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Hate Speech Against Women

Addressing a Democratic Crisis

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Summary

Key Points

This Policy Brief makes the following key points:

- (a) The communication of contempt for women is nothing new. However, the proliferation of digital and online media means that the prevalence and severity of sex-based vilification is increasing and is more easily observable and documented than before.
- (b) Although the extent of the relevant harms cannot be assessed with precision, one need only look at the vitriol encountered by women, particularly those with public profiles, in Australia and overseas, on Facebook and Twitter, in news and tabloid media, and even in parliaments, to appreciate how prevalent the problem appears to be.
- (c) Sex-based vilification silences women by preventing them from speaking, marginalising and devaluing their speech, and building structural constraints impeding their speech. Women respond to sex-based vilification by adapting their behaviours; policing their identities, speech, and movements; leaving online and offline spaces; and/or disengaging from public life. Even where women can and do speak, sex-based vilification makes it more difficult for what they say to have its intended force.
- (d) If the legitimacy of democracy rests on political equality (i.e. equality of opportunity to participate fully in democratic processes), sex-based vilification impedes women's participation and represents a crisis of democracy itself.
- (e) The ubiquity of sex-based vilification, including its pervasiveness in online spaces, plausibly raises unique difficulties with respect to its regulation. However, regulation is possible.

Recommendations

This Policy Brief makes the following recommendations:

- (a) **A multifaceted approach:** A multifaceted approach to addressing sex-based vilification would entail a range of legal strategies to respond to different manifestations of such speech, and sex-based vilification laws would be one aspect of a holistic response to such speech that also incorporates other regulatory and non-regulatory counter-speech measures.
- (b) **Limited scope:** Sex-based vilification laws ought to capture those manifestations of vilification that can be most clearly characterised as subordinating and silencing speech.
- (c) **Additional measures:** Speech acts that are less straightforwardly characterisable as sex-based vilification may be most appropriately regulated through a combination of legal and non-legal content moderation laws, regulations, and guidelines.
- (d) **Empowering counter-speech:** It is also crucial to empower women and other actors to speak back against sex-based vilification through contributions by states, institutions, corporations, organisations, and communities to educational and capacity-building resources.
- (e) **Cultural change:** Such measures ought to be accompanied by a holistic and effective enculturation process directed at their proper interpretation and application.

Hate Speech Against Women

Addressing a Democratic Crisis

1. Introduction

Public discussion of speech expressing contempt for women has intensified in Australia in recent times. Such speech may often be said to constitute *hate speech* against or *vilification* of women. That is, it may be said to be directed at women for being women, or on the basis of their actual or perceived female sex, in the sense that it is about all women, even as it is directed at particular women.¹

Despite the current surge in interest, sex-based vilification is nothing new. Such speech typically accompanies violence committed against women and occurs prolifically in pornography, advertising, popular culture (including film, music, literature, and other visual and performance arts) and mainstream news and tabloid media reporting. It is directed at and about powerful women, ‘ordinary’ women, and women generally. It occurs digitally and in person, online and in physical spaces such as workplaces and educational institutions, and via speakers who may themselves colloquially be described as powerful or ‘ordinary’.

The proliferation of digital and online media means that the prevalence and severity of sex-based vilification is increasing and is more easily observable and documented than before.

This Policy Brief provides an overview of this pressing policy challenge, focussing on how such speech represents a crisis of democracy through its silencing of women and limiting of their democratic participation. It sets out proposals for a ‘multifaceted counter-speech’ approach to addressing sex-based vilification, combining both legal and non-legal regulatory measures.

¹ ‘Sex’ means actual or perceived female sex throughout this Policy Brief. ‘Vilification’ rather than ‘hate speech’ is used throughout this Brief to focus on the functions of such speech, as opposed to its expressive qualities. This is explained further in the postscript on p.8.

2. Online Vilification

Communicative phenomena compounded by online technologies – including the lowering of individuals’ inhibitions and altered dynamics of interaction and decision-making in online spaces – suggest that the harms of online sex-based vilification are accommodated and magnified by and for many audiences.

Recent accounts of online speech that may reasonably be characterised as sex-based vilification cover everything from women’s experiences of being victim to offhand sexist remarks, to ‘revenge’ pornography, to invective directed at female journalists and bloggers, to speech characteristic of the ‘Manosphere’ (an online ecosystem of websites, blogs, and online fora promoting versions of masculinity that are misogynistic or otherwise in strong opposition to equality between women and men).

The communication of contempt for women is nothing new. However, the proliferation of digital and online media means that the prevalence and severity of sex-based vilification is increasing and is more easily observable and documented than before.

The problem of sex-based vilification is especially apparent in the context of the cyber harassment of women. This typically involves sustained and tactical campaigns of invective, image-based abuse, and other objectifying and contemptuous speech, and is often engaged in by ‘cyber mobs’ of more than one attacker.

Anonymity and invisibility of assailants online, as well as the multi- and cross-jurisdictional nature of cyber harassment, make it difficult to identify participants or measure the extent of any given mob. Though the sum of abuse inflicts devastating harms, it is difficult to hold individual perpetrators accountable.

3. Vilification of Women in Politics & Public Life

Significantly, sex-based vilification, including but not limited to online sex-based vilification, is often directed at and about women in positions of political leadership or with public profiles. In Australia, female politicians across the political spectrum have spoken openly about their many and varied experiences of communicative conduct that may reasonably be described as sex-based vilification.

‘Ditch the witch’ was famously said of [Julia Gillard](#) while she was the former Labor Party Prime Minister. [Mehreen Faruqi](#), a Greens Party Senator, has written candidly of the intersectional and especially vitriolic sex-based vilification she is subjected to as a Muslim woman of colour. [Sarah Hanson-Young](#), also a Greens Party Senator, recently brought a successful defamation claim against a former male politician with respect to speech (also) constituting sex-based vilification.

Women with public profiles may be particularly targeted when they speak openly about issues affecting women.

[Julia Banks](#), a former Liberal Party Member of Parliament, has observed that online harassment against her worsened the more publicly she discussed her own experiences of sexism in federal politics. International examples also abound. [Anita Sarkeesian](#), a Canadian-American feminist blogger and gamer, was targeted after starting a crowd-funding campaign to create a series of short films examining sexist stereotypes in video games. [Caroline Criado-Perez](#) was similarly besieged for heading up a successful campaign to have Jane Austen’s image replace Charles Darwin’s on the British £10 note. When Criado-Perez spoke out about the abuse, including during media interviews, the campaign of invective against her escalated. A number of high-profile women who pledged their support for Criado-Perez also received floods of abuse.

One need only look at the vitriol encountered by women with public profiles on Facebook and Twitter, in news and tabloid media, and even in parliaments, to appreciate how prevalent the problem appears to be.

4. Subordination & Silencing Harms to Women

Critical research on discriminatory speech is crucial to understanding the harms of vilification, including sex-based vilification. The work of critical theorists who take speech harms seriously reflects what many women and minority individuals experience when targeted by vilification. Importantly, it also articulates how vilification impacts on women’s and minorities’ political and material realities in societies imbued with patriarchal, racial, and other forms of systemic oppression.

In accordance with relevant research in this area, sex-based vilification is properly conceived of as discriminatory treatment of women that constit-

Sex-based vilification silences women by preventing them from speaking, by marginalising and devaluing their speech, and in building structural constraints impeding their speech. The result is that even where women can and do speak, what they say is unable to have its intended force.

utes and causes the subordination and silencing of women on the basis of their sex.

Those subordination and silencing harms are systemic harms for two reasons. First, because they accrue to women on the basis of female sex, which is an axis of structural discrimination and disadvantage in patriarchal societies. Second, because the authority of sex-based vilification in patriarchal societies is at least partly derived from patriarchal oppression as a rule-governed activity at play in those societies. Speakers play by the rules of patriarchal oppression when they engage in speech acts of sex-based vilification and are able to reinforce it.

The extent to which sex-based vilification, including online sex-based vilification, subordinates and silences women or will do so over time, in fact, causally speaking, is not possible to measure or assess with precision.

However, what is important is this: women are, in fact, systemically disadvantaged and oppressed in patriarchal societies; those harms flow from the systemic subordination and silencing of women in those societies; and speech acts of sex-based vilification contribute to – in that they are speech acts of – that systemic subordination and silencing.

In other words, sex-based vilification constitutes discriminatory harm in and of itself and contributes to other discrimination and violence against women in patriarchal societies. Moreover, women typically feel threatened and humiliated by occurrences of sex-based vilification and adapt their own behaviours accordingly, by policing their identities, speech, and movements or by leaving online and offline spaces and disengaging from public life.

5. Implications for Political Communication

That sex-based vilification occurs so prolifically has significance beyond its harms to individual women and women as a group. The silencing harms of sex-

based vilification are particularly relevant in this regard.

Sex-based vilification silences women by preventing them from speaking, by marginalising and devaluing their speech, and in building structural constraints on their speech. The result is that even where women can and do speak, what they say is often unable to have its intended force. That is, sex-based vilification functions, and is often intended, to exclude women from full democratic participation.

This is especially true of sex-based vilification that occurs in spaces in which essential political communication also occurs.

For many women, as for many others, online spaces, for example, are now key loci of public discourse and engagement within public life. In liberal democracies, online spaces are specifically also key loci of women's participation in democratic processes of the kind that, according to liberal arguments, serve to legitimate exercises of public power over and affecting them. In turn, women's presence in and engagement within those spaces, or lack thereof, pertains to democracy itself. It is apparent that the same may be said of sex-based vilification that occurs in key institutional spaces, like parliaments, in which core political communication takes place.

If democratic legitimacy rests on political equality, meaning substantive equality in participatory opportunities in democratic processes, sex-based vilification delegitimises and represents a crisis of democracy itself. Such speech thus warrants careful and urgent consideration in liberal democracies and necessitates regulatory responses that appropriately and adequately address its harms.

6. The Gap in the Law

The above notwithstanding, there is a 'sex-based gap' in anti-vilification laws. Apart from some notable exceptions at the domestic level in some jurisdictions, sex-based vilification laws do not

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The ubiquity of sex-based vilification, as well as its pervasiveness in online spaces, plausibly gives rise to some unique difficulties with respect to its regulation. One possible way forward is to take a ‘multifaceted counter-speech’ approach to addressing such speech.

exist. Nor has the issue of sex-based vilification received much scholarly or policy attention.

In contrast, vilification on the basis of one or more other ascriptive characteristics, including, for example, race, religion, sexuality, gender identity, intersex status, disability, and HIV/AIDS status, is unlawful in Australia at the federal, state, and territory levels, under international law, and in many other countries. The socio-legal implications of the harms and regulation of those categories of vilifying speech, in particular, racial and religious vilification, have also been more extensively considered.

In the Australian context, the recently introduced Racial and Religious Tolerance Amendment Bill 2019 (Vic) and its second reading speech are notable exceptions at the policy level. The Bill prompted the Legislative Assembly Legal and Social Issues Committee Inquiry into Anti-Vilification Protections. On 2 September 2021, in response to the Committee’s recommendations, the Victorian Government expressed its in-principle support for extending existing anti-vilification laws to cover groups protected from discrimination under the *Equal Opportunity Act 2010* (Vic). This potentially means that Victoria will, in time, have laws prohibiting some vilification against women, on the basis of sex and/or gender.

It is unclear why the overall gap in the law exists, and much work would need be done on this question in order to reach a definitive answer. What the gap in the law may suggest, however, is that sex-based vilification silences women to such an extent in patriarchal societies that such speech drives, in part, its own acceptance in those societies. Sex-based vilification itself may constrain women’s articulation of their experiences of its harms such that women are unable to protest it as harm, in ways that might secure the

requisite uptake from the relevant institutions, including legal institutions.

The gap in the law may thus exist because sex-based vilification is not only abundant, but is also normalised, such that such speech is simultaneously overwhelming and invisible. The subordination and silencing of women through sex-based vilification may be so central an organising factor in patriarchal societies that, unlike racist, homophobic, or transphobic speech, for example, it is imperceptible as harm or imperceptible as harm worth doing anything about in those societies, including for the purposes of law.

7. A Multifaceted Counter-Speech Approach

The very ubiquity of sex-based vilification in patriarchal societies, as well as its particular pervasiveness in online spaces, plausibly gives rise to some unique difficulties with respect to its regulation.

A possible way in which to overcome some of those difficulties, while nevertheless meaningfully and adequately responding to sex-based vilification, may be through a ‘multifaceted counter-speech’ approach to addressing such speech.

- (a) **Multiple legal strategies:** Pursuant to such an approach, states would employ a range of legal strategies to respond to different manifestations of sex-based vilification, and sex-based vilification laws would be one aspect of a holistic response to such speech that also incorporates other regulatory and non-regulatory counter-speech measures.
- (b) **A core but partial solution:** Sex-based vilification laws may be conceived of not as a complete potential solution to the problem of

sex-based vilification, but instead as one, albeit crucial, part of the overall conditions necessary to enable effective counter-speech against it, in addition to any deterrent and remedial functions such laws may have.

- (c) **Sensitivity to context:** The exact combination of measures comprising a multifaceted counter-speech approach, as well as their precise content, would depend on a range of jurisdiction-specific considerations, including both policy and legal considerations. In particular, the enacting and framing of potential sex-based vilification laws and other legal measures are subject to jurisdiction-specific constitutional considerations.
- (d) **Limited scope:** Generally speaking, sex-based vilification laws that form part of such an approach ought to capture those manifestations of sex-based vilification most straightforwardly capable of characterisation as subordinating and silencing speech.
- (e) **Legal and non-legal content moderation:** Speech acts constituting sex-based vilification that are less straightforwardly characterisable as such may be most appropriately regulated through a combination of legal and non-legal content moderation laws, regulations, and guidelines. Content moderation laws and regulations may be administered by state bodies through content classification schemes, advertising standards schemes, broadcasting standards schemes, codes of conduct for social media firms and other platform hosts, or otherwise.
- (f) **Voluntary codes and guidelines:** Corporations and organisations, for example, media and technology firms, including social media firms, internet service providers, and other platform hosts, may also be encouraged by states and other actors to commit to voluntary codes of conduct or put in place internal guidelines pertaining to the classification,

identification, and removal of content constituting sex-based vilification.

- (g) **A collaborative effort:** Academics, lawyers, policy makers, and others may also work with states, institutions, corporations, organisations, and communities in various capacities on ‘constitution -making’ or other projects directed at bettering the design of policies, procedures, and governance infrastructures pertaining to the moderation of speech constituting sex-based vilification.
- (h) **Empowering counter-speech:** Additionally, counter-speech in all forms, not merely through regulatory means, is an important aspect of holistic responses to vilifying speech, including sex-based vilification.

Crucial components of any multifaceted counter-speech approach to addressing sex-based vilification thus include: (i) non-regulatory contributions by states, institutions, corporations, organisations, and communities to educational and capabilities building resources enabling women to themselves speak back against sex-based vilification; and (ii) those actors’ non-regulatory counter-speech on women’s behalf.

For example, capabilities building resources may be employed to encourage women and other actors to counter-speak against sex-based vilification when it occurs, as well as to empower them to actually and effectively do so.

- (i) **Accessibility, clarity and implementation:** Any regulatory counter-speech measures that adequately and accurately respond to the harms of sex-based vilification, including, but not limited to sex-based vilification laws, would need to render the complexity of those harms into legal language capable of interpretation and application by lawyers, judges, other administrators, and other

Sex-based vilification laws would be one aspect of a holistic response that also incorporates other regulatory and non-regulatory measures, including counter-speech in all forms, by women and other actors.

actors, including, importantly, women themselves.

- (j) **Cultural change:** The above measures ought to be accompanied by a holistic and effective process of cultural change directed at their proper interpretation and application. A significant potential benefit of a multifaceted counter-speech approach to addressing sex-based vilification is that the various forms of counter-speech discussed above would themselves go some way to effecting that process, such that they contribute to enculturation and vice versa. The necessary cultural change will also likely partly occur as a result of political momentum leading up to the enactment of sex-based vilification laws and other regulatory measures.

8. Conclusion

Sex-based vilification systemically subordinates and silences women on the basis of their sex. Those subordination and silencing harms are relevant to law and contribute to discrimination and violence against women. Sex-based vilification also constitutes a material threat to women's democratic participation. Accordingly, it delegitimises democracy and represents a democratic crisis in urgent need of regulatory response.

The ubiquity of sex-based vilification in patriarchal societies, especially in online spaces, plausibly gives rise to some unique difficulties with respect to its regulation.

However, a multifaceted counter-speech approach, crucially including, but not limited to, sex-based vilification laws, may be employed to effectively address such speech. Ultimately, sex-based vilification and its effects are not a problem solely for women: public life and the entire democratic community are impoverished when

women are silenced, and the responsibility to address and counter such speech should not fall to women alone.

Postscript: 'Vilification' versus 'Hate Speech'

My use of 'vilification' throughout this Policy Brief is in contrast to much of the existing 'hate speech' research. To the extent that the latter, more popular term shifts focus from the functions of discriminatory speech to its expressive qualities, it is misleading and unhelpful. In fact, it is not the 'hate' in hate speech with which defenders of anti-vilification laws, for example, are concerned, as if they wish to engage in some form of thought control; what is of concern is what such speech does.

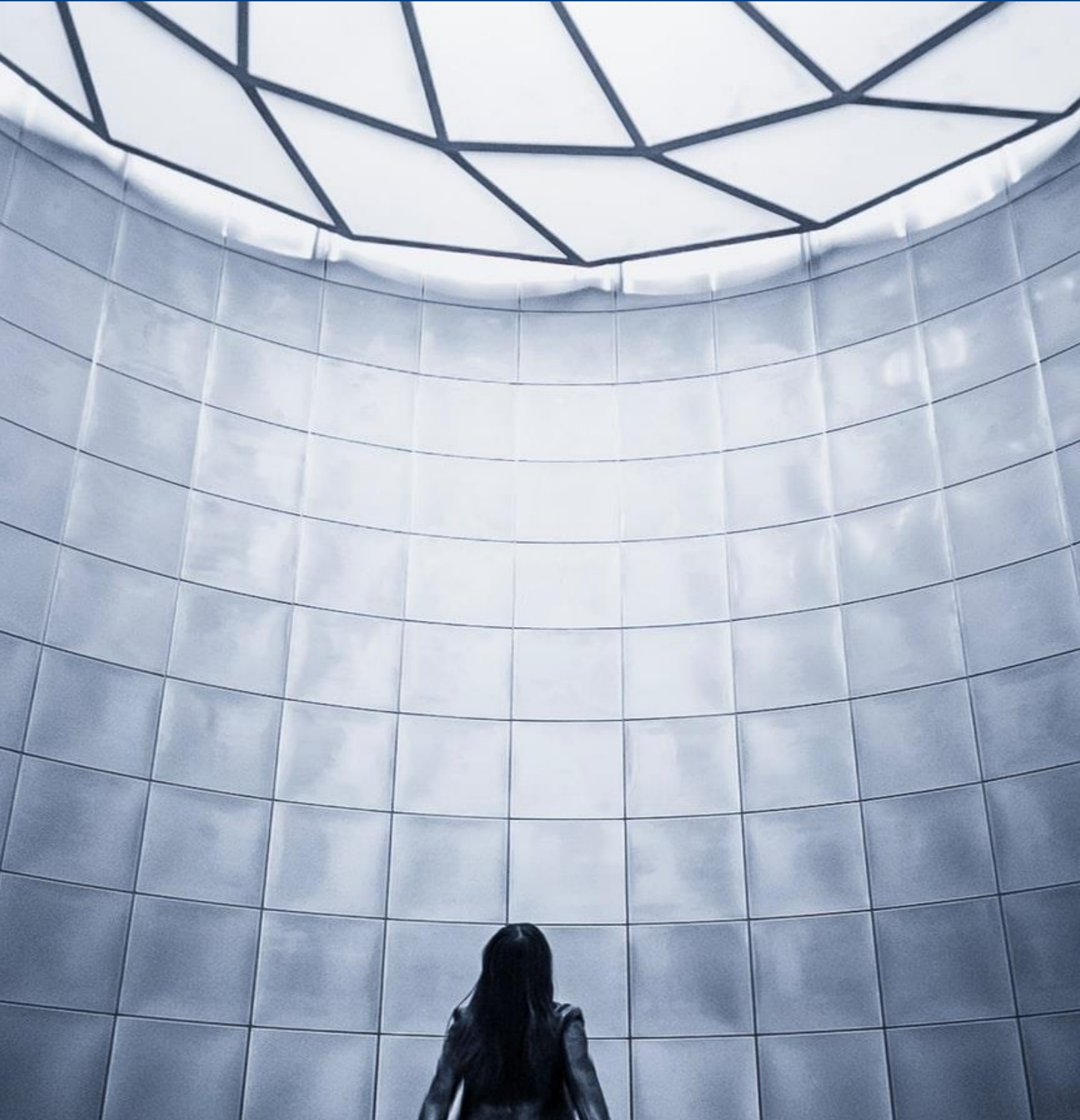
I also use 'sex' and 'sex-based vilification' in favour of 'gender' and 'gender(ed) vilification' deliberately. It is unclear that gender, as distinct from actual or perceived female sex, is an axis of women's systemic oppression in patriarchal societies in relevant ways for the purposes of discussions around vilifying speech.

For example, the vilification of women for their gender expression, including gender non-conformity, is an aspect of their vilification in patriarchal societies on the basis of their sex. Sex-based vilification is also distinct from vilification on the basis of gender identity, as is prohibited in some Australian states and in the Australian Capital Territory. Gender identity as a category of vilification is typically addressed to vilifying speech directed at and about transgender and intersex persons, for being transgender or intersex. It excludes vilification directed at and about women, including transwomen, on the basis of their actual or perceived female sex.

Sex-based vilification systemically subordinates and silences women on the basis of their sex. This contributes to discrimination and violence against women, undermines their political participation, and as such, represents a democratic crisis in urgent need of regulatory response.

Vilification of Women in Politics & Public Life

Sex-based vilification, including but not limited to online sex-based vilification, is often directed at and about women in positions of political leadership or with public profiles. In Australia, female politicians across the political spectrum have spoken openly about their many and varied experiences of communicative conduct that may reasonably be described as sex-based vilification. Women with public profiles may be particularly targeted when they speak openly about issues affecting women.



References

Note: A variety of references in this text are provided as hyperlinks within the text. This references section lists selected texts in alphabetical order.

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