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LAW & JUSTICE



NSW Police Force
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Ms Madeleine Foley
Principal Council Officer
Legislative Council
Standing Committee on Law and Justice
Inquiry into Spent Convictions.

23 April 2010

Dear Ms Foley

Thank you for the opportunity to review the transcript of both mine and that of Chief Superintendent Trichter's appearance before the Standing Committee on Law and Justice on the 1 April 2010. I also note the request to provide a response to questions forwarded prior to the hearing, but were not reached on the day, and to those questions taken on notice during the hearing.

Both I and Chief Superintendent Trichter have reviewed the transcript and have made a number of minor corrections as prescribed on pages 14 and 16.

In response to the Question on Notice raised on page 14 of the transcript. **"What is your conviction rate of reports?"** I note the transcript records my advice that BOSCAR might be a more appropriate regime to provide that data.

On that basis inquiries were made and confirmation received that the NSW Bureau of Crime Statistics & Research (BOSCAR) is the body responsible for analysing and interpreting NSW crime reports and court result data. A request was made to BOSCAR for the relevant information which revealed that data for 2009 is not yet available, however, details for 2004 to 2008 is complete.

For this 5 year period BOSCAR records 106 persons aged 10 to 17 years were found guilty in NSW courts where their principal offence was a child sex abuse offence against a victim aged under 16 years.

During the same period, 2004-2008, NSW Police data indicates 822 persons aged below 18 were charged with sex offences against children. While the combined data suggests a conviction rate of approximately 12.8%, this may

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vary due to the period between charge and the court outcome (eg some persons charged in 2008 have not yet gone to trial.)

In respect of the question on notice raised on page 16 of the transcript.

“How often would juvenile offenders in sexual offences be given a period of detention that is greater than two years? What is the common sentencing period?”

BOSCAR has advised that of the 106 persons found guilty, twenty two received a custodial sentence with 4 receiving a custodial sentence of two years or greater.

It should be noted that the data used for analysis omits:

- Children's Court results from 2004-2005.
- any faulty court records where a penalty descriptor was missing
- offenders found guilty of a child sex offence but whose principal offence was a more serious charge.

Prior to appearing before the hearing a schedule of questions were received. A response to those questions not reached during the hearing is now provided.

Question 3

The submission from the Privacy Commissioner states that the largest category of inquiries to his Office involves complaints from past offenders that police officers have not blanked out spent convictions when sending out a copy of their criminal record, for example to a prospective employer. The Commissioner advises that his Office's (*sic*) numerous attempts to have the Police address this issue over the last six years have not met with success. What steps are you taking to address this issue?

In providing a response to this question I have caused inquiries to be made with the Criminal Records Unit who manages this function within the NSW Police Force. I am advised that the Unit is not aware of any specific examples where this situation has occurred.

Results of a National Criminal History Record Check (NCHRC) for employment, visa, licensing and adoption purposes are presented in the form of a National Police Certificate. The certificate lists all “disclosable court outcomes” recorded by Australian police jurisdictions against the applicant's name and/or fingerprints. “Disclosable court outcomes” are court outcomes which are released by a Police jurisdiction in accordance with the State spent conviction legislation applying in the State where the outcome is recorded. Outstanding court matters may also be included. The NSW Police Force do not issue “blanked out” matters on a National Police Certificate.

Spent convictions will only be released by NSW Police if required for a category of employment or purpose exempt from the *Criminal Records Act 1991*. However, if a NSW record is released to an interstate police jurisdiction

to enable them to issue a National Police Certificate or provide a result to an employer, spent convictions are released to that jurisdiction to ensure a 10 year crime free period from the date of the NSW Conviction, as outlined at Section 9 of the *Act*. The release of such information is permitted by Section 13 of the *Act* to ensure that convictions from another state are considered when calculating a crime free period for a conviction to become spent. However, the interstate jurisdiction will only release the spent conviction if it "un-spends" a subsequent conviction within 10 years (adults) or 3 years (children's court matters) or if the category or purpose of the check is exempt from spent conviction legislation i.e. working with children checks.

NSW Police would welcome details of specific examples so the assertions of the Privacy Commissioner could be further explored.

Question 6

Attachment B of the Government submission lists sex offences that are not being capable of becoming spent under the current spent convictions scheme. Are you aware if any category of offence would commonly attract a sentence of 6 months or less? Would any category of offence commonly attract a sentence of 12 months or less for an adult, or 24 months or less for a juvenile?

As NSW Police does not hold detailed sentencing statistics, an informed response to this question cannot be provided.

Questions 11

The court application model for sex offences requires the Attorney General and the Police Commissioner to be notified of any application for a spent convictions order, to give them the opportunity to intervene.

a. What are your views on this proposal?

There are merits in a court application model, as opposed to a model whereby the test is the category of offence or the penalty. Such a scheme would enable the court to take into account the specific circumstances of the offence. However, there may be significant practical difficulties if such a scheme were adopted.

The principal objection is the substantial increase in the workload for the courts, which are already significantly overloaded. There would be consequential adverse resource implications, in both cost and human resources, for police and, in particular, police prosecutors, the latter invariably inheriting responsibility for appearing in such proceedings.

If such a scheme were to be introduced, perhaps consideration could be given to modelling it along the lines of appeals in the Local Court against Habitual Offender Declarations under the Road Transport legislation. In that scheme, a Habitual Offender Declaration is the consequence of a traffic offender having been convicted of a certain number and category of traffic offences. The offender may then appeal to the Local Court against the declaration.

There is no respondent in such proceedings. In an analogous scheme in respect of spent convictions, the court could review the court file for the original offence and deal with the application on that basis.

It is of concern that there may be an expectation that NSWPF will intervene in every case, particularly having regard to the nature of sexual offences. The position the NSWPF takes in respect of any such matter may well be seen as arbitrary, thereby raising the questions: Who will make the judgment call whether to intervene? Who, in the NSWPF, will possess the necessary expertise to advise on such cases? What could the NSWPF provide that could add value to the process? Should NSWPF be engaged in the process at all?

b. In what circumstances could you envisage that the Police Commissioner would intervene?

The comments provided in response to Question 11a are additionally applicable. However, standard operating procedures would need to be developed, perhaps incorporating some kind of standard risk assessment ie, likelihood of adverse consequences in the event the conviction is spent. The Commissioner would be required to intervene, according to the likelihood of such adverse consequences.

c. What departmental processes would be required to track convictions that are due to be spent?

The notification process required to track convictions would require the Department of Justice & Attorney General to notify NSW Police via the existing Electronic Exchange of Court Outcomes (EECO) interface between their JusticeLink system and COPS. This would allow for orders to be automatically updated on a persons' record in COPS. Due to the timeframe required for advice on this matter, the technological and cost implications required to enhance JusticeLink and COPS to enable this functionality are unable to be provided. It should be noted if the EECO interface is not utilised for this purpose, there is a risk that spent conviction orders may not be received by Police which will place the accuracy and integrity of court outcome information in COPS at risk.

Regards



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23 April 2010