

Submission to the Victorian Parliament's Inquiry into Anti-Vilification Protections | 20th December 2019

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The Racial and Religious Tolerance Amendment Bill 2019 proposes to extend the protections against vilification currently extended to race and religion to a further five attributes, namely a) gender, b) disability, c) sexual orientation, d) gender identity, and e) sex characteristics. I oppose the bill in its current form on the grounds that a) gender should be 'sex', and d) gender identity should be 'gender expression' or 'gender non-conformity'. If these amendments are not made, then I oppose the bill in its entirety on the grounds that it is likely to do more harm than good to women, a group Fiona Patten claimed to be motivated to protect with this bill. I explain my reasons below, and attach articles written for *The Age* and *The Australian*, and the text of a public talk critical of 'gender identity', as supporting material.

Case for amending the bill

- 'Gender' is a contested term, with feminists using it to refer to the stereotypes and expectations of femininity or masculinity imposed upon female and male people respectively, and activists for transgender rights using it to refer to identity. Sex ought to be a protected attribute, and its protection should not depend on which meaning of 'gender' ultimately prevails.
- Replacing 'gender' with 'sex' creates more robust protections for women without creating losses for trans people. Trans people who have transitioned physically and gained some of the secondary sex characteristics of the opposite sex are protected by 'sex characteristics', trans people who have obtained legal recognition of their status would be protected by [legal] 'sex'.
- 'Gender identity' is poorly defined and an inadequate basis for identifying a group who need protection against vilification. It is an internal, subjective property of persons that cannot be independently verified.
A person can have a gender identity that is not signalled through his appearance and is not disclosed, in which case he cannot be vilified on the basis of it. If he signals it through his appearance or discloses it, any discrimination will be on this basis. Therefore, gender expression or gender non-conformity are more adequate bases for anti-vilification protections.
- Gender expression, or gender non-conformity, are attributes which can be independently verified. They apply to a larger group of people subject to harassment and discrimination, including people who do not have a 'gender identity', or people with congruent gender identities, including all gender non-conforming people.

Case for rejecting the bill (without amendments)

- The three attributes 'gender', 'gender identity', and 'sex characteristics' make trans people particularly well protected by the bill. But activists for trans rights are particularly aggressive in pursuing their aims. In the UK, there have already been police investigations into trans activists' allegations of misgendering, deadnaming, offensive language, and retweeting. An employment tribunal in the UK recently found it acceptable for employment to be denied to a candidate on the basis of her holding gender critical beliefs (including the belief that gender is not identity), after trans activists in her workplace deemed some of her tweets 'transphobic'.
- Gender critical women are disproportionately targeted by trans rights activists. Already this year, these activists have protested events organized by or including as speakers gender critical women at the University of Melbourne, organized Open Letters aimed at shutting down

discussion, targeted women's employment, attempted to have women's conference papers removed from the programme, engaged in sustained campaigns of targeted harassment online, and engaged in workplace harassment. To give two examples that are both candidates for vilification according to the new bill, a student at my institution tweeted 'the only good transphobe is a dead transphobe' soon after tweeting 'Holly Lawford-Smith is a transphobe'; student activists stood outside my building on campus protesting a seminar with the placard 'TERF graves are gender neutral bathrooms'. The ability to bring vilification claims for this type of speech is neutralised if the activists perpetrating that speech can, and are more likely to, bring counter-claims.

- In summary, if 'gender identity' is a protected attribute, then a poorly-defined class of people which can be identified into on a whim will be empowered to weaponise their grievances into legal action. This is likely to hurt women disproportionately, given the current tensions between feminists and trans activists over understandings of sex and gender concepts.

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**[This submission does not reflect the views of the University of Melbourne as an institution; I make this submission as an individual member of faculty with academic freedom. This submission is related to one of my areas of research, feminism].*

Links:

[1] A Philosophical Perspective on Gender Identity [long] – archived at hollylawford-smith.org

[2] "Misgivings About Racial And Religious Tolerance Amendment Bill", *The Age*, 21st September 2019. Online at <https://www.theage.com.au/national/victoria/misgivings-about-racial-and-religious-tolerance-amendment-bill-20190919-p52syb.html>

[3] "Just How Bad Is It To Misgender Someone?" *The Age*, 1st October 2019. Online at <https://www.theage.com.au/lifestyle/gender/just-how-bad-is-it-to-misgender-someone-20191001-p52wil.html>