

TRANSCRIPT

LEGISLATIVE COUNCIL LEGAL AND SOCIAL ISSUES COMMITTEE

Inquiry into a legislated spent convictions scheme

Shepparton—Monday, 15 July 2019

MEMBERS

Ms Fiona Patten—Chair

Dr Tien Kieu—Deputy Chair

Ms Jane Garrett

Ms Wendy Lovell

Ms Tania Maxwell

Mr Craig Ondarchie

Dr Samantha Ratnam

Ms Kaushaliya Vaghela

PARTICIPATING MEMBERS

Ms Melina Bath

Ms Georgie Crozier

Mr Stuart Grimley

Dr Catherine Cumming

Mr David Limbrick

Mr Edward O'Donohue

Mr Tim Quilty

WITNESSES

Mr Chris Hazelman, OAM, Manager, Ethnic Council of Shepparton and District Inc.,

Reverend Chris Parnell, Secretary, Ethnic Council of Shepparton and District Inc., and Executive Officer, Shepparton Interfaith Council.

The CHAIR: Having had a quick lunch break, I will declare open the Standing Committee on Legal and Social Issues public hearing. Particularly to the committee, can we just make sure our phones are turned off or on silent?

As you know, Chris and Chris, we are conducting a hearing in relation to our inquiry into a legislated spent convictions scheme. All evidence taken at this hearing today is protected by parliamentary privilege, and that is as provided by the Constitution Act and further subject to the provisions of the Legislative Council standing orders, therefore any information you give to us today is protected by law and cannot be used against you in a court of law or any other forum. Of course if you say the same things outside, we cannot protect you in the same way.

The evidence is being recorded by Hansard here, and we will provide a proof version of the transcript to you for review, but be aware that this information will become public because it will be, as you are aware, Chris, posted on the committee's website.

If you would like to give us a bit of an introduction and then allow the committee, who I will quickly introduce—I think you probably met them all: Kaushaliya Vaghela; Jane Garrett; Tien Kieu, the Deputy Chair; Wendy Lovell; and Tania Maxwell.

Mr HAZELMAN: Hi, how are you? I am appearing today on behalf of the Ethnic Council. My name is Chris Hazelman and I am the manager there.

Rev. PARNELL: I am Chris Parnell. I am appearing today on behalf of the Ethnic Council and the Interfaith Network. I am the secretary of the board of the Ethnic Council and executive officer of the Shepparton Interfaith Network.

The CHAIR: Thank you.

Mr HAZELMAN: So, if I can just make a few comments. When I was first approached and indicated to be desirable to appear here I was thinking, 'Well, from the multicultural community what particular issue can I bring that is specifically different from the mainstream community?' And I thought, well, perhaps I will tell you a little bit about Shepparton and our role. The Ethnic Council is an organisation formed by the pre and post-war migrant groups in the mid-80s to be their advocacy group, but today we are much more than that. We are a fairly major service provider through funding from the commonwealth and state to provide a range of settlement services to new arrivals.

People who have arrived on a refugee or humanitarian visa over the last 15 to 20 years now represent 10 per cent of Shepparton's population. And in addition—

Ms GARRETT: That is big.

Mr HAZELMAN: Yes, it is quite huge. Now, as you probably heard previously, a further 10 per cent of the population are Indigenous. It is the largest Indigenous community outside of Melbourne. And Shepparton is the leading destination point for new arrivals outside of Melbourne. The intensive irrigation here provides employment, so it has brought people. It has brought refugees, as it did the Greeks, Italians and Albanians pre and post-war. So Shepparton's demographic would be unique for a provincial Australian city. How is that of interest to the committee? Well, I think what we can say, and I did say, is that Victoria is the leading state for settlement and multicultural communities, particularly refugees, and on the issue that you are addressing, as I understand it, Victoria is the only state without this comparable legislation.

The people that come to Shepparton now, I am going to focus on their barriers to participation, which is probably one aspect that this legislation has been highlighted for other groups. The new arrivals' barriers to participation are particularly around language, their education capacity, recognition of foreign qualifications, regrettably it is often a barrier for their skin colour, their religion, and also issues around visa anxiety. There are a lot of people here in Shepparton who are on temporary protection visas or on safe haven enterprise visas, where essentially decisions about their future status have been kicked down the road for a three or five years, so they are in this limbo. Now that impacts particularly on their mental health. Intergenerational change, you know—people arrive, circumstances change which causes family disruption and occasionally family violence.

Even a person's name or clothing can be a barrier to their ability to participate more freely in our community. And all the literature and academic research strongly confirms that the settlement experience of visible communities is a far more difficult and complex process than it is for people from more traditional areas. Some of the research indicates that Australia on occasion has had a difficult relationship with those viewed as visible. It is an experience. And particularly these are all issues that do not impact the mainstream community. It impacts our minority communities greatly, and in a crisis situation—for many of these people the settlement experience does become a crisis—it can influence negative outcomes and interaction with both the acute health and the justice systems, and when it is an impact with the justice systems it is almost like a double jeopardy situation because any sort of a conviction in the settlement period can result in people then falling foul of the commonwealth and the Minister for Home Affairs' assessment of them under a character test. Unfortunately a couple of those criteria—one being a substantial criminal record—for the commonwealth to assess someone in terms of revoking their visa, residential status or even their citizenship include a conviction for just over 12 months, and you think: 'Well, there is another barrier that people in the mainstream community certainly do not have to address'.

Also for those old enough to be familiar with the old consorting laws in Victoria, the same situation applies under commonwealth legislation. There is a provision in that character test to make an assessment of someone because of their association with criminals: merely knowing someone can place people in the position that their very capacity to stay in Australia comes under question, so that is extremely difficult.

Ms LOVELL: Dustin Martin's father.

Mr HAZELMAN: Now that's from a true Richmond supporter, isn't it?

Yes, but that is exactly the case. A slight variation, because as I understand under the Trans-Tasman agreement the capacity for Australia to remove ex-pat New Zealand is a lot easier than it is for other countries because it takes the AAT out of play.

Now specifically to what you are looking at, though, we would maintain that if you are already facing identifiable and recognisable levels of disadvantage, a conviction adds just another hurdle to overcome. It adds to the list of things that I read out previously that I would never be confronted with if I had a conviction. At an individual level, let us use employment as an example.

A person from a multicultural community has already overcome a range of issues just to get to an interview that the mainstream applicant does not experience, and a previous conviction just simply adds another layer to be overcome. We already know that here in Shepparton for many of the arrivals employment is not an issue as it is in other places. That is not to say that all new arrivals are employed, but the horticultural industry in particular provides an employment basis and unemployment is a huge factor in successful settlement. But for our communities if one does fall foul of the justice systems, as I said, there is a double jeopardy situation. It is not just a conviction that might come into play years down the track; it is a conviction that comes into play here and now. Do you want to add something to that, Christopher?

Rev. PARNELL: I think we need to keep in mind that for a lot of people from the settlement communities, to be seen at court or going to court is a cause of shame for them, intense shame, and they lower themselves in their own self-perception in terms of what they have done in the community. We do have some cafes that we run at the Ethnic Council where we appraise people of the legal system and their responsibilities when they take up citizenship in this region.

We also have a very successful arrangement with the local police station where two officers are allocated to multicultural duties and they can actually be out of uniform and they can actually do their policing duties with a lot of effectiveness. All they have to do is wag their fingers at people, you know. That is a better form of policing, because for a lot of them you say, ‘Do you want to lose your visa?’, ‘Do you want to lose your citizenship?’, and it reminds people of just how much they are on the edge of a precipice in terms of their character, their behaviour and their presence in the community.

I have got to say that for the majority of people, nearly all actually, their presence in the community is a positive. It is a benefit to us all, and it is an add-on to the diversity. I was reading with a Muslim imam last night, and he intuitively picked up what a ‘fair go’ is in Australia. He was not even taught that; it was picked up. So we have these values in Australia of a fair go, of tolerance, and he explained what tolerant was in terms of your interaction in the community, your acceptance in the community and the role that you play. I think here we have got a lot of aspects that build social cohesion. Many agencies here will undertake those activities, build the strength, build the sense of participation in people and build this sense of belonging and that they have worth, no matter what culture they are from. Last night I was in a pizza shop and there were African boys there, Turkish girls and boys there, Australians there and then Albanians there. They were all happily talking amongst one another while they were waiting for their pizzas. That is a sort of simple level of tolerance, cohesion and acceptance.

I just want to say one other thing about your role and your task, and that is that when you set a period after which a conviction can be spent, you are giving a message out to the community that these people have learned to manage their minds, they have picked up the values of the community, and with juveniles or with adults, whether it is a five-year or a 10-year, you are saying that they have managed to be crime free in that period and they have managed to engage in self-discipline, self-respect and self-sacrifice and take on the values of the community. What people see in terms of behaviour is based on choices, and choices are guided by values. So people, in terms of rehabilitating themselves after an offence, can exhibit that behaviour and exhibit that sort of language that expresses what you are looking for in a community in terms of integration, acceptance and self-rehabilitation. So there is a sense there in which you are saying these people meet a community standard. In terms of the objectives of good government you are saying with the spent convictions legislation that you are protecting the community.

The CHAIR: Thank you, Chris.

Mr HAZELMAN: There is an element there, just on the point was talking about, that for a lot of the people in the new-arrival communities their strategic planning horizon is about the middle of next week, luckily if that. If someone has, let us call it, an indiscretion now, they are not thinking of the consequences of that 20 years down the track. I just do not think that should be a burden they should also have to carry, given the inherent disadvantage they come with in the first place.

The CHAIR: That is right, and I wondered when I was thinking about this last night, are there times where a criminal check has a different effect on someone from an ethnic background than on the rest of us? I know you mentioned the notion of shame there. Are there unique ways where the ethnic community is affected by criminal background checks that we may not see with the rest of the population?

Mr HAZELMAN: I think the issue of shame that Chris mentioned is high on it. I can cite an example—it was only about seven or eight years ago—in one community where there had been quite a serious sexual assault of a young girl by another member of the community, and in fact that caused enormous ramifications right across the community. We had various meetings with them and the police brought people up to meet with the community, because their overwhelming response was the shame it was bringing on their community to the point where they wanted to have a public meeting where they could formally apologise to the rest of the community for the shame that they brought.

All of the issues in relation to police have a huge impact in the community, particularly a conviction, and quite often we have seen that people will move away from Shepparton if there is even a relatively minor conviction. Let us not forget that for a lot of the communities that are here their interaction with the justice system is one of great fear in the first place. Where they come from the police are not necessarily the good guys, so it is a fairly traumatic experience.

The CHAIR: We are considering spent convictions. Again I am wondering whether the criminal record plays a role in settlement services that they have, so if they have a criminal conviction, will this prevent some of your clients from being able to access certain services or housing? Certainly we know it impacts on employment.

Mr HAZELMAN: In terms of settlement services provided by the state or the commonwealth, no, there is no provision to exclude someone on the basis of a criminal record. It is more that the commonwealth services in particular are more specific around the type of visa a person might hold. But we do not even do any assessment in respect of any criminal background at all and have no capacity to do a police check, even if we wanted to.

Rev. PARNELL: I think people can access settlement services and a range of services. Their criminal background is not taken into regard once they are accepted as a client. They are funded for the next period of time to have those services delivered to them. It is similar with housing.

Dr KIEU: Thank you for coming in. You brought up a very interesting point about people in uniform and people from a refugee background. People who come from those countries are very suspicious of authority, particularly the ones in uniform, so multicultural, ethnic police not wearing uniform is quite an interesting point. I have a few questions. The first one is for the character tests. The federal government considers a conviction of 12 months to be serious. So what line of sentencing would you recommend or suggest for the spent convictions scheme?

Mr HAZELMAN: The commonwealth considers 12 months to be a serious enough offence that you can get kicked out of the country for it. I would think, looking at some of the court hearings across the mainstream community where a 12-month conviction was recorded, it would not seem unusual or out of the ordinary; it would seem on a par with normal sentencing. So without having an overwhelmingly strong view on it, I would have thought somewhere probably in that 12 months to two years range would be a satisfactory outcome.

Dr KIEU: Because at the moment there are some other jurisdictions that could be up to 30 months—two and a half years.

Mr HAZELMAN: Yes.

Dr KIEU: The other question I would like to know is about young people among newly arrived refugees. What is the rate of offences, minor and major; do you have any figures—because with those, particularly in the metropolitan area, there seem to be some concerns, but I am just wondering what is happening in Shepparton?

Mr HAZELMAN: It is a really, really good question. It is interesting that as part of the state government's action plan for dealing with the African community they have involved people from Shepparton, community leaders, in that process mainly because of this commonly held view that Shepparton is this model for successful settlement—because the sorts of issues that have occurred in Melbourne with some communities certainly have not happened here. From a policing aspect they indicate that statistically they do not have a problem with young people from new arrival communities. However, having said that, there are a couple of instances where young people from the Sudanese community that have relocated to Melbourne for work or for education have very quickly got caught up in issues in Melbourne and subsequently there have been arrests, so Shepparton has not been immune from it. In a broad sense it is not occurring in Shepparton, but Shepparton people have been caught up in it in Melbourne. I would hazard a guess that the more stable community structures here, the employment for parents and engagement with the kids in schools have been a significant factor in why it has not happened here. It has been a better environment than where they are in a large metropolitan area without necessarily the range of support services to assist them.

Dr KIEU: Perhaps we could learn from Shepparton then.

Ms LOVELL: Everyone can learn from Shepparton.

Mr HAZELMAN: This is not a double act, Wendy, where I feed you lines!

Rev. PARNELL: One of the things you have got to be aware of is that news travels quickly, so you have Sudanese community leaders in Melbourne and Sudanese community leaders up here in Shepparton, and they

talk to each other all the time. At the moment, if something happens in Melbourne, they know about it up here in Shepparton, so if there are kids from Shepparton involved in trouble in Melbourne, you can bet your bottom dollar that the local leadership is going to go down there and sort it out. We had the Victoria Police African task force up here recently, a couple of months ago, at African House, and they were really open about what they want to achieve, how they see the community and how they want to have that community interaction so that there is understanding right down to the lowest level in the community. That has been a very positive effect—very strong, very positive and very well accepted. The other thing to be aware of is that in other countries there is corruption in the police, corruption in the court system and corruption in immigration. We do not have that here, but people are afraid of it.

There is a sense in which we protect ourselves with the integrity of our services and the integrity of our government and what we deliver, and our self-checking processes are very important to us I think. So I think people are afraid of corruption, so that the issue of policing out of uniform and then the issue of being able to go into the justice system and see that people do not wear wigs and black robes like they used to in a sense brings some comfort to the people that settle here.

Mr HAZELMAN: In respect to the issues in Melbourne I think we often underestimate the impact of the mainstream community, and I think Shepparton in very broad terms has always been recognised as a very welcoming community for new arrivals. There is great support from the mainstream, and perhaps if that is missing in other areas or in other locations that might be a significant factor in why some of the behaviours are the way they are.

Dr KIEU: Sorry, but I have heard stories that the parents from Africa have to send their kids back because of the problems they have here, back to the previous country, so they are sad.

Ms LOVELL: Chris, I was just going to ask about—taking it back a step, pre anyone getting any convictions—what support is given to our new settlers to help them to understand the laws in Australia and the consequences if they break those laws, before we even get to the point of having a conviction to be spent?

Mr HAZELMAN: Yes, good question, Wendy. We have spent a lot of time, effort and energy over the years as an agency developing the relationship with Victoria Police and through our and others' lobbying. I think about four years ago police allocated a sworn member full-time as their multicultural liaison worker, another member full-time working on youth matters. That has been an amazing initiative, and together with the police we regularly run sessions with new arrivals around the orientation to Australia, accessing the police, accessing our justice system, and also the consequences of certain activities that might be cultural practices in country of origin but certainly not acceptable here, so to try and avoid people falling foul of the law just through ignorance. Now, that is an ongoing issue. A lot of that is to do with the relationships the police have with the communities. If it is a relationship built with trust, there is a bit of confidence, and the two members that are currently in those positions have done a fantastic job.

They attend every community activity that is going, sometimes in uniform, sometimes not. We actually encourage the wearing of the uniform so people are not frightened by it. For a couple of our communities we have run events where we have asked the police to specifically send female members, so that it breaks down some of those barriers, and we talk to the communities and say, 'Given the staffing ratios in Shepparton at the moment, if you have an issue in the middle of the night there's a fair chance that one of the police that turns up is going to be female. So if you've got some cultural issues, you don't want to be dealing with that at midnight; you want to be dealing with it now when we're having a more social event', and that has worked reasonably well. Not to say that there are not people from communities that are going to fall foul of the system, but we are trying to work as hard as we can to make sure that people have an understanding and knowledge and a good working relationship with police. As I said before, for our communities here, where they come from, going to the police station is a pretty brave act, and if we can assist and get them over that barrier, it will help.

Ms LOVELL: So, Chris, is that unique to Shepparton or does that happen throughout other ethnic councils around the state?

Mr HAZELMAN: It is happening to lesser degrees elsewhere, and I think a lot of it is to do with the inclination of Victoria Police to actually allocate the resources specifically. Now, there is a bit of that that goes

on in the metro, I think we are the only regional place—I could be wrong—where there is a dedicated sworn officer. Prior to police doing it here, it was an add-on to one of the sergeants. Like, you are the multicultural bloke this week, and that never really—

Ms GARRETT: It does not work.

Mr HAZELMAN: It does not work, and one of the good aspects of what they have done now is that anything that goes through the police that has got a multicultural look about it ends up on the multicultural liaison officer's desk, and to be honest he spends more time in our office than he does in his. So the relationship is great—particularly if you provide food.

Ms LOVELL: Matt does at his shop.

Mr HAZELMAN: It does, yes.

Ms VAGHELA: Considering you work with the ethnic communities, what sort of offences do you think should be excluded from a spent convictions scheme and what is your justification? Are there any offences you think are the ones which are being committed by the early settlers or newly arrived migrants?

Mr HAZELMAN: I do not think I could give a qualified view on that. I did mention before a fairly serious sexual assault in the Afghan community. If you applied the reasonable person test, you would say, 'Well, that wouldn't be excluded because it's a crime of a serious nature', but most of the issues that we find when our new-arrival communities fall foul of the system is really at the lower end of the scale. There are usually things around traffic and occasionally there has been social misbehaviour, the occasional assault and that sort of thing that invariably might draw a conviction but not a jail sentence. I would have thought those sorts of things would be applicable to your considerations.

Ms VAGHELA: So you would still prefer exclusion of some serious crimes where there is sexual assault or anything?

Mr HAZELMAN: No. I think broadly speaking the community would struggle if you were going to exclude crimes like that. But I think the relatively minor activities that our communities tend to get involved with are really at the lower end of the scale, and that is the sort of stuff that should be excluded. Anything of a serious nature—I do not know whether you put an arbitrary time for a prison sentence, anything under this would be excluded or anything over. I do not know. That becomes a fairly subjective sort of a process then.

The CHAIR: And I think sometimes that is the problem: it is very hard to make a rule that works for everyone.

Mr HAZELMAN: I do not envy you the challenge of trying to find where that point is.

The CHAIR: Just one quick final thing. I think currently if you are found guilty, and as you say, with a lot of the sort of misdemeanour and smaller offences, you may get a 'no conviction recorded'—in fact quite often you would; however, it is actually still found on your police check and that will stay on that record and it is effectively recorded. Current policy is that at the discretion of the police it is no longer on your record after 10 years. When there is no conviction recorded, I am wondering whether the ethnic community would understand that that does not mean that they are not guilty and that it is not recorded.

Mr HAZELMAN: I do not think the community would make that fine distinction. They would just see the issue that they have been to court, they have been found guilty and that is where the shame and stigma from the community comes from.

Another aspect where I think that there is a degree of subjectivity that comes into it is that occasionally—or not occasionally, on a regular basis—for people that are charged with an offence there is a mentions hearing and the mentions hearing will determine whether there is the likelihood of an extended offence or whatever, and to put it bluntly, police prosecution will cut a deal. If someone is up, let us say, on an assault charge and wants to defend it and say, 'Well, I think my defence is going to take three days in the Magistrates Court', the police

prosecution will say, 'Is it really worth wasting the court's time for three days?', and they say, 'Would you accept?'.

So there are different outcomes in different circumstances. There is certainly a situation where it appears that the law may not be applied equally in all cases. It will depend on occasion too on a person's capacity to defend the case, so resources come into it. You might find that people from a lower socio-economic background are more likely to front a conviction than someone who has got the resources to defend it. With the resources to defend it, you are more likely to get offered a deal to accept something without a conviction. It might be a fine and no conviction, whereas someone who cannot actually defend it would be fined and convicted.

The CHAIR: Some people have suggested that if there is no conviction recorded, then it should not be recorded on a police check. Would you have an opinion on that?

Rev. PARNELL: I would support that.

Mr HAZELMAN: Yes, I would support that. What about a situation where someone is just charged?

The CHAIR: Yes, that is right. That is actually still on your record as well.

Mr HAZELMAN: It still shows up on your record. I would have thought all of those things, after a period of time of five years or so, probably should be expunged and not be part of it. I think we have seen in the last few years recent legislations in respect to convictions for homosexuality in the past being completely expunged. I think on an offence-by-offence basis you could apply the same.

The CHAIR: Yes, I agree.

Rev. PARNELL: If I can respond to Dr Kieu, if I may, there have been a couple of instances where imams have done religious events and have fallen foul of the law. They are not licensed celebrants. In those instances the imams have actually been sent back home because they do not have the capacity to take up the cultural conceptions of cultural law. In fact that is federal law as well as religious law. So an example of this is the attempt by imams to bring religious marriage in Islam into the Family Law Act or the Marriage Act of Australia. It failed miserably; it got laughed out of all proposals. And I think that there is a learning curve for everyone who comes from another culture—a learning curve to understand what the law is in Australia and how cultural activities mesh with that. So I just want to point out that some imams have actually been sent home in New South Wales for what they have done.

The CHAIR: Thank you. I think it has been great to get a perspective from a regional position but also from an ethnic and new settlers' position.

Rev. PARNELL: Thank you for coming out to regional Victoria. We are really pleased to see you here.

The CHAIR: No, it has been really useful. Thank you.

Witnesses withdrew.