

# TRANSCRIPT

## LEGISLATIVE COUNCIL LEGAL AND SOCIAL ISSUES COMMITTEE

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

Melbourne—Monday, 1 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

**WITNESS**

Ms Melanie Poole, See Your Change Consulting.

**The CHAIR:** Thank you so much for making time to come in and see us. As you know, we are the Standing Committee on Legal and Social Issues and our inquiry is into a legislated spent convictions scheme. I think you are aware that you are being recorded today. All evidence that is taken in this hearing is protected by parliamentary privilege through the Constitution Act. The information you give 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 repeat this outside the Parliament, we would not be able to protect you there. We have allowed a bit of time, so if you would like to maybe give us some opening remarks and then we can continue with a discussion.

**Ms POOLE:** Okay. Great. I just want to start by acknowledging that we are meeting on Wurundjeri land today and that it is stolen land. In making that acknowledgement I just want us to have in our minds the disproportionate impact the system has on Aboriginal people. I heard bits of what you heard from Uncle Larry and Uncle Jack, and it really made me reflect on the ways in which Aboriginal people throughout our history have been excluded from everything—jobs, housing, all of the different ways to participate in society—and that today that exclusion on the basis of racism is not permitted, at least explicitly, but it is if you have a criminal record, and so that is a way in which that discrimination towards Aboriginal people continues. I think that is important to acknowledge.

I am a consultant who works with non-profits and with social service organisations, particularly on engaging marginalised communities and particularly on how they amplify those voices in their advocacy. I was previously the director of strategy, policy and engagement at the Federation of Community Legal Centres, so I have worked with Fitzroy and a lot of the experts that you have heard from. I have also worked in the US and worked on quite a lot of criminal justice campaigns there, particularly with JustLeadershipUSA, which is an organisation that is run by people who have lived experience in prison. But really today I am here just as somebody who has in my social network and among people I love—my friends, my family and the people I work with—a lot of women who have been criminalised, and I guess I just really want to make sure that the experiences of women are a part of what you are considering when you make your recommendations.

I think you have really heard a lot of the legal and policy points that I think are important through Liberty Vic and Fitzroy and Woor-Dungin and a lot of the experts you have heard from, but I want to particularly draw attention to the psychological impact as well, because I think that is something that when I talk to women who are living with the stigma of criminal records, that is what they talk about—not just the practical impact that it has when you are blocked from jobs and housing and so on but what it does to you as a person, about how you feel.

One point I want to make is that quite a few of the comments that I have heard have been talking about a spent convictions scheme is something that gives people a second chance, but I think it is important, especially in the case of women, to say that for most women in the criminal justice system—for most of the women filling up prisons in Victoria—they never had a first chance, and so it is not so much about giving them a second chance, it is about not perpetuating the fact that they have never even had a chance to begin with.

The story of the women that are in our prisons is different from the story of men. It is not to say that men should be in there either—criminalised either—but I think the experiences of women often are sort of overlooked. The story of women who are criminalised is often a story of women who were severely abused as kids and who were ultimately criminalised for things like drugs, not actually for doing any harm to other people. So for them to spend the rest of their lives being reminded over and over again of that message, ‘You’re worthless and you’re not part of society’, we cannot underestimate the level of damage that that does to someone.

I was speaking to a woman just recently. She was only in prison for a very short period of time, a few weeks or something, and she was criminalised because of drugs. She has been able to really get her life on track. She is totally clean from drugs. She is doing really well. She really is a very compassionate person and she really wants to help other young people who are in a similar situation to what she was, and there could be no better person to do that. She signed up to be basically a mentor to youth who are at risk, and she went and did the

training. She was talking about how she had to catch a bus 2 hours each way to go to where this training was. It was all voluntary. She was going to give a whole lot of her time to this, and she was commended by the people doing the training on the depth of her understanding. And then it came to the criminal history checks, and she was told that she could not be a mentor to the young people. She was crying when she talked about this, even though it had happened a little while ago. But it was not just about the fact that she could not do that role; what she kept talking about was the message—that she was deemed unfit to be someone who could interact with young people. I think that that is a particularly important thing to keep in mind.

I also think it is such a loss to so many sectors—teaching, early childhood education, nursing. I can think of so many things that women who have been criminalised have wanted to do and have even completed training for sometimes before they were criminalised and then could not continue with that career. I guess, personally, I can say from a legal and social services sector perspective it is such a loss to be in a situation where the people who have often given me the best expert advice—and I do not think anyone is an expert unless they have lived something, so they are the experts; and it is often policy advice, it is advocacy advice, it is across a whole range of areas or they might want to be a social worker et cetera—often cannot be employed even when the organisations know that they are the best people for the job, because they have to do the checks and because they are deemed to not be fit to work with children and so on. Again that sends this really devastating message to women that you cannot even be included in trying to solve the problems in going for these jobs where that expertise is really needed, and it is such a loss.

The same goes for government. If we had a justice department that had in its staff a lot of people with lived experience of the system, we would be getting very good policy advice. In the US there are laws in 30 states now that say that government jobs cannot include that box that you have to tick. They are called Ban the Box policies, but they recognise that actually it is a loss to the opportunities for those people and it is a loss to what government can gain from their insights. So, yes, I will give you a chance to ask me questions, but I think those are just a couple of the things I wanted to emphasise.

**The CHAIR:** Thank you very much for that. I do think that the stories that we have heard and the evidence we have received, particularly about women and offending, is such a different story and it is so often based on trauma and being victims that has then led them to crime. Just speaking of that mentor, the story that you told us at the beginning of that woman, how should we remedy that? You certainly heard the evidence of what spent conviction legislation looks like in other jurisdictions. We do not have any that. It gives us the advantage of thinking about how we might do things differently. Would you think that we need to have certain exceptions for certain jobs, or is there a way that you would do it differently?

**Ms POOLE:** You are probably already doing this, but I think it is worth looking at the US experience because there is quite a diversity of Ban the Box policies across it may even be more than 30 states now. The last—

**Dr KIEU:** Could you explain more about the US? We are not aware of that very much.

**Ms POOLE:** There are basically policies called Ban the Box and Fair Chance. Fair Chance is legislation, and Ban the Box can be legislation and it is a mix of policies. I think it was up to about 30 states, although I was in the US a few years ago, so—

**The CHAIR:** It might be more.

**Ms POOLE:** it might even be more now that have adopted these policies to differing levels. So what these policies say is, for example, on an ad you cannot say that—

**The CHAIR:** Police check required.

**Ms POOLE:** there would be a police check would be required. They specifically focus on government jobs and then also government contractors, including private companies. And then the Fair Chance legislation goes more broadly and says, ‘No employers at all can ask for a criminal history until the point at which you are basically going to make an offer’, and then employers can but it has to be specific and relevant. So they have gotten through the hiring process; they are now going to make this person an offer. At that point they can ask

for a criminal history check, but they cannot then withdraw the offer unless there is a reason that is relevant to what is in that so-called criminal background.

I know that one of the issues has been that in some jurisdictions there was an unintended consequence of racism actually getting worse, particularly toward men and toward African-American men in particular, because employers would sort of think, ‘Oh, we’re not allowed to ask anymore, so we’re going to assume that black men are more likely’—and there was a really important study done on that. So it is not a silver bullet, but there has been a pretty overwhelming positive reception, and there has been growing bipartisan support for it as something that massively reduces recidivism because people are not being locked into being stigmatised for the rest of their lives and so on.

**The CHAIR:** Yes, jobs are a great—

**Dr KIEU:** So there is no spent conviction scheme in the US per se, but there are some other schemes more related to employment?

**Ms POOLE:** Well, it is just different language, yes. The other thing I would say is I think would agree with those eight recommendations in the Liberty Vic submission. I think the point about needing to vary the waiting times is really important from the perspective of women who have, like I was saying, mostly been criminalised—a spent convictions scheme cannot fix all of the issues—for offences they should not be getting criminalised for in the first place. But where she has done absolutely nothing to hurt another person and particularly a child et cetera, for her to wait 10 years still is a pretty devastating prospect and still has that massive psychological impact, and all of the women that I have spoken to have really felt like the 10-year thing is still too much. So I think that it is important to be able to think about what the actual offence was.

**The CHAIR:** Would you think that we might want to tier the crime-free period as it relates to certain offending or certain offences? So for a non-violent drug possession or theft conviction you might not need to wait a decade—you might be able to apply at an early time.

**Ms POOLE:** Yes. I think that would make a lot of sense. And I think we also need to think about the context in which people are currently being criminalised for things that they were not being criminalised for. As the fantastic media coverage—well, the devastating media coverage—that we have seen over the last few days has pointed out, we are on our way to tracking back to 1870s numbers in terms of the proportion of people we are incarcerating, and I am sure you are all aware of the fact that the numbers of women have risen by 75 per cent, and it is extraordinary. So I think that the context in which people are actually ending up with criminal records for things they would not have in the past is also particularly relevant to saying, ‘Yes, it should be tiered’, and to really think about how long of a waiting time is necessary.

**Dr KIEU:** In your opinion piece here about a woman in prison there is a phrase about, ‘There is no evidence that the recent bail laws would protect the community’, but there are also incidents of newly released for bail then committing some very serious acts—the Bourke Street incident and some other incidents—so how would you see that good balance there?

**Ms POOLE:** Well, we should be making evidence-based policy, shouldn’t we? And every legal expert that I have heard on this has pointed out that there is just no evidence to suggest that putting in place these really draconian bail laws is going to do anything at all to reduce the chances of the Adrian Bayleys and others committing the horrific violence that they committed and that where it is impacting is on women who have not hurt anyone. So, I mean, the question of ‘What should we do about these extraordinarily violent men?’ is a whole separate question outside of what you are considering here, I think, but I think the issue with those laws is that, as far as I can tell, they seem to be more based on political rhetoric than what the legal experts are saying. I have just not seen any evidence that they will do anything to address those extreme incidents.

**Ms LOVELL:** Melanie, can you just point us to anywhere that you would say is world’s best practice in this?

**Ms POOLE:** In spent convictions?

**Ms LOVELL:** Yes.

**Ms POOLE:** Well, my knowledge is basically the US and Australia, so I think that particularly in New York and in California in the US, where they have got the Fair Chance legislation in place, my understanding is that that is very, very good legislation and that it is having an important impact. It has not been in place for very long, so I think it is—

**The CHAIR:** Early days.

**Ms POOLE:** early days, but all of the experts seem to be saying that it is producing good results. And it is in a context I think of the overall mass incarceration trends in the US finally starting to go down and the Fair Chance legislation being really recognised as part of how society recovers from that. You know, in the US situation one in three people have been criminalised, basically, so your society is in a mess if you cannot think of something. And with Australia's trends and Victoria's trends rising so sharply, that is relevant to us as well. How do we recover from that when the number of people are much higher?

**Dr KIEU:** But those may be not only related to the spent convictions scheme but also perhaps to the equal opportunity employment act to require employers to do certain things and not to do certain things.

**Ms POOLE:** Yes, and that is also part of why I would pick those two examples. Although I should say I do not think I can comment from a world perspective. There might be all kinds of wonderful examples in countries all over the place, but that is why I would pick those two states in a US context, because it is supported by strong anti-discrimination law. So a person goes through the hiring process and if they end up at a point where their offer is withdrawn because of their criminal history check for reasons that are not relevant, then they can actually challenge that, and that is critical. I have heard some of the other people talking to you today about how the discrimination component is really important.

**Dr KIEU:** What we have heard from some of the witnesses is that that is the difficult bit in Australia because people maybe have their application rejected and not be given a reason, and there is only suspicion but not hard evidence to connect their past criminal behaviour with the rejection of the job, even though they have satisfied so far several rounds of interviews to be fitted to that position. Once the link is not disclosed it is hard to challenge that. That may be some of the issue that we have.

In the US, I do not know. If in the US they make an offer first and then check the criminal record later, there is clearly some link there why they reject that person. But if here they make the decision and say, 'Sorry, we cannot offer you the position' without giving a reason, it is very hard to challenge that particular decision.

**Ms POOLE:** Yes, I agree; it is hard. But at least if it is unlawful, if the person challenged it then the employer would at least have to give some sort of argument as to why it was not on that basis, you would presume.

**The CHAIR:** And it can have an educative effect as well, educating people about where a conviction should sit in consideration of the appropriateness of someone for a job.

**Ms POOLE:** Absolutely. I think that that is big. Coming back to the psychological point, I think that is also part of how this helps to shift those norms and helps to send messages to everyone that this is not an excluded group of people that do not belong, and to the people in that group the same thing—that you are part of society.

**The CHAIR:** Exactly. Melanie, thank you so much. We have really appreciated your insight, and I think certainly that voice is sadly often silent. It was a great op-ed as well, just bringing forth some of those numbers and that we are criminalising victims. I do not think anyone in society thinks that is a good thing. Fantastic work. You will get sent a transcript of this evidence in a couple of weeks so you can have a look at it. Hopefully the final report will come out in mid-August.

**Ms POOLE:** Great. Good on you for doing it, and thank you for the invitation.

**The CHAIR:** Thank you. The hearing is closed.

**Committee adjourned.**