

# **The relationship between community attitudes and recent racial vilification laws in Victoria Australia: A comparison of a legal and extra-legal classification model.**

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## **Abstract**

*This study assessed the level of consistency between the elements prescribed in Victoria, Australia's Racial and Religious Tolerance Act (2001) and the criteria utilised by a sample of the general population in that state. A random sample of 197 adult Victorians was asked to provide their opinions about a hypothetical vignette where seemingly racist comments were made. Based on existing research and theory, it was anticipated that participants' classifications of conduct as racial vilification would be better predicted by factors not included in the legislation, than legislatively-defined considerations. Results indicate that the legal model, which included the elements of 'incitement' and 'basis of race', was a significant predictor of classifications of racial vilification. However, the proposed 'extra-legal' model, which included 'race of the target', 'race of the perpetrator', 'intention', and 'perceived seriousness', also emerged as a significant predictor of respondent classifications. Although the legal model did in fact emerge as a more effective predictor, a hybrid model including the legally prescribed elements as well as 'perceived seriousness' had the greatest predictive ability. It is concluded that the public, as potential jurors, show a preference for grounded 'act-based' factors when determining whether a behaviour constitutes racial vilification or not, and that the tenets of Victoria's Racial and Religious Tolerance Act (2001) largely reflect these intuitive criteria.*

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Although multi-disciplinary investigation of concepts such as prejudice and discrimination is commonplace, the more specific area of 'racial vilification' has attracted less attention. In an increasingly multicultural society, and one where legal regulation of such phenomena is increasingly evident, this imbalance needs to be addressed. In general, the term 'racial vilification' refers to statements that express or promote racial intolerance (Dollis et al., 1992). In many western jurisdictions, racial vilification is considered a 'hate crime', as it is seen to be motivated by the intention to harm or intimidate a target because of their particular cultural / ethnic affiliation (Craig and Waldo, 1996; Herek, 1989).

Allport (1954) argued that prejudice and discrimination have their origins in a simple 'in-group' / 'out-group' distinction. An 'in-group' is an association of people bound by a common interest and an investment in staying unified (De Carvalho, 1993). Allport posited that a common means of strengthening the group's sense of unity is for members to consciously or unconsciously identify an 'out-group' that then becomes the target of discrimination (Allport, 1954; Fazio and Dunton, 1997). It was claimed that detection of such 'out-groups' strengthened the 'in-group's' sense of identity.

Like Allport (1954), DuBois (1969) argued that prejudice and discrimination are based on a distinction between groups; however DuBois labelled these groups the 'cultural minority' and 'cultural majority'. Like Allport's 'out-group', DuBois' 'cultural minority' is not a self-defined group. Instead, cultural minorities are defined as 'outsiders' by the dominant group. According to the DuBois model, discrimination occurs when the actions, view or values of 'cultural minority' members are identified as divergent from the accepted norms of the 'cultural majority'. Like Allport, DuBois also contends that denunciation of the 'cultural minority' is a device that maintains the exclusivity of the values of the majority, and that this denunciation and the mechanisms that stem from it are often prejudicial (DuBois, 1969).

The individual and social ramifications of prejudice are varied and extensive. Among a variety of negative macro-level social effects, research has found that discrimination can also result in psychological stress (Mak and Nesdale, 2001), stereotyping (Holmes, Murachver, and Bayard, 2001), wage gaps (O'Neilly, 1995; Farkas and Vicknair, 1996), unfair hiring decisions and problems obtaining housing (Fix and Turner, 1999), inequalities in educational opportunity, difficulty obtaining employment (Lawrence, 1995), lack of advancement in large organisations (O'Neilly, 1995), and differential processing in criminal justice settings (Austin and Allen, 2000; Mustard, 2001). In regards to this latter issue, it is well documented that anti-Arab and Anti-Muslim sentiments have intensified in many jurisdictions since September 11, 2001, and that practices such as racial and religious profiling are now widely accepted (Ramirez, Hoopes and Lai Quinlan, 2003).

Australia is a signatory to *The Convention on the Elimination of all Forms of Racial Vilification* (1966) and Article four of this Convention obliges all members to 'declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination as well as acts of violence or incitement to such acts

against any race or ethnic origin'. In order to meet this obligation, in March 1990, a committee to advise the Victorian Attorney General on racial vilification was established. The result of the committee's recommendations was the *Racial and Religious Tolerance Act 2001* (Vic). The stated purposes of the *Act* are: to promote racial and religious tolerance by prohibiting certain conduct involving the vilification of persons on the ground of race or religious belief or activity, and to provide a means of redress for the victims.

Section seven of the *Act* renders racial vilification unlawful. It states:

A person must not on the ground of race of another person or class of person, engage in conduct that incites hatred against, serious contempt for, or revulsion or severe ridicule of, that other person or class of persons.

The role that such a law should play in western societies like Australia is a source of debate. It is variously argued that law should be inspirational, prescriptive, or reflective, and that it should articulate standards of desirable behaviour, change attitudes, deter conduct, and/or regulate morality (Freckelton, 1994; Lane, 1992). Regardless of one's position on such complex jurisprudential issues, it is undeniable that law can play a key role in addressing oppression (Marouf and Steward, 1995). With this in mind, enacting and enforcing dedicated legislation can be viewed as a valid response to the problem of racial vilification (Marouf and Steward, 1995; Matsuda, Lawrence, Delgado and Crenshaw, 1993). However, if legislative steps are to be effective, it is imperative that statutes be acknowledged and accepted by the community (Lane, 1992). The most effective means of achieving community acceptance is to ensure that the law reflects and codifies the pre-existing value structure of the community (Freckelton, 1994; Lane, 1992).

In order to evaluate the level of consistency between legislative changes and community attitudes, the values of the community need to be measured. Although there are relatively few published studies that examine the consistencies between new laws and community perceptions of their elements, those that have been undertaken provide some insight into how such assessments may be made.

Wilson, Walker, and Mukherjee (1986) studied public attitudes about the seriousness of various crimes by surveying a representative sample of 2,555 Australians. In this study, participants were asked to rate the seriousness of a list of acts relative to the crime of stealing a bicycle. They found that one area of inconsistency between the (then) law and community perceptions was that the majority of respondents (exact percentages were not given), viewed homosexual relations between two consenting adults as more serious than some of the crimes listed. Yet such intimate conduct was a crime only in the Australian state of Tasmania at the time the study was conducted.

Dennison and Thomson (2000) examined community perceptions of stalking-related behaviours in Victoria. Stalking, like racial vilification, is a newly constructed (and somewhat contentious) socio-legal issue, and the authors investigated the alignment

between community and legal definitions of this crime. Dennison and Thomson found that, if intention was clearly present in an example of potential stalking, participants had greater confidence in their opinions that the behaviour constituted stalking. However, like Victoria's racial vilification legislation, the *Crimes Act 1958* (Vic) does not require intention to be present in order for stalking to be considered unlawful.

In a similar vein, one of the more contentious issues to be considered in relation to racial vilification is the identification of factors that aid in the definition and identification of the issue itself. After a significant amount of documented debate, legislators have stipulated two legal elements in the recent Victorian *Act*, 'presence of incitement' and 'basis of race'. Based on Dennison and Thomson's (2000) study, it is posited here that another factor that may be important in people's assessment of whether an act constitutes racial vilification is the perpetrator's perceived state of mind, or level of intention.

Another potentially predictive factor of classifications of racial vilification is perceptions of the seriousness of an act. Seriousness has been used alternatively as a predictor and an outcome variable in various studies of community attitudes. What can be taken from these studies is that the perceived effect on the victim and opinions regarding appropriate consequences for perpetrators are highly associated (Wilson et al, 1986; Dennison and Thomson, 2000; Lane and Knowles, 2000). Following from this, it is likely that perceptions of seriousness would be predictive of participants' preparedness to classify conduct as racial vilification.

Given the positions of key theorists such as Allport and DuBois, two other factors that emerge as likely predictors of racial vilification classifications are 'race of the target' and 'race of the perpetrator'. The *Racial and Religious Tolerance Act 2001* (Vic) specifies that, in order for conduct to come under the purvey of the *Act*, conduct must occur 'on the grounds of race' (Section 7). Legally, it is irrelevant *what* race or ethnicity the target and the perpetrator are. However, it is more than feasible that the public would be influenced by the 'in-group' / 'out-group', 'minority' / 'majority' status of the depicted parties when deciding whether an act constituted racial vilification. If this is the case, the public would draw on the race / ethnicities of the depicted parties when classifying conduct.

Although prior research has provided some insight into community perceptions of some unlawful conduct, while also outlining potential factors that relate to these perceptions, little is known about the factors that would be associated with the public's classifications of conduct as racial vilification. The question is important because the general public, as potential jurors, represent the pool who are likely to be asked to make such judgments. Second, good law reflects community values, and the importance of this requirement is amplified when law deals with highly sensitive issues such as race and free speech.

Based on the preceding review, it is apparent that there are two categories of factors that may be associated with perceptions of an act, the legally prescribed elements (in this case, 'basis of race' and 'presence of incitement'), and extra-legal factors ('perceived seriousness', 'intention', 'race of the target', and 'race of the perpetrator'). With this in mind, the broad aims of this research were to assess the level of consistency between the

definitional criteria employed in the *Racial and Religious Tolerance Act (2001)* and the criteria utilised by a sample of Victorians, while also identifying potential sources of differences. In order to achieve these broad aims, the first analysis will assess how well a legal model including ‘basis of race’ and ‘presence of incitement’ predicts participants’ classifications of conduct as racial vilification. The second will identify any factors, other than the legal elements, that predict participants’ classifications.

Based on prior research and theory, it was predicted that the legal model would be a significant predictor of participants’ classifications of conduct as racial vilification. Second, it was anticipated that an extra-legal model that included ‘intent’, ‘race of target’, ‘race of perpetrator’, and ‘perceived seriousness’ of conduct would be a significantly more effective predictor than the legal framework.

## Method

### Participants

Questionnaires were sent to 1000 members of the Victorian population who were randomly selected from the State electoral roll, a public document that lists all eligible voters and is readily accessible at electoral offices and other sites. Respondents included 197 members of the Victorian population (105 males; Age M= 47.3, SD= 17.6; and 92 females; M=43.46, SD=16), representing a response rate of almost 20%. This response rate was achieved with no follow up of potential respondents, as anonymity was assured from the outset. The sample contained participants who were from a variety of cultural backgrounds and who varied in educational attainment (see Table 1).

### Materials

Each participant completed an anonymous questionnaire that was designed for this study. The questionnaire consisted of two sections. The first requested demographic information and the second asked participants to read a short hypothetical vignette that depicted an incident whereby seemingly racist comments were made. In a 3x3x2 design, the variables of ‘intent’ (present, absent, ambiguous), ‘race of the perpetrator’ (Aboriginal, Vietnamese, White Australian), and ‘race of the target’ (same, different), were systematically varied across 18 versions of the vignettes. An example of the vignette is appended, with its variations inserted in bold.

Participants were asked to indicate whether, in their opinion, the conduct constituted racial vilification (yes/no). Participants were then required to indicate their opinion of the severity of the perpetrator’s actions on a 10 centimetre line ranging from ‘not serious’ to ‘very serious’. This provided a ‘perceived seriousness’ score on a scale of 1 – 100 for each respondent.

To measure participants’ opinions about the presence of incitement, the dictionary definition of the term ‘incite’ was first provided in order to maximise external validity and to ensure participants were clear on what was being asked. Consistent with the tenets of the *Racial and Religious Tolerance Act (2001)*, participants were then asked to complete a series of questions designed to assess whether they felt the conduct in the scenario incited hatred against, serious contempt for, severe ridicule of, and/or revulsion

of the target (e.g. 'do you think Rob's conduct could have incited hatred against Charlie?').

### Procedure

Each potential participant was mailed one version of the scenario and an accompanying questionnaire, and invited to take part in the study. The package also included a plain language statement that explained the aims of the study and emphasised that participants' responses to the questionnaire were anonymous, and that their personal opinions were required. Participants were then asked to return the completed questionnaires via the reply paid envelope supplied.

### **Results**

A logistic regression was used to assess the effectiveness of the legal model as a predictor of racial vilification classifications. Consistent with predictions, in comparison to the null model, the legal model (containing 'incite hatred', 'incite serious contempt', 'incite revulsion', 'incite severe ridicule', and 'basis of race') was a significant predictor of participants' classifications of conduct as racial vilification,  $\chi^2(5, N=197) = 0.67$ ,  $p < .001$ . Nagerkerekere's  $R^2$  demonstrated that legal factors explained 43.8% of the variance in classifications of racial vilification, and that 83.3% of cases were classified correctly (see Table 2). This analysis also enabled assessment of the individual contributions of each legal factor (see Table 3), with 'basis of race' and 'incite serious contempt' emerging as the most predictive factors in this highly significant model.

Another logistic regression was then performed to assess the predictive ability of the proposed extra-legal model (including 'race of the target', 'race of the perpetrator', 'intention', and 'perceived seriousness'). This model was also a significant predictor of participants' classifications of conduct as racial vilification,  $\chi^2(4, N=197) = 61.76$ ,  $p < .001$ . This model explained 39.2% of the variance, and classified 31.6% of cases correctly (see Table 4), with 'perceived seriousness' accounting for the greatest proportion (see Table 5).

A logistic regression was then used to compare the legal model and the extra-legal model. A significant difference between the two models was identified,  $\chi^2(9, N=197) = 94.67$ ,  $p < .001$  and, contrary to expectations, the legal model emerged as the better predictor.

The variables of 'incite severe ridicule' and 'incite revulsion' contributed very little to the predictive accuracy of the legal model, and 'perceived seriousness' was the major contributing factor to the predictive power of the extra-legal model. Given these findings, an additional logistic regression was undertaken including the legal elements of 'basis of race', 'incite hatred', and 'incite serious contempt' and the extra-legal variable of 'perceived seriousness'. This model was found to be a significant predictor of classifications,  $\chi^2(4, N=197) = 91.44$ ,  $p < .001$ , with 54% of the variance in classifications of racial vilification being explained ( $R^2$  change of .102). This model classified cases correctly 85.8% of the time (see Table 6). When compared to the legal model, this model was found to be significantly different,  $\chi^2(6, N=197) = 91.56$ ,  $p < .001$ .

### Discussion

It was predicted that the model including the legally mandated factors would be a significant predictor of participants' classifications of conduct as racial vilification. The results supported this prediction. It is not surprising that participants utilised criteria that are consistent with the *Act* when making assessments regarding potential racial vilification, as the legal criteria were based, at least partly, on community opinions and views. Prior to drafting and enacting the *Racial and Religious Tolerance Act (2001)*, the Victorian government was involved in extensive community consultation (Dollis et al., 1992). Given the sensitive nature of such legislation, it could be posited that, in drafting this statute, law reform professionals may have been more invested in reflecting community views than they routinely would be.

When examining the contribution of individual legal factors to the predictive model, 'basis of race' emerged as the most effective predictor. A simple explanation for this finding is that the inclusion of race in any conceptualisation of racial vilification is a fairly obvious one. It is also likely that the limited nature of the depicted scenario also narrowed the range of alternative motivations that may have been gleaned. In contrast, the idea of 'incitement' is more difficult to measure and conceptualise, and respondents showed much less of a reliance on this vague notion. The difficulties of this notion have been recognised in the past, with Gelber (2000) documenting the significant steps taken by legal advocates to explain this concept in relevant Victorian cases. Even though efforts were made in this study to explain the notion of incitement (as they would be by legal advocates in an actual case), it appears that the public are less concerned with this potential motivation.

Based on the research and theory reviewed, it was also anticipated that the constructed extra-legal model (including 'intention', 'race of target', 'race of perpetrator', and 'perceived seriousness' of the conduct) would be a significantly more effective predictor of participants' classifications than the elements employed in the *Act*. The results did not support this prediction. Although the 'extra-legal' model was a significant predictor of classifications of racial vilification, it was less predictive than the model advocated in Victoria's law. These findings were not consistent with Wilson et al's (1986) study of public attitudes about a range of criminal behaviours, where participants' views were often influenced more by extra-legal factors. The results of this study illustrate that the public make personal and situational decisions about the central aspects of a behaviour, and that, in the case of racial vilification, the legal elements are more aligned with public views than many other acts.

When examining the contribution of individual 'extra-legal' factors to the predictive model, it was apparent that, despite expectations, 'race of the target' and 'race of the perpetrator' contributed very little to the model. These findings could be drawn on to challenge the simplicity of the 'in-group' / 'out-group', 'cultural minority / majority' models proposed by Allport (1954) and DuBois (1969). The fact that respondents did not significantly delineate between cases where members of a range of racial / ethnic groups made contentious statements about members of the same or different sub-groups, could

mean that, in contemporary times, and / or in a multicultural society such as Australia, the traditional notions of in-groups and /or cultural majorities have either assumed less importance, and/or evolved as a result of the relatively recent societal focus on certain sub-groups as ‘threats’ (Ramirez et al, 2003). Further, participants were not influenced by whether the perpetrator was of the same or a different race to the target.

The results also indicated that ‘intention’ accounted for only a small proportion of the variance in classifications of racial vilification. This finding is not consistent with that of Dennison and Thomson (2000), who found that this extra-legal factor influenced participants’ views and opinions when stalking was the issue at hand. A possible explanation for this inconsistency lies in the type of conduct each study addressed. First, the legal consequences attached to stalking are more serious than those usually associated with racial vilification, and the behaviours that could be labelled stalking may be more subject to alternative interpretation. Thus, participants may have wanted intention to be present before they would be willing to acknowledge the commission of this crime.

Second, racial vilification is a form of prejudice and discrimination that has broader social ramifications. With this in mind, perhaps participants did not require an intentional state of mind because they felt that ‘making the utterance’, regardless of its motivation, was in and of itself harmful and therefore sufficient basis to identify the crime. This idea can be linked to the earlier observations concerning the various incitement-related factors. In these instances, as with the notion of intent, the public showed less concern for these more abstract ideas. Instead, if the public saw the act as occurring on the basis of race, they viewed it as racial vilification.

The final factor, ‘perceived seriousness’, accounted for the largest proportion of the variance in classifications of conduct as racial vilification. These findings are consistent with the research of Wilson et al. (1986), Dennison and Thomson (2000), and Lane and Knowles (2000). Each of these studies demonstrated that perceptions of seriousness influence opinions about definitions, classifications and the required consequences for perpetrators. In this case, it is apparent that, if respondents saw the depicted event as serious, they were more prepared to label it racial vilification. Although the current design does not allow for the order of such decisions to be determined (ie respondents may first decide whether an issue constitutes racial vilification and this then influences their seriousness response), it is notable that respondents were reluctant to attach the formal label if they did not see the event as particularly serious.

Some methodological limitations regarding this research should be noted. First, the data collected originated from a small sub-set of the population, with the demographic data revealing little variation in participants’ culture. This group of participants predominantly identified themselves as ‘Australian’. However, it must be noted that many cultural groups do this in Australia. This qualification notwithstanding, a possible result of having a less dispersed respondent group is that of not representing the full range of possible responses, and this possibility must be considered in this study. One explanation for this concentration of demographics is that only those interested in, or who had experience with, racial vilification responded to the questionnaire.



A second methodological issue is that the cells in the data set did not contain equal responses. Of the 197 participants, 149 responded to the scenarios containing a minority group as the target, while only 48 responded to the scenarios containing an Australian (majority) target. Further, 103 participants responded to scenarios where the perpetrator was a different race to the target, compared with 94 where the perpetrator was the same. Although it is argued here that addressing these differences would be unlikely to significantly alter the strong patterns evident in the analyses, a future study with a larger and more evenly distributed set of responses would be a worthwhile activity. One possible explanation for this systematic response difference in response rates is the content of the vignettes. Potential participants who received the 'same race perpetrator and victim' scenarios may have found them improbable, trivial, or unrealistic, and therefore elected not to participate.

This study demonstrated a degree of consistency between the primary tenets of the *Racial and Religious Tolerance Act (2001)* and the perspectives of Victorian registered voters. If Lane's (1992) view that it is important for a good law to be acknowledged and accepted by the community is accepted, then this law is a good one in the eyes of this sample of the voting public. With the exception of the role of 'perceived seriousness' in participants' classifications of conduct as racial vilification, the *Act* reflects and codifies the value structure of this sample – a value structure that favoured grounded and behavioural criteria over more abstract ideas such as intention and incitement. The strengths of the legal model aside, it must be noted that the proposed extra-legal model accounted for a significant proportion of the variance, and a useful aim of further investigations in this area would be to improve upon the final 'hybrid' model, which still left 46% of the variance unexplained. It is important that future studies seek to identify other potentially predictive factors, as these are likely to impact upon juror judgements in such cases.

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**Table 1**  
**Cultural group and educational level of participants**

Culture of participants	Percentage of participants	Level of education completed	Percentage of participants
Australian	79	Primary school	12.5
European	10.3	Year 10	22.5
Eastern European	4.1	Secondary School	22.5
Asian	4.1	University degree	22.0
Other	2.5	Diploma/Certificate	8.0
		Post Graduate study	7.0
		Trade qualification	2.0
		Other	3.5

**Table 2**  
**Predictive ability of the legal model**

Observed		Predicted		
		Racial vilification		% correct
		Yes	No	
Racial Vilification	Yes	134	10	93.1
	No	21	31	58.5
Overall %				83.8

**Table 3**  
**Contribution of individual legal factors to the predictive model**

Variable	R <sup>2</sup>	R <sup>2</sup> change
Basis of race	.309	
Incite hatred	.399	.09
Incite serious contempt	.411	.32
Incite revulsion	.411	.00
Incite severe ridicule	.438	.007

**Table 4**  
**Predictive efficiency of the extra-legal model**

Observed		Predicted		
		Racial vilification		% correct
		Yes	No	
Racial Vilification	Yes	136	8	95.1
	No	29	24	45.3
Overall %				81.6

**Table 5**  
**Contribution of individual extra-legal factors to the predictive model**

Variable	R <sup>2</sup>	R <sup>2</sup> change
Race of the target	.023	
Race of the perpetrator	.05	.027
Intention	.058	.08
Perceived seriousness	.392	.34



**Table 6**  
**Predictive ability of the legal model with perceived seriousness**

Observed		Predicted		
		Racial vilification		% correct
		Yes	No	
Racial Vilification	Yes	135	9	93.8
	No	19	34	64.2
Overall %				85.8

### **The Vignette**

**Charlie/Nam/Michael**, a man of **Aboriginal/Vietnamese/Australian** descent, decided one Friday night to go to a popular inner city Melbourne club with some friends. The club was fairly crowded and **Charlie/Nam/Michael** and his mates decided to grab a drink and head into the gaming room. They had a bit of a look around and chose a poker machine to play. They continued to play the machine for some time, having a great time laughing, having a few drinks and generally enjoying the night. As luck would have it, **Charlie/Nam/Michael** won the house jackpot of \$1000. **Charlie/Nam/Michael** left his friends with the machine and headed to the counter to find an attendant. Rob, who **was not of/was also of Aboriginal/Vietnamese/Australian origin**, had been watching **Charlie/Nam/Michael** and his mates since they arrived in the gaming room. Rob and his mates had arrived at the club before **Charlie/Nam/Michael** and Rob was playing the poker machines and having a drink himself. Rob was not as lucky as **Charlie/Nam/Michael** though, and had earlier lost \$100 playing the machine that **Charlie/Nam/Michael** just won on. When Rob saw **Charlie/Nam/Michael** heading towards the counter, he (1) **turned to his mates and said, 'Hey, watch this'. He then shouted across the room, (2) called out, (3) said to him 'Check out the nigger/wing nut/convict', 'Who let the coon/gook/skippy in here?'** and 'Go back where you came from'. Rob's comments were sufficiently loud for many people in the club to hear. Several people laughed at **Charlie/Nam/Michael**, some sneered at **Charlie/Nam/Michael**, and others moved away from **Charlie/Nam/Michael** and his friends. Other people laughed at Rob, some sneered at Rob, and others moved away from Rob and his friends.