

LEGISLATIVE COUNCIL LEGAL AND SOCIAL ISSUES COMMITTEE

Inquiry into a legislated spent convictions scheme

Melbourne—Wednesday, 19 June 2019

MEMBERS

Ms Fiona Patten—Chair

Dr Tien Kieu—Deputy Chair

Ms Jane Garrett

Ms Wendy Lovell

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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

**Necessary corrections to be notified to
executive officer of committee**

WITNESS

[REDACTED].

The CHAIR: I would like to declare open the Standing Committee on Legal and Social Issues public hearing, or open mic night, as I like to call it. Could I just ask everybody to put their mobile phones on silent or turn them off. Also, this is a no photo session, even selfies.

I would also like to begin this hearing by acknowledging the Aboriginal peoples, the traditional custodians of this land which we are meeting on today, and pay my respects to their ancestors, elders and families. I particularly welcome any elders or community members who are here today to impart their knowledge of this issue to the committee or who are observing from the gallery.

We have had apologies from Georgie Crozier, Melina Bath, David Limbrick, Jane Garrett and Tim Quilty.

The committee is conducting tonight's hearings as a tell-your-story forum in relation to our inquiry into a legislated spent convictions scheme. All evidence taken at this hearing is protected by parliamentary privilege as provided by the Constitution Act 1975 and is further subject to the provisions of the Legislative Council standing orders, therefore the information you give today is protected by law and cannot be used against you in a court of law or any other forum. I am saying this to all of you because hopefully many of you will be speaking to us; I will not repeat it after every speaker. All evidence is being recorded. You will be provided with a proof version of the transcript, and transcripts will ultimately be made public and posted on the committee's website.

We have allowed 15 minutes for each speaker today, and the committee may ask a question or two after you have spoken. I would just like to thank everyone again for coming today.

Our first speaker is [REDACTED]. Thanks very much, [REDACTED], for making the time to come and speak with us today.

WITNESS: Thank you very much.

The CHAIR: We have allowed 10 or 15 minutes for you tell your story.

WITNESS: Sure thing. I have had an interest in this piece of legislation for a number of months. I have been keeping an eye on some of the developments because it is very personal to me.

I was in contact with the criminal justice system going back six years ago now, where I received a community corrections order because of my offending behaviour. Since then it has been quite a struggle to actually obtain stable employment for quite a substantial period of time.

So, as I said, my name is [REDACTED]. I am a 40-year-old male, recently graduated from Federation University with a certificate IV in alcohol and other drugs. The university was very kind in allowing me to complete some of my assessment tasks without the requirement to go out on placement, because that was very problematic in terms of a background check—I faced a lot of rejection. So my teachers allowed me to complete some of my assessment tasks within the university grounds themselves. Some of my past involvement with volunteer work with people with mental health and drug and alcohol issues have held me in good stead.

But as I said the mark of having a criminal conviction against your name is quite a heavy burden to bear. I have been looking at a lot of evidence from America, where the criminal justice system has a strong role to play in a lot of people's lives, and individuals have often said that having a criminal conviction against their name is often like trying to walk with one leg tied behind them with a big boulder.

So I have worked really hard in trying to develop my skills and qualifications. As I mentioned previously, I have just completed my certificate IV in alcohol and other drugs, and I am going on to do the diploma level, which is through Torrens University. As much as I am trying to work hard to rectify the mistakes that I have made in the past, in the back of my mind it always feels like I am going to be hamstrung in my future job prospects and in my future ability to obtain placement, because if there is a case where some subjects require

me to go out and work in the field, that means that a lot of the hard work that I have put in will just be sabotaged by—there are certain things in my past that I am not proud of.

I think one of the benefits of this spent convictions scheme is that it gives people like me hope, and that is what we all need. So when you talk about rehabilitation, and effective rehabilitation of people who have offended, having a conviction against your name and having an employer question your character is not something which is going to help with rehabilitation, and it actually defeats people.

I know analogies often fall down at times, but one of the analogies that I want to make is that when I was in high school I was always on the team that was losing quite badly, but the teacher would always say, like, 'There are 5 minutes to go. The scores are level. Next goal wins'. The team that was losing quite badly always seemed to find a burst of energy. I know that what happens in physical education class in high school is not the same as real life and looking for work, but when you feel as though your debt has been forgiven, that there is no more penalty to pay for your past misdemeanours, it actually gives you some buoyancy.

I would like to applaud your efforts as well, with your party bringing this to attention. I am sure that for the media and politicians it is not exactly a popular subject and it is not something that is actually going to win elections, but I think when you talk about the pub test—if you have to explain to someone, 'I can't find work in my chosen field because of what happened six, seven years ago', it is the fairness factor. I am not the same person I was seven years ago; I am not the same person, hopefully, I was three weeks ago. When someone actually looks at your criminal past on the piece of paper when you go for a job, they are making judgements around what they see written down, but the person in front of them is not the same as what happened at the dates that those offences were recorded.

So being involved in the criminal justice system in the way that I have causes strains on relationships, it causes strains on friendships. No-one anticipates waking up one day and deciding to commit criminal offences, but everyone wants to actually achieve the best for themselves, and I feel as though this piece of legislation will give people the chance to actually show the rest of the world that they have the ability to actually contribute to society. Like, one of the things that actually prevents people from going back into jail or offending again is the chance to actually be able to contribute, and this piece of legislation will help people actually feel as though they can actually move forward without being terribly hamstrung.

The CHAIR: Thank you, [REDACTED] When you have applied for jobs and you have been knocked back, what have you heard from employers about your criminal past?

WITNESS: I remember going for a job in a nursing home and my father was saying to me, 'That's just terribly foolish'. I said, 'Look, I've got to give it a go. I know what I'm good at; I know what I'm capable of. Let's just see if people are able to give me the benefit of the doubt'. The worst thing that was said to me was, 'Oh, you've wasted your time'. I think that after I was convicted and during my serving of the corrections order, with the amount of depression that I actually felt, I was like, 'There's just no way forward'. I have read about spent convictions schemes from other states, and I think Victoria has not got those protections in place. It is like: where is the legislation to actually help rehabilitation?

Ms LOVELL: In the jobs that you have applied for have they always asked for a criminal background check?

WITNESS: In terms of the nature, of the type of work—like, I have had work through my local football club, which I have had to actually quit recently. My role there was being a sports trainer because I was heavily involved in football as a younger person, and since I have finished playing myself I have just gone into doing first aid. So the relationship with my football club has been very strained because when they asked me to actually help with the junior football—I am paranoid that someone will find out about my past offending. I come from a small regional centre—Ballarat—so my first game of being a sports trainer was a year after I was convicted, and one of the prosecutors in my case had a son playing football. It is hard to actually pull away. I was desperate to show that person that I am not the person that he had prosecuted and that I have different skill sets.

So in recent times I have had to actually quit my role as a sports trainer, which had helped me with some cash flow on the weekends, because of the amount of background checks that are required. And that is fair enough; people need those protections. But I think there needs to be a certain amount of time in which you can safely say to somebody—and hopefully as the years go on my risk of offending gets less and less, so that is like a distant memory. So that is—

Ms LOVELL: So have you ever actually applied for a police check?

WITNESS: Yes, three or four times.

Ms LOVELL: And it did come up on it?

WITNESS: Yes, it always does. I wanted to have a role in helping with a meals program for people who are homeless in my home town. The police check actually took a long time to get back, and I knew exactly why it would take that long, because of their privacy policies and things like that. But the longer a police check takes to get back to an employer—yes. I got that phone call and they said, ‘I’m sorry. We just can’t offer you a position’, despite the fact that I have got food handlers licences, food safety licences.

Mr ONDARCHIE: [REDACTED], thanks for coming in, mate.

WITNESS: Sure thing.

Mr ONDARCHIE: It took a lot of guts to come in and do this, so thanks for doing that.

WITNESS: Thank you.

Mr ONDARCHIE: As we develop our findings through this inquiry and our subsequent recommendations, do you think we should take into consideration time frames around the distance between now and when the offence occurred? Should we say anything beyond two years, three years, five years or 10 years? How do you think we could apply that?

WITNESS: Ten years is a long time to wait for a conviction to be spent. I like the WA model: you serve that period of time as part of your sentence, and after that you can actually have that as a spent conviction condition.

I think most states have got the balance right—so five years for people who are under the age of 18 and 10 years for adults. I would like to see seven years for adults and maybe four years for younger people, especially for a 16-year-old, who is not the same person as they are at 21. There are a lots of people I have met who want to become social workers that say, ‘Well, I got caught doing graffiti at 15’. My understanding about Victoria Police’s policy is that they release all information, regardless of whether you have been convicted or not. That to me is not very fair. They are actually ignoring what the courts’ directive is. So the courts say, ‘Well, I’m not recording a conviction’, but then it still comes up on a Victoria Police—

So I think if you have spent more than 30 months in prison, some convictions are not spent, but I like the idea of 10 years. In that time you can do some further study. There are lots of courses out there that do not do background checks.

Ms VAGHELA: I know you have trained as a sports trainer, and you have done other certificates as well. I am not quite sure: are all the jobs asking for a police check?

WITNESS: So the jobs that I have had that do not require police checks are not in my skill set. Say, for example, farmhand-type work—people in regional Victoria that need people to collect potatoes for the harvest season, so they just need help. But if I want to obtain employment which is well paying, financially secure, it is a tough road. There are many people I have met who have convictions that are hugely disheartened. They say, ‘I’d love to be able to study sports massage so I can open up my own business on weekends’, but there are so many regulations that prevent that from happening. So I think with having a conviction spent, it is like, ‘Okay, I can wait two to three years and in the meantime do something else’, but then that gives me hope that I can move on and they can judge me on my attributes for the job rather than my past behaviour.

Ms MAXWELL: [REDACTED], thank you very much for coming in. It is hard to sit in front of a panel and particularly talk about personal experiences, so I do absolutely applaud you for that. One question that I want to ask is: are there any crimes where a spent conviction should not be applied, do you think?

WITNESS: That is a difficult one to answer. I believe people have the ability to change. It is difficult, because in the criminal justice system they talk about certain offences being notoriously hard to rehabilitate. You know, those of a sexual nature—people seem to have that behaviour very entrenched in their psyche. But there are lots of sentences that people receive where there is no jail sentence—for example, in my situation, a corrections order where I had to do some community service and pay a fine. But the penalty for me is that I have got a HECS debt that needs to be paid eventually, and my punishment seems to be going further. I endured the community service; that was boring. If anyone has done community service, it is very boring and very tedious, but after that sentence is over, how do you actually go on? There are lots of people that actually receive community service, but I think if you have received a sentence of 30 months or greater, that seems to be a fair—

The CHAIR: Line to draw.

WITNESS: Because there are lots of sentences that are lesser than that. **Ms**

MAXWELL: Thank you.

The CHAIR: Thank you, [REDACTED]. Again, really, thank you very much for sharing. It really helps us, hearing stories from people. Thank you so much. I hope you hang around.

WITNESS: Thanks, Fiona.

Witness withdrew.