

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 Anna Brown, Chief Executive Officer, and

Mr Ghassan Kassisieh, Legal Director, Equality Australia (*both via videoconference*).

The CHAIR: I now declare open the Legislative Assembly Legal and Social Issues Committee public hearing for the Inquiry into Anti-vilification Protections in Victoria. Please ensure that mobile phones have been switched to silent and that background noise is minimised. I would also like to begin this hearing by respectfully acknowledging the Aboriginal people, the traditional custodians of the various lands each of us is gathered on here today. I 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 and who are watching this broadcast of these proceedings. I now also welcome any members who are watching via the live broadcast.

To the witnesses: 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. I would also like to add that any deliberately false or misleading evidence to the committee may be considered a contempt of Parliament. All evidence is being recorded and you will be provided with a proof version of the transcript following the hearing. Transcripts will ultimately be made public and posted to the committee's website as soon as they are available.

Today we welcome you to begin your opening comments. You have 10 minutes to provide a brief statement, which will be followed by questions from the members. Can I begin by introducing Equality Australia: Anna Brown, the Chief Executive Officer, and Ghassan Kassisieh, the Legal Director. Thank you for being here. Welcome to our first virtual public hearing for this committee and—I will pre-warn—if there are any technicalities, we do apologise. It is our first day, but I think we will start on a good note. Please begin your presentation.

Ms BROWN: Thank you to the committee secretariat and members for the opportunity to appear before you today. I hope there are no technical problems, but if there are I apologise for any problems on our end, and please do raise them with us as we progress through the appearance. I am here with my colleague Ghassan Kassisieh, our Legal Director, and my name is Anna Brown, as you have mentioned. I am the CEO of Equality Australia.

Just by way of background, we are a national LGBTIQ organisation built from the successful 'Yes' campaign for marriage equality with support from the Human Rights Law Centre. We work with and for LGBTIQ+ communities to address discrimination against and promote equality for LGBTIQ+ people in Australia. We also work really closely with allies, faith-based organisations, multicultural communities, women's groups, disability organisations and employer and employee organisations that support our mission and vision, and Ghassan and I have legal and policy expertise, particularly in discrimination law, including vilification protections.

Just in case it is of interest to the committee, I was also a member of the Andrews Victorian government's LGBTIQ Taskforce and was co-chair of its justice working group for a number of years. I am still serving on that working group and have served on the LGBTIQ community reference group for Victoria Police for a number of years and worked constructively with the former coalition government on historic legislation to expunge historical convictions for homosexual offences as well—so a long history and feel privileged to be part of progressive LGBTI rights reform in this state.

I think in this state, in Victoria, we can all agree that there is a strong multipartisan consensus around the value of our multicultural history and diversity and also value around that diversity of backgrounds and experiences that are reflected in our community. The *Racial and Religious Tolerance Act* was enacted nearly 20 years ago, recognising the devastating impact of hate speech on the individual, the targeted social group and also social cohesion more broadly. But this reform is obviously an unfinished project, because it does fail to protect LGBTIQ+ communities, and this committee has a crucial role to play in finishing the job and ensuring that LGBTIQ people and others are no longer left behind.

So sadly for lesbian, gay, bisexual, transgender, intersex and queer people discrimination and hate can be a daily reality, and we are much poorer as a state and as a nation because of it. And so for this reason it should be unsurprising to all of you that our key contention, and this is reflected in our submission, is that the protection of the RRTA should be extended to LGBTIQ communities. We support the inclusion of additional protected attributes—sexual orientation, gender identity and variations in sex characteristics, also known as intersex variations—in vilification law, and I just point out that Victoria is behind several of the states and territories in this regard, such as New South Wales, the ACT and Tasmania.

We support these laws because we know that LGBTIQ+ Victorians continue to experience harassment, violence and abuse based on who they are and who they love. Some LGBTIQ+ people in Victoria continue to conceal who they are and who they love for fear of experiencing such treatment, so the ripple effects are very profound. In this way, law—and you have probably heard this from many people already—plays a really important role in setting standards regarding acceptable behaviour and providing avenues for justice. Our laws provide practical remedies also to people who have suffered harm, such as compensation to support the costs of their recovery.

I would like to say from our perspective that free expression is an undoubtedly important principle to protect, and indeed the ability to express yourself authentically and safely is a value that many people in the LGBTIQ+ communities deeply cherish, having known how it feels not to be able to express who we are. But hurting others inhibits their ability to fully participate in society and impinges on their rights to free expression—I am sure you have heard this from many other witnesses as well—because those people who are the targets of hateful conduct, themselves become unable or unwilling to express themselves openly and proudly in society.

So we want to see a Victoria and indeed an Australia where anyone and everyone is able to walk down the street with their head held high—hence the name of our submission, and that is why we call for a unified, expanded and well-crafted Victorian vilification law, which protects LGBTIQ+ people and others against vilification, hate conduct and promoting hatred. Those laws should include at least two aspects: protections against vilification—provisions focused on the conduct of the person engaged in the hateful conduct and the likely reaction of bystanders to the conduct; and secondly, protections against hate-based conduct—provisions focused more on the impacts of the hate-based conduct on the person who experiences that conduct.

In conclusion, I would like to say that laws are not enough. Changing attitudes which lead to hateful conduct requires more than legal change. That is why we are incredibly supportive, and we call for broader strategies to prevent and respond to prejudice-motivated conduct towards LGBTIQ+ people, and there is some detail in our submission on that as well. Together with these strategies in place and reform to our laws we can achieve the much-needed systemic and institutional change that is required to end the hate once and for all.

The CHAIR: Thank you, Anna, for that. Is there anything else that you would like to add, Ghassan?

Mr KASSISIEH: No. I am happy to take questions, though.

The CHAIR: Thank you. Okay then, we will proceed to questions from committee members.

Ms COUZENS: Thanks for that presentation. We really appreciate your time today. I am really interested to hear from you the differences you may have experienced with LGBTIQ+ people at a regional level compared to the metropolitan area—what differences you see and what may need to be put in place to deal with those issues.

Ms BROWN: We might have to take that one on notice in the sense that we could try and see if there is further data and evidence around any disparities. But certainly we know just from the research that we have done that this is an issue in regional communities, it is an issue in suburban Victoria, it is an issue in metro Victoria. So there is no part of this state which is immune from the issue of hate-based conduct, sadly. There has been a lot of good work done by the Victorian government on bringing LGBTIQ communities together through, for example, the gender and sexuality commissioner's regional and rural roadshow, which went out across the state. I do not have any data on hand—unless, Ghassan, you do—but we would be happy to look into that further for you.

Ms COUZENS: From what I hear from community, including my own community, they feel there are some differences between regional and metropolitan, so I just wondered whether there is any research data to support that.

Mr KASSISIEH: I can slightly add on to Anna's answer to that. Well, we have got some data—for example, from the marriage postal survey—which shows actually that regional communities overwhelmingly supported equality. I think it is unfair to say one area of Victoria is more homophobic than another. There is certainly data suggesting that certain groups within the LGBTI community are more susceptible to types of homophobic-based and other harassment and violence. The data does support that LGBTIQ young people experience harassment and bullying in particular and that school is actually one of the unsafest places for them. In that regard I think the experience of a lot of LGBTIQ people who live outside of what may be considered more accepting communities is a movement away from those communities. So people actually escape either actual harm or the perception that they will experience harm by moving away from those communities to places that are safer for them. So there is actually in some regard the absence of data—showing that harassment or vilification in a regional or any other community might actually be as a result of a drain from that community of LGBTIQ people self-censoring. So they do not express themselves as openly in places where they feel unsafe, but also they move away from places where they feel unsafe towards communities that they feel will accept them.

Mr SOUTHWICK: Thank you, Anna and Ghassan, for that presentation and for being with us today. Look, I have got a couple of questions for you. The first one: I am just really interested to understand what the changes have been, if any, in terms of gender-based hate and hate against the LGBTIQ community compared to what it was a few years back, particularly around some of the education—obviously the same-sex marriage laws and what have you. I suppose drilling down also, Ghassan, specifically, as you said, in schools, where you said before about schools being one of the most unsafe places, I am just interested to know, because we have had a lot more awareness, a lot more education, whether things are getting better. I will come to the second question because it is not related; it is just that.

Mr KASSISIEH: I am happy to take that question, Anna. In terms of whether things are getting better, I think things are getting better but it is not a uniform better. The reason I say that is we know from research that we have seen, for example, people from ethnic and faith-based communities are still experiencing the kinds of attitudes that the broader community have had a journey on and have addressed. I know that from personal experience. I know that from research that I have conducted—for example, into Arabic-speaking communities in New South Wales—although I think part of that research is a broader reflection of challenges that we are still seeing in parts of that community around attitudes towards homosexuality and gender diversity more generally and the need to still engage in conversation about challenging some misconceptions and also addressing longstanding myths, I suppose, around sexuality and gender identity more broadly.

There have been improvements, and I think the community has come a long way. You can see that in, for example, the postal survey response. But we also know from the data—things like the *Private Lives* study across Australia—that there is still a very high level of harassment and abuse experienced by LGBTIQ+ people, and one aspect of that is actually the concealment. People actually still self-censor where and who they disclose their sexuality or their gender identity to out of fear that the person that they disclose their sexuality to will not accept them or affirm who they are and who they love.

It is always difficult with this data. First of all, there is an under-reporting I think of people's experiences but also that people actually self-censor and move away or conceal aspects of their identity carefully to try and avoid experiences as I mentioned earlier, like moving away from communities. Interestingly, in the context of COVID, we conducted a survey with LGBTIQ people across Australia of the impacts of COVID and its restrictions. Even in that survey you could very clearly tell, for example, that there are young people living today in homes where they do not feel safe because they do not have acceptance very close to home—from the people who are closest to them and who they live with. We are still seeing a significant rate of people who say they do not feel safe even at home because of violence and controlling behaviour from people that they live with. That is not always homophobic based or based on gender issues around transgender or gender identity, but it can be informed by that.

Mr SOUTHWICK: Anna has got something else to add.

Ms BROWN: Yes. In our submission we also enclosed a copy of the report called *End the Hate* that I co-authored when I was at the Human Rights Law Centre. There was a Senate reference around the postal survey itself that reported a spike, sadly, in hate conduct and harassment towards LGBTIQ+ people. Even though at the end of the day Australians stood up and voted yes for equality for LGBTIQ+ people in their millions, the debate itself did have an impact, and the authorising environment it created for hate speech and conduct I think was borne out and there is some evidence there from the Senate committee inquiry that was referred to in that report. Debates around the Religious Discrimination Bill continue obviously today and often these debates can be really damaging and hurtful for LGBTIQ+ people. I am not sure if you are hearing from Switchboard or some of the counselling services, but what I have heard from Switchboard is that there was a big increase in calls for support during the postal survey and that, sadly, has not dropped off since that time because of the religious freedom debates that are happening at a federal level that continue to fill many people within our communities with a sense of fear that they will be targeted or hurt in some way.

Mr SOUTHWICK: And just following on from that more generally about police, I am interested in your thoughts about—obviously the police have come a long way in the work with the LGBTI community. What other things do you think are needed to even provide further support from Victoria Police and, yes, where are the gaps?

Ms BROWN: I mean, some of this was covered in the hate report as well and I direct you to that report specifically for detailed content on this, but what we found in that report is that there are huge barriers to reporting because of the historical relationship and the distrust of police and justice authorities within the LGBTIQ+ communities, so that there needs to be that work done to build the confidence in those reporting mechanisms available to the public. So initiatives like the gay and lesbian liaison officers are very positive but need to be strengthened and expanded. Then there is the education that needs to happen within the police force itself so that when hate conduct or hate crime occurs police have the tools to identify that, and we have not seen an uptake in the use of the sentencing provisions that allow for stronger penalties for hate-based crimes. We could speculate about the reasons. I think a big one is, you know, a lack of systems in the Victoria Police force to identify and track a criminal matter as having a hate-based element to it and training in that regard and then obviously the matter needs to be prosecuted as well. So all the way through the process, having a greater sensitivity to hate-based conduct and motivations in offending.

Mr KASSISIEH: I would add to that as well that trust is very hard to earn and it is very easily broken. And I think we have seen very recently in particular a couple of cases where the conduct of police or the investigations into the conduct of police—we have heard at least from our community real concern around the way the police have responded in particular cases. So whether that is correct or not, the perception that police are not on your side can be very, very difficult to correct.

Mr SOUTHWICK: So do you think that there is a problem, in terms of investigating issues when they do potentially go wrong, of having that independence, if you like, to investigate an incident that may have happened, say, between a member of Victoria Police and a member of the community?

Ms BROWN: So rather than a member of the community reporting a matter involving third parties to police, a complaint against the police itself?

Mr SOUTHWICK: Yes.

Ms BROWN: I mean, we have made comment about this in the media in relation to the Hares & Hyenas raid, but it is incredibly important, as Ghassan has mentioned, that we build and retain that fragile trust—or the trust that can be so fragile unless we work really hard or the government and police work really hard to earn it and maintain it. And having an independent mechanism to investigate police misconduct is vital. Currently complaints are handled internally. Some matters are referred to IBAC but the remit of IBAC is quite limited—what we saw recently with the Hares & Hyenas raid—its scope really does not look at providing justice and a remedy to an individual. I do not think the victim in that matter even was heard in the IBAC proceeding. So there is a gap here and our justice system and our police integrity system really need to grapple with principles of independence but also reparations and justice when things do go wrong.

Ms SETTLE: Good morning and thank you for your presentation. I was interested—in your submission you talk about allowing representatives to file complaints on behalf of anonymous complainants. Can you explain to me where that is important and how that would work?

Mr KASSISIEH: I am happy to address that. So I think one of the real issues that we see in discrimination law frameworks and vilification frameworks is a real emphasis on an individual—often the individual that has been affected by the conduct—being able to initiate and progress with their own complaint. One of the real concerns that a lot of people who have been the target of attack have is that the process of engaging leads to further victimisation, so a lot of discrimination law frameworks federally and in other states allow a representative complainant to bring an action on behalf of a class of complainants. So what that would mean is, for example, rather than having a range of individuals with similar complaints about potentially the conduct that is complained about, you could have a body like a not-for-profit that represents that interest bringing a complaint.

Obviously those processes have to be carefully structured so that they do not change the balance in a discrimination setting or a vilification setting to allow large corporations, for example, to use the mechanisms. But there are examples in the commonwealth law—for example, a trade union being able to bring a complaint on behalf of workers. So you could see an example there where, you know, a class of workers are affected by the same kinds of treatment that is the subject of the complaint. And it can be a tool for redressing the imbalance between complainant and defendant so that the resources of a representative complainant can be brought to bear in a way that an individual might not be able to. For example, if it is a not-for-profit, they may have DGR status which allows them to fundraise—allowing them to support the costs of legal assistance in bringing the complaint while an individual is less able to do that.

Mr TAK: Thank you, Ghassan and Anna. You refer to the support that is available to the LGBTIQ+ community. Now, from your research and certainly from the ethnic, migrant, multifaith, multicultural community what sort of support, and how can that support be improved?

Mr KASSISIEH: Well, I have a strong personal view around this, and—if I could step out slightly—I obviously don't speak for the organisation in terms of my views on this, but I think it is very important that these initiatives are led by the community itself and are not imposed on it, because one of the big things that we see when we look at the attitudes that ground prejudice or ignorance towards sexual orientation and gender identity is a sense that it is being imposed on the community from the outside. It is very important for LGBTIQ+ people from within these communities to have an ability to stand up and say, 'Actually, we are part of this community. We are not an imposition on this community'. I think that goes a long way.

The other thing that is significant, I think, is the emphasis on the individual versus the collective in many ethnic and faith-based communities. That is, that the emphasis is much more on the need to maintain collective harmony. Things like shame, familial shame or the reputation of the family to the broader community can mediate the ability for individuals and in fact the response to individuals who stand up and challenge cultural norms around sexuality and gender identity. And it is not just, obviously, for LGBTIQ+ people. It is for women as well. It is for people who seek to move out of home before marriage. It is a range of issues.

So I think it is really important that we first of all have a respectful discussion that is not imposed on these communities but comes from within and is organic and grassroots in the sense that we empower people from within the communities that are LGBTIQ+ identifying and we support them to be able to speak about their stories to open a conversation with religious leaders, with community leaders, about supporting those people. And we have got to start basically from the ground up in the way that we have done over many decades of LGBTIQ+ activism across, you know, the broader mainstream.

I know that, doing the research with Arabic-speaking communities in 2005, some of the things that people still believe are things like homosexuality is a sickness or an illness. That is being dispelled. That it is curable; that is being dispelled. But with these things we have to have an open, frank conversation, a respectful one, appreciating that we need to take people on the journey, but we need to do it in a way that allows people from those cultural and faith-based backgrounds to speak on their own terms and to open the conversation rather than have it imposed on them.

Ms BROWN: I would just like to add from our organisational perspective we very much would endorse Ghassan's personal view, even though he is polite enough to express it in those terms, and I think a really good example of this has been some, you know, modest but effective grant giving from the Victorian government around grants to multicultural communities to support initiatives around LGBTIQ issues. They have been actually really effective at building and supporting that very much self-driven cultural change and exploration.

The CHAIR: Thank you. I just had a question. Just to add on to your presentation about the support services, one particular recommendation that you have in your submission is the introduction of an app to allow people to report conduct. Can you just elaborate a little bit more on the app's purpose and how it would function?

Mr KASSISIEH: Sure. So the idea of the app is to reduce the barriers to reporting and partly to increase the data and the collection of information about where and the types of incidents are occurring so that you could have, for example, a more overarching or strategic response that does not just rely on individuals but also reduces the barriers for individuals to be able to report in a way that is very current—exactly when it happens—and that would feed into existing processes the police may have and that the discrimination law bodies may have.

If I could use an example—this is completely unrelated—you have a framework of, say, money laundering legislation across Australia, and banks are required to report various transactions that happen. And when banks do that, that one transaction, when pooled together with all the other transactions that every other bank reports, tells you a picture; it gives you a story which you do not have necessarily when you just rely on one individual bringing a complaint.

So by reducing the barriers to reporting and encouraging people to report, you start to build a picture around where the pockets are. Are there known sites where violence or harassment is more likely to happen? Are there particular targets who are the target of those incidents? And there are particular offenders that are more likely? And so then you can think about more strategic intervention beyond just an individual complaint from the pooling together of the data that you get by seeing in a live way as it happens where it has happened. We know, for example, we have seen incidents of hate increase around, say, public discussions. We saw it after September 11 and the attacks on particularly Muslim women following that time. We have seen various waves of increase. When you see that data come in you are able to respond in real time and systemically with more strategic responses that do not just rely on individuals.

Anna, did you want to add to that? It is about reducing the barriers to reporting but also allowing the aggregation of data across—

Ms BROWN: Yes. I think you are hearing from the Victorian equal opportunity commission later today as well, so I am sure they would have thoughts. Whether you explore community specific apps or third-party reporting mechanisms is another idea that has been floated as well, tailoring language for particular communities, so reducing some of those barriers to reporting and having community-controlled organisations delivering that third-party reporting service. Obviously it needs to be funded properly, but the commission itself I think has had an Anti-Hate Spray app and tried different sorts of online and app tools in the past. I am sure you will be able to explore these issues with them as well.

The CHAIR: Just one final question. Throughout many submissions we have heard the issue of time and how long the process takes, and I suppose maybe having that third-party mechanism may create a false sense that there will be action taken. I think, from a lot of the submissions, a fast effective conclusion to incidents should occur whether it is via Victoria Police or via the equal opportunity commission. It is just taking too long, the system at the moment. There are some cases that take up to two years once the incident is lodged, or even more, and by then I think the damage is done. There is a real sense, especially with social media—

What is your view? We live in a social media world, but do you have a view on how can we put forward the right protections—knowing that it is beyond Victoria—where the system does not take that long for an action to occur?

Ms BROWN: This is not an easy problem to fix, but I think there needs to be a range of ways that people can report. Not all reports will lead to a complaint, and the report itself—

As I understand, the police at the moment gather intelligence about online activity, and it could be in the real world, that is hate-based just so they can track it even if there is no evidence of an offence. But it is important for individuals to, as you say, have access to justice, and that means within a reasonable time. Two years is quite long for a process. Again, you will hear from the regulator later today, but I imagine one of the answers to that is funding and ensuring that the regulator is funded to progress complaints in an efficient manner. I think they are best placed to answer those sorts of questions.

I agree with you that we do need more efficient and effective complaints avenues for victims. Certainly the current system seems to be inordinately subject to delays, and justice delayed is justice denied. Ghassan, do you have anything to add?

Mr KASSISIEH: Yes. I would also say that the framework is important not only for the complaints that are brought but for what it does in changing behaviour of those that have the ability to respond more quickly to instances that arise. We know that, for example, when laws are in place employers or platform providers will respond to the risk to them of the potential for a complaint by taking more proactive measures and getting policies in place and training in place in moderation of content—taking down content, complaints mechanisms—and then also you have the issue of basically people voting with their feet. So if the experience is not a good one for people, then people opt for more ethical workplaces or more inclusive places to engage.

The complaints that make it through to the process are really the tip of the iceberg, and it is important not to lose sight of the fact that the framework itself prevents many complaints from ever getting to that point in the first place as well because of the standard setting that it has and the way that that risk of a complaint changes the behaviour of those that have the ability to change how their platforms work and how their workplaces operate. So I do not think we should underestimate the value of—even if a complaint takes a long time, there are probably ten more complaints that have been avoided. We should also think about prevention and strategies for reducing the need for a complaint. Ideally we should have zero complaints; that is the system working well. So all those strategies that sit beyond the complaints mechanism are really important in addressing the broader issue.

The CHAIR: Can I take this opportunity on behalf of the committee to thank Equality Australia for presenting. Anna and Ghassan, thank you very much for taking the time. It has been an absolutely informative presentation. The next steps will be that we have got a number of other public hearings to continue, and we will continue to have presentations from various stakeholders. Hopefully in the next couple of months committee members will be deliberating on all the submissions, which will then be part of a report that will be handed to government with some strong recommendations. So thank you again, Anna and Ghassan, for taking time out today and being the first presenters in our live broadcasting today. Thank you again.

Mr KASSISIEH: Thanks very much.

Witnesses withdrew.