

INQUIRY INTO SPENT CONVICTIONS FOR JUVENILE OFFENDERS

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Partially Confidential

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

Sir,

Please accept my submission concerning the Inquiry Into Spent Convictions For Juvenile Offenders.
Having had to live with the consequences of childhood sexual abuse in my own life,
[omitted at the request of the author] I do
believe I have the right to submit my thoughts on the Governments decision to consider Spent
Convictions for sexual abuse cases.

Rehabilitating offenders - Page 3

In 1991 the then Attorney General The Hon. John Dowd MLA brought in Spent Convictions for what he considered, "relatively minor offences", that young people were "unable to live down past indiscretions", "Often feel very insecure because of the possibility that one day they will be embarrassed by their past conviction", The current Attorney General affirmed the view of Attorney General Dowd that Spent Conviction scheme aids rehabilitation of the offender. Both Attorney Generals have not taken into consideration, the rehabilitation of the victim from the crime committed against them.

Attorney General, The Hon. John Dowd MLA introduced the Spent Convictions scheme that would take away the burden of living with having to reveal their past indiscretions that caused them to be insecure and would interfere with their rehabilitation because it did not allow them to put their past behind them. Nowhere does he consider the effect of the crime upon the victim and the lasting effect they must live with and the insecurity that interferes with their rehabilitation.

Protecting the community - Page 4

Attorney General Dowd believed that serious offences should not be covered by the Spent Conviction scheme. He also believed that sexual offences should not be covered by the Spent Conviction Scheme

based on the protection of the community. We now have a Government who wants to protect, at the expense of all sexual abuse victims, the very people who have polluted their lives in such a destructive manner. This inquiry is based on juvenile offenders, how long before it is extended to adult offenders. The aim of the above laws was to prevent further crimes being committed, especially by those who had been through the court system and found to be guilty.

Sexual offences against a child even by a juvenile can leave the child with enormous problems. Not only has the body of the child been invaded but their trust has been violated, their security of being safe destroyed and their innocence polluted forever.

What is the impact of excluding sexual offences from the spent convictions scheme ? In what situations are past offenders required to disclose their criminal records ? - Page 4

If an offender applies for a work position that entails the need to work with or in the same area as children, they must first apply for a clearance that will allow them to obtain that work. The Child Protection (Offenders Registration) Act is there to protect the children and young people and does that by restricting those who have been convicted of a sexual offence against children.

You must be of good repute to be able to have a gun license.

Security guards must also have a clean record and be of good repute.

How does this requirement impact past offenders particularly juvenile offenders ? - Page 4

It is essential for the protection of children that sexual offenders be stopped from working with children. This may seem harsh on juvenile offenders as they were only young when they committed the sexual act that lead to their conviction, but the prevention of more sexual abuse victims is important. The intent of the Protection Act was for the safety of children and this is what the Government should concentrate on. The laws were enacted for a reason, even juvenile offenders had shown by their actions that the well-being of their victims was unimportant to them. At some time or other in our lives we have to make the decision to do what is right instead of allowing ourselves to delve into what we know is wrong. Three years between the time of conviction and possibly time spent in prison is not long enough to prove there is a reason for wiping away legally any conviction.

Are there any limitations on what can be done on the basis of the information disclosed ? - Page 4

Privacy laws should and do place boundaries upon any information that must be provided to agencies

that check the suitability of a person to work with children - have a gun license - security work - etc.

Even within families struggling to reveal the truth of an abuser within the family circle can be threatened with prosecution for trying to protect other children by the legal representative of the abuser.

The Child Protection (Offenders Registration) Act 2000 is an important step forward for the safety of all children. The offenders who have to register must attend the police station at certain times - when they travel on a holiday they must inform the police - when they move house they must also inform the police. The police cannot reveal any information they have concerning the offender who must report to them.

What is the relationship between the spent convictions scheme and these specific limitations and the implications for offenders ? - Page 4

If spent convictions concerning sexual abuse offenders is enacted and becomes law based on the results of this inquiry it could lead to the watering down of the effectiveness of the Child Protection Register and the safety of children. Ten years free of conviction for adults, does not mean that the all offenders were as the law would prefer them to be. Unfortunately some offenders will never change, except to become better at concealing their crime of sexual abuse. Three years free of conviction for juveniles abusers is not long enough. The Government shows concern for the welfare of the offenders but where is the same concern for the welfare of the victims of those offenders.

Unfortunately once again the Government is not accepting the reality that there are too many sex abusers who are never exposed concerning the crime they have committed. Families put their reputation ahead of the welfare of the victim, in doing so they protect the abuser and allow more victims to suffer the horror of sexual abuse. There is no mention of any investigation carried out concerning the offender and the years that have past to allow the Government to declare the conviction spent.

For the offender to have their conviction overturned would wipe away any limitations. They could apply to work with children - obtain a gun license - work in the security field - go on a jury etc. Yes, they would be free but what of the victim, are they free of the mental trauma they are left with, free of health problems, of lack of self worth, of being ashamed of their history, of being afraid that people will find out about them and not understand how it could happen and why it happened. Will the Government prevent the memories that haunt the victims, will they take away the fears that go along with the memories, as they are willing to take away the conviction of the offender so that they can live a far better life ?

Are there any other specific implications the Committee should be aware of ? - Page 4

As stated above unless there is an investigation into the years between conviction plus prison time, until the time of a spent conviction being allowed, the Government could make it possible for an active clever abuser to continue in their degrading crime, free of restrictions.

Should convictions for sexual offences be capable of becoming spent ? Is the rationale for the blanket exclusion of sexual offences from the spent convictions scheme still valid? - Page 5

Having been involved in sexual abuse survivor groups, witnessing the on going trauma so many of the survivors have to live with, the difficulties they struggle with just about every day of their lives I cant help but wonder does the Government really know what they are doing with this inquiry.

[omitted at the request of the author]

NO sexual offences should become spent, the blanket ban must stay. This is not a vindictive answer.

It is based on the reality, the knowledge, of how the victims' lives are altered and damaged by the selfish desires of an abuser. Now they must face the fact that their Government wants to ease and protect the one who abused them. Where is the victim's protection from the community finding out about their history ?

What are the advantages and disadvantages of the exclusion ? - Page 5

The advantages of the exclusion surely points to the fact sexual offences are considered to be so heinous that they must never become spent. Babies -children have been deliberately cruelly debased at the hands of offenders, there must be a message given loud and clear that our Government will not allow a sexual crime to become spent.

There is no disadvantage for the victims of sexual abuse in the exclusion. The offender is the one who suffers the disadvantage. Their advantage over their victims was at the trial when they could use, compliments of the then Premier Mr Carr, 13 mitigating circumstances that could reduce their prison sentence. Plus their prison sentence was taken into consideration for the length of time they must spend on the Paedophile Register, plus the fact that an offender could be found guilty in a court of law and yet not face prison time. The disadvantage they suffer with the Spent Conviction laws, as they stand now, is minor in comparison to what the law allows the victims to live with and go through at a trial.

In other jurisdiction where sexual offences are not excluded - Western Australia and Queensland, - what impact has this had ? - Page 5.

The offenders can face their prison sentence with the knowledge their conviction can not by law be used against them when they have completed the required crime free time. They also know that "crime free" means they must not face the court or be caught committing a crime in that period. There is no system used to verify the crime free time is as the law implies it should be. The offender has the relief of walking away from their crime, the victim has no relief from living with the crime committed against them. The Governments of Western Australia and Queensland have protected the offenders at the expense of the victims, have they forgotten who committed the crime ?

Should sexual offences simply be included along with other offences in the spent convictions scheme ? Should sexual offences be included in the spent conviction scheme like other offences ? - Page 5

Sexual offences might be considered by some people in the community a non event, "every one has Sex" is a comment often bandied around. Unfortunately it is a crime that leaves a victim with too many demons to live with. Sexual offences should never be treated lightly, it is a heinous crime. It should not be included in the spent conviction scheme. A victim cannot walk away from the trauma they have been left with, why should the offender have the blessing of their Government to walk away from the crime they have inflicted upon the victim ?

What would be the advantages and disadvantages of this approach ? - Page 5

As stated above the offender is the one who has the advantage. Their family also benefits from the spent conviction because there can be no exposure of the offenders crime. They do not have to live with the fear that the crime will become public knowledge. The victim continues to live with the damage inflicted upon them. Their family continues to live with and watch the struggle their family member has to endure.

What has been the experience in Queensland of this approach ? Page 5

Whatever the experience in Queensland has been it would be a miracle if it was to the benefit of victims

There is an Aboriginal girl who still needs her Government to give her JUSTICE.

Should convictions for sexual offences be included in the spent convictions scheme only in limited circumstances ? Where the offence was committed as a juvenile.

Should sexual offences committed by a juvenile be capable of becoming spent ? - Page 6

Can the Government guarantee that the juvenile will not abuse again, will the Government guarantee that the juvenile as an adult will not sexually abuse another person because they have learnt about the way the

law can wipe away their conviction after a period of time.

If so should all sexual offences committed by a juvenile be capable of becoming spent, or only some ? - Page 6

As stated above the Government must surely take responsibility in allowing even juveniles to have their convictions being spent. The word rehabilitation is used too easy for the offender but there is no mention of any rehabilitation for the victims of even the juvenile offenders. The victims must be a part of the conditions that go with spent convictions or there cannot be consideration given to any type of spent conviction.

**Where there was a finding of fact that the sexual act was consensual.
Should sexual offences committed by a juvenile, where the court finds that the sexual act was consensual, be capable of becoming spent ? - Page 6**

"Consensual" in what degree? Too often young girls are badgered into having sex "because everyone does it" later in life the trauma starts because the young girl was not ready to have sex. At the time of the court finding that the offence was consensual what advice or counseling was the victim given? To use the juvenile consensual sex as a reason to allow the conviction to become spent the Government must be very sure the sexual act was consensual in every way.

**Where the offences were minor sexual offences. - Page 6
Should convictions for certain "minor" sexual offences be capable of being spent ? If so which offences ? - Page 7**

There is no such thing as a minor sexual offence. To touch an unsuspecting person in a sexual manner always does mental damage. In fact to some people it can be very offensive as can obscene exposure. Is it ever considered that obscene exposure could be an indication of a future sex abuser. The action of exposing ones genitals could be the tip of an iceberg covering up the real danger that lies within that person.

[omitted at the request of the author]

As stated, obscene exposure is not minor nor should it be treated as minor and should not become spent. It is a crime against a person's right to stay free of sexual abuse.

Where no conviction was recorded – Where a court finds a person is guilty of a sexual offense, but does not proceed to a conviction, should these findings be capable of becoming spent ? - Page 7

To base the judgement of a sexual offence case on the so called good character -background - health etc of the offender is a disgrace. The judgement should be on the facts of the case. To allow otherwise waters down the seriousness of the crime and the damage inflicted upon the victim. A person of good character does not stoop so low as to sexual abuse or expose themselves to someone. The Judiciary needs to learn that fact so that they can adjudicate a case wisely. They should not become spent based on no conviction. Once again there is no thought for the victim and how they must feel concerning the lack of justice that has occurred.

Other potential circumstances ? - Are there any other circumstances in which sexual offences should be capable of becoming spent that the Committee should consider? - Page 7

There are no circumstances that should allow sexual offences to become spent. If the Committee could consider the act of sexual abuse against a person as a soul destroying act, that takes away the freedom to be yourself, they might just understand the suffering of a sexual abuse victim. It is time that the welfare of the victims was considered by the Government and how they could help them instead of the offender.

Options for reform. - Page 7

A - Convictions for sexual offences should not be capable of being spent. - Page 8.

In 1991 Spent convictions came into existence, sexual offences were not included for a definite reason, they were considered too serious and should be left as they are.

B - Convictions for sexual offences should be capable of being spent.- - the conviction attracted a prison sentence of less than six months. - Page 8

The length of the sentence depends on the Judiciary.

[omitted at the request of the author]

The relevant crime-free period of time has elapsed (ten years for an adult and three years for a juvenile) - Page 8

As stated before too often the offender has become very clever in hiding their activities from the law.

[omitted at the request of the author]

[omitted at the request of the author]

C - Convictions for sexual offences should only be capable of being spent in limited circumstances. - Page 8

How can the Government be certain that the crime-free time as set is the right decision to make?

With options - B - C - has the Committee ever considered what the effect would be on the victims at the knowledge that the offender could spend the rest of their lives free of the stigma of a prison sentence while they cannot lose the effect upon themselves of being sexually abused.

Mechanism for spending convictions for eligible sexual offences - Lapse of time. - Page 8

Option B - A simple legislative amendment is all that's needed to help offenders feel good again. How wonderful for offenders.

Option C - Would seem to be a bit more difficult, but the Government could manoeuvre around that difficulty so that offenders could once again hold their heads up and be free of the crime they committed.

Application to the court - If the spent conviction scheme is widened to include some or all convictions for sex offences, should a court order be required? - Page 9

A court order should be required for such an important step to be taken. Not only should the court have all relevant information concerning the conviction, they should also have the victim's impact statement plus the victim's statement concerning the impact the offence has had on their life since the court case and conviction. Only then can there be the chance of a decision that might contain some justice for the victim.

If so, should this court order be made at the time of sentencing, or upon application after the crime-free period has elapsed? - Page 9

At the time of sentencing within the discourse given by the judge or magistrate could contain the information detailing when the offender's legal representative could apply for a spent conviction order. There must also be the information detailing the conditions that must apply to the spent conviction. Within those conditions should be the information that the court will insist on an investigation into the conditional crime-free years of the offender before the spent conviction becomes legal. The victim has to live with the mental consequences that can haunt them for the rest of their lives, yet the Government does not want the offenders to live with the burden of a prison sentence in their resumes.

Can you suggest any improvements to the model set out in cl.9 of the Model Spent Convictions Bill?
? - Page 9

The basis of altering the law to aid convicted sex offenders is to make their lives easier in the knowledge that people will not find out about their conviction, nor will people be able to inform others of the conviction. As stated throughout this submission, what of the victim? Where is the consideration for the welfare of the victim? Where is their right to be free of the effects of sexual abuse? My medical history is passed on to doctor after doctor, specialist after specialist, for them to read the fact I was abused as a child. It does effect, and leave, lasting medical problems for the victim. There is no "spent results of sexual abuse" time for me. Once again the Government has concentrated on the welfare of the offender and forgotten or walked away from the one who is the victim. JUSTICE is so easily wiped away.

The Model Spent Convictions Bill should include the welfare of the victims and ways to assist them.

Yours Sincerely

Patricia Wagstaff. (Mrs) -

P. Wagstaff

I have no objection to any section of this submission being used as the committee so desires. - P. Wagstaff.