



THE LAW SOCIETY  
OF NEW SOUTH WALES

Our Ref: RBG661316

12 November 2012

The Hon. Greg Smith SC MP  
Attorney General and Minister for Justice  
Level 31  
Governor Macquarie Tower  
1 Farrer Place  
SYDNEY NSW 2000

Dear Attorney General,

**Spent Convictions for Juvenile Offenders Report: NSW Government Response**

Thank you for seeking the Law Society's comments on the Government's proposed response to recommendations 5 and 6 of the 'Spent Convictions for Juvenile Offenders' Report by the Standing Committee on Law and Justice.

**Committees' position**

The Law Society's Juvenile Justice Committee and Criminal Law Committee (Committees) have reviewed the Government's proposed response. While the Committees welcome the Government's agreement that sexual offences committed by juveniles should be able to become spent, the Committees consider that the original recommendations of the Report provide a fairer outcome for young people and do not support the specific mechanisms proposed by the Government. The Standing Committee recommended that 'convictions for offences by juveniles, including sexual offences, are capable of being spent after a good behaviour period of 3 years has lapsed' and that 'convictions for sexual offences by juveniles are spent by lapse of time, as with convictions for other juvenile offences, unless the Attorney General or the Commissioner of Police apply for the convictions not to be spent (if there are concerns about potential re-offending)'.

**7 year proposal**

The Committees are of the view that the proposed period of 7 years before which juvenile sexual offences are spent is too long. The Committees support juvenile sex convictions becoming spent after 3 years unless there is a prosecution application (by the Attorney General or the Commissioner of Police) for the convictions not to be spent as recommended in the Report. A spent conviction after a 3 year crime free period is a fairer outcome for a juvenile offender when considering the importance of principles relevant to the Children's jurisdiction such as rehabilitation, and that the moral culpability of a juvenile offender is vastly different from an adult.

Disadvantaged and vulnerable young people are more likely to commit a crime, for example a crime of poverty such as stealing, in the lengthy 7 year period. It is this group

of young people that will be particularly at risk of the lasting impact of a sexual offence conviction.

On the assumption that juvenile offenders are often aged between 16 and 17 years, a 3 year crime free period concludes at around the same time as the period of higher education and training before entering the workforce. A requirement to wait 7 years could work as a disincentive for training and education, especially where the unspent conviction will preclude young people from employment opportunities. This could be the difference in whether a young person's rehabilitation is successful, because education and employment are effective strategies for crime reduction.

The policy reason behind prohibiting convictions from being spent is the protection of the community due to fears of potential re-offending. However, this possibility is dealt with by the proposal to allow for the Attorney General or the Commissioner for Police to submit an application to oppose the conviction becoming spent. Absent of an application by the Attorney General or the Commissioner for Police the additional time becomes purely punitive. A non-spent conviction has effects in various aspects of life (visas, housing, employment, volunteer work, licences etc). The Committees note that there are other protections in place for the community regardless of whether a conviction becomes spent, such as the working with children check and the sex offender register.

If the Government wants to differentiate between 'ordinary' spent convictions and 'sex offences' spent convictions, then perhaps it could consider making the period 4 years, which would differentiate the types of convictions but would be more in line with encouraging rehabilitation. There would still be the fall back position (to protect the community) of the prosecution making an application.

### **Application for conviction to be spent**

The Committees consider that it is highly likely that disadvantaged young people convicted of a sexual offence will not make an application to the Local Court for their conviction to be spent because justice for this group is difficult to access. The Committees query who will provide this legal service to young people.

The Committees are of the view that any application (after a 3 year crime free period) should be to the Children's Court where the young person is still under 18. Applications should also be to the Children's Court where the young person is under 21 when making the application and had been sentenced in the Children's Court (in the same way that section 28(1) of the *Children (Criminal Proceedings) Act 1987* operates).

Proposed section 9(e) 'whether the conviction prevents or may prevent the applicant from engaging in a particular profession, trade or business or in a particular employment' should be broader, or include an additional consideration such as 'whether the conviction prevents the applicant from participating in the community or in educational opportunities'. Proposed section 9 should include an additional subsection (g) 'any other relevant factor'.

### **Reference to 'custodial sentences'**

The Committees assume that the reference in the letter to 'custodial sentences' is in fact a reference to a 'sentence of imprisonment'.

I trust these comments are of assistance.

Yours sincerely,

A handwritten signature in blue ink that reads "Justin Dowd". The signature is written in a cursive style with a small flourish at the end.

Justin Dowd  
**President**