

TRANSCRIPT

LEGISLATIVE COUNCIL LEGAL AND SOCIAL ISSUES COMMITTEE

Inquiry into a legislated spent convictions scheme

Melbourne—Monday, 1 July 2019

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WITNESSES

Ms Sally Parnell, Acting CEO, and

M Daniel Clements, General Manager, Justice and Crime Prevention Programs, Jesuit Social Services.

The CHAIR: Thank you for coming in today. As you know, we are doing an inquiry into spent convictions, and the evidence, as you are aware, is being recorded. Just so you know, all evidence taken during these hearings is protected by parliamentary privilege. This protects you against any action for what you say here today, but if you go outside and repeat the same things, you are no longer protected. I think you have actually gone through this process before with us in the past, so I am sure you are well aware of that. We do appreciate you giving us the time, and we appreciate that Jesuit Social Services has done a lot of work in this area of prevention and reintegration, so we really welcome your thoughts on a spent convictions scheme. If we could hear from you for around 5 or 10 minutes and then open it up to questions, that would be great.

Ms PARNELL: Okay. Thanks for the opportunity. Just having followed Liberty Victoria, we are not sure if we have got a whole lot of new thing to add. We have probably got some colour and movement to add around our experience with our people that we work with and the level of disadvantage they experience. Just a bit of background: Jesuit Social Services works with some of the most marginalised in the community, who are often experiencing multiple and complex challenges. This includes people involved, or at risk of becoming involved, in the criminal justice system and others who face significant barriers to social and economic inclusion. Our service delivery and advocacy focus on key areas of justice and crime prevention: mental health and wellbeing; newly arrived communities settlement and community building; education, training and employment; gender; and ecological justice.

In terms of our position, Jesuit Social Services supports the introduction of a legislated spent convictions scheme to ensure a person's criminal record does not unfairly impact their ability to obtain employment. Our justice programs are based on the belief that all people exiting prison should have the same opportunities to access employment, housing and education in order to help get their lives back on track. The disclosure of criminal history records can inhibit rehabilitation in the long term and cause ongoing stigma and loss of confidence and self-esteem for people who are keen to move on and turn their lives around.

We recognise that organisations such as Liberty Victoria and others are well-placed to advise on the specifics of the most effective model. In our view any model should be founded on the recognition that all people deserve a second chance. Once a person is sentenced to prison, our focus should be on their effective rehabilitation. A protracted waiting period for people who commit relatively minor offences should be avoided, in our view. And we support a process where eligible convictions are spent automatically so as not to place administrative burden on people. You might be aware of our *Dropping off the Edge* research over a number of years, which has consistently shown that a small number of communities across the state are experiencing a complex web of entrenched disadvantage that limits outcomes and opportunities for people. Our data in Victoria from *Dropping off the Edge* found that those living in the 3 per cent most disadvantaged postcodes in the state were twice as likely to have criminal convictions and three times more likely to be experiencing long-term unemployment in comparison to the rest of the state.

We know that employment is a key protective factor against further involvement in the justice system and can help mitigate feelings of disempowerment, exclusion and stigma. We know that many of the people we work with are struggling to obtain employment due to their criminal record, which can negatively impact their overall mental and physical wellbeing. We cannot expect people to turn their lives around if they do not have access to secure housing and opportunities to experience education and employment. We must recognise that it is often the most marginalised and disadvantaged members of our community that end up in our prisons.

The CHAIR: Thank you, Ms Parnell. That is right. A previous witness was quoting your *Dropping off the Edge* research. I guess I would like to look at that slightly broader impact of convictions on those marginalised groups. Spent convictions will be one way to help address this. Is there anything else that you think is part of that reintegration and is part of that process of getting people back on track? Sometimes we have seen justice systems actually provide an opportunity for those people to turn their lives around. Is there anything else you

think the committee should be considering when we are reporting on spent convictions that governments should also be considering in this area?

Mr CLEMENTS: I think one of the things that we need to be aware of is that the incapacity to access the labour market disproportionately impacts on certain cohorts, and notably we would highlight the challenges for women returning to the labour market, the challenges for Aboriginal people and the challenges for young people. So what is often an impulsive act from a 15 or 16-year-old, they have no understanding around the repercussions and the long-term implications of that act and what that means for their future. One of the programs that we currently deliver in both Parkville and Malmsbury, the Justice Employment Training Transition program, observes firsthand the challenges associated with supporting children and young people to meet their aspirations and move into the labour market and/or learning pathways. First and foremost, a whole range of professions are often limited because you cannot get access to participate in learning around any of the helping professions—around aged care, around social work, around nursing. Something that we particularly note with young women and girls who are in Parkville is that that is where they have aspiration—to move into those sorts of workforces. But without a working with children check it is impossible to get a placement, so it is impossible to actually consider that as an employment pathway.

The CHAIR: Certainly we heard from one of the other witnesses that you might have someone with those lived experiences that would be perfect to provide peer education or peer support and yet our own government policies preclude them from providing that support because of our requirements around police checks.

Mr CLEMENTS: Absolutely. Yes. I can think of one example, a woman, she would be in her mid-40s, and she had really significant issues around family violence in her life. As a result of those issues around family violence the children were removed from her care, which then precluded her basically getting a working with children check, which meant that she could not participate in a project that we had put together around people with lived experience combined with an acquired brain injury to support our understanding and knowledge of the impact of both the ABI and her trajectory through the criminal justice system. And we had to advocate really strongly for her to get a working with children check, which we were able to do, but it came at considerable time and effort. She is now actively participating. This was something that had happened 20 years ago. What we regularly hear from some of the men in our programs is, 'I got sentenced to four years, but I'm serving it 25 years later'. So the impact of regularly having the blockers around the fact that they have had a criminal conviction come up is a clear prohibitor to getting a job.

Dr KIEU: The spent convictions proposal scheme is based on certain principles, like that people should not be condemned for the rest of their life for what they have been punished for and should be open to reintegration and becoming a more active and participating member of society. The other thing is I would like to get your view on whether certain spent convictions with certain waiting periods would be a motivation for people not to reoffend? Have you seen any such evidence or example of that?

Ms PARNELL: Look, I think we can only speak in the general. It needs to be horses for courses. We would believe that for younger people a waiting period does not really help because of the compulsive nature of their behaviour. So once they have been charged and have served their period of time, we think that the conviction should immediately be spent. I think it is case by case.

Mr CLEMENTS: I think the capacity to have a nuanced approach, particularly with children, is absolutely critical—and young people. I would echo Sally's point. I think what Liberty Victoria is saying—around three years—is in principle a good approach, but I think the capacity to take a matter to a court and have a professional opinion provided around why that conviction should be spent is in principle a good approach and something we would support.

The CHAIR: Still looking at those, I would like to hear a bit more about the justice employment transition programs that you are running.

Mr CLEMENTS: It is a bit of a balancing act, because one of the issues is many young people do not have realistic understandings around what it takes to actually step into the labour market. So it is kind of like, 'I don't need to study; I just want to get a job'. What we do is very much around the pragmatic and supporting them to understand the steps that will be taken. As part of that, it is also about building that hope and aspiration and

supporting them to understand that there are practical steps you are going to need to take to get a job. So, 'It's great that you'd like to be a chef, but to be a chef there's a whole range of steps that go before that, not least of which is some qualifications'.

We are absolutely committed to ensuring that we create safe communities and balancing the risk associated with the fact that young people have committed quite serious offences, but the moment you start putting blocks in the way we see the change that happens for a young person, because essentially they start second-guessing themselves and questioning their capacity to actually get a go. So in principle the idea that you can put something up in front and say, 'That will be history, literally; there won't be a rider. Your conviction will be spent, and there'll be an opportunity, but there's something to play for', is really important, and children and young people need that. That builds into hope, setting goals. It is a really clear goal if you could say, 'No further reoffending for a period of three years', and that means then suddenly you have access to a range of opportunities that otherwise would not be there.

The CHAIR: So you used the example of the woman who had a criminal conviction and the working with children. Is that something that the services come up against in other circumstances where you find an applicant for a position who is very well suited to that, quite often because of their experiences, and due to your funding models or due to who is giving you the money you are restricted from employing that person?

Ms PARNELL: Yes. People often apply to work for us who have a history. Some—

The CHAIR: Because they have probably been helped by you in the past.

Ms PARNELL: That is right, and some of them are very well suited to the work. They have empathy; they understand what it takes to move forward in life. We find in certain areas of our work that are non-statutory we have discretion to make a choice, and we do often—not a lot, but now and again we will employ somebody that has got some history that we do not think is relevant to employment. It might have been a driving offence or a drug offence that is long gone. However, working in our justice programs that involve our staff going into the prisons themselves, there is another layer of check that happens through the department, and often we are not able to move forward in employment, which we think is a shame.

Mr CLEMENTS: Again, that would be one where we would have certainly seen a number of really suitably qualified Aboriginal applicants for roles that we have got where they have a history 10, 15 years ago—in their youth, generally; in their early 20s—where there was some offending. Often it is offending in relation to poverty around motor vehicles that have not been registered and then driving an unregistered vehicle—that sort of offending—which then 10, 15 years later, despite the fact they have gone on and got a degree in social work, pops up the moment that they have to have police checks. All our staff need police checks and working with children checks, so straightaway that is a conversation where we are in a position that we need to have. As Sally has identified, with certain positions certainly going into the adult jurisdiction particularly you will not get access to prisons with those sorts of criminal histories as well. So while we may go, 'Look, you'd be a great candidate', we struggle sometimes to recruit suitably qualified people from within the Koori community. But we know that we are not going to get them across the line to do that work to meet the needs of Aboriginal participants on our programs who are incarcerated in the adult jurisdiction.

The CHAIR: What would you recommend we do about that?

Mr CLEMENTS: Well, I think the recommendation that there be an opportunity for an approach to the court. For example, I think potential employee should also be able to play a role in that, but I think sometimes there is a little bit of discretion from Corrections. We have certainly had that, but that requires a very senior approach into Corrections. I think where there is an opportunity to have a more nuanced approach and to have the capacity to advocate on behalf of some people like that is something we should pursue. But I would also note that it is something that many of those potential applicants would not necessarily feel confident in pursuing themselves. It certainly presents as a hurdle for them, and the idea that I might be able to get my conviction spent if I pursue certain steps might not be something I would feel confident doing. So I think it sometimes does require a third party, it does require support for people to pursue an avenue that way like that.

The CHAIR: Yes; sure. Thank you. One of the other recommendations certainly from Liberty Victoria is that the time period for spending convictions begins at the point of conviction, and that varies in various jurisdictions. Do you have an opinion on that, whether it should start at the time of conviction or at the time of release, which happens in other areas?

Ms PARNELL: We support Liberty Victoria's view that it start at the time of conviction.

The CHAIR: Yes. And would you say for the same reasons—that it gives someone an incentive not to offend?

Mr CLEMENTS: Absolutely, and particularly for young people. That is something concrete that you can put on the table in the context of planning for the future. As we know with young people, they do not think about the repercussions of those acts. So to be able to put that on the table straightaway, also in the context of prerelease planning, and say, 'Okay, we're dealing with a six-month, eight-month sentence. That's already two-thirds of the way to a spent conviction. Part of the next steps will be careful planning around the potential qualifications you will need to step into the labour market'. A clear plan with a clear goal makes a huge difference for a young person.

Ms LOVELL: I just want to follow up on that one. Do you know what percentage of prisoners actually do offend while being incarcerated, particularly young people? So what percentage it would actually affect, whether it started at the time of incarceration or at the time of release?

Mr CLEMENTS: Sorry, whether they have actually had an offence while they are in—

Ms LOVELL: The difference between whether it starts when you are sentenced or whether it starts when you are released is that period of incarceration, so what percentage of people actually reoffend during that period?

Mr CLEMENTS: We would have to take that on notice.

Ms PARNELL: And come back to you.

Mr CLEMENTS: I note that previously we heard that there are some—so again it is very important to make the distinction between the youth jurisdiction and the adult jurisdiction. So if we are talking within the youth jurisdiction, we also note that we have some really significant challenges that we are facing at the moment in those environments. Part of what we have said is to actually support those environments to be truly therapeutic and rehabilitative. That means that we need to ensure that we recruit suitably skilled staff. We are seeing a rise in incidents, which see that young people are incurring charges while they are in custody, and that is something that we would note is a very worrying trend. Again, it would be important to unpack what is actually happening in that space so that we understand what was happening for the young person and why there was a conviction recorded while they were in custody.

The CHAIR: Yes. Thank you. That gives us something to think about. Thank you so much for coming in today, bearing the weather and bearing this not-so-warm room as well. We very much appreciate it. I think certainly Jesuits was always a part of the solution. As we explore this further, it will be looking at the prevention rather than dealing with the symptoms. Congratulations for the work that you are doing in that field. Thank you.

Ms PARNELL: Thank you. Thanks for the opportunity.

Witnesses withdrew.