



VICTORIAN COUNCIL FOR CIVIL LIBERTIES

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Criminal Law Policy
Department of Justice
GPO Box 4356
MELBOURNE VIC 3000

Draft Model Spent Convictions Bill – Consultation Paper

Thank you for the opportunity to comment on the Draft model Spent convictions Bill.

Liberty Victoria is one of Australia's leading human rights and civil liberties organisations and works to defend and extend human rights and freedoms in Victoria.

Liberty Victoria welcomes the institution of a national spent convictions scheme and supports the Bill. It is important to have a system that recognizes a person's ability to rehabilitate and, after a period of good behaviour, no longer carry a 'black mark' against their record; irrelevant and/or necessarily spent offences can and do encroach upon an individual's civil liberties.

We note Windeyer J said in *Cobiac v Liddy* (1969) 119 CLR 257 at 269 that "a capacity in special circumstances to avoid the rigidity of inexorable law is of the very essence of justice"

In relation to specific clauses of the bill we comment as follows:

1. The bill provides for a spent conviction scheme, but does not address the release of information by bodies such as Victoria police. Whilst we recognize that the bill includes an offence to disclose information in relation to a spent conviction however this is only if the person knew or ought to have known the conviction was spent.
2. Once a conviction has become spent, this information should be dealt with in a way that does not prejudice the person. A system or register needs to be set up to track spent convictions otherwise the purpose of the bill is undermined. There are numerous examples of Victoria police releasing this information despite its policy to the contrary. Further, even where there has been a finding of guilt with no conviction because the person has pleaded guilty, this has appeared on a person's record or that police were investigating matters.

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3. In relation to clause 9 (sex offences), Liberty Victoria believes that a spent conviction scheme for sex offences should be included in the Act.
4. We welcome the discretion of the court, in certain circumstances to make a spent conviction for a sexual offence. However, we raise the issue of the interaction between this proposed clause and the current *Sex Offender Registration Act Vic 2005*. This deems some offences as registrable offences (registration is triggered by a finding of guilt of a sex offence). Liberty Victoria is concerned about the effect of a spent sex offence on their registration. Many offences deem a person to be on a register for life. Further consideration should be given to this bill's interaction with other legislation; particularly where the purpose of this bill may not be served due to the existence of an entirely separate statutory scheme.

Should you require any further comments please feel free to contact Aggy Kapitaniak on 9225 8746.

Yours faithfully

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