

TRANSCRIPT

LEGISLATIVE ASSEMBLY LEGAL AND SOCIAL ISSUES COMMITTEE

Inquiry into Anti-Vilification Protections

Melbourne—Thursday, 12 March 2020

MEMBERS

Ms Natalie Suleyman—Chair

Mr James Newbury—Deputy Chair

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WITNESSES

Dr Laura Griffin, Lecturer, La Trobe University and

Ms Nicole Shackleton, PhD Candidate, La Trobe University, and

Ms Danielle Walt, Project Manager and Policy Consultant.

The CHAIR: Good morning. Today I acknowledge the traditional owners of the land on which we are meeting. I pay my respects to the elders both past and present and the elders of any other communities who may be here today. I declare open the public hearings for the Legal and Social Issues Committee Inquiry into Anti-Vilification Protections. At this stage all mobile phones should be turned to silent. I welcome Dr Laura Griffin, Senior Lecturer at the School of Law at La Trobe University; Nicole Shackleton, PhD Candidate, La Trobe University School of Law; and Danielle Walt, Project Manager and Policy Consultant.

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, those comments may not be protected by this privilege. All evidence given today is being recorded by Hansard and is also being broadcasted live onto 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 it is available. Verified transcripts, PowerPoint presentations and any handouts will be placed on the Committee's website as soon as possible. I now invite you to proceed with a brief opening statement to the Committee, which will be followed up by questions from the Committee. Thank you so much.

Ms SHACKLETON: Thank you and good morning. Before we begin we would also like to acknowledge the traditional owners of the land, the Boon Wurrung and Wurundjeri people, and pay respect to their elders past, present and emerging. Thank you for inviting us today to assist the Committee with its Inquiry. We are here to speak about the need to include gender as a protected attribute in Victoria's anti-vilification laws, as outlined in our submission and in our scholarly research in the area.

Like hate speech on the grounds of race or religion, there are real and significant consequences to gendered hate speech. Research has established a number of direct, personal and serious impacts of gendered hate speech, including anxiety, depression, social withdrawal and economic loss. Danielle is going to discuss these harms shortly, but first I want to talk about silencing—the silencing of women's voices and the minimisation and discrediting of their achievements through gendered hate speech. The internet has fostered numerous digital public spaces, including social media platforms—Facebook and Twitter—where members of society can discuss issues of public importance, share information and advocate for cultural and legal change. These are democratic spaces, and for many women they are also spaces of work. The use of gendered hate speech against women who speak out in these spaces or work there has real consequences. Women often alter their behaviour online after witnessing another woman being targeted or being targeted themselves. Accordingly, the silencing of women in public spaces is directly harming our democracy.

Our research found that there is a gap in the law concerning gendered hate speech. There are no anti-vilification laws in Victoria or in Australia that specifically prohibit gender-based vilification in public. The failure to prohibit vilification on the grounds of gender when the law has recognised the harmful nature of vilification based on other attributes indirectly signals to the community that women are legitimate objects of hostility and marginalisation based on their gender. We therefore recommend the adoption of the Racial and Religious Tolerance Amendment Bill or a similar Bill which would extend anti-vilification laws in Victoria to protect against gendered hate speech and encourage women's participation in public discourse without—or at least with a lessened—fear of being attacked.

We also recommend that significant powers be granted to police and investigative agencies to compel social media companies and other internet platforms to release information to law enforcement agencies for the purpose of investigating a complaint. There are, however, risks associated with introducing gender as a protected attribute in anti-hate speech laws. Laura will discuss these risks and how they can be mitigated after Danielle has spoken further about the harms of gendered hate speech.

Ms WALT: Harms resulting from gendered hate speech have consequences beyond the original target, with ripple effects spreading out from initial victims to immediate and broader symbolic groups, to other excluded communities and finally to societal norms and values. Harms can be caused directly to the individual target of hate speech. An initial victim may suffer a range of personal and financial harms as a result of targeting. Women often report feeling intimidated, scared and threatened when faced with gendered hate speech. These feelings may lead to silence and significant psychological and emotional impacts. Those targeted are also likely to experience economic impacts. The Australia Institute published economic costs of online harassment and cyberhate, which reported that cyberhate or online harassment impacted the ability to work or earn an income for 28 per cent of targeted individuals. Using survey data, the Australia Institute estimated that Australians have borne a total cost of \$330 million from online harassment and cyberhate, \$62 million of which was medical costs and \$267 million was lost income. Other costs such as moving costs associated with being doxxed by online hate groups or having to employ moderators, which is not necessarily required for other groups, can be a factor as well.

Harms from hate speech can also extend beyond the initial victim, such as to the effect of hate speech on wider society and encouraging negative stereotypes, prejudice or hostility, which can lead to further harmful conduct, including violence. In looking at the inclusion of gender in anti-vilification legislation, it is critical to look at the links between gendered hate speech and the perpetuation of gender-based violence. Multiple reports by government agencies, anti-violence organisations and the Australian Human Rights Commission have linked traditional views about gender roles, male dominance and low-level support for gender equality with gender-based violence.

This link has also been addressed by the courts. Judges have explicitly identified that language which dehumanises women, blames them for male violence and normalises the abuse of male power contributes to the creation of circumstances in which women may be violently harmed or killed. In that same case the judge identified that the law is looked to for protection from men who would act on disrespectful, contemptuous and misogynistic views and opinions about women and stated that the court must unequivocally denounce crimes that involve these attitudes towards women. Judges have identified that courts perform an important educative function of positively influencing how the community—and especially men—value, respect and treat women. The Royal Commission into Family Violence identified a definite link between traditional beliefs about gender roles and language and gender-based violence. As such, addressing gender in anti-vilification laws is imperative in ensuring that Victoria's established commitment to addressing family violence is supported.

Dr GRIFFIN: Before I speak on the risks I just wanted to mention a correction to my title. I am a Lecturer, not a Senior Lecturer, at La Trobe. I do not want to be claiming a promotion.

As we discuss in our submission, there are also various risks associated with law reforms to prohibit gendered hate speech. First, laws may prove ineffective if they are never or only very rarely enforced. However, as other scholars have also confirmed, anti-vilification laws, even in those circumstances, can still hold significant symbolic value by sending a public message that such speech is considered wrong in our society and is unacceptable.

Another risk is selective enforcement in counterproductive ways, and this risk arises even if protections are framed as applying to all social groups equally. By mistakenly assuming an even playing field, such protections can end up being used as a weapon against the very individuals and groups that they were intended to protect, and this is known as a misfire of hate crime laws. For example, if laws against gendered hate speech were to be used by men to silence women's voices on issues of misogyny, male violence or harmful gender norms, this would directly undermine the purpose of such laws—it would be a misfire. The operation of other kinds of hate speech laws demonstrates that this is a real risk.

A third and related risk is that anti-vilification laws could be used in the over-policing of certain communities, such as Indigenous communities or racialised migrant communities. Again, this is a risk that is borne out in the past cases we have seen involving hate crime laws, such as with discretionary sentencing laws. If not appropriately framed, such laws could be used by those in more powerful positions, potentially even positions of authority, such as law enforcement, against already vulnerable groups. Any laws against gendered hate

speech need to be worded and appropriately framed to guard against these risks and ensure that misfiring cannot occur. Otherwise they could too easily be coopted by those who have the resources, power and confidence to wield the legal system to silence those who speak about gender inequality or gender-based violence.

To guard against these risks we recommend that any new laws against gendered hate speech should be explicitly framed with the purpose to protect historically marginalised groups, specifically to protect women, non-binary or gender-diverse people. Training must also be provided to institutions involved in the enforcing, interpreting and applying of these laws. This is also important to allow for intersectionality to be taken into account in the way that the laws operate. By intersectionality I am referring to the ways in which different identity traits can intersect, such as gender, disability, race, religion or sexuality. The experience of a disabled refugee Muslim woman, for instance, when she is targeted by hate speech is likely to be very different to that of a white able-bodied woman like myself. To allow for these power dynamics to be taken into account when a complaint is made we also recommend that an individual be allowed to complain under multiple protected characteristics rather than having to choose a single one when they make their complaint. Thank you for listening to our summary. We look forward to answering any questions you have.

The CHAIR: Thank you. I will start with the first question, and it is something that continues to be raised just about in every submission. It is the rise of online vilification and the rise of hate attacks online. I am just interested to seek your view of how Victoria could effectively regulate such a complex system and I suppose how it would work when we see, on one hand, such an issue that continues to be a challenge not only for Victoria and the country but also globally as well.

Ms SHACKLETON: Well, that is a very complicated question.

The CHAIR: I am sure it is.

Ms SHACKLETON: I think the most important thing to note is that vilification and anti-vilification laws are just one part of a really big puzzle. The statistics do show that there is a rise in gendered hate, there is a rise in hate speech online, and I think you can see that both statistically and anecdotally. Most of us have seen that that is occurring. We are recommending that part of solving this problem is to include gender in anti-vilification laws. That is going to plug a very small part of the gap, I guess, but it is a very necessary part. In terms of dealing with online hate, I think we need a much broader arsenal. This could go much further beyond vilification laws—into duties on platforms, to essentially prove that they are doing whatever they can to remove hateful speech. I know we have got the eSafety Commissioner which does it federally as well, so they are working directly with the social media companies.

Mr TAK: eSafety.

Ms SHACKLETON: Yes, the eSafety Commissioner is doing that federally. So they work directly with social media companies to remove not necessarily hateful conduct but to remove image-based abuse, child pornography and cyberbullying of children. So that could definitely be extended to include not just cyberbullying but vilification against adults. So that would be one option. Obviously that is a Federal scheme, and Victoria does not have much power to do anything about that. But I guess working across governments is really important.

What is also really important is that part of what we see is the anonymity of online spaces, so people get to say whatever they want behind a veil. So in terms of anti-vilification laws there do need to be powers available to compel social media companies to do what they can to identify the perpetrator when the police have done everything they can or when the VEOHRC has done everything they can to identify the perpetrator.

Dr GRIFFIN: We have addressed some of this in our submission, particularly in relation to recommendation 3, about the ways that different agencies and organisations can work together. I think the only way is that it needs to be a collaborative effort, and as Nicole has said, mechanisms of accountability need to be in place so that organisations with access to identifying details, for example, are compelled to share those.

Ms WALT: I guess it is also worth reflecting, law is the initial step for this—having laws in place that understand and reflect the fact that this behaviour is unacceptable. That is your initial platform for being able to

have these discussions, for being able to say, ‘Then what do we do about it?’. In the absence of recognising the harms that are associated with it and in the absence of having laws in place that actually recognise this as an initial unacceptable behaviour from a societal perspective, we cannot really do a lot from an implementation or a policy perspective to be able to enact, so those protections are not available. Yes, there is a rise in online hate speech. There is a rise in online participation, full stop. This is a good thing and worthy of encouragement, but making sure that we can keep up with the times and reflect appropriately in the law what is going to be a safe and effective platform for disseminating those views is critical.

The CHAIR: You talk about historically marginalised groups in your submission. Could you just discuss a little bit more how legislation can make it clear in focusing on those groups?

Dr GRIFFIN: Yes. I think this is important because it reflects essentially the purpose of these laws in the first place, which is to recognise that certain social groups are subject to attacks on the basis of their identity. And so when we are looking at gender the social groups that are most vulnerable to attack on the basis of their identity are going to be women and gender minorities, such as non-binary or gender-queer people. One of the things that we discussed in our submission was the danger of symmetry. Even though it may look appealing and it may look like it is consistent with the norms and values of liberal democratic society to have the protections apply equally to all genders, for example, the problem is that this opens up a risk of shutting down the kinds of speech and the kinds of attacks that the law is intended to address in the first place. So we think that it is very important to guard against these risks, knowing the ways in which more powerful social groups tend to be able to mobilise laws like anti-vilification laws. Despite their purpose, they can be used against more historically marginalised social groups. So we would recommend that it be made clear, for example, in a purpose section, in a second-reading speech and in the materials that would accompany any new law—so any manuals and educational or training programs that are provided as well—so that everybody who is involved in interpreting, applying and enforcing these laws understands that that is how they are intended to be read. Would you like to add anything?

Ms SHACKLETON: No, you have captured that perfectly. I mean, we are not advocating that the term ‘women’ be used rather than gender. We are advocating for the term ‘gender’ to be used but that it be included in a purpose section in the Act, primarily so the interpretation of that provision has that to go on.

Mr SOUTHWICK: Thanks for your presentation today and your submission. Nicole, you mentioned initially that there have been no gender-based laws for specifically public—

Ms SHACKLETON: Yes.

Mr SOUTHWICK: In Australia. Have you looked at other jurisdictions?

Ms SHACKLETON: My research has not yet gone to that space. I know there are other organisations that are particularly well versed—I know that Germany has enacted very, very strong anti-vilification and anti-hate speech laws around their social media. I also know that Canada has led the way with this. They do have a bill of rights, so it does allow them to have this discussion. But having a conversation with some other academics that I know work in this area, they mentioned that those laws in Canada when they were first introduced were used to suppress historically marginalised voices, so there is that danger there. So I have not yet canvassed other jurisdictions. It is part of my research in the future.

Ms WALT: I suppose just to pick up on that bill of rights issue, this is something that we have spoken about frequently. The absence of a bill of rights to act as a primary platform to provide that assumption of equality and that ability to reflect the way that marginalised groups will experience harm in different ways—the absence of that is one of the reasons why these laws become so critical because we do not have that initial perspective of an assumed equality in what those rights actually look like and we cannot fall back and enforce those, so there is this continuous plugging of gaps that if we had that base level enforcement would not necessarily be required. The courts would have that discretion.

Mr SOUTHWICK: And in your submission you talk about education being a really important component of this. Could you maybe elaborate in terms of where you see that working and who would ultimately be responsible for providing that in terms of: what types of organisation or groups, and what support mechanisms might be needed to ensure we do not get to the problems in the first place?

Ms SHACKLETON: Well, I think it has to be recognised that you cannot just look at online gendered hate speech away from society. It is reflecting societal norms and societal beliefs, and then it is also trying to reinforce them. It is using gendered hate speech to try and reinforce those societal norms and beliefs. So in terms of education I do not really think there is an end to what could be done and where you could go. This needs to start with basic respect for historically marginalised groups. In terms of education programs we have seen, again the Office of the eSafety Commissioner has done wonderful things about women's safety online—promoting women's safety online, giving women the tools to be able to use internet platforms online. That is potentially problematic because again it is putting the responsibility back on women. In terms of Victoria I do not necessarily want to dump it on their laps, but VEOHRC would be an obvious group that could potentially be involved in the education process of that. But it also needs to go down to enforcement agencies, so the police as well. Those would be the groups that I could identify now.

Dr GRIFFIN: Ideally the materials that would be used for this kind of training and education would be developed in consultation with community groups so that those risks and the particular strategies to address them in terms of decision-making and interactions on the ground could be anticipated before, rather than there being any gaps or problems that could have been avoided with the right kind of training. I think it is not necessarily just about getting one institution that has exactly the right expertise to provide that education and develop those materials. They have to be done in consultation with the kinds of groups that these laws could misfire against.

Ms WALT: That includes making sure it is an integrated government approach in terms of policy so that it is not a siloed approach, so that we are looking at the department of education and the influence there so that when we link it into things like Respectful Relationships, when we link it into things like current education campaigns, when we link it into things like public campaigns, that is also being supported by the work of the department of justice and by DHHS, so we can see how that is going to play out—and getting VicPol involved as well, so making sure that that integrated approach is understood and people are coming from the same basic awareness of why these laws are being created, and the importance of those laws can be fed out. It is a tiered approach. You have got the public education campaign component, for which the Government would ultimately be responsible, but then you do have making sure that enforcement groups, schools, workplaces have access to the information required to provide these protections.

Ms SETTLE: Hello, welcome, and sorry I was late. Thank you for all of the work you do. I know that Nicole and I have spoken about what it is to be a woman in politics, and it has its own issues with online commentary, so thank you for your research. My stuff is probably a little bit more technical and it might not necessarily be where you want to go or discuss, but it is something that has come up quite a bit in a lot of the submissions. It is really around the difference between the RRTA—the religious tolerance Act—versus the VEOHRC, so whether we take the RRTA into VEOHRC or whether we keep them separate is something that I am really grappling with.

Ms SHACKLETON: So are you saying move anti-vilification laws into the *Equal Opportunity Act*, or—

Ms SETTLE: Well, the vilification exists in the equal opportunity, but the *Racial and Religious Tolerance Act* is separate. But as I say, it is pretty legalese—

Ms SHACKLETON: But you are talking a standalone act or integrating new clauses into it?

Ms SETTLE: Do we bring the *Racial and Religious Tolerance Act* into—

Ms WALT: I have a perspective about that, but I think—

Ms SHACKLETON: You do. I must admit, I listened to the discrimination law experts' presentation yesterday and I know that they spoke a little bit about potentially the issues involved with that. I think there are arguments both ways. Integrating it is nice and simple. It is all in the same place. While vilification and discrimination are linked, they are ultimately slightly different things. One is about violent language or incitement language that happens in any kind of public space, and one is about making sure that we can use employment services and services without discrimination equally. So there are differences which potentially might, particularly when you talk about the need to ensure that these laws are not being used against historically

marginalised groups, make it harder to put those protections in—if it was integrated rather than a standalone act.

I also know there is talk of potentially moving the criminal vilification provisions into the *Crimes Act*, which is what they did in New South Wales. That is going to bring it more to the attention of the police, so that might result in more criminal prosecutions of vilification, which is potentially a good thing. On the other hand, once again, it is going to make it difficult to ensure that these provisions are not being used in what we argue to be the incorrect way.

Ms WALT: And overpolicing marginalised communities.

Ms SHACKLETON: Yes. So those are essentially the arguments on either side—have not settled on what is the correct way of doing this. Dani, could you—

Ms WALT: No, I think we will stick with that. I have a personal view, but we will save the rest.

Ms SETTLE: We have obviously heard from lots of groups. Yesterday we had the LGBTIQI lobby in. And there were discussions around the use of the word ‘gender’ and whether it is ‘gender identity’, and I think in one of their submissions the suggestion was ‘gender identity’ and ‘gender expression’. There have also been other submissions that referred to it in terms of sex. Where is your feeling on how we define—

Ms SHACKLETON: Sorry, I just want to clarify, the LGBTI lobby are saying not gender, just gender identity and gender expression?

Ms SETTLE: They were saying gender identity or gender expression.

Dr GRIFFIN: Okay. This is a really complex question but one that, you know, we have talked and thought a lot about. I think it is important to recognise the kinds of vilification that the trans community, for example, can be subject to is worthy of recognition in and of itself. So we would encourage the inclusion of ‘gender identity’, particularly because—leading from other jurisdictions—that has been the sort of language used particularly to address that kind of marginalisation and hate. We advocate for also including gender so that we have a broad enough category to cover all women, including trans women, because women, including trans women, can be subject to hate speech as women.

We also think that it is problematic. We know that the Committee has received other submissions advocating for the use of sex instead of gender, and we feel that this would be inappropriate because we think to simplify the hate against women down to biological sex would be misleading. And we think it would be unhelpful, particularly because it does exclude trans women from that coverage. And we think the sort of recourse to the category of sex instead of gender is unhelpful, particularly in a jurisdiction like Victoria, which has had very progressive movement in this area. It is really harking back to a simplification that really does not work in this legal system and is not appropriate. So this is why we advocate gender as well as gender identity or gender expression, in order to recognise that sort of victimisation of the trans community as well.

Ms WALT: And as Nicole was saying previously, being able to pick up on those compounding impacts is really critical. So not all women are trans women, but all trans women are women, and being able to make sure that they can make those arguments on multiple identity facets is really critical. In addition, going by sex alone is sort of out of line with scientific and best practice evidence in a number of ways, so—

Dr GRIFFIN: I should add there, though, that the inclusion of sex characteristics—we understand that this is intended to offer protection for intersex people in particular. And we think that there is a lot of scope for reading that broadly as well. So we would support the inclusion of that too. We are not advocating for the removal of the word ‘sex’ or any consideration of biological sex characteristics at all in the legislation—just that each of these terminologies are used to recognise and offer protection against particular kinds of hate for particular identity traits and that they are each worthy of protection.

Ms SHACKLETON: And putting them into one is going to result in less protection for all groups that are—

Dr GRIFFIN: Potentially.

Ms SHACKLETON: Potentially—or more protection for one group at the expense of another group.

The CHAIR: Can I take this opportunity to thank you all for submitting on behalf of the Committee. The next steps will be: we have got a number of public hearings and submissions to listen to, we will be deliberating at the conclusion of that and hopefully soon we will be able to prepare a very strong report back to Government—

Ms SHACKLETON: Fantastic.

The CHAIR: taking your submissions as well, hopefully, into consideration. Thank you again for taking the time to submit.

Ms WALT: Thank you for your time. The best of luck.

Dr GRIFFIN: I really appreciate the opportunity.

Ms SHACKLETON: Thank you very much.

Witnesses withdrew.