

# TRANSCRIPT

## LEGISLATIVE COUNCIL LEGAL AND SOCIAL ISSUES COMMITTEE

### **Inquiry into the Use of Cannabis in Victoria**

Melbourne—Wednesday, 19 May 2021

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

## WITNESSES

Ms Ashleigh Newnham, Manager, Strategic and Community Development, and

Ms Korina Leoncio, Lawyer, Springvale Monash Legal Service (*both via videoconference*).

**The CHAIR:** Welcome back, everyone. As I am sure you know, we are the Legislative Council Legal and Social Issues Committee and we are doing public hearings into the use of cannabis in Victoria. I am delighted to welcome to the hearing Springvale Monash Legal Service, and we have Ashleigh Newnham and Korina Leoncio. Thank you so much for joining us.

I am Fiona Patten, the Chair of this committee. Next to me are David Limbrick and Sheena Watt and on the screen is Matthew Bach. Thank you so much for joining us.

Just to let you know, all evidence taken today is protected by law, and that is under our *Constitution Act 1975* but also the Legislative Council standing orders. This means that you are protected from any action for the information that you provide today. However, if you were to repeat that outside this place, you may not have the same protection. Any deliberately false evidence or misleading of the committee could be considered a contempt of Parliament.

I think you can see on our screen we have people transcribing. Hansard is listening to you. We are recording; we are live. You will receive a written transcript of today's hearing, and I would encourage you to have a look at that because ultimately it will form part of our report and it will go up onto the committee's website.

We are very grateful for you taking the time to join us and we are very grateful for the submission that you provided to us. We would welcome some opening remarks, and then we will open it up to a broad committee discussion. Thank you.

**Ms NEWNHAM:** Thank you. We are very honoured to be here today and very grateful for the opportunity both to make a submission but also to give evidence at this hearing. Springvale Monash Legal Service is a community legal centre located in south-east Melbourne. We offer people legal advice and assistance on a range of different legal matters, but we also provide tailored social work support, financial counselling through a partnership with Good Shepherd, as well as an extensive community development and community engagement program in addition to our advocacy and law reform activities.

My opening comments with regard to the topic at hand are just to reiterate our broad position, which is that SMLS supports a government-controlled legalisation model. That is one where there is quite a bit of government involvement in, I guess, the marketing and the availability and all of the parameters of accessing cannabis products. Rather than a more free-market approach, we would support a government-controlled approach. In the alternative to that, if that is not an approach that is possible at this time, we would support a full decriminalisation model. So that is a de jure model where decriminalisation is actually fully set out in law, rather than, in the alternative, a de facto model, which relies more on just removing or reducing penalties.

There are a number of reasons for that. One particular one is around giving too much capacity to the discretion of law enforcement where there are a number of issues that present themselves, in particular around race and ethnicity. We see time and time again where data shows unfair rates of race-based differences when it comes to the availability and opportunity for people to use diversion. I know that in New South Wales there was some data released that said 82 per cent of Indigenous people found with small quantities of cannabis were pursued through the courts whereas only 52 per cent of non-Indigenous people were. So we can see that leaving it open to discretion creates opportunities where racial discrepancies can exist, and that is really problematic.

We are also very opposed to a model that would introduce fines as a potential punishment because, as a community legal centre, and I say this with confidence, every single community legal centre in Victoria would say that fines are a huge problem for communities from lower socio-economic statuses. In a lot of the communities that we work with fines are such a burden, and we are consistently helping people navigate the legal system when it comes to fines. There is a little saying out there that we use where if something is punishable by a fine, it means it is legal for rich people and illegal for poor people. And so we are quite cautious about offering that as an alternative, although I know that a lot of places around the world have introduced that

as an option. But we just wanted to sort of put it out there that that is not necessarily—I feel like we could probably do better than that.

But anyway, I did not have a long presentation because I am much more interested in any questions you guys might have around our submission and the work that we do.

**The CHAIR:** Thank you, Ashleigh. I really appreciated your submission. I think you really laid out really good examples of the unintended consequences of prohibition and of our current system and certainly reminding us about the social security call for drug testing and then looking at visas and, as you mentioned, fines.

I would like to start off. I am particularly interested in your very cautious recommendation around a regulated and legal approach. I say that because some people see legalisation or legislation as a liberalising of the industry, and I would say that that is probably not what you are suggesting. It is not a liberalisation but more of a regulation. Have you got any thoughts about what that model might look like?

**Ms NEWNHAM:** Not too many specifics, I suppose, because I feel like there are models around the world. I know that in different states across the US they have different approaches. Some support a much more free market approach where anyone and everyone can kind of do whatever they want, whereas we would not necessarily be pushing for that type of model. Ours would be more around, I guess, local communities having more of a say on things like where premises can be located, how many shops can one business operate or how much quantity can one particular company deal in. Because we are not really interested in seeing a giant lobbying conglomeration appear, such as like alcohol or tobacco or something like that that can create more problems or unintentional problems that we do not want to see; we want to see a model where the government has a say. And it does not necessarily have to be state government. It could be local government having a say in where shops are located, how people can obtain it, the labelling of products in terms of how much of a certain quantity is in them, where to get help and can storefronts be open near are schools—things like that. I think I would be much more interested in a model that had quite, I guess we would call it, a community-based approach—like what is something that is really going to support people in accessing it in a healthy and safe way?

**The CHAIR:** Thank you. Before I open it up to others as well, I think that is a really interesting way to frame a regulated model. You also talk about drug-use stigma, and no doubt your clients have experienced that. Your recommendation to us is to address drug-use stigma through public health programs. I am wondering if you could expand a little bit on that notion.

**Ms NEWNHAM:** Yes. I am very much interested in the idea that we ascribe these type of objects with a moral value. We assign a moral value to drugs as either good or bad, the same as we do with food. Food is either good or bad, and the people that consume that thing, that drug, are then associated with that moral value as either good or bad. I think that it is really interesting, especially in the way in which that can impact people's ability to either continue using or stop using drugs if they choose to, because it can create this personal feeling of failure, like, 'I'm bad because I can't stop using'. I think that can be incredibly harmful.

There has been some amazing research done on the impact of stigma and what it can do to individuals and communities. I think Dr Kate Seear, who is on next, has some really amazing work in that space, so I am very much interested in her opinion on this question. My idea is that with the way in which Victoria decides to go about whatever comes out of this inquiry, messaging strategies are going to be incredibly important, and I think any messaging strategy through a public health campaign, through an advertising campaign, needs to take into account the harm that that type of association can create. We have just had the mental health royal commission results, and I would hate to see public health campaigns or messaging programs that had that kind of way of making people feel like they are bad people for certain behaviours that have not really a moral value assigned to them.

In addition, stigma can impact the legal system. It impacts the way that people make decisions, it impacts the way that police undertake their duties, it impacts the way lawyers interact with their clients and it impacts the way that families interact with one another. I would say I am not an expert on that topic, and I defer to Dr Kate, who is on next, who will be able to speak to that to a much greater degree, but yes, I am very much interested in

how can we support people through a harm reduction approach but also by not assigning them with a negative moral judgement about certain behaviours that may not actually be moral or bad.

**The CHAIR:** Yes. That is right. No, thank you, and I note that you quote Kate in your submission, so that is great. I will go to David, then I will go to Matthew, then I will go to Sheena, if that is okay.

**Mr LIMBRICK:** Thank you, Chair, and thank you for appearing today, and for your submission and the work that you do in Springvale, which is in my area. One of the things that you brought up in your submission, which is something that I have been paying a lot of attention to for some time now is around drug driving. You make the very good point that I have made myself: I think you said there is a lack of scientific evidence to support the causal relationship between significantly low drug concentrations and driving impairment. I suppose my question here from a legal point of view, or maybe a moral point of view, is: is this unjust what is happening now? Because it appears from your submission and from other things that I have seen that we are penalising people for having drugs in their system, not because they are impaired, and my concern is that there is a large number of people, potentially, who are suffering these legal consequences and yet they pose no threat to other people.

**Ms NEWNHAM:** Yes. That is a really great summary, actually. I agree with that. I think it is unjust. If the purpose of the legislation is to improve road safety, and if someone's consumption of cannabis is not impairing their driving, then I am not sure why we are policing that, if it is not to police their drug use. I think that to lose your licence for a year or two years is an incredibly significant penalty. It does not seem like it because it is not jail time. Often people think of it as kind of not that big a deal, but it is huge, especially out in the south-east. We know our public transport system is not world quality. I would not say that it would be meeting people's needs if they were not to be able to drive.

**Mr LIMBRICK:** Or if you are a tradesman—you are out of work.

**Ms NEWNHAM:** Or if you are a tradesperson, absolutely. So losing your licence has enormous ramifications. It stops people from being able to pick up their kids from school, it stops people from being able to keep their employment, it stops people from being able to seek help. Often they are told, 'Okay, well, stop driving. You can't drive for a year', or two years or something, and yet we fail to consider, as you say: was that justice? Is that just to police their drug use through our *Road Safety Act*? I think if we are going to police drug use, police it, but we should not be doing it through our other legislation which is designed to keep people on the road safe, not necessarily to police people's consumption of cannabis. Since the time I wrote this submission I think there has been some really interesting research into the impairment that people have after consuming certain products. I think it was Australian research. I cannot—

**The CHAIR:** Yes. The Lambert initiative.

**Ms NEWNHAM:** Yes, that is right. So there is some scientific consensus around, or there is some evidence there that we could talk about if you are looking to figure out what level is appropriate to inhibit someone or to impact someone's driving or their ability to operate machinery or something like that. I absolutely think that that should be enforced, because we want our roads to be safe and we do not want people to be harming other people on the roads. But, as you say, it can create really serious ramifications in people's lives, especially when they have not necessarily done something that is going to hurt other people. Like, it is just using a bit of marijuana, it is not necessarily impairing their driving.

**Mr LIMBRICK:** Thank you. I really like the point made earlier about fines and their sort of regressive impact. This is something that has been concerning me throughout the pandemic—these very large fines that are being given out to people and the idea that it is illegal for rich people and illegal for poor people. At the moment though with the options—and you spoke about discretion in here, and this is something that my team has been focusing on; in fact we are looking at a Bill on this—what are your thoughts on the idea of removing discretion from police? At the moment they have the ability to charge, caution or divert. If the discretion was removed so they did not have the ability to charge for possession of small quantities and everything was diverted—now, assuming you would have to remove some of the barriers because I know there are some barriers to going into diversion—would that solve a lot of these problems? I know it is not decriminalisation, it is not legalisation, but my thought is that it would solve the issue of people getting criminal sanctions for possession.

**Ms NEWNHAM:** I think it is definitely a step in the right direction. I think it is New South Wales where there are actually incentives for police officers, and it is part of their performance reviews, around diversions that are given out.

**Mr LIMBRICK:** How does that incentive actually work? Do you know?

**Ms NEWNHAM:** I would have to take that question on notice. I can provide some follow-up there. I need to find my source, but I have read something to that effect, that it is incentivised so that it is something that police are interested in doing. It might be New South Wales or South Australia; I have to get back to you. That is also an option. I think that if you were to set in law what quantities and at what level people need to go to diversion—and I think that we have something in our submission around that—apart from that leading to racialised sort of policing I think that we have to realise that it is quite unfair to ask for that level of discernment from police officers, where their job is so multifaceted nowadays. They are often asked to pretty much solve all of our societal problems at the ground level. It is really quite a lot of pressure to put on people to make decisions about what charges they get for certain amounts of a very insignificant substance, really.

So I think you are right: that it would be a step in the right direction towards a more progressive drug law policy that is better able to protect people from the harms of the criminal justice system and also create some structure and more ability to make decisions as a police officer, with confidence that you are doing the appropriate thing. I agree that it is not necessarily going to solve all of the issues, but it is a step in the right direction.

**Mr LIMBRICK:** Thank you. And I have one final question—you might not know the exact answer—but roughly what percentage of the work that your organisation does is related to helping customers or helping clients with cannabis-related legal issues?

**Ms NEWNHAM:** That is a good question. I will have to take that one on notice unfortunately.

**Mr LIMBRICK:** Would it be a large percentage? If you do not know off the top of your head, you do not know.

**Ms NEWNHAM:** Well, we have different practice areas, so I would not like to say. I would say that it intersects. We have outlined the different areas of law that it intersects with, so it would be hard for me to answer that question because it pops up in lots of different areas of law. I would say that we do a fair bit of the drug-driving stuff. We as a community legal centre have a very limited criminal practice because we tend to do more non-criminal and Victoria Legal Aid tends to do more of the criminal practice, so they might be better able to answer a question like that or give some more sort of data around that. I do not know, Korina, if you have anything to say about that point?

**Ms LEONCIO:** Yes. I was just going to say that unfortunately it is probably not something that we would record and that could be readily extracted. So, yes, I do not think it would be possible.

**Ms NEWNHAM:** I can take a survey of our staff and find out what their perception is of that, and then I would be able to provide that.

**Mr LIMBRICK:** That would be wonderful. Thank you.

**The CHAIR:** Yes. Thank you, Ashleigh. That would be really insightful. Matthew?

**Dr BACH:** Thanks very much, Chair. And thank you both for coming along today and also for your submission. In my view it is going to be a really important one for our inquiry. Over a long period of time I have been interested in and appalled by the outcomes for people, especially people experiencing disadvantage, after they have interactions with the criminal justice system. And I think, Ashleigh, you clocked me shaking my head violently at one point when you were giving us your initial presentation. That certainly was not because I was disagreeing with anything you were saying but rather that was at the point that you were providing us with those horrifying statistics regarding Indigenous people in New South Wales. And so I will ask you a question, if I may, about why it is in your view and in the view of your organisation so important to do whatever we can to stop people—especially people who are vulnerable or experiencing disadvantage—from having that interaction with the criminal justice system in the first place?

I am my party's spokesperson for child protection, for example. And we saw just yesterday new data that demonstrates the huge numbers of Indigenous kids in our state, more so than in any other state, who, in the language of the Australian Institute of Health and Welfare, have accessed child protection services—almost one in three Indigenous kids.—So I wonder if you could speak to some of the linkages between the different types of really negative outcomes that folks experience after that initial interaction, oftentimes, with the criminal justice system.

**Ms NEWNHAM:** Wow. That is a really complex question. It is a good one. Look, all these issues are extremely intersectional. A few years ago we did a legal needs analysis of the south-east to find out what the legal needs were, and the risk factors for people developing a legal issue are almost exactly what you have said—involvement with child protection, being Aboriginal or Torres Strait Islander, speaking a language other than English and having a low income and a low education level—and I think that that is so awful, that those are the risk factors for people to experience a legal issue in our country, in our state, in our south-east region. So at every level those are the risk factors, and what does that say about the laws that we have and the way that we enforce those laws—and that statement about fines meaning something is legal for rich people and illegal for poor people.

I think there are a lot of things in our society, a lot of factors that create a dichotomy between what happens if you are a certain type of person—you know, white, able bodied, wealthy—versus if you are someone that has an indicator of disadvantage, as we call it. Maybe it is disability, maybe it is race, maybe it is language, maybe it is wealth or income level or being a woman—you know, there are so many things that are different. If you belong to one of those groups, your life experience will be significantly different. And I think the way we experience the legal system is different. We work very closely with other services, with social workers and caseworkers and things like that, and I know that they would say that if their client goes alone to an appointment somewhere with a government service versus if they go with their white, able-bodied caseworker, they will get a different outcome. So it is not limited only to the legal system or the criminal justice system. It is across our society where people get different outcomes depending on their intersectional identities.

Look, I do not know how to answer that question. It is really quite far reaching. I mean, I know that the federal government is talking about, 'How can we analyse certain policies and their impact on women?', but we should be analysing certain policies and their impact on Indigenous people, on people with low literacy, on people with low incomes, because if we did that, we would find some glaring inequalities in our society, I think.

And definitely, on the one around child protection, we provide the duty lawyer service at Dandenong Children's Court. A lot of our clients that are coming through there have had experience with child protection. Just that exposure to the legal system is traumatic in itself, so it is creating another trauma—having to go to court, having to experience what that is like. I am very lucky. I come from a very privileged background, so I cannot imagine how distressing that must be to not be able to go to school and have to go to court. A lot of young people actually do not want to tell their parents about their court matter. They put their documents under their bed and never want to tell them. It creates this ramification of issues.

That is another reason why we are promoting our Sporting Change, which is our lawyer in school program, where young people can actually have access to legal information, because they do not know where their lives intersect with the legal system. Just getting up, getting out of bed and getting to school on time is a legal issue—it has got legal ramifications in itself—and catching public transport, using public places. I think that from a young age we are not taught about how our lives intersect with the legal system. It is very important, I think now more than ever, to teach young people about how to navigate the legal system, because if you are rich and wealthy and have family support you do not necessarily need to know that stuff because you will be able to afford lots and lots of support, but if you are coming from a family that is from a low socio-economic background or have other indicators of disadvantage—your parents cannot speak English or something like that—it is highly likely that you are not going to know where you can access support and you will not even know what you are experiencing is a legal issue in itself.

I think that the question you ask is very deep and very far reaching, and I would like to write you a whole essay in response.

**Dr BACH:** I would love to read it, Ashleigh. Thank you very much. For my purposes that is a fantastic response. I really wanted to get on the record—again, noting that in many respects it is an entirely unfair

question—your broad views about some of the really grey issues that we see disproportionately, as you said, through no fault of individuals, affect some people and not others through that interaction with the criminal justice system.

Just very quickly with your indulgence, Chair, I am with Mr Limbrick—I thought your comments about fines were just fascinating. I got a speeding fine the other day in my parliamentary car—I was only going slightly over—and a friend of mine said, ‘Oh, just write in. You’ll get off it’. And I said, ‘What do you mean?’. He said to me that he has never paid a speeding fine in his whole life. He just writes in every time and he gets off it. Now, I said, ‘I’m a member of Parliament. I can’t just write in and try to get off my speeding fine. I don’t want to end up on the front page of the *Herald Sun*’. But I had never really thought about it before, because I think that was only my second ever speeding fine. But this person—you know, educated, just so happened to be a bloke—said, ‘Nup, never pay a fine’. So I think you are onto something there.

**Ms NEWNHAM:** Absolutely.

**The CHAIR:** Thank you, Matthew. I think it was a really interesting conversation, and we are just about to embark upon the criminal justice inquiry, so we will certainly be seeking your feedback on that one as well. Sheena.

**Ms WATT:** Thank you, Chair. Thank you, Ashleigh. It will come as no surprise that much of what you said has resonated with me, having spent the morning, interestingly, with the Human Rights Law Centre, who are dear friends of community legal centres. I just had a question for you regarding the broad diversity that is where you are based and in the communities that you serve, knowing that many good folks around your way are from overseas, and you did mention in your submission that there were some issues surrounding visa cancellations as a result of cannabis use and possession charges. I am pretty interested to know more about that, because I, too, represent a very diverse area with many people who find Melbourne to be home but not permanently so. I wonder, do you have any experiences that are worth sharing with the inquiry around visa cancellations, your advocacy and work on that, with respect to cannabis use or possession charges?

**Ms NEWNHAM:** Yes. Visa cancellations is an extremely problematic and devastating area of law right now—as our entire migration system is basically. The visa cancellations legislation has been enhanced over the last few years and become more and more strict, and basically any person who is not an Australian citizen—so that is any visa holder, including a permanent resident—can have their visa cancelled if they are deemed to be of bad character, and that includes an automatic and retrospective cancellation if you are charged with something that has a one-year or more jail sentence, even a suspended sentence.

The joint migration committee had an inquiry about this maybe two years ago, and I am able to send you our submission to that which outlines some of our concerns and the concerns from our community around what that does to basically tear apart the fabric of our society, because it is heavily racialised. If you are born in Australia and are an Australian citizen then you have one set of penalties for breaking the law, but if you are not an Australian citizen and you are from another country, you have an increased set of penalties.

There are additional issues where I know of young people that have been charged with, you know—sometimes it is a combination of charges. It is not necessarily only the possession of drugs; it can be maybe property damage or some other things that have led to an accumulative one-year sentence. So it might have been short sentences and then they add to up to 12 months and then your visa is automatically cancelled and you get a letter in the mail basically saying you have two weeks to leave the country. It is absolutely devastating, and sometimes these people—especially young people—do not actually know that they are not citizens. They are not aware of their own visa status, because—why is that something that is important to them at that young age? They are focusing on having fun with their friends and figuring out what they want to do with the rest of their lives. And while maybe there are some laws that have been broken, I think that it is really important to note that having one set of penalties for one type of person and another set of penalties for another type of person is extremely problematic and breaches our human rights in all manner of ways.

Another thing that can happen, which we have seen time and time again, is where parents hire lawyers to represent their young person to reinstate their visa and they spend two, three, four years in immigration detention waiting to resolve a matter. I read about a case study from Victoria Legal Aid where it was an old gentleman who had committed an offence—I think he stole a car or something—literally something like

40 years ago, and because the laws are retrospective his visa was cancelled. He is 80 years old and he committed the offence 40 years ago, but yet he spent two years in immigration detention trying to sort out this and he had lived in Australia his entire life since he was three years old, which I just think is—I mean, I think I am getting off track here away from legislation—

**Ms WATT:** I am enjoying it so much, though.

**Ms LEONCIO:** But it goes to show the far-reaching impact of the criminalisation of cannabis. It goes as far as potentially resulting in the deportation of an 80-year-old who has spent all his life here.

**Ms NEWNHAM:** So I will send that through to the committee, our submission into that, as well as the Victoria Legal Aid one that has that case study. It is of great concern because it undermines social harmony, which I think is really important—I mean, it is what we are all trying to achieve, isn't it? We want social harmony and we want equal opportunities for people and we want families to be strong and healthy and you cannot be if your son is being sent overseas to a country that he does not know and you are extremely worried about him. I think that it is very important to promote equality because if people do not believe they are living in an equal society, it tears at the very fabric of what it means to be a Victorian—an Australian—so I think that it is really of great concern.

**The CHAIR:** Thank you, Ashleigh. That inequality of even the existing prohibition as to the existing criminal system, you have really articulated that extremely well. Matthew, do you have further questions for Ashleigh or Korina?

**Dr BACH:** Not from me, Chair.

**The CHAIR:** Sheena?

**Ms WATT:** No. I was so very impressed with that.

**The CHAIR:** Yes. Ashleigh and Korina, thank you so much for giving your time to us today. Thank you very much for just a really passionate hearing and submission. I think we were all really moved by some of those inequalities that you have presented so beautifully to us today. As I mentioned at the outset, you will receive a transcript of today's hearing. You will probably also receive an invitation to submit to our criminal justice inquiry, which we are embarking on. But, yes, thank you again. Please have a look at the transcript and make sure that we did not misrepresent you in any way. Thank you again.

**Ms NEWNHAM:** Thanks for the opportunity and best of luck as you sort through the reams and reams of submissions [Zoom dropout]

**The CHAIR:** All 1400! Thank you, Ashleigh. Thank you, Korina.

**Witnesses withdrew.**