

TRANSCRIPT

LEGISLATIVE ASSEMBLY LEGAL AND SOCIAL ISSUES COMMITTEE

Inquiry into Anti-Vilification Protections

Melbourne—Tuesday, 25 February 2020

MEMBERS

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Mr James Newbury—Deputy Chair

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WITNESS

Mr Mark Zirnsak, Senior Social Justice Advocate, Synod of Victoria and Tasmania,
Uniting Church in Australia.

The CHAIR: Before I begin I would like to acknowledge the traditional owners of the land on which we are meeting. I pay my respects to their elders both past and present and the Aboriginal elders of our communities who may be here today.

Welcome, Mark Zirnsak, Senior Social Justice Advocate, Synod of Victoria and Tasmania, Uniting Church in Australia. 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 the same things, including on social media, these comments may not be protected by privilege. All evidence given today is being recorded by Hansard, and it is also being broadcast live on Parliament's website. Please note that footage can only be rebroadcast in accordance with the conditions set by standing order 234. You will be provided with a proof version of the transcript for you 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 proceed with a brief opening statement of 5 to 10 minutes to the Committee, which will be followed by questions from Committee members.

Mr ZIRNSAK: Thank you to the Committee for being able to appear here. From our experience the *Racial and Religious Tolerance Act* has had an impact on restraining the ability of hate groups to basically organise and recruit in the open. That we regard as the main benefit of that, and certainly from our community's point of view we have seen that impact, where groups in the past who would have targeted our congregations for recruitment have generally not. I am still aware of some of our members who have joined organisations which in my view hold anti-Semitic conspiracy theories as part of their view on things, but otherwise largely a lot of activity prior to the entry of this Act has disappeared.

It also to a lesser extent provides protection to individuals from communities against extremists whose views are hard to shift in the community. So we are dealing with a fairly small group of extremists generally out there in the broader community. Most people treat each other fairly decently, so we are trying to deal at the pretty extreme end of behaviour, and obviously that is a spectrum too. There will be people who obviously might have quite prejudicial views whose views you want to shift, but this is not the tool that you would use to do that. You are obviously looking at a range of other tools in that space.

In our view, as you have heard from other witnesses and as I know you have got other submissions, there certainly could be improvement to the legislation to make the complaint process easier. We certainly strongly support increasing the powers of the Victorian Equal Opportunity and Human Rights Commission to be able to mount investigations of its own, compel witnesses, be able to take anonymous complaints and make an objective assessment as to whether incitement to hatred has been breached, so recommendations 9, 12, 13 and 17 of the Victorian Equal Opportunity and Human Rights Commission's submission would be ones that we would strongly support in that.

Certainly the things that then benefit from being able to do that is someone being able to make a complaint and not have to worry that they become the target again. I personally just had experience of that, having appeared before a federal parliamentary inquiry and then becoming the target of a group who posted my testimony online, which received a whole lot of comments, including one person who said that I had a very punchable face and another one who suggested that I should be taken out behind the woolshed. So I am kind of aware of the kind of thing. And in it then being suggested that I go back to the committee and raise concerns about the things that were being posted, I actually felt quite fearful about, 'Will this spark another round of them having yet another go at me in that kind of space?'. So I completely get why, and I am in a pretty privileged position in society to be able to see my rights defended compared to many in our community from various groups. So I think being able to allow people to raise these things even anonymously and then have a regulatory body assess objectively, 'Is there behaviour going on here that is completely unacceptable in our standards, and ones that would trigger the law?'

As to whether the law should then be extended to actual expressions of hatred, we are certainly open to that, but I think our view on that would probably be there is a need to make sure the bar is set at an appropriate level for that. Firstly, you do not want groups using it as a weapon against each other where they have got internal disputes. Secondly, you also want the law respected. You do not want a situation where cases start getting raised where the broader community says, 'Hang on a minute. It doesn't seem reasonable for the State to be intervening in that kind of expression'.

So that is certainly a factor. I would not say that is the only factor, but again our experience with the *Racial and Religious Tolerance Act*—we were advocates for it, we strongly supported it, and we also supported the Islamic Council of Victoria around the case with Catch the Fire Ministries. Our experience in that case was in our view Catch the Fire Ministries and their supporters were able to seek and gain public support in a way that was not accurately representing what they had actually done. A lot of what they had done was not revealed, and they had supporters in the media and they were able to therefore build community support for themselves that we do not feel was warranted. If all the information had been laid out before people, I suspect they would not have had the level of support they did in that particular case. Therefore it is thinking about: do you build sympathy for people you do not want to? That is possibly the case, whereas, for example, in the recent case with white supremacist groups, they are not going to get public sympathy and they are not going to find sections of the mainstream media who are going to present them in a sympathetic way. So I think there is safety in for targeting some groups and not for others.

That said, while we think the legislation has had a good impact on organised groups—obviously we would acknowledge the evidence and the comments by Mike Burgess today—we also reflect that there are still small groups that are a lot more informal or quite tight networks or individuals who will engage in very hateful behaviour, quite harmful behaviour to members of the community but it is not in an organised sort of way. We are not in a position to assess whether in reality those things are growing or not. Also, even if reports of them grow, that could be an indication that maybe people feel more willing to come forward and report it. Maybe they have got more knowledge about it. Maybe it is growing hate. It can be hard to assess some of those things on that basis.

The world of the online—we are particularly focused on that space, and we recognise there are very substantial problems there, particularly because the technology companies and the environment they have created allow for anonymity. You have already heard from other witnesses that anonymity—there is a whole body of cyberpsychology that basically shows that giving people anonymity, creating a sense that they have a cloak of invisibility, encourages them in being able to be disinhibited, so they will engage in behaviours that they would not normally engage with. Much like being intoxicated is often the reflection made on that. As long as that online anonymity exists, it is going to be very hard to do that.

The other thing that the online world has provided is the echo chamber—you can find people who are like-minded. In the past finding a fellow Neo-Nazi extremist in the real world might have been quite hard. Online it is made very easy. Then you create little echo chambers, and you also become socialised into those environments. Psychologists talk about the fact you are now with this group, certain behaviours are the behaviours you have to engage in to be accepted by that group and your desire to be part of that group will escalate your behaviour in ways that you would not otherwise do. So that is quite an important factor.

Today, having listened to the previous evidence, obviously issues of banning hateful symbols have come up. I am happy to explore. I think there are going to be some real challenges about getting that legislation right. Some of the balancing factors in this might be ease of prosecution versus the context and what you are actually trying to achieve. Are we trying to prevent people who might see a public display of a hateful symbol being harmed by it? Are we trying to say people who hold hateful views should not be allowed to publicly express them? Depending on what you are trying to achieve, you might design that quite differently.

Ease of prosecution, you could make it a strict liability offence to display a swastika or a Nazi flag, but then I am going to say, 'Okay, well, what do you then do' and then we start talking about exemptions. The movie poster for *Inglourious Basterds* has a swastika on it, so then you give an artistic exemption, okay. But I can take you down to model shops or games shops selling World War II simulation games that have Nazi symbols on them, so we are now giving exemptions for some of these things. I can take you down to miniature war games groups who might have model armies of World War II Nazi forces that have Nazi flags, okay, we are going to give an exemption for them. What about re-enactors—people who want to dress up? I have checked: there are

people, and fortunately a very small group. I cannot imagine why you would want to don a Nazi uniform, but if I am a re-enactor and I am wearing it for the purpose of some historical interest, do we give an exemption there? If you start giving all those exemptions, do you open up loopholes for people who are expressing hate to make suddenly a claim against the exemption? So drafting this would need some careful consideration. I know there is already a possession offence in WA. Looking at the drafting now, I actually am worried that it would be pretty easy to escape prosecution. I would be interested to see what the prosecution figures there are.

Are you then going to cover other symbols as well? I mean, the Nazi one is easy. Do we go to the Confederate flag? Do we go to the Eureka flag? Because the white supremacist groups use the Eureka flag at times. We have even got communities that have disputes about symbols. I noticed the mayor of Whittlesea displayed a Vergina Sun flag—hang on, is that how it is pronounced? Anyway, it is connected with the Macedonian community, and there is a media report about an assault that resulted out of that display of that flag; community disharmony potentially is alleged to maybe flow on from that. So thinking carefully about what are we actually going to try and stop and how are we going to craft it to make it work? So we are not opposed to it but flagging there will be some quite interesting challenges there.

We certainly in the past have been, and we continue to be, of the view that the legislation should not exempt private conduct. So going back to its purpose, if what you are trying to do is stop hate groups being able to recruit, you do not want to tell a hate group, 'Well, look, as long as you do it in private, as long as your recruitment is between yourselves and potential people who might be sympathetic to you, that's an okay activity. It's only if you put it out there and broadcast it that we are going to stop you'. That has always struck us as a bit of an odd thing to be doing. Give it a look, but that said, catching people doing it privately is probably a little harder. But it might make it easier for law enforcement if you are implanting an undercover agent into a group to look at how they are doing the recruitment and radicalisation. You might actually make their job a little easier from that point of view.

The other thing I would say is obviously the legislation is not the only thing that needs to be done in addressing hatred in our community. And certainly we are very keen, as we mentioned in our submission, to explore what are effective ways that we can give people who get caught up in these hate groups exit paths—how do we actually help them get out of that? Looking at the work that globally the group Life After Hate are doing I think is quite interesting. If you look at one of the founders, Tony McAleer, who was a member of White Aryan Resistance, his exit path was basically he had some kids which changed his life. Then he ran into a Jewish leadership trainer, Dov Baron, and because they actually got along and became friends he was actually confronted with his hatred, and that empathy that was expressed to him by Dov led him to exit the hate group and become an active advocate for trying to overcome hate groups.

I do not know that you can replicate that as a government, but looking at how we actually create pathways and make it easier to get people out of these hate groups I think is quite important. I am happy to take questions.

The CHAIR: Thanks, Mark. Your submission refers to the New South Wales Government inserting a vilification offence into the *Crimes Act*. What is your view on this?

Mr ZIRNSAK: Look, I am happy to see it done in that way and have police be able to do it provided the police have the resources and the capability to follow it through. I think that is important. So you possibly might need to look at 'Can you have a specialised unit within the police or a unit within the police that has partly this as its focus?' to actually make it a priority.

Mr SOUTHWICK: Sorry, can you elaborate on that?

Mr ZIRNSAK: I am just conscious that police have always got far more crime than they can ever deal with. That is the simple reality so they always have to prioritise what their attention is. I guess I would be an advocate where I think in the past you have seen police have specialised units to deal with certain crime types. Often that makes them far more effective because those officers become knowledgeable, they become embedded, they become invested, they own the need to address this crime type. So I think there is a real benefit in doing that. But obviously that would need to be weighed up against how serious are the kinds of things that we are seeing versus the other crimes that police need to deal with? If you allocate resources to this, what are you not allocating resources to? That is always a challenge for law enforcement.

Ms COUZENS: Thank you very much for coming along today and for sharing your personal experience too. We really appreciate that. I am interested in your views on what we need to do better around social media, what is happening there, and people hiding behind that and saying some pretty hateful things, as we know.

Mr ZIRNSAK: Yes. From my mind it is actually that ability to have an anonymous identity. This is where you will find very quickly—any government that moves in this space will find itself meeting strong opposition from a whole range of civil liberty groups and some of the human rights groups as well who trumpet online privacy over other basic human rights. That is one of the challenges in that space. But I actually think we need to be addressing anonymity. Where people are engaging in serious criminal activity we need law enforcement to be able to identify who is that real person. So if I am going to open an online account of any sort, the provider actually needs to know I am who I say I am, and all the harms we see not just in this space—I mean, we have a paedophile who can have 14 fake identities pretending to be teenagers of 14 different personalities in order to groom children for their activities and be able to get away with that because Facebook or any other social media provider is not actually checking when they are registering it is a real person doing it and have their identity. They are the kinds of harms we are seeing. Look, I am open to hearing the argument about privacy, but we do not allow people to go and open bank accounts with fake names or get passports with fake names, so why is it okay to do it? Even the public library does a level of identity check probably greater than the social media company does.

Ms COUZENS: We know vilification is growing. We have heard evidence of that today, obviously, and obviously a driver of that is social media and inciting people to say these things. Is there anything you think that can be done that will help change that?

Mr ZIRNSAK: Fundamentally the reason you get that behaviour, the cyber psychologist would argue, is it is the disinhibition of the fact I believe I am anonymous and I will not get caught. So anything that can be done to actually say, 'Well, you're not going to be anonymous, and if you engage in this behaviour you will be held to account'—even if I create that perception—is going to deter the behaviour. The problem is if I make a complaint and there is no way law enforcement can identify who is behind it, there is not a great sense of general deterrence here. The only other thing you then can do is try and encourage people—online also you have got particularly a very strong, what they call, bystander effect, which is people actually not intervening. Interestingly, the studies tend to show that—let us say you are walking down the street and you see someone being mugged—if you were there by yourself, you are actually far more likely to intervene than if you see it happen and there are 100 people around you, because if there are 100 people around you, you kind of go, 'Oh, one of them might intervene; I don't need to do it', or, 'I might not be the one who needs to phone the police. I'll assume someone else will do it'. Online you get very much the same effect, so people tend to think, 'There's lots and lots of people online. I don't want to be the one who has to comment back at this person who is saying these really terrible, awful things that they shouldn't be saying'. So anything we can do to encourage people to overcome that bystander effect and actually counter—

Ms COUZENS: There are some groups out there now that are challenging that.

Mr ZIRNSAK: Absolutely, exactly, but that is the challenge they face: how you overcome that in the online environment.

Ms COUZENS: You may or may not be able to answer this question, but do you consider there is any difference between regional and rural communities in what is happening in terms of vilification?

Mr ZIRNSAK: To be honest, I do not have a great feel for it. Just quickly casting my mind—I can think of everything from prejudicial to hateful things happening both in the metropolitan region and in the rural region, and it is in such small numbers that my anecdotes would not be enough to say, 'Well, on balance it is a bigger problem in one region or another'.

Ms COUZENS: Okay. What is your view about extending protections under the Act to include groups not currently protected?

Mr ZIRNSAK: Look, we are supportive of that. I think provided it makes sense to do so and you do not create—again it would be groups. To be honest, probably there needs to be some thinking about what are the kinds of groups that in the broader community people would say, 'Yes, those groups are deserving of protection'. That community acceptability—again I am going to stress it should not be the only factor. It should

not be, 'Well, a group doesn't get protection because the rest of the community doesn't support them', but I think there is some level that takes in there—I did notice if I looked at the groups, for example, that the Victorian Equal Opportunity and Human Rights Commission suggested we would support all of them. The only one I have a bit of a question about is personal association, as to what that actually means and that coverage. But our general view is you should not be inciting hatred against anybody, full stop, anyway. But then the question becomes at what point in that behaviour should the State intervene to restrain you from that behaviour. I think that is a bit of a threshold test. While generally we would say do not do it at all, because ultimately, like, go back to the couple who were flying the Nazi flag. If you now say, 'Well, we're going to make it illegal for you to do that', presumably initially you might say, 'Well, that's a fairly minor offence'. But if they are belligerent and they say, 'Well, I'm not going to remove it', and the police come and take a flag away and the next day they have gone and bought another one and popped it up again, eventually you are going to send them to prison. So I have got to think through what behaviour is so bad that I actually am happy to see someone who is completely belligerent and locked in their ideology being sent to jail as the only way of stopping them from their behaviour.

Mr SOUTHWICK: You mentioned in your initial presentation that people were going to a church and recruiting.

Mr ZIRNSAK: Yes.

Mr SOUTHWICK: Could you elaborate on that?

Mr ZIRNSAK: Look, we have certainly seen groups who we would be concerned about who would target our congregations for recruitment. I will be blunt: we were concerned that Catch the Fire Ministries were trying to recruit in some of our congregations. They were handing out leaflets that basically said, 'Get a map of your local area and then identify Satan's strongholds', which included mosques, Buddhist temples, bottle shops and brothels, 'and then come back to your church and collectively pray against these Satan's strongholds'. Now, that was an activity we found deeply disturbing and concerning for us. We certainly have not seen them engaging in that sort of activity.

There are some external groups, overseas groups, that have come into our congregations and have pushed lines that we would not be comfortable with, particularly, you know, suggesting that persecution of Christians overseas is largely driven by all Muslims—in the way they express it—rather than acknowledging the whole complexity of any religious group and the fact you might have extremists; you also might have regimes that misuse any particular religious belief in order to justify human rights abuses. So they are the kinds of things where I would indicate we have seen sort of recruitment activities going on within our congregations.

Mr SOUTHWICK: And again, as I have asked a few times—I know you have been present this morning—how important do you think education is in terms of embedding that in the curriculum in some way to ensure that we present a broader element of racial, religious and other targeted activities as we have been talking about today?

Mr ZIRNSAK: I think it is important. I think building up that knowledge and respect for people's different beliefs, particularly religious beliefs and also the right to hold no religious belief. You know, encouraging religious people to be tolerant of people who do not hold a religious belief I think is equally important too. So I think that is important in our society to build a harmonious society. So I think education—our state system and the degree to which the State also funds private education systems—should require a standard that sort of promotes a harmonious society and encourages respect for people. I think that is the level at which it is done.

The only question mark I have is the effectiveness of that of addressing extremist or hateful ideology. Does it really work—the degree to which it acts—as a sort of vaccine against becoming radicalised or going into a hate group? And what are the other factors? What are the kind of people who enter those groups? Why do they enter those groups? What are the causes? And then I think it is possible—I would argue, I do not just think it is possible—there probably is a need for things that are more targeted as well, that are actually targeting the people who are likely to be far more vulnerable to being drawn into a hate group and trying to identify how we actually target those groups specifically, because I think there are probably some typologies around the kind of people who would get drawn in for various reasons.

Mr TAK: Thank you, Mark, for your presentation. You, in your submission, recommend that anyone should be able to make a complaint as part of the deterrence, rather than the person who is the target. Can you elaborate?

Mr ZIRNSAK: Yes, sure. So, again, for example, if we became aware of a group engaging in hate behaviour, we should be able to report that and have the regulatory authority look into it and assess, 'Is there an objective activity of incitement to hatred taking place here?', without needing a complainant. The test from our point of view should not be that somebody who has been the target has to go and report the activity; it should be the ability of the regulator to make the assessment: has there been an incitement to hatred in this space? And that is for the reasons: one, it would increase detection; you would get increased reporting; and you would get people who are willing to report because they do not have to fear that they are likely to be subject to ongoing targeting. So you get all those benefits of increased detection and increased intelligence being reported to the regulatory authority, rather than having to rely on very brave individuals coming forward to make a complaint who have been the target of the incitement.

The CHAIR: Thank you, Mark, very much for taking the time to present to us and also, of course, sharing your personal experiences. The next steps will be, once the public hearing stage is concluded, that the Committee will deliberate on all the submissions and hopefully hand a report with some strong recommendations to Government on this very important matter. So thank you again for being here today.

Mr ZIRNSAK: Thank you.

Witness withdrew.