T R A N S C R I P T

LEGISLATIVE ASSEMBLY LEGAL AND SOCIAL ISSUES COMMITTEE

Inquiry into Anti-Vilification Protections

Melbourne—Wednesday, 11 March 2020

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Mr James Newbury—Deputy Chair
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WITNESSES

Professor Beth Gaze, Law School, University of Melbourne, Australian Discrimination Law Experts Group; and

Mr Liam Elphick, Adjunct Research Fellow, University of Western Australia Law School, Australian Discrimination Law Experts Group.

The CHAIR: Good afternoon. 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, those comments may not be protected by this privilege. All evidence given today is being recorded by Hansard and is also broadcast live on the Parliament's website. Please note that footage can only be rebroadcast in accordance with the conditions set out in standing order 234. You will be provided with a proof version of the transcript for you to check, as soon as possible. Verified transcripts, PowerPoint presentations and any handouts will be placed on the Committee's website as soon as possible. I now invite Liam Elphick, Adjunct Research Fellow, University of Western Australia Law School, and of course Professor Beth Gaze, Law School, University of Melbourne, to make a 10-minute statement, which will be followed by questions from the Committee. Thank you so much.

Mr ELPHICK: Thank you.

Prof. GAZE: Thanks very much. The submission that we put in was put together by the Australian Discrimination Law Experts Group, which is, despite its claim to expertise, actually a group of academics in Australian law schools who all teach and research in the area of anti-discrimination law. So we have sort of a substantial business of putting in submissions, because there happens to be a lot of law reform in this area at the moment. The people who had input into this particular submission are listed on the front page of it. And there are some people who have sort of quite extensive backgrounds in this area. For example, Robin Banks was previously the equal opportunity commissioner in Tasmania, and Simon Rice and Belinda Smith obviously have significant reputations. Margaret Thornton as well is very eminent in this area and wrote one of the very early texts. The submission was primarily authored by myself and Liam. What we have tried to do for this presentation is to just pull out what we regard as the most important points in it, and of course we are happy to answer any questions.

One of the things that we have done just at the beginning of the submission is to try and mount the argument that it is justified to actually restrict this sort of harmful speech, and I mentioned that that restriction is supported in international law. And in fact it is supported by articles in both the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights that say that any incitement to discrimination should be prohibited by law. So in fact this is—I know the Victorian Government is not a signatory to international conventions—in accordance with the commitments that the Australian Government has taken on. And that is just to distinguish us from an American context, where there are quite absolutist approaches under the First Amendment, where there must be no limits on freedom of expression. So in a way I would say Australia and other jurisdictions, like Canada and the UK, have taken a different path in relation to freedom of expression and what we regard as hate speech.

And one of the other justifications for that, of course, is that they are not just speech. These are taken to be acts, actions. And particularly that is in the legislative drafting; it is clear that they are talking about acts which happen to be speech. And those actions have consequences. So it is not just sort of, 'Sticks and stones might break my bones but words will never hurt me', as we are aware. That is in a way our introduction to the justification for having laws like this, and then it gets to the question of what is the most effective way of actually having these laws drafted? There are a couple of things that have occurred since the previous version in 2001, the big one of course being the rise of social media. The fact is that we have such toxic debate on social media and such limited opportunities to actually deal with those expressions, so I think for this Inquiry that is a really important thing. If that was the only thing you dealt with, that would be well worthwhile, but in a way also you would be path finding in this area in Australia because none of the other states or the Commonwealth have yet done this type of thing as well.

The other question is of course the fact that there has been relatively limited litigation under either the civil or the criminal provisions of the *Racial and Religious Tolerance Act*. In relation to the criminal provisions I suspect that is because perhaps responsibility for enforcing those was not so clear. As somebody who has taught in this area for many years it has never been clear to me who was actually monitoring and bringing prosecutions under this law. In relation to the civil matters, we have mentioned in the submission that there are some real problems with who is actually going to bring a complaint in these types of matters and what the incentives are for them to actually do that. Even if they do and they then succeed, what sort of remedies might they get? So I think those are problematic because the speech actually targets a whole group, not necessarily a particular individual.

The other thing we just wanted to say is we actually thought in the Fiona Patten Bill that was proposed there were a couple of really excellent things, so that is a good starting point. We strongly support the broadening of the attributes that she was proposing to expand it to. There are really two groups there. There are the attributes that she identified in that Bill to expand to—sex, gender identity, sexual orientation and so on. We strongly support expansion to those. Then there is the other group of attributes: sort of the religious beliefs, physical features and so on, and the question is to what extent should it be broadened in application to those attributes? The second one is the provisions that she included for provision of identity of people who are posting hate speech, if you like, on social media. We thought those were both really useful innovations from her bill. Maybe I will hand over to Liam at the moment to just add a few comments on those.

Mr ELPHICK: I will just add a few comments about the aspects of Fiona Patten's Bill that we do support and then just pivot to some things we would like to see changed or at least considered by the Committee moving forward. As Beth mentioned, the extension of the attributes is something that we support—extension to gender, disability, sexual orientation and gender identity. This brings it relatively into line with Tasmanian laws, ACT laws and New South Wales laws. It is worth noting that that extension of and by itself is not necessarily revolutionary, but in a sense it would bring Victoria into line with some other states that have already amended vilification protections in recent years.

As to the provisions about finding out the identity of a speaker, particularly through social media, the proposed sections 22A to 22E of Fiona Patten's Bill are also something we support. There may need to be some tinkering around that and some understanding of how that would play out in practice, but these provisions would be relatively unique in the discrimination or vilification law systems in Australia and are something that we think is well overdue in regard to social media.

Finally, subject to something that Beth is going to talk about soon, we also support the changing of the standard of inciting various standards to 'likely to' incite various standards, adding a more objective test to that provision, but we also think that can be improved further.

Pivoting then to some aspects of the Bill we would like to see changed or considered in greater depth, the first point to note is that there are obviously other attributes under the *Equal Opportunity Act* in Victoria that are not currently protected under the *Racial and Religious Tolerance Act* or indeed under Fiona Patten's proposed bill. These are age, breastfeeding, employment activity, industrial activity, lawful sexual activity, marital status, status as a parent or carer, physical features, political belief or activity, pregnancy and expunged homosexual conviction. We believe there is merit for most if not all of these attributes as well to be covered by any extension to the anti-vilification laws—noting for instance that in Tasmania 14 of the 22 protected discrimination law attributes are also protected in vilification law and for instance that in New South Wales they extend that protection to transgender groups, homosexual groups and also on the basis of HIV/AIDS discrimination as well.

I will hand back to Beth for some of the other things we would like to see changed in the bill.

Prof. GAZE: One of the things that we did raise in the submission was the actual formula that is used to define the prohibited conduct. So the Victorian Bill, like a lot of the other state and territory bills, uses the formulation of incitement to serious harassment and so on. That is actually looking to the audience; to prove it you have to actually prove that somehow the audience for the speech is being affected in that way, and this is quite a difficult thing to prove. What evidence would one bring forward to prove that? So it is perhaps one of

the reasons why there has been so little enforcement of this, because even if someone is concerned and they go off to a legal service or a lawyer to get advice, the answer will be, 'Well, how would you prove that standard anyway?'.

In contrast, under section 18C of the federal *Racial Discrimination Act* the test is the impact on the group who have been vilified, and that is something about which they can at least give evidence. That can be reality tested, and it is a more clear standard so there can be a decision based on the evidence. I know this is a much bigger shake up of the Bill, but we thought it was appropriate at this stage to raise it with the Committee and to consider whether if we are concerned about lack of enforcement and perhaps the pervasive nature of this speech in Victoria it might be worth considering moving in that direction—if that is something the Committee is interested in considering.

Then there is the separate question of which of the words that section 18C currently uses: 'offend', 'harass', 'intimidate' or 'humiliate'. So it is a question of how does one pull together these different sets of words, and I know that one of the comments that Fiona Patten has made about her Bill is that she thought 'offend' and 'insult' really were not vilification terms—they were really harassment terms. So in the submission, what we have done is just draw out the fact that they occur in different circumstances. So vilification applies to any public speech, but the prohibition on harassment (a) only applies to sexual harassment at the moment but (b) only applies in the defined relationships—so only in employment, education, provision of goods and services and accommodation and so on. So taking those words out of a vilification prohibition would actually sort of raise, if you like, the threshold for the vilification provision. But I think it would need to be balanced by actually expanding the definition of harassment beyond sexual harassment, perhaps, to include the other attributes.

The reason for that is harmful speech—say, racist speech at work, for example—is often litigated as racial discrimination. And it may be that one could make that out—there are quite a lot of federal cases in which racist speech at work is regarded as racial discrimination—but it helps to have a separate definition of racial harassment, for example, because it can pick up the fact that only a single incident would be sufficient. And there are other advantages from the formulation of it as harassment. Again, legislation like, say, Tasmania's prohibits harassment on a much wider range of grounds, so I think in a way historically our laws just have not picked up that possibility of broadening the range of attributes that are protected by both harassment and vilification provisions.

The other aspect that we did actually pick up—there are two other things just to mention. That is the problem of the enforcement issues. I think I pointed out in the submission that—certainly this is mainly at the federal level, I guess, because there is so little case law in the Victorian Act—the communities that have been successful in bringing claims of vilification under section 18C of the RDA have been the Jewish community, which has strong central organisations which can pursue anti-Semitic speech and have been successful in doing that, and there have been a number of complaints about vilification of Indigenous people and groups. Some of those have been successful, but the Indigenous community does not have strong central community organisations. That means the burden is borne by individuals. So for example, in one case Hannah McGlade, who is a lawyer in Western Australia, brought a case against Senator Lightfoot for a very derogatory comment about Indigenous people, and I think her complaint went up to the Federal Court twice. She had to pursue that through, and in the end all she got was an order for costs. So all of that work that went into it and the court just said, 'Look, a sufficient penalty is that he should pay the costs'. But if you are advising somebody else who is looking at that, it is hard to say, 'It's worth your while to actually do this'. So I think either we think about trying to resource some organisations to bring complaints and for them to have to select the complaints that need to be brought, or we need to try and think of some other way. If we want to see some enforcement of this law so that it gets into the press and people learn what it actually restricts, then we need to think of some other way of doing that.

The final thing that I think we mentioned was a positive duty on online platforms to actually publish some information about what they are doing to ensure that they are not breaching the laws. That would be a big step forward.

Mr TAK: Thank you, Professor, and thank you, Liam. Interesting, the social media conduct that you have already raised two or three times—really interesting. So could you, in terms of identification, suggest how online conduct should be addressed? I mean, I have heard a few of the points that you have already raised.

Prof. GAZE: Yes. I think, for starters, the only thing that is really different about online conduct from other speech is the fact that it is anonymous, and so I think that gives people a lot of freedom. But if there are actually provisions to identify the speaker, then I think that might act as a little bit of a constraint on the sort of material that actually does get circulated online. But perhaps I will hand over to Liam to comment on that.

Mr ELPHICK: I think the main issue is certainly identification, and then enforcement as a result. So the steps taken, as I said, in new sections 22A to 22E in Fiona Patten's Bill certainly assist with that, and the focus should really be on unmasking those who have some aspect of confidentiality. The other issue that is worth thinking about, though, is an issue raised by a recent High Court case in *Burns v. Corbett*, which effectively found that state tribunals, which includes the Victorian Civil and Administrative Tribunal, have territorial limits of jurisdiction and they cannot hear questions of federal law. For instance, in Victoria we have to go through the Victorian Supreme Court or go through the Federal Court in terms of their different divisions. This might be a concern for social media more than other types of vilification where it originates in other states. So a person online in New South Wales vilifies a person in Victoria and questions arise as to whether, for instance, if that case was to go to VCAT, they would actually be able to hear that question as to which laws should apply. I do not think we have a clear answer to this problem yet. *Burns v. Corbett* is a fairly recent High Court case which is causing a lot of problems in discrimination law in particular, because discrimination and vilification claims tend to go to tribunal level first before they go to courts, and this High Court decision was about tribunals. So there is not a clear solution to this, but it is something we think the Committee should be aware of in proceeding forward on that basis, especially in regard to social media vilification.

Ms SETTLE: I was interested in your submission that you do not support moving the RRTA into the *Equal Opportunity Act*. We have had quite a few submissions saying that we should, and I would just really like to understand—

Prof. GAZE: Yes, thank you. I think in a way it is legislatively neat to have all of the provisions that relate to those protected attributes in one piece of legislation, and I think that comment was really just to draw attention to the fact that when we talk about vilification we tend to get into disputes about freedom of expression. So the comment in this is really to say we should not allow those concerns about freedom of expression to spill over into our prohibitions on discrimination. If we do move them into the main Act, then they should be in a separate division and it should have very clearly separate purposes and so on so that we do not then have arguments about freedom. For example, I mentioned that racially discriminatory speech at work is often targeted as racial discrimination of speech in relation to the discrimination prohibitions rather than as vilification, and it would be easy for a free speech objective, or a balancing free speech objective, to spill over into freedom of expression in the workplace. So it is really just to say we do not want to wind down the objects of the discrimination provisions.

Ms SETTLE: Thank you.

The CHAIR: I have two questions. The process usually is a very long and costly exercise for the average citizen in Victoria. What would be something that would be satisfactory in the sense of the financial cost, the burden of that, and the time that it takes for a complaint to actually go through a very long process?

Mr ELPHICK: I can start with that. I think one issue we have is that discrimination law is largely a claims-based system that addresses discrimination in the same way that vilification laws address vilification, after it has happened. And they are not overly effective at preventing it before it occurs. So on the one hand we have ways in which we can improve individual enforcement for individual claimants, which I might allow Beth to speak about, but on the other hand we should also think about how we can prevent it before it occurs in the first place. So our proposed positive duty on online platforms to take all reasonable steps to ensure that communications comply with anti-vilification laws would be one major step in ensuring that it is prevented. And we have seen recent defamation cases effectively impose duties on social media companies to moderate the comments on their posts, particularly news organisations. And we think that a duty on online platforms in

that regard could take somewhat of a similar form and cut it off before it occurs. But I will hand over to Beth to talk more about the actual individual enforcement once it does happen.

Prof. GAZE: Yes. And as to the individual enforcement, it has been a topic of debate amongst discrimination lawyers and academics for a very long time that the enforcement under these laws is quite slow and quite burdensome. Because there are conciliation processes in the commission, and then there are conciliation processes in VCAT. And eventually one might get to a hearing if one has got that sort of stamina. And I think one of the solutions, without sort of completely reforming that whole process, is really to think about trying to facilitate the bringing of actions by organisations. Allowing even, say, the human rights commission—well, the human rights commission is not necessarily the ideal organisation, but trying to find an organisation that actually has perhaps some responsibility for bringing an action in severe matters. Because there are some that are really quite serious and where one thinks, 'That actually should just be strategically identified and acted against to just try and take some of the burden off individuals'.

Mr ELPHICK: And one organisation that could do that is obviously Victoria Legal Aid, if they were given specific funding for strategic litigation in this area. And the lack of litigation in Australia is a problem, not just in vilification protections but in discrimination protections too. As Beth said, if you are a lawyer representing someone who wants to bring a vilification complaint or you are just a vilification complainant who is unrepresented, then you are going to look at the existence of the cases we have—the very few cases we have had in the last 19 years—and say: is this really worth your time? If we have more of those high-profile cases, we can start to see more deterrence but also start to see more complainants empowered to bring their own cases as well.

The CHAIR: And I suppose, when you talk about empowering individuals, again I go to the cost factor, because it is a very costly exercise and a time burden as well for someone to commit to. So you have suggested Legal Aid having some funding to be able to represent individuals. Outside of that I suppose I would ask, then: you spoke about online, for some of the companies to prevent it, but then when an issue arises online, the process to actually go through might not be covered under, let us say, Legal Aid. So I suppose I am getting to: what you would suggest to provide assistance? You know, it continues to grow in this space.

Prof. GAZE: What would be the ideal situation? It would be to have some method of actually getting a relatively quick adjudication and a right of reply on the social media. That would be really probably your ideal position, wouldn't it? Because nobody really wants a statement on social media to actually lead to months of proceedings in court, and decisions and everybody spending hours of time. But part of the problem is often the groups that are the most vilified are the ones that do not actually have a platform. There are plenty of people who do have platforms, but often those are the most powerless groups. They do not have an ability to reply, and so actually offering them that ability to reply within a reasonable time on the same site or something like that would be a way of correcting the debate in a way, which is probably what people really want rather than to get some sort of remedy months or a year down the track.

The CHAIR: That is right.

Mr ELPHICK: The problem with the delay is obviously not at all something found just in discrimination and vilification laws. It is found across the legal sphere. So in some ways some of the suggestions we have made in this submission through, for instance, a special presumption that claimants, if they are successful, have their costs reimbursed, assist in these particular cases. There are other delays that are going to be the case no matter what claim is brought at VCAT or taken to other courts, because the court and tribunal systems are clogged up and that is the situation we are in right now. So in some ways we can do things particularly in this system to improve it, but a lot of these problems are the same in a lot of other different systems as well, and it would take more whole-scale changes across the legal sphere to remove some of those costs and reduce some of those delays as well.

Mr NEWBURY: Thank you both. I think you have spent a bit of time on one of the most difficult parts of this Inquiry, the online, because of the jurisdictional issues which you mentioned earlier. I was really interested in the positive duty that you have proposed. I think one of the difficulties with the positive duty is: how does Twitter, for example, have someone moderate? I mean, the speed with which people say crazy things—it is,

frankly, almost impossible. So I think your suggestion perhaps is a workaround of both the jurisdictional issues and the practical issues of the right of reply. Without putting words in your mouth, is that how you see that proposal?

Prof. GAZE: Yes, I guess that is right. Although I do not know that it will resolve the jurisdictional issues, because if the speech was from a posting in Sydney, for example, then I still think there would be the same issues with requiring a right of reply, because the Victorian Parliament would not have any ability to compel someone in Sydney necessarily to accept a posting in reply.

Mr NEWBURY: But the company could perhaps as a policy accept—

Prof. GAZE: That is right. And so I think that positive duty—actually asking those companies that are online publishers to provide policies and show what they are doing to address these various issues—would be a step forward. It actually has a parallel under current anti-discrimination laws with the obligations on employers to show that they have taken reasonable steps to prevent their employees from being sexually harassed in order to avoid vicarious liability, so there is that sort of formulation in a way. We are suggesting that it should be a more explicit positive duty, not just to avoid liability. But that mechanism is already almost used.

Mr NEWBURY: And when you are talking about publication of what they are doing, what kind of elements? Were you thinking of policies, instances of complaint and resolution—those types of—

Prof. GAZE: Yes, they could have their policies. They could have complaints procedures and how they have been working—reporting on the number of complaints and the time they have taken to resolve the complaints and the sort of outcomes that they have had. So there are all those sorts of things that they could have. While it is a big job to moderate, they are actually able to set up, you know, automatic artificial intelligence to identify a whole lot of things on those platforms. I do myself think that it is partly a matter of what incentive they have to actually set up a proper artificial intelligence to check all postings, because there are some words that they will be able to identify quite clearly as problematic or potentially problematic. So I do not think it is impossible to have a computer do this. I do not think it has to be all done by humans.

Mr ELPHICK: A positive duty can be difficult to enforce, but we have still seen various instances of them being implemented and having an effect, and I am sure we will see the same with the *Gender Equality Act* in Victoria as well. But in terms of what a positive duty is meant to do in the first instance, I think what we are trying to ensure is that with employers' online platforms: step back and think about what they can do, what reasonable steps they can take, to prevent vilification. Just to give one example, which is not under a positive duty but is in regard to a social example: the AFLW, the women's competition, has been subject to a lot of abuse. The players have been subject to a lot of online abuse. I note that Fiona Patten actually mentioned this in one of her speeches on her bill. Some organisations and media organisations have started to take steps to redress that in some way. I think the *Herald Sun* has actually completely stopped comments on its articles on the AFLW. The AFLW itself has started to respond directly to vilification online and sort of try and defuse the situation directly and make sure it does not snowball out of control. So there are always going to be different measures implemented by different platforms and organisations, and there is not a one-size-fits-all approach, but what a positive duty would ensure is that they have at least turned their mind to that in terms of what they can do in their particular circumstances to prevent vilification.

Mr NEWBURY: That is a really good point. Tayla Harris, I know, last week proposed the AFLW employing someone to do that exact work. She is a fantastic person.

Mr ELPHICK: Without doubt.

Mr SOUTHWICK: Thanks again for your submission. Just again following through on the positive duty stuff, in terms of remedies—apart from, obviously, having the educative policies in place for a positive duty—do you think there should be remedies, and how far would you go? You know, if you are a publisher of, say, a newspaper or what have you, you have got systems and everything in place, but how does, say, a small business that may be promoting their stuff on a social media platform and may not necessarily have the resources to watch every comment and take down something that may be offensive do that?

Prof. GAZE: I think that is a difficult one. In terms of remedies, I do think that damages is not really a good remedy in this area, because it is not as if anybody has suffered a financial loss. What they have suffered is much more intangible than that. I do think people should be compensated for their costs if they bring a claim and they are successful, so I think that is one thing that could be addressed under our legislation. It would be possible in a positive duty to adjust for the size of the business, so I think that that could be part of it, because a lot of the duties that are already in Australia's legislation—for example, the *Workplace Gender Equality Act*—only apply to larger businesses. So it would be possible to actually consider that in developing positive duty.

Mr ELPHICK: And just to add to that point, I think when we are looking at positive duties we are looking at something that is meant to be preventing harm from occurring in the first place, rather than responding to individual instances of harm. So I would agree certainly with Beth that individual compensatory awards would be inappropriate for a positive duty. There is, though, a need for some level of enforcement, some level of regulation, that ensures that online platforms and others would actually take the positive duty seriously and not just say, 'That's an unenforceable duty that we're not interested in'. So you could have different layers of regulation in that regard. You could have enforceable undertakings. You could have sanctions; so that might be civil penalties on those organisations that go to the state rather than go to the individual complainants. And of course you could keep scaling up that level of regulation to the level that you desire. But I think it is important to have something in place that would actually ensure that the positive duty is enforceable at the very least.

Mr SOUTHWICK: In terms of, again, remedies, I think the other great thing about your submission is clarifying the difference between the vilification and harassment and pointing that out and where they apply. In terms of remedies there—and you mentioned the limitations in VCAT in terms of remedies—do you think there is also something that distinguishes between the remedy situation in a vilification situation as opposed to that of harassment?

Prof. GAZE: I think there is, because the harassment and discrimination claims are brought within those specific relationships—you know, work, education et cetera—and they are brought by a particular individual because they have to show they were harmed. You can have a group complaint, but essentially it has to be about the same type of actions. So you can identify the harm to the particular individual, who might have lost their job or, you know, been otherwise penalised at work or in education, so there is something clear you can compensate for, whereas I think with vilification some examples do harm specific groups. I am thinking of the Andrew Bolt series of articles, for example, that harmed a specific identified group of people, but a lot of the comments actually are just generally directed at the particular group, and so the harm is intangible. It reduces their sense of security and safety and equality in the community and their ability to participate on social media, and I do think it is very hard to compensate for something intangible like that. But I think one way is that if there are proceedings then the costs are paid for them, and also perhaps a right of reply actually gives them what they want, because often people, if they are going to bring this sort of litigation, are saying, (a) 'I don't want it to happen to anybody else' and (b) 'I want to protect the group of people who've been vilified'. So in a way we need to think about a remedy that is more than just money and that could actually be along those lines.

Mr ELPHICK: And then, just in terms of the remedy that does relate to money, just to add to that point, a problem we have is that the awards usually given in discrimination, harassment and vilification complaints are compensatory damages for loss the claimant has suffered, but another form of damages, aggravated damages, is for insult to the person's dignity or humiliation or some lowering of their feelings and personhood as a result. We have not seen aggravated damages used as much in discrimination, harassment or especially vilification. So a way of strengthening that in terms of actually getting greater compensatory awards will be to focus more on aggravated damages as opposed to just compensatory damages, because as Beth says, it is quite difficult to prove that in some situations in vilification compared to other instances in discrimination and harassment.

Prof. GAZE: Actually, just to add to that, and not wanting to complexify the damages situation too much, if what we are really interested in is deterrence rather than solely compensation, then there is another category of damages known as punitive damages. The idea of punitive damages is that they should specifically deter that particular respondent and they should have a general deterrent effect so all of the other people who might feel like they want to do the same thing stop and think about it. But discrimination law generally has got no scope at all for anything other than compensatory damages. Perhaps this sort of area of vilification is actually one area where thought might be given to allowing for those sorts of punitive damages in an appropriate case—just

allowing the decision-maker to consider that—because otherwise there is no real deterrent effect. All the respondent has to do is compensate and perhaps pay costs, but there is not the capacity to deter someone else from doing it.

The CHAIR: Just on a final question, your submission states that there is not enough information about vilification complaints, whether they are resolved or dealt with by the Victorian Equal Opportunity and Human Rights Commission. What would you suggest needs to be improved in this area? This includes data collection in general as well.

Prof. GAZE: Look, I think this is a general point, because the Victorian commission obviously has funding limits and there are limits to what it can do. One possibility, and the Committee might be interested in this too, is to ask them to do a little bit more research on the complaints that they have had over the last 19 years to give you a clearer idea of, 'Do they get a lot of complaints that actually are not on race and religion?'—do they get inquiries, rather, because they would have an inquiry about vilification. If it was outside jurisdiction—in other words, if it was not on those attributes—they would not necessarily accept it as a complaint. So it might be possible to get some indication from the commission. As academics we are aware that these agencies have got an awful lot of information that would be really nice to access and to analyse. In the academic community everybody is extremely frustrated because we usually cannot get access to it. We are told: privacy, costs of accessing it and so on. We know the agencies do not necessarily have the staffing power to do that analysis, and we would be delighted to do it.

Mr ELPHICK: Free.

Prof. GAZE: That is right. But we cannot get access to it.

Mr ELPHICK: Just to add to that point, two members of our group, Associate Professor Alysia Blackham and Dr Dominique Allen, have both done a lot of research on this particular issue in recent years across the discrimination law sphere around Australia, particularly around data transparency, confidentiality and settlement, how each of those are dealt with in the discrimination and vilification laws and how that leads to the problems we have mentioned in our submission. I certainly recommend reviewing their research for further detail on that, which we are happy to send you as well if you need copies of that.

The CHAIR: Thank you. That would be lovely. That is very good. Thank you very much for taking the time to present to us. To Liam and Beth, the next steps will be: we will continue on with our public hearings until the completion. We will then deliberate, and of course there will be some strong recommendations to Government on our final report. Hopefully will be able to cover some of the points that you have raised today. Thank you again for being here.

Prof. GAZE: Thanks very much.

Mr ELPHICK: Thank you very much.

Witnesses withdrew.