

TRANSCRIPT

LEGISLATIVE COUNCIL LEGAL AND SOCIAL ISSUES COMMITTEE

Inquiry into Management of Child Sex Offender Information

Melbourne—Thursday, 13 May 2021

MEMBERS

Ms Fiona Patten—Chair

Dr Tien Kieu—Deputy Chair

Ms Jane Garrett

Ms Wendy Lovell

Ms Tania Maxwell

Mr Craig Ondarchie

Ms Kaushaliya Vaghela

PARTICIPATING MEMBERS

Dr Matthew Bach

Ms Melina Bath

Mr Rodney Barton

Ms Georgie Crozier

Dr Catherine Cumming

Mr Enver Erdogan

Mr Stuart Grimley

Mr David Limbrick

Mr Edward O'Donohue

Mr Tim Quilty

Dr Samantha Ratnam

Ms Harriet Shing

Mr Lee Tarlamis

Ms Sheena Watt

WITNESSES

Ms Ashleigh Cooper, and

Mr Scott McKissack.

The DEPUTY CHAIR: Thank you very much for appearing here today as witnesses. I would like to read out your privileges while appearing at this hearing. Any evidence taken here will be protected by parliamentary privilege, as provided by the *Constitution Act 1975*, and further subject to the provisions of the Legislative Council standing orders. Therefore the information that you provide during the hearing is protected by law. You are protected against any action for what you say during this hearing, but if you go elsewhere outside this room and repeat the same things, the comments you make may not be protected by this privilege. Any deliberately false evidence or misleading of the committee may be considered a contempt of Parliament.

All evidence is being recorded and also broadcast live. You will also be provided with a proof version of the transcript following this hearing. Transcripts will ultimately be made public and posted on the committee's website.

For the Hansard record, can you please state your name and any organisation that you are appearing on behalf of.

Ms COOPER: My name is Ashleigh Rae Cooper, and I am just appearing as myself.

Mr McKISSACK: My name is Scott David McKissack, and I am appearing as myself.

The DEPUTY CHAIR: Thank you for your appearance here today. My name is Tien Kieu. I am the Deputy Chair of the Legal and Social Issues Committee, and on my right are Sheena Watt and Stuart Grimley. We are members of the committee. We also have our colleague Tanya Maxwell listening in and contributing via Zoom.

To start with, would you please provide a summary of what you would like to present to the committee today.

Ms COOPER: Sure. Thank you very much. Before I share anything more, I would just like to ask the committee members and anybody watching to hold what I have to share with you with the dignity and respect that it deserves, because these experiences have irreversibly impacted my life and continue to do so today and will continue to do so for the rest of my life. I also ask committee members and anybody watching this just to be aware that some of the details may be graphic in nature. I am hoping that everybody has received a copy of the sentencing remarks that I asked to be circulated prior to me attending. It is about 10 pages long. The reason I have sent that ahead is just so I do not have to go into too much detail about my experiences, because it is retraumatising for me and it is also deeply personal, even though it is on the public record.

I know that you have heard a lot of evidence from many other people and parties and groups speaking to the data collection regarding sex offenders. I actually want to speak to a completely different issue that has not been covered, and that is the Sex Offenders Registration Amendment (Miscellaneous) Bill 2017. As a bit of background for this, in 2017 I reported my experiences to police of when I was sexually abused as a child from the ages of 13 to 14 through that summer months period from November until January. My case finally made its way through the court system, and 12 months ago today we were at the County Court for the plea hearing. The offender in my case pled guilty. They were found guilty of three class 1 actions and one class 2. They were sentenced to life on the sex offenders registry; however, this Bill allowed the offender to be exempted from the registry after serving only three months. I want to speak to some of the issues that have arisen from that, and we will get into that, I guess, shortly.

I am here with my partner today, Scott, as my primary support person, who is an absolute legend. But I also think it is really important that we talk to partners, spouses and the people who are closest to survivors as well, because they are the ones who are helping us pick up the pieces, and they also go through this experience with us and have even less of a voice and less control over the process than a survivor does. So I would like to just ask Scott if there is anything he would like to share at this point.

The DEPUTY CHAIR: Thank you.

Mr McKISSACK: I would like to say, first of all, I have had a look at the terms of reference. My concern is, as it stands, that we are almost a little bit ahead of where we currently are. We are talking about how we can make things public, how we can store data and everything of that sort, but to be able to get to a stage where you can do that you have to have confidence that the system as it currently stands is working, and in my personal opinion, just based on Ashleigh's case alone, I do not have that confidence. I do not share that confidence. From what I have heard I believe it is overworked, potentially underfunded. It is not pleasant work. But I also believe that you have got to have the confidence that the system is working and that it works alongside the justice system, and based on Ashleigh's case I could say with 100 per cent certainty I am not confident of that fact.

That miscellaneous Act that Ashleigh referred to provided an opportunity for offenders to apply for exemptions. But based on a speech from I think it was a Greens senator in the previous Parliament, the understanding they had was that it was to refer to lower level offending, if you will, like sexting. How can someone convicted of sexual assault, of rape, be in a position that they can apply for an exemption after serving for three months? That is wrong.

The Victorian public at large are not aware of this. There is no education along these lines because a lot of people are never going to experience something like this. They are not going to be in a position where their partner has to go through the system. They have got to have confidence the system works. I do not have that confidence, and I will say it firmly on the record. I do not believe that someone convicted of a sexual offence, a sexual assault or a rape, should be in a position to apply for an exemption after three months. I think that is madness. I think that is wrong. And Ashleigh is right: the partners do not get much say. We get no say. We have to go along with the whole process. Being a support, we pick up the pieces for them—for your partner, for your loved one who is affected. But who picks up the pieces for us, the partners? No-one, absolutely no-one.

During the court process Ashleigh had great support. During the process where the offender tried to apply for the exemption, I think the most maddening part of it was the lack of communication that occurred and the lack of knowledge that some people had. I may as well go on, I am on a roll. But it does not just speak to the lack of communication; it also speaks to how we were never informed that this was a possibility. When this guy was sentenced, that should have been the end of it, but it was not. When your partner receives a call out of the blue on a Friday afternoon going, 'Oh, by the way, we want your thoughts on this application for exemption'—sorry? That is a thing? At the time we had no information. We tried to pull together as much information as we could, but throughout that process of trying to pull together information we were obstructed from doing so. We spoke to people at the OPP. They did not know that this was a thing. Obviously the offender's lawyer knew. No-one else did. How is that allowed to happen?

What makes things worse is in trying to gather information on this so we knew what we were up for and what we were up against, we got obstructed by the police minister's office or the police minister herself. We asked a couple of legitimate questions. What is the process involved in applying for an exemption? So, in other words, what does the offender have to go through? How many offenders have applied under this exemption? How many of them were successful? And I guess the other one: at any stage does the victim-survivor actually get a say? They were basic questions. We had a contact at Victoria Police that initially was really helpful, but then we found out that Minister Neville had informed them that because there were some inquiries starting to be made, no further information was to be provided. For me that is probably one of the worst parts of this whole process—that someone shut down a legitimate inquiry. We were not seeking identifying details. We did not want to know who was on the register, who had applied, who was successful. We did not want any of that. We wanted the data. That is all. It led me to wonder a couple of things, and thinking back on it now, does the data actually exist? If not, why not? If a member of the public is interested enough to want to access that sort of information, why can't they? As a partner I was watching my loved one going through trying to find all that information and getting nowhere because someone had been told that they were not allowed to provide information like that. What has been hidden? That is the part that worries me. Just to be clear, I am not suggesting in any way that Minister Neville did anything wrong. I assume she has used ministerial privilege. But in something that does not identify anyone, how is that valid?

The other suggestion I would probably make potentially is in relation to the sex offenders registry. I have no drama with it being managed by Victoria Police, none at all. The police are the perfect ones to manage the system. They need funding, and they need to not be as overworked. But the police minister of the day—whichever party, it does not matter who—should not be able to come in and say, 'You can't provide this information'. Victoria Police can redact. If there are names, you can redact them. If there is identifying

information, you can redact it. It should not be up to a government minister to say, 'Oh, you can't release that information'. That is wrong as far as I am concerned. I am happy to answer any questions, but I might throw it back over to Ashleigh.

Ms COOPER: Similar sentiments to Scott. I lived through it, it wasn't fun. There is a lot that happened around this. Obviously we thought that having gone through the sentencing that was it, we were done, we could actually start to rebuild our lives. I want to make very clear that going through the court process for any survivor is extraordinarily difficult and it puts your life on hold, and it is a trauma, an enormous trauma. We did not know when things were going to happen, how they were going to happen, and somehow, magically, the case worked its way through at all the really great points when we were coming out of or going into different stages of lockdown last year. So to receive that phone call and find out that the only voice that a victim has in this process is a verbal statement made to the police member, which is open for warping and miscommunication, was extremely distressing—that I could not submit a separate written statement with my thoughts and views—and there were just inherent problems throughout the whole process, everything from being able to get information to who knew what. I may not have agreed to the plea deal that was struck had I known that this was a possibility, and that would have changed the entire court process. This was not ever floated as a possibility that could happen, but it seems to be something that quite a few criminal defence lawyers are very clued up about. It is what they advertise on their websites, a quick Google search will reveal that, but it is not something that the OPP seems to be overly aware of or enthused about or able to support, and that is a problem. Victims do deserve to have that explained to them as a possibility if it is relevant to their case.

I have quite a lot of notes, but I do want to hand back to the committee as well for any questions. I just want to reiterate for you to be aware that some of this is quite difficult, I think, for everyone, so let us take care of our emotions.

The DEPUTY CHAIR: Thank you very much, Ashleigh and Scott, for appearing here today and also for your courage to share with us your personal story and experience, and also for your frank and open opinions on the system. It was a very serious criminal act, with the three class 1 and one class 2 actions, and then for some reason that has been taken off the registry only after three months. Your evidence also related to ministerial powers. So I would just like to flag that we are also having another inquiry, a separate one, on the justice system, if you think that you would like to submit—

Ms COOPER: We are all over it.

The DEPUTY CHAIR: Yes, because the court system is independent from the Parliament, but we are very glad to hear your opinions and submission today.

And also thank you, Scott, for bringing the view and the experience of a partner, whom we often do not hear from or are aware of to a certain extent. So that is a very valid and very valuable contribution. Thank you, Scott.

Before I hand over, I would just like to have your opinions about, in general, a public disclosure of the registry. From your experience, you want some information, but in general would you like that registry to be publicly available, and why in your case, in your opinions?

Ms COOPER: I do not want a wide open public registry. I can be swayed on this, however. If we look at the data that we do have through the ABS and the personal safety survey, the 2016 and 2018 ones, we know that much sexual offending occurs within families and people very closely linked with families. So if we have it public, open for anybody to just drop it into Google and see, I very much wonder about a victim's right to privacy and outing the family, also remembering it is not just the victim, it is the people very closely connected to them. If it is somebody's dad that is on the registry, you are also outing the mum, you are also outing all the siblings and the extended family, and I worry about what that means for those people as they move through the community and different stages of life.

So I can be swayed if we can address those concerns. I am really quite worried about what this means for victims. You know, we live in an age that is very digital; we scope each other out all the time. And it does concern me, if this is something that pops up on a general Google search, that this will just come up and, 'Hey, your uncle is on the registry', or something of that nature.

So I think what I at this point feel most comfortable with is having almost like a staggered system depending on why you need access to the registry. For example, you are doing a criminal history check because you are about

to potentially hire somebody. Fine, let us figure out a way to do that. Maybe there is licensing or something that has to be done to make sure that that is being responsibly used.

Yes, that is my main concern. And if we can address the right to privacy of victims and their loved ones, I can be swayed to having an open one.

The DEPUTY CHAIR: That is a very important point. Thank you. Tania Maxwell, do you have any questions?

Ms MAXWELL: Thank you, Deputy Chair. Welcome to Ashleigh and Scott. Thank you so much for being here, Ashleigh, it is lovely to finally meet you in person.

Mr GRIMLEY: Sort of.

Ms MAXWELL: Well, you know what I mean. Look, I absolutely agree with you, Ashleigh, in regard to the registry and the impact that that can have not only on victims but their families. And whilst I do see a need for some sort of a disclosure scheme—what that looks like at the moment I am not sure, and obviously that is why we are having this inquiry—what would be your thoughts around people being on a public register if they have already been named on social media or their case has already been made public—for example, if their record is very clear on AustLII? I mean, we have had multiple sex offenders who have been brought into the light through social media: Adrian Bayley, Kewley. There is a significant list of those sex offenders who are publicly known. What would your thoughts be around that—so somebody who has already been publicly identified to be on that register that the public can access?

Ms COOPER: Okay, so we are talking about the court of public opinion.

Mr McKISSACK: No, I think they are talking about if the person has been—

Ms COOPER: Yes, I know. It is a bit of a mixed bag for this one. And I want to make this very clear: I am not here to defend sex offenders, but they are human beings, and in Australia every human being has a right to privacy to an extent. So I would say that they probably could apply for their name to be changed on the public record, like on AustLII. My offender's name is public. He has been named in the media—I make no bones about that—and he has apparently experienced repercussions as a result in his social life. I guess that depends on if you are expecting the public to be the ones who dispense justice rather than the courts. I am not sure.

Ms MAXWELL: No, I do not think the public should ever be able to do that, and I think anybody who becomes a vigilante should be treated as such and go before the courts et cetera. I guess what I am trying to determine is, to lead on from my previous question: do you believe that a victim should have the right to make a call as to whether that perpetrator—their perpetrator, their offender—should be on a register or not?

Ms COOPER: I think you can definitely have input. I think it is important for victims to have a voice. I do not know that it should be the deciding voice, because I think this is a really complex issue where you need a lot of people coming together to share expertise. You need the OPP to come to the party on this. You need other experts to share. A victim's voice is extremely important because they can offer so much in terms of what it means for the offender to be on the registry. It is not always about: 'Your life is going to be made inconvenient'. For me, it was the only form of justice that I felt that I received, because there was no custodial sentence. It can be a really important punitive element of sentencing, and I guess, like I said, it is important to listen to the victims—very, very important—and their vote does and should always carry weight and should be taken into consideration before a decision is made. I just do not think it is necessary to have them as the only deciding voice. I think there need to be multiple voices included in that.

Ms MAXWELL: Well, magistrates and judges ultimately should be making that decision but I think in consultation with the relevant people.

Ms COOPER: Absolutely. As I said, in my experience this law was not made known to me at all at any stage during the legal proceedings, so this was not even floated as a possibility in conferences with my OPP solicitors. It later emerged that they had thought that maybe this was a possibility, but they had not shared that with me, and that is incredible because it really would have changed the plea agreement. So I think victims need to be really informed of what is going on, and I know it is a really tough thing to do, especially because we are often in a state of active trauma—very acute trauma; our brain is not working because we are frozen and

about to have a panic attack—but it is important to try and get this information across and make it known, because it will impact the decision-making. I am just going to leave that one there.

Ms MAXWELL: Thanks, Ashleigh. Thank you, Scott.

The DEPUTY CHAIR: Thank you. Sheena Watt, do you have any questions?

Ms WATT: I want to start by thanking you both for being here and bringing a really important perspective to this inquiry, one that I think adds enormous value to our work and our deliberations. So thank you to you both and of course for opening our eyes to not just the victim-survivor experience but the family and loved ones as well. That is certainly something that only through your testimony I am more aware of. Can I ask further, you talked about possible family impacts around disclosures and if we were to have a register that had identifiable family names what that would mean. Coming from particular communities where your name would be well known, can you see that it could be particularly more damaging for people from a particular cultural or ethnic background or from a region and that there could be some groups that would be far more impacted by the disclosure of families or family names on a public register than others? I just think Smith in Melbourne might have a different impact to, you know, a cultural name from a small regional town that is on a register. I just wonder if you have any thoughts on how it can have more compounding impacts for particular family survivors and others?

Ms COOPER: Yes. That is a really, really good question. I will share what happened in my case. The story became public last year through *news.com.au* as part of the Let Her Speak campaign, which I am sure you all got thousands of emails about from people, and since then there have been several other stories on *Mamamia* and different outlets. Each time there is an impact and somehow word eventually finds its way to me. Often members of the community reach out. They find me on social media, and they let me know that they have seen the story, they know the offender and they have taken action against them in some form. Now, it is not vigilantism—I just want to be very clear; no-one has been hurt—but, for example, the offender in my case was kicked out of a hobby club because they were identified. There was a photo of them in the article, and they can no longer attend that club. There have also been other people who reached out to say that they know the offender's family and they think it is all lies. These are the things that also victims are going to deal with.

Let us say Fred Smith is on the register for abusing one of his children, and somehow that gets into the media because a journalist thinks, 'This is a great story that the public does need to know about; it's important'. Without consideration for the victim and the victim's family word gets around local newspapers. I mean, my story made it into the *Canberra Times*. It made it into some very obscure places and things that I had never heard of in smaller communities, and so the repercussions were quite vast. It is not just about what goes on in the media, it is people remembering that someone in their community did something awful. And the smaller and more tightly knit that community is, the bigger the impact.

I do not want to speak on behalf of any cultural groups, I do not think that is appropriate, but I know my community where I live is quite tight-knit so of course it has had an impact. And it is also not just people contacting the offender, it is people reaching out to the victim and to the victim's family members and all that that we also have to be aware of. I have had some not great emails and messages on social media as a result of the story being public, and that is without a public register. So we do need to be really, really mindful of protecting victims in this case too and not just the victims but, like I said, their families—the people who are on the inside circle of what is going on. It is really, really important.

Ms WATT: Thank you, Ms Cooper.

The DEPUTY CHAIR: Thank you. Mr Stuart Grimley.

Mr GRIMLEY: Thank you, Deputy Chair, and thanks, Ashleigh and Scott, for your presentation. It was very, very informative and very moving. You are a legend, Scott, an absolute legend, and, Ashleigh, you are an absolute trouper.

Ms COOPER: Thanks.

Mr GRIMLEY: To have that support is just tremendous. We have heard so many submitters so far speak about what we need to do for offenders and rehabilitation and all of that, and just to hear from your perspectives

a different side to that story has been really refreshing. I have always said that offenders choose to offend, but victims do not choose to be a victim.

Ms COOPER: That is very true.

Mr GRIMLEY: That is something that you live with for the rest of your life. You are doing remarkably well, considering, so thank you for submitting and sharing your story.

My question is around: you mentioned a staggered approach to having information available to persons or the public. Part of the terms of reference is to:

investigate ... circumstances in which the details of convicted child sex offences can be made public ...

In your opinion, either Scott or Ashleigh, are there any circumstances where you think these details can be released to a person or the public?

Mr McKISSACK: I might have a crack at that one.

Ms COOPER: Yes, sure.

Mr McKISSACK: I think if it is on the public record, absolutely. I also think, potentially as another path to consider, maybe if someone is really determined to find out that information, then they should go through an FOI. If you really want that information, then you pay for the right: lodge a freedom of information request and they will provide the relevant details and redact those that are not, potentially. That is one option. Ashleigh mentioned a licensing-type arrangement. That could apply to employers. The only concern I would have with that is that could potentially be more paperwork. It is more bureaucracy. It is more 'You've got to pledge not to disclose X, Y, Z, and if you do, well ...'. It only takes one person and that is a whole business torn down. You have to educate employers on who can have access to that information, who cannot. It has got to be common sense. But I think freedom of information is your best bet. If you really want that information, go there. I would not go to Victoria Police on that one because, well, they are not allowed to provide that information. That would be a suggestion to consider.

Ms COOPER: I am quite interested in having perhaps different tiers of information released to different groups of people, depending on the purpose for obtaining the information. As far as having something publicly available goes, I am quite taken with the idea of having a dots-on-the-map kind of situation happening. Not house-specific dots, like street address-specific, but if you can have, say, a cluster of dots in a suburb that tells you, 'Hey, there are people in this area, in this general vicinity, who are on the registry'—no identifiable information—that is potentially enough information for the lay person, but, again, perhaps at different levels. So Scott is talking about employers hiring people, keeping in mind as well with the registry that if an offender is self-employed, they do not have to disclose their criminal history to themselves and refuse themselves work. This is quite common. In my case the offender is self-employed. He does not have to do a criminal history check on himself. He cannot deny himself employment. There are third parties that I know that work with different entities who run those criminal history checks, and maybe it is around having training, an agreement and possibly some form of registration with them as to what information they are able to receive should it come up that a candidate is on the registry.

Mr GRIMLEY: And if, for instance, a person was in a relationship with another person—it was quite a new relationship—and that person had concerns that they were paying undue attention to their child, for instance, do you think that in any circumstance there that person could investigate knowledge or information about their partner, similar to the Western Australian disclosure scheme where they put in their details and it gets processed that way? Is that something that you think would be worthwhile considering?

Ms COOPER: I think that could be a real possibility. The other concern that I have is not just around the whole—like, I know we are here to talk very specifically about the SORA, but there are also the preventative elements of trying to get ahead of these crimes before they happen. So in that sort of situation, what I would also hope happens is that if you are putting someone's details in and it comes up with a flag, there is some way that—I do not understand how IT works, so bear with me; I am just being very imaginative—if it does come up that 'Yes, this person does have a record and they are on the registry', then 'Hey, here's some contact information. Let's have a conversation about your relationship to this person and how you can either safely exit or how you manage or cope with that situation'. There needs to be some form of resource because—I do not

know that I need to tell anyone in this room this—victim services are a very tatty patchwork in this state and around the country.

The DEPUTY CHAIR: Thank you very much for your contribution and testimony today. They are very valuable for our report, and your contribution will be reflected in that. Hansard will provide you with a transcript of today's hearing. Please go through and check that you have not been misrepresented or misheard in any way before we make it publicly available. So thank you so much once again for sharing your experience and personal story.

Ms COOPER: Thank you for having us.

Mr McKISSACK: Thank you for having us.

Witnesses withdrew.