

LEGISLATIVE COUNCIL LEGAL AND SOCIAL ISSUES COMMITTEE

Inquiry into a legislated spent convictions scheme

Melbourne—Wednesday, 19 June 2019

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**Necessary corrections to be notified to
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WITNESS

Ms Gillian Clark.

The CHAIR: Hello. Thank you so much for coming, and thank you for coming at this late hour. We greatly appreciate it. We do not finish until 7.00 so we cannot start until the end. We have had a little bit of information about you, but we would love to hear your story.

Ms CLARK: Okay. Thank you, and thank you for having me be able to share this story. I have written it down, which is not my usual standard, but it is because I could get sidetracked so I am just trying to contain it.

Mr ONDARCHIE: Whatever makes you comfortable.

The CHAIR: Yes, and take your time on this one.

Ms CLARK: Yes. My name is Gillian Clark. I am a social worker and I have a masters in addictive behaviours and I am currently employed as a senior consultant in dual-diagnosis work in a country hospital. But tonight I am here to share the story of my late husband, Matthew Clark, in the hope that it might make a difference to other people's lives. Matthew died on 1 April this year. Whilst his criminal record is not a direct causal factor in his death, it has played a significant role in the trajectory of events that led him to be in the place that he was at the time of his death. I do not know the other stories you have heard here tonight, but certainly lots of people said to him that he had an extensive criminal history. It was 29 offences over 30 years, so it was not small but it was not the biggest.

The first offence he recorded was when he was 17, in 1993. That stands on his last police record check. It was for 'possess amphetamines', 'a minor consuming alcohol' and 'use amphetamines'. His last conviction was at 42 years of age, so last year, and that was 'obtain property by deception'. Hopefully what I describe will give you some context to all of that. Matthew was never incarcerated. He has never been charged with a violent offence. He struggled with addiction from the age of about 13 years. He had an acquired brain injury from three months of age and developed significant and often debilitating mental health issues. He had quite significant obsessive-compulsive disorder, anxiety and depression.

His whole life from late adolescence was spent attempting to address these issues with multiple rehab admissions, multiple counselling sessions, multiple doctors, specialists—you name it, he tried to do it. Of significance in this context is he had a gap in offending of seven years in that. It may have been longer than that except for something else that I will touch on soon.

In 2002 Matthew had his son, Caleb, a major turning point in his life. Caleb's mother was unable to care for him; she also had addiction issues. The moment Matthew—his story—saw Caleb when he was born and because of his love for him, it was not long before he became primary carer. That was formalised in Family Court when Caleb was about six. In 2004 Matt and I met, and we were married in 2011 and had a daughter, Molly, in 2014, who is now four. We moved to Wonthaggi in 2006 where we still reside—well, the three of us do. Because Matt had focused on raising Caleb he was on the DSP—and because of his addiction issues. But when Caleb started school he realised he did not have anything to do anymore. His role was significantly changed and so was he in terms of what he wanted to do. So he completed during that time a certificate IV in drug and alcohol studies. Because we were involved with the Family Court for as long as it takes to be involved in the Family Court and because he was a male in the Family Court attempting to get custody, he became involved in a group called Dads in Distress and ended up running a voluntary support group in Wonthaggi. And he started his own DJ business in the local area, quite a successful DJ business.

The reason that Matthew was able to progress during this time was because for the first time in many years he had security, safety, connection and personal purpose. Because of these traits and the support of opiate replacement pharmacotherapy, which he was on until the day he died, he did not need drugs to get through life, and thus he did not have any further criminal charges during that time. So that is the context.

In 2010 Matt began applying for jobs in the welfare sector, and despite all that positive progress and Family Court, training and volunteering, he kept getting interviews, but whenever the question of his police check

came up it would just squash any chance of employment. He tried multiple ways of addressing his criminal record in interviews. He would be up-front about it, he would not say anything until the end, he used to take a copy of his police check with him to actually try and just explain the context of it, but it was not always successful. He had many reactions from employers as a result, and remembering that these were all in the health and welfare sector so there is an assumption that they have some understanding of context. I am sorry if anyone is from there this evening, but it is the truth.

He went for a job at TaskForce, a drug and alcohol organisation in Victoria, and completed the interview and was given really positive feedback. In the interview he brought a copy of his police check and presented it to them, and the interviewer, upon viewing the police check, advised, 'Well, you should have told us this earlier. There is no way that we'd employ you given your history of theft, as it's clear that you have a history of being dishonest'. He did not get the job, but more importantly, he came away from this potential opportunity shattered, questioning his sense of self and feeling hopeless about his future. That was only one example, but multiple examples of those over time.

The CHAIR: What year was that, sorry, Gillian?

Ms CLARK: That would have been in 2010. So at that time he had not had a conviction for six years. Just to remind you, he had not had a criminal conviction for six years—never been incarcerated, no violent crime. He had won custody of his son, completed studies, volunteering, drug free—like, these things that people strive their whole life to achieve and often do not.

And this was replicated at other organisations—Salvation Army, Flagstaff, Launch Housing, just to name a few—and had the same outcome, until 2011, when he was offered a job at WAYSS Ltd, which is a housing service based in Dandenong. So we had married in 2011, and just prior to that Matt was in a car park in Prahran, at the Coles. He went in to buy some cigarettes, came out and there were police near the car, which was, you know, whatever you want to call it. They had run the numberplates of the car, and they were waiting for him there to search the vehicle, without any reason except that he had a criminal record, I guess. They never said that of course, but he had not committed another crime, he was not even in the car, [REDACTED].

Unfortunately, due to his stupidity—I can say that because I am his wife—he had made a bad choice; he had actually purchased an imitation firearm for his grandfather, who had been in the Second World War, that just happened to be in the car. It was not fireable, it was not made of material that would have survived being fired even and it came in a cardboard box. And they charged him with having a firearm. We ended up in the County Court on appeal, but because we could not afford legal support, the charge stood, and that was the first charge that sort of made a big change. He had just been given the opportunity for this job, so he actually chose to go into the CEO. He went directly in to the CEO. He explained to the CEO what had happened, and they said, 'Okay, we're going to give you a chance', which was huge and, like, amazing. So he stayed there for five years, and it was a big life changer in that time. We had to go through IVF, so we were able to do that, and there were all these other things that just put everything together.

Unfortunately, that did not last and there were a few issues that happened in the organisation, major changes—some bullying and harassment, not of Matt and not by him, but it changed the culture within the organisation. He had two clients, sisters whose father was convicted of murder, and he was supporting them through the time. Because of all these changes at that time the organisation were really strict. He was an outreach worker, but they pulled him in and said, 'You can only be in the office'. He was like, 'I'm meant to go. I've been supporting these girls', and it was the conviction day, and they said, 'No, you can't go'. He said, 'I can't. That's not how I work. I can't work like this'. Because of his lived experience, it challenged his own beliefs about what was helpful to people and what would not be helpful to people, I guess.

To cut a long story short, after a long time his mental health declined. He became probably burnt out—that is the best way to describe it—and suicidal as a result of the pressure of the workplace, and he went on WorkCover. But that was too stressful—I do not recommend WorkCover to anybody; it is that nature; it is just too stressful—and he resigned. But that started the process all over again. So after five years of stability working full-time—he had actually broken his neck during those five years as well because he is a snowboarder, but he still kept going to work—he had to start again.

During that employment he was promoted: he was sent out to a sole position in a standalone hub. And he did not use drugs; he did not incur any more charges. It was just—things were going well. He started to look for work again. The same hurdles came up, even though he was in a better position because he had been employed for five years and they were quite willing to give him good references. It was not a question of references. But the firearm charge, in conjunction with the prior criminal record, made a big difference. It was actually interesting the number of times people would comment to him about how many pages his criminal record was, and that alone is enough. You might go with one charge, but if you are going with multiple pages, it is just not a great look. But as I said, his first charge was still on there from 1993—he was 17; he was not even an adult—and it all adds to the story. People do not see the person; they see what is on the paper. So he was not successful in gaining employment for a long time, and that really was the beginning of quite a lengthy downward spiral for Matt.

He could not get any income support through Centrelink because of my income. Because he is not entitled to Centrelink, he is not eligible to access employment support services. There is one that I found—I do not know if it still exists—a support service for people with criminal records in Victoria called ACSO, but that was in Melbourne and it only had a catchment here, not any regional support. With that combination of the trauma experienced with the employer, ongoing mental health issues, stress from financial pressure—our daughter had been born by that time—and that rejection continuously from employers for things from his past, he just became increasingly fragile. He continued to seek support for his mental health issues, but he was just feeling worthless and helpless.

He actually said to me a couple of years later that he had felt like he had gone back to when he was 20—like his mindset had been dragged back to the time when this was all going on for him—because it was like the world was against him and he had no options, no choices. He became apathetic and frustrated and had a growing sense of unfairness regarding the circumstances. He did not have a purpose in life. Even though he had two beautiful children, he did not have that sense of purpose. I think having success and then losing it was worse than having never had any at all. It trapped him in a cycle. Matt was never shy of telling his own story, and he would have been here tonight if he was here to tell his story as well without any shame. He would wear it, not with a badge of honour, but you know, he had no shame about it. He did make choices—bad choices—that led to things happening.

Then he got a great idea, which was not a great idea at all. With skills that he had learned in his 20s, he grew some synthetic cannabis. Our son, Caleb, has severe eczema. He read some articles about how synthetic cannabis might help eczema, and so he decided to have a go at that. He got some seeds from Canada that were almost pure—they had less than 1 per cent THC in them—and he grew some cannabis. But it just opened the door to a world that he had closed so many years before. He did not think of that at the time, I guess. But he was purposeful. He was doing something. He felt like he was helping, and at that time it was far more important for his survival than the potential of being caught for doing another crime. It was like that did not register.

Not being able to gain employment as a result of his criminal activity after years of being drug free, crime free, productive and happy and giving back to society placed Matt in a cycle that he had spent years trying to break free from. During this period he even began volunteering at SHARC, a drug and alcohol organisation, with young people completing rehab. He knew the manager there—we still do. He was asked to provide a copy of his criminal record to volunteer—it was a pretty standard procedure—and she said that she just put it in her drawer because if she had gone to management with it, they would have said he could not even volunteer. This is an organisation that at the moment has got a lot of money to do peer helper work. This is not because of their own philosophy; it is because of the standards set by the department around employment.

Had Matthew been able to gain employment, to find meaningful purpose like any other human being that seeks to find meaningful purpose in life, he would never have reverted to past behaviours. He would not have needed to revert to past behaviours, and we know that because he was able to break free of those. He never would have thought of growing cannabis, and that did create a problem with our marriage. He also never would have been ashamed of himself—anxious, depressed about his own actions. He never would have then gone to the GP, where he was prescribed alprazolam, a scheduled drug now, by the local GP. It was scheduled then as well, but they did not get a permit. They did not ring his methadone prescriber. He never would have gone on to become dependent on alprazolam, been involved in three car accidents in two months and sustained significant

concussions that led to the development of an amnesia-type syndrome. He never would have been so despondent and lost. He attempted to take his life twice, just this year, and chances are high that he never would have been disoriented, confused and wandering around unsteadily at 5.00 a.m. on the side of the road on 1 April and been hit by a car, causing his death.

He was a beautiful person. He was generous, caring, funny and always willing to help others. He was a brilliant father to our two children and a loving husband. He committed crimes as a result of his drug use and impulsivity as a result of brain injury and out of desperation. He also performed to a high standard, as both a volunteer and for five years as an employee, but he could have helped so many more in similar situations to his own if his criminal record had been spent. The consequences of living with the shame of his own past was punishment enough, and at 42 years of age surely your actions when you were 17 are no longer a valid reflection of your current circumstances.

So that is the story. I did have some recommendations, for want of a better term. I do not know if you want me to go through them. Otherwise, questions?

The CHAIR: Gillian, thank you. It is such a tragic story. I would like to hear recommendations.

Ms LOVELL: Yes, I think your recommendations are more pertinent than questions.

Ms CLARK: Okay. I guess I put this together with my professional experience as well—like a combination of lived experience and professional. So I guess when thinking about the spending of convictions it cannot be a black-and-white process, which often legal processes are—

The CHAIR: Tonight has really shown that, hasn't it?

Ms CLARK: but rather reflective of the nature of criminal offending, so violent versus non-violent, context of offending and so on. Those with criminal histories should be awarded the opportunity to prove themselves where offending behaviour has ceased, just like you would at court. So if you go to court for a crime that you are charged with, you get the opportunity to defend yourself. It should be no different, and in fact Matt went for a job at Windana, which he was successful in getting, but there was then another bit of a hiccup along the way. They actually advised him, and it took them nearly six months to do this, that they had to get department approval in order to employ him. But there was only one person in the department; I do not even know what this role was, but somewhere in the ether is a department that needed to rubberstamp that employment. So there is also that bureaucracy that stops organisations—who could be bothered doing that when you have got someone there that does not have a criminal record? It costs money too—not to get the approval but to wait to employ somebody.

Where there is subsequent offending, the nature and context of offending should be reflected in whether previous charges are unspent—that is, if the defendant had been charged with intentionally causing serious injury, for example, but the majority of previous offending was related to theft, with multiple years of no criminal activity, this may warrant the previous convictions not being released to prospective employers. I think that reflects the need to understand criminogenic behaviour as well. So it suggests that there are patterns of offending behaviour. Some of these patterns might be developing, so we know—I guess the forensic specialists know—that there are certain types of escalating behaviour that are of serious concern, like stalking, which can lead to sexual assault, for example. But a lot of them can be largely contextual—shop theft to fund a drug habit, for example.

So having the opportunity for a forensic examination of the individual offending behaviour would be a far better discretionary process, as opposed to the length of criminal behaviour or even a fixed-year period, because it allows for examination of context and circumstance. Ultimately people commit crimes for a reason, whatever that reason might be: whether it is because of their belief that the laws do not apply to them or whether it is because of the circumstances that they live in. Not allowing people to move away from their past will most likely result in them returning to their past, just like Matt did.

Management of criminal records arguably needs to fall in line with other state and federal policy regarding addictions. There is a huge discrepancy in the way that that is viewed. So all state and federal policy has got a harm minimisation philosophy to treatment: it is all about holistic treatment, yet they forget that needing

recovery from criminal behaviours, if you like, is also a treatment process. It is not just something that you choose to do or not do, particularly because of context. There is a growing recognition of the impact of trauma on addictions and the complexity of presentations of those seeking treatment. So that is all the department's push. The Victorian Department of Health and Human Services has significantly invested in the AOD peer worker space. However, where individuals have a criminal record, it does not matter how much training you do, you cannot get employment unless you know someone. The other big thing to think about there is what is happening in the private drug and alcohol system, because there are a lot of people working in that space without regulation. They can get jobs and they have got criminal records. That does not mean that they should not be working there, but it is just such a skewed model.

The CHAIR: Gillian, we have got the transcript of this. You have given us a lot to think about. It is really great. Again, it is just these complications that you have provided for us.

Ms CLARK: Sorry!

The CHAIR: No, thank you.

Ms CLARK: Okay. Thank you.

Mr ONDARCHIE: I just want to say thank you. Thank you for coming in—clearly from a distance—to share. And I guess to everybody else who is here tonight, whether you are coming to present or you are here to support people who are presenting, thank you so much for coming to our Parliament tonight and sharing with us.

The CHAIR: On that note, is there anyone who has not spoken who might like to have a couple minutes to share their story? No. Very good.

Mr ONDARCHIE: Gillian, thank you.

Ms CLARK: That is okay. Thank you.

The CHAIR: Very good. Thank you, Gillian. Again just to reiterate what Craig said: thank you, everyone, who has come this evening. We appreciate that retelling stories is never easy. We just are so appreciative of everything that we have heard tonight, and I think it has really added such depth and such texture to the beginnings of this inquiry. Believe me, these will all be weighing on our minds as we work through this inquiry, so I thank you all and I thank certainly those who have provided submissions—written submissions as well. Thank you very much.

Committee adjourned.