

PROOF VERSION ONLY

LEGISLATIVE COUNCIL LEGAL AND SOCIAL ISSUES COMMITTEE

Inquiry into a legislated spent convictions scheme

Shepparton—Monday, 15 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

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

WITNESS

Mr Dan Wright, site manager, Shepparton and Echuca, MADEC Australia.

The CHAIR: We are conducting this inquiry in relation to a legislated spent convictions scheme. Just so you know, any evidence taken at this hearing is protected by parliamentary privilege, so that means that any information you give us here today is protected by law and cannot be used against you in a court or any other forum. Of course if you were to say that same thing outside this hearing, that protection would not be offered there. What you are saying is being recorded by Hansard here today, and you will be given a draft transcript of that. Ultimately that information will be on the committee's website and so will be made public. Could you maybe start with a bit of an introduction, then we can ask some questions.

Mr WRIGHT: Good morning. My name is Dan Wright, and I am the site manager for MADEC Australia in Shepparton and Echuca. A little bit about MADEC—MADEC is a Jobactive provider for the federal government. There are three providers in the Shepparton and Echuca area, and we are fully funded by the federal government. We work in assisting local jobseekers in gaining sustainable employment and addressing jobseeker barriers to employment. Some of the barriers may include the following: generational unemployment, criminal convictions, drug and alcohol, age, long-term unemployment and a vast array of other barriers. In terms of this subject criminal convictions is probably becoming one of the most prevalent barriers to employment to a lot of our clients. The convictions may vary. However, in the degree of seriousness there is no bias. As an example, a person may have a minor one-off charge from some time ago and not have committed another crime since. The issue is their crim check needs to be clean in most case scenarios to obtain suitable employment. It is inhibiting the jobseekers and only costing our state and country more money as the clients will sit and probably be welfare dependent for longer.

Introducing a crime-free period is certainly one way to alleviate the issue. How long and the seriousness of the crime is something that needs to be accounted for. On the other hand I have got examples of recently released clients from prison that have been able to adjust to society immediately. They gain sustainable employment simply because the employer knows their history and they will give them a go. There could be a level of merit, such as the seriousness of the crime. This may be another option.

From our perspective we are seeing more and more large and major companies adapting to crim checks during the recruitment process prior to the application stage, and this is eliminating the opportunities for any client with a past criminal conviction, no matter the seriousness. Perhaps a rating scale is another option that can be looked at to allow businesses to filter more minor convictions from their recruiting process.

By working with the jobseekers on a daily basis, as I have stated before, their criminal history is certainly inhibiting opportunities and becoming by far the biggest barrier to their employment. We can fix and provide assistance for anxiety, disability, depression, drug and alcohol and lack of experience, and we can provide licensing, but we cannot change someone's crim check. This does not stop at just employment. It also includes the ability to contribute to work, for instance with work for the dole activities. When the client cannot fulfil those obligations, then they are at risk of being financially penalised.

I certainly welcome the need to change spent convictions for Victorians and feel that if we approach this matter and we start to use some common sense, not only our government but employers and industries, we will create more change for the better and continue to decrease the unemployment rate for the state.

The CHAIR: That is really great and succinct. And it is kind of alarming that historical convictions are now becoming the most prevalent barrier to employment. I do not think we have heard that put so clearly earlier. You mentioned the idea of a sort of scale. Actually, sorry, I will leave that for a bit later. We heard earlier that there are some provisions within the federal government's discrimination legislation that provide remedy for someone who has been discriminated against because of an irrelevant conviction. Have you had any experience in that area?

Mr WRIGHT: Yes. It is hard, I guess, to be able to provide an example because we would not be privy to it. So for instance a business, they will ask for a crim check first. Who knows what comes back on it? Generally, those people are put aside and they move on to the next one. So we would not see that happen.

The CHAIR: Yes, so you do not know why.

Mr WRIGHT: No.

The CHAIR: They are just overlooked. It seems that education to employers here is also important. Would you have any advice to us as to what we might recommend in that sort of area, of how we would educate employers?

Mr WRIGHT: I guess it is about them knowing. You know, the employers that we have seen that will work with clients that have got past criminal history, it is just about being up-front and honest with them. And they are really open to it. And they may have had problems themselves in the past, and that is why they are. So it is a matter of, you know, I guess, the level of seriousness of the criminal conviction in the past. And so the employer understands that, and it is not just, you know, 'No, there's a criminal conviction there', because it could be as simple as drink-driving, and they do not know. So I think it is more about what it is and why, and then working on educating those employers around that. How? I am not sure. Because it is generally done from an HR department where they, you know, count it out by then.

The CHAIR: Yes.

Dr KIEU: Thank you, Dan. I just have a question. You talk about the seriousness or the severity of the crime in the past and then you have to base it on that to see whether it would be spent or not, but that is undefined and that would put a lot of pressure on those who would determine how serious or not serious it is so that it can be spent. So what do you think about how to go about that?

Mr WRIGHT: I guess my thoughts would be that there would be a panel that would be able to make those decisions, and whether, you know, you would come before a panel and explain what is happening.

Dr KIEU: But that would put a lot of pressure on the system, because every single person applying for that would have to go through the panel.

Mr WRIGHT: Yes.

Dr KIEU: Well, a certain type of—

Mr WRIGHT: Maybe we need to look at, again, the seriousness. That is much above what I would be able to think of, but it is about looking at, you know, do we rate them? Someone had a minor drug charge 20 years ago; should that affect them now, when there has been nothing since? Do we say, 'Okay, well, that one sits in this category'? How do we decide the categories? I do not know.

Dr KIEU: Sorry, just to follow up on that, what do you think about the idea—and this is only an idea—if at the time of sentencing the judicial officer would also declare whether this conviction could be spent later on or not, subject to certain conditions? So that would alleviate a lot of pressure from the system.

Mr WRIGHT: Yes, I think that is a great idea. And if there is no crime committed since, it gives them an incentive not to do it.

The CHAIR: Yes. That is right. As per the UK model as well.

Ms GARRETT: Do you get a sense, with convictions, that there is a common theme to what you see with your clients as to what they have got into trouble with?

Mr WRIGHT: Yes. There is a lot. Drug, alcohol and violence are probably the main ones. Yes.

Ms GARRETT: Or all three, I suppose.

Mr WRIGHT: Yes.

Ms LOVELL: Can you just give us an example of what is actually revealed to the employers? Do they actually find out what the specific charge was, or is it just that there is a criminal conviction?

Mr WRIGHT: Yes. On the CrimCheck form itself it tells you what it was and the time line, so the dates of when it has happened. And obviously that is about as much as the employer can see. They can inquire further with the client but generally—

Ms LOVELL: So it would just say ‘assault’—

Mr WRIGHT: Yes. It would show it.

Ms LOVELL: or something like that. It would actually say what the actual charges—

Mr WRIGHT: Yes.

Ms LOVELL: Is it only impacting in certain types of jobs or is it right across the entire workforce, because obviously we have a significant shortage for harvest labour. You are the main harvest labour office. Is it impacting on people even trying to do fruit picking?

Mr WRIGHT: Not generally. Harvesters are pretty open to the sort of clients that they are taking. The biggest increase I am seeing is probably the more professional-type businesses within the city. And, you know, if you go back five years ago, it was not there. So it is definitely increasing. Five years ago it was mainly government organisations but now it is filtering down. Who knows—in another five it could be harvest.

Ms LOVELL: So why is it increasing? Why are people more interested in this? Is it just because it is available or is it that there has generally been a problem in the past and that is why they are now becoming more specific?

Mr WRIGHT: Yes, I think that has contributed to it. There have been issues in the past. You know, someone has not disclosed their history and then things have happened, and it could be as simple as theft and they have gone into a business and they have done it again—recommitted. I think the employers are getting smarter around that and wanting to know the quality of the candidate that they are putting on, but I think they have probably gone a little bit too far one way.

Ms MAXWELL: I think child safety standards and all sorts of other standards that employers are now having to implement as a framework for employing people—that has become a part of that. It is compulsory. They are actually mandated to do that, particularly if it is DHHS, social services, things like that. It has become a part of it; that is why it has expanded and broadened so much for people.

Ms VAGHELA: So from your experience through MADEC Australia, if we say that a spent conviction scheme was put in place, how many individuals would be affected—through your experience?

Mr WRIGHT: I was talking about this this morning. I think we are getting up to probably—we have got around 1000 people on our case load. I could comfortably say that well over half of those clients would have a past criminal history.

Ms VAGHELA: Half. So out of 1000—

Ms GARRETT: Five hundred-plus.

Ms VAGHELA: Five hundred? Okay, and in terms of the impact of the criminal record appearing on the checks: what impacts do they have? So once that comes up, what happens after that? What sort of experience do you have, and is it worse when they are juvenile or is it worse if they come from an Indigenous background, or is it more or less the same?

Mr WRIGHT: No, it is a pretty blanket approach with it. So what I am seeing with the employers is they are asking for a criminal reference check first. If something comes up on there—and it may not matter what it is—they are basically put aside and they move to the clean crim checks.

Ms LOVELL: There are that many applicants, they can pick and choose.

Mr WRIGHT: Yes.

Ms GARRETT: This is just kind of a look-and-feel question, but do you find there are certain types of offences that employers are particularly—you mentioned theft or a dishonesty offence. In your experience are they more anti that than someone who has got into trouble with marijuana when they were 16, or is there a qualitative difference?

The CHAIR: Or is it just across-the-board?

Mr WRIGHT: It is a little across-the-board. I would say the violence one is not a huge one—where I would have thought that that would be—if they have explained what the situation was, how long ago. If it is to do with drugs, that is a big one. That seems to be a very big blocker.

Ms GARRETT: Right. Because they are concerned about the work performance?

Mr WRIGHT: Yes.

Ms LOVELL: Dan, are you able to give us a couple of examples of how it has impacted on local people, without identifying who they are, but people who you think would have made perhaps a great contribution and have been restricted by the fact that they have a conviction?

Mr WRIGHT: We have probably got some really good examples around work for the dole. So we have had some clients that could contribute, and whether it is working at St Vincent's or out at Rumbalara, something like that, just in an activity. They have not been able to because of it, and it may have been as simple as drink-driving and they have not been able to contribute. So we have had to look for alternative activities for them that probably do not suit them, and that is quite common.

The CHAIR: If you were a decision-maker in this area, are there certain people that you would give that chance to—and I think that work for the dole is a good example. So there would be an option to go into bat for those people.

Mr WRIGHT: Yes, absolutely. Again it would be a great thing. That is what work for the dole is about—getting a chance to live and breathe what it is like to work and getting that opportunity and getting a second chance.

The CHAIR: Are you finding in your youth leadership program that sometimes criminal convictions are—

Mr WRIGHT: Around Indigenous, yes. We are finding that quite often, and again it may be something minor but it has put a real roadblock in for them.

The CHAIR: What happens to one of your clients once they have had a police check? I suspect some of your clients might assume that was the reason they were not selected. Can they get up and dust off and try again, or do you find that that—

Mr WRIGHT: Yes. Look, it does. It puts a lot of stress on them, but I guess that is what we are there to do. We are there to support them and help address those barriers. We will look for other employers, or we will look for other activities that we can work with them on, and that is all we have got to do—keep addressing and helping with those barriers. Like I said, there are some really good employers out there that will look at everybody.

The CHAIR: See past that.

Dr KIEU: How often can you ascertain that the person was not employed because of the criminal check? Because sometimes it is not given as a reason.

Mr WRIGHT: No, it is not, but for major companies I would say it is nearly every time they apply. As you were saying before, Wendy, they are getting a lot of applications coming through for positions. For one simple position they could get 40, 50, 60 applications. If half of them have a criminal past, they are down to 30. That makes it a lot easier to short-list.

Ms MAXWELL: Dan, do you think that there might be more opportunity in the future for organisations such as MADEC to be able to lobby and advocate to employers? So if a check comes back and an employer says, 'No, we're going to move that to the side', they are encouraged to actually phone you and say, 'Can you give us a little bit more information about this young person?'.

Mr WRIGHT: Yes, absolutely, and particularly because the crim check does show you what the history was. Generally we have employment brokers that work for us that will try to do that straightaway. They will advocate for that client. Knowing that there is going to be a blip there, they will probably get there, to the employer, first and let them know, and the more we do that, the better we are prepared.

Dr KIEU: What do you think about the present working policy of the police to determine whether to release certain information or not? What has happened to your clients? Do you see that often? Do you see it as arbitrariness? What do you think about that?

Mr WRIGHT: From the information from the police?

Dr KIEU: Yes. They have a working policy that they could decide not to release certain information according to certain criteria that they decide themselves.

Mr WRIGHT: Okay, yes. We do not see it a lot—well, we do not see it at all. We do not know what the history is. All we basically get is what we get from the client and what the criminal check says. We do not see any further information from that. We do not get to talk to the police about any of that. Yes, it is blocked from us completely.

The CHAIR: We have actually had a number of submissions suggesting that we should change our Equal Opportunity Act to prevent people from being discriminated against on the grounds of an irrelevant conviction—so if it is not relevant to the work that they are doing. Would you have any thoughts on that?

Mr WRIGHT: I would absolutely agree. I think that would be a fantastic idea. Like we were saying before, it could be as simple as a drink-driving charge. How would that affect working in a supermarket? It would not have any effect. So yes, I would absolutely agree.

The CHAIR: In other jurisdictions the waiting period before a conviction can be considered spent is generally around 10 years for an adult. Do you think that that is a suitable time, or would you think there would be times when your clients would probably benefit from an earlier time period?

Mr WRIGHT: I think that it could be a case-by-case scenario, and I really like the suggestion around someone at the start being that advocate for them. I think 10 years is a long time. From the age of 20 to 30, you are a completely different person, yes.

The CHAIR: Exactly.

Ms VAGHELA: This is just a follow-up from my previous question. You said that out of 1000, maybe if the spent conviction scheme was put in place, about 500 would be affected. Out of those 500 how many individuals do you think would reoffend?

Dr KIEU: A tough question.

The CHAIR: It is a tough question. Probably not many if they had a job.

Mr WRIGHT: No, that is right.

Ms VAGHELA: That implementation would play a big role in terms of giving them stability and a positive outlook on life. But if there were, say, drug and alcohol-related or mental health issues or whatever it was, that is just what I wanted to know. If you give them a chance, they can go and get a job, but what are the tendencies that they would be reoffending?

Mr WRIGHT: If it is a minor crime, like drug or alcohol—and this is part of our program—we are there to support them. It is not only once they are in work we leave them without that ongoing support. So if we are able

to do that and continue with these clients, we could probably eliminate that quite a lot. It could be up to 70 per cent of those 500 that we could help along the way. If we know something is happening, we can address it and we can fix it. So with assistance from the providers, yes, we could make that number a lot bigger.

The CHAIR: Thanks very much. It has been really insightful, and it is very helpful for the committee to hear from that employment perspective. I think we have heard it spoken about in other areas, but from someone who is directly involved in finding employment for people, this has been really helpful for us, so thanks very much for making the time for us today.

Mr WRIGHT: No problems. Thank you.

Witness withdrew.

DRAFT