

TRANSCRIPT

LEGISLATIVE COUNCIL LEGAL AND SOCIAL ISSUES COMMITTEE

Inquiry into a legislated spent convictions scheme

Shepparton—Monday, 15 July 2019

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WITNESS

Mr Lee Joachim, Consultant, former Chair of Rumbalara Aboriginal Co-operative, Yorta Yorta elder.

The CHAIR: Welcome, Lee. We are doing an inquiry into a legislated spent convictions scheme. Just so you are aware—it is fairly obvious that it is being recorded. All the evidence at this hearing is protected by parliamentary privilege, so anything you say here cannot be used against you in a court of law or in any other forum. You will receive a transcript of today's hearing, which you will be able to make some changes to, and it will go up on our website and be part of this really important investigation into what we think is a really important issue. If you would like to open up with a few comments, then we will open it up to general discussion. Tell us a bit about yourself, Lee.

Mr JOACHIM: My name is Lee Joachim. I am a member of the Shepparton and Mooroopna community and a Yorta Yorta man. I was raised by my grandmother, and during that time in my life I visited every prison in Victoria, from the age of 10. It was usually because my grandmother, who cared for kids that were not necessarily hers, got into trouble. So by the age of 10 you have driven to Sale, Geelong, Castlemaine, Bendigo, Beechworth and everywhere there was a prison possible and probably two in New South Wales that I do not want to remember. It was a scary period of my life being so young and visiting all these prisons and even attending court with my grandmother for the people that she was caring for at the time.

Life has so much changed since then. Most of the crimes that the uncle was doing were petty crimes, blue-collar crimes. In those days there were not any police checks so even coming out of prison he had the opportunity for employment. Whether it was shearing, whether it was working in the fields or picking fruit or doing just general labouring work, there was that possibility for him to do it. He has turned 60 now. After my grandmother died he turned a leaf and found God, and his life changed. He has all those convictions to his name, and there are probably a couple of hundred to it, but he has found employment and he has had the opportunity to prove himself to those employers that that way of life that he had no longer exists.

Over a time when police checks have become part of the norm of working for a company—and I have been a director of a company; I have been a CEO of businesses as well, so I fully understand that need there—it is not easy coming here to talk about spent convictions because there are so many liabilities being a director of a company that you could face and being an employer that you can face also even further on down the track, which is really difficult for me to actually address as an employer and certainly as a member of the community.

Most of my time has been spent working for my own mob, whether it has been with the Yorta Yorta Nation Aboriginal Corporation or even at Rumbalara twice as a chair and once as a CEO, and it is difficult to look at that. But the changes that are being, I suppose, rammed through in regard to reforms at a national level and reforms at a state level that are looking at self-determination of Aboriginal people are a real concern, because what you have to then look at is the responsibility for kids in out-of-home care. You have the responsibility of aged care and running an aged-care facility. Even preschool and early childhood programs so on and so forth have to be considered here as well.

And how do you transform these reforms into something that is meaningful to the community when the majority of the community will have an abundance of issues in relation to their history? If I can talk on one in particular, I have got a relation that had a drug history back when she was 16, and she is 40 now and has really tried to transform her life but has found it hard to get employment, and that has just ratified a worthlessness within her. How do you get a break when you have a conviction that is from way back then to where you are now in your life? And sometimes people do not turn around.

I look at a young boy who had the opportunity to look after his sibling's children because of neglect, but back at the age of 16 he had an armed robbery conviction. This person is now 38, 40 almost. He cannot care for those kids because of that conviction. There are some serious convictions that I would personally not spend or relieve, and there are white-collar crimes as well that I certainly would not allow to be spent either. I think white-collar crime is a devious thing, and it has been a part of my Aboriginal community for quite some time. I think that has to be rectified. I do not think people understand when they go on to be directors of a company what that ramification means in relation to employing someone and that ramification on you as a director at that

point in time and what can happen to you through this lovely process of law that we have and what that can bring to you.

It is a really difficult thing to look at, but there are situations where spent crime has to be looked at. If the state and the commonwealth are looking at reforms in the Aboriginal space of health, education, early childhood and so on and so forth, then how are you expecting the Aboriginal community to reform and change if some of these early convictions of people are affecting the way that they will be employed and they will be considered to care for kids and care for elders in the future? That is a really tough issue to deal with. We have had through this community several bouts of training with regard to personal care assistants. Some of those personal care assistants have a history and no-one has told them with that history you cannot get employed in that industry.

Ms GARRETT: That is soul destroying too, isn't it? To go through the training and then you cannot?

Mr JOACHIM: Well, it is soul destroying. You go through the training and you get this qualification and then all of a sudden you get employed or have a chance of employment and then they find out and no, sorry, you cannot do it.

The CHAIR: So I guess you have got that great experience of representing people with a past but also looking at it from an employer perspective. I am guessing that when you were at Rumbalara and other organisations you asked for a police check, or had to ask for police checks.

Mr JOACHIM: Yes.

The CHAIR: When someone came back with a police check was there a discretion that was considered by you or by the board, you know, that this is 20 years old or five years old and this person has turned their life around?

Mr JOACHIM: Yes, there is that discretion and you can have that discretion. That is great for me as an Aboriginal person who might, you know—everyone here is related to me. You have that pleasure of knowing that and you can give that discretion where it is due and work with the person as well to ensure that they do not reoffend. You have got to put those plans in place and it is important to put those plans in place so you know that you are protecting yourself as the CEO and you are protecting the board that you are also there to manage as well and not bring any undue litigation against them in the future. So you have got that discretion, but when you are a non-Indigenous employer who does not know the history of this particular person it is really hard to say, 'Hey, you know, we'll give you the benefit of the doubt here'.

The CHAIR: So if a spent convictions scheme was to be legislated here in Victoria, would you have any recommendations to us about certain crimes should not be spent, and I think you have said white-collar crimes should never be spent, and probably some serious sexual crimes. Is there a time period that you think we should forgive someone those convictions that you could recommend to us?

Mr JOACHIM: Depending on the crime, I would say overall 10 years.

The CHAIR: Maybe not for your own plate.

Mr JOACHIM: In particular I have never been a supporter of the Koori Court process either because again you are pleading guilty, and I have had relations who were 16 and were coming to being 30 and they have still found it hard to find employment even within their own communities. I do believe it is 10. Sexual crime against children or against women should never be spent; never, never be spent. I am a father of nine children and six of those happen to be young girls and I would hate that. I am a grandfather and so I would hate that. To be a survivor of particular things in my life, I would never want those sorts of crimes to be spent.

Dr KIEU: Your example of people in your community who are not allowed to take care of kids, like a young nephew or nieces or older people, that has some consequences and ramifications that those people will be taken out of the community and cared for by outsiders, so to speak, and that gradually will lead to the loss of culture and also the tradition in the community. We have been listening to many people who have made submissions on the spent convictions scheme, and all the people are very much for it. Now, with your position

as a past director, could you expand more on the liabilities if you employ people with spent convictions in the present day and what liabilities a company, a director or a board would have to face?

Mr JOACHIM: I am presuming things in that area, but there are, I think, liabilities under corporate law even further down the track, when someone is making a decision to put a child in place in out-of-home care and then 20 years down the track they come back and they can actually sue the individual that placed them in that and made that decision. But that also has ramifications for the directors as well in their responsibility to that child and to that program that they are actually managing. I think people do not fully understand the ramifications beyond that. Yes, you get insurance in being a director at that period of time that you are a director, but once you are not a director then further on down the track there are ramifications to that. I do not think people in our Aboriginal community and organisations fully understand their responsibility in regard to good governance and what that actually means for them as an individual. We understand that, yes, there is a financial liability to it, but there is also, post that, a liability to that as well, because these children that you might place in out-of-home care or assist government in placing in out-of-home care have ramifications to that. And it also looks at those that are employed during a period where you give leniency and you have given consideration to what their crime was. They might be a person who broke and entered but has also done that as well. There are liabilities that come with that also. It is just understanding the full ramifications of the law from a corporate perspective as well as from blue-collar crime.

Dr KIEU: And also the moral responsibility as well if something happened down the track.

Mr JOACHIM: Well, there is a moral responsibility. I mean, these children in this out-of-home care space—God help me if someone reads this, but there are reasons why these children were removed. You cannot simply blame prejudice or racism. There are real issues, and the issues for my community in particular are intergenerational within families as well. So putting the child in care—it is just questionable unless we are providing proper training, unless we are providing a real understanding of the legalities of our decision-making as well.

Ms GARRETT: Well said.

Ms LOVELL: Lee, in your time as an employer, what percentage of applications for employment would have actually had to declare that they did have a prior conviction? And also do you think that it impacted on the amount of applicants coming in for jobs because they did not want to apply, knowing that they had prior convictions?

Mr JOACHIM: Well, yes, as an employer it was 100 per cent, whether you were the gardener or the cleaner to being someone—

Ms LOVELL: But the percentage that actually showed up a prior conviction. One hundred per cent of them had to declare, yes, they had a conviction, or no, they did not have a conviction, but—

Mr JOACHIM: Well, 100 per cent had to do the police check. Some did not declare it openly, but it did come back. If I was looking at a percentage, probably around 10 per cent. If I was looking at those that did not apply because of previous convictions, a damn lot.

Ms GARRETT: Are there some crimes that came up, or convictions that came up, that you would have said, ‘No, I do want to know about that. I wouldn’t want that to be spent’? You mentioned sexual assaults, and I certainly agree with you on all of those. But is there any other category where you would go, ‘As an employer, I would actually want to know; if you’d done that 15 years ago, I would still want to know’?

Mr JOACHIM: I suppose the occasion of assaults, and I suppose the length of time between those assaults and the amount that they did was certainly a big thing for me.

Ms GARRETT: So the seriousness of it matters.

Mr JOACHIM: Well, the seriousness of it matters.

Ms GARRETT: And then you mentioned white-collar crime. I assume systemic theft, you know that sort of stuff—

Mr JOACHIM: Yes, theft, fraud.

Ms GARRETT: I mean as an employer you would probably want to know.

Mr JOACHIM: You have to know because you are spending public money in most of the instances that I have been employed in. You are spending public money, so you have got that responsibility to the public that you are spending the money for, as well as your own community to make sure that there is the best outcome to the little dollars that you do actually get.

Ms LOVELL: So obviously the serious crimes you would always want to know about, but as someone who was responsible for running the elderly persons village, would minor theft have—?

Mr JOACHIM: Oh, God, no theft, no.

Ms LOVELL: Just that they are dealing with elderly people who will have purses and other valuables around.

Mr JOACHIM: I mean, there were issues in regard to having safes to put personal things away. You have got to deal with drugs at the centre as well, so you have got to ensure that everything is accountable there and those people were not a part of that.

Ms LOVELL: So you do have to be selective about the people you would place into employment there?

Mr JOACHIM: You have to be selective in who you place in it, yes.

Ms GARRETT: These are vulnerable people in your care as well.

The CHAIR: And obviously management of that and supervision is important.

Mr JOACHIM: Yes, it is important.

Ms LOVELL: It is really complicated, isn't it.

Mr JOACHIM: It is, and it is not necessarily the easiest decision to make as an employer, as a family member of those—it is not easy, and you might be the most hated person in the community at the time and probably still are.

Ms LOVELL: Anyone who puts their hand up to be a leader—you know, you put your hand up, you are going to get you head shot at.

Mr JOACHIM: Yes, you do, but you do it for the betterment of the community to ensure that, and raising nine kids is not easy because if you do this, this is what happens, and you have got to be sensible about how you raise your children as well as how do you transform that into a community process as well to ensure that we are doing the utmost for them and making them aware. It is about education. It is all about education. It is understanding law, what your rights are. It is understanding your responsibilities as a decent human being.

Ms MAXWELL: Lee, do you have any particular careers where you would think that a spent conviction still would need to be disclosed? So for somebody applying for a position, do you think that there are certain positions where their offending should be disclosed?

Mr JOACHIM: I think personally, becoming a director of a company, certainly being a CEO of a company, being a social worker in the framework of out-of-home care, I think health professionals such as nurses, dentists, doctors—it is really hard. When you look at Rumbalara, where I was the CEO, and chair twice, it covers everything from births to deaths. So for all those professions you have to report what your crimes were, because you are looking after the wellbeing of individuals, of families, so it is a really hard case and that is where these reforms are being put in place at a state and a federal level. I do not think as communities that we

fully understand what the activity and the history of our individuals, our community, places on us in regard to being the largest employer of Aboriginal people, because if that organisation closes down, I am telling you there are not going to be many places of employment opportunities for Aboriginal people in here. When I was there it was 210 employees and 166 were Indigenous people. The others were all your professionals, your trained doctors, nurses, dentists and so on and so forth.

Ms MAXWELL: These are very fine lines. Somebody may have offended very young and then decide to, like you said, go on to do training and become a health professional or a police officer or whatever it may be, only to then find—

Mr JOACHIM: But it was a lack of that educational institution not to investigate the backgrounds of those individuals as well. You know, you give them hope and then you just rip it out of their bloody hands after they have got the qualification. It is not fair.

Ms VAGHELA: Thank you for your time today. If a spent convictions scheme is put in place and one person discloses the spent conviction of the other person in, say, a town like this where everyone knows each other, they would know that person is getting a job after that. If this scheme gets put in place, if one person discloses someone else's spent conviction, do you think there should be any provisions in place, and what sort of consequences should they face?

Ms LOVELL: It is going to be hard in a place like this because everyone—

Ms VAGHELA: Yes, that is what I am saying.

Ms LOVELL: We have all known each other since we went to school together.

Ms VAGHELA: It will be so hard—that is what I am saying—in a town like this.

Mr JOACHIM: Well it is hard, and then you have got unfair dismissal laws that come into play as well. Look, that has happened while I have been an employer and a director. If there is no proof at hand, then you are going on hearsay. Then, 'Okay, we're going to sack you because we heard this'—again unfair dismissal laws come into play. It is hard, but in some places you just put a monitoring process in place to ensure that there is some safety around you as an employer and certainly the individuals that they work with and certainly the directors of the company as well.

Ms VAGHELA: And the last question: do you come across many people—and we do not need the names—where the check shows that they have criminal records and as a result they were not able to get a job? They might have done the offence when they were juvenile—or if they were Indigenous. Have you got examples of what impacts that has had on their lives down the track?

Mr JOACHIM: So when we look at a young lad who committed—took a plastic bat in and held up a supermarket at a young age and was affected by drugs, who is now a 38-year-old adult, then you know it happened back then, but you have got to give him the benefit of the doubt. You have seen them working, you have seen what they do in the community and how their life has changed and how they have become sort of a reformed hero, so to speak, to the younger people within the community. So you do put that aside, and you do have to consider them becoming a father, them becoming, I suppose, a leader within their own family group, someone that you can actually look up to in how they have reformed their life. You hold them up as heroes.

The CHAIR: How would we do that, Lee, because, you know, that is an armed robbery.

Mr JOACHIM: Yes.

The CHAIR: That would be unlikely to be a spent conviction in most jurisdictions in Australia. How do we do that where this person has turned their life around? To keep some of their relatives out of state care one thinks is the better option than not, but they will not be able to pass the working with children check.

Mr JOACHIM: No, no, they do not.

The CHAIR: No.

Mr JOACHIM: It is really hard as an employer. You put issues in relation to not working with children and certainly not working with elders, just to protect them, but there was a case where how do you talk that young lad into really testing the case in a court of law?

The CHAIR: And does shame come into that—or not for this fellow?

Mr JOACHIM: No, not for this fellow, no. He is pretty proud, and he has reason to be proud because he has turned his actual life around. I am glad I was there to see it.

Ms MAXWELL: So, Lee, do you think in a small—Shepparton is not small, but it is small enough that people generally, particularly if you have grown up here—

Ms LOVELL: It is small.

Ms MAXWELL: A spent conviction or not, people are probably likely to know of the offence anyway, so I guess when you are considering employment of said person, you more than likely have heard or know that they have had a conviction. So when the police check comes in people are still just going to have to make that decision. Is this a responsibility that we feel warrants them having a second chance or whatever, or no, actually, based on the level of offending we do not think we can? I guess the second part of that is: do you believe that organisations have the right to know whether somebody has had previous offences and been incarcerated and then it is up to that organisation to make that judgement about the accountability they are prepared to take for employing this person?

Mr JOACHIM: On several occasions as an employer we have taken on that responsibility of understanding that. There is a multitude of layers here as well when you look at the local community. You have got that racism, and then you have got prejudice within the police as well. My name is Lee Joachim, and I have got family with the same name who have done crimes. When the police pull me up, I can pronounce my name ‘Joachim’ or ‘Joachim’. There are so many different pronunciations to my name. I have done that, but they tell me I am ‘Lee Joachim’. But then within a community itself you have got prejudice within your own individual group, and it is really hard to break that prejudice down when you have got a class system within your own Aboriginal community. Many of our community will go and work elsewhere and build up a work ethic, a work—

Ms GARRETT: History.

Mr JOACHIM: history, and come back to the community then, because the only way you can actually do it is work outside.

The CHAIR: Get another chance.

Mr JOACHIM: And I have done it myself—work outside the community and then actually come back, because that is what you have to do when you are prejudiced. You have got racism, and then you have got your own prejudice within your own community, and you have to do that. I have got no convictions at all, thank God, but it is about that. It is about building up a history, coming back and applying it to your own community. That is what you have to do. Melbourne is a great place for most people to start off with, where they have changed their life around and are getting employment within their organisations down there or even starting off organisations for themselves, proving themselves and then coming back and working with the community.

Dr KIEU: I would just like to raise an issue; it is not a question. I asked the question about the employers’ or directors’ liability, but if the spent convictions scheme comes into effect, then some of that liability would be relieved for the directors but not necessarily for the state, because that will be transferred to the state. If in 20, 30 years from now something happens, then the state, depending on how the legislation is phrased, could carry the liability as well.

Mr JOACHIM: Yes.

Dr KIEU: What do you think about that?

Mr JOACHIM: Yes. No, it will, because it is public funds. The state cannot relieve themselves of it when you have got all of this.

Dr KIEU: I just wanted to raise that issue.

Mr JOACHIM: Look, I have just got a broad understanding of law in general, but when I am being a director, when I am being an employer, I make sure I understand my liabilities and what I could face, and if I am not happy being a director, then I will just quit, because I have got a duty of care to myself and to my family as well. There are big issues around corporate law and blue-collar crime and white-collar crime.

Ms MAXWELL: It is very complex.

Mr JOACHIM: It is not simple, and I think the state need to be aware of their liability attached to all of this as well. I do not think they are. They think they just give the money—‘Here you go, have the money’—and they deal with it within a black organisation, but the liability does come back to them.

The CHAIR: Thank you so much for your time, and we really appreciate you hanging around. I am sorry that we missed you.

Mr JOACHIM: Not a problem.

Committee adjourned.