



## The New South Wales Bar Association

08/521

19 May 2010

Ms Madeleine Foley  
Principal Council Officer - Committees  
Standing Committee on Law and Justice  
Parliament House  
Macquarie St  
Sydney NSW 2000

Dear Ms Foley

***Re: Inquiry into spent convictions for juvenile offenders***

The Association appreciates the opportunity to appear at the NSW Legislative Council's Standing Committee on Law and Justice public hearing to discuss the issues surrounding spent convictions for juvenile offenders convicted of minor sexual offences and to also provide a written submission to its Inquiry.

The Association's Criminal Law Committee on behalf of the Bar Council, has prepared the following submission which supplements the evidence of Mr Warwick Hunt, Barrister, given alongside the evidence of Ms Debra Maher on behalf of the NSW Law Society before the Inquiry on 1 April 2010.

The Council supports the broad principles expressed in the two submissions by the Law Council of Australia made to the Standing Committee of Attorneys-General into the proposed Model Bill in relation to spent convictions generally. During his appearance before the Inquiry Mr Hunt tabled those Law Council submissions. The NSW Bar Association had significant input into the production of those submissions.

Further, the Council adopts the submission of the NSW Law Society and its response to questions taken on notice by Ms Maher during her evidence.

In relation the questions on notice forwarded to Mr Hunt by the Principal Council Officer, the Bar Council responds as follows:

**Q3: The model spent convictions bill sets out more generous eligibility criteria for spent convictions than currently exist.....given the proposal to broaden the eligibility criteria for all offences, does this impact on your view of whether sex offences should be included in the spent convictions scheme.**

The balance to be struck in relation to spent convictions for sex offences (and particularly for juvenile) relates to two issues of public interest. On one hand the

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public interest in appropriate offenders being able to rehabilitate themselves and engage in lawful employment and community activities and on the other, the importance of the community being on notice as to the past of serious sexual offenders.

It ought be noted that, without other review, nothing in any change or maintenance of conditions in relation to spent convictions for sex offences will impact on the operation of either of the Child Protection Register or the *Commission for Children and Young People Act 1998*.

The more generous criteria for spent convictions proposed by the Model Bill does not affect the Council's view that sex offences by juveniles ought be capable of being spent. This is particularly so, as juveniles who commit sexual offences about which the community remain on notice will generally attract more serious penalties than those that are provided for maximum criteria for the spending of the relevant conviction.

**Q4: The submission from Prof Dianna Kenny (SUB 18, P4) argues that more research is need into sentencing trends for juveniles before deciding on the benchmark sentence under which a sex offence could be spent. What is your view on the sentence of 24 months in the Model Bill, and the suggestion that further research is required?**

The Council supports the development of policy and legislation based on empirical evidence. The Council suggests that an interrogation of existing statistics (and in particular those held by the Judicial Commission of NSW) and research may answer Professor Kenny's concerns.

There are benefits to uniformity of criteria across all classes of offences. The 24 month sentence criterion is appropriate for juvenile offenders in relation to offences generally.

**Q7: Some submissions oppose the court application model for sex offences because it would disadvantage young persons who do not have access to legal information and resources. To address this the Salvation Army (SUB 14, P3) recommends that legal aid be made available to applicants and that information on the application scheme be provided at the time of sentencing. Should young people be supported to access the court application process?**

If a court application procedure was adopted, legal aid ought be available and the offender advised of the process at the time of sentence. That mechanism, is administratively cumbersome and keeps young people engaged with legal processes that are foreign to them and would in practice provide a further obstacle to youth employment and rehabilitation. An automatic spending of all eligible convictions on meeting the relevant statutory criteria is supported.

**Q9: The court application model for sex offences requires the Attorney General and the Police Commissioner to be notified of any application for an order for a sex offence to be spent, to give them the opportunity to intervene. What are your views of this provision?**

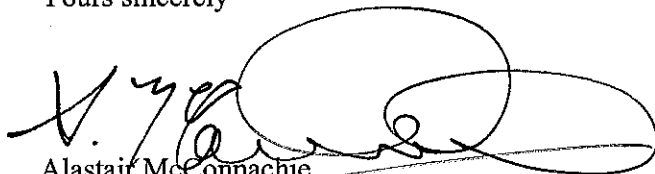
The Council considers this mechanism is cumbersome, apt to politicisation and ought not be adopted.

**Q10: The court application model for sex offenders provides that an offender must wait two years after an unsuccessful application for a spent convictions order before re-applying to the courts. What are your views on this provision?**

If the court application model was adopted, which is not supported, there ought be a period before a re-application can be made, to avoid abuse of the process. Two years seems arbitrary and restrictive. The Council would support a restriction on further application to a period of 12 months unless exceptional circumstances can be demonstrated, in which case a further application could be brought with 12 months of an unsuccessful application. Apart from being cumbersome and restrictive, this model, whatever the waiting period would be costly in terms of government resources for little demonstrable benefit.

Please do not hesitate to contact me on 9229 1756 or Cindy Penrose, Policy Lawyer on 9229 1739 should you have any queries regarding this matter.

Yours sincerely

A handwritten signature in black ink, appearing to read 'A. McConnachie', written over a horizontal line. The signature is stylized and somewhat cursive.

Alastair McConnachie  
Acting Executive Director