

# TRANSCRIPT

## LEGISLATIVE COUNCIL LEGAL AND SOCIAL ISSUES COMMITTEE

### **Inquiry into a legislated spent convictions scheme**

Shepparton—Monday, 15 July 2019

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**WITNESSES**

Mr Daryl Sloan, Aboriginal Advocacy Program Manager, and

Ms Karryn Goode, Chief Executive Officer, Rights Information and Advocacy Centre.

**The CHAIR:** Thank you both very much for making the time to come and see us. As you know, we are doing an inquiry into a legislated spent convictions scheme in Victoria. I will just let you know that this is being recorded by Hansard. Any evidence and any information we take during these hearings is protected under parliamentary privilege, and that is provided under our Constitution Act. This means that 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 were to say the same things outside here, that same protection is not extended. We will provide you with a proof version of the transcript, which you can have a look at, and then it will be made public, so it will go up on our website. Fortunately for us we will be able to use it in our deliberations on this. If you would like to speak for a few minutes, and then we can have a wider discussion.

**Mr SLOAN:** First of all I would like to acknowledge that we are on Yorta country. I am a Wurundjeri man. I was born in what is now known as Dandenong, but I am lost to my mob and I have lived on Yorta Yorta country for over 40 years now, so I acknowledge them as my elders and I acknowledge them as respected persons and leaders, and I also wish to acknowledge the emerging leaders of that community as I do the stolen generations.

I was doing a bit of pre-reading prior to this to think about how I can encapsulate what I want to say in a short time, and I found a quote by a C Hill, *Society and Puritanism in Pre-Revolutionary England*, London, Seeker and Warburg, 1964, page 131. And it says—and I find this interesting because it is 1964, which is the years that I was in care:

... thoughts are vagrants which must be diligently watched for, caught, examined, whipped and sent on their way.

As it said, I am Daryl Sloan. My ward number 82258, and I am now 57 years of age, and I am one of the estimated 500 000 forgotten Australians, and I would like to thank you for your time today, for coming, for this what I see as an overdue inquiry. It offers people like me hope for the future and most of all the opportunity to gain healing.

My two brothers and I were placed into what today is still so poorly called state care after being charged in Melbourne Children's Court with the criminal offences of no settled place of abode and no visible means of support. Rather lofty words, but in other words I was charged with vagrancy.

I, the youngest of five children, was then two years and two weeks of age. It was then 12 November 1963. My brothers and I were then incarcerated as wards of the state of Victoria with an insensitive judicial system, and I pause there because I want to talk about justice, the justice system—what is just, what is fair, what is right—and to me how deplorable it is that we use a justice system, what should be just, fair and not crushing but fair and reasonable, to put little boys in children's homes, and that system has continued to manage to punish us ever since.

We three boys ended up placed in different institutions simply on the basis of our ages. Those were terribly hard and cold years that words simply cannot express, and I have learned the truth that a childhood lasts a lifetime. We are all products of our environment.

We were first placed in Turana, what today is known as the Melbourne Youth Justice Centre—a jail. Due to overcrowding we were sent to Allambie Reception Centre. I tell people this is a reception centre, but not like a reception that you get at a wedding. I have since learned during the months that I was there that these two sites housed 300 children each—a big difference from the family of seven that I had come from.

I have had the pleasure since of meeting Professor Emeritus Dorothy Scott, AM, she telling me she was employed at both these places and on seeing the overcrowding, the treatment of the inmates, she, then aged 16 years of age, dedicated her life to the social work sector to bring about the positive change that was much

required and to address the Charles Dickens-like conditions we were placed into. On sharing with Professor Scott that I had been placed into those institutions during the years she worked there, that good lady burst into tears and apologised to me.

I take a thought from Susanna Davies, her PhD thesis at Melbourne Uni in 1990, and she speaks of the meaning of the word 'vagrancy' failing to identify the negative connotations underlying that term and its use. We were charged with no fixed place of abode, and we were made wards of the state of Victoria until we turned 18 years of age. We were termed juvenile offenders, and that is the way we were treated. The category of vagrancy essentially remained an elaborate construct employed by the particular segments of the community to highlight the social undesirability of other groups and individuals.

The legal system provided the most obvious and powerful means for designating and punishing individuals as vagrants, and these were the laws that we were treated under as children. The vagrancy provisions in both their framing and their administration encapsulate the assumptions and beliefs that lay under the vagrant stereotype. The legislators, the policemen and magistrates inherited a particular understanding of vagrancy, but they also shaped this understanding to suit their own interests and the then changing colonial context.

My first memory of those places was just complete and utter confusion, a feeling that stayed with me for all the years that I was in so-called state care. Between Allambie and Turana was about four months, and I do not remember seeing my brothers. I do remember the day a big black car came. It was the shiniest black car I ever remembered, had ever seen. It was so glossy and black. The driver was a man and he smoked cigarettes, because I could smell them on him. He wore a porkpie hat, and there was a lady that sat in the back seat and she told me where to sit, on the right of her, and my other brother Wayne on the left of her and my brother Graham up the front. It must have been still cool because she had a coat and she took that off and folded it on her lap and sat her handbag on it. She had silk gloves. She took them off. She had a white hat with a cream ribbon around it. She had too much perfume on; I remember that.

We spent years in Ballarat. There were three children's homes beside each other. There was a baby section, a toddler section and then there was the orphanage. My two older brothers were placed in the orphanage and sometimes I would get to see them through the big huge fence that separated us children, and we would get to call out and talk to each other through the wire fence. But as a little three-year-old that fence looked like it went all the way to the sky.

I have learned that you can be fed but still really hungry. You can be warmly dressed but really cold. You can be surrounded by people but so lonely. Each night the clothes were taken off us and we were dressed in smocks and we were put into row after row of cast-iron beds with the high-lift sides. Mini cells they were, you could not get out of them if you tried—and believe me, we tried. We did not have pillows. In fact we did not have any personal belongings at all. Whatever you came in with was taken away and went into the general population.

My first cognitive thought was laying in one of those cots one time looking around at the children crying, the toddlers crying. I realise now as an adult there was one other adult there, a lady, and there were two younger girls probably taken from the other orphanage to help settle the kids, to keep the overtime rates down. They were really struggling to quieten all the children down. I remember looking at the kids crying and my first thought was, 'What's the point in crying? They're too busy to hear you anyway'.

That is a thought that has shaped my life for over 50 years. My wife and I are now foster carers and have been for over 25 years. We have had over 100 children come through our home. Some come back now in their 30s and still call us Mum and Dad, and it is pretty sweet getting a Father's Day card from a 35-year-old girl that calls you Dad, along with the liquorice and the sardines and other specialties she knows I like.

Mum eventually formed a relationship that was deemed secure enough by the state to get us out, but the truth was alcohol and family violence was the norm. He knocked us around, and I left home when I was 15 years of age. During that time between the children's home and leaving home I attended 15 schools. It was a way of just keeping on the move, staying one step ahead of the authorities and staying under the radar. So I do not know much about the years. I know when the West Gate Bridge fell we were living at Upwey and that was the year that man stepped on the moon. We were up in Sassafras when the marches against the Vietnam War were

taking place. That becomes my count of where I was placed. We were living in Griffith when Donald Mackay was murdered in 1977, and that became my milestone.

As a young man I got into trouble. I got into drugs and alcohol. I think we were self-medicating and probably had a death wish. I did crazy things. I got into thefts. Stealing stuff—that was pretty much the norm. If you did not have it, you went and got it. One of the things you learn in a children's home is how to fine-tune a radar of survival, and you become very gifted at picking up the signals on what you need to do to survive. So somehow or other I avoided coming into contact with the police largely. I seemed to know when they were watching and when to back off. There was one night I did get put on 11 charges by the police after a high-speed police chase around town. I had been smoking dope and drinking alcohol, and I was stupid. But that was in 1983, and I have not offended since. It has been well over 35 years since I have done any illicit drugs.

I have been married for 33 years. I married an American, and before I went over to America to marry Debbie I was interviewed by ASIO—a boy from the country, I did not know about it. He wanted to know if I had any priors. I did not tell him about the children's homes because I heard that you cannot go overseas if you have got priors. As a young fella riding a pushbike around Shep, I got pulled up by the cops. No helmet—no headlight, I should say; the helmet laws were not in. And he asked me if I had been into trouble with the police. I said, 'Yeah, I was in the children's homes'. And he said, 'You're one of those boys'. And I still to this day do not know what he meant by that. I do not know what 'one of those boys' is.

One of the things about such a transient lifestyle is it made me determined to work for people whose voice cannot be heard now, and hence where I am working now with the Rights Information Advocacy Centre I actually get to advocate and speak up on behalf of other people. One of the roles I undertake in that role is to work with survivors of the stolen gen who had been sexually abused in the children's homes and help them to put through the claims, and they have got to relive that whole experience. So I walk this line as a community member—not their counsellor but someone who assists them and makes sure that afterwards they are adequately debriefed. Having to work with men that disclose their horrific rapes multiple times and having to relive that as they go through the system, I personally will never put in a state claim against sexual abuse. It is not worth it. It is simply not worth it for what you have got to disclose and what you have got to tell people about what has happened, just for money. Everybody is entitled to their own decision, and for some of these people that do not work they need the money. They need to say what happened.

**The CHAIR:** Daryl, I am just a little bit conscious of time.

**Mr SLOAN:** I am finished. There is my charge sheet. I will just pass that around. I went home and got that out of my file.

**The CHAIR:** Thank you so much for sharing. I am sure that that story is never, ever easy to tell.

**Mr SLOAN:** No.

**The CHAIR:** But knowing that background I have no doubt that you are brilliant at your job in helping others. Karryn, did you want to add something at this point or allow us to start to ask some questions?

**Ms GOODE:** Keep going. That is fine, yes.

**The CHAIR:** Just thinking about those compensations, criminal convictions—do they play a role when people are seeking compensation?

**Mr SLOAN:** Yes, there is some talk that if they have been convicted of a serious sexual assault they are not eligible for some reason. I do not know where and why that comes up. But in Australia's history, if you look at a lot of the violent people in our past, a lot of them had formerly been wards of the state—Chopper Read, the Whiskey Au Go Go murderer, Martin Bryant. If you start looking through it, many, many of these people were in state care. Louis Armstrong—it is where he went to learn the trumpet, you know.

**The CHAIR:** How would a spent convictions scheme assist some of your clients?

**Mr SLOAN:** For some it still gets brought up today. I have heard of this happening. I heard of a case in Tasmania where a man missed out on a security guard job because they did a police check and the fact that he had been put in state care as a child came up, and it just shows 'ward of the state'. He was a juvenile offender, and he missed out on a job because of that. Personally I do not know how it has affected me. It has certainly come up in the courts, but how they got that information I am not sure of.

One of the things that occurs with this is the institutionalisation that it leads people into. So they go from this type of environment into the youth detention system and eventually into jail. Or the other way was they went from the children's institutions and when they turned 18 they joined the navy or the army because there was still someone to tell them when to line up, what to do and where to go.

**The CHAIR:** Can I ask you something, does RIAC ask for police checks for your staff?

**Ms GOODE:** Yes, it is part of our contracts, both state and federal. We have just recently employed an Indigenous worker who has gone through this process. She recently brought back to me her results, and she was really worried. This result was 'Failing to display an L-plate'. As a young kid—

**The CHAIR:** That was on her police check?

**Ms GOODE:** Correct. So she was not convicted but had to do a community correction order. If an employer was looking for any reason not to employ her, that would be it. We did not go down that avenue. We put her on. She is a young mum raising four kids and wants to be an advocate and put back into the community and do some really good things within the community, but there would be indirect discrimination, I am sure, amongst some employers.

**The CHAIR:** Your contracts require that you have police checks for employing people—

**Ms GOODE:** Correct.

**The CHAIR:** but enable you to provide that discretion that you were able to with that woman?

**Ms GOODE:** Yes.

**Ms GARRETT:** I just really wanted to thank you very much for your contribution, and you are going to make me cry. It was very, very powerful, and I am very sorry about what happened to you and what the state did to you—to be charged when you are two and a half years old, in our lifetime, or almost in my lifetime. I just want to say you have been heard here today, and it has been incredibly powerful for us. I know it is not easy to tell a story like that—your own story—but it has been heard, so thank you.

**Mr SLOAN:** Thank you. From the research I read—and I could not find the book to bring it today; it was an old second-hand book I found—I believe I was one of 280 children who were charged that year in 1963. So you would imagine it was around 300 every year for quite some time.

The other thing I want to go back to is the point about the spent convictions. One of the roles I fulfil is as an independent third person with the Office of the Public Advocate. I sit in interviews where people come into contact with the law. They may be an alleged offender, a witness of a crime or a victim of crime. Sometimes I am in the SOCIT, where I will hear an offender being charged or I will be sitting in an interview where someone is telling their story. A SOCIT policewoman shared with me that a lady who has some mental health issues has made three allegations in nine months against men. She explained to me that she brought in the guy that she made an allegation against and questioned him about it, and he said it was not like that at all; it was totally consensual. She said to me the thing is that even though no charges get laid, it actually shows up on this man's record that he has been questioned over a sexual assault. This police officer said to me, 'I know he will be treated differently from now on'. So it is not even just those who are getting a conviction.

**Dr KIEU:** Thank you very much once again, Daryl. It has taken courage, and we are all moved by your story. I would like to ask, in your personal situation now you are a manager for the Rights Information and Advocacy Centre because the centre has the discretion to employ people with a past. Prior to that, with your

past conviction how did you manage and what happened to you prior to being employed by the centre? Was it a big problem for you?

**Mr SLOAN:** Well, one thing is I did not go around disclosing it, and I managed to get through with that. I worked at a local factory, the SPC, for a number of years, and then wanting to give back to the community I started doing volunteer work for the Salvation Army at a local youth refuge working with homeless youth. I ended up working for the Salvation Army for about 17–18 years, going on to work with homeless adults.

One of the things is Chamberlain and Menzies are gurus, professors in Melbourne on homelessness, and they did a survey. It is roughly about 10 years old now, and they found that 42 per cent of people going to a SAAT-funded youth centre—so that is supported accommodation assistance program—42 per cent of those had formerly been in state care in one of its forms. So it is a real precursor to homelessness. My work working with adults would tell me it is probably about 65 or 70 per cent of that homeless cohort that had formally been in one of the forms of state care, and yet any of the front doors for housing—BeyondHousing is one of the ones here—do not ask ‘Were you in state care?’ It is not a precursor question that they ask. We certainly do because we have now become aware of it and that will factor into the issues around the assessment that we do.

I guess I have been lucky that it has not come out, and I have learned to keep it quiet. I must say prior to employing our employee I was going through RIAC’s policy and procedures, and I found a paragraph or two that said that all past convictions must be disclosed. This was only about two months ago I think. I actually went to Karen and said, ‘Look, how far back do past convictions have to go?’ Then it was a matter of well, what was the conviction? I explained how I was charged as a child at two years of age, and Karen was able to say, ‘Look, that’s going back too far; that’s okay’. But on the other hand it still raises that concern in me that, ‘Oh dear, am I in trouble for not previously disclosing this?’. It plays in the back of your head.

**Ms LOVELL:** So, Daryl, do you think that there would be any sort of closure for you or healing if somehow we were able to have those historical convictions of children being in need of care expunged?

**Mr SLOAN:** Yes, absolutely. I remember last year there was some talk in federal Parliament about the adults that were picked up and charged for offences regarding homosexuality going back previously. One of the things that was said then in Parliament was these charges were likened to what happened to us children being placed into care. The thing is, that cohort were adults. They were able to make cognitive decisions around what was happening. They most likely knew the law. They most likely knew they were breaking the law. But we children, we had no say in anything.

Like I said, I keep coming back to that stress and confusion of what has happened. You go from a family of seven to 300, and when your clothes were taken off you, you did not know what you were going to be wearing the next day. There was no such thing as a favourite jumper or favourite pair of boots. My feet are malformed because they used to put you in shoes that were too tight. I grew up thinking shoes were meant to hurt. I did not know any better. I take a size 12 now and my feet do not hurt, but as a young man I did not know—10, 11? You just squeezed your feet in. That is what you do. That is part of that upbringing where you were not taught to brush your teeth, you were not taught this and you were lining up. Remember, it was not that long after the Second World War, and so we still had that regime of line up for this, line up for that, exercise on the spot and all that type of thing. I tell you now: I do not line up. If I go into a supermarket and it is too much of a line, I put it down and go. What really gets me is when I am shopping for someone else, because then I cannot put it down.

**Ms MAXWELL:** I would just like to thank you so much, Daryl, for coming here and sharing this story and reiterate what Jane said, which is that obviously it is always a very difficult story to tell, but it is so important that you are able to continue to tell this story because the light that you can shed on issues and behaviours and what has happened to you is very important for others to hear so that changes can be made. I mean, we see similar issues now with our young people going into residential care and we know that that often leads to involvement in the criminal justice system, and from your stories that is where we should be learning how to remodel our residential care.

**Mr SLOAN:** Yes. One of the things that is my greatest hope in enduring what I have is that it can be actually used as an education piece, because if I have gone through all this for nothing, that is the greatest waste, that is the shame. That to me is intolerable, and as I said, it is a childhood that lasts a lifetime.

**Ms MAXWELL:** That is right.

**Ms VAGHELA:** Thanks, Daryl, for telling your story. It was very difficult to hold the tears. You are very brave, very courageous.

**Mr SLOAN:** Thank you.

**Ms VAGHELA:** What I want to know from you—and, Karryn, you also mentioned that you gave the name of one particular example of a person whose criminal record has appeared on the check—through this organisation that you are working with, Daryl, how often do you see that happening? Do you have any sort of data that says if we are dealing with X-number of people over here, this is appearing for X-number of individuals? What I am trying to say is if a spent convictions scheme comes into play, how many individuals will be affected through RIAC or in RIAC?

**Ms GOODE:** We do not capture that data. We are not required to report on it, so it is one of those things we do not capture. But I would like to say that if you look at the community services sector as a whole, we are all trying to gain funds through either the state or the feds, and both are asking us to be user-led. So ‘user-led’ means having a disability or whatever and if you are looking at drug and alcohol communities, if you are looking at the legal justice system as well, if you want to be user-led—or you have to be user-led to get that funding—and you are trying to employ people that have had lived experience but do not have any convictions, that is a real challenge.

**Ms GARRETT:** That is a very good point.

**Ms GOODE:** Yes, and I have only been in the sector for a short time and that is what I am noticing. So if you are looking at employing with those skills and knowledge, it is a real challenge for the whole sector. So I think from an employer’s point of view and the sector’s point of view, we need to look at that as well.

The other thing from my experience in a previous organisation was where we were dealing with the long-term unemployed or we were dealing with people that were mums re-entering or dads re-entering the workforce and again part of their employment services provider was to put them through training. Now, the training is okay, but what we experienced was when they had to go and do placement, it is when they did placement and they did not pass a police check or a working with children check, that became problematic as well.

**The CHAIR:** Do you have any suggestions or solutions on how we might look at that? Because it has been raised numerous times.

**Ms GOODE:** Look, it all comes down to litigation, doesn’t it? And you are putting somebody in an organisation that has vulnerable people. So, no, I do not have a magic wand for that bit. The only one is if an RTO could deliver placement or do some simulated placements rather than placing them into a hospital or child care. That is the only way you would get around it. But having said that, then, the poor student or the future employee is still not going to gain employment. So they have done all this education—

**The CHAIR:** So, Karryn, just a final question from me: in looking at that, we have been looking at time periods, I suppose, or waiting periods or rehabilitation periods between conviction and when a record would be considered spent or no longer public. For your clients who are trying to re-enter the workforce, is 10 years too long, or is it just about right for them to fully accept the consequences, for rehabilitation, or is it on a case-by-case basis?

**Ms GOODE:** Yes, I think it will have to be, depending on the matter that they were convicted on as well. I think you might have to do a staggered approach, like, say, for failing to display an L-plate—

**The CHAIR:** To have to wait 10 years, yes.

**Ms GOODE:** That is right. Whereas if you have convictions such as sexual assault, they would be at the higher end rather than the lower end, so maybe that is an approach that could be looked at. Yes, it is a real tough one.

**Mr SLOAN:** Just going back to a point about people who may not have passed the police check, one of the things that we uphold very much at the Rights Information Advocacy Centre is people's privacy. So that would not be discussed. It would not be something that I as a manager would be privy to. That would be between the CEO and the HR person, and that would not be bandied about. The file would not be kept. It would just go through.

The last point I wanted to make is that as a youth worker I was one of the first people that was captured by the working with children check, and I am very aware that it does not cross the borders. They do not communicate with each other. My son plays with Rumbalara Football Netball Club, and we cross over to Moama, Deniliquin, Finley, and their working with children checks are not informed to Victoria, and Victoria does not work back the other way. And so I actually spoke with the then child safety commissioner, Andrew Jackomos, and his frank response was, 'Oh, the government had to be seen to be doing something'. So the system was not necessarily well-planned to start with. So if we were going to look at something, I would be looking at something a lot more careful than that. We ask for a working with children check not only for our employees but also for the board of directors, but we do a police check, and that is national, right across the board. If they have come from overseas in the last seven years, we ask for an overseas one as well. So we are being very careful. But, yes, the working with children check is not necessarily a great system to start with.

**Dr KIEU:** You touched upon your work with homeless people. You may be aware that the committee may be having something in the future, so we would look forward to it if you could put in some submission.

**Mr SLOAN:** Okay. I am better at speaking than writing about it, and I am better at doing it than speaking about it.

**Ms GARRETT:** You are a very good speaker.

**Mr SLOAN:** Just on that point, though, I have been employed by the ABS for the last three censuses here in the Shepparton region counting the homeless, so I actually go out in my old four-wheel drive and count them. We have a higher rate of homelessness up here per capita than metro Melbourne, yes.

**The CHAIR:** Thank you so much.

**Mr SLOAN:** I hope it is of some help.

**The CHAIR:** Tremendously. And I really appreciate it, and as we say the transcript will be sent to you in the next week or two. If you do have any further thoughts on this, please feel free to get in touch with Lilian. We would welcome it. Thank you again.

**Witnesses withdrew.**