

INQUIRY INTO SPENT CONVICTIONS FOR JUVENILE OFFENDERS

Organisation: NSW Government

Date received: 15/03/2010

NSW GOVERNMENT SUBMISSION TO THE LEGISLATIVE COUNCIL
STANDING COMMITTEE ON LAW AND JUSTICE'S INQUIRY INTO SPENT
CONVICTIONS FOR JUVENILE OFFENDERS

BACKGROUND

Law in NSW

Crimes Act 1900

Prior to the introduction of the *Criminal Records Act 1991* (NSW) (**Criminal Records Act**), section 579 the *Crimes Act 1900* (NSW) allowed a conviction to be spent after 15 years of the sentence being served and no other convictions being recorded. The section provided that the conviction may be disregarded for all purposes and the person concerned may answer questions about convictions as if the conviction had never occurred.¹

The purpose of the Criminal Records Act

In 1991, the then Attorney General, the Hon John Dowd, introduced the Criminal Records Act. In his second reading speech to Parliament, he noted the Act provided some "positive encouragement and incentive for previous offenders to refrain from unlawful conduct" and noted that one of the "basic objectives of the criminal justice system is to encourage the rehabilitation of offenders in order that they may become responsible and productive members of society".² The spent convictions scheme reflects the need to ensure that past offenders are not unduly disadvantaged for past (often minor) offences, after lengthy periods of good behaviour.

The Criminal Records Act

Under the Act, an offender's conviction is spent when:

- the person's sentence is 6 months or less, and
- if the person is an adult they have not been convicted of a crime punishable by imprisonment for 10 consecutive years, or if the person is a child (prosecuted in the Children's Court) they have not, for three years or more, been the subject of a control order or convicted for an offence punishable by imprisonment.³

The crime-free period commences from the date of conviction. Once, a conviction is spent it cannot later be revived.⁴

The exclusion of convictions that incurred an imprisonment sentence of more than 6 months seeks to ensure that serious offences are not covered by the scheme. In this way, the scheme attempts to balance the need to facilitate the rehabilitation of past offenders, and the need to avoid societal concern regarding the concealment of serious past offences.

The purpose of the crime-free behaviour requirement is fundamental. The then Attorney General, in his second reading speech, recognised that 'the length of the rehabilitation period is one of the most important aspects of the scheme. It must be sufficiently long so that at its conclusion, society can be confident there is little likelihood of further offences being committed. From the point of view of the past offender, the benefits of the scheme should be available within a reasonable period of time if

¹ Mr Dowd (Attorney General) Legislative Assembly 27 February 1991

² Mr Dowd (Attorney General) Legislative Assembly 27 February 1991

³ Part 2 of the *Criminal Records Act 1991* (NSW)

⁴ *Criminal Records Act 1991* (NSW), section 8(6).

they are to be of any real assistance'.⁵ For this reason, the determination of the 10 year crime-free period for adults was based on the findings of recidivism studies carried out in the UK by the Home Office Research Unit, in 1972, and in NSW by the Bureau of Crime Statistics and Research in 1977. These studies showed that the risk of an individual re-offending after 10 years of crime-free behaviour is negligible. Additionally, other legislative provisions at the time (such as the *Credit (Administration) Act 1984* (NSW)) specified 10 years as the period during which convictions were a relevant consideration for licensing of credit providers.

The provision of a shorter crime-free period for juveniles (except for very serious offences dealt with by a higher court), is based upon recidivism research which shows that many young people progress through periods of criminality which they abandon as they grow older. The three year period aims to strike a balance between the need to address societal concern regarding the appropriateness of the scheme and the need to ensure that juveniles are not unduly disadvantaged by minor convictions after they have shown trends of rehabilitation and have attempted to enter the workforce or other productive spheres.

However, juveniles that are charged with serious offences and are dealt with according to law (i.e. not in the Children's Court), are also treated as an adult for the purposes of the Criminal Records Act, i.e. the child is required to have a good behaviour period of 10 years (rather than three years, which is normally the case for juveniles).

Importantly, as recognised by the then Attorney General in his second reading speech, the spent convictions scheme created by the Criminal Records Act 'does not provide for the destruction of criminal records'.⁶ The maintenance of criminal records is necessary for the purposes of criminal intelligence, criminology research, sentencing and certain types of employment. Therefore, the 'spending' of a conviction means that certain consequences flow to protect the past (rehabilitated) offender. The 'spending' of a conviction means that the person concerned is not obliged to disclose the existence of the conviction when, for example, applying for employment, insurance, credit or when making an application for a statutory licence. However, the actual record of the conviction still remains on the past offender's criminal record and may be disclosed in certain circumstances (discussed below).

Like similar schemes in other jurisdictions, the NSW scheme makes it an offence for those who have access to official records to make unauthorised disclosures of information about spent convictions.⁷ This provision applies to persons with access to criminal records in all departments and other agencies.

Findings and Orders

Section 5 of the Criminal Records Act deems certain findings or orders of a court to be treated as convictions for the purposes of the Act. These include:

- a finding that an offence has been proved, or that a person is guilty of an offence, without proceeding to a conviction
- a finding that an offence has been proved, or that a person is guilty of an offence, and the discharging of, or the making of an order releasing, the offender conditionally on entering into

⁵ Mr Dowd (Attorney General) Legislative Assembly 27 February 1991

⁶ Mr Dowd (Attorney General) Legislative Assembly 27 February 1991

⁷ *Criminal Records Act 1991* (NSW) section 13.

a recognizance to be of good behaviour for a specified period or on other conditions determined by the court

- in the case of the Children's Court, an order under section 33 of the *Children (Criminal Proceedings) Act 1987*, other than an order dismissing a charge.

What this means in practice is that if the court decides to deal with an adult offender by way of a section 10 order, despite the court deciding not to proceed to conviction, the order is a conviction for the purposes of the Criminal Records Act. A section 10 order is when the court finds a person guilty of an offence, but does not convict the person and either directs that the charge be dismissed, discharges the person on condition that the person enter into a good behaviour bond, or discharges the person on condition that the person enter into an agreement to participate in an intervention program pursuant to section 10 of the *Crimes (Sentencing Proceedings) Act 1999*.

In the case of a young person dealt with by the Children's Court, all orders imposed by the court are deemed to be convictions other than an order made under section 33(1)(a)(i) of the *Children's (Criminal Proceedings) Act 1987* dismissing the charge. This is so despite section 14 of the *Children's (Criminal Proceedings) Act 1987* which prescribes that a court shall not record a conviction in relation to a child who is under the age of 16 years, and may choose not to record a conviction in relation to a child who is of, or above, the age of 16 years if the matter was disposed of summarily.

Exclusions from the scheme

Convictions for certain offences are never capable of becoming spent, including sexual offence convictions (see **Attachment B** for a list of all of the sex offences that are currently excluded from the scheme),⁸ convictions for offences against bodies corporate⁹ and convictions prescribed by Regulations.¹⁰ The exclusion of sexual offences was based on the view that prevailing community standards required that sexual offences be treated differently to non sexual offences and be precluded from becoming spent under the scheme.

The scheme also provides for a number of circumstances where spent convictions must still be disclosed (see **Attachment C** for a list of current exclusions). The then Attorney General, in his second reading speech, noted:¹¹

It is acknowledged that in some particularly sensitive occupations such as child care, teaching and the police force it is necessary for employers to have all available information about certain types of offences. It is therefore proposed that the provisions which deem convictions to exclude spent convictions shall not apply to appointment or employment of police, prison officers, teachers, teachers aides or child care providers. Similar provision will be made in relation to the appointment of judges and magistrates. The bill provides also for the making of regulations to effect other exemptions for specific occupations or purposes in relation to all or some offences. However, exemptions will be sanctioned only in limited circumstances, as any broad extension of exemptions would weaken the effectiveness of the bill.

There are also a number of additional disclosure requirements, for example when applying for a legal practitioner certificate which is covered by clause 7 of the *Legal Profession Regulation (2002) NSW*,

⁸ *Criminal Records Act 1991* (NSW) section 7(1)(b).

⁹ *Criminal Records Act 1991* (NSW) section 7(1)(c).

¹⁰ *Criminal Records Act 1991* (NSW) section 7(1)(d).

¹¹ Mr Dowd (Attorney General) Legislative Assembly 27 February 1991.

and screening for registration as a nurse¹². Further, disclosure of a criminal record may be required when applying for particular licences, such as casino operator or casino employee licences, or security industry licences.

In regards to judicial use of spent convictions, it is important to note that the scheme does not require courts or tribunals to be restricted by the obligation to disregard spent convictions. In this way, the spent conviction scheme does not operate in relation to most aspects of criminal proceedings. More specifically, the scheme is excluded in relation to cross-examination, for example, on credibility of a witness, and in relation to ethical obligations of lawyers presenting a case to court. Spent convictions are also taken into account during sentencing.

The Child Protection Register and Child Related Employment

Since the introduction of the Criminal Records Act, the Government has introduced additional legislative measures that aim to protect the community from sex offenders. Such measures are unique to sexual offenders, and are not applied to offenders convicted of non-sexual offences.

For example, the *Crimes (Serious Sex Offenders) Act 2006* enables the State of NSW to apply to the Supreme Court to have a serious sex offender placed on an extended supervision order, or a continuing detention order, that continues even after an offender has finished their original sentence. In addition, following a conviction for a child sex offence, an offender becomes a registrable person and is subject to mandatory reporting requirements under the *Child Protection (Offenders Registration) Act 2000 (the CPOR Act)* and is prohibited from working in child-related employment under Part 7 of the *Commission for Children and Young People Act 1998 (the CCYP Act)*. These additional measures offer further protection to the NSW and Australian communities.

Each of these regimes make some differentiation between the seriousness of the sexual offence committed, which is demonstrated in some way by the type of offence committed, the age of the offender convicted of the offence, or the sentence given by the court in relation to the offence.

For instance, the CPOR Act sets up the registration and reporting requirements for certain offenders who commit sexual and other serious offences against children. The Act does not apply to offenders who commit sexual offences against adults. Registrable persons under the Act are subject to annual reporting requirements and must provide the Commissioner of Police certain information such as their address, phone number, car registration, email address, and employment details. The Act applies to adults and young people and during 2008/09 approximately 29 young people committed offences serious enough to require registration with police under CPOR Act. The period a person has to report under the Act varies by the type of sexual offence they committed. For adult offenders a period of eight years is prescribed for sex offences known as "Class 2 offences", including offences that involve acts of indecency against or in respect of a child, grooming offences, kidnapping offences, and child pornography offences, and a period of 15 years is prescribed in respect of "Class 1 offences", including the offence of murder where the victim is a child and any offence involving sexual intercourse with a child. Young people are required to report for half of the reporting period that is prescribed for adult registrable persons. Lifetime reporting requirements apply to registrable persons who then subsequently commit a further registrable offence.

In addition, offenders in respect of whom a court has made an order under section 10 of the *Crimes (Sentencing Procedure) Act 1999* in relation to a Class 1 or Class 2 offence are not required to

¹² *Nurses and Midwives Act 1991* (NSW), section 42D.

register under the Act. Similarly, a young person who is dealt with by the Children's Court pursuant to section 33(1)(a) of the *Children (Criminal Proceedings) Act 1987* in relation to a Class 1 or Class 2 offence is not required to report under the Act. A young person is also not required to report under the Act if they, as a child, committed a single offence involving an act of indecency or certain voyeurism offences. Such exclusions reflect the view that there are differing degrees of seriousness amongst sexual offences, and amongst sexual offenders.

Under the CCYP Act, all sex offenders, including those not covered by the CPOR Act, are declared 'prohibited persons' and prohibited from working in child-related employment. Although juvenile sex offenders are entitled to seek a review of the restrictions relating to their employment, the situations in which an adult offender can seek a review are strictly limited. Adults convicted of murdering a child or of being involved in the production of child pornography can never seek a review of their employment status. However, adults convicted of certain offences involving sexual intercourse with a child are able to seek a review if the offender was not more than three years older than the child against whom the offence was committed and did not involve circumstances of aggravation. Adult offenders convicted of sexual offences involving indecency offences are **automatically** able to apply for a review.

Law in other Australian jurisdictions¹³

All Australian jurisdictions except for Victoria and South Australia have spent convictions schemes. South Australia assented to the *Spent Conviction Act 2009* in December 2009, but it has not yet been proclaimed. The relevant Acts from other jurisdictions are:

- o Australian Capital Territory: *Spent Convictions Act 2000*
- o Commonwealth: *Crimes Act 1914* Part VIIC
- o Northern Territory: *Criminal Records (Spent Convictions) Act*
- o Queensland: *Criminal Law (Rehabilitation of Offenders) Act 1986*
- o Tasmania: *Annulled Convictions Act 2003*
- o Western Australia: *Spent Convictions Act 1988*

Australian Capital Territory

In the ACT, the *Spent Convictions Act 2000* (ACT) creates a spent convictions scheme almost identical to NSW. However, the ACT scheme includes two important differences from the NSW scheme. First, the protection of the spent convictions scheme in ACT is extended to certain nominal penalties that are not convictions in the strict sense. This is done by providing that the "convictions" become spent immediately, or upon the satisfaction of conditions.¹⁴ For example, a finding that an offence has been proved without proceeding to a conviction is treated as an offence but becomes spent immediately after the finding is made. Second, under the ACT scheme, if a person is convicted of an offence which was committed in the crime free period but the conviction is not incurred until after the crime free period, the spent conviction may be revived and will not become spent again until the offender has achieved the relevant crime free period in respect of the later offence.¹⁵

Commonwealth

The Commonwealth Spent Convictions Scheme came into force in 1990 through the *Crimes Legislation Amendment Act 1989*, which introduced Part VIIC of the *Crimes Act 1914* (Cth).

¹³ Knowler, J., 'Living down the past – spent convictions schemes in Australia', 1994, in *Privacy Law and Policy Reporter*, Vol 1(6), available at <<http://www.austlii.edu.au/au/journals/PLPR/1994/80.html>>, accessed 5 January 2010.

¹⁴ *Spent Convictions Act 2000* (ACT), section 12.

¹⁵ *Spent Convictions Act 2000* (ACT), section 15.

The spent convictions scheme in the Commonwealth allows individuals to disregard criminal convictions when:

- the person has been sentenced to less than 30 months imprisonment, and
- if the person was a juvenile they have had a crime free period of 5 years, or if the person was an adult they have had a crime free period of 10 years.

The Commonwealth scheme also has a number of exclusions that are contained in Division 6 of Part VIIC of the *Crimes Act 1914*. The Commonwealth does not exclude sex offenders from the spent convictions scheme.

Northern Territory

In the Northern Territory, the *Criminal Records (Spent Convictions) Act 1992* creates a similar scheme to that operating in NSW, subject to a few differences.

The NT scheme makes similar provisions as in the ACT legislation, allowing for non conviction records to be spent immediately¹⁶ and for the revival of spent convictions where an individual is convicted of a subsequent offence punishable by imprisonment.¹⁷

Queensland

Under the *Criminal Law (Rehabilitation of Offenders) Act 1986*, convictions that incurred no sentence of imprisonment or a 30 months sentence or less are capable of being spent automatically upon expiration of the crime-free period (subject to no further convictions occurring during this period). The crime free period is 10 years for adult indictable offences, and 5 years for other offences and/or offenders.

Sex offenders' convictions are treated like any other offences and are automatically spent, when the above criteria is fulfilled.

Tasmania

Under the *Annulled Convictions Act 2003* a conviction is annulled upon completion of the prescribed period of good behaviour. The Tasmanian scheme is very similar to NSW, except that the crime-free period is 10 years where the offender was an adult at the time of conviction, or 5 years where the offender was a juvenile at the time of conviction.¹⁸

Western Australia

In Western Australia the *Spent Convictions Act 1988* creates an intermediate position where a sex offence cannot become spent by elapse of time but will only become spent if a court so orders. A court, in sentencing, can fix a qualifying period for the offence to become spent, or the offender can later apply for an order. The court must consider such matters as whether the person is likely to re-offend and whether the person was previously of good character.

For serious convictions, the scheme provides that sentences of imprisonment of more than one year or for an indeterminate period, or fines of \$15 000 or more, can be spent by application to a District Court judge.¹⁹ For lesser convictions, the scheme provides that sentences of imprisonment for less

¹⁶ *Criminal Records (Spent Convictions) Act 1994* (NT), section 7.

¹⁷ *Criminal Records (Spent Convictions) Act 1994* (NT), section 10.

¹⁸ *Annulled Convictions Act 2003* (Tas), section 6.

¹⁹ *Spent Convictions Act 1988* (WA), section 6.

than 1 year and not for an indeterminate period are capable of being spent by application to the Commissioner of Police.²⁰ The crime-free period is ten years for adults and 2 years for juveniles. In 2008, of the 18 applications for spent convictions made to the Court, 3 involved convictions for sexual assault. All 3 were successful. In 2009, of the 13 applications made, none related to convictions for sexual assault.

The scheme also specifies the instances in which it is unlawful to discriminate against an individual on the ground of a spent conviction.²¹

Model Spent Convictions Bill

As a result of the different approaches taken by jurisdictions in relation to spent convictions causing uncertainty and confusion, the Standing Committee of Attorneys General agreed to a model Spent Convictions Bill (**Attachment A**).

The model Bill proposes to create a new spent convictions scheme and proposes a number of options that may be considered. For adults, the Bill provides that offences where no sentence of imprisonment was imposed, or where a sentence of imprisonment of 12 months or less was imposed, are capable of becoming spent. For juveniles, offences where no sentence of imprisonment was imposed, or where a sentence of imprisonment of 24 months or less was imposed, are capable of becoming spent.

The model Bill does not come to a position as to how sex offences should be dealt with, but it does offer some options:

- o that sexual offences never become spent, or
- o that sexual offences become spent only on application to the Court.

The Bill maintains the exceptions that currently exist in most jurisdictions regarding situations where spent convictions do need to be disclosed. Similarly, the Bill prescribes various penalties for unlawful disclosures of public records and business activities.

International approaches

1. United Kingdom

General Overview

The *Rehabilitation of Offenders Act 1974 (ROA)* provides that after a certain amount of time, certain convictions will become spent.²² Once a conviction becomes spent, past offenders are not normally required to disclose it. However, this rule is subject to a number of exceptions.²³

How a conviction becomes spent

The way in which a conviction can become spent under ROA will depend upon the sentence received for the offence, and the rehabilitation period that applies to that offence sentence. The principles apply to convictions in a criminal court, findings in a juvenile court, certain offences in service disciplinary

²⁰ *Spent Convictions Act 1988 (WA)*, section 7.

²¹ *Spent Convictions Act 1988 (WA)*, Division 3.

²² Liberty Organisation, 'Spent Convictions and the Rehabilitation of the offender', 2009 available at <<http://www.yourrights.org.uk/yourrights/privacy/spent-convictions-and-the-rehabilitation-of-offenders/exceptions-to-the-roa.html>>, accessed 12 January 2010.

²³ *Rehabilitation of Offenders Act 1974 UK*

proceedings and hospital orders under the *Mental Health Act 1983*.²⁴ The time required before the conviction is spent – the rehabilitation period – differs depending upon the nature and length of the sentence, be it a term of imprisonment, a fine, a surcharge order, probation, or an absolute or conditional discharge. Relevant rehabilitation periods are set out below. Unless otherwise stated, the rehabilitation period runs from the date of the conviction and will generally depend upon compliance with the sentence.

Relevant Rehabilitation Periods²⁵

- Prison for more than two and a half years - Never
- Prison for more than six months but less than two and a half years - 10 years
- Youth custody* for more than six months but less than two and a half years - 10 years*
- Corrective training for more than six months but less than two and a half years - 10 years*
- Dismissal with disgrace from Her Majesty's service - 10 years*
- A sentence of Borstal training - 7 years
- Prison for six months or less - 7 years*
- Dismissal from Her Majesty's service - 7 years*
- Imprisonment or detention in YOI or youth custody for six months or less - 7 years*
- Detention in respect of conviction in service disciplinary proceedings - 5 years*
- (Most) fines - 5 years*
- Young offender detention for over six months but less than two and a half years - 5 years
- Probation order or community order (person 18 or older) - 5 years
- Probation order or community order (person under 18) - Either 2 ½ years from conviction, or until the order ceases to have effect – whichever is the longer
- Hospital order under *Mental Health Act 1983* - Either 5 years, or 2 years after order ceases to have effect, whichever is the longer
- Young offender detention for six months or less - 3 years
- Conditional discharge, binding over, care order, supervision order, reception order - Either 1 year after making of order, or 1 year after the order ends, whichever is the longer
- Absolute discharge - 6 months
- Disqualification - The period of disqualification
- Cautions, Warnings and Reprimands - Spent as soon as they are issued
- Conditional cautions - Spent as soon as conditions end.

Excluded sentences

Convictions resulting in the following sentences can never become spent under the UK scheme:²⁷

- A sentence of imprisonment, youth custody detention in a young offender institution or corrective training, for a term of more than two and a half years.
- A sentence of imprisonment for life.
- A sentence of preventive detention.
- A sentence of imprisonment or detention for public protection, or an extended sentence under the Criminal Justice Act 2003.
- Detention during Her Majesty's pleasure or for life, or a sentence of custody for life.

²⁴ Liberty Organisation, 'Spent Convictions and the Rehabilitation of the offender', 2009 available at <http://www.yourrights.org.uk/yourrights/privacy/spent-convictions-and-the-rehabilitation-of-offenders/exceptions-to-the-roa.html>, accessed 12 January 2010.

²⁵ *Rehabilitation of Offenders Act 1974* UK, section 5.

* These periods are reduced by half if the offender was under eighteen at the date of conviction.

²⁷ *Rehabilitation of Offenders Act 1974* UK, section 5.

- A sentence of detention for more than two and a half years in the case of a youth convicted of a grave crime.
- Certain court-martial and military punishments.

New convictions and other principles affecting the rehabilitation period

If, during the rehabilitation period, an individual is convicted of an offence that can only be tried by a Magistrates' Court, the new sentence will carry its own rehabilitation period and will not affect the earlier one. Otherwise, if, during the rehabilitation period, the individual is convicted of any other offence covered by the ROA, then generally and if the second offence has a longer rehabilitation period, the earlier conviction will become spent only when the later one becomes spent. If the second offence has a shorter rehabilitation period, then the later conviction will become spent only when the earlier one becomes spent. If during a rehabilitation period a person is given a sentence that can never become spent, this also prevents the earlier unspent conviction from ever becoming spent. It is important to note that it is the length of the sentence imposed by the court that is relevant and not, for example, the length of time actually served in prison.

Where a person is convicted in the same proceedings of more than one offence, and the sentences imposed for those offences are either ordered to be served consecutively (i.e. one after the other) or wholly or partly concurrently (i.e. at the same time), then those sentences will be added together and treated as a single term, giving rise to one rehabilitation period. By contrast, where a person is convicted of a single offence but more than one sentence is imposed in respect of it (whether in the same proceedings or not), then there will be one single rehabilitation period, to be calculated by reference to the more serious of the sentences imposed.²⁸

The effect of rehabilitation (conviction becoming spent)

Once the rehabilitation period has expired, and the conviction becomes spent, the past offender will not generally have to reveal the previous conviction, and it also generally cannot be revealed by anyone else without the individual's permission.²⁹ The objective is to put the individual in the position they would have been in if they had not committed the offence at all. If someone maliciously, and without lawful authority, publishes or reveals to another person that an individual has a spent conviction, the individual may be able to sue them for damages for defamation.³⁰

Employment

Employers often wish to ask questions about a potential employee's previous convictions. The general rule under the ROA is that an individual can treat such questions as not relating to spent convictions. However the ROA sets out excepted professions, occupations or offices where the protection does not apply.³¹ These exceptions are dealt with the Exceptions section. If the employment is not exempt, the individual does not have to disclose their spent convictions, and if asked whether they have any convictions they are entitled to say no. In turn, it is unlawful for an

²⁸ Liberty Organisation, 'Spent Convictions and the Rehabilitation of the offender', 2009 available at <<http://www.yourrights.org.uk/yourrights/privacy/spent-convictions-and-the-rehabilitation-of-offenders/exceptions-to-the-roa.html>>, accessed 12 January 2010.

²⁹ Scottish Government, *Rehabilitation of Offenders Act 2009*, available at <<http://www.scotland.gov.uk/Topics/Justice/public-safety/offender-management/law/RehabofOffenders>>, accessed 12 February 2010.

³⁰ Liberty Organisation, 'Spent Convictions and the Rehabilitation of the offender', 2009 available at <<http://www.yourrights.org.uk/yourrights/privacy/spent-convictions-and-the-rehabilitation-of-offenders/exceptions-to-the-roa.html>>, accessed 12 January 2010.

³¹ *Rehabilitation of Offenders Act 1974* UK.

employer to deny employment, dismiss or otherwise treat an individual less favourably because of a spent conviction.³²

Provision of services

Some forms of every day contracts, such as insurance policies, are affected by the legal principle that all relevant information must be disclosed by the person seeking insurance, whether or not it is asked for - otherwise the contract could potentially be treated as invalid. However, the ROA makes it clear that the duty to disclose all relevant information does not extend to disclosing convictions that are spent.

Evidence in legal proceedings

A spent conviction cannot be used in evidence in a civil court, tribunal, arbitration or disciplinary or similar hearing. An individual should not be asked questions about spent convictions and, if they are, they need not answer them unless they wish to do so.³³

2. Canada

General Overview

Under the Canadian approach, an offender is permitted to make an application to an appropriate body after a minimum period has elapsed.³⁴ The body then decides whether or not the person is rehabilitated and ought to be given the benefit of the scheme.³⁵ This arrangement allows for applications made to the Solicitor-General to be considered by the National Parole Board. A pardon is only granted if the application is successful.³⁶ The record of the conviction is held separately and must not be disclosed to anyone without the Solicitor-General's consent.³⁷ The pardon can be revoked by the Governor in Council and this discretion is often exercised where the applicant ceases to be of good conduct.³⁸

Importantly, this scheme does not function so as to allow the individual to deny the fact they have a criminal record.³⁹ Rather, the pardon is considered to be evidence that the ex-offender has been rehabilitated and the conviction should not be taken into account. The scheme is effective as it allows for personal assessment of the ex-offender's application.

It has been noted that only a small proportion of eligible people take advantage of the Canadian system. Schemes of this type are costly and complex to administer.⁴⁰

3. New Zealand

In New Zealand, the *Criminal Records (Clean Slate) Act 2004* (NZ), creates the clean slate scheme, which is intended to enable law-abiding citizens to live free from the adverse effects of historical

³² *Rehabilitation of Offenders Act 1974* UK.

³³ *Rehabilitation of Offenders Act 1974* (UK), section 4.

³⁴ *Criminal Records Act 1985* (Canada), section 3.

³⁵ *Criminal Records Act 1985* (Canada), section 2.1

³⁶ *Criminal Records Act 1985* (Canada), section 2.1

³⁷ *Criminal Records Act 1985* (Canada), section 6.

³⁸ *Criminal Records Act 1985* (Canada), section 7.

³⁹ *Criminal Records Act 1985* (Canada).

⁴⁰ Knowler, J., 'Living down the past – spent convictions schemes in Australia', 1994, in *Privacy Law and Policy Reporter*, Vol 1(6), available at <<http://www.austlii.edu.au/au/journals/PLPR/1994/80.html>>, accessed 5 January 2010.

criminal records, in particular circumstances.⁴¹ The scheme functions by 'concealing' the criminal records of individuals who have had minor convictions. However a number of exceptions exist.

An individual is eligible to have his or her criminal record concealed under the clean slate scheme if he or she:⁴²

- has not been sentenced for offending in the past 7 years and has no criminal proceedings pending; and
- has never had a custodial sentence imposed; and
- has no convictions for a specified sexual offence, or a judicial order that a conviction must never become concealed; and
- has paid all fines and reparation, and relicensing requirements for driver disqualification (if any) have been met.

In certain circumstances, if an individual is not eligible under the clean slate scheme, he or she may make an application to the court to have his or her offence or conviction disregarded.⁴³ An application of this kind may be made to the court if an individual has committed a specified sexual offence and, as a result of that offence, had a non-custodial sentence imposed, or if an individual has had a custodial sentence imposed, but the offence for which he or she received the custodial sentence has now been decriminalised. In each of these cases, a court may make an order that the offence be disregarded, meaning that the clean slate scheme will apply to the individual's criminal record.

If an individual is eligible to have the clean slate scheme apply to his or her criminal record, the individual's criminal record will be concealed.⁴⁴

This means the individual is not required to disclose any information about his or her concealed criminal record. Any request made to the individual, or any other person or body, for information about the individual's record must be treated as having been asked subject to the clean slate scheme and must be answered accordingly.⁴⁵ The scheme makes it an offence to compel or coerce an individual who is eligible under the scheme to provide information about the individual's criminal record. It also makes it an offence for a person with access to concealed criminal records to knowingly disclose information that is required to be concealed unless there is lawful authority for the information to be disclosed.⁴⁶

There are a number of exceptional situations when the provisions of the clean slate scheme will not operate to prevent the disclosure of an individual's criminal record. The scheme does not prevent disclosure when criminal records are disclosed:⁴⁷

- to law enforcement agencies for investigation, prosecution, or sentence administration purposes; or
- to the New Zealand Security Intelligence Service for dealing with security-related matters; or
- in criminal or civil proceedings before a court or tribunal (including sentencing) or in proceedings before a Parole Board or District Prisons Board; or
- in connection with an application by the person for employment in a position that involves the national security of New Zealand, as a Judge, as a Justice of the Peace or Community

⁴¹ Explanatory note, 'Criminal Records (Clean Slate) Bill 2001, available at <http://www.brookers.co.nz/bills/enacted_bills/B011831.PDF>, accessed 5 January 2010.

⁴² *Criminal Records (Clean Slate) Act 2004* (NZ), section 7.

⁴³ *Criminal Records (Clean Slate) Act 2004* (NZ), section 9 - 11.

⁴⁴ *Criminal Records (Clean Slate) Act 2004* (NZ), sections 9 - 11.

⁴⁵ *Criminal Records (Clean Slate) Act 2004* (NZ), section 14.

⁴⁶ *Criminal Records (Clean Slate) Act 2004* (NZ), sections 16 - 17.

⁴⁷ *Criminal Records (Clean Slate) Act 2004* (NZ), section 19.

Magistrate, as a member of the police, as a prison officer or a probation officer, or in a position subject to employment vetting under statutory authority by the New Zealand Teachers Council; or

- in connection with an application made to a government department for approval to act in a role involving the care and protection of a child or young person, as recognised by any enactment; or
- in connection with research that requires access to criminal history information to be given to employees or persons contracted to government departments or law enforcement agencies, or to any person undertaking research approved by a government department or law enforcement agency; or
- under the provisions of the *Archives Act 1957* if the person to whom the concealed conviction relates has been deceased for a period of 25 years or more.

Subject to exemptions, all government departments and law enforcement agencies that hold criminal records must comply with the requirements of the scheme. Government departments and law enforcement agencies that hold criminal records are required to conceal them if the scheme applies to those records. The absence of appropriate business practices may lead to a government department or law enforcement agency becoming subject to the penalties set out in the offence provisions of the Act.⁴⁸

OPTIONS FOR REFORM – CIRCUMSTANCES

It is necessary to find the 'appropriate balance between the need to rehabilitate offenders and the need to protect the community'.⁴⁹ These two considerations are particularly relevant when analysing the proposals for reform. The Discussion Paper by the Legislative Council Standing Committee on Law and Justice also raises some options for reform. The positive and negative aspects of the proposed options are considered below.

Discussion paper option A: Convictions for sexual offences should not be capable of being spent.

Community expectations

The exclusion of sexual offences recognises the strong societal concern attached to sexual offences by ensuring that such offences remain on an individual's record as relevant for all purposes for which a criminal record may be used.⁵⁰

In the Second Reading speech for the Criminal Records Act, the then Attorney General said that the rationale for the blanket exclusion for sexual offences was that 'all sexual offences will be ineligible to be considered spent. Conviction for such offences would frequently involve a sentence of more than six months and would therefore be excluded from the scheme anyway. Nevertheless, there will be some cases where this is not so, and in my view prevailing community standards preclude the disavowal of such convictions.'⁵¹

⁴⁸ *Criminal Records (Clean Slate) Act 2004* (NZ), section 16.

⁴⁹ Standing Committee on Law and Justice, NSW Legislative Council, 'Inquiry into Spent Convictions for Juvenile Offenders', November 2009, p. 3.

⁵⁰ Gelb, K., 'Recidivism of Sex Offenders Research Paper', January 2007, Sentencing Advisory Council, p. 1.

⁵¹ Mr Dowd (Attorney General) Legislative Assembly 27 February 1991.

Juveniles and sentencing practices

If juveniles' sex offences were to be spent like any other offence, they would become spent if the original sentence was less than six months or non-custodial, and the person had not committed a crime for three years. The rationale for this is an assumption that a sentence of less than six months means that the offence committed was relatively minor.⁵² Juveniles who have been convicted of a sex offence may be sentenced to a community based supervision order. This approach supports research that has found that juvenile sex offenders who received community based sentences involving intensive supervision and treatment as opposed to custodial sentences are less likely to engage in adult sex offending. Evidence indicates that juveniles who have been convicted of sex offences are no more likely to reoffend than juveniles who have committed other non-sexual offences.⁵³

Spent Convictions Exemptions

Sexual offences are often considered distinguishable from other types of offences and relevant in a broader set of contexts and there is an argument they should be disclosed regardless of the passage of time.⁵⁴ There may be particular circumstances in which a person with a record of particular types of offences (such as sexual offences) poses an unacceptably high *risk* of re-offending, especially in the context of employment.⁵⁵ However, the spent convictions scheme contains a number of exemptions, which would require a person whose conviction has been spent to disclose when seeking employment in certain fields (see **Attachment C** for a list of all the circumstances a person is still required to reveal their conviction despite it being spent).

Discussion paper option B: All convictions for sexual offences should be capable of being spent

As stated above, the purposes of the Criminal Records Act include:

- providing some positive encouragement and incentives for previous offenders to refrain from unlawful conduct, and
- encouraging the rehabilitation of offenders so that they may become responsible and productive members of society.

Research based on both official reports of offending and self-reports of offenders shows that sex offenders typically have lower rates of recidivism than do other kinds of offender and that these rates vary for different sub-groups of sex offender.⁵⁶ In addition, little to no evidence exists to suggest that the rehabilitation period for minor sexual offences in particular is longer than for other minor offences.⁵⁷

⁵² Mr Dowd (Attorney General) Legislative Assembly 27 February 1991.

⁵³ Allan, A., Allan, M., Marshall, P. & Kraszlan, K. (2003) *Recidivism among male juvenile sexual offenders in Western Australia. Psychiatry, Psychology and Law*, 10(2), 359-378.

Langstrom, N. (2002). "Long-term follow-up of criminal recidivism in young sexual offenders." *Psychology, Crime & Law: Special Swedish studies on psychology, crime and law* 8: 41-58.

Nisbet, I.A., Wilson, P.H., & Smallbone, S.W. (2004). *A prospective longitudinal study of sexual recidivism among adolescent sex offenders. Sexual Abuse: A Journal of Research and Treatment*, 16, 223-234.

Rasmussen, L.A. (1999) *Factors Related to Recidivism Among Juvenile. Sex Offenders. Sexual Abuse: A Journal of Research and Treatment*, 11 (1), pp. 69-85.

Sipe, R., Jensen, E.L. & Everett, R.S. (1998). *Adolescent sexual offenders grown up: Recidivism in young adulthood. Criminal Justice and Behaviour*, 25, 109-124.

Worling, J. and T. Curwen (2000). "Adolescent sexual offender recidivism: Success of specialized treatment and implications for risk prediction." *Child Abuse and Neglect: The International Journal* 24(7): 965-982.

⁵⁴ Mr Dowd (Attorney General) Legislative Assembly 27 February 1991, p. 9-11, 31.

⁵⁵ Human Rights and Equal Opportunity Commission, 'Discrimination in employment on the basis of criminal record', December 2004, p. 3

⁵⁶ Gelb, K., 'Recidivism of Sex Offenders Research Paper', January 2007, Sentencing Advisory Council, p. 21.

⁵⁷ Gelb, K., 'Recidivism of Sex Offenders Research Paper', January 2007, Sentencing Advisory Council, p. 21.

It could be argued that, absent clear evidence that the causes of reoffending for sex offenders are different to those for other offenders, the purposes of the Criminal Records Act should apply equally to sex offenders as to other offenders.

Discussion paper option C: Convictions for sexual offences should only be capable of being spent in limited circumstances

Where the offence was committed as a juvenile

Juveniles in particular, face significant disadvantages from the disclosure of past criminal conduct, especially when first entering the workforce. The Discussion Paper states that "the long-term consequences for young people of being convicted of a sexual offence can sometimes be disproportionate, both in relation to the seriousness of the offence and the risk of reoffending"; for example, where there is a finding of fact that the sex was consensual, where the offences were minor or where there was no conviction recorded. Such instances raise a question about the appropriateness of excluding all sex offences from the spent convictions scheme.

Research indicates that important offending characteristics of juvenile sex offenders differ from those of adult offenders. This includes both their capacity to rehabilitate and the nature of their offending behaviour.⁵⁸ Research further indicates that much juvenile sexual offending is committed out of impulse, immaturity and as a result of peer pressure (consistent with the prevailing research suggesting that the adolescent brain does not mature until a person has reached their early to mid 20s) and that there is a need to distinguish between this type of adolescent offending and serious sex offenders. This is not to trivialise the seriousness of sexual offending, but to determine which response is most likely to impact on further offending in the longer term.

A range of factors that are specific to juveniles, as opposed to adult sexual offenders, have been identified that might be considered in the development of approaches to penalties and treatment. For example, research suggests that:

- Rates of transition from adolescent to adult sex offender are much lower than originally thought and there is increasing evidence that adolescent and adult sex offenders are distinct populations.⁵⁹
- The majority of young people who have committed sexual offences do not come to the attention of police for further sexual offences within the first 10 years of their adult lives.⁶⁰

⁵⁸ Miner, M et al (2006), *Standards of Care for Juvenile Sexual Offenders of the International Association for the Treatment of Sexual Offenders*, Sexual Offender Treatment, Volume 1, Issue 3

⁵⁹ Miner, M et al (2006), *Standards of Care for Juvenile Sexual Offenders of the International Association for the Treatment of Sexual Offenders*, Sexual Offender Treatment, Volume 1, Issue 3

⁶⁰ Allan, A., Allan, M., Marshall, P. & Kraszlan, K. (2003) *Recidivism among male juvenile sexual offenders in Western Australia. Psychiatry, Psychology and Law*, 10(2), 359-378.

Langstrom, N. (2002). "Long-term follow-up of criminal recidivism in young sexual offenders." *Psychology, Crime & Law: Special Swedish studies on psychology, crime and law* 8: 41-58.

Nisbet, I.A., Wilson, P.H., & Smallbone, S.W. (2004). *A prospective longitudinal study of sexual recidivism among adolescent sex offenders*. *Sexual Abuse: A Journal of Research and Treatment*, 16, 223-234.

Rasmussen, L.A. (1999) *Factors Related to Recidivism Among Juvenile. Sex Offenders*. *Sexual Abuse: A Journal of Research and Treatment*, 11 (1), pp. 69-85.

Sipe, R., Jensen, E.L. & Everett, R.S. (1998). *Adolescent sexual offenders grown up: Recidivism in young adulthood*. *Criminal Justice and Behaviour*, 25, 109-124.

Worling, J. and T. Curwen (2000). "Adolescent sexual offender recidivism: Success of specialized treatment and implications for risk prediction." *Child Abuse and Neglect: The International Journal* 24(7): 965-982.

Further, Police apprehension statistics of sex offenders in Australia suggest that juvenile sex offenders make up only 10 percent of all alleged sex offenders.⁶¹ There also appears to be a consensus among the various appeal courts in Australia that special emphasis needs to be given to the principle of rehabilitation when sentencing juveniles, including those who have committed sexual offences.⁶²

A major purpose of penalties in the criminal justice system is to encourage and facilitate the rehabilitation of offenders, especially juveniles.⁶³ For example, this is reflected through the imposition of community service orders and referral of juveniles to youth justice conferences as alternatives to imprisonment. In turn, the spent conviction scheme can be viewed as an additional legal rehabilitative measure, ensuring that past offenders are given appropriate opportunities to re-engage in all aspects of society after a prescribed period of good behaviour.⁶⁴

Where there was a finding of fact that the sexual act was consensual

The age of consent in NSW is 16 years of age. It is therefore an offence for two young people below the age of 16 to engage in consensual sexual intercourse, or for a young person below the age of 18 to engage in consensual sexual intercourse with, for example, a 15 year old. These offences are sometimes known as “young love offences”. Some Australian jurisdictions, such as Victoria, include a defence to certain sexual offences in cases where the defendant is no more than a specified number of years older than the alleged victim and the sexual activity is “consensual”. NSW has no such defence. As such, on occasions, prosecution action might take place in relation to these offences and a Court may have to decide an appropriate sentence.

In sexual offences where the victim is an adult, it is an element of the offence that the Prosecution must prove the victim did not consent to the act. However, a sexual offence may be committed against a child without consent being an issue, i.e. the Prosecution does not have to prove that the child did not consent to the sexual intercourse. It would be difficult in those circumstances to make consent a consideration of when an offence could be spent.

The issue of consent on sentence

In relation to juvenile offending, the issue of consent is relevant to the extent that it may be raised on sentence. Consensual offending is likely to fall into the less serious category of offence, attracting a sentence of a level that would ordinarily be capable of being spent provided the offender complied with the crime free period. Although a Court may decide that a dismissal of the charge under section 33(1)(a)(i) of the *Children (Criminal Proceedings) Act 1987* is required (which as discussed above, is capable of being spent), the Court may also choose to impose another form of sentence, such as a good behaviour bond under sections 33(1)(a)(ii) or 33(1)(b). Including young persons who receive a sentence below a certain threshold in the spent conviction regime, may address the issues surrounding the particular circumstances of consensual “young love” offenders.

⁶¹ Lievore, 2004, *Recidivism of Sexual Assault Offenders: Rates, Risk Factors and Treatment Efficacy*, Canberra : Australian Institute of Criminology

⁶² Nisbet, I; Rombouts, S; Smallbone, S (2005) *Impacts of programs for adolescents who sexually offend: literature review*, Ashfield, NSW: Department of Community Services

⁶³ Moon, M., et al, 'Is Child Saving Dead? Public Support for Juvenile Rehabilitation', 2000, in *Crime and Delinquency*, Vol 46(1), p. 42.

⁶⁴ Knowler, J., 'Living down the past – spent convictions schemes in Australia', 1994, in *Privacy Law and Policy Reporter*, Vol 1(6), available at <<http://www.austlii.edu.au/au/journals/PLPR/1994/80.html>>, accessed 5 January 2010.

Where the offences were minor sexual offences or where no conviction was recorded

The CPOR Act divides sexual offences into two categories, Class 1 and Class 2 offences. Class 1 offences include the most serious offences, such as the offence of murder, where the person murdered is a child, offences that involve sexual intercourse with a child and the offence of persistent child sex abuse. Class 2 offences include offences that involve an act of indecency against or in respect of a child, grooming offences, kidnapping offences and child pornography offences including possessing child pornography and producing child pornography. However, it may be problematic to apply a similar delineation between 'minor' and 'serious' sexual offences could be applied to a spent convictions scheme. Sexual offences by their very nature are serious. A more accurate way to measure the seriousness of the actual offence that the person has committed is by the sentence that is ultimately given, as this reflects the court's assessment of the actual conduct that made up the offence.

Another measure of the level of seriousness involved in the sexual offence committed is if the Court has not recorded a conviction and the offender has received the benefit of a dismissal under either section 10 of the *Crimes (Sentencing Procedure) Act 1999*. Before dismissing a person's charges pursuant to section 10, the Court must have regard to the following factors: the person's character, antecedents, age, health and mental condition; the trivial nature of the offence; the extenuating circumstances in which the offence was committed; and any other matter that the court thinks proper to consider. An order under section 10 in relation to a sexual offence would only ever be appropriate in exceptional circumstances. Attachment D is a table showing the number of offenders who received a non-conviction order for a sexual offence between the periods January 2002 to December 2008 based on statistics from the Judicial Commission of NSW.

An order under section 10 of the *Crimes (Sentencing Procedure) Act 1999*, is taken to be a conviction under the Criminal Records Act and is not ever capable of being spent in relation to a sexual offence. As stated above, such orders are only used in exceptional circumstances in relation to sexual offences. However, there is no option available to the court that would allow the conviction to become spent, even if it wished for such an outcome.

OPTIONS FOR REFORM - MECHANISM FOR SPENDING CONVICTIONS

The Discussion Paper of the Legislative Council Standing Committee also raises the issue of the appropriate procedural mechanism that could accompany any possible widening of the scheme. The options suggested by the Committee are as follows:

- o automatically after a lapse of time.
- o on application to a Court.

These options are discussed below.

Application to the court

The benefit of asking the Court to consider the application of a sex offender to have their conviction spent is that it provides an extra layer of protection to the community before a decision is made. However, it can be a costly and time-consuming process.

If the Court is to make an order for a sex offender's conviction to be spent, the decision should be made on specific grounds. In Western Australia the Court must consider whether the person is likely to re-offend and whether the person was previously of good character. However, in NSW an

offender's conviction can only be spent if they have not been convicted of a further offence in the last ten years. As such, the offender has already demonstrated that they have had a long period without re-offending.

If a conviction is to be spent on application to the Court, it is integral that protection of the community and not further punishment of the offender be the paramount consideration in the Court's assessment of the application.

Before any power is given to the Courts to make orders for a conviction to become spent, further consultation would need to be conducted with them.

Application to the Administrative Decisions Tribunal (ADT)

Although not considered in the Discussion Paper, another option is for the ADT to hear the application for a conviction to be spent instead of the Court. This may have the benefits of lower cost and greater efficiency. It still however, carries the benefit of providing an extra layer of protection to the community. Again, the grounds on when a conviction should be spent would need to be clearly identified.

However, given the seriousness of a conviction for a sex offence and the seriousness of the decision of spending that conviction, the decision may be better left to the Courts, which are familiar with criminal legislation and sex offender provisions.

Consultation with the ADT would need to occur before any jurisdiction was given to the Tribunal to make such orders.

Automatically spent after a lapse of time

Arguments in favour of sex offences committed by juveniles becoming automatically spent are:

- the most significant indicator of rehabilitation is not committing any offences for a period of time (the requirement is three years), and
- the best indication of the seriousness of the offence is the sentence given (the requirement is six months).

The benefits of having convictions automatically spent are:

- it saves Court time and money,
- it does not reopen the case for the public to scrutinise, and
- it gives certainty to the offender that their conviction will be spent if they do not re-offend thereby also giving motivation for not re-offending.

The disadvantages of having the convictions automatically spent are:

- it does not give a second layer of protection to the community as to whether the person has been rehabilitated, and
- it does not allow the spending of the conviction to be considered on a case by case basis.

Automatically spent after a lapse of time - unless the State makes an application to the Court to stop the conviction from being spent

Another option which was not put forward in the discussion paper is automatically spending a conviction after a lapse of time, unless an application is put forward by the State to the Court to stop the conviction from being spent. The benefits of this option are:

- it gives a second layer of protection to the community, by allowing the Court to look at individual cases in more depth where there is some concern that the person has not been adequately rehabilitated, or there are other unique factors surrounding the case, and
- it minimises the time and cost to the Court.

If this approach were to be developed it would require consultation with both the Court and affected government agencies. Time limits to make an application would also need to be developed. Guidelines on the grounds that the Court could consider in making an order to spend the conviction would also need to be considered.

The disadvantages to this approach are:

- it does not give certainty to the offender that their conviction will be spent,
- it would require resources to track convictions that are due to be spent and make a determination on whether an application should be made to stop that conviction being spent,
- it would require resources to develop guidelines for the Court.

Victim participation in spending the conviction

In any model in which the person has the ability to apply to the court to have their conviction spent, the question of whether or not a victim should be given the opportunity to appear in court should be considered. On the one hand, victim participation in this process has the ability to give the victim a voice in a matter that is very personal to them; however, given the length of time that would have to accrue before such an application was made, notifying the victim of such an application has the potential to reopen the crime for the victim and potentially provide an opportunity to revisit the facts of the case.

LIST OF REFERENCES

Allan, A., Allan, M., Marshall, P. & Kraszlan, K. (2003) *Recidivism among male juvenile sexual offenders in Western Australia. Psychiatry, Psychology and Law*, 10(2), 359-378.

Dowd (Attorney General) Legislative Assembly 27 February 1991

Explanatory note, 'Criminal Records (Clean Slate) Bill 2001, available at <http://www.brookers.co.nz/bills/enacted_bills/B011831.PDF>, accessed 5 January 2010.

Gelb, K., 'Recidivism of Sex Offenders Research Paper', January 2007, Sentencing Advisory Council

Human Rights and Equal Opportunity Commission, 'Discrimination in employment on the basis of criminal record', December 2004

Dianna T. Kenny, Timonthy Keogh and Katie Seidler 'Predictors of recidivism in Australia juvenile sex offenders: Implications for treatment' *Sexual Abuse: A Journal of Research and Treatment* 2001, 13, 2, 131-148

Knowler, J., 'Living down the past – spent convictions schemes in Australia', 1994, in *Privacy Law and Policy Reporter*, Vol 1(6), available at <<http://www.austlii.edu.au/au/journals/PLPR/1994/80.html>>, accessed 5 January 2010.

Langstrom, N. (2002). "Long-term follow-up of criminal recidivism in young sexual offenders." *Psychology, Crime & Law: Special Swedish studies on psychology, crime and law* 8: 41-58.

Liberty Organisation, 'Spent Convictions and the Rehabilitation of the offender', 2009 available at <<http://www.yourrights.org.uk/yourrights/privacy/spent-convictions-and-the-rehabilitation-of-offenders/exceptions-to-the-roa.html>>, accessed 12 January 2010.

Lievore, 2004, *Recidivism of Sexual Assault Offenders: Rates, Risk Factors and Treatment Efficacy*, Canberra : Australian Institute of Criminology

Moon, M., et al, 'Is Child Saving Dead? Public Support for Juvenile Rehabilitation', 2000, in *Crime and Delinquency*, Vol 46(1), p. 42.

Naylor, B., et al, 'In the shadow of a criminal record: proposing a just model of criminal record employment checks', 2008, in *Melbourne University Law Review*, Vol 32(1), available at <<http://www.austlii.edu.au/au/journals/MULR/2008/6.html>>, accessed 5 January 2010.

Nisbet, I.A., Wilson, P.H., & Smallbone, S.W. (2004). *A prospective longitudinal study of sexual recidivism among adolescent sex offenders. Sexual Abuse: A Journal of Research and Treatment*, 16, 223-234.

¹Nisbet, I; Rombouts, S; Smallbone, S (2005) *Impacts of programs for adolescents who sexually offend: literature review*, Ashfield, NSW: Department of Community Services

Payne J *Recidivism in Australia: findings and future research* Australian Institute of Criminology 2007

Rasmussen, L.A. (1999) *Factors Related to Recidivism Among Juvenile Sex Offenders. Sexual Abuse: A Journal of Research and Treatment*, 11 (1), pp. 69-85.

Standing Committee on Law and Justice, NSW Legislative Council, 'Inquiry into Spent Convictions for Juvenile Offenders', November 2009..

Sipe, R., Jensen, E.L. & Everett, R.S. (1998). *Adolescent sexual offenders grown up: Recidivism in young adulthood*. *Criminal Justice and Behaviour*, 25, 109-124.

Van Wijk, A., et.al. *Juvenile Sex Offenders Compared to Non Sex Offenders: A review of Literature 1995-2005*. *Trauma, Violence and Abuse*, Vol. 7, No.4, October 2006

Worling, J. and T. Curwen (2000). "Adolescent sexual offender recidivism: Success of specialized treatment and implications for risk prediction." *Child Abuse and Neglect: The International Journal* 24(7): 965-982.

Legislation

Annulled Convictions Act 2003 (Tas)

Criminal Records (Clean Slate) Act 2004 (NZ)

Criminal Records Act 1991 (NSW)

Criminal Records (Spent Convictions) Act 1994 (NT)

Criminal Records Act 1985 (Canada)

Nurses and Midwives Act 1991 (NSW)

Rehabilitation of Offenders Act 1974 (UK)

Rehabilitation of Offenders Act 2009 (Scottish)

Spent Convictions Act 2000 (ACT)

Spent Convictions Act 1988 (WA)

Submissions received

The Department of Premier and Cabinet wrote to the Attorney General on 23 December 2009 requesting that the Attorney General coordinate the NSW Government's response to the Legislative Council Standing Committee on Law and Justice's inquiry into Spent Convictions for Juvenile offenders. The following submissions were made:

- The Minister for Police
- The Minister for Health
- The Department of Human Services
- Corrective services have also made a separate submission to the inquiry.

Relevant Sex Offences

The relevant 29 offences in the *Crimes Act 1900* are at the following sections:

- 61JA Aggravated Sexual Assault in Company (prescribed by Regulation)
- 61I Sexual assault
- 61J Aggravated sexual assault
- 61K Assault with intent to have sexual intercourse
- 61L Indecent assault
- 61M Aggravated indecent assault
- 61N Act of indecency
- 61O Aggravated act of indecency
- 61P Attempt to commit offence under sections 61I–61O
- 66A Sexual intercourse—child under 10
- 66B Attempting, or assaulting with intent, to have sexual intercourse with child under 10
- 66C Sexual intercourse—child between 10 and 16
- 66D Attempting, or assaulting with intent, to have sexual intercourse with child between 10 and 16
- 66EA Persistent sexual abuse of a child (prescribed by Regulation)
- 66F Sexual offences—cognitive impairment
- 73 Sexual intercourse with child between 16 and 18 under special care
- 78A Incest
- 78B Incest attempts
- 79 Bestiality
- 80 Attempt to commit bestiality
- 80A Sexual assault by forced self-manipulation
- 80D Causing sexual servitude (prescribed by Regulation)
- 80E Conduct of business involving sexual servitude (prescribed by Regulation)
- 91A Procuring for prostitution
- 91B Procuring person by drugs for prostitution
- 91D Promoting or engaging in acts of child prostitution
- 91E Obtaining benefit from child prostitution
- 91H Production, dissemination or possession of child pornography (prescribed by Regulation)
- 91G Children not to be used for pornographic purposes

The relevant two offences in the *Summary Offences Act 1988* are at the following sections:

- 5 Obscene exposure
- 11G Loitering by convicted child sexual offenders near premises frequented by children (prescribed by Regulation)

Attachment C

Current exclusions to the Spent Convictions Scheme

Exclusions contained in the *Criminal Records Act*:

- The Spent Convictions scheme does not apply in relation to an application by a person for appointment or employment as a judge, magistrate, justice of the peace, police officer, prison officer, teacher, teachers aide or a provider of child care services under Part 3 of the Children (Care and Protection) Act 1987.
- The Spent Convictions scheme does not apply in relation to an application by a person for employment in child-related employment within the meaning of Part 7 of the Commission for Children and Young People Act 1998
- The Spent Convictions scheme does not apply in relation to a conviction of a person for arson or attempted arson if the person seeks to be appointed or employed in fire fighting or fire prevention
- The Spent Convictions scheme does not apply in relation to proceedings before a court (including the giving of evidence) or the making of a decision by a court (including a decision concerning sentencing).
- It is not an offence for a person to make information relating to a spent conviction available in accordance with section 38 or 38A of the Commission for Children and Young People Act 1998.
- It is not an offence for the officer in charge of the Criminal Records Unit of the Police Service to make information relating to a spent conviction available to a law enforcement agency or to the holder of an office prescribed by the regulations.
- It is not an offence for an archive or library (or an authorised officer of an archive or library) to make available to a member of the public, or to another archive or library, in accordance with the normal procedures of the archive or library, material that is normally available for public use and that contains information relating to a spent conviction.
- It is not an offence for a law enforcement agency (or an authorised officer of a law enforcement agency) in the discharge of its duties (or of the authorised officer's duties) to make information relating to a spent conviction available to another law enforcement agency or to a court in compliance with an order of the court.

law enforcement agency means any of the following:

- (a) the Police Service,
- (b) the Australian Federal Police,
- (c) the police force of another State or a Territory,
- (d) the Australian Crime Commission,
- (e) the Australian Bureau of Criminal Intelligence,
- (f) the National Exchange of Police Information,
- (g) the Independent Commission Against Corruption or a similar body established under the law of another legislature in Australia,
- (h) the New South Wales Crime Commission or a similar body established under the law of another legislature in Australia,
- (i) the Attorney General for the Commonwealth or for a State or Territory,
- (j) persons employed in the Attorney General's Department or a similar Department of the Commonwealth, another State or a Territory, or employed in a body administered by such a Department, being persons whose primary function is the institution or conduct of proceedings for offences,

- (k) the Office of the Director of Public Prosecutions or a similar body established under a law of another legislature in Australia,
- (l) the Director of Public Prosecutions, or a person performing a similar function, appointed under a law of another legislature in Australia,
- (m) a Crown Prosecutor,
- (n) an Australian legal practitioner to the extent to which the Australian legal practitioner is engaged by or on behalf of the Crown to prosecute an offence,
- (o) a person or body prescribed for the purpose of this definition by the regulations.

Exclusions contained in the *Criminal Records Regulation 2004*:

- o The Spent Convictions scheme does not apply in relation to an application by a person for appointment or employment as an Officer within the meaning of the Director of Public Prosecutions Act 1986.
- o The Spent Convictions scheme does not apply in relation to an application by a person for appointment or employment as an officer of the Commission within the meaning of the Independent Commission Against Corruption Act 1988.
- o The Spent Convictions scheme does not apply in relation to an application by a person for appointment or employment as an officer of the Inspector within the meaning of the Independent Commission Against Corruption Act 1988.
- o The Spent Convictions scheme does not apply in relation to an application by a person for appointment as the Commissioner for the Police Integrity Commission under the Police Integrity Commission Act 1996.
- o The Spent Convictions scheme does not apply in relation to an application by a person for appointment as an Assistant Commissioner for the Police Integrity Commission under the Police Integrity Commission Act 1996.
- o The Spent Convictions scheme does not apply in relation to an application by a person for employment as a member of staff of the Police Integrity Commission for the purposes of the Police Integrity Commission Act 1996.
- o The Spent Convictions scheme does not apply in relation to an application by a person for employment as a member of staff of the Inspector of the Police Integrity Commission for the purposes of the Police Integrity Commission Act 1996.
- o The Spent Convictions scheme does not apply in relation to an application by a person for engagement as a consultant by the Inspector of the Police Integrity Commission under section 92 (3) of the Police Integrity Commission Act 1996.
- o The Spent Convictions scheme does not apply in relation to an application by a person for appointment as the Inspector of the Police Integrity Commission under the Police Integrity Commission Act 1996.
- o The Spent Convictions scheme does not apply in relation to an application by a person for appointment as the Commissioner for the New South Wales Crime Commission under the New South Wales Crime Commission Act 1985.
- o The Spent Convictions scheme does not apply in relation to an application by a person for appointment as an Assistant Commissioner for the New South Wales Crime Commission under the New South Wales Crime Commission Act 1985.
- o (3) Section 12 of the Act does not apply in relation to an application by a person for employment as a member of staff of the New South Wales Crime Commission for the purposes of the New South Wales Crime Commission Act 1985.
- o The Spent Convictions scheme does not apply in relation to an application by a person for appointment as a Crown Prosecutor under the Crown Prosecutors Act 1986.

- The Spent Convictions scheme does not apply in relation to an application for admission as a legal practitioner under the Legal Profession Act 1987.
- The Spent Convictions scheme does not apply relation to a conviction of a person for a serious personal violence offence for the purposes of applying section 9D of the Bail Act 1978.
- It is not an offence for the disclosure of information concerning a spent conviction by the officer in charge of the Criminal Records Section of the NSW Police Force to a person employed in the Department of Corrective Services.
- It is not an offence for the disclosure of information concerning a spent conviction by the officer in charge of the Criminal Records Section of the NSW Police Force to a person employed in the Bureau of Crime Statistics and Research.
- It is not an offence for the disclosure of information concerning a spent conviction by the officer in charge of the Criminal Records Section of the NSW Police Force to a person employed in the Bureau of Crime Statistics and Research.
- It is not an offence for the disclosure of information concerning a spent conviction by the officer in charge of the Criminal Records Section of the NSW Police Force to a person employed in the Office of the Sheriff or in the Office of Fair Trading, Department of Commerce.
- It is not an offence for the disclosure of information concerning a spent conviction by the officer in charge of the Criminal Records Section of the NSW Police Force to any of the following persons:
 - (a) the Casino Control Authority,
 - (b) the Director of Liquor and Gaming, or a person authorised in writing by the Director.

Exclusions contained in miscellaneous legislation:

- **Casino Control Act 1992 (NSW)**
158 Disclosure of spent convictions
(1) Section 12 (Consequences of conviction becoming spent) of the Criminal Records Act 1991 does not apply in relation to an application for a casino licence or a licence under Part 4 (Licensing of casino employees).
- **Casino, Liquor and Gaming Control Authority Act 2007**
12 Disclosure of spent convictions
The Authority is taken to be a law enforcement agency for the purposes of section 13 of the Criminal Records Act 1991.
- **Commission for Children and Young People Act 1998 (NSW)**
38 Notification of information relating to relevant criminal records or other orders
(1) The Commissioner of Police may, in accordance with this Division and the regulations, disclose (or arrange for a member of the Police Service to disclose) to the Commission, and to any employer (or employer-related body) approved by the Minister, information relating to any relevant criminal record of persons, or any relevant apprehended violence orders in respect of persons, or any child protection prohibition orders in respect of persons, for the purposes of background checking.
(2) The Commission and any such approved employer (or employer-related body) may, in accordance with this Division and the regulations, disclose that information to other employers for the purposes of background checking undertaken by the Commission or approved employer (or employer-related body).
(3) Information that may be disclosed under this section includes:

- (a) information relating to spent convictions, despite anything to the contrary in the Criminal Records Act 1991, and
- (b) information relating to criminal charges, whether or not heard, proven, dismissed, withdrawn or discharged
- o **Firearms Act 1996 (NSW)**
 - 11 General restrictions on issue of licences
 - (5) A licence must not be issued to a person who:
 - (a) is under the age of 18, or
 - (b) has, within the period of 10 years before the application for the licence was made, been convicted in New South Wales or elsewhere of an offence prescribed by the regulations, whether or not the offence is an offence under New South Wales law, or
 - ...
 - (c) is subject to a firearms prohibition order.
 - 29 General restrictions on issuing permits
 - (3) Subject to this Division, a permit must not be issued to a person who:
 - (a) is under the age of 18, or
 - (b) has, within the period of 10 years before the application for the permit was made, been convicted in New South Wales or elsewhere of an offence prescribed by the regulations, whether or not the offence is an offence under New South Wales law,
- o **Security Industry Act 1997 (NSW)**
 - 16 Restrictions on granting licence—criminal and other related history
 - (1) The Commissioner must refuse to grant an application for a licence if the Commissioner is satisfied that the applicant:
 - (a) has, within the period of 10 years before the application for the licence was made, been convicted in New South Wales or elsewhere of an offence prescribed by the regulations in relation to the class of licence sought, whether or not the offence is an offence under New South Wales law, or
 - (b) has, within the period of 5 years before the application for the licence was made, been found guilty (but with no conviction being recorded) by a court in New South Wales or elsewhere of an offence prescribed by the regulations in relation to the class of licence sought, whether or not the offence is an offence under New South Wales law, or
 - (c) has, within the period of 5 years before the application for the licence was made, had a civil penalty imposed on the applicant by a court or tribunal in New South Wales or elsewhere, being a civil penalty prescribed by the regulations in relation to the class of licence sought
- o **Totalizator Act 1997 (NSW)**
 - 109 Disclosure of spent convictions
 - (1) Section 12 (Consequences of conviction becoming spent) of the Criminal Records Act 1991 does not apply in relation to an application for a licence.
 - (2) The Minister is to be considered to be a law enforcement agency for the purposes of section 13 (Unlawful disclosure of information concerning spent convictions) of the Criminal Records Act 1991.
- o **Weapons Prohibition Act 1998 (NSW)**
 - 9 Application for permit
 - (1) A person may apply to the Commissioner for a permit.
 - (2) An application must be in the approved form and be accompanied:

- (a) by the fee prescribed by the regulations, and
- (b) by such information and particulars as may be prescribed by the regulations.
- (3) An applicant for a permit must provide proof of the applicant's identity in accordance with the requirements of the Financial Transaction Reports Act 1988 of the Commonwealth that apply in respect of the opening of a bank account.
- (4) On receiving an application for a permit, the Commissioner may carry out such investigations and inquiries as the Commissioner considers necessary to enable the Commissioner to consider the application properly.
- (5) Section 12 of the Criminal Records Act 1991 does not apply in relation to an application for a permit.
- o **Tow Truck Industry Act 1998 (NSW)**
 - 96 Disclosure of spent convictions
 - (1) Section 12 of the Criminal Records Act 1991 does not apply in relation to an application for a licence or a drivers certificate.
 - (2) The RTA is to be considered to be a law enforcement agency for the purposes of section 13 of the Criminal Records Act 1991.
- o **Medical Practice Act 1992**
 - 192B Application of Criminal Records Act**
 - For the purposes of the application of this Division in respect of a criminal finding, the ~~Criminal~~ ~~Records~~ ~~Act~~ 1991 applies in respect of a criminal finding as if section 8 (2) and (4) of that Act were omitted.
 - Note: This type of provision is duplicated in the following acts.
 - Nurses and Midwives Act 1991 (s 42D),
 - Psychologists Act 2001 (s 117),
 - Optometrists Act 2002 (s 121),
 - Osteopaths Act 2001 (s 117),
 - Pharmacy Practice Act 2006 (s 140)
 - Physiotherapists Act 2001 (s 118)
 - Podiatrists Act 2003 (s 117)
 - Dental Practice Act 2001 (s 143)
 - Chiropractors Act 2001 (s 117)*

Attachment D

NSW Judicial Commission Statistics

Sexual offenders who received section 10 non-conviction order (NCO)

Crimes Act 1900

Section	Offence	Court	Time period	Total number of cases	Number of offenders who received NCO	Number of offenders <18 years of age who received NCO
61C(1)(a) <i>*repealed*</i>	Maliciously inflict actual bodily harm with intent to have sexual intercourse	District	Jan 2002– Dec 2008	1	0 (0%)	0 (0%)
61D(1) <i>*repealed*</i>	Sexual intercourse without consent	District	Jan 2002– Dec 2008	31	2 (6.5%)	2 (6.5%)
61D(1A) <i>*repealed*</i>	Sexual intercourse with person <16 without consent by person in authority	District	Jan 2002– Dec 2008	4	0 (0%)	0 (0%)
61D(1A) <i>*repealed*</i>	Attempt sexual intercourse with person <16 without consent by person in authority	District	Jan 2002– Dec 2008	1	0 (0%)	0 (0%)
61E(1) <i>*repealed*</i>	Indecent assault	District	Jan 2002– Dec 2008	41	1 (2.4%)	1 (2.4%)
		Local	Jul 2005– Jun 2009	2	0 (0%)	0 (0%)
61E(1A) <i>*repealed*</i>	Indecent assault on person <16 by person in authority	District	Jan 2002– Dec 2008	14	0 (0%)	0 (0%)
		Local	Jul 2005– Jun 2009	1	0 (0%)	0 (0%)
61E(2) <i>*repealed*</i>	Act of indecency with person <16	District	Jan 2002– Dec 2008	4	0 (0%)	0 (0%)
		Local	Jul 2005– Jun 2009	2	0 (0%)	0 (0%)
61I	Sexual intercourse without consent—not subject to SNPP	District	Jan 2002– Dec 2008	77	0 (0%)	0 (0%)
61I	Sexual intercourse without consent—subject to SNPP (item 7)	District	Feb 2003– Dec 2008	130	0 (0%)	0 (0%)
61I	Attempt sexual intercourse without consent	District	Jan 2002– Dec 2008	15	0 (0%)	0 (0%)
61J	Aggravated sexual assault—not subject to SNPP	District	Jan 2002– Dec 2008	172	0 (0%)	0 (0%)
61J	Aggravated sexual assault—subject to SNPP (item 8)	District	Feb 2003– Dec 2008	110	0 (0%)	0 (0%)

Section	Offence	Court	Time period	Total number of cases	Number of offenders who received NCO	Number of offenders <18 years of age who received NCO
61J	Attempt aggravated sexual assault	District	Jan 2002–Dec 2008	8	0 (0%)	0 (0%)
61J	Aid and abet aggravated sexual assault	District	Jan 2002–Dec 2008	1	0 (0%)	0 (0%)
61J	Accessory before fact to aggravated sexual assault	District	Jan 2002–Dec 2008	1	0 (0%)	0 (0%)
61JA(1)	Aggravated sexual assault in company inflict actual bodily harm—subject to SNPP (item 9)	District	Feb 2003–Dec 2008	5	0 (0%)	0 (0%)
61JA(1)	Aggravated sexual assault in company—threaten actual bodily harm by weapon—not subject to SNPP	District	Jan 2002–Dec 2008	5	0 (0%)	0 (0%)
61JA(1)	Aggravated sexual assault in company—threaten actual bodily harm by weapon—subject to SNPP (item 9)	District	Feb 2003–Dec 2008	1	0 (0%)	0 (0%)
61JA(1)	Aggravated sexual assault in company—deprive liberty—not subject to SNPP	District	Jan 2002–Dec 2008	4	0 (0%)	0 (0%)
61JA(1)	Aggravated sexual assault in company—deprive liberty—subject to SNPP (item 9)	District	Feb 2003–Dec 2008	7	0 (0%)	0 (0%)
61K(a)	Inflict actual bodily harm with intent to have sexual intercourse	District	Jan 2002–Dec 2008	7	0 (0%)	0 (0%)
61K(b)	Threaten actual bodily harm with intent to have sexual intercourse	District	Jan 2002–Dec 2008	5	0 (0%)	0 (0%)
61L	Indecent assault	District	Jan 2002–Dec 2008	91	3 (3.3%)	0 (0%)
		Local	Jul 2005–Jun 2009	430	30 (7%)	0 (0%)
61L	Attempt indecent assault	District	Jan 2002–Dec 2008	1	0 (0%)	0 (0%)
61M(1)	Aggravated indecent assault—not subject to SNPP	District	Jan 2002–Dec 2008	87	0 (0%)	0 (0%)
61M(1)	Aggravated indecent assault—subject to SNPP (item 9A)	District	Feb 2003–Dec 2008	76	2 (2.6%)	0 (0%)
61M(1)	Aggravated indecent assault	Local	Jul 2005–Jun 2009	222	3 (1.4%)	0 (0%)

Section	Offence	Court	Time period	Total number of cases	Number of offenders who received NCO	Number of offenders <18 years of age who received NCO
61M(2) <i>*old*</i>	Aggravated indecent assault—child <10—not subject to SNPP	District	Jan 2002–Dec 2008	37	0 (0%)	0 (0%)
61M(2) <i>*old*</i>	Aggravated indecent assault—child <10—subject to SNPP (item 9B—minimum 5 years)	District	Feb 2003–Dec 2008	36	0 (0%)	0 (0%)
61M(2) <i>*old*</i>	Aggravated indecent assault—child <10—subject to SNPP (item 9B—minimum 8 years)	District	Jan 2008–Dec 2008	9	0 (0%)	0 (0%)
61M(2) <i>*old*</i>	Aggravated indecent assault person <10	Local	Jul 2005–Jun 2009	60	0 (0%)	0 (0%)
61N(1)	Act of indecency—person <16	District	Jan 2002–Dec 2008	4	0 (0%)	0 (0%)
		Local	Jul 2005–Jun 2009	45	1 (2.2%)	0 (0%)
61N(1)	Incite person <16 to act of indecency	District	Jan 2002–Dec 2008	2	1 (50%)	0 (0%)
		Local	Jul 2005–Jun 2009	10	0 (0%)	0 (0%)
61N(2)	Commit act of indecency with/towards person >16	Local	Jul 2005–Jun 2009	125	9 (7.2%)	0 (0%)
61N(2)	Incite person >= 16 to act of indecency	District	Jan 2002–Dec 2008	1	0 (0%)	0 (0%)
		Local	Jul 2005–Jun 2009	2	1 (50%)	0 (0%)
61O(1)	Aggravated act of indecency—person <16	District	Jan 2002–Dec 2008	5	0 (0%)	0 (0%)
		Local	Jul 2005–Jun 2009	4	0 (0%)	0 (0%)
61O(1)	Incite aggravated act of indecency—person <16	District	Jan 2002–Dec 2008	1	0 (0%)	0 (0%)
61O(1A)	Aggravated act of indecency—person >=16	District	Jan 2002–Dec 2008	1	0 (0%)	0 (0%)
		Local	Jul 2005–Jun 2009	1	0 (0%)	0 (0%)
61O(1A)	Incite aggravated act of indecency—person >=16	District	Jan 2002–Dec 2008	1	0 (0%)	0 (0%)
61O(2)	Aggravated act of indecency—child <10	District	Jan 2002–Dec 2008	5	0 (0%)	0 (0%)
		Local	Jul 2005–Jun 2009	12	0 (0%)	0 (0%)

Section	Offence	Court	Time period	Total number of cases	Number of offenders who received NCO	Number of offenders <18 years of age who received NCO
61O(2)	Incite child <10 to aggravated act of indecency	District	Jan 2002–Dec 2008	1	0 (0%)	0 (0%)
		Local	Jul 2005–Jun 2009	4	0 (0%)	0 (0%)
63 <i>*repealed*</i>	Rape	District	Jan 2002–Dec 2008	2	0 (0%)	0 (0%)
65A(2)	Sexual intercourse procured by non-violent threat	District	Jan 2002–Dec 2008	4	0 (0%)	0 (0%)
66A <i>*old*</i>	Sexual intercourse—child <10—not subject to SNPP	District	Jan 2002–Dec 2008	82	2 (2.4%)	2 (2.4%)
66A <i>*old*</i>	Sexual intercourse—child <10—subject to SNPP (item 10)	District	Feb 2003–Dec 2008	57	0 (0%)	0 (0%)
66A <i>*old*</i>	Aid and abet sexual intercourse—child <10	District	Jan 2002–Dec 2008	1	0 (0%)	0 (0%)
66B	Attempt sexual intercourse with child <10	District	Jan 2002–Dec 2008	5	0 (0%)	0 (0%)
66B	Assault child <10 with intent to have sexual intercourse	District	Jan 2002–Dec 2008	1	0 (0%)	0 (0%)
66C(1)	Sexual intercourse with child between 10 and 14	District	Jun 2003–Dec 2008	30	0 (0%)	0 (0%)
66C(1) <i>*old*</i>	Sexual intercourse with child 10–16	District	Jan 2002–Dec 2008	84	1 (1.2%)	0 (0%)
		Local	Jul 2005–Jun 2009	6	0 (0%)	0 (0%)
66C(2)	Aggravated sexual intercourse with child between 10 and 14	District	Jun 2003–Dec 2008	16	0 (0%)	0 (0%)
66C(2) <i>*old*</i>	Sexual intercourse with child 10–16 by person in authority	District	Jan 2002–Dec 2008	52	0 (0%)	0 (0%)
66C(3)	Sexual intercourse with child between 14 and 16	District	Jun 2003–Dec 2008	58	2 (3.4%)	1 (1.7%)
		Local	Jul 2005–Jun 2009	33	4 (12%)	0 (0%)
66C(4)	Aggravated sexual intercourse with child between 14 and 16	District	Jun 2003–Dec 2008	13	0 (0%)	0 (0%)
66D	Attempt sexual intercourse with child over 14 under 16	District	Jun 2003–Dec 2008	1	0 (0%)	0 (0%)
66EA(1)	Persistent sexual abuse of a child	District	Jan 2002–Dec 2008	14	0 (0%)	0 (0%)
66EB(2)	Attempt to procure child <14 for unlawful sexual activity	District	Jan 2008–Dec 2008	1	0 (0%)	0 (0%)
66EB(2) <i>*old*</i>	Procure child for unlawful sexual activity	Local	Jan 2008–Jun 2009	1	0 (0%)	0 (0%)

Section	Offence	Court	Time period	Total number of cases	Number of offenders who received NCO	Number of offenders <18 years of age who received NCO
66EB(3) <i>*old*</i>	Groom child for unlawful sexual activity	Local	Jan 2008– Jun 2009	1	0 (0%)	0 (0%)
66F(2)	Sexual intercourse with intellectually disabled by person in authority	District	Jan 2002– Dec 2008	1	0 (0%)	0 (0%)
66F(3)	Sexual intercourse with intellectually disabled person	District	Jan 2002– Dec 2008	13	0 (0%)	0 (0%)
67 <i>*repealed*</i>	Carnally knowing girl under 10	District	Jan 2002– Dec 2008	8	0 (0%)	0 (0%)
68 <i>*repealed*</i>	Assault girl <10 with intent carnally to know	District	Jan 2002– Dec 2008	1	0 (0%)	0 (0%)
71 <i>*repealed*</i>	Carnally knowing girl between 10 and 16	District	Jan 2002– Dec 2008	7	0 (0%)	0 (0%)
73(1)	Sexual intercourse with person under care >=16 & <17 years	District	Jun 2003– Dec 2008	1	0 (0%)	0 (0%)
73(2)	Sexual intercourse with person under care >=17 & <18	District	Jun 2003– Dec 2008	1	0 (0%)	0 (0%)
73 <i>*old*</i>	Carnal knowledge by teacher etc	District	Jan 2002– Dec 2008	10	0 (0%)	0 (0%)
74 <i>*repealed*</i>	Attempt carnal knowledge by teacher etc	District	Jan 2002– Dec 2008	1	0 (0%)	0 (0%)
76 <i>*repealed*</i>	Indecent assault of female <16	District	Jan 2002– Dec 2008	45	2 (4%)	2 (4%)
76 <i>*repealed*</i>	Indecent assault of female >=16	District	Jan 2002– Dec 2008	1	0 (0%)	0 (0%)
76A <i>*repealed*</i>	Commit act of indecency with girl under 16 years	District	Jan 2002– Dec 2008	3	0 (0%)	0 (0%)
76A <i>*repealed*</i>	Incite girl under 16 years to commit act of indecency	District	Jan 2002– Dec 2008	1	0 (0%)	0 (0%)
78A	Incest with person >=16 years	District	Jun 2003– Dec 2008	4	0 (0%)	0 (0%)
78H <i>*repealed*</i>	Homosexual intercourse with male <10	District	Jan 2002– Dec 2008	4	0 (0%)	0 (0%)
78K <i>*repealed*</i>	Homosexual intercourse with male 10– 18	District	Jan 2002– Dec 2008	31	1 (3%)	0 (0%)
78K <i>*repealed*</i>	Aid and abet homosexual intercourse with male 10–18	District	Jun 2004– Dec 2008	1	0 (0%)	0 (0%)
78L <i>*repealed*</i>	Assault male 10–18 with intent to have homosexual intercourse	District	Jan 2002– Dec 2008	1	0 (0%)	0 (0%)
78N <i>*repealed*</i>	Homosexual intercourse by teacher etc	District	Jan 2002– Dec 2008	1	0 (0%)	0 (0%)
78Q(1) <i>*repealed*</i>	Act of gross indecency with male <18	District	Jan 2002– Dec 2008	1	0 (0%)	0 (0%)

Section	Offence	Court	Time period	Total number of cases	Number of offenders who received NCO	Number of offenders <18 years of age who received NCO
79	Bestiality	District	Jan 2002– Dec 2008	2	0 (0%)	0 (0%)
79 *old*	Buggery	District	Jan 2002– Dec 2008	16	0 (0%)	0 (0%)
80 *old*	Assault with intent to commit buggery	District	Jan 2002– Dec 2008	1	0 (0%)	0 (0%)
80	Attempt to commit bestiality	Local	Jul 2005– Jun 2009	1	0 (0%)	0 (0%)
80A(2)	Sexual assault by forced self-manipulation	District	Jan 2002– Dec 2008	1	0 (0%)	0 (0%)
81 *repealed*	Indecent assault on male	District	Jan 2002– Dec 2008	27	0 (0%)	0 (0%)
		Local	Jul 2005– Jun 2009	1	0 (0%)	0 (0%)
81A *repealed*	Indecent act with male	Local	Jul 2005– Jun 2009	1	0 (0%)	0 (0%)
91A	Procure person not being prostitute for purposes of prostitution	Local	Jul 2005– Jun 2009	1	0 (0%)	0 (0%)
91B	Procure person by threat for purposes of prostitution	District	Jan 2002– Dec 2008	1	0 (0%)	0 (0%)
91D(1)(a)	Induce child to participate in prostitution	District	Jan 2002– Dec 2008	6	0 (0%)	0 (0%)
91D(1)(a)	Attempt to induce child to participate in prostitution	District	Jan 2002– Dec 2008	2	0 (0%)	0 (0%)
91E	Obtain benefit from child prostitution	District	Jan 2002– Dec 2008	2	0 (0%)	0 (0%)
91F	Operate premises used for child prostitution	District	Jan 2002– Dec 2008	2	0 (0%)	0 (0%)
91G(1)(a)	Use child <14 years for pornographic purposes	District	Jan 2005– Dec 2008	3	0 (0%)	0 (0%)
91G(1)(b)	Cause or procure child <14 years for pornographic purposes	District	Jan 2005– Dec 2008	1	0 (0%)	0 (0%)
91G(2)(a)	Use child >=14 years for pornographic purposes	District	Jan 2005– Dec 2008	2	0 (0%)	0 (0%)
91G *old*	Use etc child < 14 years for pornographic purposes	District	Jan 2002– Dec 2008	2	0 (0%)	0 (0%)
91G *old*	Attempt to use etc child >=14 years for pornographic purposes	District	Jan 2002– Dec 2008	1	0 (0%)	0 (0%)
91H(2)	Disseminate/produce/possess child pornography	Local	Jan 2009– Jun 2009	1	0 (0%)	0 (0%)
91H(2) *old*	Produce/disseminate child pornography	District	Jan 2005– Dec 2008	4	0 (0%)	0 (0%)

Section	Offence	Court	Time period	Total number of cases	Number of offenders who received NCO	Number of offenders <18 years of age who received NCO
		Local	Jul 2005–Jun 2009	15	0 (0%)	0 (0%)
91H(3) <i>*repealed*</i>	Possess child pornography	District	Jan 2005–Dec 2008	18	0 (0%)	0 (0%)
		Local	Jul 2005–Jun 2009	188	0 (0%)	0 (0%)
91K(1)	Film person engaged in private act without consent	Local	Jan 2009–Jun 2009	1	0 (0%)	0 (0%)
91L	Film person's private parts without consent	Local	Jan 2009–Jun 2009	1	0 (0%)	0 (0%)
578B(2) <i>*repealed*</i>	Possess child pornography	Local	Jul 2005–Jun 2009	42	0 (0%)	0 (0%)
578C(2)	Publish indecent article	Local	Jul 2005–Jun 2009	2	0 (0%)	0 (0%)
578C(2A) <i>*repealed*</i>	Publish child pornography	District	Jan 2002–Dec 2008	2	0 (0%)	0 (0%)
		Local	Jul 2005–Jun 2009	2	0 (0%)	0 (0%)

Summary Offences Act 1988

Section	Offence	Court	Time period	Total number of cases	Number of offenders who received s10 or 10A	Number of offenders <18 years of age who received s10 or 10A
5	Obscene exposure	Local	Jul 2005– Jun 2009	562	82 (15%)	0 (0%)