

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

WITNESS

Mr Alastair Lawrie *(via videoconference)*.

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

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

All evidence taken today 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 comments repeated outside this hearing may not be protected. Any deliberately false evidence or misleading evidence to the committee may be considered contempt of Parliament. All evidence is being recorded and you will be provided with a proof version of the transcript following the hearing. Transcripts will ultimately be made public and will be posted on the committee's website.

Today I welcome Alastair Lawrie, who will present for a maximum of 10 minutes to ensure adequate time for questions at the conclusion from committee members. Thank you very much, Alastair, for being here today with us. Welcome.

Mr LAWRIE: Thank you very much for the opportunity to appear today and give evidence on this important topic. I do so as an advocate for LGBTI anti-discrimination law reform for close to two decades. This includes previously serving as the chair of the policy working groups of both Victorian and New South Wales gay and lesbian rights lobbies, although I appear here in a personal capacity. In my comments I will focus on terms of reference 4, 'comparisons in the operation of the Victorian Act with legislation in other jurisdictions', and 8, 'possible extension of protections or expansion of protection to classes of people not currently protected'.

Starting with the comparative approach, it is clear that Victoria has fallen behind the standards set by several other Australian jurisdictions. In my own state of New South Wales protections against vilification on the basis of homosexuality were first added to the *Anti-Discrimination Act* in 1993, just four years after racial vilification was first prohibited and before passage of the commonwealth *Racial Hatred Act 1995*. Transgender vilification protections were then added in 1996. While there are limitations to these protections, such as the exclusion of bisexual, non-binary and intersex people, many LG and T people here have enjoyed anti-vilification coverage for close to a quarter of a century. LGBT people have also been protected against vilification in Queensland for almost 20 years following the inclusion of both sexuality and gender identity in their vilification provisions in 2002. The ACT *Discrimination Act* has included prohibitions on vilification on the basis of sexuality and transsexuality from 2004, with gender identity replacing transsexuality in 2010 and intersex added in 2016, meaning the ACT's vilification provisions cover the entire LGBTI community, one of two such laws in the country.

The other jurisdiction to cover all of lesbians, gay men, bisexuals, transgender and intersex people is Tasmania, which has the most extensive anti-vilification laws in Australia. These protections have two parts. Section 19 of the Tasmanian *Anti-Discrimination Act* prohibits public acts that:

incite hatred towards, serious contempt for, or severe ridicule of, a person or a group of persons ...

That section has included sexual orientation from its commencement in 1999, and it included transsexuality within sexual orientation from that time until 2014. Gender identity and intersex variations of sex characteristics were both added in May last year. Section 17 separately prohibits:

conduct which offends, humiliates, intimidates, insults or ridicules another person on the basis of an attribute ...

Those provisions have covered sexual orientation, gender identity and intersex status, or intersex variations of sex characteristics, since 2014. From a comparative approach alone, it is disappointing the Victorian *Racial and Religious Tolerance Act* has not been extended beyond racial and religious vilification since it commenced in 2002.

Turning now to the second issue—the possible extension of protection to classes of people not currently protected—I think the preamble to the Act is quite instructive. Paragraph 3 in particular reads:

... some Victorians are vilified on the ground of their race or their religious belief or activity. Vilifying conduct is contrary to democratic values because of its effect on people of diverse ethnic, Indigenous and religious backgrounds. It diminishes their dignity, sense of self-worth and belonging to the community. It also reduces their ability to contribute to, or fully participate in, all social, political, economic and cultural aspects of society as equals, thus reducing the benefit that diversity brings to the community.

From an LGBTI advocate's perspective, it seems obvious to me that the exact same description could be applied to my community. Some people are vilified on the ground of their sexual orientation, gender identity or sex characteristics. This conduct is contrary to democratic values because of its effect on us. Homophobia, biphobia, transphobia and intersex phobia diminish our dignity, sense of self-worth and belonging to the community. It also reduces our ability to contribute to or fully participate in all aspects of society as equals and reduces the benefits of diversity.

Explaining this to you in a more structured or systematic way, I would submit (1) sexual orientation, gender identity and sex characteristics are fundamental or inherent human characteristics; (2) lesbian, gay, bisexual, transgender and intersex people are frequently subjected to vilification on the basis of who they are; and (3) that vilification can cause serious harm and should therefore be legally prohibited.

In 2020 the first point is obviously not up for serious debate. In terms of points 2 and 3, I would draw the committee's attention to a community survey which I conducted at the end of 2016 with 1672 LGBTIQ respondents from around Australia, including 386 in Victoria. One of the questions asked, 'Have you ever experienced verbal harassment or abuse because of your sexual orientation, gender identity or intersex status?'. Overall 74 per cent of respondents answered yes, with 48 per cent of all respondents then reporting at least one instance of verbal harassment or abuse in the previous 12 months. That is one in two LGBTIQ Australians indicating they were verbally abused in the year 2016 alone, which I should note was before the postal survey. Perhaps unsurprisingly but nevertheless disappointingly, these rates were even higher amongst transgender respondents: 68.3 per cent reported abuse in the previous 12 months. And intersex respondents, 82.2 per cent in the previous year. The rates in Victoria were average for the country, 74.1 per cent reporting abuse or harassment ever and 49.8 per cent in the previous 12 months.

Now I acknowledge that many—indeed, likely most—of these responses would fall short of the legal standard for vilification, but no doubt some would meet it. Taking just one respondent's experience:

I have been referred to as a tranny and had both my sexuality and gender identity mocked and invalidated repeatedly. I have been told to kill myself an innumerable number of times, including being told to 'get my teeth and gender straight or kill myself', and that my gender is 'cancer'. This is just a short list of the abuse I've suffered.

When asked for the location for anti-LGBTI comments in the previous 12 months, 92 per cent of respondents said social media, 83 per cent said politics, 81 per cent religion, 80 per cent media and 67 per cent in a public space. Finally, when asked to explain the impact that witnessing homophobic, bi-phobic, transphobic and intersex-phobic comments had on him, here are just two of the comments received:

They make me feel worthless, like a freak, like I don't deserve to live, like I don't deserve anything, like I will be alone forever, like no-one will love me, like I should just kill myself because it would be easier.

And:

... disgust and shame at both myself and Australia. I feel marginalised, oppressed, fearful, frustrated and in some cases terrified of the country I live in.

This brings me back to the preamble of the *Racial and Religious Tolerance Act* and the benefit that including sexual orientation, gender identity and sex characteristics as protected attributes would bring. In my view it would not only reflect Victoria's democratic values but enhance the dignity, self-worth and belonging of a significant cohort of Victorians. That would be a positive outcome, and I hope the committee, and the Parliament ultimately, agrees. Thank you.

The CHAIR: Thank you very much, Alastair, for that submission.

Ms SETTLE: Alastair, thank you for your presentation but also your advocacy over a long period for a very important section of our community. Thank you very much.

You were just citing those statistics there around the space in which that vilification has occurred, and social media was top of that list. Can you talk to us about how you think we might be able to legally address that? Obviously people talk about jurisdiction as an issue. Have you got an opinion on how we can work in the online space to stop vilification?

Mr LAWRIE: Thanks very much for the question. I am actually going to say that I am not an expert on that particular issue, so I might defer to other witnesses giving evidence on that specific point.

Ms SETTLE: Okay, understood, and we have had some great input in that area. Something else I am interested in that people have talked about is the idea that people should be able to bring a third party, so advocacy bodies, to report vilification rather than the victim themselves having to be the one to report. Do you have any opinion on that idea of third-party reporting?

Mr LAWRIE: Thanks very much. I do. I think that that proposal is seeking to address one of the fundamental weaknesses of antidiscrimination and antivilification laws, which is that as an individual complaint-based system the onus or the burden is placed on the person who has been the victim or has experienced that discrimination and vilification, and in many cases it is quite understandable that the person who has been the victim of or experienced it does not want to be engaged in a legal case for six, 12, 18 months but would prefer to move on. That does not mean that the discrimination or vilification should be acceptable. It should be addressed, and I think that if we allow third-party organisations to take on those complaints, then that would relieve some of the burden on the victims or people that experience discrimination or vilification, and I think that would be a great thing.

Ms COUZENS: Thank you, Alastair, for your presentation today. We really appreciate it and the work you are doing in advocating for your community. I have to say, you know, the feedback that I have from young people in particular in my electorate certainly reflects what you are talking about and the feedback that you have had from people in your community and the impact that that has, particularly on social media. I think in Victoria to some degree there has been, I do not know, a bit of an awakening with activities like the Pride Centre being funded by the state government, lots of different festivals happening, so I think there is a shift but certainly not enough. Do you see education and inclusion policies as being one way of addressing some of the vilification that LGBTIQ communities face?

Mr LAWRIE: I think that education programs and inclusion programs, particularly in schools, are important. I think that making sure that young and vulnerable LGBTI people in our community know that they are supported will obviously help with their mental health, help with their acceptance, help with their participation in society more broadly. I do not think that that alone would be sufficient. I do not think that it is a coincidence that many of the anti-LGBTI organisations in our community often target the most vulnerable members of our community. I am thinking of LGBTI kids often in schools, and especially young trans and gender-diverse children who are simply seeking access to supportive health care. These are groups in particular that do not have the benefit of a bully pulpit that the groups that are targeting them do. One of the positive features of anti-vilification law is that it recognises that there are power differences or power imbalances in our community and seeks to protect the vulnerable against those who maybe do have a platform and are using it against the vulnerable. I think that inclusion and support programs in education are valuable, but I do not think that that obviates the need for anti-vilification protections.

Ms COUZENS: In your submission you talk about the vilification of LGBTI people across Australia. What is the impact of failing to effectively address unlawful vilification, particularly for LGBTIQI people?

Mr LAWRIE: Thanks very much. I think I tried to outline some of those impacts in the quotes at the end of my introductory comments, and I am sure that other groups like the LGBTI Health Alliance nationally or Switchboard in Victoria could speak more fully to the impacts of vilification on our community. From my perspective, I think that it does have a clear negative impact on mental health, particularly for young people growing up in the community, and that can lead to lifelong mental health impacts because of the failure to feel accepted, the failure to feel like you can fully be yourself and participate in your community. It might not be any one particular incident of vilification that causes that, but ongoing exposure to negative and harmful comments over many years. If we can lessen the burden of those comments by having an effective anti-vilification regime, I think that that will, in the long term, have positive outcomes in terms of mental health and feelings of acceptance.

Ms COUZENS: Do you have any idea what LGBTIQ people are doing in terms of making complaints about treatment, or are they just not making complaints?

Mr LAWRIE: I think that this returns to an earlier point about the problems of anti-vilification law. To one extent a lot of people do not lodge complaints because they are the victims or they have experienced it and they do not want to have to be confronted by the legal system, and that is perfectly understandable. At the same time, that does not necessarily mean the law is worthless, so from my perspective it plays a valuable normative role so it indicates that anti-LGBTI, racist, other forms of prejudicial vilification is not acceptable in the community, and that is using the authority of the government to say, 'Actually, we're better than this', and that this type of commentary does not need to go on. Then it can be used also to address the worst examples of vilification, so it remains an option for particularly egregious types of vilification for people to make complaints.

I think sometimes the argument that it is not used much is used by opponents of vilification law to say that it is not needed. I do not think that that argument really works because I do not think that they would really want all of the potential incidents of vilification subject to complaints going through, given ongoing racism and anti-LGBTI prejudice in the community. I suspect our complaint-handling bodies would actually be overwhelmed with demand if every example of breaches to vilification laws were complained about, so I think to that extent it is being used for the worst examples, but there are limitations which hold it back from being used more often.

The CHAIR: Any further questions? I just had one question. A number of other stakeholders have discussed the support available for LGBTI people who experience vilification. Do you believe, in your view, there are enough resources and support available to the LGBTI community?

Mr LAWRIE: I am probably not in a position to comment specifically on the funding levels of organisations, especially in Victoria. I do know that Switchboard does amazing work and that sometimes their resources are strained in trying to respond to the needs of the community. Particularly around the postal survey and subsequently they saw a spike in demand for their services. So I would defer to them if they were making an argument for increased funding, but I am not in a position to comment specifically on Victorian funding.

The CHAIR: I suppose it is not just funding, but do you believe as an individual there are enough support services to be able to deal with, if, for instance, you have been vilified, and to go through the process? I suppose that is the question that I would like to raise.

Mr LAWRIE: Sure. I think to a certain extent even raising awareness within the LGBTI community that those options are available. I mean, clearly they are not available in Victoria at the moment to make a vilification complaint, because neither the Victorian Act nor the commonwealth Act does prohibit vilification. Even in New South Wales, I suspect, a significant minority or perhaps even a majority of the LGBTI community would be unaware that there are some vilification protections that they could take advantage of. So there is the education side of things, and then there is making sure that there are community legal centres or legal aid services able to respond to demand and also to go out to the community and ensure that people are aware that they can make those complaints.

Mr TAK: Thank you, Alastair, for a really interesting submission. I concur with you and the members appertaining to your submission. My question is: as you understand and can see that vilification sometimes can cross boundaries and cross countries internationally and all of that, what role do governments and online platform providers have in terms of responding to this online vilification?

Mr LAWRIE: I think I will repeat my earlier comment that am not necessarily in a position to comment on the specifics of online platforms, in particular social media. I think to a certain extent responding to this issue would be easier if the commonwealth government were to introduce anti-vilification protections for our community nationally. We had the *Racial Hatred Act* passed 25 years ago in two months time, and it is increasingly accepted by people that it exists and it is able to be used. I think that if we had a commonwealth regime, then at the very least there would be a nationwide standard. Unfortunately I do not see that that is something that is going to happen any time soon, which is one of the reasons why I am encouraged to see the Victorian inquiry currently and hopeful that Victoria moves into line with Queensland, New South Wales, the

ACT and Tasmania on this issue. But returning to the issue of online platforms, I do not think I am in a position to comment further.

Mr SOUTHWICK: Thank you, Alastair, for your presentation. In the research that you conducted I was wondering whether you were able to break things down into geographic areas. I am trying to get a bit of a handle on whether you are finding attacks on the community depending on where people live. I know in some areas there has been a lot of work that has been done. And I just wonder if you look at the further out someone may go geographically, whether there needs to be more work geographically when it comes to this stuff, particularly around education.

Mr LAWRIE: Sure. Thanks for the question. That research that I did in 2016 was broken down by state or territory, but I will have to go back and check, and I will take it on notice. I do not think it was done via metro versus regional versus rural. I did include in the introductory comments that Victoria was in fact at the national average, which perhaps at the time surprised me a little bit. There might have been an expectation for rates to be lower, but really there was no clear difference from the national average that about three-quarters of our community had experienced verbal harassment or abuse and one in two in the previous year, which are disturbingly high figures. But as I said, I will go back and check whether there is a further breakdown on rural and regional and provide the committee with further information on that.

Mr SOUTHWICK: Yes. Thank you. It is the first time I have actually thought about this through these hearings, but I know in seats like mine there has been a lot of work done. There are probably others in other seats as well. I do not know whether we would get the same kinds of situations, and as prolifically as what you are seeing, the farther out one would necessarily go. A lot of it has been, for us, directed at education and that kind of early stage.

Mr LAWRIE: I think, just adding to that, it might also be that, even if there is the same frequency or type of vilification experienced in a rural or regional area, the impact of it could be exacerbated if they are not being exposed to the same extent to supportive comments. Being isolated and hearing one or two vilifying comments and nothing on the other side would be a much more harmful, I would imagine, outcome than being in a metro area and at least receiving supportive comments to balance or counteract that vilification.

Mr SOUTHWICK: So that counts as well, having more networks and support networks. Yes, absolutely. Thank you.

The CHAIR: Thank you so much, Alastair, for taking the time to present to us today and sharing your experiences with the committee members. The next stage will be that the committee will continue deliberating submissions and evidence. We will then follow up with some strong recommendations and a report to Parliament. You can be informed of the progress of the committee by staying up to date with the committee's web page. But thank you again, on behalf of the committee, for sharing your experiences with us today.

Mr LAWRIE: Thank you very much for the opportunity.

Witness withdrew.