

Quote in reply: Criminal Law Section:

25 September 2009

Mr Peter Hallahan
Committee Secretary
Standing Committee on Legal and Constitutional Affairs
PO Box 6100
CANBERRA ACT 2600

Email: legcon.sen@aph.gov.au

Dear Mr Hallahan

INQUIRY INTO THE *CRIMES AMENDMENT (WORKING WITH CHILDREN - CRIMINAL HISTORY) BILL 2009*

I refer to your email of 11 September 2009 requesting the Queensland Law Society's comments regarding proposed exceptions to Part VIIIC of the *Crimes Act 1914* (the "Act") for convictions of persons who work, or seek to work, with children.

The Society supports the exchange of inter-jurisdictional criminal history information for people working with children, be it in limited circumstances. However, it has serious concerns regarding various aspects of the *Crimes Amendment (Working with Children – Criminal History) Bill 2009* (the "Bill").

1. Quashed and pardoned convictions

It is concerning that the Bill creates an exception for convictions that have either been quashed or pardoned so as to allow them to be disclosed or taken into account by those undertaking child related employment screening.

The requirement for disclosure of convictions that have been quashed or pardoned is inconsistent with section 5(1) of the Queensland *Criminal Law (Rehabilitation of Offenders) Act 1986*, which embodies the notion that when a conviction is quashed on appeal or pardoned, it should effectively be treated as if it never occurred. It follows that such convictions are not part of an individual's criminal history; nor relevant to any inquiry about a person's character in the assessment process being embarked upon under the Act.

The decision to include such 'convictions' and other non conviction information in child related employment screening has not been based on empirical evidence as to its necessity. The justifications for including such information provided by the Honourable Brendan O'Connor MP in his second reading speech of the Bill simply draws attention to the limited and dated nature of the research relied upon and the need for further discussion around the issue.

2. Type of spent convictions to be disclosed

While the Society acknowledges the importance of protecting vulnerable individuals and therefore the necessity to disclose spent convictions in certain circumstances, it is important to adopt the least restrictive means of achieving this objective.

Given Australia's international treaty obligations to prohibit discrimination on the grounds of past criminal history, the Society recommends that the Government reconsider the extent of the proposed exclusions to the spent convictions scheme. Under the current Bill individuals applying for a position working with children will be required to disclose *any* spent conviction they may have. It is concerning that such disclosure will be required in circumstances where the conviction is of no bearing on the position applied for i.e. an individual applying for a position as a volunteer for a charitable organisation will be required to disclose a conviction for possession of marijuana obtained 15 years earlier, despite its likely irrelevance to the person's ability to undertake the position.

The Society contends that a spent conviction should only be required to be disclosed when a causal link can be established between the offence and the type of employment applied for. For example, it should be necessary for an individual applying to work as a social worker to disclose any convictions for sexual or violent offences, but not to disclose historic public disorder convictions. The determination of what offences must be disclosed when applying for certain positions may be adequately dealt with by way of regulation.

2. Definition of "working"

The Society is concerned that the proposed definition of "work" in section 85ZZGC is drawn extremely broadly and will encapsulate a vast number of individuals whose roles involve only indirect association with children in their employment i.e. adult retail shop employees.

Such a broad definition will require a considerably increased number of individuals to undergo child related employment screening, possibly resulting in delays in the commencement of paid employment or acting as a disincentive to those entering the volunteer workforce. The wide definition of work will also no doubt put considerable strain on the resources of those organisations tasked with undertaking the employment screening.

In this regard, the Society queries the justification for broadening the criminal history checking regime beyond the scope of the current exclusions relating to the "care, instruction or supervision of minors" provided for in section 85ZZHE(e) and (f) of the Act. Again, there would appear to be limited research to suggest a need to expand the scope of the exclusions to the degree proposed.

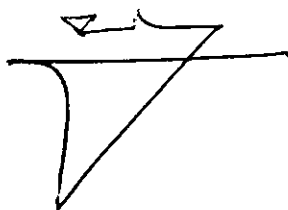
3. Criminal history checking regime

The spent convictions scheme is built upon the premise that historic convictions are not a reliable indicator for determining future behaviour and reliance upon such convictions has the potential to result in serious prejudice to a former offender. The use of criminal history information to exclude individuals from employment not only impacts upon a former offender's rehabilitation, but ultimately increases their risk of reoffending.

It is concerning that this Bill provides yet another example of a rapidly expanding criminal history checking regime that encroaches upon the spent convictions scheme without justification borne from relevant modern research. The Society's urges the Government to commission further research into the need and impact of requiring disclosure of criminal history information that includes non conviction information and irrelevant spent convictions in child related employment screening. This is an issue that requires further public discussion and reasoned parliamentary debate to inform the direction of any legislation.

Thank you for the opportunity to provide our comments on this Bill.

Yours faithfully

A handwritten signature in black ink, appearing to be 'Ian Berry', written over a horizontal line.

Ian Berry
President