

# TRANSCRIPT

## LEGISLATIVE ASSEMBLY LEGAL AND SOCIAL ISSUES COMMITTEE

### **Inquiry into Anti-Vilification Protections**

Melbourne—Thursday, 12 March 2020

#### **MEMBERS**

Ms Natalie Suleyman—Chair

Mr James Newbury—Deputy Chair

Ms Christine Couzens

Ms Emma Kealy

Ms Michaela Settle

Mr David Southwick

Mr Meng Heang Tak

#### **WITNESSES**

Ms Jasmine Yuen, Acting Victorian Director, and

Mr Dan Flynn, Chief Political Officer, Australian Christian Lobby.

**The CHAIR:** Good afternoon. I would like to first of all welcome you. Could you state your name and title for the record—for Hansard.

**Mr FLYNN:** Dan Flynn, Chief Political Officer with the Australian Christian Lobby.

**Ms YUEN:** Jasmine Yuen, Acting Victorian Director.

**The CHAIR:** All evidence taken by this Committee is protected by parliamentary privilege. Therefore you are protected against any action for what you say here today, but if you go outside and repeat some things, including on social media, those comments may not be protected by this privilege. All evidence given today is recorded by Hansard and is also being broadcasted live on Parliament's website. Please note that footage can only be rebroadcasted in accordance with the conditions that are in standing order 234. You will also be provided with a proof version of your transcript to check as soon as it is available. Verified transcripts, PowerPoint presentations and handouts will be placed on the Committee's website as soon as possible. I now invite you to provide us with a 5- to 10-minute brief, which will be followed up with some questions. Thank you so much for being here. Welcome.

**Mr FLYNN:** Thank you, Chair. I just want to be careful to time myself. We have before us the *Racial and Religious Tolerance Act* and a Bill here that seeks to amend it to turn the Bill into the Elimination of Vilification Act. Can I say at the outset that we are concerned about this. We are concerned that it will in fact clash religious and multicultural communities, who originally sought to be protected by the Bill, with those who advocate very much for LGBTI activism, which will result in a stifling of freedom of speech. If I can just go to the submissions that have been filed—and the way that this will proceed is that I will make some comments and in the course of our time Ms Yuen will make some comments as well, but we will finish within the time frame.

What we say, essentially from the executive summary, is that this Bill is not inclusive but it is actually divisive. It introduces protected attributes about which there is no community consensus. To add gender identity, sexual orientation—in particular gender and gender identity—is quite concerning, given there is no consensus on this in the community in the way that there is certainly in relation to race and religion.

There are some amendments proposed in the Bill, which I will go to in detail, which really lower the threshold test for which somebody might be in breach of this legislation. A concern when you have a Bill like this, if it becomes law, is that people self-censor. People are concerned that if they state a religious view—that they believe that in their religion marriage is between a man and a woman—then that is going to create an emotional reaction in somebody who will say that hatred is being incited, and that will cause a sort of self-censoring, if you like.

I might go to the Act and just go to some clauses that create some concern. What I have with me is a copy of the *Racial and Religious Tolerance Act* track-changed amended by this Bill, which is sort of the only way that I could understand it. Can I point out that gender is not defined in this Act. That is concerning, because when we read Fiona Patten MP's, second-reading speech, a lot of it is about the protection of women, but there is no definition of sex here and even gender is not defined. We would understand, and many would say who have a different view to us, that there are many, many dozens of genders—it creates confusion.

Just going to the central clause, 7, it says a person must not, on the ground of a 'protected attribute' of another person, 'engage in conduct'. It previously said 'that incites hatred' or 'serious contempt for'. We now have a lowering of the bar to say conduct that 'is likely to incite'. It has definitely got to be a lower threshold, and it would not appear in a sense to require a victim or somebody having been incited but just that that behaviour is deemed by a tribunal as likely to incite. That is concerning.

It is concerning at clause 10 that there is material about the incorrect assumption as to a 'protected attribute'. When we think about gender identity it may be a norm that people are entitled to be affirmed in the gender they decide is appropriate for them, but there may be little or no outward indicator of what that is. If someone makes an incorrect assumption as to their gender identity, that will be irrelevant according to clause 10, and that is concerning.

Still in the detail here, clause 24 raises another issue of very much a lowering of a threshold. Clause 24 previously spoke of racial vilification and that if a person intentionally engages in conduct that 'the offender knows' is likely to incite hatred, that constitutes an offence. That is being now lowered in two ways in section 24(1), by the insertion of 'recklessly'—so not just intentionally but recklessly—and in conduct that 'the offender knows is likely to', 'the offender knows' is struck out. So it is conduct that 'is likely to' incite hatred'—again, a concerning development.

The Bill introduces attributes, as I said, that are the subject of bona fide religious views, and there would be many who would want to state their religious views about marriage or gender who are not in any way malicious, but it is part of the Abrahamic faiths—Judaism, Christianity and Islam, among others—that believe that God created mankind male and female. It is the Christian world view that God made human beings as just simply male and female, Genesis 1:27, and that has implications for beliefs about morality and sexual behaviour.

Christian parents have a right to choose to pass their beliefs on to their children, and the many ethnic communities represented in Victoria have the right to pass on their beliefs and culture to subsequent generations. Ms Yuen, do you wish to speak to that aspect?

**Ms YUEN:** Yes, I just want to jump in to give you a sample from a multicultural perspective. We have over 24 000 supporters in Victoria alone, and among all these supporters in Victoria we have Christians not only coming from different denominations but also from different cultural backgrounds. Just let me give you an example: we have huge numbers of Chinese Christians among our supporters, not to also mention Asian Christians among our supporters.

I can tell you that all of them have great concern about gender identity issues that have been happening in Victoria in the past few years. I myself, as you can hear, come from a migrant background as well, and because of that I have lots of communication and interaction with different communities coming from Asian backgrounds. So I can testify that the majority of the multicultural communities in Victoria, whether they are Christians or whether they are not, still adhere to the traditional view of marriage between a male and a female. As well, they hold onto the belief that humankind is born either male or female—only two genders.

The multicultural communities deserve the rights and freedom to express these kinds of belief and express these kinds of cultural values as well as passing these on to their future or their younger generations. The *Racial and Religious Tolerance Act* that is the original Act served to create a safe space or safe environment for them to do that. But if this original Act is replaced with the elimination of vilification Bill it would take away that freedom and that protection, especially when protected attributes such as sexual orientation, gender identity and sex characteristics are added into this elimination of vilification Bill in clause 3. So this is very concerning to the multicultural community, and that will actually put not only the faith community but also the multicultural community into a very risky position because they might be put to a tribunal because of what they say or what they do not agree with.

**Mr FLYNN:** I am just mindful of the time. Just going on from Jasmine Yuen's comment there, in talking about the tribunal, one of the things that does concern us, and we have raised it, is the power to effectively raid someone's home for documents for proof. There is provision there that compels people to produce documents which you would not see at VCAT. The Victorian Civil and Administrative Tribunal would never have those sorts of powers—a court might, but VCAT would not. It seems an extraordinary breach of the right to silence and common-law liberties to have provision for that in the Bill.

I think finally it probably summarises our position to say that true tolerance, true inclusivity and equality and respect means that, while the LGBTI community expect the wider community to understand and acknowledge them, they should also respect that others in the wider community who have different beliefs, perspectives and

choices should be able to articulate those without ending up in front of a tribunal. Thank you. They are our submissions.

**The CHAIR:** Thank you very much for your submission. I might start with the first question. We are looking into, clearly, the effectiveness of the current anti-vilification protections. Through our public hearings and submissions we have heard from various religious groups and organisations in relation to the fact that the current system is not working, whether it is navigating the system or whether it is the prosecution. I am talking in relation to the rise in attacks on the Muslim community, anti-Semitism and the list goes on—those sorts of very alarming attacks—and I suppose the victims not feeling that they are really able to make a complaint and satisfactorily have an effective outcome or prosecution. I would like your view on just that point. Have you had any incidents where you have not felt that the current system is working, and if it is not working, what are some of the gaps?

**Mr FLYNN:** Having listened carefully to what you have said there, Chair, it would appear that any such concerns, be they religious or racial, are covered abundantly under this Act. In fact this Act is quite tight, and many have complained over the restrictiveness of this Act unamended. We recall the Two Dannys case, where two pastors gave a seminar on Islam. Somebody was there and felt vilified by it, and that went all the way to the Supreme Court through VCAT and was of international significance. This was some perhaps 10 or 15 years ago. So the Act is quite tight. For people to say they feel like they have nowhere to go in terms of racial or religious vilification is simply not made out, in my view. This is a very strong Act—some would say too strong.

**Mr TAK:** Ms Yuen, you referred to the collapse of, if the Bill were to pass in its entirety, the multicultural community. What can you tell us about whether there has been an increase in terms of vilification in the multicultural community?

**Ms YUEN:** I have been in Australia for a little bit more than 20 years. To be honest I have not experienced any racial attacks or discrimination, but in fact what I experienced was during the marriage campaign. I have been verbally attacked not because of my ethnicity but because of what I believe. So I would say this *Racial and Religious Tolerance Act* is enough to protect us—in fact it is really important to protect us. We feel that it is, really, especially for the multicultural community. But the difference is when this elimination of vilification comes in and changes the whole thing and puts in the new protected attributes, like what we have concerning gender identity, sexual orientation and all this, it will change the whole thing. It will draw the protection for the multicultural community out, making it insignificant. In that case I would say it will weaken the protection for the multicultural community if this is to be really modified, putting in something else.

**The CHAIR:** Your submission discusses concerns with the proposals to amend serious vilification criminal offence provisions. Would you be able to just expand on those concerns? And secondly, what is your response to other stakeholders—and I think I covered this at the beginning—who consider the current laws to be ineffective?

**Mr FLYNN:** I will just deal with the last part first, because I was not seen to answer that properly. There are laws—there are certainly Federal laws—that you cannot abuse somebody over the internet. You cannot vilify over the internet. There are Federal laws in relation to that. So we are sort of getting thrown this Bill as, well, look, people feel that they do not have a recourse, and this will give them something that is easily identified and which they can take a proceeding under. But when we are given that and presented with that package, what we find in the package are a number of elements of this, particularly in relation to gender and gender identity, that create great concerns for the faith community, not just the Christian community. A Bill that was designed to protect faith communities will in fact harm them and cause them apprehension and fear.

The first part of your question in terms of the law—that we had some criticism or comment in relation to the amendment of the law—it is just simply the lowering of the threshold, that it is now likely to cause harm or likely to vilify. It is a case of, if you make a mistake in wrongly identifying someone's gender identity, that will be relevant. Those sorts of things leave our community and the faith community open to great attacks.

**The CHAIR:** Just for the record, I welcome David Southwick, the Member for Caulfield, back. He has some questions.

**Mr SOUTHWICK:** My apologies for not being here for the whole presentation. I just want to pick up on some of the issues that I kind of heard the tail of. Leaving aside the gender changes and purely focusing on the race and religious component of this, there have been a number of attempts to prosecute when an individual has been targeted, vilified, for their racial or religious background, and we have seen that although there have been many, many attempts, there have been very, very low success rates of those because the onus of proof needs to be that the incitement effectively then causes an action of a third party.

So if I vilify you, I am doing it so Jasmine can effectively get a whole group of other people to rise up and do whatever they wish to do, but the kind of one-on-one attacks are not covered. I am just interested in terms of your view, particularly from many of the Christian faith, Jewish and others that get targeted on an individual basis. I will cite an example if I can: when we had a situation a few weeks back where the Nazi swastika was flown in a country town—in Beulah—there happened to be a Holocaust survivor that was living next door that no-one knew about until a week or two later. The flag was up for 10-plus days. There were no laws to be able to get that flag taken down. Eventually it was bluff that actually got the flag taken down. That particular individual did not feel comfortable leaving his home because he had suffered the horrors of the Holocaust and he felt uncomfortable having that flag in his backyard. What is your view of that type of situation? I totally understand the fact of broadening the scope to include other areas, but purely on the area of when an individual is targeted and that individual has no, if you like, elements to take it forward, what is your view of that?

**Mr FLYNN:** This particular Act in its unamended form and in the form proposed by Fiona Patten, MP—

**Mr SOUTHWICK:** Can I just also say—sorry—let us forget Fiona Patten’s amendments, because this has nothing to do with Fiona Patten’s amendments. Ignore that. This is purely just a general let us look at the laws as they sit at the moment and whether we need to be amending the laws to ensure we protect individuals going forward.

**The CHAIR:** So it is the current anti-vilification laws.

**Mr SOUTHWICK:** Current laws, forget what Fiona is proposing.

**The CHAIR:** Yes. That is separate to this Inquiry.

**Mr FLYNN:** Okay. If you are saying that, say, something that might offend a Holocaust survivor is not covered here because it is not his religion, it is not his race, it is something else, then could a relevant attribute not be inserted?

**Mr SOUTHWICK:** Well, that is what we are looking at. That is exactly the point. We are looking at a range of people, whoever they may be. In the current law as it applies the vilification effectively needs to incite a third party to act. People have given a whole range of views. There is also the view of whether it may be ‘likely to incite’ as opposed to ‘will incite’. There are questions around that. So whether it be a Muslim, a Christian, a Jew or anyone that may be targeted because of their background because that individual effectively may be harmed but it does not incite a third party to act—the laws are very loose in terms of going forward. That is why we have had umpteen unsuccessful attempts to have a successful prosecution or even a successful mediation in many instances.

**Mr FLYNN:** It is good that something like that would be addressed by the Parliament, but in doing so there is an objection and a concern to gender, gender identity—

**Mr SOUTHWICK:** I get that; I totally understand that.

**Mr FLYNN:** All of those are coming through in the same bus, so to speak.

**Mr SOUTHWICK:** There have been some people who have presented evidence that have suggested looking at opening the scope—

**The CHAIR:** Broadening.

**Mr SOUTHWICK:** Broadening the scope, and then to, if you like, lower the bar to somebody who may be personally harmed, whether it be because of their gender—what other categories are we looking at?

**The CHAIR:** Religious.

**Mr SOUTHWICK:** Religious is part of it, but a whole range of things.

**The CHAIR:** Disability.

**Mr SOUTHWICK:** Yes, disability. So, I suppose just to clarify for us, are your concerns the fact that this becomes very subjective in terms of where somebody might go with that, and are you also concerned that effectively the church may be a target of this, as part of that going forward—and citing things like Catch the Fire and other scenarios?

**Mr FLYNN:** Sure. Well, that has been a longstanding concern, I think, of the church community, of the Christian community, just how those two pastors—and the process was the punishment for them. That has been a longstanding concern with this Bill. But if aspects of vilification need improving, then so be it. But I suppose we are here perhaps to sound a cautionary note that if all elements of LGBT ideology come through—and any question on that is inciting hatred, is vilification—with the obvious relevant protection of a Holocaust survivor, then we are most concerned about that. So that is really—

**Mr SOUTHWICK:** You want to see a separation in terms of—

**Mr FLYNN:** Well, they are two different issues. And we are concerned, particularly seeing Fiona Patten's Bill. We are very concerned that that is exactly what she is trying to achieve. She certainly makes no mention of race, religion or Holocaust survivors in her second-reading speech.

**Mr SOUTHWICK:** No, and we are not looking at her Bill at the moment.

**The CHAIR:** We have got to run.

**Mr SOUTHWICK:** One last thing: there has been a fair bit of evidence from people talking about the law as one element and the other really important element of all of this is education. And we know that there has been the loss of religion in schools as part of a component that was there to educate people, particularly about their faith and their backgrounds. There has been discussion about potentially more of a general faith and culture component in schools to ensure that people could learn about different people's faiths and backgrounds, to help people understand that going forward, to negate some of the attacks on people from a different race or religious background. How important do you think that is in our schools to help negate some of the racial hate attacks, anti-Semitic attacks and incitement going forward?

**Mr FLYNN:** Very important. The removal of religious instruction in school time was a bad thing, in our submission because for children—in whatever faith they are taught—there is a general moral compass of behaviour that those children learn. And much of that moral compass is removed and in fact was substituted for by Respectful Relationships, which will tell them their gender is on a spectrum and is fluid. Now, that we are concerned about. And, yes, reinstating that to create greater awareness, greater respect for all the faiths, is something that we would certainly endorse and encourage.

**The CHAIR:** I think all the questions have been asked. Thank you so much for taking the time to present to us.

**Mr FLYNN:** Thank you for your time. We very much appreciate it.

**The CHAIR:** So the next steps will be that we have got a number of other public hearings and submitters to hear. All evidence will be deliberated by the Committee Members, and hopefully we can put forward a good report with some strong recommendations that takes in as much as possible from submitters, to get a good report for our community. So thank you again for taking the time to present to us.

**Ms YUEN:** Thank you.

**Mr FLYNN:** Thank you, and thank you for all you do. We appreciate that.

**Witnesses withdrew.**