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

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 Gemma Cafarella, Chair, and

Mr Jamie Gardiner, Member, Government Regulation and Equality Committee, Liberty Victoria; and

Mr Sam Elkin, Coordinator, LGBTIQ Legal Service, St Kilda Legal Service.

The CHAIR: Thank you very much for being here today. Today I 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 community who may be here today. All mobile phones should be turned to silent at this point. I welcome Gemma Cafarella, the Chair of the Government Regulation and Equality Committee, Liberty Victoria, and of course Sam Elkin, the Coordinator of the St Kilda Legal Service LGBTIQ Legal Service, and Jamie Gardiner, OAM, a member of the Government Regulation and Equality Committee of Liberty Victoria. 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 this privilege. All evidence given today is to be recorded by Hansard and is also being broadcast live on 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 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 5 to 10 minutes of an opening statement, which the Committee will follow up by questions. Thank you so much, Gemma.

Ms CAFARELLA: Thank you. I wanted to start by firstly thanking the Committee for inviting us to give evidence today. We are really pleased to be able to come and speak on this. As you may know, Liberty Victoria is one of Australia's oldest civil liberty organisations. We have a history dating back to 1936, when we were formed. We see our role as seeking to promote both compliance with and the furthering of human rights in Victoria, and we speak out when we see that those freedoms are being threatened or where there are opportunities to further entrench freedoms, so effectively that is why we are here today.

We have of course partnered with the LGBTIQ Legal Service, so I will throw over to Sam after I have made a few opening comments, to speak about his role. But in short, we are really pleased to partner with them because of course we have the kind of human rights analysis and the human rights knowledge, but being able to work with organisations that actually have day-to-day contact with affected communities allows us to put some very real examples in place to show the impact of why these human rights issues matter.

I wanted to start by talking about why it is that we are interested in protection from vilification and of course to talk about a kind of general overview of the legislative scheme. Basically the reason that we are interested in these anti-vilification reforms is that these laws in conjunction with the *Equal Opportunity Act* and also the *Crimes Act* are pieces of legislation that are key mechanisms that allow us in Victoria to actually implement human rights that people have at the kind of international scale or as reflected in our *Victorian Charter Of Human Rights and Responsibilities*. So those are rights like freedom from and freedom from cruel and inhuman and degrading treatment and unlawful attacks on your reputation but also things like protection of family, particularly when it comes to issues facing LGBTIQ Victorians, and also the protection of children, who we know are particularly vulnerable to the harm that comes from vilification.

In our submission we were of course invited to make a submission about how the RRTA might be amended, and on that basis we provided some suggestions. Having had the opportunity to do some further reading—in particular reading the submission of the Victorian Equal Opportunity and Human Rights Commission—we do want to foreshadow that amending the RRTA is one way that Victoria could go about strengthening these protections, but we do not necessarily consider that that is actually the best mechanism for achieving that. Having had the benefit of seeing VEOHRC's submission, we think there are really two ways that it could be done. One is amend the RRTA, but as my colleague Jamie pointed out that might be seen as akin to putting—Jamie, what were you saying?

Mr GARDINER: A V8 engine into a Hyundai Getz.

Ms CAFARELLA: The reason for that is that we see that there are numerous flaws in that legislation, and also having the protections in different pieces of legislation of course creates some complexity, difficulty, and I think has an impact on the kind of societal norms that we are hoping to achieve when they are all in different places—and people find it difficult to actually understand. So we absolutely stand by the policy that we have set out in our submission, and in particular the need for change. But we are foreshadowing that we think it might actually be better to do that by changing the *Equal Opportunity Act* to put those key protections in there but also to the extent that the criminal offences associated with vilification are retained that it would be preferable to put them in the *Crimes Act*, where the rest of the criminal legislation and the crimes that exist in Victoria are set out between the *Crimes Act* and *Summary Offences Act*.

In terms of what it is that is our position, we effectively want to see three main changes to the way anti-vilification laws work in Victoria. First, we want to see a focus on harm. It is our position that Parliament should be interested primarily in protecting people from harm and that that should be the focus of any amendments to the law. At the moment the definition of vilification is somewhat divorced from what we think most people think of when they hear the word 'vilification' and also from the pretty straightforward dictionary meaning of vilification. In particular, it is a very high bar requiring a person to incite hatred, serious contempt, revulsion or severe ridicule about the person, and it really focuses on some quite hypothetical third party. Is the act or words, or whatever it is, something that actually kind of incited something in others? Our position is that when focusing on harm the question should be about what the impact was—not on that other group of people but in terms of focusing on the prevention of harm. That is why we have put forward the proposed definition for vilification that we have, which is 'conduct that a reasonable person would consider hateful, seriously contemptuous, reviling or seriously ridiculing'. So it is a high bar, but in our view it actually more appropriately catches the kind of conduct that we want to stop in order to prevent harm.

The second thing, very briefly, that we want to see is obviously protection for a broader variety of groups of people. International human rights law and the *Victorian Charter Of Human Rights and Responsibilities* provides those key protections that I outlined at the start, not just for people in terms of their practice of religion or their race but it is intended that they have a broader coverage to include things like protection on the basis of LGBTIQ features like gender and sexuality—but also to provide that greater coverage. Sam will talk a little bit shortly about the impact on LGBTIQ people in particular.

Thirdly it is our position that we would support the broadening of investigative powers of the Victorian Equal Opportunity and Human Rights Commission. At present the laws exist to kind of provide this protection for human rights and really aim to create a societal norm or a systemic behaviour that we want to see, but at the moment we rely on the people who are affected by this quite damaging treatment to actually be the enforcers of that law. I think what we see is that people think, 'Oh, it's just me. This is too small an issue. I don't want to create a fuss'. That is one of the reasons people do not come forward. Also if you are affected by this kind of damaging treatment it might be that you are not feeling like you are in a strong enough position to come forward and actually enforce your rights, so what we would like to see is the capacity of VEOHRC to be restored to actually go forward and investigate these kinds of things on a proactive basis.

Just finally, I think it is important to address the elephant in the room, which is the question of freedom of expression and freedom of speech. It is something that comes up as a reason not to go forward with more protections from anti-vilification out in the public realm. It is our view that Liberty Victoria can add some important perspective on that in terms of the human rights context. That is essentially that human rights documents explicitly acknowledge that freedom of expression is not and has never intended to be an absolute right. It is something that has the capacity to very seriously impinge on the human rights of others, and both the International Covenant on Civil and Political Rights and also the *Victorian Charter Of Human Rights and Responsibilities* appropriately acknowledge that there can be justifiable limits on freedom of expression where it is something that will impinge on the rights of others. In our submission the definitions that we have put forward, the broadening of the categories and the broadening of the definition of vilification all sit comfortably within the appropriate and justifiable limitations on the freedom of expression and freedom of speech.

I will throw over to Sam now to talk about the specific perspective of his program.

Mr ELKIN: Thank you, Gemma, and thank you for the opportunity to address the Committee today. Just briefly, the LGBTIQ Legal Service has existed since May 2018 and since this time we have routinely advised clients who have contacted us seeking advice about their experiences of discrimination on the basis of sexual orientation and gender identity as well as disability, race and religious belief. Many of these people have also described being subjected to hate speech at this time. Depending on the situation people can be protected under the *Equal Opportunity Act* or similar federal discrimination legislation, but in some cases they are simply not. We routinely have to advise clients that there is no suitable avenue for a remedy where they have suffered hate speech on the basis of characteristics other than race and religion in Victoria.

Briefly this is the story of Veronica, who is a client of ours who is not protected by our current laws. Veronica is a transgender woman who lived in a private rental property in an inner suburb of Melbourne. Within days of her moving into her new house she started being harassed and bullied by numerous neighbours in the common areas of her apartment complex and on the streets near her home. She was subjected to numerous hateful and humiliating comments about her transgender history and referred to by various transgender, sexist and homophobic slurs as she walked in and out of her home. One of her neighbours made explicit reference to her genitals in very humiliating terms, which made her feel particularly distressed and fearful. Veronica was unable to utilise current Victorian tenancy laws to address this situation as her private landlord did not rent to or otherwise have any effective control over the behaviour of her neighbours, some of whom owned their own homes. She was also unable to utilise current Victorian anti-discrimination laws to address her situation as her relationship with her neighbours did not fall into an area of public life protected by these laws. Veronica did call the police on numerous occasions, and while they did take a statement, they determined that her neighbours' behaviour did not amount to criminal conduct and told her that they would not be able to assist her in obtaining a personal safety intervention order. As a result of this ongoing harassment, Veronica was left with little choice but to break her lease and to move out of her home. She was then faced with a significant financial penalty and was faced with homelessness. Six months later Veronica has found a safe place to live, but she does remain extremely disappointed that she did not receive protection from the sustained vilification that she experienced in Victoria.

This example is far from a unique experience. During the short 18-month life of our service we have been contacted by people all over the state in inner-city, suburban and regional areas who have been subjected to ongoing vilification by their neighbours due to their presumed sexual orientation, gender identity or transgender status. I should mention that this of course includes LGBTIQ people of faith, it includes people from CALD backgrounds and it includes people with disabilities, so I am very encouraging of protections being extended to those groups and being maintained for those groups.

I wanted to also briefly touch on the experiences of vilification that occurred during the 2017 postal survey. During the 2017 marriage equality postal survey it was widely reported in the media that far-right political groups and unknown groups had erected posters around Melbourne that falsely claimed that homosexuality was a curse of death and that up to 92 per cent of children of gay parents suffered abuse. Other posters featured rainbow nooses next to text that said 'Stop the fags'. There were also pamphlets that claimed that same-sex marriage would result in more protections for transgender women, who would then go on to rape people in public toilets. This was an extremely distressing time for many LGBTIQ Australians, and it was made worse by the dissemination of this kind of hateful material that found its way into Melbourne's inner-city laneways and into individual mailboxes throughout Victoria. During the postal survey Queenslanders were also subjected to this kind of hate speech, where posters and leaflets appeared emblazoned with slogans such as 'Burn the faggots', 'Send poofters to their own island' and 'Hitler had the right idea about homosexuals—burn them'. My counterparts at the LGBTI Legal Service in Queensland were able to take action against the authors of similar posters and leaflets due to that state having laws to protect LGBTIQ people from this kind of vilification.

In summary, it is due to experiences like this that we broadly support the Racial and Religious Tolerance Amendment Bill 2019, but we do ask the Committee to consider extending the definitions to include all LGBTIQ people and in particular to broaden the definitions to include gender expression to more fully capture the way in which hate speech is experienced by our community. I defer to Gemma and Liberty Victoria on the way that that should be specifically implemented, because I know that there are a number of options. Thank you.

The CHAIR: Thank you, Sam. Any further comments?

Mr GARDINER: Yes, Chair and members of the Committee. I do want to acknowledge the traditional owners of the land on which we meet and to pay my respects.

My colleagues have said all of the important things, so I want to add a little bit or say them again. The question of harm is central, as has already been said. I think on page 12 of our submission we refer to the RRTA test and that it:

> … inappropriately focuses on the impact of conduct upon third parties, rather than focusing upon the harm that is caused to the affected person as a result of the conduct.

That harm is caused, as Sam has just pointed out, to many people, most of whom never feel able to make a complaint even to the police, and it is something that needs to be dealt with. As Gemma has explained, the proposals in our submission—all of those policy proposals—go towards improving those protections, and we would now say they really should be in the *Equal Opportunity Act 2010*, where appropriate mechanisms are for dealing with complaints. But the very important matter that has also just been raised is that the Commission needs to have the powers to investigate and to pursue issues of prejudice, whether it is currently defined as discrimination or currently defined as matters under the RRTA. Prejudiced words, spoken or written, and prejudiced materials or activities cause harm to many people, and the Commission needs to have the power—as the 2010 Act as originally enacted gave it—to look into issues where individual complaints are not the appropriate course. We have recommended in here and the Commission recommends—and, I think, everyone thinking about it—that putting the onus of dealing with improper conduct on the victim of that conduct is wrong.

Part of the role of the law must be to actively protect people from harm. That is what it is there for. So if this Inquiry comes up with—as we hope it will—recommendations to extend the attributes on which the harm of hateful speech, harmful speech, is done, it should be put, as we have said, into the *Equal Opportunity Act*. The *Equal Opportunity Act* already is the location that the RRTA places the responsibility for dealing with complaints under the RRTA, or the RRTA refers things to the police. Neither work terribly well, as I am sure others have told you. It was always, in my view, a mistake—this is a personal view—to introduce an Act which based all of its tests around the definition of a word, 'vilification', which in the Act is given a meaning other than what the dictionary gives it. 'Incitement to harm' is already a problem dealt with under the *Crimes Act* and the *Summary Offences Act*, but the harm caused by derogatory speech or conduct, prejudiced speech or conduct—not only on religious grounds or on race grounds but on all of the other grounds in the *Equal Opportunity Act*—that is what we should be dealing with.

So that is where our submission goes—and our thoughts further about how our policy proposals should be placed within the right place, where there are the right processes for dealing with harms that are not criminal and, in a way, individually are too small but collectively amount to major harms.

The one further point on that question of harm is that harms caused by prejudice—prejudiced words, prejudiced conduct—impact and weigh as a burden on an entire community. Indigenous people suffer from the thousand cuts of slurring words and attitudes and behaviours, none of which can be dealt with unless there is a systemic discrimination power. That is clear for Indigenous people. It is clear for Jewish people; we know about the role of anti-Semitism in creating fear in a community. And we know about the role of transphobia, homophobia and prejudice on the grounds of sexual orientation or gender identity in having an entire community feeling unsafe. These are the things that need to be dealt with. These are the harms that research shows harm people—lead to psychological damage leading at the extreme end to self-harm and indeed even suicide. These sorts of harms are why Indigenous people and LGBTI folk have higher rates of suicide and self-harm. That is what your Committee should be recommending to Government—that they need to be dealt with better in the ways that we have suggested in our submission.

The CHAIR: Thank you very much for that, Jamie. Before I open to questions, I would just like to introduce David Southwick, the Member for Caulfield, who has joined us now.

Mr NEWBURY: Sam, thank you for providing Veronica's case. You mentioned at the end of your comments that it was not the only case. I have dealt with a similar case in my community, so thank you for raising that case. I understand exactly where you are coming from. The St Kilda legal centre is a centre that I am familiar with, and an acquaintance of mine works there. It is a wonderful organisation.

I did want to ask you, and it might be a question for yourself or for all of you: one issue that I think is coming across from some of the submissions is a lack of awareness, so, not setting aside any of the points you have made about need for change, what do you think of that proposition—that there may be a lack of awareness in the community that laws exist, that there are protections in place?

Mr ELKIN: In my personal opinion, I believe that the LGBTIQ community are aware that vilification laws do not extend to them. I think they are very aware of that fact, and it is a driver of distress and a lack of trust in official institutions as they exist. So I think people know that. I think people know that, generally speaking, discrimination laws exist. I do not think that they necessarily know the detail of how they operate, but I think that people are generally aware that they exist, and certainly because of the federal discussions around the Religious Discrimination Bill I think there is a broader awareness of these laws in society. But people do not necessarily feel able to go through what could be a 12, 18-month process without legal representation to enforce their rights. They are simply not able to commit to that without assistance. That is why I think that, as Jamie mentioned, there needs to be investigation power afforded to VEOHRC, because people know about the laws but they are not going to utilise them because it is too hard and they do not feel safe.

Mr GARDINER: Could I add to that that the issue of not complaining is a big one across all of the areas of the *Equal Opportunity Act*, and people have unfortunate experiences when, as in the case of Veronica, they go to the agency that could help them and they say they cannot—I would argue they could have, but that is another matter. The other thing about the RRTA in particular is that it was never going to be relatively accessible, partly because of what I said before: it bases its focus on a misconceived and incorrect definition of a word that has another meaning. But it never had the ability to be talked about in a useful way. I am sure lots of people—most people, I suspect—did not know it existed, or if they knew it existed, they knew it did not work, so yes.

But the biggest issue is what Sam has said: that people do not feel that these laws are going to help them or that they should not have to – and do not have the resources, emotional as well as financial, – to deal with them. The only thing you could say about the Victorian laws is that they are less difficult to access than the federal laws, which would have to go through the Federal Court, and that is even worse. But the feeling of not being protected is the issue. People might be vaguely aware that there is a law that ought to do it, and they are always sure that laws do not do it. And for LGBTIQ folk, as Sam has said, there is a long history of being persecuted by the agents of the law, which continue to be a folk memory even 40 years after the bad laws were repealed.

Ms CAFARELLA: If I could maybe just add very briefly on that, to the extent that the Committee is considering making recommendations around increasing the awareness in the population, we would wholeheartedly support any such move, but I think the most important thing is to get the laws right in that they actually provide the protection to the people that we want to be reaching, because organisations like the LGBTIQ Legal Service, organisations like Liberty Victoria—the frontline services—we provide information to people. People come to these organisations, and that is a key point at which, you know, it is like a sliding doors moment: do we go and enforce these rights or not? And if the laws are not right, we cannot encourage them to go through that process, whereas if the laws provide that protection, organisations like ours can more confidently recommend that people take that action.

The CHAIR: I just had one question. Thank you so much for your submission. It has been really important to state the real-life stories as well. I think that is really important. But I did want your opinion in relation to online hate, the rise of online hate activity and I suppose the role that laws can have in trying to protect, because we have heard numerous submissions—and I am sure you have heard of firsthand experiences—where things are posted on Facebook or in various platforms that also create a lot of harm.

Ms CAFARELLA: Yes, I think the reality is that the internet is just another forum where this kind of prejudice and these kinds of behaviours play out. So I think from our perspective it is pretty straightforward that if these protections are to exist they need to also cover online behaviour. We are all members of the LGBTIQ

community personally as well as doing the work that we do professionally. I am pretty confident that all of us would have been subject to the kind of behaviour that we are talking about, online. I certainly have, personally. So yes, I think it is, to be very frank about it, a no-brainer. If these protections are to exist, they need to cover online behaviour as well.

Mr GARDINER: Can I add? I just absolutely agree. Again, if we concentrate on the harm, those who cause harm or those who permit harm to be caused need to be brought to account. Now, I am not, and I do not think any of us are, in a position to understand how to deal with your Facebooks and Instagrams and all of the others where they involve international bodies and they involve federal law, but we need to somehow bring them within the purview of the law so as to deal with the harm that they cause or facilitate, because obviously they claim that they are just carrying it; other people are doing it, but they have got a responsibility and I think as a society we are working on finding ways to bring them to account. Yes, they must be brought to account. They must be prevented from doing the harm or facilitating the harm that they can cause—discriminatory harm, harm on the basis of people's attributes that are in the *Equal Opportunity Act*. So, yes.

The CHAIR: Heang, did you have a question?

Mr TAK: Thank you, Chair. I just would like to follow on with your question, but first of all thank you very much. To continue, Jamie, you said particularly the reporting to make a complaint is lacking. Now if you come back to the online conduct, or social media conduct, although it is not in your submission, how do you suggest that online conduct could be addressed?

Mr GARDINER: Well, I think, as with anything, there has to be a bit of a hierarchy of approaches. Generally speaking, when it is safe to do so one should complain initially to the person doing the harmful thing. If that works, good. The problem with online is that you do not know who the person is, because they could be called XYZ123 and you have no idea who that is or they could be called by a well-known name falsely. So we cannot do that. Then you would say, 'Well, we should let the people who run it know', and many of the online forums' processes have, not necessarily easy, ways to report a problem to say, 'I don't like this. This shouldn't be there. This is harmful'. Then they may or may not respond. There needs to be a possibility at one level, if the Victorian Equal Opportunity and Human Rights Commission had the sort of powers they were given in 2010, which were taken away in 2011, to go to them and say, 'Look, here's a problem'. People could also go to the police and say, 'Here's a problem'. The police can do what is called an information report rather than a charge, where as they gather similar material about problems they then can and do act on them. The police are overloaded in so many ways, but if they get the information about harmful conduct, including online conduct, coming from several different people—and obviously each person does it on their own, but once there is a hotspot—they can and they do act on it. The Commission if it had the powers that were given in 2010 could—again, 'could'—act. So one way or the other there are ways that people could complain: to the online provider, to the police, to the Commission if it had those powers. Beyond that my imagination lacks further thoughts. Maybe we could all think of better and further ways. But that sort of escalation is the standard way in the way you have a complaint escalating.

Ms CAFARELLA: Online behaviour actually presents a fairly unique opportunity, because whereas saying words to someone requires you to capture them, which normally you are not doing, online behaviour is actually usually recorded and quite permanent. So I think when we come back to this question of giving VEOHRC increased powers to undertake systemic reviews and proactive approaches to this behaviour, online behaviour actually presents a pretty good opportunity for organisations like VEOHRC to look at what is being said and where it is being said and to, as we go on down the track, think a little bit more flexibly about what we might be able to do about that by engaging the service providers and the like.

Mr ELKIN: If I could just add a couple of comments very briefly, I too did not have a good answer to that question, but I did have an opportunity to read Victoria Legal Aid and the Victorian Aboriginal Legal Service's submission on this point and I thought their recommendations 12 and 13 were very helpful, that the:

> … anti-vilification laws should be amended to expressly extend liability for authorising or assisting vilification or victimisation to corporations (in addition to natural persons and unincorporated associations in the current provision)—

and that, as my colleagues have mentioned:

> VEOHRC should be empowered to identify an unknown respondent by requiring a person or entity, where reasonable and necessary, provide the respondent's name and contact details to support the dispute resolution process.

To me that seems sensible.

Ms SETTLE: First of all, thank you very much for presenting to us, but also more importantly thank you very much for the work that you do for the LGBTI community. It is a community I am passionate about since doing the media for Mardi Gras in the 80s a long time ago. Thank you very much for all that you do. I am interested in, sort of, the other end of it. We did talk to VEOHRC recently, and they said that under the RRTA if they do manage to get two people in the room we really end up in a mediation situation and they both have the option to be in that room and we end up with an apology. Do you think that we need stronger redress? You talked about the criminal Act having one role. What sort of redress exists within VEOHRC, do you think?

Mr GARDINER: I am not currently actively involved with VEOHRC, but I was a member of the Commission from 2000 to 2009 so I have some experience with it, although not under the current Act. Yes, confidential settlements with no oomph are not the way to go. The issue of one individual complaint in the current system, whether it is under the RRTA or under the *Equal Opportunity Act*, can produce a result through conciliation or through mediation; there are a number of different flavours of that, but one or other of those things. But the Commission needs the power, which it does not have, to add to that agreement an enforcement on that respondent, assuming that it is a corporate body, the requirement not to do it again—not to let it happen again. Now, that is not the concern of the original complainant, but it is and should be the concern of the Commission, which it cannot do at the moment because the 2010 powers were cut back in 2011. They need to be brought in. So I think that is basically the answer. The individual process with an individual, usually confidential, settlement may be good for the complainant and respondent, but it does not solve the longer term problem. The longer term problem needs to be fixed because ultimately human rights is something that has to be real for everyone, and that involves a change in culture. If you look back to when the *Equal Opportunity Act* really began operating, 42 years ago, the notion of discrimination being wrong was laughable except to a very small minority of people. Culture has changed—not as far as it needs to, but it has changed in little bits. We are now in the position that we can make bigger strides. The *Equal Opportunity Act* is no longer fit for purpose because it is still using 'an individual must complain and only the individual complaint is dealt with'. It could be better. Please recommend it.

Ms SETTLE: So, for example, in the case of Veronica, what would that look like—that the police had the powers to say 'Cease and desist' or—

Mr ELKIN: I think in that particular example there is an open question of whether the police probably did have powers under the *Summary Offences Act* or the *Crimes Act* to take action. They probably did have the powers to assist further with a personal safety intervention order, and they did not in that particular example. I suppose I would echo Jamie's comments with conciliation processes more generally. This is the day-to-day, bread-and-butter work that I do at the LGBTIQ Legal Service. We take people through conciliations at VEOHRC, we take people through conciliations at the human rights list at VCAT and through the Australian Human Rights Commission as well, and the structural factors at play mean that an individual may in the first instance really be wanting a systemic outcome—you know, wanting training to occur in that workplace or in the broader workforce so it does not happen to somebody else—and that indeed is usually the motivating factor why people make the complaint, because people do not make complaints lightly. They are really stressful, unpleasant processes, and I constantly have to say to people, 'This is going to have an emotional impact on you, so please think of yourself first before making this decision'.

But our experience in taking people through the conciliation process is that we might ultimately be able to get a small financial sum for an individual, and for that person it might be meaningful. It might be a bond for another property, it might be a couple of months worth of income to get themselves back on their feet and find a new job, and that is not nothing. But the thing that the employers or the businesses or larger institutions do not want to be told to do is to implement training, and that is why I think that Jamie is absolutely right: that there needs to be greater powers for the anti-discrimination bodies to insist that that does occur, because that is the thing that ends up going through negotiation and you end up with an apology, maybe; you might get a signed statement of service, you might get a couple of thousand bucks and that is the end of the matter. We do not get the systemic

training and we do not get the regular commitment to training. If we do get training, it might be one-off for one-hour, optional, and it is simply not good enough. So, yes, I certainly agree with those comments.

Ms CAFARELLA: And I think, Jamie, you made comments about the 'Don't do it again' power, which is something that kind of exists in many ways in, for example, criminal law. If you do something once, you know that the second time you do it you are going to get a more significant penalty, and I think when you are looking at individual complaints that is something that is quite substantially lacking. No-one is really keeping track of the repeat offenders, and I think that would be something that would create a normative change on the side of particularly employers and the like.

Mr GARDINER: Can I just add to and commend the point that Sam made, which is very important. Most people who made complaints to the Equal Opportunity Commission in the old days or make them to VEOHRC now do it because they do not want what happened to them to happen to another person, and the notion that people make complaints lightly, while it may be published in some of the less reputable newspapers, is just not true.

The CHAIR: Another point, and we have heard it in the submissions, is the lack of reporting. So we have seen the ICV, the Islamic Council of Victoria, in their report or submission clearly state that after Christchurch there has been an increase of attacks on the Muslim community. And what is stated in a reported form is actually not the real numbers; there are four times that amount. If I could get your opinion, I think that is another issue about the reporting and navigating the system and the duration—some of the complaints take two years-plus to actually get to a satisfactory or perhaps not satisfactory outcome. I would like your opinion on those two points.

Mr ELKIN: Certainly when we look at, you know, the published decisions that are available in Victoria in relation to discrimination laws as they exist, generally the cases that go to a final hearing often are the ones that perhaps did not have the strongest claims in the first place. So the situation is not creating good law; it is not creating useful law that sets a benchmark in a lot of cases. So we often do not have, you know, really helpful decisions to point to to be like, 'This could be you. You could get a favourable decision'. There is such a strong motivating factor for the individual to settle because of the length of time that it takes and in many cases the lack of ability to find legal representation to assist or the prohibitive cost of it. Why wouldn't you settle in most cases? Where there is not a larger organisation with an interest in creating systemic decisions that either define the law or change the law as it currently exists, it is just not going to happen, and that is why it is not happening.

Ms CAFARELLA: I think that having that kind of data-keeping process invested in bodies like VEOHRC is really important. Off the top of my head I cannot think of any kind of fail-safe solution to this, because I suppose compelling parties to have matters reported would be a disincentive to matters settling. So it might actually mean that people who are making claims find it harder to have matters go away more quickly, and that might actually dissuade them from making the complaint in the first place. But certainly having some reporting of the number of matters that are going before the Commission and the outcomes would be helpful, if not statements of law maybe put out by the Commission or the like, to really reflect what is actually happening when matters are getting to the Commission rather than only the matters that do not actually manage to settle and someone is kind of brave or bold enough to push on to get in law.

Mr GARDINER: There may be a number of ways to deal with some of those issues. The Commission does of course publish an annual report with statistics, and if they get reported in the newspapers or on TV, well, that is good but it vanishes again. The use by the Commission of the wisdom it gains from all of those complaints and the publicity campaigns it could do and can do and does do on letting people know are largely determined by funding. If there are the resources, good things can be done. If there are no resources, then even the most ingenious ways of handling things do not go as far as we would want. So I am no longer advocating for the body I used to be involved in running, but it needs more resources. There may be a few tweaks to the legislation needed to enable some material to be used, but of course one of the issues and one of the essential parts of the Commission's legislation is the confidentiality of cases and the material that the Commission hears. Only the complainant, after all, should have the right and have the power to identify themselves, but when people want to, they can. But to the extent that the legislation puts unnecessary restraints on the Commission's ability to use

its material, appropriately privacy protected, then they should also be fixed. Off the top of my head I am not sure what those are now.

Mr SOUTHWICK: Thanks for your submission and your appearing today. I acknowledge the great work that you do. Your legal service is in my electorate, so I have visited a number of times and seen what you do. I am going to ask you two questions, but I will do it in one as I am conscious of the time. The first one is a resourcing one. Already you do a whole heap of work with a set of vulnerable clientele under very limited resources. What role do you think there would be for your service going forward, considering that you are very much front facing in this arena, and being able to provide that level of support with limited resources? The second thing is around Victoria Police's role. What do you think Victoria Police's role is in all of this, both currently and potentially going forward?

Ms CAFARELLA: Do you want to start with the first one?

Mr ELKIN: Well, yes, resources are front of mind for our service at the moment. Our funding is coming to an end in 12 weeks, so our ability to continue to assist people through the complaint system as it currently exists is very up in the air at the moment.

Mr SOUTHWICK: And what is that? How much is that funding at the moment?

Mr ELKIN: It was a $111 000 grant from the Victoria Law Foundation to set up the LGBTIQ Legal Service. So yes, we are in a precarious situation and certainly I think many, if not most, organisations that are doing the work of supporting vulnerable people in society at the moment and helping them to defend their rights are in a similar precarious situation, so our situation is certainly not unique. If you are going to create laws to protect people, you need to actually give people the ability to get legal representation where they need it, and it is patchy at best at the moment, to say the very least.

Ms CAFARELLA: I will just echo that. We are seeing a situation in which many of the legal services that can assist people through these processes are chronically underfunded, overworked and not actually able to assist as many people or assist people in the meaningful way that they might need assistance. But I think it is particularly important to focus on the funding of organisations, like St Kilda Legal Service, who work with these groups of people who are specifically affected by these kinds of issues in order to properly bolster the capacity of affected communities—and not just the LGBTIQ community, but given that we are here talking about that, I really do think it is important to flag the work that those specific organisations do with their community, which I think is a very important way that we actually get systemic change.

Mr GARDINER: I might take up the second question about the police. One of the things I do is I am a member of the LGBTIQ priority reference group of the Priority Communities Division of Victoria Police. Victoria Police have been working slowly but over a long time to get better at a lot of things. I have been agitating with them to do so for 40 years, so I know how slow it is. But I am very, very encouraged these days by the work that is being done within Victoria Police, both in developing policy and in improving their internal training to deal with communities affected by prejudice. The reference groups in the Priority Communities Division include LGBTI. There is the human rights group and there is a CALD group. There are about 10 groups. Anyway, in a way it is the obvious ones. There is roughly one reference group for each of the *Equal Opportunity Act* attributes. And there is serious work going on within Victoria Police to think through how to deal with prejudice-motivated conduct—particularly crime, of course. I sort of half referred to it before, but to come back to it, in Veronica's case I think that section 17 of the *Summary Offences Act*, for example, concerning offensive conduct in a public place could well have been used to deal with the neighbours of Veronica because what they were doing was offensive conduct. There would be a question of whether it was in a public place, but almost certainly it was. So there are issues.

Now, one of the things that the police have been doing, and I do not think I am being overly optimistic here, is recognising that they have existing legislation that is perfectly properly directed to the sorts of conduct that we have been talking about here, and continuing to encourage them to develop that, and to do it properly, will be a good thing. It does happen. There are examples of *Summary Offences Act* section 17 being used now to deal with louts hurling abuse at I think it was Jewish elderly people on a coach going to some event, that sort of

thing. And I think they have acknowledged that they actually probably do have that power because that legislation would cover similar things where the abuse is homophobic, for example.

Mr SOUTHWICK: So just drilling down in, I think it is Abdella's case, the example of the graffiti being, if you like, present for three months before it was taken down, do you think that police should have powers to have that removed?

Mr GARDINER: Yes. That is an important example of the question of who controls that space. It is not principally the police. I forget exactly who would technically have had the automatic power to deal with that particular graffiti—was it the railways or the local council? I cannot remember.

Mr SOUTHWICK: I think that was the body corporate.

Ms CAFARELLA: That is it—the body corporate.

Mr GARDINER: The body corporate, yes. So whichever body it is should be able to be compelled to do it. And failing to do it should be unlawful. I say unlawful carefully to distinguish between the possibility of it being criminal or being dealt with through the non-criminal process—but still required, yes.

Ms CAFARELLA: And I think from our perspective that would probably involve considerable education of the police on two things. The first is that the police have a kind of default setting for anything that does not appear to be criminal to say, 'Oh, that's a civil matter and it's not something that we can help with'. That is something we see on the ground all the time. And so I think it is really necessary for police to really have a bolstered role in understanding that that is exactly an area that they should be stepping into. But secondly, of course, is to really emphasise the types of people who have protections. So if the categories of protection are extended, as we hope they will be, then it would be necessary in my view to really educate the police on the fact that homophobic or transphobic graffiti or the like is something that really is in their domain.

Mr ELKIN: I would just say briefly in relation to that example certainly the police were notified and involved. My impression of the police is that at least one police officer genuinely did want to help and seemed really concerned about what was going on for this person and was aware of the fact that this person felt very under siege. Everybody seemed very distressed about the situation, yet nothing happened. And whether it is that at the higher levels of the police they decided not to proceed I do not know, but it baffles me in that scenario, when the police were involved, why action was not taken. And it is just not an isolated case. It is something that the police I think currently do not seem to know how to deal with.

Mr GARDINER: Most of them, though there are glimmers of hope, as I was saying. But yes—

The CHAIR: We need to conclude.

Mr GARDINER: And you do not have to look far back to know that the police culture was so closed that nothing happened.

The CHAIR: Thank you very much. We have gone over the time limit and that shows how valuable your presentation was. Can I on behalf of the Committee thank you for all the work that you do Sam, Gemma and Jamie. We had some really informative discussion today. The next step will be that we will continue on with our public hearings, gathering evidence. Then we will deliberate and prepare a pretty strong report back to Government on some recommendations that hopefully will benefit the Victorian community. Thank you again for the time that you have taken to present to us.

Mr GARDINER: Thank you very much for the opportunity.

Witnesses withdrew.