct. The MAV is supportive of a definition that would capture a range of public acts, including:

- conduct that occurs on either one or multiple occasions, consistent with how Victoria's anti-vilification laws currently operate;
- conduct that takes place on private property if it can be seen by the public (for example, this would include display of a hateful poster in a person's front yard that is visible from the street, but would not include private conversations or conduct within a person's home); and
- online conduct, consistent with the current Racial and Religious Tolerance Act protections.

This definition will make it clearer for Victorian councils as to what constitutes vilification and therefore what the appropriate course of action is that may or may not need to be taken.

4 Changing the civil exceptions – proposed reform 4

The MAV is particularly interested in the *Exception for public interest* proposed exception. The public interest exception applies to a much broader range of conduct compared to other exceptions in the Racial and Religious Tolerance Act, and it is an important protection for the right to freedom of expression.

The MAV supports the Inquiry's recommendation of adding the word 'genuine' to the public interest exception as it means that exception would only apply for 'any *genuine* purpose that is in the public interest'. A person would only be able to rely on the exception where their purpose for engaging in the conduct was truly in the public interest. Again, MAV supports the proposal to align this with other Australian jurisdictions that provide similar public interest exceptions under their anti-vilification laws.

5 Allowing VEOHRC to help people to identify who vilified them – proposed reform 5

The proposal to provide the Victorian Equal Opportunity and Human Rights Commission (VEOHRC) with additional powers, including the capacity to investigate without knowing the identity of the perpetrator/s is supported.

The MAV suggests that VEOHRC are also funded to deliver specific training for councillors and Mayors, council CEOs and relevant staff, and to deliver a mainstream community educational campaign. This would provide the foundational resources for councils to tailor their messages to communities, and in various languages.

The MAV welcomes the opportunity to contribute to this review of anti-vilification laws. We also stress the importance of any changes being adequately monitored and resourced.

Should you have any queries about this matter, please contact Troy Edwards, Executive Director, Policy and Advocacy, tedwards@mav.asn.au.

Yours sincerely



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