Legislative approaches to the regulation of racial hatred: a study of racial vilification laws in Australia, 1989-1999

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LEGISLATIVE APPROACHES TO THE REGULATION
OF RACIAL HATRED: A STUDY OF RACIAL
VILIFICATION LAWS IN AUSTRALIA, 1989-1999

A thesis submitted in fulfilment of the requirements for the award
of the degree

DOCTOR OF PHILOSOPHY

from

UNIVERSITY OF WOLLONGONG

by

LUKE McNAMARA, BA, LLB, LLM

FACULTY OF LAW

2000
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ABSTRACT

This thesis examines the range of models of legal regulation which have been adopted in Australia to deal with various forms of racial vilification—including criminalisation, civil liability via the creation of statutory torts, and civil liability via the human rights dispute resolution system. It reviews the history and current operation of all relevant federal, state and territorial laws, via an examination of relevant reports, legislation, parliamentary debates, statistical data, and judicial and quasi-judicial decisions, as well as secondary literature.

The factors which have influenced the choice of different legislative models for the regulation of racial vilification are identified, and the implications of the choices that have been made for the level of protection provided for victims of racial vilification are discussed. In particular, this thesis analyses the impact of free speech 'rights' and values on the initial choice and subsequent modification of regulatory models by legislatures, and on the application and interpretation of relevant legislation by human rights agencies, prosecuting authorities, tribunals and courts. The capacity of existing regulatory models to achieve the underlying objectives of racial vilification laws in a democratic multicultural society are examined, including an assessment of the strengths and weaknesses of the various approaches to the regulation of racial vilification which have been utilised to date in Australia.
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This “book” is for Josie.

(Sorry there are no pictures — I’ll try to fit some into the next one!)