

TRANSCRIPT

LEGISLATIVE ASSEMBLY LEGAL AND SOCIAL ISSUES COMMITTEE

Inquiry into Anti-Vilification Protections

Melbourne—Thursday, 28 May 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 Jessie Holmes, Chief Executive Officer, and

Mr Gavin Blinman, Director, Community Development & Wellbeing, Yarriambiack
Shire Council (*both via videoconference*).

The CHAIR: Good afternoon and welcome to the Legislative Assembly Legal and Social Issues Committee public hearing into anti-vilification protections. I would like to begin by acknowledging 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 may be here today. All evidence taken at this hearing is protected by parliamentary privilege as provided by the *Constitution Act 1975* and further subject to the provisions of the Legislative Assembly standing orders. Therefore the information you provide during the hearing is protected by law. However, any comments repeated outside the hearing may not be protected and any deliberate false evidence or misleading evidence to the committee may be considered a contempt of Parliament.

All evidence is being recorded, and you will be provided with a proof version of your transcript following the hearing. Transcripts will ultimately be made public and posted on the committee's webpage. Can I now welcome from Yarriambiack Shire Council Jessie Holmes, the Chief Executive Officer, and also Gavin Blinman, the Director, Community Development & Wellbeing. Welcome. You have up to 10 minutes to provide a brief to the committee followed by questions from committee members. Thank you.

Ms HOLMES: Thank you very much for having us. We very much appreciate the invitation on this important subject. You are happy if I speak, Gavin?

Mr BLINMAN: Yes.

Ms HOLMES: And Gavin can add anything to where we are at. I guess if you had asked me how the second week of January this year was going to turn out and I knew that the week was going to be spent as a media circus I probably would not have responded accordingly, but effectively we received notification that a household in Beulah was flying a Nazi flag above their property to quite a significant height that was visible relatively easily to the entire community. Beulah is a small town in the middle of our shire, and it has about 400 people in it. It is quite a close-knit, small community. A couple had moved there relatively recently, and they erected the flag. The flag was up probably for about a fortnight, and we had a bit of commentary, but then it hit the media and it sort of blew up from there.

When we were notified, I guess our first thing was that we contacted the local police to find out what could be done about the situation. The local police were obviously aware of the situation as well, and they were trying to seek ways to have the flag removed as well as us trying to figure out how we could potentially remove the flag. When it hit the news on the Monday afternoon, roughly, we received a lot of phone calls and a lot of emails from different people across a wide variety of stakeholders.

I received a lot of robust emails and phone calls from people who thought that council was condoning the flag being raised because we did not have a legislative mechanism to have it removed. So when we explained that we were seeking legal advice and trying to have it removed but at the moment we could not figure out how we could get them to take it down, a lot of people were extremely unhappy with that and thought that council should just go in and take it down physically. So I would say that we probably received about 25 phone calls and emails over the Monday, Tuesday, Wednesday period with people expressing disappointment—would be a nice way of putting it—in relation to council's conduct about the matter.

We had a lot of support too though, especially once it hit the media. Obviously, David, we had a few conversations, but Sue Wilkinson, who is the CEO at Darebin shire—her background is planning and statutory planning, as is mine. We were trying to work through what potential mechanisms we could use out of the planning scheme to have the flag removed. She was keeping me up to date. And Rebecca Davis from the *Australian Jewish News* was getting different opinions and things from people about what legal mechanisms could be used. We were sussing out with our lawyers at Maddocks whether or not they were feasible as well. Then finally a private planner called Catherine Sherwin actually was the person who gave us a mechanism within the planning scheme that she thought could be used. Our legal advice from Maddocks was to have a go and see. It was a bit of a tenuous planning stretch. It was effectively a control in the planning scheme that says that you do not need a permit for a national flag, therefore the default would be that you would need a permit for something that is not a national flag—so if it was not Australian, Aboriginal or Torres Strait Islander.

The way the planning scheme works is that it is silent on what you do not need a permit for, so the reverse would be opposite. So we contacted the police, who had been in contact with us the whole time as well, in particular the local police officer Shayne Riggall, but also the area director Paul Maslunka at the time too. They were investigating other ways and potential legal mechanisms that they could use, but they agreed to accompany us to the house at the time and provide him with a notice of a planning infringement penalty, which is about \$770, if the flag was not removed.

So we attended, Gavin and I and the two local police officers, and it was a colourful scene, to say the least. The owner was half naked. It was a very hot day. *Today Tonight* were there filming at the time, so it was quite an interesting dynamic at the household. They were feeling quite stressed about all of the attention that they were getting at the time. So we went into their house. Look, they were not aggressive to us, they were just under the pump, really, weren't they?

Mr BLINMAN: They were pretty stressed about the media coverage and I guess they felt that they had been portrayed wrongly in the media. So they were not aggressive but very angry about it towards us.

Ms HOLMES: Yes. So there was a lot of profanity. They were very vocal. We stayed for about an hour. We were inside their home, we stayed for about an hour, we explained kind of the planning issues. He sort of indicated that he might take the flag down and hang it up in his window instead and then we could not get him on the flag control provision et cetera. So we ended up leaving after about an hour but the local police officer, Shayne—an absolute hero in this situation—spent another several hours with them and he eventually convinced them to take the flag down. So he ended up actually taking the flag down. They refused to, but they allowed him to draw it down.

Mr BLINMAN: When he took the flag down he offered it to them and they dropped it on the ground, so we really did not feel it was about the flag as much as annoying other people in the community. Unfortunately from council's point of view, particularly with local laws, which is in my directorate, we often see people like this, who just do not really have an issue but they like to annoy people with something that they know will niggle the community, and these particular two people, really that was their sole intention. All the time they were ranting and raving at us about their heritage and their German connections. They totally got their history wrong around the flag and things they were saying about Germany. And then the fact that they let the flag just be left in the dust—if they really valued the flag, they would not let it touch the ground. It was more about annoying people, we felt, than anything else.

Ms HOLMES: These were not people that had ideological, kind of—you know, they were not in deep as white supremacists or anything like that. They were very much just all about, 'This is my right. You can't tell me what to do'. It never at any point felt like an intolerance to race or like political ideology. It was really just about, like, 'This is my house and I'll do what I want'. It was an uneducated kind of, 'You can't tell me what to do'. And then it became a real point of pride. They refused to kind of take a step back because they thought they would be losing, and so that is where the local police officer's negotiation over several hours brought them back to a position that they felt that they could still kind of save face and that they had not given up or kind of ceded any of their rights. And then they packed up their caravan and left for a couple of days, and then obviously the community came together after that and held a celebration on the Saturday. They held, like, a peace flags sort of celebration barbecue on the Saturday. I think there were over 120 people at the day. Our local member, Ali Cupper, and our federal member, Anne Webster, came and spoke. David obviously sent up the speech to be read aloud as well. And that was really that community just saying, 'This isn't us. This isn't our belief system. This isn't what we represent'.

And I guess it was made slightly more complicated in Beulah because there was a survivor that lived within close proximity of this house and the community had also had another survivor who had passed away two years ago, two and a half years ago. Even though it was quite a small town of less than 400 people, it had very obvious connections to a Holocaust survivor—it was known in the community. So it was really problematic in that sense as well because the rest of the community was kind of like, 'This has other layers of ramification' in

relation to this as well. But certainly in speaking to them, their language, apart from being profane, was mostly around, you know, 'How dare you come in here and tell me what to do'. The police came in and started recording, as they are legally required to do, on their chest cameras and he was kind of like, 'You can't record me. I'll record you' and went and got his video camera. It was—

Mr BLINMAN: A power thing. An illustration of that is at one point he said, 'Well, if I take the Nazi flag down, I'll put up the rising sun', so he was just about antagonising people as much as he could.

Ms HOLMES: And he made some derogatory comments about Asian ethnicity.

Mr BLINMAN: Things, yes, associated with that.

Ms HOLMES: It was just a real display of, like, low education outcomes. It never at any point felt like it was a sophisticated kind of ideological stance. It was very much just a case of, you know, 'I've read a little bit too much of poor media'.

Mr BLINMAN: A little bit of information that went too far. But, yes, he was very antagonistic. And in talking to the previous shire where he lived, they had similar issues with him over there in that he was very anti-authority and annoyed his neighbours as much as he could before he moved over to here. Unfortunately for us we see a lot of those people, particularly through our local laws, regularly.

Ms HOLMES: Yes. It really just in the end became a battle of the wills. But I think it was also unfortunate as well that, from the local council perspective, it was a real one where we just could not win. The expectations on the outcomes that local government would deliver in that circumstance versus the actual powers that we have to deliver an outcome that would have been satisfactory to the rest of the community were not well aligned. The social media picked that up and really ran with the fact that we as a local government were condoning the behaviour and had failed atrociously to represent the community values in any kind of respectful way. You cannot get into a kind of Facebook/Twitter warfare over trying to explain the tenuous legal position that you are in. And our legal advice at the time when we tried the planning controls for the flags was that it had never been to VCAT before, but, 'Hey, let's just test it and see what happens'. It probably would not have got very far because VCAT as a planning instrument does not really want to be involved with political outcomes. Our legal advice was, you know, 'You can have a crack, but we don't think you would have much of a leg to stand on legally in relation to that as well'.

Mr BLINMAN: Yes, and there is certainly nothing in our local laws that covers anything like this.

Ms HOLMES: Yes. We probably would not have been able to chuck it under 'unsightly premises' or something like that; it would not have sufficed. But certainly, yes, it was an interesting experience. The general community sentiment during the week and then again on the weekend—from everybody—was just, 'We thought that you couldn't do it'. Everybody just thought that you could not have Nazi flags up. It was just kind of a given that it was offensive and the symbolism that it represents—you just cannot. So when we were saying to people, 'There's no legal mechanism for us or for VicPol', people were just like, 'That can't be right'. There was just a general kind of community feedback that was like, 'But you can't'. Yes, it was quite interesting, given that there are rules for lots of things, but there did not seem to be a rule for that. Overall, I guess we learned some lessons, but mostly it was just the goodwill of the police officer being able to negotiate them out of the situation.

Mr BLINMAN: Yes, he was terrific.

Ms HOLMES: Yes, he was.

Mr BLINMAN: He really kept people's stress levels down and calmed them down a number of times when they almost got—bordering on—threatening towards us a few times.

Ms HOLMES: Yes. He diffused the situation really well without having to compromise on his values through his language. When they were saying things that were unsavoury he did not buy into that; he just redirected the conversation and continued to defuse it. So yes, he did really well. That is probably all for us. We are happy to take questions.

Mr SOUTHWICK: No surprises that I have got a question. I just wanted to thank you, firstly, Jessie and Gavin, for coming today, but also I wanted to put on the record all of the great work that you as a shire did in what was a mammoth task. We have not spoken—just for the rest of the committee’s benefit—since the incident, and I purposely did not want to do that because I just wanted to hear what you had to say and how it ran, which is exactly what I thought your evidence today would have been. These are exactly the problems that we are talking about, and the fact that the community came together the way that it did and responded the way that it did, the fact that a Holocaust survivor, as you mentioned, was the by-product of all of this—he was not front and centre at the beginning, but he was discovered later on—and certainly when I spoke to him, the fact that he could not leave his home and was feeling really vulnerable from that, and the fact that there were no laws and that you had to use bluff to effectively get the flag down.

I suppose there are two questions that I have for the committee. The first one is: you mentioned the fact of going to VCAT and all of the processes and all of the weeks of work that you have done, and the legal advice. I remember you vividly saying that if this was going to be tested in court, then a day’s worth of court would have been your whole legal budget or something—the fact that you are financially not established to be able to run these kinds of things—so maybe if you could just elaborate on that. The second thing that I am really keen on the committee hearing is about the damage that it does to the community: the fact that that flag was up, the fact that you said that everyone thought that the flag was illegal to be shown but nothing could be done, and the damage that was caused. I know that a lot of work has been done—we have all done work to repair that damage. But for people outside of Beulah looking at Beulah—*Today Tonight* and all of those people putting the shine light on your town, which is a great town, doing wonderful things—from one person and a one-person incident, what the ramifications are of that and why a simple law to get that flag down would have been able to fix a whole range of stuff. Sorry.

Ms HOLMES: That is okay. So you are right. Our entire organisation’s legal budget is about \$12 000, and that covers everything. Maddocks estimated to us that to run the case would have been about \$18 000 to \$20 000. So, yes, that would have been two years worth of our legal budget in relation to that. I just remember talking to Shaun, who runs the hardware store in the town. He just said it is really annoying that now when you type Beulah into Google it comes up with ‘Beulah Nazi flag’ as your first search item, and he is just like, ‘That’s not what we want to be known for’. From the community’s perspective they have just invested \$40 000 of money to do this massive artwork space on their public hall, and now that is not the first thing that comes up when you google the town. And the town had been through the wringer in the six months beforehand as well. The supermarket had burnt down. They had had another shopfront incident as well. They had just had a couple of things. They were already not in a good place as a community and were not feeling that great anyway. So for this to come up—it was for two or three days, and it went international. It was on UK websites and things like this. The reputational damage was significant for the community, and it did not represent them.

Lydia mentioned the holocaust survivor. He clearly did not want to come out and be front and centre of this issue. He is an older gentleman, quite frail, and so was well known, well liked and well loved within the community, but he did not want to make a fuss because the people that had moved into town probably are quite a large physical presence and could be quite intimidating. Even if they were not actively, physically aggressive, they are still quite antagonistic if you are not used to that type of behaviour. For me, we never made a point of speaking about that person, and we tried very hard to keep that person—

Mr SOUTHWICK: Yes, I know.

Ms HOLMES: out of the media, because they did not want to publicly kind of identify or deal with it that way. But it did just put a whole other layer of pressure on the community, who wanted to protect that person because of everything they have done for the town over the years. So it just added another layer of complexity, because we did not want to mention that. But at the same time I genuinely do not believe that the people who raised this flag knew that he had that history. I do not believe they did, because when the police officer raised it they seemed genuinely surprised.

Mr SOUTHWICK: Yes, I agree with that. Just if I could also put on record Shane’s work and, as you said, hours of work trying to negotiate that down, which is not normal. Most other Victoria Police members, when they are dealing with so many different things, do not have that ability to be able to do that in a town like yours. So credit to him and credit to you.

Mr NEWBURY: I want you to know and I want to put on record how strongly the community—you mention when you google what comes up with your town. I know that there were reverberations right across Melbourne, Victoria and Australia very clearly that your town did not condone what happened, and you could sense that from far and wide. I think every corner of Australia knew that one household did something that was wrong and that you did everything that you could. I think that it is really important that you know that and that you hear that really clearly.

The other thing that you mentioned today that came through was the amount of work that you had to go through to create the bluff, or the interesting legal scenario. I am in a particular municipality where we had something similar—not on a flagpole but a giant sign someone put in their front yard—and my council had to do the same thing. They did not use the same trick of bluff, but they had to bluff nevertheless. So I have got a really, really simple question: do you think a simple law telling people that they cannot do this—that is, put something like this up—and a law stating that quickly and clearly would be of benefit?

Ms HOLMES: We had this conversation quickly before today. Unfortunately we have 108 pieces of legislation that we administer as local government, so a quick and easy-to-use law does not really exist for us, sorry. We also spoke about whether you just legislate against this particular flag and, when you start to use language around ‘offensive’, what does that belie? What happens if someone uses the swastika but not in that colouring? It becomes really difficult, because what we know, whenever we are trying to implement legislation or enforce legislation, is that people will always go to the grey. So you say, ‘You can’t have two unregistered vehicles in your yard’, and they put one in their backyard so it is not visible from the street. People will always find the way to get around it. So we were kind of trying to think in our heads—what kind of law, and where do you place that law? But also, not only do you have that law readily available, but how easy is it to actually enforce that law? So whenever we are going to take legal action against somebody, we are kind of like: does this person suffer from mental health issues, so if we take them to the Magistrates Court the magistrate is going to throw it out anyway for fire hazard or whatever it might be?

I absolutely think there needs to be something really obvious and clear about a flag that is that offensive. The symbolism that comes from that flag is clear; everybody recognises it, and that is fine. It is how you actually legislate that but also how you enforce it. We have a whole bunch of instruments that we can enforce, but if it is going to cost you \$20 000 to enforce it, from council’s perspective, it is like native vegetation—somebody can cut down \$5000 worth of native vegetation, and it costs us \$75 000 to prosecute it. So council is always making decisions about how we would enforce that. If we had had a clear piece of legislation to use, that would have made it a heck of a lot easier, but at the same time I feel we were just trying to go, ‘How do you do it without infringing on people?’, because the Act that you guys are looking at is a tolerance Act. When I had conversations with people on a Monday and a Tuesday, they were like, ‘Have you just tried talking to them and being rational and being reasonable with these people about it?’. They did not have that ability to have a rational and reasonable conversation.

Mr NEWBURY: Again I do really appreciate that feedback in that I think the enforcement issue is something that you have now put across as something that is always an important point with any law or rule.

Mr BLINMAN: It is, and particularly with enforcement one of the things we always go to when we are thinking about it is: what is the outcome we want to achieve? So how do we use that, and what is the outcome we want from this? And as Jessie said with the Nazi flag, is it the swastika or is it the flag? I mean, what is it that we are seeking to prevent? Because people do get around things, and they might stick the swastika on a rainbow flag or something like that. Is it any less offensive? For us it is the outcome we are always looking at with our local laws particularly, and I guess it is the same case with this—what is the outcome we are seeking to achieve?

Ms HOLMES: Honestly, if we had had a law, we obviously would have exercised it. We tried to exercise a bluff law, so we were trying with anything that we could. You are right, we always go with the carrot-stick approach around how we can get people to comply, because often getting them to comply through a legal mechanism is very onerous. You want them to comply because they are rational people, and this is where I wonder with this particular couple with this flag, because they did not seem to have a kind of religious or political ideology stance in relation to Nazism and white supremacy; they had this other kind of ideology stance around, ‘I can do what I want’. I am not even sure if you prosecuted them that they would have been prosecuted, because their intent was not white supremacy. It was just this whole other kind of—

Mr BLINMAN: To annoy people.

Ms HOLMES: Yes, this other ideology.

Mr BLINMAN: It was about annoying people. Unfortunately for us, we see that a lot, and you cannot prosecute people because they annoy people.

Ms HOLMES: Yes, we would like a piece of legislation that we can use against people that just are not sensible, and we would call it another name—would be a true way of using this language. It would be ideal, but I think you would have to be so careful about how you crafted any type of legislative mechanism to enforce, only because people find ways around everything. But, this particular flag being so symbolic and so offensive, genuinely the community was just like, ‘No, you can’t’. This flag and what it represents is not in line with values and not even in line with an extreme of accepted values of two to eight; it is a minus four. This particular flag just incited a whole bunch of symbolism. People were genuinely cross, but they were also devastated about what that flag represented. So that is a lot of things to put into a simple law.

Ms COUZENS: Thank you both very much for your submission and your presentation today, and congratulations on the work that you have done. It must have been very challenging at times by the sound of it. I think you have pretty much covered the question that I had, but I will ask it because I will be interested to hear what your views are now, given some time has passed, on whether it has actually unified your community more so than prior to this flag issue. I would just be interested to know.

Mr BLINMAN: Beulah has been a pretty strong community. As Jessie mentioned, they had a couple of major issues in the town prior to this with their only supermarket burning down and before that there was a death of a young child in the community suddenly. So they had a fairly strong community, and I think this probably just reinforced the strength of that community, this incident.

Ms HOLMES: I would agree with that. They are a ripping community. They are close knit, everybody helps each other out—just the typical kind of awesome small rural town mentality that everyone gets involved and everyone is there. I would agree. It did not bring them closer together; it just reinforced the fact that they are already a close-knit town and they know what they stand for, and this did not represent what they stood for.

Ms COUZENS: So there were no—from the other side—people feeling that they could do the same thing?

Ms HOLMES: There was zero—

Mr BLINMAN: Not in this community, no.

Ms HOLMES: Not in this community. There was no sympathy—none at all—and no tolerance for the couple at all. There was no love lost out of the situation at all.

Ms COUZENS: Does that couple still live in Beulah?

Mr BLINMAN: They went away for some time with their caravan, but they are back and keeping a very low profile.

Ms HOLMES: And the house is for sale.

Mr BLINMAN: Yes.

Ms SETTLE: During the incident did you have any contact with the equal opportunity commission? Were people supporting you or those larger organisations supporting you—the human rights commission?

Mr BLINMAN: The main support was really through VicPol and other councils.

Ms HOLMES: Yes. Other councils really jumped on the bandwagon, and we also had a couple of different private law firms that identified as having Jewish heritage that were happy to provide legal advice if we needed it, but we were using our legal retainer with Maddocks at the time, and our local members. It all happened very quickly within a three-day period so we did not have a lot of those other bodies but other councils—

There is another council that had had a similar situation with I think a tattoo at a swimming pool that they tried to work through, so they called us and said, 'We used some of these things', but it was a different scenario and we could not really use any of that legislation. Then a few people were kind of like, 'We could potentially use the survivor to kind of do that', but he did not want to—he did not want to get involved—so that kind of took away some of those legal avenues that VicPol was looking at. But no, some of those bigger agencies we did not hear from at the time—

Mr BLINMAN: Really we did not have time to. I mean, there was a lot happening over that short period of time and really it was a lot of work for VicPol and who could find something we could use to try and remove the flag because of the volume of emails. Jessie has probably played it down a bit, but the amount of emails and threatening, well not threatening, phone calls that were quite vitriolic towards Jessie and council at the time over those two days was quite amazing.

Mr SOUTHWICK: Just very quickly: I suppose, Jessie, there are other jurisdictions in which there is a very simple mechanism of effectively a swastika being illegal and a flag to be illegal and a simple confiscation—initially a confiscation, I understand, pursuing somebody. But particularly on just getting that flag down as being the big issue for you, if there was a very simple mechanism of a Nazi symbol and a Nazi flag being banned and a mechanism to be able to do that, would that be something that would have been beneficial for you in these instances?

Mr BLINMAN: Well, that would be very black and white for us, and that would be something we could work with, because it really has to be black and white for us.

Ms HOLMES: Yes, it would. I think everyone agrees there has to be a mechanism. When I spoke with people in the community on the Saturday when we were having the barbecue, and then when I spoke with people out in the wider community, just kind of going, 'Holy moly', everybody agreed that with that particular flag you should just be able to go in and deal with it, with what that represents you should just be able to deal with it. Never once was that conversation around infringing on people's political or religious rights for that particular flag. Nobody ever said that would be compromising people's rights to expression or communication. Everybody was like, 'We all know what that flag is and what it stands for; it has to come down'. So there was never any confusion about that particular flag or that symbolism being something that people felt like if you went and took it down, it would breach other people's rights to expression or freedom. That discussion never came into play with anybody that I was speaking to. I think we got one email from someone just saying how dare we try and breach somebody's freedom. I think it was somebody in southern Queensland or something. But, yes, apart from that everybody else was on the same page: do something about it.

The CHAIR: Thank you very much. I do not believe there are any further questions. On behalf of the committee can I thank both Jessie and Gavin and in particular your council. It was obviously a mammoth effort, as David indicated earlier on, and a very challenging set of circumstances. But your community, your council and the efforts of the local police coming together—really, on behalf of the committee I do truly thank you very much for the work that you have done in these challenging circumstances. Our next step will be: we do have numerous other public hearings and submissions to hear, and hopefully we will be concluding and deliberating on all the submissions and then we will be handing a report to government with some very strong recommendations dealing with some of the circumstances that your council faced back in January. But let me assure you: there will be strong recommendations to government on this very, very important issue. So thank you so much for presenting today. We really appreciate it.

Ms HOLMES: Thank you very much for your time. It is very much appreciated also.

Mr BLINMAN: Thank you.

Witnesses withdrew.