Words are powerful tools. They can have an impact on minds and hearts. Words in the form of propaganda have moved masses. When words are used to insult, ridicule or incite violence against a group or individual because of their race or ethnicity, the effects can be devastating. In legal terminology this is known as racial vilification.

Australia made its first move towards addressing racial vilification in 1975, when it ratified the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). By agreeing to abide by the Convention, Australia was required to declare racial vilification, or hate speech, “an offence punishable by law”.

However, it was another 20 years before Australia introduced racial vilification legislation at the Commonwealth level. Concerns about the effect of potential racial vilification legislation on freedom of speech, expressed mainly by civil libertarians and media commentators, were one of the main reasons for the delay in its introduction.

By the time of the 1996 Federal elections, the issue of racial vilification legislation was still well and truly on the agenda. John Howard declared himself opposed to the existing legislation while the Democrats wanted it strengthened. The ensuing debate illustrated that racial vilification laws are not to be taken for granted and their importance is something that needs to be constantly reinforced.

Academics, such as Canadian Professor, Kathleen Mahoney, Japanese-American, Mari Matsuda, and NSW Anti Discrimination Board President, Chris Puplick have opposed arguments that racial vilification legislation poses an obstruction to free speech. They emphasise that free speech is not an absolute right and is qualified by other competing rights.

For a Vietnamese boat-person who escaped their country in perilous circumstances, often after a debilitating confinement in a ‘re-education camp’, and whose citizenship status in their country of origin has been virtually nullified, the words ‘Asian go home’ bring unbearable grief.

In Australia, this idea has been supported by two decisions of the High Court in 1992. The High Court found that although there was an implied right to freedom of speech in the Australian Constitution, the right extended to freedom of expression in a political context only and did not include freedom of expression generally. Freedom of speech is limited by a host of legislation including that relating to defamation, sedition, treason, copyright, privacy, blasphemy and censorship to name a few. Racial vilification legislation, therefore, does not represent a great obstruction to freedom of speech.

Arguments that assert that racial vilification legislation compromises freedom of speech are based on erroneous assumptions and ignore some fundamental realities. Proponents of such arguments assume that all individuals have equal access to free speech. According to Professor Mahoney: “Advantaged groups possess a disproportionate share of freedom of expression by virtue of their greater share of power and wealth. In a marketplace where some have a greater ability to speak and be heard than others, it is more likely that the ideas of the advantaged will emerge out of the competition of ideas, rather than the truth.”

They also ignore the historical factors which have lead to the oppression of various groups. The historical context of words is often the key to understanding why they are so damaging.

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The same could be said of refugees from any country who are confronted with racial vilification. Forced to leave their own countries due to extensive persecution as a result of their race, religion,
ethnicity, politics or social group, the occurrence of further persecution in Australia is severely traumatising.

The arguments used by civil libertarians to oppose racial vilification legislation are founded heavily on ideas formulated in the United States in the 18th and early 19th centuries. Eighteenth century philosopher, John Stuart Mill, advocated complete freedom of the press and unrestricted public discussion among citizens as a means of attaining truth. According to Mill, the full truth could only be attained by confronting an opinion with other contrary opinions.

The theory of utilitarianism espoused by Jeremy Bentham in the early 19th century was particularly influential. Bentham argued that citizens must be protected against rapacious governments, which are inherently ruled by self-interest, if the greatest happiness among the greatest number of people was to be attained. One way of providing this protection was to ensure that citizens had the right to unrestricted free speech.

The relevance of these arguments to western democracies in the 20th century is questionable. The assertion that vilifying the most disadvantaged groups in society will lead to the discovery of truth is disturbing. By openly vilifying such groups with impunity, an environment is created where racist violence can flourish. For example, a British study found a clear link between the distribution of racist literature and attacks on ethnic minorities.

The Human Rights and Equal Opportunity Commission's Report of the National Inquiry into Racist Violence in Australia in 1991 noted an increase in racist violence towards Arab Australians during the Gulf War. This was a time when Arabs were the targets of much negative media publicity. The Report said: "Events following the outbreak of the Gulf War included incidents of vandalism and arson. The most serious incident took place on 24 January 1991 when the Rooty Hill Islamic Cultural Centre at Mount Druitt (NSW) was attacked with a Molotov cocktail in the early hours of the morning."

"A Lebanese family in Sydney was subjected to a 'terror campaign' for almost two months. They felt isolated in an area which had a reputation for hostility to and racist violence against Muslims."

As for the need for protection from governments, Professor Kathleen Mahoney says: "While great care must be taken to contain the exercise of state power, to view the government as villain is incorrect. Governments must speak on behalf of those who cannot be heard to facilitate the expression of their ideas and to promote the interests of tolerance, pluralism and individual autonomy."

Some opponents of racial vilification legislation argue that words alone cannot cause harm. A wealth of evidence exists to the contrary. According to Professor Mahoney: "The purpose and effect of hate propaganda is to lay the foundation for the mistreatment of members of the victimised group." She describes the work of social psychologist, Gordon Allport, who shows how Hitler's vilification of the Jews was the first step in a chain of brutality, which lead to the gas chambers at Auschwitz.

The idea that racial minority groups would benefit from knowing they are disliked in an astounding one. It is related to the "fresh air" theory which asserts that it is better for racists to discuss their views openly so that they can be adequately countered and exposed for what they are. Mari Matsuda says that: "To be hated, despised, and alone is the ultimate fear of all human beings." She describes the psychological and emotional symptoms experienced by victims of racial vilification including "fear in the gut, rapid pulse rate and difficulty in breathing, nightmares, post-traumatic stress disorder, hypertension, psychosis and suicide."

The National Inquiry into Racist Violence in Australia described the psychological and social impact of racist threats as "crippling". In particular, it highlighted the devastating effect of racist abuse on refugees: "It is likely to have a particularly damaging effect on those who have come from war-torn areas and anticipated that Australia would provide a safe and peaceful refuge from violence and fear."

To avoid receiving hate messages, victims are often forced to drastically change or restrict their lifestyles. The National Inquiry into Racist Violence in Australia reported the case of a Vietnamese woman living with her two children in Melbourne. After three years of harassment from an Anglo neighbour including racist verbal abuse, destruction of clothing, smashing of windows, death threats and fuses cut at all hours of the day, the woman was forced to move out of her home.

The fear that racial vilification legislation could lead to the perpetrator being depicted as a martyr derives from the Canadian experience, where criminal trials of perpetrators lead to their views being widely and repeatedly broadcast. Given the nature of the Australian legislation, with its emphasis on conciliation rather than criminal proceedings, this seems an
unlikely consequence. Our experience with the laws to date does not provide any evidence to support the concern that the racist may be transformed into a martyr.

The argument which illustrates the greatest misunderstanding of the effects of racial vilification is the one which suggests that the victim should learn to be more tolerant of his/her abuse. There is no evidence that tolerance of racist behaviour leads to its diminution. Asking the most disadvantaged groups in society to tolerate their oppression for the sake of dominant groups seems undeniably cruel. Says Mari Matsuda: “Tolerance of hate speech is not tolerance born by the community at large. Rather, it is a psychic tax imposed on those least able to pay.”

The futility of ‘tolerance’ in the face of racial vilification is illustrated most poignantly by a case reported by the National Inquiry into Racist Violence in Australia:

“A Lebanese family in Sydney was subjected to a ‘terror campaign’ for almost two months. They felt isolated in an area which had a reputation for hostility to and racist violence against Muslims. After an increasing number of incidents, including attempts to set the house on fire and windows being broken by stones, the husband and father of the family suffered a stroke and heart-attack, and died. His physician attributed his death to the campaign.”

Arguments about restrictions on free speech have been influential but they have not stopped Australia joining a host of other governments by implementing racial vilification laws. Today, nations as diverse as New Zealand, Canada, Britain, France, Czechoslovakia, the Netherlands, Denmark, Germany, Pakistan, Mexico, Bulgaria, Dominica, Austria and Cyprus all have some form of legislation preventing racial vilification. The message from the international community is clear: hate speech is not to be tolerated.