TRANSCRIPT

LEGISLATIVE ASSEMBLY LEGAL AND SOCIAL ISSUES COMMITTEE

Inquiry into Anti-Vilification Protections

Melbourne—Wednesday, 24 June 2020

(via videoconference)

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

Professor Gail Mason, Co-Convenor, and

Ms Julie Nathan, Co-Convenor, Australian Hate Crime Network.

The CHAIR: I declare open the Legislative Assembly Legal and Social Issues Committee public hearing for the Inquiry into Anti-Vilification Protections in Victoria. Please ensure at this stage that mobile phones have been switched to silence and the background noise is minimised.

I acknowledge the traditional owners of the land on which we are meeting. I pay my respects to their elders past and present and the Aboriginal elders of other communities who may be here today.

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

Today we welcome from the Australian Hate Crime Network, Professor Gail Mason, Co-convenor and Professor of Criminology, University of Sydney, and Julie Nathan, Co-convenor and Research Director, Executive Council of Australian Jewry here today. You will have up to 10 minutes to present to the committee, followed by questions. Who would like to begin? Gail?

Prof. MASON: I am happy to. Hello, my name is Gail Mason and, as has already been recognised, I am a Professor of Criminology at the University of Sydney Law School. I would also like to acknowledge the traditional owners of the land on which I am meeting, who are the Gadigal people of the Eora nation.

Today I am appearing in my volunteer capacity as one of the co-convenors of the Australian Hate Crime Network. The Australian Hate Crime Network is a partnership between government organisations, academics and non-government organisations all working together to develop policy and reform agendas to address the problem of hate crime and hate incidents across Australia. The network has over 80 members across most states and territories. We have had the opportunity to read the submission by the Victorian Equal Opportunity and Human Rights Commission, and in general we would like to state that we support the recommendations of the commission. What we would like to do today is to reinforce or add to some of those recommendations, so I am going to firstly address three particular points and then I will hand over to Julie and she will address additional points.

Our first recommendation is for the extension of relevant laws to other attributes. Hatred is something that occurs along a spectrum—a spectrum of harm and a spectrum of vulnerable groups. The Australian Hate Crime Network is unique because what we do is we represent the interests of multiple groups that are targeted for hate crime; for example, on the basis of their race, ethnicity, religious affiliation, sexuality or disability. So informed by the experiences of our members, we believe it is essential that vilification and hate crime laws are extended beyond the grounds of race and religion. Having said that, we also recognise that it can be quite difficult to determine how far to extend these kinds of protections. Looking at international best practice, the network recommends dual criteria for making these kinds of decisions. First, existing anti-discrimination and human rights standards provide a key benchmark for identifying attributes that are already well recognised as the targets of prejudice and discrimination. Second is the research evidence that identifies those communities in Australia that are most at risk of vilification and hate crime. So when you put those two factors together, we believe that they show that, at a minimum, vilification or hate crime laws should also protect people with disabilities, LGBTIQ communities and also women.

The second recommendation that we would like to make is for the introduction of comprehensive hate crime law reform. The Victorian Equal Opportunity and Human Rights Commission has recommended that the Victorian government consider introducing complementary offences in addition to vilification laws; that is recommendation 10. We support this proposal, but we believe that it does not go far enough. As we

have explained, vulnerable groups in Victoria are the targets of a spectrum of harm and hate. Vilification is only one of the ways in which hate erupts and harm is inflicted. For example, what of the Melbourne case where two African men were followed, physically assaulted and verbally abused for no other reason than they were presumed to be African? What of another Victorian case where the offender continually targeted victims of Indian appearance to rob and assault because he was intent on physically injuring people from an Indian background? He was so intent on doing that that he even learned to speak in Hindi so that he could swear at them in Hindi. Neither of these cases is about vilification. They are crimes that are motivated or driven by hatred, and they are not uncommon.

Currently Victoria has no laws that allow such offenders to be explicitly charged, prosecuted and convicted for the hateful sentiments that drive their hostility. In effect, this places Victoria 30 years behind international best practice, and I will mention most other Australian jurisdictions fall into this category as well. Why I say that is because the UK, the US and many European nations have enacted distinct hate crime laws that publicly name and denounce this type of crime. The network believes that this inquiry is an opportunity for the Victorian government to introduce a more comprehensive suite of laws capable of sending the crucial public message that as a society we strongly condemn the prejudice that drives all forms of hate crime, not just vilification. And we would welcome the opportunity during the questions to discuss specific models for hate crime law reform with the committee.

The third and final recommendation that I would like to make relates to law enforcement policy and procedure. Even the very best laws will fail if they are not supported by policing, policy and practice, particularly here I am talking about criminal laws. Hate crime needs to become core business for routine policing in Victoria. In 2017 I was a chief investigator on a research project partnered with Victoria Police and colleagues from Monash University. What we did on that project was we examined VicPol's response to prejudice-motivated crime. The research found that prejudice-motivated crime was both under-reported to police and under-recorded by police. Two explanations for this stood out. Minority communities often do not fully understand that they can report prejudice-motivated crime to police and they often lack trust and confidence in police to do so. Frontline officers themselves do not always feel confident, they do not feel they have the skills to identify and record prejudice-motivated crime.

The network believes that these two barriers are priorities for the effective policing of hate crime. This kind of policing reform will help individual victims, but it will do more than that because, like every other state and territory in Australia, Victoria lacks robust hate crime data. Policing reform is essential to build reliable data, and it is also essential for monitoring the problem, for developing policy and for allocating resources because all of those things depend on good data. We would also welcome the opportunity to discuss options for policing reform in more detail with committee. I will now hand over to my colleague and co-convener, Julie Nathan.

Ms NATHAN: I would like to thank the Victorian Parliament for holding this Inquiry into Anti-vilification Protections, and for inviting the co-conveners of the Australian Hate Crime Network to appear here today. "The Holocaust did not begin in the gas chambers, it began with words." This was stated by Professor Irwin Cotler, a former Canadian minister for justice. In Rwanda, the genocide there did not begin with the machete hacking of Tutsis by Hutus. It too began with words. 'Cockroach!' they called them, thus dehumanising them and preparing the way for slaughter, so too with the Armenian genocide and the Cambodian genocide and countless other massacres around the world, and so too with terrorists and mass murders committed by individuals or by groups of non-state actors killing in the name of a cause or an ideology.

Words of course do not always lead to violence and genocide, but words are powerful. Words can calm and create cohesion. Words can also vilify and incite. Legislation against vilification is extremely important. The right legislation sends a message to everyone of what is acceptable or unacceptable in a democratic society such as ours. It sets the bounds. But the legislation needs to be effective and comprehensive. At the Australian Hate Crime Network we advocate certain positions and we consider certain options that we believe need to be part of a comprehensive package in order to effectively protect against vilification and hate crimes.

I will briefly mention three areas. Firstly, anti-vilification laws need to cover a range of attributes, not just race and religion but also gender identity, sexuality, disability; they could also include age, gender and other attributes. Secondly, the legislation needs to cover a broad range of discourse and incidents, not just vilification or incitement or threats of violence but also criminal acts—for example, vandalism or robbery, which are crimes in and of themselves—where they are motivated by a hatred of the victim's group. Then, the offender

should face a harsher penalty. Thirdly, the threshold needs to be at the right level, not so low that it catches discourse that is legitimate critique of particular races, religions, sexual identities and the like and not so high that it catches no-one. It requires getting the right balance.

As a general background to the situation in Australia I would like to briefly address the various campaigns over the last several years to vilify particular groups. From 2015 to 2017 we saw the campaign to vilify Muslims and Islam, especially here in Victoria. From 2016 to 2018 we saw the rise of the Neo-Nazi group Antipodean Resistance, which was very active in publicly promoting hatred, especially of Jews and homosexuals as well as those of African, Asian and Arab ethnicity. During 2018 the 'white replacement' ideology took root amongst extremists in Australia. This ideology promotes the killing of Jews and the deportation of all those of non-European ethnicity and of Muslims, except for Indigenous Australians. This is the ideology that is behind the murders of Jews in synagogues in the US and of Muslims in Christchurch and the two deadly attacks in Germany—all over the last two years. In 2020 we have seen COVID-19-related street attacks on people of Chinese and other East Asian ethnicities, including verbal abuse, assault, graffiti and general vilification. ASIO in its 2020 report noted that Muslim extremism remains the highest threat in Australia; the report also noted that right-wing extremism is a rising threat and comprises one-third of investigations.

With the internet, vilification and incitement to violence is made so much easier, cheaper and quicker—to spread the propaganda, to incite violence—than it was in the old days. I closely monitor right-wing extremists and others online. It is quite common, almost normal, to see the vilification of Jews, LGBTI people, those of Asian and African backgrounds, Indigenous Australians, Muslims and others and to see the support for violence against many Australians from these minority backgrounds. The prevailing mood amongst many right-wing extremists in Australia is in general upbeat and readying for some kind of civil war or revolution. I might add that Victoria seems to have more than its fair share of right-wing extremists.

Of course vilification occurs not only online and not only by right-wing extremists. Vilification and hate incidents occur in our streets, schools, workplaces, shops, public transport and elsewhere. It takes various forms, from verbal abuse to physical assault, from graffiti to vandalism, from propaganda posters to hate mail and more. This is why effective and comprehensive anti-vilification and anti-incitement laws are crucial for the coming years. I would also like to talk about the working of section 93Z of the New South Wales *Crimes Act*, enacted in 2018, in our discussions further on, as 93Z is often put forward as the model for other states. Thank you.

The CHAIR: Thank you, Julie. I might just start with the questions, if I may. I think the theme overall that the committee has heard has been in relation to the rise of online vilification and hate speech. Would you be able to provide the committee with some of your views, and how can that space be better regulated and better administered with the increase of such a high, 24/7 cycle of, I suppose, access to be able to send all sorts of hateful content and vilification towards groups?

Ms NATHAN: Online?

The CHAIR: Yes.

Ms NATHAN: So the Australian Hate Crime Network had a submission on the Online Safety Act, and we made 23 recommendations for that. Briefly, just four of those: for example, you can incentivise social media platforms to self-moderate more effectively; we can legislate to require a platform to provide a tool for rapid verification of jurisdiction; we can add that a new category of tech company is formulated which is not necessarily either a platform or a publisher, and that will tighten the tech companies' liabilities over harmful content; the eSafety Commissioner should have the ability to launch legal proceedings against an online media service provided that it has hosted harmful content. There are many other ways of effectively dealing with these issues. Much of the discussion of online hate deals with popular and mainstream platforms—websites, Facebook, Twitter, YouTube, Instagram and the like. So some of these platforms themselves have brought in new measures to minimise hate content on their sites. Others have been forced to do so by advertisers withdrawing advertisements from their sites, especially on YouTube. And yet the platforms in general have been slow and erratic in dealing with hate discourse. Governments have also enacted legislation to force social media platforms to deal with hate content. However, a lot more needs to be done.

But the other section is there is a whole other type of online platform—sites such as Gab, VK, Minds, Telegram, BitChute and others. These platforms are based on the mindset that people should be able to say whatever they like, and hence they have become sites where extremists feel at home. These are the sites where also those who have been thrown off Facebook and Twitter and YouTube go; they go to these sites because they can say whatever they like there. Some of these platforms operate from countries where it is difficult to hold them to account. As well, many of those who are posting comments, images and videos on these sites that vilify and incite violence use pseudonyms, which makes it harder to identify who they are. Often these types of sites are beyond the law. So it is a rather complicated way of how we deal with the online hate content.

Prof. MASON: Can I just add to that? Given that the federal government is currently reviewing the online safety legislation, we certainly think that at a minimum the online safety Act should explicitly proscribe the public advocacy of hatred or prejudice-based violence against individuals or groups, because here is an opportunity for this legislative and policy base to be extended to behaviour that adversely affects adults in all sorts of ways. We would very much like to see the problem of hatred explicitly condemned in that legislation and policy.

The CHAIR: I just have one more question if I may, to Julie, I think. I think in your submission you spoke about the New South Wales reforms that should be considered for Victoria. Could you just expand a little bit more in relation to that specific question?

Ms NATHAN: So New South Wales enacted section 93Z of the *Crimes Act*, 'publicly threatening or inciting violence', in 2018. So section 93Z provides an interesting model for Victoria or other states. On the positive side, 93Z covers multiple attributes, not just race and religion as in Victoria, but also various gender identities and other attributes. However, after two years there has not been one prosecution under section 93Z. The reason it appears may be that the threshold is set too high. I am familiar with one case that was investigated by New South Wales police. They considered this case to be the strongest one they had and were preparing to prosecute. However, section 93Z requires the approval of the Director of Public Prosecutions before any charges can be laid. In this particular case the DPP did not give his approval, and so the case had to be dropped. The requirement for DPP approval is a major drawback of section 93Z.

The case I refer to is instructive. A well-known right-wing activist in New South Wales posted many comments online in support of violence and killing, especially of Jews. In one comment he wrote 'it is time to legalise the Kike Cull'. The word 'kike' is a highly derogatory term for Jew and the word 'cull' refers to mass killings, normally in the context of animals such as kangaroos and horses. He also posted about the need to 'cleanse the world of the Zionist Jew', and one of his other posts called to, 'Give us back our guns, kick the Zionist Jews out of their positions of power', and for people 'to pick up a rifle before it's too late'. He used the hashtag #BringOnRahowa—'rahowa' stands for racial holy war—and he used the hashtag #HitlerWasRight. These are the words that the DPP determined did not breach section 93Z. Accordingly, the neo-Nazi Antipodean Resistance poster calling to 'Legalise the Execution of Jews', which you should have with you, is also not a breach of section 93Z, and this has been confirmed by New South Wales police familiar with the case. The other Antipodean Resistance poster that you have, calling to 'Get the Sodomite filth off our streets' may also not be in breach of 93Z, despite it also showing the shooting of a person. So the threshold is set so high that the DPP apparently did not consider that in this case, calling for the killing of people of a specific ethnicity, was an actual threat to commit violence, and considered that it fell short of incitement to violence.

So we recommend that any Victorian anti-vilification legislation, one, includes multiple attributes, race, religion, gender, sexual identities, disability and the like; two, sets the legal threshold at a reasonable level—not too high and not too low; and three, does not require DPP approval in order to commence the prosecution.

Ms COUZENS: Thank you, Gail, and Julie, for your presentation. We really appreciate your time today. To begin with, I think, Gail, you mentioned earlier about some countries that have laws dealing with hate crimes. and you mentioned the US. Given what is going on over there at the moment, I just wonder whether you want to have any further comment on that, because I thought that was quite interesting.

Prof. MASON: Do you mean in the context that perhaps the laws are not effective?

Ms COUZENS: Yes.

Prof. MASON: Yes, I do have a comment on that. The US does have hate crime laws in all jurisdictions. They are quite restrictive and they are not used to anywhere near the same extent as the laws in the UK. So if we were to be asked about what would be a preferred model for hate crime legislation, I would definitely recommend the Victorian government look to the UK model rather than the US. By way of comparison, the FBI reports all of the hate crime statistics from the US and so does the Home Office in the UK. We know that both those countries have very different populations as well. The typical number of hate crimes actually reported by the FBI in the US on an annual basis is around 6000 or 7000; in the UK it is upwards of 60 000. But it means that you have got to take in the different populations as well.

So you can see there is a massive difference. That comes down to how hate crime is defined in in the law. Definitely the UK has a much broader definition. But also it comes down to how police respond, and the UK are generally seen as world leaders in the policing of hate crime. They have a victim-centred approach to hate crime. For example, if the victim or any other witness to a crime believes that it was a hate crime, then the police are required to record it. The reason for that is that it takes away police discretion and potential, I guess, police indifference, which has been a huge problem in the UK in the past. I am not saying it is now, but it has been in the past. So the UK have quite a different policing approach, and as I say, one that is seen as—globally—best practice, whereas in the US they use a more restrictive definition. They have a much narrower method of recording hate crime by police.

Ms COUZENS: And are there prosecutions?

Prof. MASON: Yes, there are definitely prosecutions in the US.

Ms COUZENS: And in the UK?

Prof. MASON: Oh, yes, absolutely.

Ms COUZENS: What do you think needs to be done in the area of prevention of vilification—for example, in relation to education research and the availability of support services?

Prof. MASON: Shall I jump in, Julie, and then you might want to go? Look, I think all of those things are absolutely crucial here. The Victorian community, I think, has some understanding of vilification. But whether people really understand that they can report these things to police and have a good sense of what they actually mean and that their experience might match the legal definition, that is a totally different question. And I think community awareness is absolutely crucial here.

Just going back to that research that I conducted as part of an Australian research grant with Victoria Police, one of the things that we did there was we held focus groups, particularly with minority communities in Victoria. The outcome of those focus groups was that people did not understand concepts like prejudice-motivated crime, which is a concept that Victoria Police use. They did not understand vilification either. I mean, I can understand why—both of those are mouthfuls. When you do not understand a concept, then it is very, very difficult to recognise that your experience of something awful might actually amount to that legal concept. So community awareness is absolutely crucial here.

Community trust is crucial as well. And we know that some—not all communities, but some—minority communities have a problem in terms of confidence with the police, communities being overpoliced, like Indigenous, Muslim and African communities. We need to overcome those problems as well. That requires really careful liaison between police and particular communities to build those trusting relationships. So you are talking here about community awareness campaigns, about the meanings of legislation. You are talking about strategies from both sides—from police and from communities—to build those trusting relationships that are absolutely essential.

Ms COUZENS: Do you think the police need educating as well on what vilification means and what laws are in place if somebody does make a complaint?

Prof. MASON: Yes, look, I do, and Victoria Police have done work on police training for recruits. I am not so much aware of the work they have done around vilification education, but they have actually integrated into their training for recruits a program on prejudice-motivated crime, or a module on prejudice-motivated crime. What we did in our research project was we assessed the impact of that training module on a survey of

1600 recruits with Victoria Police. We basically looked at their understanding of prejudice-motivated crime before they did the training, which was a 4-hour module as part of the recruit training, and then we assessed their understanding after the training.

The bad-news story is that the training did not have a positive impact on their capacity to identify prejudice-motivated crime or hate crime, and I think that really brings to the fore the difficulty in this area. So it was not for want of trying; Victoria Police were integrating this training into their overall package, but it was not working. The main conclusion from the research was that the training was confusing recruits. If you think about it, a recruit has a whole heap of information coming at them at one time and they have got to digest a lot. So I guess that that research is instructive because it shows that, yes, training is essential but training is difficult. So, again, we need to look at international best practice, and there is a significant amount of evidence on what does work in training for police, particularly coming out of Europe and the UK.

Mr SOUTHWICK: Thank you very much, Gail and Julie, for that presentation and the work that you are doing. There was a lot you covered just then, Gail, about the policing. There are just a couple of things I want to carry on with. Firstly, are you able to provide the committee, obviously at a further time, some more information, particularly around the UK model with policing and some of the work that is being done there—I think that would be really useful—and in addition the training that you just mentioned? Secondly, I know that you opened up in the presentation talking about the under-reporting and the fear. Do you think one of the recommendations that we should be focused on is that hate and vilification should be one of the reporting mechanisms in the crime statistics each quarter? As you know, I think, Victoria has an independent agency that reports on crimes. Would it be helpful if there was a separate category that dedicated itself to that?

Prof. MASON: Yes, yes, I definitely think it would because there is a lack of data, as we have already said, and I am sure you have read before in other submissions. And this is not peculiar to Victoria; this is across Australia. Sure, we have police forces that collect hate crime data, and of course human rights agencies collect their own data as well, but we have no way of putting those together. We also have no consistency nationally, for example, on the definition of 'vilification' or the definition of 'hate crime'. So having a national database or register of hate crime would be ideal, and I would be happy to talk about that as well.

But short of that, I think that in Victoria, yes, it would be incredibly valuable if reports of prejudice-motivated crime, if that is the category that Victoria Police will continue to use, could be pulled out of the data and reported annually and publicly, and reports of vilification as well, because one of the things that we lack here— well, lack in Australia generally—is not just good police data but the public availability of the data. Again, if we compare ourselves to the UK or the US, there you have annual reports; so the Home Office in the UK produces an annual report every year with hate crime data, and that is publicly available. I guess one caveat I would put on that is it is easier in the UK to do that because they have those very specific hate crime laws, so they have already got the legislative basis for the police to record the data and then for the Home Office to prepare the reports.

Ms NATHAN: It is not just hate crime, it is also hate incidents, because there is a lot of hate that occurs out there that does not measure up to being a crime. There are only two communities in Australia who actually collect data on hate incidents and hate crimes, and they are the Executive Council of Australian Jewry for the Jewish community and the Islamophobia Register Australia for the Muslim community. I think there may be a group in Victoria who collect data on anti-LGBTI incidents, and of course some of the police forces. Ideally to have a national reporting system and data collection system for incidents and crimes against all categories of people would then provide politicians and law enforcement with the information that they require to be able to effectively deal with and counter hate crimes and hate incidents across Australia, whether you do it state by state and then have it in a national system—so it needs to cover not just crime but incidents as well.

Mr SOUTHWICK: Thank you for that. That is great. We have seen lots of recent situations in schools, both attacking children but also in between ethnic groups of late. Would you suggest any strategies that we could be doing more in terms of a broader education piece or something that we could implement in schools that would help understanding of people's different ethnic backgrounds and cultures and what have you as a kind of mutual respect piece that is needed?

Ms NATHAN: Yes. Dealing with hate is a multipronged campaign. So law enforcement, legislation, is one area; education, particularly in the schools, in universities, programs—there are various ones; the national

strategy against hate, things like that—so teaching in schools, programs about other communities, but also being able to discuss differences without topics being shut down. So yes it is important. We have seen the horrendous incidents in Victorian schools last year and there have been more recently some interracial attacks in Victoria. Whatever will work, and looking at all the different areas—education, law and everything—is the best way to go.

Mr SOUTHWICK: Just finally, particularly on the use of symbols, we have seen obviously a swastika, a symbol of the past, that is being used obviously now currently. What are your views on, say, banning those symbols?

Ms NATHAN: The Australian Hate Crime Network has not looked into this matter. I have in my own capacity in my professional job. It is a complicated issue. Say for example, Germany and other countries will ban Nazi symbols. Once we start to ban symbols, say if we ban the Nazi swastika—a swastika also is an Indian symbol with very good intentions—or the Nazi flag here, then what happens is right-wing extremist neo-Nazis will then choose a different symbol which is not so identifiable as they are. It is something that needs to be looked at very closely, and how it works, for example, in Germany and other countries, but as for the Hate Crime Network, this is not something we actually have a position on at the moment, because we are more into changing legislation or assisting with legislation to be changed. But that is something that can be looked at later.

The CHAIR: I thank, on behalf of the committee, Gail and Julie. Thank you so much for what has been a really extensive presentation and all the work that you do as part of the Australian Hate Crime Network. The next steps for the committee will be that we will continue going through the deliberations of all the submissions and evidence received by the committee. We will be preparing some strong recommendations as part of a report to government for some changes. So thank you for being part of that process. You can keep up to date via the committee's webpage. Again, I do thank you for taking the time to present today and joining us via Zoom.

Ms NATHAN: Thank you.

Prof. MASON: Thank you very much for inviting us.

Committee adjourned.