

## **LAW REFORM COMMITTEE**

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

Melbourne – 2 August 2002

#### Members

Mr R. H. Bowden

Ms D. G. Hadden

Mr P. A. Katsambanis

Mr T. Languiller

Ms A. L. McCall

Mr R. E. Stensholt

Mr M. H. Thompson

Chairman: Mr M. H. Thompson

Deputy Chairman: Ms D. G. Hadden

#### Staff

Executive Officer: Ms M. Mason

Research Officer: Ms K. Giles and Ms S. Kaufmann

#### Witnesses

Mr B. Ashen, Chair; and

Venerable T. P. Tan, Member, Management Committee, Buddhist Council of Victoria; and

Ms D. Cousens, Melbourne Sakya Centre, Member, Management Committee, Buddhist Council of Victoria

**The CHAIRMAN** — On behalf of the Victorian Parliament Law Reform Committee I welcome you to today's hearings. I invite you to speak to your submission this morning, following which we will ask questions of you.

**Mr ASHEN** — We had one submission from Di Cousens, who is from the Melbourne Sakya Centre, which is a member of the committee of the Buddhist Council of Victoria (BCV), and we had a working party that Venerable Thich Phuoc Tan was on. So I will ask Venerable Tan to go through what the working party came up with, and he will be followed by Di Cousens on her submission.

**Venerable TAN** — On Saturday the committee, with five people present, had a discussion about lying under oath and affirmation. In Buddhism we have a rule about truthful speech. At a different level for practitioners one of the basic five precepts of a Buddhist — that is, no. 4 — is not to practise false speech. So we would like to include that in this affirmation or oath because one of the five foundation precepts is that it is severe for people to break that rule in the Buddhist concept of creating the best karma. Therefore at the beginning of the oath — and it is very meaningful for all of us as Buddhists — when we refer to that precept it is a strong spiritual sin for all of us.

We therefore propose one of the lines which precedes the affirmation: in accordance with Buddhist precept of truthful speech and mindful of the consequences of false speech, I, (name), do solemnly, sincerely and truly declare that I will tell the whole truth and nothing but the truth. So that is the complete oath that the committee from the Buddhist council would like to propose.

In regard to the witnessing of statutory declarations we take into consideration the very cultural diversity in Buddhist communities, not to mention some of the ethnic diversity also in Buddhism. However, we also make some suggestions here, which we think might be easier and appropriate to apply in Buddhist communities. 'Sangha' is the word for monk, and means the monk's community; however, we just say monk. He is a fully ordained monk for at least five years and after five years is regarded as a qualified teacher.

As to the query whether an organisation or an individual should be a member of the BCV, because the council is a collective organisation made up of different members of Buddhist groups we know each other very well. Although not all Buddhist organisations are members of the BCV, the majority are. Therefore in this regard the council and the opinions of its committee members best represent the organisations as a whole.

Finally, as to the cross-cultural awareness training for court officials, we think it is important to have some input and suggest that Di Cousens's paper be used as a starting point to prepare the document to use as a background for printing paper in such training.

**Ms COUSENS** — I wrote my paper before the committee meeting of the Buddhist council. The Melbourne Sakya Centre is a member of the BCV so I would like to endorse the revised version of the oath for Buddhists, which is in accordance with the Buddhist precept of truthful speech. You had a lot of other questions in your paper about sacred texts. In my paper I have explained that there are too many sacred texts in Buddhism — it has been widely interpreted across countries and cultures over 2500 years, and you cannot find one book and say, 'That's the book for Buddhists'.

**The CHAIRMAN** — Mr Bowden has a question which might be opportune to pose.

**Mr BOWDEN** — Hopefully this is a helpful question at this point: in your submission you indicated that Buddhism has no one sacred text and that it is not customary or in some cases acceptable to swear a promise on it.

**Ms COUSENS** — That is right.

**Mr BOWDEN** — Does the council agree with this view and do you think courts need to provide any sacred text?

**Ms COUSENS** — As I have said in my submission, you do not need to provide sacred texts in a court context because the court is dealing with secular matters. Buddhism is very much a path to enlightenment — that is, it is a spiritual path — so the laws of the land apply and you do not have to bring in a Buddhist sacred text — and, as I said, there are too many.

**Venerable TAN** — Yes, I strongly agree because the Buddhist Tripitaka, which is the collection of the Buddha's direct speeches made over 49 years of teaching, contains a lot of text and each tradition adopts one text particularly for practising and purpose of ordering in that group. It is difficult to find a particular text. These texts are called Dhammapada and are widely accepted by most groups, but still not all groups use Dhammapada as one of their core teaching texts. Therefore if we cannot have every group agree then better not to have any.

**Mr LANGUILLER** — In your submission you state that Buddhists do not swear on the Buddha. Does that mean that the form of oath that Buddhists currently take in the Supreme Court manual is inappropriate?

**Ms COUSENS** — The form of oath that is taken in the Supreme Court — what is that, the affirmation?

**Mr LANGUILLER** — They do take an oath.

**Mr ASHEN** — When I saw that I cringed. I do not know where that oath came from, but it is not a very good one. Hopefully with the law reforms it might be changed.

**Ms COUSENS** — There are spiritual ceremonies where you are in front of a Buddha or you feel you are in the presence of the Buddha, but you do not swear on a statue or swear in the name of the Buddha. So maybe that is a subtlety that might elude the committee. You do not swear on a statue, you do not swear on a text, but you might say, 'The Buddha is my witness'.

**Mr LANGUILLER** — Just to follow up on that, would you feel that the standard affirmation is equally binding on their conscience, given your view about the court process?

**Ms COUSENS** — I think that it is a good thing to have oaths that are specific, that it is difficult to find a one-size-fits-all solution in these kinds of environments, and that it is going to have more impact on a Buddhist to say something that is culturally relevant to them. At the same time because the Buddhist precept of honest speech is a basic precept — the affirmation is about honest speech — I would not want to see the situation, and I think in the paper yesterday there was a discussion about this, of getting rid of any kind of oath or any reference to God. It is suitable to have different kinds of oaths for different groups of people because they are meaningful to those people. For those people who believe in God it is much more evocative to have some reference to God. It is better not to try for the one-size-fits-all policy.

**The CHAIRMAN** — If you would like to continue speaking to your paper.

**Ms COUSENS** — We go back to information on taking oaths: we do not want to swear on the Bible. On witnesses to affidavits, it is not proposed that all that ordained persons be given the right to witness affidavits. It is proposed those people who are respected within the community and have been given a position of responsibility be given this role. These could be abbots of monasteries or directors of dharma centres, which means Buddhist centres, in those monasteries or dharma centres that are affiliated with the Buddhist Council of Victoria.

There are some groups that call themselves Buddhists, but they might be something quite different to Buddhists. Buddhist groups are recognisable through having a Buddhist lineage. Some ad hoc groups spring up all over the place and they are not identifiable by us. Therefore we have

proposed that those that are members of the BCV are authentic Buddhist groups. Some authentic groups might not be members of the BCV — for example we do not have a Thai member — but we can tell you who are the authentic Thai members. It seemed necessary to have some kind of approval process and not just say that everybody is okay.

The official submission of the BCV says that it would only propose that witnesses of affidavits be ordained persons, either monks or nuns. That is absolutely relevant to born Buddhists, particularly from ethnic communities like Sri Lanka, Cambodia and whatever, but Australian-born Buddhists who have converted to Buddhism later in life — like 99 per cent of the population — are not and will never be ordained. If we are going to be more inclusive and pick up the diversity then it would be more relevant to make some laypeople have the power to also witness oaths. So I have proposed that dharma centre directors have that authority.

I do not know who has authority to witness oaths — for example, if you get a law degree for life you can witness an oath. I am not proposing that anybody who would be a layperson would have some kind of authority vested in them personally but vested in their position. So if somebody was a director, then in that position as director they would have that authority, but they would lose that authority if they were no longer a director.

On translation, probably a lot of work needs to be done on checking translations.

**The CHAIRMAN** — Getting back to the dharma centre directors, how many dharma centre directors are there in Victoria and what is their general background training expertise?

**Ms COUSENS** — How many dharma centres are there?

**Mr ASHEN** — There are about 80 Buddhist centres and organisations in Victoria. Usually a director is a well-respected member of that community. They would hold professional qualifications, or they might not hold professional qualifications.

**The CHAIRMAN** — Are these centres formalised in any way?

**Ms COUSENS** — They are incorporated associations that are required to submit annual reports, and so on.

**Mr ASHEN** — The directorship could last for a couple of years or three years, and some directors are in the position for 10 to 15 years. There is no specific time line for directors. However, some Buddhist groups do not have members of the Sangha or ordained monks and nuns in their organisation. Some organisations are purely lay Buddhists, so if there were someone in that community who could sign statutory declarations they would have to be a layperson, and if that were the case a director of that temple would be the person.

**The CHAIRMAN** — Amongst the membership of the temple groups what proportion would be English speaking and what proportion would be from a non-English-speaking-background people?

**Mr ASHEN** — We are talking about a community that has been established over 50 years. In the non-English-speaking-background communities that have been here for 25 years, a majority of, say, the Vietnamese community would speak English now, wouldn't they?

**Venerable TAN** — Yes. Of the second generation, most speak more fluent English than Vietnamese, and that increases over the following generation. The population of ethnic Buddhists is quite large. I am not aware of the current statistics, but figures for 1996 show that the largest group of Buddhists are of Vietnamese origin, followed by those who were born in Australia, although again they could have some ethnic background. Then we come to the Chinese, and so forth. I assume the ethnic group has a majority but the size of the group speaking English is definitely increasing.

**The CHAIRMAN** — The reason in part for my question is that if there are people who speak Vietnamese, Cambodian, Thai or a range of Chinese dialects, and there are people within those communities who are able to take affidavits — it might be community leaders or solicitors or pharmacists in the case of some of those communities that have been here a bit longer — is there a need to expand that grouping to the directors of the dharma groups?

**Ms COUSENS** — If I could mention here, as it is presently the case that only Christian ministers have the right to witness affidavits, I propose that this is unrepresentative and should be changed. If you are going to privilege one religious community, then it is prejudice, or it is not representative to only privilege that one religious community.

**The CHAIRMAN** — That is understood. Is a director of a dharma synonymous with a minister of religion or more synonymous with an ordained priest?

**Ms COUSENS** — A director of a dharma centre can have all kinds of roles. I have officiated at a wedding. People have lots of different kinds of jobs — pastoral care, teaching. Some directors of dharma centres are much more concerned with running the books, and so on, but it is not a non-religious role. You do not get to be a director of a dharma centre just because you are an accountant.

**Mr ASHEN** — Are Jewish rabbis recognised as being able to sign statutory declarations?

**Ms MASON** — I think the definition is a minister of religion who is authorised to celebrate marriages, so it is any religious minister. I do not know how minister restricts it.

**Mr KATSAMBANIS** — An imam and a rabbi have the power to do so.

**Mr ASHEN** — That excludes Buddhist monks because they do not officiate at weddings.

**Ms COUSENS** — I have to qualify that when I officiated at a wedding it was not in a legal role as an authorised celebrant. Is an authorised celebrant empowered to witness an affidavit?

**Mr KATSAMBANIS** — Yes.

**Mr BOWDEN** — With the differences between ordained ministers in one religion and other religions, wouldn't one practical way be for the directors to apply to become justices of the peace, because that position is authorised to do both statutory declarations and affidavits?

**Ms COUSENS** — That is an interesting proposal. What is the procedure for that?

**Mr BOWDEN** — You make an application to a member of Parliament of your choice, and then a certain process is followed.

**Ms COUSENS** — That would be a good solution.

**Mr BOWDEN** — It takes away the religious difficulty but it still enables the service to be provided.

**Ms COUSENS** — Yes, I think that is a good proposal.

**The CHAIRMAN** — We are getting through to translation.

**Ms COUSENS** — I think I have said it all in the submission.

**Mr ASHEN** — I wanted to make one point about something that happened in a court setting that was an example of the lack of understanding or training on behalf of the court or the court officer. The chair of the New South Wales Buddhist Council was called to appear as an expert witness on Buddhism in a court case. He was called up to give evidence and when he stood

in the court to give evidence the court official approached him with a Bible to take the oath. They knew this man was an expert on Buddhism, but still the Bible was put under his nose for him to be sworn on.

**The CHAIRMAN** — Which court was that?

**Mr ASHEN** — I am not sure what court it was in New South Wales, whether it was a magistrates court, Supreme Court or County Court. He said he was bemused by it because everyone knew fully well that he was there as an expert witness on Buddhism, yet they still approached him with the Bible to make an oath. I can understand that a courtroom can be just like a factory. It is an automatic thing and people like a court officer would automatically be approaching the witness with a Bible in one hand and not asking questions. Is it up to the witness to make the statement that they would rather make an affirmation?

**The CHAIRMAN** — In Victoria, yes.

**Mr LANGUILLER** — I wish to revisit one point, just reflecting on the fact that ministers of religion can witness an affidavit but we have not found accommodation for Buddhism, and presumably for many other religions. I know there is a way around it where you can get your own persons up to witness affidavits, but I also come back to the point of fairness. Are you saying that if high-ranking persons within other religions, whatever that means, or relatively high-ranking persons, whether it is ministers or whatever, can witness an affidavit, there should be an accommodation for Buddhism, and presumably for a whole range of other religions which may not necessarily be accommodated under the current system?

**Ms COUSENS** — Yes.

**Mr LANGUILLER** — There can be a way around it, and I think that is a practical suggestion for the time being, but how strongly do you feel about that point?

**Ms COUSENS** — As a first step I fully endorse the proposal for Buddhist monks or nuns who have been ordained for five years or longer, maybe one from each of the centres in the BCV, but in the longer term it would be appropriate to recognise that the Australian Buddhist community is not primarily an ordained community and that the leadership of that community is also a lay leadership.

**Mr ASHEN** — The point you are making is important. The Buddhist community sees what has been in place for many generations, that based on the Judaeo-Christian belief system and what goes with it, so with the Buddhists community as it is now we would like to feel we have an equal representation in relation to what we can do with powers, and so on, that are automatically given to the other religious traditions. The law, as it states now, that a minister of religion has the power to sign affidavits and statutory declarations because they can officiate at weddings, automatically excludes our community because of that fact. Hopefully the new laws can take that into consideration, that Buddhist monks and nuns who have been ordained for five years can apply to fill that role if they want to. Of course, not all Buddhist monks and nuns will want to do this, but if it is there I am sure the community will take advantage of it and use it.

**The CHAIRMAN** — What does the council think of the proposal to remove the religious oath entirely and replace it with a non-religious affirmation for all witnesses?

**Ms COUSENS** — I have already spoken to that a little bit. I will reiterate and say I think it is appropriate to recognise diversity and to have different oaths for different groups of people because you want people to make a commitment in terms that are meaningful to that person. For a large group of people that will involve swearing to God or whatever, so I would not want to discount that.

**Venerable TAN** — It makes good sense to have an oath in different religious versions; it is better than just straightforward mundane statements. To take it back one step, the ethnic community, particularly my own community, when they have a dispute they also go to the temple and make a statement. Each party takes it most seriously, that a person is making a more serious statement than just resolving it elsewhere. So a religious statement is stronger, at least some for religious people.

**The CHAIRMAN** — On behalf of the committee I thank you for taking the time to prepare a submission and attend today.

**Ms COUSENS** — Thank you, we really enjoyed the opportunity.

**Mr ASHEN** — And good luck.

**Witnesses withdrew.**