YJC Youth Justice Coalition

A Coalition of Youth, Legal and Welfare Workers

28 April 2010

The Director
Standing Committee on Law and Justice
Legislative Council
Parliament House
Macquarie Street
SYDNEY NSW 2000

By email: lawandjustice@parliament.nsw.gov.au

Dear Director,

The Youth Justice Coalition's response to Questions on Notice

The Youth Justice Coalition (**YJC**) thanks the NSW Legislative Council Standing Committee on Law and Justice for the opportunity to give oral evidence to the Inquiry into spent convictions for juvenile sex offenders.

Please find attached our response to the questions asked by the Committee on notice. We look forward to your comments. In the meantime, should you have any questions, please do not hesitate to contact Katrina Wong, Convenor of the Youth Justice Coalition on 9559 2899 or at Katrina_Wong@clc.net.au

Yours faithfully,

Katrina Wong
Convenor, Youth Justice Coalition

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RECOMMENDATIONS

1. That the Committee not make recommendations in relation to the *Model Spent Convictions Bill 2009* without first calling for detailed submissions.

Recommendations on the Model Spent Convictions Bill 2009

2. The Model Bill to be changed to reflect the provisions of the NSW *Criminal Records Act 1991,* making all convictions eligible to be spent, except those that are prescribed.
3. The Model Bill to be changed to allow sex offences committed by young people to be spent without an application to a court.
4. If Recommendation 3 is not adopted, that clause 9 of the Model Bill be changed to include a presumption that an application will be granted, unless there are particular circumstances justifying a refusal.
5. The Model Bill to be changed to provide that all findings of guilt that do not proceed to conviction are immediately spent.
6. The Model Bill to be changed to allow all convictions for minor offences to be immediately spent.
7. The definition of 'minor offence' to be changed to express the value of the penalty imposed in penalty units, rather than in a fixed dollar amount. The number of penalty units should also be significantly increased.
8. That clause 7 (3) of the Model Bill be changed to exclude registrable persons who were convicted of an offence committed when they were under 18 years of age.

Recommendations in response to the Questions asked on Notice

9. The qualification period required for young offenders should not be extended to five years.
10. The eligibility criteria for convictions capable of being spent should be broadened to include offences committed by a young person for which a penalty of less than 24 months imprisonment was imposed.
11. A court application model should not be adopted for sex offences committed by young people.
12. If Recommendation 11 is not adopted, Legal Aid should be provided to all applicants applying to a court to have a conviction spent.
13. The court application model should allow an application to have a conviction spent to be heard in any jurisdiction, regardless of where the conviction was originally imposed.

14. **The court process should not be politicised by allowing the Attorney General or Commissioner of Police to intervene in the hearing of an application to have a conviction spent.**
15. **In court applications to have a sex offence spent, consideration should only be given to adopting those additional assessment criteria that are relevant to an offender's rehabilitation.**
16. **That no minimum time period be imposed before a young offender can reapply to a court to have an offence spent, after having made an unsuccessful application.**
17. **The court to have a discretion to dismiss applications that are frivolous, vexatious or completely without merit.**

INTRODUCTION

Before addressing the specific questions on notice asked by the Committee the YJC wishes to make some general comments.

Adoption of the *Model Spent Convictions Bill 2009*

We note with some concern that the Committee may be considering a recommendation that the NSW Parliament adopt the *Model Spent Convictions Bill 2009* (**"The Model Bill"**). The Model Bill was not included in either the terms of reference for the Inquiry or the Discussion Paper issued by the Committee. The YJC was not asked to provide submissions on adopting the Bill and has not had an opportunity to consider a detailed response to any such proposal. The adoption of the Bill would mean a broad change to the spent convictions regime in NSW and goes far beyond issues relating solely to juvenile sex offenders. We further note that the Discussion Paper for the Inquiry explicitly stated.

"*The Committee is only examining sexual offences. It is not examining other offences and is not examining the spent convictions scheme in general. The Inquiry will only consider whether convictions for sexual offences that otherwise meet the criteria to become spent should be capable of being spent.*"[1]

If the Committee were giving serious consideration to recommending the adoption of the Bill, we would strongly urge it to call for detailed submissions on the proposal.

Recommendation 1

That the Committee not make recommendations in relation to the *Model Spent Convictions Bill 2009* without first calling for detailed submissions.

Comments and recommendations on the Model Bill

Having noted our concerns, we would make the following preliminary comments regarding the Model Bill.

The Model Bill was the subject of a consultation process conducted by the Victorian Department of Justice in 2009. There were numerous submissions made to the Department by a variety of public, community and private organizations. In particular, the Public Interest Law Clearinghouse (**PILCH**) and the Victorian Association for the Care and Resettlement of Offenders (**VACRO**) provided a detailed joint response to the Bill.

[1] Standing Committee on Law and Justice, *Discussion Paper: Inquiry Into Spent Convictions for Juvenile Offenders* (2009) p 3

PILCH/VACRO submission

We note the recommendations made by PILCH and VACRO in their submission to the Victorian Department of Justice. In particular, the specific recommendations supported by the YJC include:

Recommendation 1

The Bill should contain an object or purpose giving explicit consideration to the ways in which the rehabilitation and reintegration of offenders is affected by criminal record discrimination.

Recommendation 2

In light of the deficiencies in current anti-discrimination legislation in Victoria and federally, the Bill should be amended to prohibit discrimination on the basis of irrelevant criminal record.

Recommendation 3

The Bill should be reconfigured to provide that criminal record information may be released only where relevant and that in such circumstances the disclosure be limited to offences relevant to the specific employment position.

Recommendation 4

The Bill should be amended to reflect that a specific purpose or object of the legislation is to facilitate rehabilitation and reintegration of offenders into the community.

Recommendation 5

The Bill should be amended to provide that findings of guilt and criminal investigations may not be disclosed in any circumstances.

Recommendation 6

The qualification period for adults should be reduced from ten to seven years and for juveniles from five to three years.

Recommendation 7

The Bill should be amended to provide that minor offences may not be disclosed on a criminal record.

Recommendation 10

The definition of 'minor offences' in the Bill should be amended to include summary offences (with any necessary limitations) and infringement offences.

Recommendation 11

Sex offences should be subsumed within the Bill and the definition of 'eligible offences'

Recommendation 12

If recommendation 11 is not adopted, the Bill should provide that eligible sex offences may be spent on application. Victoria Legal Aid funding should be made available to assist offenders with applications under these provisions.

Recommendation 13

Discrimination provisions in the Bill should be dealt with in a separate section and the Bill should specify that discrimination on the basis of a spent conviction is an offence.

(References to Victoria should be read for the purposes of this submission as referring to New South Wales)

A copy of the PILCH submission is enclosed with this paper.

Additional comments on Model Spent Convictions Bill 2009

In addition, we wish to draw the Committee's attention to the following key points not addressed in the PILCH submission.

The Model Bill should require the "exclusion" of offences from a spent convictions regime, rather than their "inclusion".

The Model Bill proposes that only eligible offences be capable of becoming spent. Although the category of eligible offences is quite broad (but still inappropriately limited, as discussed below), an offence must be included within that category to capable of becoming spent. In simple terms, the approach of the Model Bill is that no convictions can be spent, except offences falling within a particular definition. Or in other words, for a conviction to be capable of being spent it must be "included" in the category of eligible offences.

This is the opposite of the current approach to spent convictions in NSW. The *Criminal Records Act 1991* (NSW) provides that all convictions are capable of becoming spent, except those of a certain type or for a which a particular sentence has been imposed. Again in simple terms, the approach of the NSW spent convictions scheme is that all convictions can be spent except those that are prescribed. Or in other words, only those convictions that are "excluded" are not capable of becoming spent.

While this may seem like an argument about semantics, the two approaches have quite different practical implications.

Firstly, the "exclusionary" approach of the NSW spent convictions scheme creates a presumption that all convictions not excepted are capable of becoming spent. This is a factor for the courts when considering how any ambiguities in the legislation are to be interpreted.

Secondly, the "exclusionary" approach of the NSW scheme reflects the rationale of the spent convictions regime, the starting point of which is to give all offenders a chance to rehabilitate.

The recommendation of the YJC is that the "exclusionary" approach of the NSW spent convictions regime be adopted. To reflect this, the Model Bill should be changed to allow all convictions to be spent except those that are prescribed.

Recommendation 2

The Model Bill should be changed to reflect the provisions of the NSW *Criminal Records Act 1991,* making all convictions eligible to be spent, except those that are prescribed.

Opposition to a court application model for sex offences committed by young people

The YJC wishes to reiterate its opposition to a spent convictions regime that requires offenders convicted of a sex offence to apply to a court to have that conviction spent. As noted in our previous submission, such a model is without an empirical basis and is inequitable.

Given this submission, it is the recommendation of the YJC that the category of prescribed eligible offence in the Model Bill be abolished. This would allow sex offences to be dealt with in the same way as all other offences.

Recommendation 3

The Model Bill to be changed to allow sex offences committed by young people to be spent without an application to a court

If a court application model is adopted, a presumption should be included that an application will be granted

Clause 9 (5) of the Model Bill directs the court to undertake a balancing exercise when considering an application to have an offence spent. Matters such as the seriousness of the crime and the extent of the offender's rehabilitation are to be weighed by the court in reaching a decision.

Such an approach places a clear burden on the applicant to convince the court that they have been successfully rehabilitated and that they no longer pose a threat to the community. In the view of the YJC, placing this burden on the applicant is too onerous and does little to provide additional protection to the community.

Before an offender can even make an application to the court they must already have served the required qualification period. This would mean that they have not committed any new offences for at least three, five or seven years, depending on the model adopted. This is in itself a very strong indication that they have been successfully rehabilitated. In addition, as noted in the YJC submission there is no evidence that young people convicted of sex offences are more likely to commit further sex offences.

Of further concern are applications to spend offences involving underage consensual sex. In making such an application it will be very difficult for the young person to show evidence of rehabilitation. Sex offender programs are not appropriate in those circumstances. This is because offences involving under age consensual sex committed by young people do not involve the coercion, violence or predatory behaviour that is of concern in cases of non-consensual sex offences.

It is the submission of the YJC that these concerns can be addressed by including a presumption that an application be granted. A clause could be added to the Model Bill that would create such a presumption, but could further provide that the presumption be displaced in certain circumstances. The court could then be directed to a consideration of the matters currently listed in clause 9 (5) in deciding whether the presumption should in fact be displaced.

Such an approach would more appropriately reflect the aims of a spent convictions regime, by only preventing those offenders who pose a special risk to the community from having their conviction spent.

Recommendation 4

That clause 9 of the Model Bill be changed to include a presumption that an application will be granted, unless there are particular circumstances justifying a refusal

No mechanism for immediately spending findings of guilt where no conviction is recorded

Currently under section 8 (2) of the *Criminal Records Act 1991* (NSW), when an offender is found guilty but the court does not proceed to enter a conviction, that offence is immediately spent. Under the Model Bill however, there is no such provision. An offender in such circumstances will have to wait the prescribed qualifying period (10 years or 5 years for adults and juveniles respectively) before the finding can be spent. It is only in determining the effect of a second or subsequent offence that the Model Bill recognises a category of minor offences (which includes findings of guilt that do not proceed to a conviction).

The YJC would strongly oppose the adoption of such an approach to findings of guilt that do not proceed to conviction. Exposing the offender to the significant stigma, discrimination and other detrimental impacts of having to disclose a criminal record, even though the court did not consider the crime serious enough to impose a penalty, is inappropriate. It undermines the principle of rehabilitation that underpins the spent convictions regime without any commensurate benefit of increasing the protection of the community.

Recommendation 5

The Model Bill to be changed to provide that all findings of guilt that do not proceed to conviction are immediately spent

Definition of minor offence is too restrictive

The Model Bill provides that an offence for which a penalty of less than $500 is imposed is a minor offence. Where a person is convicted of a minor offence while serving the qualification period for a previous offence, that minor offence will be disregarded.

The opinion of the YJC is that minor offences should not be restricted only to consideration of the qualification period for a subsequent offence. In addition, minor offences should always be immediately spent at the time that the conviction is imposed, regardless of whether it is a first or subsequent offence. However, we would wish to address the reasons for this opinion in much greater detail in further submissions, should the Committee consider adopting the Model Bill.

Further, the YJC supports the recommendation made by PILCH and VACRO that minor offences be defined by reference to penalty units, rather than as a fixed dollar amount. This is in line with current legislative practice and would not require constant amendments to the legislation to keep up with inflation.

In addition, the suggested monetary limit of $500 (or just under 5 penalty units, each penalty unit being the equivalent of $110) is far too low and would not include many relatively minor offences. An example of such an offence is driving with two persons over the age of 16 who are not wearing seatbelts. That offence is punishable by a fine of up to $2200 but a penalty of $506 is commonly imposed.[2]

Further research into the monetary penalties commonly imposed by courts must be conducted before any recommendation on a specific number of penalty units can be made. However, it is opinion of the YJC that it should be significantly increased.

Recommendation 6

[2] *Road Rules 2008* (NSW) r 265, *Road Transport (General) Regulation 2005* (NSW) Sch 3

The Model Bill to be changed to allow all convictions for minor offences to be immediately spent.

Recommendation 7

The definition of 'minor offence' to be changed to express the value of the penalty imposed in penalty units, rather than in a fixed dollar amount. The number of penalty units should also be significantly increased.

Clause 7 (3) of the Model Bill would create significant inconsistencies when applied.

Clause 7 (3) of the Model Bill extends the period of time an offender must wait before the conviction can be spent, where the person is also a registrable offender under the *Child Protection (Offender Registration) Act 2000* (NSW) (CPA). In such a case, the qualification period continues until the reporting period under the CPA expires. In the case of a young person who has committed a registrable offence (such as kidnap of a child or sexual intercourse with a child) the reporting period is a minimum of 8 years and can be as much as 15 years or their lifetime. This creates a significant inconsistency in the application of the Model Bill.

On the one hand the Model Bill provides that where a young person has committed a sex offence, that offence (by court order) is capable of being spent after 5 years. But on the other hand, the CPA applies to convictions for almost all sex offences committed against children. Other children are the most likely victims of a sex offence committed by a young person and therefore the CPA will apply to almost all young people convicted of a sex offence. In particular, young people convicted in cases of underage consensual sex are registrable persons for the purposes of the CPA. This will mean that the young person's conviction (even in cases of under age consensual sex) will not be capable of being spent for a minimum of 8 years.

In effect, clause 7 (3) of the Model Bill renders the stated qualification period for sex offences committed by a young person irrelevant. The reality will be that a young person convicted of a sex offence will not be able to have that conviction spent for at least 8 years. The YJC recommends that section 7 (3) of the Model Bill be changed so as not to apply to a registrable offender where the offence was committed as a juvenile.

Recommendation 8

That section 7 (3) of the Model Bill be changed to exclude registrable persons who were convicted of an offence committed when they were under 18 years of age.

We now move on to answering the questions on notice asked by the Committee.

QUESTIONS ON NOTICE

QUESTION 7

"The Model Bill sets out more generous eligibility criteria for spent convictions than currently exist. Currently eligible offences include those where the prison sentence is less than 6 months, with a good behaviour period for an adult of 10 years and 3 years for a juvenile. Under the Model Bill, eligible offences include those where the sentence is less than 12 months for an adult and 24 months for a juvenile. Given the proposal to broaden the eligibility criteria for all offences, does this impact on your view on whether sex offences should be included in the spent convictions scheme?"

Given our submission that there is no empirical evidence for treating sex offences differently to other offences, a change to the eligibility criteria for spent convictions would not effect our view that sex offences should be capable of becoming spent.

However, we would make the following comments about the proposed changes.

Changes to the eligibility criteria

In the view of the YJC, the Model Bill does not "[set] *out more generous eligibility criteria than currently exist* [in NSW]".

No mechanism to immediately spend findings of guilt where no conviction is recorded

As noted above, the Model Bill does not provide for a finding of guilt to be immediately spent where no conviction has been recorded. This would make the impact of the Model Bill much more severe than is currently the case in NSW, particularly given that most minor offences are dealt with by such orders.

A good behaviour period of five years for young people is too long

In addition, the proposed good behaviour period (or qualification period as it is referred to in the Model Bill) of five years for juvenile offenders is less generous than the current criteria. The YJC does not support an extension of the qualification period to 5 years for an offence committed by a young person

Our objections are as follows:

1. The principles of juvenile justice emphasise the importance of promoting the rehabilitation of a young offender. Extending the qualification period to five years increases the period of time that the young person will suffer the stigma and discrimination that results from

having to disclose a criminal record. As noted in the YJC submission, this makes it harder for the young person to obtain employment, undertake study and places them at greater risk of being marginalised and exploited.

2. In particular, increasing the qualification period to five years will mean that most young people will have to continue to disclose offences at critical points in their development. Young people applying for admission to university or trying to obtain employment after having finished further education at the age of 18 – 21, are unlikely to have completed the qualification period. Disadvantages suffered by young people at such a crucial time in their life are likely to have a significant long-term impact on their future.
3. As Jane Sanders (representing the YJC) noted in her oral evidence to the Committee, the qualification period for a conviction only begins after the sentence imposed for the offence has been served. This means that a young person who commits an offence at the age of 16 may have to wait a year for the matter to go to trial, they then have to serve the sentence (which can be up to two years) and then finally the qualification period begins. Extending the qualification period to five years would in practice mean that it might be seven or eight years before a young person would not have to disclose having committed the offence. A young person who committed an offence at age 16 may be 24 before the conviction is spent, well past the time that they would have been applying to study or attempting to obtain employment.
4. There is no evidence to show that a young person is more likely to have successfully rehabilitated after five years as opposed to three years. In fact, it is the view the YJC that the longer a young person is exposed to the disadvantages of having to declare a criminal record, the higher the chance that they will re-offend.

The YJC does not believe that the qualification period for young offenders should be extended.

Recommendation 9

The qualification period for young offenders should not be extended to 5 years.

Increasing the maximum period of imprisonment to 24 months

The expansion of eligible offences to included those for which a young person has been sentenced to less than 24 months imprisonment is certainly more generous and is fully supported by the YJC. Such an expansion is consistent with the principles of juvenile justice and emphasises the importance of giving a young person every opportunity to rehabilitate.

Recommendation 10

The eligibility criteria for convictions capable of being spent should be broadened to include offences committed by a young person for which a penalty of less than 24 months imprisonment was imposed.

QUESTION 10

"One of the reasons expressed in your submission (p 24) for not supporting the court application model is because young people may not have the financial resources or knowledge to access the court system. You also suggest that young people may be deterred by the possibility of publicity surrounding their application. To address this, the Salvation Army (Sub 14, p 3) recommends that legal aid be made available to applicants and that information on the application scheme be provided at the time of sentencing. Would this address your concerns?"

Before addressing this question the YJC wishes to reiterate its opposition to a spent convictions model that only allows a conviction for a sex offence to be spent by application to a court.

General objection to a court application model

As noted in our submission, young people who have committed sex offences are more likely to be socially disadvantaged and would commonly face significant barriers when trying to access the justice system. Further, there is no empirical basis for treating sex offences differently to other offences. Young people who commit sex offences are not more likely to commit further sex offences; in fact they are less likely[3].

There is no evidence that the community needs the additional protection from young sex offenders that would supposedly be provided by the court application process. Making it less likely that a young sex offender will be able to have their conviction spent merely decreases their chances of rehabilitation and may have the opposite effect of pushing them towards re-offending.

Recommendation 11

A court application model should not be adopted for sex offences committed by young people.

Provision of legal aid in court application model

Despite our general opposition to a court application model, if such a model were adopted the YJC would strongly support the provision of Legal Aid for such applications. However, the provision of legal aid to applicants does not sufficiently address our concerns about access to the court system.

[3] Alfred Allan, Maria Allan, Peter Marshall, Katalin Kraszlan, *Recidivism Among Male Juvenile Sex Offenders in Western Australia* (2003) 2 PPL 359 at 366

Recommendation 12

If Recommendation 11 is not adopted, Legal Aid should be provided to all offenders applying to a court to have a conviction spent.

Additional concerns about access to the court application process

There is an important distinction between resources being available and a young person being able to effectively access those resources. Even if Legal Aid is available, the young person may face barriers in trying to obtain that aid.

Knowledge of the existence of the scheme

Even if information is provided on the process at the time of sentencing, there is a long delay between conviction and the young person actually being able to make an application. They must successfully complete the qualification period, which may be up to seven years (under the Model Bill) after they were convicted. Young people who have committed sex offences are likely to be disadvantaged and may face competing pressures in their daily lives. It is unlikely that after three, five, or seven years, they will have retained the information about their rights in relation to spent convictions.

Capacity to make an application for legal aid

A young person, who knows that they can make the application and is aware that legal aid is available, may still not have the resources to successfully apply for that aid. A young person may not have a stable address that correspondence can be sent to. They may have trouble understanding the process and their obligations. They may have difficulty in complying with the requirements of the process such as providing supporting documentation.

Resources for reports and expert opinions

The burden in a court application is on the applicant to show that they have been successfully rehabilitated. In order to show this, the young person will need to provide evidence in the form of reports and expert opinions. Obtaining such reports requires financial resources that the young person is unlikely to have, but a failure to obtain them could have a significantly detrimental impact on the young person's application.

Applications must be made in the jurisdiction where the conviction was imposed

The Model Bill provides that an application to the court can only be made in the jurisdiction where the conviction was imposed. Therefore, a court in NSW cannot spend a conviction imposed by a court in WA. This is potentially a very significant barrier to a young person being able to make an application.

As noted above, the lapse of time between a conviction being imposed and the young person being eligible to make an application to court can be significant. It is quite possible that the young person may have moved to another jurisdiction, possibly following family breakdown or in search of employment. A young person would then have to bear the significant expense and inconvenience of travelling and staying in the original jurisdiction while the application was heard. In the opinion of the YJC, in those circumstances most young people will not be able to access the court application process.

In addition, it is inequitable that a young persons' criminal record and their obligation to disclose that record should apply nationally, while their right to deal with that criminal record should be limited to the jurisdiction in which the conviction was imposed.

Recommendation 13

The court application model should allow an application to have a conviction spent to be heard in any jurisdiction, regardless of where the conviction was originally imposed.

QUESTION 11

"The court application model in the Model Bill requires the Attorney General and the Police Commissioner to be notified of an application for a spent convictions order, to give them the opportunity to intervene. What are your views on this provision?"

The YJC strongly opposes any provision that would allow the Attorney General or Police Commissioner to intervene in an application to the court to have a conviction for a sex offence spent.

It is not clear what reasons could justify the inclusion of such a provision. In the absence of those reasons is hard not draw the conclusion that such a provision is intended to allow political considerations to intervene in the court process. An example of this might be where a young person has committed an offence that has attracted a high level of media attention and public condemnation.

However, the fact that the Government of the day may wish to respond to public or media pressure is no basis on which a court should determine an application. This would be a blatant politicisation of the process and has no foundation in principles of justice or rehabilitation. The fact that a young person may have committed an offence that has drawn considerable media and public attention is not relevant to either their rehabilitation or to the risk that they may continue to pose to the community.

Recommendation 14

The court process should not be politicised by allowing the Attorney General or Commissioner of Police to intervene in the hearing of an application to have a conviction spent

QUESTION 12

"Submissions suggest a number of additional factors for the courts to consider in assessing an application for a spent convictions order, including whether the sex offender has participated in rehabilitation programs, and a victim's impact statement. Would it be appropriate to consider such additional assessment criteria?"

If a court application model is adopted, the YJC considers that some additional assessment criteria may be appropriate. However, those criteria need to be carefully considered and directly relevant to the application.

Rehabilitation as a factor

An appropriate criterion may be the young person's participation in a sex offender's program. Although their participation or failure to participate in such a program should not be determinative of their application, it could be relevant in considering the extent to which the young person has been rehabilitated.

However, one concern the YJC wishes to highlight is with applications to spend offences that involve under age consensual sex. In those circumstances, sex offender programs are not appropriate, as the young person is not in need of rehabilitation and exposure to other sex offenders may place them at risk. The fact that they have not participated in such a program should not be a relevant consideration for the court in deciding their application.

Further, as discussed above, it will generally be very difficult for a young person in circumstances involving underage consensual sex to demonstrate that have been sufficiently rehabilitated. This is because the offence does not involve the coercion, violence or predatory behaviour that is of concern in cases of non-consensual sex offences.

Victim's impact statement is not relevant to a court application

A victim's impact statement, while very important in some circumstances (such as applications for compensation), is not relevant to an application by an offender to have their conviction spent.

It is when the court is imposing the conviction itself that a victim's impact statement should be considered, and the seriousness of that impact should be reflected in the severity of the sentence. But once that sentence has been served, and an offender is applying to have the conviction spent, the victim's statement is no longer relevant. The only relevant considerations are those that relate to the extant that the offender has rehabilitated and whether or not they pose a continuing risk to the community. This reflects the underlying rationale for the spent convictions regime, which is to balance the competing interests of offender rehabilitation and protection of the community.

Support for criteria that are relevant to rehabilitation

The YJC would support the inclusion of relevant assessment criteria but would oppose the inclusion of other criteria, such as victims' impact statements.

Recommendation 15

In court applications to have a sex offence spent, consideration should only be given to adopting those additional assessment criteria that are relevant to an offender's rehabilitation.

QUESTION 13

"The court application model for sex offences 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?"

The YJC considers that making a young person wait for two years to reapply after making an unsuccessful application to the court is too long a time period.

Facilitating rehabilitation

The circumstances of young people can change rapidly as they develop and mature and it is possible that they may be significantly rehabilitated in a period of time much shorter than two years. If a young person has successfully completed a sex offender program since their last application or has been undertaking counselling or further study, they may have considerably changed their personal circumstances.

However, if despite having made positive changes a young person is prevented from making a further application to the court, they will continue find it hard to obtain employment and will still be stigmatised. This may reverse the positive changes that they have made and undermine their rehabilitation.

Court discretion but no minimum time limit to reapply

As an alternative, the YJC proposes that no minimum time limit be imposed between applications. Instead, the court should be given discretion not to hear an application where that application would be vexatious or completely without merit. This would allow the courts to protect the process from abuse but not restrict a young person's legitimate interest in having their conviction spent as soon as possible.

Recommendation 16

That no minimum time period be imposed before a young offender can reapply to have an offence spent, after having made an unsuccessful application.

Recommendation 17

The court to have a discretion to dismiss applications that are frivolous, vexatious or completely without merit.