

INQUIRY INTO SPENT CONVICTIONS FOR JUVENILE OFFENDERS

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

Dear Ms Robertson

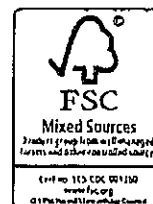
Inquiry into Spent Convictions for Juvenile Offenders

Thank you for your invitation to make a submission to the subject inquiry. Your original invitation would not appear to have reached my office and is the reason for my late reply.

As you may be aware, the NSW Ombudsman is enabled by Part 3A of the *Ombudsman Act 1974* to oversight the investigation by government and other designated agencies of what might generally be termed "child abuse allegations" made against their employees. My office performs this function in the context of the care and protection of children and young people in NSW, to ensure that investigations are conducted properly and the appropriate actions are taken. This includes reporting relevant findings to the Commission for Children and Young People for the purpose of the child-related employment screening program administered by the Commission. The *Commission for Children and Young People Act 1998* prohibits persons who have been convicted of "*a serious sex offence, the murder of a child or a child-related personal violence offence*" (a phrase defined in the Commission for Children and Young People Act) from being employed in "*child-related employment*" (which is also defined in the Commission for Children and Young People Act).

I am concerned that any scheme involving spent convictions for juvenile offenders should sufficiently provide for the requirements of the child-related employment screening program with regard to accessing the totality of any criminal record. In this regard there would seem to be two available options, so that any spent convictions scheme could provide either:

- (i) an exception to the scheme whereby the disclosure of what might otherwise be a spent conviction in relation to "*a serious sex offence, the murder of a child or a child-related personal violence offence*" is permitted for the purposes of child-related employment screening; or
- (ii) an exception to the scheme whereby a conviction for "*a serious sex offence, the murder of a child or a child-related personal violence offence*" cannot become a spent conviction.



I acknowledge that a spent conviction scheme for juvenile offenders serves a valid social purpose in encouraging the rehabilitation of juvenile offenders, however this should be balanced against the effect of a spent convictions scheme on the need to provide an effective system of workplace protection for children and young persons. In this light, it is my view that either of the two options suggested above would not deprive a spent convictions scheme of the social utility which it so clearly has, but would act to ameliorate the concerns that I have discussed.

Please contact Timothy Lowe, Legal Counsel, of my office on telephone (02) 9286 1089 if any clarification of the above is required.

Yours faithfully

A handwritten signature in black ink, appearing to read "B. Barbour". The signature is stylized and somewhat cursive.

Bruce Barbour
Ombudsman

17/2/10