

INQUIRY INTO SPENT CONVICTIONS FOR JUVENILE OFFENDERS

Organisation: NSW Department of Education and Training
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**DIRECTOR-GENERAL OF EDUCATION AND TRAINING
MANAGING DIRECTOR OF TAFE NSW**



NEW SOUTH WALES
DEPARTMENT
OF EDUCATION
AND TRAINING



Early Childhood and Primary Education
Secondary Education
Technical and Further Education
Vocational Education and Training
Higher Education
Adult and Community Education

The Hon C M Robertson MLC
Committee Chair
Standing Committee on Law and Justice
Legislative Council
Parliament House
Macquarie Street
SYDNEY NSW 2000

DGL 09/2126

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Christine

Dear Ms Robertson

I write in response to your letter of 25 November 2009, regarding the inquiry into spent convictions for juvenile offenders.

Thank you for the opportunity of contributing to the inquiry.

The Department of Education and Training has considered the discussion paper and our submission is attached.

If you require any further information, the department's contact person for this matter is Mr David Rees, Manager of the Employment Screening Unit. Mr Rees can be contacted on telephone number (02) 9836 9210.

Yours sincerely

Michael Coutts-Trotter
**DIRECTOR-GENERAL OF EDUCATION AND TRAINING
MANAGING DIRECTOR OF TAFE NSW**
28 January 2010

Encl

The NSW Department of Education and Training's Submission to the Inquiry into Spent Convictions for Juvenile Offenders

Section 38 (3) (a) of the *Commission for Children and Young People Act 1998* provides for information to be disclosed, for the purpose of the *Working with Children Check*, "relating to spent convictions, despite anything to the contrary in the *Criminal Records Act 1991*".

Similarly, spent conviction legislation does not apply to people seeking employment as teachers and teachers' aides due to section 15 of the *Criminal Records Act 1991* that excludes convictions becoming spent for the purpose of employment in certain occupations.

The issue being considered by the inquiry is "whether the current prohibition on spent convictions for sexual offences should remain or whether there are certain circumstances in which a sexual offence was committed that should give rise to the possibility of the conviction becoming spent."

This is not confined to juvenile sex offenders so the title of the discussion paper appears to be misleading. An option put forward in the discussion paper is to treat juvenile sex offenders differently to adult sex offenders in terms of the spent conviction regime.

For the purpose of background checking for child-related employment, the Applicant and Workplace Risk Estimate (AWARE) procedures of the Commission for Children and Young People enable an Approved Screening Agency to assess the relative seriousness of a charge for a sex offence. For example, consensual acts between near age peers do not indicate any particular risk if there is no other matter to consider.

Furthermore, the *Commission for Children and Young People Act 1998* allows for people with convictions for sex offences to make application to a relevant tribunal for a review order. If successful, a person's record does not apply for the purpose of the *Working with Children Check*.

The Department of Education and Training considers that there is already sufficient procedural fairness for people (including juveniles) with sex offences on their police record when they undergo the *Working with Children Check*.

Given that certain juvenile sex offences can indicate a risk of reoffending, the Department of Education and Training is concerned that amending the *Criminal Records Act 1991* does not restrict the availability of information used to assess a person's suitability to engage in child-related employment.

Spent convictions are examined as part of the *Working with Children Check* so there should be no issue of someone with a background of one or more sex offences gaining child related employment without that offence or offences being revealed during the background checking process.

Apart from background checking for employment, it could be considered that some sexual offences should be treated no differently to any other type of offence by the spent convictions regime. The existing arrangements are that offences for which six months or more of imprisonment is imposed never become spent and that a crime free period of ten years for an adult and three years for a juvenile must have elapsed.

If there is a view that sex offences are inherently more serious, this should be reflected in the penalties applicable to those offences (if this is not already considered to be the case) rather than in the operation of the spent convictions scheme.

In terms of students convicted of offences, schools need to be aware of relevant risk related information concerning a child or young person who is seeking to enrol, or who is already enrolled in a government school to ensure the safety of staff and students.

While spent convictions assist offenders to reintegrate into the community by limiting the stigma of old criminal convictions for less serious offences, there must be a balance between the need to rehabilitate offenders and the need to protect the community, including staff and students in schools.

Option C is supported in principle. *Convictions for sexual offences should only be capable of being spent in limited circumstances*, pending further qualification of the term 'limited circumstances' and 'minor offences'.

It should be noted that in some circumstances a 'minor offence' as determined by the inquiry, may still have significant implications for the Department of Education and Training. For example, a young person may be convicted of sexual offences which include grooming behaviour which may be regarded by the courts as a minor offence. If the behaviours continue in the school situation this could present a high risk to other students.

Knowledge of relevant risk related information, especially if this is related to violence, can assist in the identification of appropriate supports that can maximise potential for the student's rehabilitation in a learning environment.

It is essential that any changes to the current spent conviction scheme do not place the Department of Education and Training in the situation where it is without access to relevant risk related information regarding students who may present a high level of potential risk in the school environment. It is important that schools provide a safe environment for children and young people as this is an expectation that is strongly held by the community.