

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

Dr Nigel Zimmermann, Principal Adviser to the Archbishop, and

Ms Penny Badwal, Community Engagement and Liaison Officer, Catholic Archdiocese of Melbourne.

The CHAIR: Before we begin the proceedings, I acknowledge the traditional owners of the land on which we are meeting. I pay my respects to their elders, both past and present, and the Aboriginal elders of any other communities who may be here today. I welcome Nigel Zimmermann, the Principal Adviser to the Archbishop, Catholic Archdiocese of Melbourne, and Penny Badwal, the Community Engagement and Liaison Officer.

All evidence taken today 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 recorded by Hansard and is also being broadcast live on Parliament's website. Please note that any footage can only be rebroadcast in accordance with conditions set out by 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 handouts will be placed on the Committee's website as soon as possible. If there is any media present today, we welcome any media coverage of the hearing. We also remind you of the following guidelines: cameras must remain focused only on the person speaking; operators must not pan the public gallery, the Committee or witnesses; and filming and recording must cease immediately at the completion of the hearing. Broadcasting or recording of this hearing by anybody other than accredited media is not permitted.

I now invite you to proceed with a brief 5- to 10-minute opening statement to the committee, which will be followed up by questions from Committee members. Thank you, Nigel.

Dr ZIMMERMANN: Thank you very much. My colleague, Penny, and I are very grateful for your time this afternoon. I have an opening statement which I thought might be helpful for us. Thank you for the opportunity to share it.

The Catholic Archdiocese of Melbourne welcomes the opportunity to participate in a public hearing to consider amendments to the *Racial and Religious Tolerance Act 2001*. Comprising around 1.1 million Catholics, the Melbourne archdiocese is the largest Catholic diocese in Australia, providing services and support to 207 parishes, 337 schools, 27 hospitals, 92 aged-care homes and homes for those with disabilities or who are chronically unwell, as well as many other pastoral and social welfare services.

The Catholic Church respects the dignity and freedom of all people, regardless of any particular attributes. It is inherent in Catholic teaching that people should never be vilified, including vilification that is based on any attribute that might be held. That is our starting point on this issue, and every attempt to incite violence or hatred against other persons must be rejected. Since this review of anti-vilification laws began late in 2019, a helpful public conversation has developed around related issues. This is a useful moment to reflect on what exactly is the best way to protect all people in Victoria from vilification. Any protections from vilification should include but not be limited to those with a religious belief.

Nationally a conversation has been underway since mid-2019 as to whether a federal law is required to protect people from religious discrimination. Given the fact that this has not yet reached the point of parliamentary debate and that a number of political parties do not yet have a clear policy on this question, we appreciate the efforts of the Government and this Committee to allow for substantial conversation to take place here in Victoria as well as to give the national conversation the time and space it needs to constructively develop. It is important that there is consistency across jurisdictions, and therefore no changes should be made until the Commonwealth Government has resolved this issue. We suggest that it would be helpful to let that debate take place free of other pressures, with the hope that we can provide protections for everyone, not just Catholics and other Christians, as a security for all Australians who practise a religion in some way.

We are strongly of the view that exemption in section 11 of the Act regarding religious belief is necessary and should be maintained, noting its requirements of reasonableness and good faith. Just as religious organisations

and institutions have a reasonable right to define expectations that those in their employment uphold the ethos and religiously inspired identity of that organisation and community, as set out in the *Equal Opportunity Act 2010*, we hold that exceptions of a reasonable nature also have a place in any anti-vilification laws. We also consider that a person should be able to express their religious or other beliefs in private, and so the exception in section 12 should be maintained.

We are concerned that the expansion of the threshold for committing an offence may lead to more legal action being taken rather than acting as a deterrent to unacceptable conduct. This will depend on what we mean by expansion, but there is a risk if any lack of clarity enters descriptions of the threshold. Being embroiled in legal proceedings can be detrimental to victims. There is no excuse for actions that vilify others, but there is a difference between reasoned disagreement and actions of vilification, and opening up the possibility of grievous, frivolous or vexatious legal processes can be detrimental for everyone concerned. Therefore if there is any expansion of the threshold for committing an offence under section 24, any amendments need to be clearly drafted to be objective, clear and not lacking in legal certainty.

One of the risks of expanding the list of attributes protected is that we move away from the notion that all people are valued and have dignity to a magnification of particular groups at the expense of others. For example, the *Equal Opportunity Act 2010* lists 18 protected attributes and the *Fair Work Act 2009* lists 12, and yet there are still others that have not been named and to our knowledge are not yet being suggested, such as mental health; matters of personal conscience, including in a professional setting; education; homelessness; health or medical record; and state of wealth.

In light of this, we encourage the Government to consider any extension of categories carefully to ensure the balance is struck between care for particular groups and protection for everyone. In Catholic churches and places of service, whether they be hospitals, schools or social service ministries, people are cared for and respected not because of any attributes but because they are human persons. Our approach is broad and encompassing: we retain this belief for people from their conception until their death. We do this in an inclusive way and we do not wish to see any group or individual marginalised. Thank you very much.

The CHAIR: I will begin with one question from me. What can you tell us about whether there has been—and we have heard this during the day—an increase in vilification and hate conduct in Victoria? There may be some experiences and stories that you would like to share with the Committee.

Dr ZIMMERMANN: Thank you. Certainly in recent years in Catholic communities circumstantially there has been evidence to us from those who publicly identify as practising in the Catholic Church and in the Catholic community that they have experienced an increase in feeling vulnerable and in feeling as if, because of their religious belief, they might be more explicitly identified by those who might be wishing to vilify them in some way. For the Catholic community in Australia it has not been something that we have collected formal data on, so I would emphasise that it is circumstantial. But there is a sense of feeling a worry in the air that if particular instances were to be raised, some in our community are not sure whether they will be taken seriously or whether they will be heard and whether their concerns will be thought through in a fair way. Whether or not that feeling is justified, it is certainly something that has come to our attention, and so there is a feeling of anxiety and worry amongst some in our community.

The CHAIR: Just to follow up on that, today we have heard from stakeholders about the current barriers in relation to people making complaints and awareness of the current vilification wording itself in the Act. There was some real concern and challenges in relation to (a) having awareness and (b) making an official complaint. What is your view in relation to the current Act?

Dr ZIMMERMANN: In terms of the current Act our general feeling is that it has been largely successful. It is something which we think, although there was much debate at the time it was first considered, over time most would recognise that there has been real value in having something like that. The question for us, I suppose, in the air at the moment is whether in reviewing the legislation we ensure that we do continue to protect all Victorians, and that is where that question needs to be worked through very carefully.

The CHAIR: Just to add to that, you discuss the potential unintended consequences if the Act is amended in your submission. Did you want to just elaborate on, I suppose, some of those issues?

Ms BADWAL: We were concerned that if there was not precise legal language used it could encourage litigation. Our view is that the law is incredibly important but it needs to go beyond the law. Whether it be community education or there being set community standards that are well understood by the community or community leaders such as yourselves and of course others leading by example, there needs to be more than just the law. So we were worried about a focus, I suppose, just relying on legislation and nothing beyond that and also concerned that if language is not precise it is open to interpretation, and then that is not good for the community either in an area where people are not sure what is vilification and what is not.

Mr SOUTHWICK: Thanks for appearing today. I am pleased with your opening remarks about there never being a place for vilification as such. I wanted to touch on a couple of things. Firstly, you mentioned religious exemptions. Could you elaborate a bit further about that and particularly, when it comes to employment in Catholic schools and the like and schools of different faiths and religions, the importance of those exemptions for you?

Dr ZIMMERMANN: Thank you. I think the debate around the Religious Discrimination Bill federally has allowed us, I think, all to sit down and actually address some misconceptions around religious organisations. There is no desire from Catholic organisations to discriminate against people based on attributes or anything like that. However, in holding the ethos of a Catholic organisation—so a Catholic school, for example—there is a hope that rather than talking about exemptions we might talk about protections for a religious community that also has organisations and services like schools and so forth. That is really around making sure that the mission of that particular organisation or that service can be put into effect in a really positive way. If matters of employment become such that a school is not able to look to employ leaders and so forth that are willing to and keen to put energy into making sure that mission is one that flourishes for the sake of the whole community, then we think there is a risk there that the identity of that particular community or that service is put at risk. And there is a risk then, further down the track, that the mission can get lost. So I think there has been a great opportunity to address some of those misconceptions and for us to in a sense get back to the heart of what we think Catholic organisations are really on about in terms of their mission.

Mr SOUTHWICK: So just taking that one step further, in essence, if you had somebody entering a school that had an opposite view of religion in terms of the Catholic religion, the Jewish religion in a Jewish school or the Islamic religion in an Islamic school, then those institutions should have the right to have a person employed that fits in with the ethos and the teachings of the school and the values to which they belong. Would that be fair?

Dr ZIMMERMANN: I think there is a hope that the values proposition put forward in a mission-based organisation, whether it is Catholic or otherwise, is something that can be held to, and employment practices are just one element of how that can be fruitfully maintained. I would say that from a Catholic perspective we do not see there being a competition of sorts with other religious groups or organisations.

Mr SOUTHWICK: But if there was anti-religion, let us call it certainly anti-Catholic, in terms of that, that may not sit with the values and principles, obviously, of what you are trying to—

Dr ZIMMERMANN: Yes, I think that is right. I think that if there are values that are in opposition to the values being held there, just like you would a political organisation or any other kind of organisation, we would hope in a democratic country that we would have room for particular organisations to employ according to those values.

Mr SOUTHWICK: Yes. Can I just drill down in terms of broader education and dealing with hatred and vilification. We had SRI, special religious instruction, which was an important element which schools, particularly public schools, had that ability to be able to teach faith and culture and what have you in schools. That is not now within the curriculum within the school day but it is an after-hours proposition. What is your view about having a curriculum that deals with faith and background and culture, even festivals and other things that different religions and backgrounds have, having something like that embedded as a curriculum to build inclusiveness and to ensure that young people are properly educated around this stuff to help ensure we do not have these kinds of situations occur later in life?

Dr ZIMMERMANN: Could I just ask you just to clarify a little bit further what you mean by later situations in life?

Mr SOUTHWICK: The kind of vilification that we see: hatred because people have not been educated or are not informed of other different backgrounds and faiths.

Dr ZIMMERMANN: Sure. Thank you. I think it is a really excellent question because certainly I am not here to speak on behalf of Catholic education as such, but there is a hope in the Catholic community that we would be building into those communities opportunities for students to be learning and that the dignity of every person around them is something that is of primary value. The hope is that that is not just done in a passively respectful way—it is not just about tolerance of other views—it is about having an interest in protecting the interests of those other views as well. Our hope, I think it is fair to say, would be that graduates of Catholic schools would be those with some resilience and interest in protecting others, even if they have very different views to them on religion or any other matter. We would be taking a long-term perspective that the school is not the only community that shapes students but it is a very important one, and we hope to be producing good evidence of students who have an interest in care and protection for those who are vulnerable.

Mr TAK: Thank you, Penny and Nigel. My question is in relation to social media. What we heard from previous stakeholders seemed to suggest that social media enables this vilification. Do you observe that from your own experience as well?

Ms BADWAL: We have not kept strict data on this; however, I think with the nature of what online communication is, it can encourage people to believe that what they are expressing is done in a private capacity as opposed to realising that the nature of social media is very much public. So unfortunately I think without people knowing and being able to sit face-to-face and actually have a conversation with someone, which would probably often be a respectful encounter, sometimes sitting behind a keyboard without being able to encounter a person does mean there can be an increase in vilification.

The CHAIR: Your submission discusses opposition to some proposals to amend the current act, one being to lower the incitement test. What is your response to concern that the current test is too strict, too difficult to prove and too high?

Dr ZIMMERMANN: In terms of the threshold and the possibility of then trying to see how it is that we can ensure that we are continuing to improve protections for those who might be at risk of vilification in our community, in a sense we do not want to be proposing a very specific legal solution—but we would be asking the question. We need to ensure that that balance is struck between any expansion, for example, and that need to be protecting all Victorians. It is true that the Catholic community, for example, is a significant population within Victoria in terms of numbers in some ways; in others there is also a feeling of vulnerability. And so it is something that we hope—in however your own review is undertaken and as things develop in the coming months—that that balance is somehow struck between protection for those of particular attributes, whatever that list might look like, but also the whole of community at the same time.

The CHAIR: One final question: what is your view on the issue of extending the current protections under the Act to include groups that are currently not protected?

Dr ZIMMERMANN: We referred to earlier in our opening statement to some other attributes that could also be included. The great risk I think for all of us is that no matter how finely turned a list of attributes is, there might be a group or groups that are missed out on. Amongst those that we have identified we have included those who might be homeless, for example. There is a great deal of suffering and there is a great deal of marginalisation that happens in our community directly associated with those that might be considered to have that attribute, in whatever context.

As well as that there are those who might be exercising a matter of conscience, whether it is in their profession or else outside of that. In those contexts, again, it is important to consider what is the appropriate way to protect those particular groups. So our simple response really is that we would not want to see those with a religious commitment be lost from the list of attributes, but if we are adding to the list we just need to be very mindful that we are appropriately comprehensive about that.

Ms BADWAL: I would just say our position is simply that we do not think vilification is acceptable, and we want people to be protected no matter what their attribute.

Mr SOUTHWICK: Just on that, if you look at vilification from a religious perspective, and again going back into schools where we have seen examples of young people being targeted because of their religious background, what things do you think need to be put in place to ensure that that does not happen? And what proposals would you like to see the Government taking, going forward in this area?

Dr ZIMMERMANN: I think both Penny and I have in different ways been addressing the limits of the law to some degree here. Although we would all hope that the law itself might act as the only deterrent, the reality of course can be very different. In particular communities there are ways of addressing this in the long term, two that I think we might be able to identify. One is really the matter of ongoing community education on these matters. Another, though, that religious communities are particularly well placed to help on is in partnering with the Government to address these concerns. Sometimes there are particular nuances to local communities that have a religious context or a religious identity that it would be unfair to expect government to be across in every detail. I think with religious communities, I certainly cannot speak for anyone else but from the Catholic context we would be very keen to be partnering with the Government to address those concerns really thoughtfully, and not just for the short term but so that we are building a much more long term safe environment for students who might be at risk and others who might be at risk.

Mr SOUTHWICK: So just to finish on this, we currently have the Safe Schools program in Victoria. Do you think we should be having a program that deals with racial-religious bullying as well within schools, and/or do you think that something like that should be incorporated as part of the curriculum to ensure that those young people are protected and not vilified—from all areas, as you started today?

Dr ZIMMERMANN: I think at this stage we would not have a clear position necessarily on whether that should be part of a curriculum program as such, but I think we would be very keen to be working with the Government to talk through what might be the best approach. That might be one of them, but there might be other ways as well that we can talk through and prepare for helping those communities. There is a great deal of diversity in Victoria that we can celebrate, including the differences between metropolitan, regional and rural areas. But even at that level there might be different approaches that we can make in those particular communities and a different way that we can share resources to address those concerns.

The CHAIR: Thank you very much for taking the time to present to us today. The next steps will be: once the Inquiry is concluded, the Committee will deliberate on the submissions and all evidence that has been provided and a report will be tabled to Parliament with some strong recommendations. Thank you for being part of this Inquiry and taking the opportunity to present to us today.

Ms BADWAL: Thank you.

Dr ZIMMERMANN: Thank you very much.

Witnesses withdrew.