

TRANSCRIPT

LEGISLATIVE ASSEMBLY LEGAL AND SOCIAL ISSUES COMMITTEE

Inquiry into Anti-Vilification Protections

Melbourne—Tuesday, 25 February 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 Vivienne Nguyen, Chair, and

Ms Maria Dimopoulos, Deputy Chair, Victorian Multicultural Commission.

The CHAIR: Good morning, I would like to acknowledge the traditional owners of the land on which we are meeting. I pay my respects to their elders both past and present and to Aboriginal elders of other communities who may be here today.

I declare open the public hearings for the Legal and Social Issues Committee's Inquiry into Anti-Vilification Protections. At this point all mobile phones should be turned to silent. I welcome Viv Nguyen, the Chair of the Victorian Multicultural Commission, and of course the Deputy Chair, Maria Dimopoulos.

All evidence taken by this Committee is protected by parliamentary privilege. Therefore you are protected against any action for what you say here today, but if you go outside and repeat the same things, including on social media, these comments may not be protected by this privilege. All evidence given today is being recorded by Hansard and is also being broadcast live on the Parliament's website. Please note that footage can only be rebroadcast in accordance with the conditions set out in standing order 234. You will be provided with a proof version of the transcript for you to check as soon as available. Verified transcripts, PowerPoint presentations and handouts will be placed on the Committee's website as soon as possible.

I invite you to proceed with a brief 5- to 10-minute opening statement to the committee, which will be followed by questions from the committee. Welcome, Viv.

Ms NGUYEN: Thank you. Good morning. Before I begin I would like to acknowledge the traditional owners of the land on which we are gathered here this morning, and may I pay my respects to their elders, past, present and emerging, and any elders who are present here this morning.

Good morning to the Chair of the Legislative Assembly's Legal and Social Issues Committee, Natalie Suleyman, and all members of the Committee.

Thank you for giving the Victorian Multicultural Commission the opportunity to present our perspectives on this significant and timely Inquiry into Anti-Vilification Protections. I also want to acknowledge that Indigenous people are a group of people that are subject to vilification constantly and on an ongoing basis.

I will briefly run through the commission's consultation process and the key findings, and Maria will focus on the key recommendations and rationale.

The commission's consultations on anti-vilification protections included 10 regional advisory council meetings, which comprised nearly 300 community leaders and representatives across Victoria. It also included a multifaith advisory group which includes representatives from more than 20 faith communities and a round table of young professionals from across the NGO, legal and corporate sectors. As outlined in our submission, we heard and observed concerns from the sectors, including concerns with the increase in vilification, particularly online, and with the lack of protection and support for individuals making a complaint; concerns with the significant and ongoing mental health impact on the individuals and their community groups; and the limited awareness of the existing provisions and indeed the awareness of the avenues to seek protection. For example, the majority of those consulted are unaware that the Victorian Equal Opportunity and Human Rights Commission administers the legislation, the complaint process and the procedures required to undertake the complaint. Those who access the provisions find the procedural hurdles difficult to meet—for example, the number of forms to fill in and the onus of proof—and there is a significant confusion between discrimination and vilification and the interaction between the State and Commonwealth legislation when vilification arises.

Committee, as you know, Victoria is arguably one of the most culturally diverse societies in the world, with data from the ABS census showing that we have more than 200 cultural, ethnic and racial and religious backgrounds, more than 200 languages and dialects are spoken and we practice more than 130 faiths. Of that, 26 per cent of the population speak a language other than English at home and nearly 50 per cent of the population were either born overseas or born in Australia with at least one parent born overseas. For Melbourne

specifically this diversity is even greater, with 57 per cent of the population either born overseas or born in Australia with at least one parent born overseas and 33 per cent of the population speaking a language other than English at home.

So given the above diversity data, the level of support for our multicultural diversity, as consistently reported through the Scanlon Foundation's social cohesion report, and the social, cultural and economic benefits that such diversity has and will continue to deliver for all Victorians, given the need to ensure that each and every Victorian is provided with the support and protection to participate and contribute fully in all aspects of our society and given the reported increases in incidents of Islamophobia and anti-Semitism as well as reported experience of racism and discrimination overseas, nationally and here locally, it is imperative that we make every effort to protect our diversity and social cohesion and that the critical cornerstones of this protection must be based on an ongoing and multilayered education campaign, and our state's legislative framework must have the world's best protection and processes. Over to you, Maria.

Ms DIMOPOULOS: Without sort of repeating the content of the submission, I think it is really important to emphasise some key points that particularly relate to the role of the VMC as a conduit between government and community, certainly the legislative aspects—I think things like the threshold being too high, elements of the attributes. You will note in our submission that we support that. I think fundamentally for us it is about the fact that communities have such a low awareness of the existence of this legislation.

This is an ongoing issue. It is not particular to this piece of law and I think anything that might sort of give greater consideration to prevention strategies by way of increasing awareness, but a more sophisticated approach to legal literacy is what we certainly heard communities talk about. The assumption that it is simply going to be about writing leaflets or distributing awareness campaigns—they are not enough. We actually have to work more closely with these communities to improve their awareness.

The fact that it is such an under-utilised, under-reported area of law, it just does not correspond with what the research is telling us about anecdotal increases in attacks on communities, particularly on the basis of their intersectional experience. So our call for the expansion of the attributes is very firmly based on what we at the commission are hearing is taking place out there, particularly with a whole new environment of online hate. So from that perspective we really do see that there is a need to appreciate the lived experience is a lot more complex than perhaps those singular issues approaches that legislation tends to talk about.

Finally, because we are obviously keen to elaborate on any aspects of the submission that you want to identify, I think that point about the threshold, that inciting hatred obviously in terms of third-party involvement is a critical block or barrier. The impact itself on the directed target is insufficiently canvassed by the law. So from that perspective anything that does not look more closely at how we might lower that threshold is bound not to make an impact with our communities.

That is probably in essence what we wanted to reiterate, but again open to any questions. Thank you so much for the opportunity. I think, Viv, it would be fair to say that in the consultations community leaders really did take up the opportunity to give feedback. So that is really, I think, inspiring to know that our members want to participate in the democratic process. They really want to feel like they belong. Any input that they might provide is certainly out there.

The CHAIR: Thank you. Before we move to questions I would like to thank the VMC for their work and being an integral part of the multicultural community. I can see by the submission that there has been in-depth consultation with communities, and you have raised some very important issues that need to be addressed. I might just start with one of the questions, and you just touched on that issue of online—the rise of online vilification. Maria, if you could just add: what really needs to be done to address online vilification in your opinion?

Ms DIMOPOULOS: Again, I think the feedback that we received was that whilst there are individual cases, this is in need of a systemic approach. And so to that extent the capacity of the current legislative framework to be able to undertake broader inquiries is not there. These are communities as groups that are affected by often anonymous postings. The power to identify who that respondent potentially might be is obviously limited. So the feedback again from communities is you often feel like you are dealing with these anonymous sources and not really knowing strategically how to address it. Muslim women certainly spoke to

us about the trolling that takes place but particularly a gendered type of intersectional racism and sexism that takes place. So I think it is widespread, at least anecdotally. We certainly do not have sufficient data, and that is another area that we would like to see some improvement in, ways that we can document the reporting of these crimes, all of which are gaps. But Viv, you might want to add to that.

Ms NGUYEN: What you have said is certainly what the communities have shared with us through the consultations. Also, the other thing is the impact on the individuals and the group of people that are hurt by those sorts of online comments and being unable to find avenues to receive that support. Services that are available do not necessarily have that type of service to support those individuals and a group of particularly women from the Muslim faith, and to be able to find that inner strength and courage to be able to take the next step—and some of those communities are naturally reserved about engaging our legal system—takes a lot of personal pain and emotional and mental health and wellbeing on them as an individual and as a small group of people, whether it be the family or the extended family right through to their communities.

Mr NEWBURY: You touched on legislative deficiencies and a rise in anti-Semitism. May I refer you to the ASIO director-general Mike Burgess's comments reported today which warn, and I will quote them:

In Australia, the extreme right wing threat is real and it is growing. In suburbs around Australia, small cells regularly meet to salute Nazi flags, inspect weapons, train in combat and share their hateful ideology.

With that in mind, would you mind sharing your views on a legislative ban of the Nazi swastika where its use is intended to vilify?

Ms NGUYEN: I will comment and then, Maria, you can further add to that. We support the ban of the swastika flag but doing that in a comprehensive context so that anything that incites hatred in the community is considered under the legislation, and that members of the community benefit from such action as opposed to an individual flag whereby there might be unintended consequences towards the community that supports the banning of the swastika flag.

Ms DIMOPOULOS: And just to add, I suppose, always the concern for us at VMC is how we balance those competing rights. I think all of us would be in agreement that it is a fine line at times. But I certainly think that a refocus of legislation is needed on the impact and as part of a community education program that makes people realise just how profound the impact is in terms of reducing people's capacity to contribute to democratic society, to feeling like they belong. I think all of those aspects to some extent have not received as much attention in that balance. Certainly—and rightly so—the focus is on the swastika and aspects of hate conduct that are out there, but we do not see the corresponding level of emphasis being given to what the impact is on communities of that, so I think a little bit more of a focus and attention on that would be helpful. The other aspect that came through was that to some extent the communities were feeling like the human rights charter had diminished in significance and visibility. I think to the extent that we might be able to re-emphasise the preamble of the anti-vilification Act for that matter, the emphasis that it places on human rights, the emphasis that it places on human dignity, it might well be worth raising some greater profile around that. Certainly from the community's perspective they do see the human rights charter as an important contextual and symbolic document.

Ms NGUYEN: And this is, if I may add, particularly true for communities that have come to Australia from war-torn countries who value the democratic values that underpin this country's system—very much so.

Ms COUZENS: Thank you very much for coming along today and providing your submission as well and sharing your learnings from your community. Pass on our thanks to your communities that have contributed to that. I have got a couple of questions, but I was just wondering whether you were able to identify any difference between regional communities and metro communities—whether there was anything clearly obvious where there was a difference?

Ms NGUYEN: In terms of the awareness of the legislation, there is not a significant difference, if anything at all. The level of awareness of the legislation is extremely low, and we are talking 300 community leaders and representatives, so in a way they are I guess more informed representatives of our community and yet the level of awareness is quite low and the understanding of the pathway of the process to be able to undertake a complaint is also quite low. There is clearly confusion between vilification and discrimination, and that resonated quite clearly. Even amongst the young second-generation Australians of cultural backgrounds that

distinction is quite lost. In that respect I think the understanding in the geographic locations as well as the generational understanding of the community of the current legislation is quite limited.

Ms COUZENS: I suppose I am interested to know what your view is on the importance of legislation—how that impacts, whether that actually does make a difference and what level of difference you think it makes.

Ms DIMOPOULOS: I certainly think the law is an incredibly significant instrument of social change, but obviously not on its own, and that is the point about having a more holistic approach to legislative changes and their impact on communities. That is why we are very much calling for—and this is quite aligned with the intent of the anti-vilification laws, which are very much about trying to prevent these things from happening in the first place—a corresponding investment in community awareness and community education. In partnership the VMC actually do believe that we are well placed to do that, but with a much more sophisticated approach to building legal literacy. At the VMC we have adopted a legal empowerment framework that really identifies, as Viv said, some of those pre-arrival experiences that often might pose an inadvertent block to engaging communities—to make reports, for example. As you know, fear of policing and all of those pre-arrival experiences are going to shake people's confidence in those sorts of institutions. A legal empowerment approach from our perspective, one that is steeped in community education principles, is the most effective way to do that, but obviously in partnership. But is legislation important? Absolutely, and not for one moment would we be suggesting that it does not have real or symbolic effect.

Ms COUZENS: And the education awareness, do you see that as twofold with multicultural communities—around the legislation but also the general community in understanding what is right and what is wrong, to put it simply?

Ms NGUYEN: We certainly think that there is a need for greater understanding and awareness across communities of legislation like this. In the main we do not interact with the law until there is a need to. Sometimes the infrequent nature of these things can mean that we do not need to know it until such time as we need to, and when that happens the very access to or availability of such sources that support people to be able to access the system does require that ongoing education and that awareness. We certainly think that that holistic approach to awareness and education is definitely necessary.

Ms DIMOPOULOS: At the same time, though, we do think that there is a need for legislative amendments with this particular law, because we want it to be effective. What communities, and particularly those that are aware of those legislative aspects, are clearly saying is, 'If you want this particular piece of law to be effective, here are some ideas that we've got to enhance it'. Where most of the debate, to reiterate, was really centred was around the incitement test. It confuses people, it does not take into account the impact, the profound impact, and ultimately it needs to be broadened, because communities do not live lives being one race, one community, one faith; they actually live in a much more complex way.

Ms COUZENS: In your submission you recommend moving anti-vilification protections to the *Equal Opportunity Act* and moving serious vilification offences to the *Crimes Act*. I am really interested in hearing more about why that recommendation has been made.

Ms DIMOPOULOS: I think again the point about the variability of understanding of legislation is probably one that could be made of a lot of laws in Victoria, but in particular with this law the often fine distinctions between things like discrimination, vilification and hate conduct are not readily understood, not so much in terms of lived experience but more so in terms of what their legal effect is. By consolidating or streamlining the legislation people seem to have a much-heightened awareness of the *Equal Opportunity Act* as an instrument of social change and as an aspect or a tool to deal with discrimination; there seems to be greater awareness of that as a piece of law. At the same time, having said the consolidation and streamlining is something that might increase awareness, at least in terms of ease of understanding, there is significance in vilification as a standalone act. I think most communities were saying, 'Let's not lose this', because whilst discrimination—

Ms COUZENS: That is why I am interested in hearing—

Ms DIMOPOULOS: That is right—no, absolutely not, and I think that needs to be stated again and again. The streamlining was more about access to the law and better understanding of what that continuum might look like rather than separating it out, so that that experience is understood from an individual and a systemic perspective rather than the importance of vilification, so much so that serious vilification should actually be

dealt with by police. But at the same time I think in terms of improving that reporting process the corresponding part of that would be to build police understanding of what vilification looks like and how it impacts. But, yes, I think it would be very, very fair to say that the question of vilification and its importance is stated by community leaders quite emphatically.

Mr SOUTHWICK: Firstly, thank you also for the great work that the VMC does for our community. If I could just pick up on some of the issues in schools, we are seeing a number of reports around vilification attacks and racial attacks—the five-year-old and a 12-year-old child, one of which was forced to kiss a Muslim boy's feet, was a very public situation, with parents still trying to pick up the mess in those situations. I understand the family have met with the VMC and with others. Firstly, how prevalent do you think that is within our schools? Do you think we have widespread issues that need to be dealt with when it comes to racial abuse, anti-Semitism and the like that is happening within the school system?

Ms NGUYEN: Thank you for that. Look, I think in the main Victoria is a culturally diverse state. If we go by the data and the evidence, there is that suggestion that there is continued support for multiculturalism, the cultural diversity that Victoria has and the benefit that brings to the state from all aspects.

In relation to the education system, we also understand there are a number of programs that have been happening that are being implemented across the state, at least in the Government schools, around cultural diversity, against racism and around bullying and the like. We also know that every year through our Cultural Diversity Week there are a lot of activities that are happening across the education system—the schools—and the commission certainly has attended many of those functions and events. However, we do recognise there have been increases in incidents of anti-Semitism and Islamophobia, and we recognise the work that is being done under the multicultural portfolio, under Minister Wynne, in terms of funding and programs that are provided for those sorts of ongoing programs and specific initiatives to occur.

We do recognise there is a lot more work that needs to be done. Sometimes it might be a specific area or it might be a specific school for a variety of reasons, and we support the work that is being done across the board by different organisations, whether it be from the government, the multicultural affairs portfolio or the likes of the Anti Defamation Commission and other community organisations who are running programs across our education system. We do recognise that the VMC has a lot more work to do on that front, and we are working with the department and other agencies around those issues.

Mr SOUTHWICK: So in terms of specifically when it comes to educating our young people around these types of issues to ensure we do not have the situations occurring and ultimately leading to the later problems, we had SRI, special religious instruction, as religious education formalised. It was scrapped back in 2015, and there was a suggestion that there would be GRE, general religious education, that would implement more a values-based education right across the board to teach young people about different people's religions and ethics and values. Do you see that that is an important place for us to have in terms of our school systems to educate our young people? And where do you think things like Holocaust studies sit as well to ensure young people understand about some of the atrocities of the past and give them a proper education and understanding about that bullying, intimidation and vilification going forward?

Ms NGUYEN: We do support, in the main, education across faiths. As we know, in Victoria we have people practising over 130 faiths, so understanding religious diversity and respecting religious diversity is important. We understand also that there are many programs that are currently being run in the education system around religious education, and we suggest that those specific recommendations should be in the remit of the department of education and that we would work with the department to make sure that the diversity and the understanding and the awareness and the systemic change that will occur in our education system will support our younger generations.

Mr SOUTHWICK: So do you think that early type of general education would help us down the track? If people understood other people's religions and backgrounds and faiths, do you think that would be a key start?

Ms NGUYEN: We think in the main it is about supporting children to understand and have a flexible and open mind about different faiths and different religions that are being practised and teaching children to understand the history and the impact of such atrocities that have happened in the past and the lessons learned

from those. We support all of those types of education to give our young children as broad an understanding as possible.

Ms DIMOPOULOS: And for us I suppose the framework—I mentioned this earlier on—provided by the human rights charter in terms of adopting a human rights approach means that we are also doing some truth telling about the atrocities of our First Nations people. That is something the VMC has embarked on at the moment in terms of really getting our multicultural communities to recognise the impact of that history and the vilification of First Nations people as the basis for any discussion around racism and vilification. So that is a project that we are currently embarked on with the treaty commission as well.

But I think in terms of that human rights framework, obviously we need that balance, because the challenges, as you are well aware, in multicultural, multifaith societies which we are so proud of in this state mean that we have got to have those broad balancing approaches, and that is what the charter from the perspective of our communities offers. It enables our communities to recognise that these absolutes are very rare; that we have constantly got to be balancing these competing rights, but in a way that ultimately does not lose sight of human dignity. I think that for us is the bottom line—that the dignity of children, all children of all faiths, of all communities, is at our core.

Mr SOUTHWICK: And finally, picking up from James's point earlier in terms of the call to ban the swastika, would you accept that that symbol that has been used from the past, in what that represents from the past, is something that is currently being used not just for one community—we are seeing that swastika being used at Maribyrnong pools, targeting the Jewish community there, and being used in Beulah, a town 100 kilometres out of Mildura or thereabouts—as a symbol very widely to target anybody that is of non-white background, and that being able to ensure that we do what we can to have that symbol effectively banned, doing something like that, would send a very, very strong message in terms of hatred and would also help in terms of an education process going forward?

Ms NGUYEN: As we have mentioned before, we support the banning of the swastika flag, balancing that with a holistic approach, so that banning any symbol that incites hatred, that creates disharmony and a lack of social cohesion in our community, is something that we support, and doing so with the balance of the human rights that are, I suppose, entrenched in each and every individual member of our community. We recognise that it is being used to really encourage people to undertake activities that may not necessarily be in the best interests of our social harmony, and we condemn all activities that incite hatred.

Ms DIMOPOULOS: Can I maybe just add—and this follows on, Chris, from the comment you made about regional—at the time the media were reporting the swastika we also reached out to our regional council in that area, and shortly after we were incredibly heartened by the fact that the majority of those communities came together to say, 'You don't speak for us'. That for me completely overpowered this one single incident of hate, and I would like to see just as much investment in harnessing that kind of community resilience and strength, because—

Ms NGUYEN: And the positives—

Ms DIMOPOULOS: Absolutely, because we hear the despairing comments, but my goodness, in these consultations, particularly with the regions, they get a bad run, and yet in so many ways these communities are more cohesive than we give them credit for. These communities really stood up and said, 'We're going to stand by our refugee colleagues and friends and family. We're going to stand by our Jewish families'. I would love to see a lot more of the media focus on that and a lot more of our resources being invested on the strength of communities—got to inspire you, hey!

Mr SOUTHWICK: I absolutely agree, Maria, but can I just also point out the fact that there were 10 days in which the community themselves could not have the powers to do what they do to get that flag down.

Ms DIMOPOULOS: I totally recognise that, absolutely. Law has to be part of this response, agreed. I just did not want to lose that balance. I love our Victorian communities—absolutely, yes.

Mr SOUTHWICK: I absolutely agree with you.

Ms COUZENS: What support is available for individuals and groups that might have experienced vilification? Is there a specific group or person they can go to to get more information and support, really?

Ms NGUYEN: I will comment. We are not aware of any specific organisations that do provide, in a structured way and on an ongoing basis, support for people who experience online hate, online vilification and this trolling. We hear many of those stories from different communities, sometimes in language, other times through the groups of people who gather to support the individual or that particular group of women or people. But we are not aware of any systemic ongoing programs or services that are provided to support people who experience such online vilification.

Ms COUZENS: And do you see a specific need for that?

Ms NGUYEN: We certainly have a significant concern about the impact on the individuals and the groups that experience that. So in that respect we do believe ongoing support for those individuals and their communities is certainly an important aspect of the whole package of the legislation, yes.

Ms DIMOPOULOS: And anecdotally again, and I am sure these organisations will speak for themselves, but the Islamic council has the Islamophobia register. Its primary aim, though, was to actually be able to collect data, because we all recognise that data is such a limited piece of what we know is going on. And the Australian Muslim Women's Centre for Human Rights—again, they do it incrementally. They try and do it in the best way that they can, but I think anything that supports these organisations that often are the first port of call, that have the trust, and so the reach-out that is made to them. And we would like to see programs, again maybe in combination or partnership with the equal opportunity commission, where they are well-placed as well to provide a more systemic response, as we have said.

The CHAIR: Thank you very much for taking the time, and again I thank Vivienne and also Maria. Again, the VMC has done some tremendous work over many, many years—it is an integral part of our community—and your submission has been fantastic. The next steps will be, as you probably know, we have a number of public hearings scheduled. After that the Committee will deliberate on all submissions and presentations and put forward some strong recommendations on this very important matter to Government. So on behalf of the Committee, thank you very much.

Ms NGUYEN: Thank you, Chair, thank you, Committee, for giving us the opportunity, and we look forward to hearing of further progress.

Witnesses withdrew.