

TRANSCRIPT

LEGISLATIVE ASSEMBLY LEGAL AND SOCIAL ISSUES COMMITTEE

Inquiry into Anti-Vilification Protections

Melbourne—Wednesday, 27 May 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 Brigid Monagle, Deputy Secretary, Fairer Victoria, and

Mr John Batho, Executive Director, Multicultural Affairs and Social Cohesion, Equality,
Department of Premier and Cabinet (*both via videoconference*).

The CHAIR: Good afternoon and welcome to the Legal and Social Issues Committee Inquiry into Anti-vilification Protections public hearing today. First of all I would just like to acknowledge that we begin this hearing by respectfully acknowledging the Aboriginal peoples, the traditional custodians of the various lands each of us is gathered on here today and pay my respects to their ancestors, elders and families. I particularly welcome any elders or community members who are here today to impart their knowledge of this issue to the committee or who are watching the broadcast of these proceedings live.

All evidence taken at this hearing is protected by parliamentary privilege as provided by the *Constitution Act 1975* and is further subject to the provisions of the Legislative Assembly standing orders. Therefore the information you provide during the hearing is protected by law. However, any comment repeated outside the hearing may not be protected. Any deliberately false evidence or misleading evidence to the committee may be considered a contempt of Parliament. All evidence is being recorded here today. You will be provided with a proof version of the transcript following the hearing, and transcripts will ultimately be made public and posted on the committee's website.

I now welcome you to make opening comments to a maximum of 10 minutes followed by questions by the committee members. I welcome from the Department of Premier and Cabinet Brigid Monagle, the Deputy Secretary, Fairer Victoria; and John Batho, Executive Director, Multicultural Affairs and Social Cohesion, Equality. Thank you for being here and participating in our inquiry. Who will present first?

Ms MONAGLE: John will.

Mr BATHO: I will make the opening statement. Thanks very much for having us. Brigid and I are very pleased to appear on behalf of the department, and I, too, would just like to begin by acknowledging the traditional owners of the land on which we are all respectively meeting today and to pay my respects to their elders, past, present and emerging.

For our opening statement I am just going to provide a brief overview of the Victorian government submission, including its purpose, how we went about preparing the submission and also just a brief summary of the key issues that are contained in that submission. The purpose of the submission was really to support and inform the committee's deliberations. It has done this by identifying a range of issues that stakeholders have raised with the department and with the Victorian government relating to hate conduct and anti-vilification protections. It identifies a number of complexities with applying and enforcing the current protections within Victoria and also provides more detail and some considerations around the emerging challenges that we are experiencing including with respect to online hate as well as the complexities around preventing events that promote hate. Finally, what it does is it provides a range of considerations that could be further explored by this committee in its deliberations on the matters to prevent and respond to vilification within Victoria.

So the submission was prepared in consultation with a range of stakeholder groups. This includes community organisations that represent different cultural and faith communities as well as LGBTIQ communities, women and people with a disability. The list of organisations is provided in the submission, and I just want you to note at this point that the list of organisations is not exhaustive by any means. We spoke to larger organisations that [Zoom dropout] to represent and synthesise views from different groups and communities within society. We were also conscious that a lot of groups and individuals would have an opportunity to make their own submission to the inquiry as well.

The intention was to capture the key issues that communities are experiencing, subjected to vilification and hate, and the current way that the anti-vilification framework operates for them. The submission also aims to provide current and relevant evidence where possible. So you can see in the submission that there is broad research and evidence relating to the frequency, impact and harm of racism, hate conduct and vilification but that we do not really have a complete picture. The submission draws on a number of sources of evidence,

whether it be data from authorities such as the Victorian Equal Opportunity and Human Rights Commission, from the Victorian Crime Statistics Agency or nationally from the Australian Human Rights Commission. It also draws on research undertaken by institutions, such as the Scanlon Foundation's theme work on social cohesion in Australia, and draws on community reporting as well from organisations that represent particular communities, such as the Islamophobia Register.

Drawing upon this evidence and research, the submission notes a number of key issues, complexities and considerations with respect to the current anti-vilification regime in Victoria. Firstly, the submission notes there is no single cause of hate conduct or vilification, nor is there a simple solution. In response to this issue the submission highlights that we need to recognise and address the root causes or drivers behind this conduct—and these drivers may operate at an individual, societal or systemic level. Responses could consider the individual and the perpetrator as well as the broader social context and behavioural norms that drive this conduct within society. To this end, the submission notes a list of broader actions beyond the legislative framework that could be used to address these drivers.

But with respect to the current legislative anti-vilification protection framework, the submission highlights a range of issues identified by stakeholders with respect to the barriers that prevent communities reporting incidents and seeking support from the current regime. Community stakeholders consistently raised the low number of complaints to the Victorian Equal Opportunity and Human Rights Commission and the low number of successful prosecutions as evidence of these barriers. As the submission outlines, some of these key barriers that were reported to us include the current incitement test in the *Racial and Religious Tolerance Act* and the high threshold and bar that it sets for prosecutions. There was a highlighted number of operational issues with the reporting and complaints framework, including the need to name a complainant as part of any complaint as a particular barrier and similarly the inability to bring an anonymous complaint. For those groups that are not captured by the current anti-vilification framework, I also note the absence of any formal protections for those cohorts.

Just finally, before I end my opening statement I just wanted to also note that the submission was made prior to COVID-19 and the pandemic that we have all been dealing with over the last few months. What we have heard so far from community groups is that there have been increased reports of racism and particularly, but not exclusively, incidences of anti-Asian language and behaviours, and we have heard from both the Australian Human Rights Commission and also the Victorian Equal Opportunity and Human Rights Commission that there has been increased reporting of racist incidents during this period.

Data is also starting to be collected by the Asian Australian Alliance, another partner organisation, on incidents of racism during COVID-19, and in early May this group had collected more than 300 reports from people from Chinese or East Asian backgrounds that had been racially abused, assaulted or harassed in public during this period. So I think I will leave the opening statement there and thank the committee again for having us, and we will welcome questions.

The CHAIR: Thank you very much, John, for your presentation.

Ms COUZENS: Thank you both very much for presenting today. We really appreciate it. I was going to ask a question about the racial comments during COVID-19. Did you have anything else to add on that, John? Are we collecting data? What are we actually doing in relation to those complaints?

Mr BATHO: We are doing a number of things. We are collecting data. I suppose from a departmental perspective we are getting anecdotal data from various stakeholder groups that we work with, including the Victorian Multicultural Commission. It is collecting a lot of anecdotal data. We are also working with the commission plus the Victorian Equal Opportunity and Human Rights Commission to make sure that people are accessing the community reporting tool on instances of racism, which is on the human rights commission's website. They have noted to us that there is an increase in reports that they are receiving through that community reporting tool. Then we are also hearing that there are other community organisations capturing that data.

Ms COUZENS: Your submission notes potential reforms to serious vilification offences, including consideration of recent reforms in New South Wales. Can you elaborate a bit more on these reforms?

Mr BATHO: In relation to the anti-vilification reforms?

Ms COUZENS: Yes.

Mr BATHO: So what we have heard from stakeholders with the incitement test is that there are particular barriers around that test, as it is constructed in the *Racial and Religious Tolerance Act*, that create barriers to successful prosecutions, and that really relates to the nature of the anti-vilification offence and the need for the incitement to incite hatred in a third party. So there was a number of different options that were put forward both from our interjurisdictional analysis as well as stakeholders that looked at ways that you could lower that test, particularly looking at introducing a more objective reasonableness element into the test and also potentially looking at ways that you could change the test to focus on the impact on the particular cohort that was the subject of the hate conduct rather than the third party that was having the hatred incited in them. So they were a number of options which were put forward. I noticed that the committee has also received submissions from the Law Institute of Victoria about particular other ways of drafting any amendments to the Act. We also did note in the submission that with any sort of lowering of the incitement test there are other issues that would need to be considered, such as balancing the right to freedom of expression and making sure that the public interest is balanced in working out what that test was.

Ms COUZENS: Have you got any data, or are you aware of any data, on the difference between complaints in regional and rural areas compared to the metro area?

Mr BATHO: I do not have any of that data on hand, I am sorry.

Ms MONAGLE: Ms Couzens, if I could just add—you did ask part of that question about New South Wales as well.

Ms COUZENS: Yes.

Ms MONAGLE: We are not experts on the New South Wales legislation, but I would say that they have replaced existing offences in what was their *Anti-Discrimination Act* into their *Crimes Act*. We have got quite a comprehensive table that analyses all the different jurisdictional crimes and processes and legislation that we would be happy to table for the inquiry should that be useful as well.

Ms SETTLE: Thank you for your presentation. Some stakeholders have recommended introducing a definition of ‘public act or conduct’ under anti-vilification laws—similar to those in the New South Wales *Crimes Act*. What is your view on that?

Ms MONAGLE: John and I are finding it hard, being in different rooms, knowing who wants to answer. I might just quickly start with that definition of the public. Stakeholders have told us that a lot of the issues that they face do fit under that sort of definition within the public versus private act. However, it is not necessarily the main barrier to them reporting, which is more to do with the high levels required in the incitement aspect. So something like online abuse could absolutely come into that definition that Victoria has in the RRTA of ‘public’, however if it is just hate conduct towards an individual that has a significant impact, it actually does not meet the incitement test and so that is one of the key barriers.

If I could add also, too, the difficulties of having to name the person who you are making a charge against obviously in the online world is really significantly problematic—or if it is just an incidental incident on the street. We heard from stakeholders that they are more of a barrier rather than the definitions of public versus private.

Ms SULEYMAN: I have a question. We have heard from some stakeholders recommending a new offence to prohibit the possession or distribution or display of vilifying material, and this has also been widely reported in the media. What is the government’s view in relation to this particular recommendation of a new offence?

Ms MONAGLE: John, do you want to take this one? You are the expert.

Mr BATHO: I am happy to take this one. What we have been hearing is that there is a number of options in how to deal with this issue. There is one option of nominating particular symbols—hate symbols—and banning them expressly. And other views have been expressed that having a broad-based, principles-based anti-vilification protection test that is not specifically naming a symbol is also a viable option. And of course there are views in the middle there. I think, as the submission outlines, there are a number of complexities with both

options in how you define the symbol or the type of conduct that you want to ban and then also creating the rationale or public interest justification in banning that symbol and whether you do that on a symbol-by-symbol basis or whether you do that with a principles-based approach. I think one of the issues and complexities that we are really interested in hearing the community's views on is: what is the best mechanism of actually stopping that type of behaviour and conduct within society, and is that a specific naming of symbols or is it a broader test? I think there are pros and cons either way. We are sort of actively considering those issues as well from a departmental perspective.

Mr SOUTHWICK: Thank you, Brigid and John. A couple of questions if I may. Firstly, I note the events that happened in September 2019 with the Blood & Honour concert that was scheduled to go forward. I know at the time the Attorney and, I think, the Premier said that there was very little that could be done to stop that from occurring. I am just wondering what your thoughts are on that in terms of what could be done to actually strengthen the laws to ensure that, in situations like that, where we know in their instance the songs and everything were very, very much hate speech—they were targeting individuals and they were targeting very much as a white supremacist group—that type of thing does not occur?

Mr BATHO: Look, I suppose there are a number of options. The first point I would make is that there are Victorian laws as well as commonwealth laws at play here, and I know that there are some commonwealth levers and commonwealth legislation around banning certain organisations that meet certain thresholds. I suppose in a Victorian context the laws as they currently stand allow police and authorities to intervene once the event has started on certain grounds. I suppose with any consideration of the options about pre-emptively banning or stopping things proceeding, the key considerations that we need to look at would be that due process is established for making those decisions and exercising those powers, as well as having a very clear basis of the action so that there is a clear reason and justifiable grounds for banning an event pre-emptively. We would also need to look at compatibility with other laws as well, commonwealth laws but also existing Victorian laws like the charter of human rights. There are not definitive options, but I think they are some of the considerations that you would need to look at in working out what mechanisms, if any, would be suitable for that.

Mr SOUTHWICK: Okay. As a follow-up, in terms of, again, some of the hate symbols that we have seen particularly relating to the Nazi swastika and flag, we have certainly heard of police not having the actual powers to act and to take those down. In terms of New South Wales, and there has been a lot of talk about us looking towards New South Wales and what they have done, there have been recent reports now that New South Wales are looking at specific legislation around the Nazi swastika, because even with the changes to their laws they still do not cover hate symbols such as the Nazi swastika. I wonder if you could comment on that and potentially the need for being descriptive in some of this kind of stuff so that we are unequivocal when it comes to stamping out those that are using specifically a hate symbol like a swastika, like they have been using.

Mr BATHO: I think there are two things there. One is around, in banning any conduct, being specific in the definition about the conduct that is intended to be banned and whether that is done through a broad-based descriptive approach which captures symbols such as the Nazi swastika. That is one way of going down that path, but you then have to balance that with not having a definition that is so broad that you capture symbols which may not meet the threshold to be banned. The alternative approach is to name specific symbols, Mr Southwick, as you have suggested there with the Nazi swastika. That is also a very definitive approach that then also leads you to the next question around what other symbols and do we list specific symbols and how do we determine that list. So that is a complexity there.

Then I suppose the second part of my response to your question is around the enforcement and some of the practicalities around the enforcement of that ban once it is enshrined and giving police or the relevant authority the necessary powers to do what needs to be done to enforce the law but also giving them sufficient clarity from an operational context to enforce those laws.

Mr SOUTHWICK: Okay, and just one last question if I may. I think it was on page 9 of your submission. You had alluded to some of the problems in schools, and there was a real alarming point in here, and now I am trying to find it. It was something like people are 2.5 times more likely to have physical health problems. What was it? Victorian adults who frequently experience racism are 2.5 times more likely than those who do not experience racism to have poor physical health. And then the racism in schools and some of the alarming figures—around 40 per cent, I think it was, of students surveyed had experienced it and what have you. Has there been any work by the government in developing up that broader education piece? I know when SRI was

taken out of schools there was talk of putting an overall unit that gave people a broader context about values, different people's ethnic backgrounds, religions, all that kind of stuff. Where has that all got to?

Ms MONAGLE: I will take this one if that is okay, John. That is a really good question, Mr Southwick, because I think what lies beneath all of these reforms, any of the work that we do, is the criticality of education, both for people of school age but also in the community, about the impacts of racism or the display of the Nazi swastika and what profound impacts that can have on community members, which, correlation or causation, does correlate with poor outcomes in terms of health and mental health as well. So education obviously can have a profound impact on people's values and their attitudes.

I think it is probably fair to say the department of education has implemented a range of different initiatives and has done for many years, but also has newer ones as well that are aimed at challenging the problem of bullying, specifically racist bullying. So initiatives such as Bully Stoppers with their online toolkit; there is \$9.5 million was invested to deliver the Victorian anti-bullying and mental health initiative; lots of work with kids on eSmart, and that is also with the eSafety Commissioner in the Commonwealth about how to be smart and safe on schools; and also Respectful Relationships as well in terms of having, as the title says, a respectful way of dealing with each other.

And I think also you would be aware too that there was an issue with two incidents of specific anti-Semitic bullying in schools last year as well, and the department worked very closely with the Jewish Community Council of Victoria and a range of other Jewish organisations to implement actions and reforms to ensure schools respond appropriately. The department established a Report Racism phone line, and in February 2020 the government also committed to all government secondary school students in years 9 and 10 being taught about the Holocaust as well. I think too they are working closely with the Gandel Philanthropy group to refresh teaching and learning for the—

Mr SOUTHWICK: Brigid, I am sorry, but I am talking even broader than that. When you have got a figure of 40 per cent of students from a non-Anglo background experiencing racial discrimination, we are obviously failing here. What do we need in the broader education space to ensure that we help those kids that are being targeted in schools?

Ms MONAGLE: Are you talking more generally about sort of religious education as part of the curriculum?

Mr SOUTHWICK: Well, I know that there was a broader element that was not necessarily teaching about one's own religion but an ability to be able to learn about people's other different religions and backgrounds. I think New South Wales are doing that as well. I am not saying that is the only thing, but I just find it quite disturbing, that figure.

Ms MONAGLE: Yes, absolutely, and my understanding is that religious education is part of the Victorian curriculum, but given in the Victorian curriculum schools adapt for the nature of their own cohorts and their own schools, I could not necessarily say every school is teaching comparative religion and all the details of that. But schools do adapt it for their own purposes. And then obviously there is a large non-government school and religious faith-based school process as well where religion is often taught. So absolutely agree with you. I think that schools and the education system utilise a range of education tools both to prevent bullying and bad behaviour but also to teach people about the different religions and faiths and multicultural statuses across Victoria.

Mr TAK: Thank you, John and Brigid, for your presentation on behalf of the government. Some stakeholders recommend moving anti-vilification protections to the *Equal Opportunity Act*. On the other hand, some suggest that in doing so we might increase the confusion that discrimination and harassment law involves the issue of freedom of expression and that a standalone act on vilification law would allow clarity. What is the government's view on that?

Mr BATHO: Brigid, I am happy to answer this question. I would probably start at the outset by saying I am not aware of a firm position, and we would be interested in the committee's views on this point because what we have heard are various views about what is the most appropriate place to house this framework, whether it is a standalone act or part of a broader human rights-type framework under the *Equal Opportunity Act*, for example. I suppose part of the answer to that question might be where the committee lands in its considerations

around the expansion of the attributes that may be covered by any anti-vilification or hate conduct framework. For example, if the framework was expanded beyond race and religion to other attributes such as sexuality or disability status, then that may change what the most appropriate legislative vehicle might be to house that framework. I think there are a number of interdependencies as to where the most appropriate place to house the framework would be in the statute book.

Ms COUZENS: Just going back to the discussion around racism in schools, given that First Nations people have experienced racism and vilification since European settlement, I would be interested to hear what education opportunities we have put into schools for students to learn about First Nations culture and history.

Ms MONAGLE: Ms Couzens, I do not have the details for that to hand, but I am more than happy to take that question on notice. Again, I know that schools adapt their curriculum to their own local environment, and I am aware of quite a number of schools that have very strong and culturally rich First Nations elements throughout their whole curriculum but I am unable to say in detail, so I will take that on notice for you.

The CHAIR: I have just got a couple of questions. One is in relation to—and I know this is not just a Victorian problem, but it clearly is a global problem—online vilification and the rise of hate speech on this platform. Can I seek a view on how Victoria could—and I know it is very challenging and it is a very difficult question, but how it can effectively regulate this space, as I said, given the complexity and the jurisdictional issues involved and also the global issues involved?

Mr BATHO: I can start. I would agree with you, Chair, that this is really complex and there are a number of players in this space. My personal view is that in order to get an effective response we need to bring in multiple parties to this, so that is the national level as well as the state level but also in partnership with the organisations that host this content or facilitate its publication online.

I understand that there is a process where the e-Safety Commissioner has various functions at the commonwealth level to foster online safety. I know Victoria, through the Council of Attorneys-General, is participating in multilateral discussions on that. Within Victoria we also have a number of laws which may operate to a limited extent to help combat this type of conduct online, including the *Racial and Religious Tolerance Act*, noting the barriers and limitations to its successful enforcement. In that context there are also a variety of offences which may be enlivened on the Victorian statute book for some types online conduct.

I suppose there is the multilateral element as well as the existing protections within Victorian law, but I think beyond that there also needs to be consideration of behaviour change and supporting users of online forums as to how to use them. I think there are a number of initiatives underway to promote safe online conduct within Victoria as well. So I think it is probably a multipronged approach to tackling this issue.

Ms MONAGLE: Could I jump in there too and say this is absolutely one of the biggest issues that was raised through our stakeholder consultation. Just two issues that relate to the *Racial and Religious Tolerance Act 2001*, one is that some of the people who identify significant hate conduct online are not characteristically identified in the Act. So women, LGBTI communities and people with disabilities have identified quite awful hate contact, and we have all seen that online as well.

And then the issue I raised earlier too that you need to be able to name the party who did that to you, and obviously there are people who do not identify themselves or people who live overseas who are conducting this conduct as well. So there are two elements of the Act which we would really welcome your views on—those two aspects in terms of widening the Act's ability to be targeted at some elements of online activity.

Mr SOUTHWICK: Just staying on Brigid's comment there, I was wondering: in terms of broadening the scope, let us call it, and the ability of somebody to take action on, let us just say, the anti-Semitism that we spoke of earlier in some of the schools. I just wondered about your thoughts about the liability of public institutions as part of this as well. So if there is vilification that happens in public institutions, in government schools and what have you, has there been any thought to that, and what is your view on that?

Ms MONAGLE: I cannot speak to thought on that, sorry, Mr Southwick. John, have you come across that?

Mr BATHO: No, that is something that we have not really turned our minds to—

Mr SOUTHWICK: Could you maybe take it on notice as a question? I am just wondering—because obviously that is a question which has a financial element attached to it as well and it would just be interesting to know what we need to be considering as part of all of this kind of thing, but I am talking broader because we are looking at expanding this to obviously LGBTI, to all of the various disabilities, to a whole range of different things—what the financial implications might be to public institutions if they are caught up in this?

Mr BATHO: I think just off the top of my head that we would need to consider both what that impact might be in a civil regime and what that civil regime has as remedies as well as how that might operate within a criminal context as well. So I think we need to do some more thinking about that as to how that would play out and what any civil or criminal regime would look like if the Act was broadened.

The CHAIR: Thank you. I will just conclude at this point. Thank you very, very much for presenting here today, Brigid and John. Your submission will take part in our deliberations, and we will conclude with a report of strong recommendations, on this very important issue, back to government. Again, thank you for being here today.

Mr BATHO: Thank you very much.

Ms MONAGLE: We look forward to seeing the report. Thank you.

Witnesses withdrew.