

## **LAW REFORM COMMITTEE**

### **Inquiry into oaths, statutory declarations and affidavits for multicultural community**

Melbourne – 2 August 2002

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Mr G. Lekakis, Chairperson, Victorian Multicultural Commission.

**The CHAIRMAN** — On behalf of the Victorian Parliament Law Reform Committee, I welcome you to today's hearings. I note that we have already had an informal discussion about a number of matters and that your evidence today may be reasonably succinct, but with the view to there perhaps being further input through your office I invite you to speak to the principal points which you wish to raise and we will then ask you a few questions.

**Mr LEKAKIS** — The Victorian Multicultural Commission welcomes the opportunity to make a presentation to the inquiry by the Victorian Parliament Law Reform Committee into oaths and affirmations with reference to a multicultural community.

The commission would also like to congratulate members of the committee for this particular inquiry. A multicultural, multilingual and multi-faith society warrants such an inquiry.

The committee should also be commended for having had the documentation relating to the inquiry translated in the 10 community languages other than English. I should also add, as an overarching position, that successful multicultural societies are ones that are based on mutual respect and that the overarching approach to multicultural affairs includes a respect of the law.

The issues pertaining to this inquiry must be carefully considered, as any issues arising from the recommendations may have implications for other areas of public policy in the future. The current system as outlined in the Evidence Act 1958 may require reform, but these should be in line with community aspirations and views. Clearly, your invitation for submissions and the hosting of these public hearings are designed to elicit this.

However, I would also like to suggest an additional forum to ascertain views and opinions from religious and ethnic community leaders and representatives. The commission proposes to co-host with the Ethnic Communities Council of Victoria such a forum within approximately two weeks. The commission and the council will invite religious and ethnic community leaders to discuss the issues identified in the inquiry's terms of reference and provide this committee with a considered response from the forum. Furthermore, I extend an invitation to members of the committee to attend as observers to the forum.

Whilst I would not pre-empt the proposed forum's deliberations and recommendations I would also like to make a few general and preliminary points, without prejudice, in relation to the four issues identified in the inquiry's terms of reference:

- (a) The significance of the sacred text of witnesses and other parties in juries and members of particular faiths.

I would like to state, on behalf of the commission, that there are no absolutes. However, for those members of the Victorian community who are religious, sacred texts are strong and binding and as such undertaking their respective roles within the judicial system, whether it be as a witness or a jury member, providing an oath would add an additional dimension. Consequently, providing the opportunity for such individuals to make an appropriate oath based on their religious belief and which is binding on their conscience is very, very important. I understand that some of the faith organisations have put forward their proposal as to what they consider to be appropriate sacred text for this and that these proposals should be considered very seriously.

The commission is also of the view that a secular affirmation should also coexist side by side with the provision for the oaths. A greater status should not be designated for any specific oath or affirmation, and they should be treated equally. It is a matter of choice in our Victorian community:

- (b) The provision of sufficient range of appropriate texts and minimum standards in this regard for all Victorian jurisdictions.

The provision of a range of appropriate texts and minimum standards would not be, as envisaged to be, expensive. However, the oath should be drafted in accordance with the wishes of representatives of various religious bodies and in a timely manner be reviewed by the Department

of Justice or this learned committee. Whilst this process may be deemed as being cumbersome it will truly reflect that the courts engage with the communities directly to define the significance of the sacred texts to witnesses, other parties and jury members of particular faiths.

- (c) The provision of cultural awareness training to all court staff and persons before whom affidavits are sworn and a development of appropriate and sensitive practice by all such persons.

The provision of cultural awareness training to all court staff, including the judiciary, is of fundamental importance if we are to ensure that practices are sensitive to the needs of our multicultural, multilingual and multi-faith community. It should also be noted, though, that the Department of Justice is currently taking an inventory project, which will identify a whole range of important issues relating to service delivery to a culturally diverse community. This, I would suspect, will include the need for the composition of the work force at every level, particularly the judiciary, to be reflective of the diversity that exists within the community. Such diversity not only includes ethnic backgrounds, but includes gender, disability et cetera.

In relation to the last issue, paragraph (d), and I will not go through it, the Victorian Multicultural Commission is unaware of any specific data or research that identifies the accessibility or representatives of JPs and such people who are permitted to witness affidavits. Clearly, both are important on a number of levels.

Accessibility amongst those whose language is other than English can be enhanced through an appropriately directed communications strategy that educates the community about the process of becoming a JP or a person who can sign those affidavits, and encouraging and recruitment of appointment so as to ensure that such people are representative of the community. The commission would be more than pleased to assist with that process of providing information to ethnic communities about the existence of JPs, what they do, the processes involved in their recruitment, the honourable standing that they have and what they do.

The role of JPs also needs to be communicated to ethnic communities as there are some misconceptions. I have been a JP for a long time and on most occasions I was offered a fee for the service. I had to remind people that there was no fee associated with taking an oath. There might be some — I will not say — but I think it is quite clear that that needs to be specified and people should be made aware.

I also had the different religious texts in my office and if somebody wanted to take an oath on the Koran they could do so before signing a document. I do not think it is cumbersome. I think we can provide the texts in a format that could be available to all JPs and all court jurisdictions. We can provide them with the books that are required, and we can also have the secular affirmation there for people to take. We should carefully consider a very balanced approach and a position offering choice to people in the Victorian community.

**The CHAIRMAN** — There are a number of questions that we might run by you quickly. Thank you very much for the thought that you have given to that evidence.

What are the problems with the current system that you are aware of? Firstly, have you come across problems with ethnic stereotyping — for example, are assumptions made that people from a particular ethnic background are of a particular religion or religious at all? Secondly, is there discrimination — for example, have witnesses' choice of oath or affirmation been challenged or inappropriately taken into account in court proceedings? Thirdly, are there problems with unavailability or incorrect handling of holy books, about which we have received information from people who have already given evidence, and lack of knowledge or understanding by judges and court staff of religious practice?

**Mr LEKAKIS** — The whole issue of training staff in our court system to the actual processes surrounding the taking of oaths and affirmations would be necessary to prevent such

situations occurring, and recruitment of staff from different backgrounds would provide the impetus for that cross-cultural understanding to occur within the court system.

**The CHAIRMAN** — How important do you think the religious oath is to those who have strong religious beliefs? I think you partly addressed that in your submission.

**Mr LEKAKIS** — I think it is very important. It is binding on their conscience; it is their belief system. I do not think that we should preclude a person's religious conviction and having to make an oath within the context of their religious beliefs.

**Mr LANGUILLER** — The Ethnic Communities Council of Victoria and the Equal Opportunity Commission, for a variety of reasons, submitted to the committee that we should remove the oath and that in order to be fair and equal before the law that on balance, for practical and other reasons, it would probably be better, given that the nature of the system and the methods that come before the courts are civil matters any way, to remove the oath.

In addition to their objection, whilst I may have a different view — but I am struggling with this issue at the moment on a personal level — in cases where the juries come into it, particularly in the criminal jurisdiction, we have juries made up of ordinary people. I say that with the utmost respect. However, I recently came across an additional comment that struck me profoundly when in my electorate someone told me a bad joke. The person said, 'If there is a Pakistani, a Lebanese and a Turk in a car, who's driving the car?'. The answer was, 'A cop'.

Why I bring this into this contribution and on the record is because I wondered as to whether revealing one's own religion, particularly if one's own religion happens to be of a minority type in this community, might not prejudice justice and the outcome of a case especially where the case comes before a jury, which typically is not as well trained in handling cases as lawyers, judges and so on.

Don't you think that perhaps, as the Equal Opportunity Commission put to us, on balance because the texts could not be provided in Swan Hill, Bendigo and every other jurisdiction or perhaps because of the reasons that may well underline the objections to the oaths by the Ethnic Communities Council of Victoria, and given that this inquiry is essentially about the relationship between the state and the church and religion and so on, isn't this the time for us to move away from religion and make it plainly and simply a secular type of system?

**Mr LEKAKIS** — As I commented in my submission, a balance of offering a choice allows that to occur. What is binding on somebody's conscience is very important and if they state that before their belief system or whether they state it before a secular affirmation is binding to them, and that choice should be offered. Victoria is a very multi-faith society and there are people who dearly hold their belief systems as integral to their life. If they are put in a situation where they have to swear as a witness in a court and they believe that to be most sacred then I think it is important to offer them that choice.

So far as any prejudicial views might be formed by a jury in relation to somebody who swears an oath in a particular matter, the judge would have to guide the jury accordingly. I do not think it would be the factor that would determine the outcome. Composition of juries: there are ways in which juries are composed and there are objections as to how they are composed in the court process when they are formed. I feel that we should respect people's views, and if they believe that the sacredness of those texts is important and binding on their consciences we should give them a choice and allow the secular affirmation as well — so, in tandem. But I do not believe it would be prejudicial.

**Mr LANGUILLER** — I accept that, except that I am concerned about the question of consistency. If I went for a job interview, and I was asked about my religious background, I would claim foul. I would say, 'This is prejudice'. I would say that they had gone after me, particularly if I did not get the job. However, in a court of law, as a member of an ethnic and religious minority, I

would put to the judiciary that if they asked me that question that I would not regard that to be a prejudicial question.

With the best of intentions a court officer could ask me, ‘What religious background are you from, and which sacred text do you wish to have, or are you aware you can have one?’, and somehow it might appear that as a member of an ethnic community I did not regard that to be prejudicial in any form, and I possibly did not think that that would be used against me — and I have a different view, by the way — and in some cases I would be very concerned, particularly if I were from a Moslem background, if I came before a jury. I have no problems putting that on the record given the submissions I receive in my office. So in a court of law it is not prejudice; in an employment interview situation it is prejudice and is reported to the Equal Opportunity Commission, which will deal with it. Do you see the point I am making about consistency?

**Mr LEKAKIS** — You are making an assumption that it is prejudice in all cases, and I do not think that is the case. I think we have to live with our differences; we have to accommodate those and seek that our employment practices, particularly our selection processes, are based on equal opportunity principles, and that those matters do not come into consideration.

When you deal with somebody in preparation for a hearing, or in taking the oath, that could be predetermined so there is no discussion of it within the court context; it is something that is decided on before the person enters the court so there is not a shuffle to ascertain that. It is like whether people require interpreters in criminal matters — that is ascertained before the hearing or the before the court process. Those sorts of discussions and predeterminations about what text you want to swear on can be conducted before the hearing so that there is no airing of any discussion about that within the court process. I can understand your concerns too, because I have had similar concerns as well, but in light of how our community is composed, and the various strands and variations, I think on all balance we should offer people a choice.

**The CHAIRMAN** — You have already answered this in part, but I want to get it on the record as such: would you feel that some members of the community, in the words of one witness, might be affronted if they were not able to take a religious oath?

**Mr LEKAKIS** — The potential for that is there if you remove the choice.

**Mr BOWDEN** — My question is somewhat related, and it is in two parts, and maybe it can be the subject of a short answer. Some witnesses, including some representing ethnic communities, have called for the removal of the Christian oath as the primary form of an oath and its replacement with a secular affirmation. What is your view on that?

**Mr LEKAKIS** — I think I answered that earlier. There should be the choice of oaths of equal value.

**Mr BOWDEN** — Of equal value, that is the key?

**Mr LEKAKIS** — There is not one oath over another, or the oath over the affirmation. It is a choice.

**Mr BOWDEN** — The second part of the question is: do you have any other comments on law reform possibilities in this area, such as the adoption of the commonwealth system where court staff have to tell the witnesses that they have a choice between an oath and an affirmation, and where neither option is given primacy?

**Mr LEKAKIS** — I agree with that. It is like whether you want to either take an oath or affirmation as part of your citizenship ceremony obligations, and people can decide.

**Mr LANGUILLER** — For the record, George, the committee is required to examine cultural awareness training for court staff and others before whom affidavits are sworn, supposing

the religious oath is retained, does the Victorian Multicultural Commission have a view about what should be included in such training? Would the VMC be able to have involvement in such training?

**Mr LEKAKIS** — We would consult with the various faith groups and try to tailor a package of training which would be appropriate. The Department of Justice could organise that in consultation with us — no problem.

**The CHAIRMAN** — In 6, 10 or 15 words, supposing the oath were to be retained, do you have a view about which religious text should as a minimum be held by courts and/or solicitors and others?

**Mr LEKAKIS** — All the ones on which the oaths are devised.

**The CHAIRMAN** — From our understanding to date from submissions made there would be the New Testament, the Old Testament, or the Pentateuch for people of Jewish faith, and the Koran. There has been mixed evidence in relation to some of the Buddhist oaths with the current view being that no one text is appropriate.

**Mr LEKAKIS** — But have they come up with an oath?

**The CHAIRMAN** — There have been a couple of draft oaths.

**Mr LEKAKIS** — Have they have come up with a standardised oath? That is why I talked about may be even a five-yearly review of what is current.

**The CHAIRMAN** — That is a very good suggestion; I will make a note of that.

**Mr LEKAKIS** — There might be a need to just go back and say, ‘Are we going okay, yes or no?’.

**Mr LANGUILLER** — Interestingly the Koran appears to be the second or the third most requested, but the Islamic association submitted to the committee that in fact the Koran should not be used in a court of law. Some courts, with the best of intentions, have made that available and have used the Koran, and some Moslem people have walked into the court with the Koran. But they say to us that we have to take the highly experienced view that the Koran is very clear about this, and that it should not be used at all. It is sufficient that they take the oath.

**Mr LEKAKIS** — That is why it is all about consultation.

**The CHAIRMAN** — Finally, and this may embellish a couple of your contributions made already, do you have a view about whether the current classes of people who are permitted to witness affidavits and statutory declarations are sufficiently representative of and accessible to the different ethnic communities?

**Mr LEKAKIS** — In my experience a number of people have applied to become justices of the peace and they have sought nomination and support in that process. As I said earlier, we should communicate to ethnic communities about the availability of such roles, and we should encourage recruitment. If there is any requirement for training of those people, then we can sufficiently organise it through their professional bodies. There are bodies which represent justices of the peace, and those people can have the mandate to do the training.

**The CHAIRMAN** — The committee and staff are keen to pursue the option of meeting with some members of some multicultural organisations in Melbourne. Do you have an idea when that might be convened?

**Mr LEKAKIS** — I have discussed it with the ethnic communities council. It has a fall-back position, which is the choice option. As usual the practice for these sorts of things is to

throw it open in a forum and just gain a view. We do it regularly with a variety of different matters on which ethnic communities are requested to comment. I have learnt over time that there is no one fixed position on a lot of matters, and that is the nature of our democracy. If we could organise something in Victoria like that in which you can come as observers, you can get a view, it would be important because people might not have been able to understand the complexity of the material you have put out. They need some explanation of what it is about, and there are newly emerging communities that could be invited to take part.

**The CHAIRMAN** — The committee staff were particularly interested in seeing whether a time could be honed down, noting we have a reporting requirement in the forthcoming session of Parliament, and even there, there is a tight time frame to draw that together.

**Mr LEKAKIS** — If you think the evidence you have had so far presented to you is sufficient to form a view, that is terrific.

**Ms GILES** — We want to have the forum.

**Mr LEKAKIS** — If you want to have the forum, let's go for it.

**Mr LANGUILLER** — Can I add that there are some communities, particularly the small communities in my experience, that are typically unable to write a submission because in many cultures writing submissions is not the practice. Secondly, they feel quite intimidated in terms of coming into forums of this nature. I am confident, particularly if the VMC called it, that we would be likely to get people who may well want to attend your forum, which would be useful to us, as distinct from coming to a committee of this kind and putting themselves before microphones and so on. It would be very valuable to us if we were able to have a forum.

**Mr LEKAKIS** — And I would be more than pleased to assist you in that.

**Ms GILES** — Can we work out a time now, if possible? Do you have some options in mind?

**Mr LEKAKIS** — No, I have to go back and get the time for you. I have to talk to the ethnic communities council in locking that time in because we can have it at a community venue.

**The CHAIRMAN** — One issue that was raised in evidence earlier today related to the capacity of migrant resource centre staff to take affidavits. As a commonwealth public servant or as the director of a migrant resource centre, would he or she have the power to take affidavits?

**Mr LEKAKIS** — I pursued becoming a justice of the peace for that specific reason, because I was a director of a migrant welfare organisation.

**The CHAIRMAN** — How many migrant resource centres are there?

**Mr LEKAKIS** — There would be about nine. They should go through the process of becoming registered justices of the peace. We should encourage that to occur at various levels of our community.

**The CHAIRMAN** — Thank you for your evidence, Mr Lekakis.

**Committee adjourned.**