

TRANSCRIPT

LEGISLATIVE ASSEMBLY LEGAL AND SOCIAL ISSUES COMMITTEE

Inquiry into Anti-Vilification Protections

Melbourne—Thursday, 25 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

Mr Peter Wertheim, co-Chief Executive Officer, Executive Council of Australian Jewry;
and

Ms Monique Meyer, parent.

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 that mobile phones have been switched to silent and that 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 their 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 the hearing is protected by law. However, any comment repeated outside this hearing may not be protected. Any deliberately false evidence or misleading to the committee may be considered a contempt of Parliament. All evidence is being recorded today and you will be provided with a proof version of the transcript following the hearing, and all transcripts will be made public and posted on the committee's website.

Today I welcome from the Executive Council of Australian Jewry, Peter Wertheim, the co-Chief Executive Officer, and of course Monique Meyer. Thank you. Are we all present?

Mr WERTHEIM: Thank you, Chair, and I thank you for the opportunity to appear before it.

The CHAIR: You will have up to 10 minutes to provide your submission, followed by questions by the committee. Again, thank you so much for taking the time to present to us today.

Mr WERTHEIM: Thank you again, Chair. By way of background, my organisation, the Executive Council of Jewry, is the elected representative body of the Australian Jewish community. Some 200 major Jewish organisations across Australia come directly or indirectly under our umbrella. You have already heard from two of these organisations: namely the Jewish Community Council of Victoria, which is our constituent body in Victoria, and the Union for Progressive Judaism, which is one of our national affiliate organisations. I respectively adopt the submissions they have each put to you about the civil and criminal provisions of the *Racial and Religious Tolerance Act*. You have also heard from our research director, Julie Nathan, who researches, compiles and authors the annual *Report on Antisemitism in Australia*, which my organisation has published since 1989. Ms Nathan and Professor Gail Mason, of the University of Sydney law school, appeared before the inquiry yesterday, and I also respectfully endorse their submissions.

I would like to use the time available to add some separate observations of my own to address the inquiry's first term of reference, namely the effectiveness of the Act 'in delivering upon its purposes'. One of the Act's purposes as set out in section 1 is, and I quote:

to provide a means of redress for the victims of racial or religious vilification.

The Act provides civil prohibitions against the incitement of racial or religious hatred, in sections 7 and 8 respectively, and a mechanism for bringing and resolving disputes before the Victorian Equal Opportunity and Human Rights Commission or ultimately the Victorian Civil and Administrative Tribunal. It also provides, in sections 24 and 25, for criminal sanctions in serious cases.

This inquiry has already heard much about the deficiencies in the way the civil prohibitions and the criminal sanctions are framed in the Act and the narrowness of the attributes which are protected. Three propositions have already been put to this inquiry by others. Firstly, that the civil prohibitions should focus on the effect of vilification on its targets, the victims, rather than on its effect on third parties by requiring proof of incitement, as the Act presently does. The provisions of part IIA of the commonwealth *Racial Discrimination Act 1975* focus directly on the harms done to the targets of racism. I agree with those who have said that this is a more appropriate and workable form of civil remedy. Secondly, that the protected attributes should be broadened so as to protect other vulnerable groups. I agree with those who have suggested that the protected attributes be the

same as those in section 93Z of the New South Wales *Crimes Act*, namely race, religion, sexual orientation, gender identity or intersex or HIV/AIDS status. Thirdly, that the criminal sanctions in the Act should be completely replaced with provisions modelled on the provisions of chapter XI of the Western Australian criminal code: David Knoll from the Union of Progressive Judaism took the inquiry through these provisions in detail yesterday and I endorse his comments, and I am happy to talk more about that during the question period. There has also been some discussion about proscribing the public display of certain symbols as Nazi symbols. Given that such displays have reportedly occurred more frequently in Victoria over the last few years we would support the introduction of a separate offence along those lines, in addition to, but not as a substitute for, offences based on the Western Australian model.

I would like to add just two further points: one relates to education against racism generally and against antisemitism in particular; the other concerns further possible means of redress in addition to civil prohibitions and criminal sanctions when vilification occurs in an institutional context. On the question of education, the law can only be effective in counteracting racism and other forms of abuse if it is allied to other arms of government policy, including education policy. This inquiry heard from Professor Suzanne Rutland on 28 May 2020. She and her colleague Professor Zehavit Gross have done a great deal of research and writing about the prevalence of antisemitism in Australian schools and what can be done to educate against antisemitism. It seems that generic education against racism will not address this problem because many younger people fail to see antisemitism as a form of racism. They see Jews as part of a privileged white elite who are immune from racism, a misperception which provides a disturbing insight into the appalling ignorance of history of many younger people. What is needed is a school curriculum not only for history but across the disciplines which inculcates critical thinking and educates against prejudice generally and against antisemitism in particular. This should include but go well beyond education about the Holocaust. There is a need to address the religious, racial and political sources of anti-Jewish hatred directly. Political leaders have an educative role to play too. They need to send consistent messages affirming the equality of all Australians and repudiating racism. The law is of course critically important as a tool against racism, but the law cannot do its job unless it is backed by a whole-of-government commitment.

On the question of other forms of redress when racist abuse occurs in an institutional context, I suggest that a redress scheme with a restorative process would be of far more practical benefit to the parties and to the community than complete reliance on a formal dispute-settling mechanism between the parties. A redress scheme could operate in a similar way to the national redress scheme for survivors of child sexual abuse that came into effect in all Australian states on 1 July 2018 and to which the state of Victoria is a party. It would provide a just, speedy and inexpensive mechanism for victims of racial or other abuse in an institutional context. The institution, not the government, would pay any compensation awarded and also an administration fee to cover the costs of operating the scheme. There would be a low evidentiary threshold to establish eligibility for compensation and the amounts awarded would be modest and capped. It would offer victims counselling and a restorative process that would carry no financial cost or legal liability, but it would make it possible for victims to receive an acknowledgement of the wrong done to them by the institution and an apology. Often the apology means far more to the victim than any financial compensation. On 28 May 2020 this inquiry also heard from Maxine Piekarski, the mother of a 12-year-old boy who was subjected to a sustained campaign of racist bullying by a gang of students at a Victorian public school in 2019. The bullying culminated in a vicious physical assault of her son by the ringleader, who screamed the words, quote, ‘You cooked-up Jew’, at her son during the assault.

Even though the mother made complaints to the school principal over several months beforehand and warned the principal of her fears that an assault was imminent, the school did nothing to prevent the assault. At times it seemed to treat her son as if he were as culpable as his tormentors. There has still been no apology, public or private, by the school or the Department of Education and Training for their manifest failure to perform what must surely have been their most elementary duty—to keep her son safe at school—despite all the expressed warnings beforehand. There has been no offer of compensation for the medical and additional educational costs which Maxine has incurred or the trauma inflicted on her son.

Another gang member who threatened Maxine and her son when the incident was reported in the media was charged with multiple offences by the police. I am informed that all of the charges were dismissed last Friday. The perpetrators have essentially escaped scot-free. Nearly 30 years ago the National Inquiry into Racist Violence in Australia concluded that the harms of racial vilification go well beyond hurt feelings or injured sensibilities and consist instead of, and I quote:

... adverse effects on the quality of life and well-being of individuals or groups who have been targeted because of their race.

The shocking racist bullying of Maxine's son, culminating in an assault incident, demonstrates the truth of that conclusion and highlights also the destructive nexus between racist language and acts of violence. It also highlights a complete institutional failure by a Victorian public school to prevent and deal with such a situation. This is the sort of case that cries out for an institutionally based redress scheme and demonstrates also the urgency of curriculum reform.

I now hand over to Monique, whose five-year-old son was last year subjected to racist abuse and bullying in another Victorian public school. It is another case of wholesale institutional failure that further demonstrates the need for an effective means of redress and for educational reform. I thank you for your attention.

Ms MEYER: Hi. I would like to thank the committee for the opportunity today of appearing before it. I have listened with great interest to many of the submissions made to the committee, and following our experience last year we worked closely with the Anti-Defamation Commission, the ADC and Peter Wertheim of the ECAJ. I would respectfully adopt the submissions put forward by the Anti-Defamation Commission, the Executive Council of Australian Jewry and the Union for Progressive Judaism, together with the Jewish Community Council of Victoria. These submissions effectively detail the inherent shortcomings in both civil and criminal provisions of the racial and religious vilification Act.

While I have a legal background, my assertion in this submission today relates directly to my experience as a parent of a child who endured racial and religious vilification at a particularly young age while in the care of a Victorian public school. It relates directly to their failure to effectively provide him any kind of protection and the subsequent journey that we have had as a family in what is, unfortunately, a very adversarial and closed system which leaves the harmed party no real other alternate than to pursue formal dispute mechanisms. I would very much like to emphasise the proposition made by Mr Wertheim: a national redress scheme is necessary.

Our son suffered tremendously as a result of the systematic failure on the part of the school he attended. His story was well covered by national and international media the time. As a mother, I was devastated by the effects. I felt responsible to some extent because I had trusted the school with his care. Our son is an incredible little boy. He is the kind of child who is friendly to everyone. He loves all sports and is a mad-keen fisherman. He is the child who walks in anywhere and starts a conversation. So when my son told me I should not love him because he is a 'worthless Jewish rodent' you will understand I was without words. I still have no way to describe the feeling, and just saying the words makes my eyes fill with tears. Anyone feeling worthless is horrible, but for your five-year-old child, who you love and care for and adore, feeling those feelings is something that stays with you forever and is something which should never occur. We discovered that a boy in his prep class did not like him and had enlisted his older brother and his friends to target and bully our son. They used awful language, insults and physical intimidation after discovering that he was Jewish and continued to harass him, specifically in the bathrooms and playground, throughout term 1. The bullies focused on the fact that our son's penis was circumcised and would follow him into the bathroom to harass him continually and comment on his genitalia.

Once we found out, we did all the right things. We notified the school immediately, we had numerous roundtable meetings, we took him to doctors and we insisted on a safety plan prior to his return to school—something the school never suggested and then proceeded to breach within 24 hours of implementation, with the principal indicating the teacher had been overwhelmed. While the same boys identified as bullying our son were caught laughing at him in the bathroom there was deemed to be no ill intent, and presumably this conduct is acceptable. The fact that this kind of behaviour falls within the classification of sexually abusive was completely ignored. What made matters worse was that my husband was in attendance at the school that very day and spoke to both teacher and principal following the incident but neither told him of what had taken place. Instead they chose to interview our son without us or any support person present. He told the principal that the boys were present in the toilet and laughed at him and had identified him. On return home he told us these boys had called him a 'dirty Jew'. When asked if he shared this with the principal he indicated he could not as she was not Jewish and she would not understand. I was shocked and appalled by the handling of the matter. We had made it quite clear as part of the safety plan that if anything occurred we were to be contacted immediately. We had identified a medical practitioner with whom our son has a relationship as the only person to interview him, given the significant stress and anxiety he was suffering from. This was again ignored. We requested an incident report. This was provided a month later and crucial factual elements were missing. In the interests of

brevity, the department were very slow to respond. It was really only through the repeated canvassing of the matter and the Cheltenham incident and the efforts of organisations like the Anti-Defamation Commission and associated media coverage that this matter was ever reviewed.

Our son is now seven, and he has missed the majority of his prep year because the school system and the education department failed to properly address anti-Semitic bullying. His first big-school experience was unimaginably traumatic. The school and the education department failed him, and he was young and vulnerable. He is too young to advocate for himself, so we must speak for him. It was an experience that reduced our son, a five-year-old, to feeling utterly worthless. He is able to articulate the hurt he felt, the loss of time he experienced with his friends and the sense of injustice. To our knowledge no action was ever taken by the school regarding the bullies' conduct, and no apology has ever been made by the school to us. What happened to him should never have occurred. In our situation the school concerned failed him. They did little or nothing to combat directly the racism and religious vilification he experienced at the time in any meaningful way. In fact when we requested some kind of action be taken—an education initiative or just a general announcement at assembly effectively condemning racism and religious vilification of this kind—the school refused. We were simply pointed to the bullying programs and policies in place which provided little or no reference to antisemitism and specifically to religious vilification and of course provided the context in which this all took place.

To this end I would agree with the submission of my learned friend Mr Wertheim. The law is of course critically important, but it cannot do its job unless it is backed by a whole-of-government commitment. In my view if programs like Safe Schools are provided in schools, they must be rigorously implemented if they are to be successful and they need to be offered to all students. Likewise, if an individual safety plan is drawn up, it has to be followed, and all staff are responsible for ensuring that the specific, absolute guidelines are implemented. There has to be a consistent approach. Junior staff need to be counselled and educated accordingly. Senior staff have an obligation to demonstrate true leadership by both their words and their actions. There has to be a concerted effort to eradicate discrimination of any kind, and there needs to be accountability for this external to the department itself. If cultural diversity and inclusion are to be genuinely acknowledged, all departmental policies and programs must require that there is strict adherence to these principles and an unwavering implementation of the objectives. It cannot be a case of paying lip-service. It has to be seen to be done and be done effectively.

Our son is just five years old. It is imperative that antisemitism specifically and religious vilification are addressed in legislation and school curriculum at a young age and that schools effectively seek to proactively fight prejudice in all forms. Thank you all for your time today and the opportunity to take part in this inquiry.

The CHAIR: Monique, thank you very much for your time today and for sharing your experiences with us. I do understand it has been a difficult time for you and your family, so we really appreciate you appearing here today.

Mr SOUTHWICK: Thank you, Peter, for your contribution, and thank you, Monique, for sharing your story with us today. Words are very hard to describe or add anything in terms of what you and your family have gone through. Please pass on our best wishes to Anthony as well. We had Maxine appear, as you know, a few weeks back, and my colleague James Newbury apologised for what happened in terms of a system failure, and I want to just do that for you as well. I think this is a systemic failure in our system, and that is the reason why these committees are so important, because we have to fix this. We have to address this. The safety is absolutely paramount of our young people. When we see our institutions fail us, more importantly when we see our schools fail us, which is the one place where you would think you would be able to redress, educate, ensure kids understand people from different backgrounds and are more aware, when that is happening in our schools then we know we have a huge problem.

I wanted to ask you, Monique, firstly to you, since the events—and obviously you still have not received the apology—I know you have had meetings with the minister, and I know there were a number of recommendations that then came from that. If you could tell the committee what happened from that and where things are at in terms of that within the schools and also the fact of your son leaving the public system—I believe he is in the private system—if you could just share a bit more about that too.

Ms MEYER: So for us, we did not feel comfortable to send our son back to a public school experience. We just did not have confidence in the department's ability to care for him in that context and advice was really, given what he has experienced at this young age, it was imperative that he be kept safe and that he feel comfortable with his Jewish identity. So as a result of that we have sent him to a Jewish day school which he feels very happy in and he is very settled at, and they are a wonderful facility. Our concern in doing that was we had not wanted to just remove him from the public school system, because that is not the solution to combatting antisemitism, but given what has taken place it is also not his role to fight that within the system.

We were very disappointed with the review which took place because the report that was created from that review following the incident was never actually released to us as parents. We were allowed to read it in a redacted form in the context of having two people essentially standing over us holding the report. We could read it in that limited form, but, as you imagine, it is very hard to digest these things, given the emotional nature of them, within that context. The department are limited by their bureaucratic processes. Obviously that is part of the nature. I do not think they are inherently evil or anything to that extent and I do not want to paint them as such. They have processes in place but I do not think these fully extend to combatting antisemitism in a meaningful way as we are seeing it presenting today. That has been part of the reason why we have chosen to send our son to a school where we feel he is safe and protected. I am not sure if that answers your question, David, but—

Mr SOUTHWICK: Yes. And in terms of what the minister then did in terms of a number of different recommendations and I think helplines and other things that were then implemented, what are your thoughts in terms of that?

Ms MEYER: Look, I think everything you can do is wonderful, but I have a question as to how effective those programs will be given none of them actually target children at the younger end of the spectrum. Now I understand it is a particularly complex thing to do and I understand that children who are so small are particularly vulnerable, but it is imperative that we educate children clearly at this young age that it is okay for everyone to have a different religion, to be different, to have a different belief system, and that there is some sort of effective education model. I have listened to Professor Rutland's advice, and what she puts forward is absolutely fantastic. A program of that calibre is really what is required, as I see it, to effectively combat antisemitism of this form and religious vilification, because the reality is if it is happening to a particular group, it is happening to everyone.

Our son is a particularly confident little boy. He is outgoing, he is very friendly, and I can imagine that a bully would pick on that because—you know, by their nature. He is someone who stands up for what he believes in and he has never been frightened to do so. But there will be other children who do not have that sort of disposition and they would be feeling vulnerable as well. So it is important that education is really implemented, in a basic form.

Mr SOUTHWICK: Thank you, Monique. Peter, to you. In this situation, in Monique's situation and in Maxine's as well, in Victoria we have obviously got some huge gaps. In some of the other states, say, Western Australia, would these things occur there? What do they have in place that we do not have that would ensure that these types of situations would not occur?

Mr WERTHEIM: David, Western Australia we have held up as the model that ought to be followed or as the best practice model for criminal sanctions. That is based on the experience with the actual operation of chapter XI of the Criminal Code over there.

Now in the situation you have just heard about from Monique and that you heard about from Maxine where the perpetrators are minors, obviously different considerations will apply. However, if an analogous set of circumstances arose involving adults, it is doubtful that the *Racial and Religious Tolerance Act* would be able to be applied, either the civil or the criminal aspects, because there is no element of incitement. This is direct harassment rather than incitement.

Incitement focuses on the effect of words on an audience, a third party, and what harassment does—and this is a concept that is imported into the Western Australian legislation in addition to incitement—is to focus on the effect on the actual target. 'Harassment' is actually defined in the Western Australian legislation. It includes threats and substantial and serious abuse and severe ridicule, all of which would have applied quite clearly in

the circumstances that Monique just outlined to you and which Maxine outlined to you in relation to what happened to her son. So there would have been an opportunity, had this sort of situation occurred between adults, under a Western Australian model to address it legally as well. And that would have been really important to inform the backdrop against any other parallel efforts that were made to resolve the matter through conciliation and through direct negotiation. The law is critically important in framing society's standards and in providing, I guess, the ultimate sanction if things cannot be resolved, and thereby it helps to get things resolved, even though we understand that in the vast majority of cases these things are and should be dealt with face to face rather than through some formal legal process. But the ultimate sanction of the law has to be there in order for that to work.

Mr SOUTHWICK: And the fact that we have had an institution failure here and we are months and months down the track and there has been no apology as such in terms of this, I think what you are proposing in a national redress scheme is a very, very interesting one and something that should absolutely be considered. You are representing a national body. Would you see this as unusual, the fact that we have had so much of a spotlight that has been shined on this situation in Maxine's and Monique's cases? There has been an investigation by the minister into this and recommendations and changes, but still it seems as though the families have been left high and dry.

Mr WERTHEIM: All I can say, David, is that I have seen similar situations begin to arise in New South Wales, where I have greater familiarity with the situation, and I have seen early intervention by community, by parents and by the government to ensure that the kind of delays and systemic failure that have been described here do not occur.

I am aware of multiple cases where this sort of thing has arisen either in a school or in a university or a TAFE. There has been rapid intervention. I am aware of one case that involved a TAFE and harassment and continual abuse of a student, a Jewish student, at a TAFE, where the TAFE intervened immediately and introduced a 10-point protocol which all staff and all students had to abide by to prevent any such thing happening in the future, and of course it was done as soon as it was brought to their attention. It was not something that they prevaricated about. It ended up that everyone was quite satisfied with that outcome, including the student who had been harassed. There are effective ways of dealing with this.

Obviously education is important because we want to create critical thinking and an approach to life where these sorts of things do not happen in the first place. But allowing for the fact that perhaps it is inevitable that they will from time to time happen, there has got to be an effective response that shows that society is absolutely opposed to this sort of thing happening, that society's values are completely incompatible with the abuse, harassment and intimidation of people on the basis of race, religion or other attributes and that every Australian is equal and has the right to be treated with full equality. It is elementary. I am saying that the experience of other states seems to be that even though incidents do occur, they seem to have been dealt with more effectively and less defensively, if I may say, by the institutions concerned. So that is partly a cultural issue and perhaps it is also a matter of policy.

The CHAIR: I just had a follow-up question, if I may, to Peter just in relation to education. The importance of education clearly has really shown itself throughout this inquiry. I just wanted to touch on the fact that back in February the government and the minister did announce that all government secondary schools, in particularly years 9 and 10, will be taught about the Holocaust, I suppose, to tackle that antisemitism and racism in the broader context. I just wanted to seek your opinion in relation to also that the government was actually working with the Jewish community and Gandel to develop a Victorian curriculum. I think that when we are talking in the context of education, there seems to be some resources and, as I said, a curriculum being developed to be implemented in the Victorian curriculum. I want to seek your opinion in relation to how effective that response has been. Could there have been more work done? Have you heard of this process throughout the year in the Jewish community, in particular when it comes to developing a curriculum for all government schools?

Mr WERTHEIM: Yes, thank you, Madam Chair. Firstly, I have nothing but praise for those programs. They are very important, and they serve a central function in dealing with the sorts of issues that we have been discussing. There has been a national curriculum in place I think since about early 2013 or 2014 from memory where it has been mandated that the Holocaust be taught as part of the year 10 history curriculum, which is compulsory. Every state has a discretion as to how to implement that, and Victoria has now announced that its

implementation of that will be somewhat more sophisticated than it was. The point I was trying to make earlier was that we need more in addition to that, because although Holocaust education is extremely important, there is a tendency with younger people to regard it as some remote event of the distant past which does not personally relate to them. Although many curricula have been developed to try to overcome that, it is still an issue. That is one point.

The other point is that by the time kids get to year 10, they are pretty much formed in their character and in their opinions and it might be too late. My view is that you need to, as Monique said, start much younger, maybe not begin with the Holocaust because that is a bit confronting for younger children, but just start with education about difference, anti-prejudice training, critical thinking. I think that is a skill that goes far beyond the issues that we are talking about but we see too little of. And there are perhaps some key moments in a child's development – and I think you would need expert advice on this – but key moments, say, when they start school, when they start primary school and when they start high school where these issues will come to the fore and need to be addressed by some direct anti-prejudice programs that are appropriate for that age group and which address the common prejudices and things that kids face at that age. I think years 7 and 8 in particular are very sensitive years for boys. It seems to be the age where racism starts to be expressed more forthrightly and when they are more conscious of those sorts of differences and are feeling insecure in themselves and for all sorts of reasons it comes out. That is another point at which it needs to be addressed.

It needs to not only be anti-racism. I am sorry to say, it also has to specifically address antisemitism because, as I said in my opening remarks, there are far too many younger people who see Jews as part of a privileged white elite who are immune to racism. They do not know the history, they do not know the reality, and that has to be overcome as well, and it can only be overcome if it is specifically addressed.

The CHAIR: Thank you, Peter. I totally agree that education plays in all stages in working through the curriculum because for someone in prep things can become confronting and it needs to be targeted, and working with the community and the sector are really important I suppose comments that you have made.

Ms COUZENS: Thank you, Peter, and thank you, Monique, for having the strength to contribute today. We really do appreciate it. Peter, you talked about the national redress scheme and the idea of perhaps using that in these situations. I suppose the question I ask is: given that not all institutions have signed up to that, how would you make it successful?

Mr WERTHEIM: Thank you, Christine. I was just holding up the national redress scheme for child sexual abuse as the kind of model that could be adopted. It would not have to be a national scheme; it could be that Victoria could lead the way and have a state scheme. It is not going to be a big burden on revenue for the reasons I stated—it is the institutions which have to pay the compensation and they also have to pay an administrative fee equal to 7.5 per cent of the amount of any compensation awarded, which helps to cover the government's costs of administering.

Overall it ought not to be a major burden on revenue, but the importance of it that I see is, number one, you do not actually have to have the parties appearing in person. It is done on the papers. That means that they do not have to relive the trauma and go through the whole thing. Number two, the threshold for establishing eligibility for compensation is a very low one. Essentially the claimant simply has to establish that the injured party was introduced to the perpetrator through the mechanism of an institution, and this could only apply where the abuse has occurred in the context of an institution. There are other contexts where it will not apply, but like the national redress scheme it is only institutionally based. Thirdly, the other critical thing is that the compensation is capped; it is very modest. In the national redress scheme the maximum amount for the most serious cases is \$150 000, which is a fraction, an order of magnitude lower than the amount of damages that would be awarded if the claim had succeeded in an ordinary civil action under the common law. So it is a very small amount, and the average payout, I am told, is about \$80 000—and that is again for serious cases.

Now, I would imagine and I would hope that the kinds of cases of racial and religious and other prejudice-based abuse that Monique has told you about and that Maxine told you about would be relatively infrequent when they occur in an institutional context. So I do not think we are talking about a large volume of cases. I think the other great advantage of a scheme like that is that once you get past all of those sorts of issues there is an opportunity for a face-to-face apology, for a restorative process and for healing to occur. Again, I was a lawyer in my former life, and I acted for a number of plaintiffs in child sexual abuse cases. I can tell you: every

case that was settled ended with an apology and the client breaking down in tears because that was the cathartic moment that meant the most to them—far more than the amount of compensation that was awarded. Just hearing from the institution, ‘We did wrong and we are sorry and we acknowledge it’—often this was a burden they had been carrying for years, and it had a profound effect. This is something that is not readily available when you have an adversarial-type system, even if it is framed in the light of mediation or conciliation.

Ms COUZENS: So it is really a model or the idea of a concept that you are referring to, rather than the exact way that it operates?

Mr WERTHEIM: Correct.

Ms COUZENS: I support your comment about education. Children are not born racist, so I think starting at that early age—have you got any ideas around how we might have some prevention around vilification in early learning? You may not be able to answer but even if it is just a general overview of what you might think could work, and Monique might have a contribution to that as well.

Mr WERTHEIM: Look, I am aware that children from a very young age do not worry about difference at all but there is a certain point when they become conscious of difference, and then it becomes something that they just notice in the way that they notice lots of other things about the world. There is nothing inherently harmful about that. What is important is that they are guided through it and educated to understand that difference is not a bad thing to be afraid of—nothing to fear, nothing to be suspicious of and certainly nothing to be the subject of bullying or abuse or ridicule. It is just a simple bit of guidance, but it could mean so much and put them on a more enlightened path later on so that when they do come to consider more serious issues to do with racism and so on they have a context and a framework from which to assess this that does not tip them over into becoming a perpetrator. And hopefully they are not just bystanders either when they see it but will speak up and know how to deal with it.

Ms MEYER: And I would add to Mr Wertheim’s comment that it is imperative that with children at a young age, particularly when there are allegations, the whole group is told about the kind of conduct and educated on the conduct and what is appropriate in that sort of setting. It has to be called out. One has to name these things in order for there to be an effective change. I do not know if mandatory reporting should be implemented in certain instances, as you do in child protection matters, but I think it is imperative that we send a call—for our son this could have been really managed so much better if it had just been called out at an assembly. You know, ‘We have heard, children, that something has happened. This is the sort of thing that has happened’—do not go into the detail—‘It is okay at our school to be Christian, Muslim, Jewish. We do not accept or tolerate any bad language or any bad conduct against anyone for their religion, for their ethnicity, for their sexuality’, whatever it is, ‘We are all allowed to be different’. For us that would have really helped.

The CHAIR: Thank you for that, Monique. Again on behalf of the committee can I thank Peter and in particular Monique for sharing your experiences and the very informative submission. Monique, I know it is challenging time for you and your family, so I do send my best wishes and again thank you on behalf of the committee. I am wishing you all the very best.

Ms MEYER: Thank you for your time.

Mr WERTHEIM: Thank you.

Witnesses withdrew.