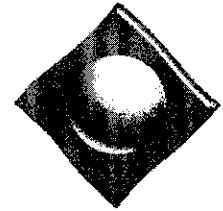


Submission  
No 7

## **INQUIRY INTO SPENT CONVICTIONS FOR JUVENILE OFFENDERS**

**Organisation:** Privacy NSW  
**Name:** Mr John McAteer  
**Position:** Principal Privacy Officer  
**Date received:** 29/01/2010

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privacynsw

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Our ref: A09/0628

Hon Christine Robertson MLC  
Chair Standing Committee on Law and Justice  
Parliament House Macquarie Street  
SYDNEY NSW 2000

Dear Ms Robertson,

I refer to your correspondence dated 25 November 2009 concerning the Inquiry into Spent Convictions for Juvenile Offenders. Judge Taylor the Privacy Commission is currently on leave and the functions of the Commissioner have been delegated.

The purpose of this letter is to make very brief submissions to the Inquiry on behalf of Privacy NSW (the Office of the NSW Privacy Commissioner).

As the Committee would be aware the NSW Privacy Commissioner's role (and that of Privacy Commissioners generally) essentially concerns data protection and seeks to ensure compliance with statutory provisions to limit the open exchange of personal information. The criminal history of an individual falls within the definition of personal information.

In this regard the objects of the current *Criminal Records Act 1991* (the Act), are consistent with a legislative limitation on the release of certain personal information after a specific qualifying period.

I note that the terms of reference of the inquiry seek to examine whether the benefits intended to be conferred on an individual by a 'spent convictions scheme' should be broadened to the individual's benefit in sex offender matters, when (for example) the offence occurred whilst they were a juvenile, or the offence was minor. As you would be aware, in Queensland convictions for sex based crimes are spent in the same manner as all other eligible convictions.

Whilst I believe that it is not appropriate to formally express a view (as delegated Privacy Commissioner) about whether sexual offences should be capable of becoming spent, as this is a social issue, the notion proposed at item 1 (a) of the terms of reference, is consistent with the benefits currently in place at section 10 of the *Criminal Records Act 1991* when contrasted with section 9. Eg: a Juvenile's required crime free period is three years whereas an adult requires 10 crime free years for a conviction to be considered spent.

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In reference to item (1) (c) of the Terms of Reference, (consent) if the offence was committed under either Section 66C (1) or (3) of the *Crimes Act 1900* and the Defendant was also a person below the age of 16 years at the time of the offence, and the behaviour was deemed upon review to be consensual, then some benefit under the spent convictions provisions might be statutorily appropriate. In such specific section 66C examples the bringing of a prosecution and determining who is the actual offender is often coincidental.

In all other circumstances (including consent) without providing a formal view on this social / public policy consideration, I would support a mechanism whereby a judicial officer could (at time of conviction or later) make an appropriate order about the conviction becoming spent.

Whilst not specifically within the terms of reference, the major concern for this Office with spent convictions generally is that the objects of the Act are not currently being met in many instances.

The provision states:

### **3 Objects of this Act**

- (1) The primary object of this Act is to implement a scheme to limit the effect of a person's conviction for a relatively minor offence if the person completes a period of crime-free behaviour. On completion of the period, the conviction is to be regarded as spent and, subject to some exceptions, is not to form part of the person's criminal history.

The issue, which I would characterise as administrative, concerns the actual removal of spent convictions from the official copy of a person's criminal history provided by NSW Police to, for example, a prospective employer. Unfortunately, too often spent convictions are not in fact removed from the official copy of a criminal record. Privacy New South Wales's numerous attempts to have this issue addressed over the last six years (since the problem arose), have not met with success.

Bearing in mind the Privacy Commissioner's role in monitoring, oversight and investigation of data protection in respect of government agencies, and the information protection principles outlined at section 8 – 19 of the *Privacy and Personal Information Protection Act 1998*, the problems outlined above continues constitute the largest single number of inquiries to Privacy New South Wales.

Whilst the notions of a spent conviction system, broader or otherwise, is consistent with public policy considerations concerning crime prevention through lack of permanent stigmatisation, and rehabilitation of offenders, the examples cited at the

Terms of Reference are consistent with the notion of 'a relatively minor offence' as referred to in the Objects of the Act at section 3 (1). The general notion of whether in broad circumstances sex offender's convictions become spent would again be a social or public policy issue and would hinge (without further legislative amendment to section 3) on the meaning of the term 'minor'.

More importantly however, unless any 'spent convictions scheme' actually operates in practice then any notion of a 'spent conviction' being spent purely for administrative rather than practical purposes, thereby providing no real benefits to the individual, then it would appear to be of minimal value.

Yours sincerely

A handwritten signature in black ink, appearing to read 'John McAteer', with a long horizontal flourish extending to the right.

John McAteer  
Principal Privacy Officer  
for Privacy Commissioner