**Victorian Aboriginal Legal Service and Victoria Legal Aid opening statements – Inquiry into Anti-Vilification Protections**

28 May 2020

## Rachel Gleeson, Victorian Aboriginal Legal Service (VALS)

I am Rachel Gleeson, and I am a solicitor in the Civil Law and Human Rights Division of the Victorian Aboriginal Legal Service. We provide legal advice and representation on civil law issues to Aboriginal and Torres Strait Islander people across Victoria.

We provided support to Charmaine around her recent experience of reporting racial vilification to Police. We were disappointed, but not surprised, at the outcome of the police investigation which ultimately found that the threshold had not been met to enable charges to be laid against the alleged offenders. Unfortunately, this sort of outcome is a common experience for our clients.

We hear many, many similar stories to Charmaine’s from the Aboriginal and Torres Strait Islander community about their experiences of being subjected to racial vilification and discrimination.

It is likely more common than we are aware of, because it’s likely that many Aboriginal Victorians are discouraged by their prior experiences of racist treatment by individuals and public institutions. They choose not to put themselves through the heartbreak of being disbelieved, or not having their experiences vindicated by the legal system.

We frequently advise individuals who have been victims of hateful, derogatory speech on the basis of their race. This occurs in diverse settings such as workplaces, educational institutions, public spaces, online and in the provision of goods and services.

I recently represented a community member who was repeatedly referred to as a ‘petrol sniffer’ in his workplace by his colleagues.

Another well-respected community Elder was presumed to be a shoplifter, purely based on her appearance as an Aboriginal person, and was refused service. This happens in metropolitan Melbourne, in the regions, and in your suburbs. These experiences can be emotionally and psychologically devastating for our clients, and doubly so when they learn that the justice system does not support them in their fight against racism.

Our clients find that they sometimes have recourse to address discriminatory treatment in certain settings by making a complaint to the Victorian Equal Opportunity and Human Rights Commission or the Australian Human Rights Commission. Many others, however, like Charmaine, find that they don’t fit the legal criteria to proceed through those forums, and then they also find that they fall short of the very high thresholds of the ‘incitement test’ in the Racial and Religious Tolerance Act.

If we as a community do not stand for racist conduct, then our laws should not permit it. My colleagues from Victoria Legal Aid will now talk you through the detail of our joint recommendations for reform to provide better protection and legal responses people for Charmaine and others in our diverse community.

# Rowan McRae, Victoria Legal Aid (VLA)

My name is Rowan McRae and I am the Executive Director of Civil Justice, Access and Equity at Victoria Legal Aid.

Victoria Legal Aid is a statutory agency responsible for providing legal information, advice, and assistance to people in need of legal assistance who cannot afford a lawyer.

In the last financial year, we provided assistance to over 100,000 unique clients through our 14 offices across Victoria, including over 67,000 criminal duty lawyer services, and more than 1,300 legal advices on discrimination, sexual harassment, victimisation and vilification.

Our lawyers frequently advise people who have been targeted by hateful, derogatory speech on the basis of their race, nationality, colour and ethnicity, or their gender identity or sexual orientation. This harmful speech takes place in the workplace, in public places, online and in the provision of goods and services. We often see hate speech accompanied by other forms of discriminatory treatment in workplaces and service settings.

Hate speech takes a significant psychological and emotional toll on our clients and their feeling of safety in our community. It can have lifelong consequences which rob them of opportunities because of another person’s hatred and prejudice about who they are.

Informed by our day-to-day practice experience, we believe that addressing hate speech goes to the heart of promoting a welcoming, harmonious society and ensuring individuals do not experience fear or exclusion because of who they are.

Strong and effective protections from hate speech benefit both individuals and the Victorian community as a whole by promoting inclusion and fostering diversity. Victorian laws should address different types of harmful hate speech – from online vilification to harmful workplace

I will now hand over to my colleague Melanie Schleiger will now briefly outline our key recommendations for reform.

# Melanie Schleiger, Victoria Legal Aid

I am Melanie Schleiger and I am the Program Manager of the Equality Law Program at Victoria Legal Aid, which provides advice and representation to people who have experienced vilification.

Based on our casework, we believe that Victoria’s anti-vilification laws must be broadened, modernised and strengthened.

I will briefly outline our 5 priority recommendations.

Firstly, our vilification laws should also protect women, people with disability, LGBTIQ+ people and for people targeted because of their connection with a protected group (such as a friend, partner or family member) from harmful hate speech in the Victorian community. Without these fundamental protections, Victorians who experience hate speech aren’t protected from harm.

Secondly, existing civil protections should be modernised by updating the current ‘inciting hatred’ legal test to remove technical barriers to victims proving vilification, and introducing a new harm-based civil protection for behaviour that offends, insults, humiliates or intimidates people protected under anti-vilification laws.

Thirdly, the Committee should review serious vilification criminal offences to facilitate greater reporting, improve deterrence and simplify the process to prosecute.

Fourthly, Victoria Legal Aid supports stronger powers for the Victorian Equal Opportunity and Human Rights Commission to investigate vilification and enforce the law.

Finally, in relation to online hate speech, new regulations to deal with changes in how hate speech is disseminated through technology should ensure corporations (including social media companies) which assist with the spread of hate speech can be held liable and give the Commission powers to identify a person accused of hate speech using an online account.

We are keen to respond to the Committee’s questions in relation to our submission and these recommendations.

Thank you.