T R A N S C R I P T

LEGISLATIVE COUNCIL LEGAL AND SOCIAL ISSUES COMMITTEE

Inquiry into a legislated spent convictions scheme

Melbourne—Wednesday, 29 May 2019

MEMBERS

Ms Fiona Patten—Chair
Dr Tien Kieu—Deputy Chair
Ms Jane Garrett
Ms Wendy Lovell
Ms Tania Maxwell
Mr Craig Ondarchie
Ms Kaushaliya Vaghela

PARTICIPATING MEMBERS

Ms Melina Bath
Ms Georgie Crozier
Mr Edward O'Donohue

WITNESSES

Ms Melinda Walker, Co-Chair of Criminal Law Section, Law Institute of Victoria

Ms Kerry O'Shea, Head of Public Affairs, Law Institute of Victoria, and

Ms Gemma Hazmi, General Manager, Policy, Advocacy and Professional Standards, Law Institute of Victoria.

The CHAIR: I declare open the Standing Committee on Legal and Social Issues public hearing. We do not have a big audience this evening, but welcome to the staff who are here. I note apologies from Ms Crozier and Ms Garrett.

The committee is hearing evidence today in relation to our inquiry into a legislated spent convictions scheme. All evidence taken at this hearing is protected by parliamentary privilege as provided by the Constitution Act 1975 and further subject to the provisions of the Legislative Council standing orders. Therefore the information you give today is protected by law; however, any comment repeated outside this hearing may not be protected. Any deliberately false evidence or misleading of the committee may be considered a contempt of Parliament. All evidence is being recorded. You will be provided with a proof transcript in the next few days. Transcripts will ultimately be made public and posted on the committee's website.

We have allowed 45 minutes for the session, so to enable question time could we keep the contribution relatively tight. We have received your submission and your follow-up letter and appreciate that this has been an issue that you have been discussing and pondering on for quite some time—decades. Thank you. Over to you.

Ms WALKER: Can I first acknowledge the traditional owners of the land on which we sit, past, present and emerging. My name is Melinda Walker. I am representing the Law Institute of Victoria. I am a private practitioner. I have been a private practitioner for 20 years and I practise in crime, so certainly the issue of convictions or non-convictions or whether they be spent or otherwise is a significant issue for the people that I work with.

As I said I am the co-chair of the criminal law section of the Law Institute of Victoria, and I represent some 19 000 members of the law institute. As you know we put forward a submission in 2015 in relation to this issue, and that was as part of establishing a working group to examine the introduction of the legislation in Victoria.

There were a number of different stakeholders which were consulted who became members of the working group. They are outlined in our submission on page 1, but in summary they included the Fitzroy Legal Service, Woor-Dungin Incorporated, the Human Rights Law Centre and the Federation of Community Legal Centres. This working group also included the Victoria Police legal services. The submission, if you have had an opportunity to read it, had 13 recommendations included in it. I will not go through each and every one in detail, but they effectively address all of the matters which this committee is examining.

If I could start by saying why we believe this is an important piece of legislation. Now, obviously Victoria is the only state in Australia who do not have this type of legislation, and the commonwealth keeps coming up every now and then, but it certainly would be encouraging if the uniform scheme would be implemented. However, Victoria does remain the only state in Australia who do not have such a scheme. What we see as the positive purposes that come out of this type of scheme are that primarily it prevents discrimination against people who do come before the courts at, often, vulnerable periods in their lives and where a conviction is recorded—or a non-conviction, and I will come back to the distinction between those two. That discrimination can span employment prospects, insurance eligibility, housing and things like that, which are significant issues for people in order to further their rehabilitation and redemption to the community. We also think that it is a positive step in clarifying public perceptions of what constitutes a record and to remove those obstacles for those people.

It affords those people completing their path of redemption, as I said, and regaining their place in the community and, again, would align Victoria with the other states and territories. To maintain the current system

of disclosable outcomes undermines the discretion that is permitted by a judicial officer to impose a penalty without recording a conviction. Section 8(1)(c) of the Sentencing Act sets out the discretion that a court has when exercising discretion as to whether or not the recording of a conviction would have an impact on their economic or social wellbeing or employment prospects when considering whether or not to record that conviction.

The recommendations, if I could then just go to those in brief compass: recommendation 1 certainly is in relation to the definition of conviction and so that is why I said I would come back to that. A conviction, we say, should be where a conviction is recorded and not a finding of guilt. Certainly with clients that I have, and members have reported back in relation to their clients, when you leave court and somebody has a non-conviction recorded the first thing they ask you is, 'Will this come up on my record?'. The answer is, 'Absolutely, yes, it will'. It depends on what type of job you want to go for, what application you are making as to whether or not a finding of guilt where a non-conviction is recorded can be disclosed. So we say that a definition of conviction should be only a recorded conviction by a court. This certainly aligns with all of the other jurisdictions.

Recommendation 2 is about that 'without conviction' recording of guilt, and we say that those court records, or sub-records if I could put it that way, should be spent immediately. Where a person or a court sees it fit not to record a conviction or impose a fine or an adjourned undertaking with conditions, that upon the undertaking being completed, upon a fine been paid—which would be good if people would pay their fines; it is certainly an incentive to pay your fine—then the recording of that non-conviction or the recording of guilt is automatically spent.

Recommendation 3, which is probably the most controversial, is the spent convictions of sentences, we say, of 30 months or less. Now, if I could just pause on that briefly, the commonwealth position is the same, that 30 months imprisonment or no imprisonment for convictions are eligible for the spent conviction scheme, as is Queensland. South Australia is where there is no imprisonment for a conviction or 12 months or less. In New South Wales, ACT, the Northern Territory and Tasmania it is six months imprisonment or less. As I said, our position is to be in line with the commonwealth model and the Queensland legislation of 30 months imprisonment or less.

It provides consistency for people certainly found guilty, if that was to be the case in Victoria and they were facing Victorian offences and simultaneously commonwealth offences, that that conviction would be spent at the same time upon the criteria being satisfied. What that criteria is is contained in our recommendation 4, which is the waiting period. We say 10 years for an adult for a conviction of 30 months imprisonment or less or a non-imprisonment but a conviction recorded. In relation to juveniles, we say that should be three years.

Now, the most important part of it is in recommendation 5. The eligibility does not kick in until after the waiting period and unless that person has not committed an offence in that waiting period. Had a person committed such an offence, they would become ineligible and that 10-year waiting period would commence again at the commencement of that second conviction being recorded.

Recommendation 7 is in relation to the cross-jurisdictional offences and where a person resides. We say that the spent legislation should apply in the state that that person is residing in—and that is certainly consistent with the other states—and that not all convictions be disclosable. Recommendation 9 is in relation to the provisions regarding disclosure of a conviction that is spent unless authorised by law. So they are the protections that people would have where there are outside agencies. Recommendations 10 and 11 address the offences and the prohibitions on allowing the request for that disclosure. That is where the Equal Opportunity Act would then apply.

That is where we stand with it, so I am certainly open to questions to clarify our position.

The CHAIR: Thanks very much for that. That was really rounded. I think it has been great to have your submission and your contribution right at the beginning of this inquiry to give us a very rounded view of this. I might start the questions here. Do you have any idea of how many individuals would be affected by this? Has the institute been able to—

Ms WALKER: I am getting that information. This is in our submission on page 5. The *Victoria Police Annual Report 2013-14* reported 481 945 criminal history checks in that particular year. As to how many people had those recorded convictions, we do not have that particular data. But if I could say this: there are very rare circumstances in which you would have a non-conviction recorded. It is more likely than not that you would have a conviction recorded.

The CHAIR: I suppose what I am trying to get at is if we were to introduce spent conviction legislation in Victoria, do we know how many people each year that may affect? Have we seen any data from other jurisdictions, particularly where there is an automatic system for convictions being spent?

Ms WALKER: I do not think we have that particular data, but we can certainly take that on notice, and if we could report back to you that would be something that we would be happy to investigate for you.

The CHAIR: Thank you. That would be great.

Dr KIEU: I have a question on your recommendation 8—defining criminal history as only referring to convictions which are not spent. So let us take one example. A fictional person has some offence and has then satisfied the requirement for that conviction to be spent and then later on commits another type of offence. If that is the case, then his or her history would not include the first conviction. Is that right?

Ms WALKER: That is correct, and I will give you a really good reason for that and something that is comparable to what we would be dealing with now in just an ordinary sentencing exercise. Say the 10-year period has passed, and given that our proposal and what we support is the 30 months or less, say somebody has for argument's sake received a six-month term of imprisonment, that may have been through various offending—not serious offending, because we certainly do not recommend that certainly serious sexual offences or serious violent offences would come under this scheme. So you are not talking about high-level offending with our recommendations. So a person comes before the court, and in the ordinary course now the court would have reference to their prior convictions, whether that be a recorded conviction or a finding of guilt. So a non-conviction is still alleged against somebody in a sentencing hearing.

A court in determining what weight they give that certainly depends upon the distance and the time that has passed in whether or not they take that into account. More often than not they do not take it into account, because of the length of time. So if somebody has had a conviction for a like offence 12 years ago, they would not give it great weight, because of the distance in time.

Dr KIEU: I have another separate question. In the case of a person seeking employment or a position in a place of trust, like working with children or a nomination to be in an elected public position, what would you think about the past spent conviction, because people would have to be investing in that person? So what would be your thinking about that?

Ms WALKER: We do not say that they are non-disclosable. We say that spent convictions for those types of checks—working with children checks, Parliament, the legal profession—are disclosable.

Mr O'DONOHUE: Thanks very much for being here this evening. I have just got a couple of questions around recidivism. The case studies you have put in your submission are similar to some of the representations I have had through my office, where someone has done something wrong at a young age, lived a life free of crime subsequently and then gotten caught out with their employment 15 or 20 years later.

With the comparison of jurisdictions that you have provided us, there have been spent conviction regimes in many other jurisdictions in Australia for a long time. Are you aware of any data or any analysis that has been done to verify the supposition I think most of us have that recidivism will be reduced because people who have had a conviction and had it spent and then therefore have had easier access to employment and other engagement in the community, which helps them stay away from crime.

Ms WALKER: I think the opposite side of it is: what is the data on the amount of people who are actually rehabilitated rather than the data on the people who are recidivists? We do not have that data, and I suspect it would be more of a criminological data than what we could get from pure data. I think that is a difficult

question to answer on the spot. We will take that on notice, and if we can give that information to the committee, we will.

Mr O'DONOHUE: Thank you. Just to follow up on that issue, in relation to recommendation 2, 'a finding of guilt for offences proven and dismissed be immediately spent', my concern or my question about that is: what if that person who has that conviction spent proves to be a recidivist offender? They committed an offence that is immediately spent, and then three months later they reoffend and are back before the court, and the court has no record of that conviction or that conviction is deemed to be spent. I understand the rationale for it, but I am concerned that having that conviction immediately spent will not capture the cohort that are recidivists.

Ms WALKER: What I get from that question is: is a sentencing court able to then appropriately sentence on the basis that that person is a recidivist rather than looking at it from a case-by-case basis? As I said to Tien just before, a court looks at somebody's background at the moment. They have to give regard to their antecedents and their personal background and the offence itself. Any offence that is committed which would attract a non-conviction or a proven and dismissed would be very low level offending, and I think that you would be really looking at more vulnerable persons in our community. I certainly know that within the criminal justice system there is a lot of work going on in that space to address those vulnerabilities to reduce that low-level crime rather than trying to reduce it by way of penalty.

Mr O'DONOHUE: Sure, I absolutely accept that, but—

Ms WALKER: I have not answered your question, have I?

Mr O'DONOHUE: It is just that it I suppose is something for us to consider, I think.

Ms WALKER: Yes. As I said, it would purely be for the purpose of increasing a sentence rather than looking at the vulnerability itself. I think if we look at the vulnerabilities, allowing somebody to keep a clear record, I do not see those people with vulnerabilities who would say, 'I can just go out and do this because I'm not going to have a record'. That is not something that is forefront in their mind. It is about whether or not they will eat today, because that is the kind of vulnerable people that we are talking about. We are talking about somebody who steals a pie from 7-Eleven, somebody who steals orange juice or somebody who steals some change from somebody's car.

Mr O'DONOHUE: To take your example, if someone has perhaps committed that type of offence on multiple occasions, the court may order a different response—not a punitive response, necessarily, but a different diversion—because they are recidivists in that lower level offending that you just gave me as an example.

Ms WALKER: Yes.

Mr O'DONOHUE: So it could lead to a different response from the court if those convictions are not spent—not in a punitive way but in possibly a therapeutic way. It is just a hypothetical.

Ms WALKER: Absolutely. I think that practically as well these are the cohort that we are seeing going into remand because they are on multiple sets of bail for low-level offending. So by the time they get to court they have probably spent four to six weeks in custody for that low-level offending. That in itself is probably an excessive sentence for that type of offending, let alone whether or not that person has a background or a history of that type of offending. I agree with you. I think that every sentencer should be looking at what type of therapeutic jurisprudence they can offer them from a criminal justice perspective rather than a fine to a homeless person who cannot pay it.

Ms HAZMI: Can I just say something on that as well. The other thing is that some of these people are also known to police, so whether or not there is a spent conviction necessarily—like it may immediately be spent or not spent—those records will exist. It could be—and I am just saying this out loud; I have not actually thought it out, so I apologise—if something is immediately spent, okay, it is immediately spent. But the next time they front up to court they might have some kind of record with police—police have got them on LEAP or something—and they have been pulled up for very similar offending anyway. That is another thing that I

suppose the prosecutor would be able to say in that scenario as opposed to dealing with it in that spent convictions scenario.

Ms WALKER: I think that is a matter for drafting as well. That was one of the things that I was thinking about when looking at the Bail Act. In the Bail Act a court, when assessing somebody's risk—whether or not they would be an unacceptable risk to be granted bail—the court must look at their antecedents, and so what does that mean if a conviction is spent? But that is something for drafting. That is something that Parliament will have to look at. There are other implications, knock-on implications, for that with the Road Safety Act, for example, with whether or not a subsequent offence, or a second offence, equates to a spent conviction or not, because the penalty would increase or the time for which their licence is suspended is affected.

Ms LOVELL: I am just wanting to get clarification. Are you saying that once a conviction is spent there is absolutely no record of it?

Ms WALKER: No.

Ms LOVELL: So there is no record of it available to courts or anything for recidivist offenders?

Ms HAZMI: That is the proposal, but we do not know if that is actually going to occur, because you are relying on certain mechanisms, like databases, to remain up-to-date. At the moment the police release policy or something says that within 10 years they should not be releasing it, but unfortunately that is discretionary, so they could release it if they wanted to.

Ms LOVELL: So there is not going to be like a locked file within someone's file that is spent convictions that can be accessed by courts or anything like that?

Ms HAZMI: You would hope so.

Ms LOVELL: It is not accessed for other sorts of checks, but it just keeps a record on the person. There will not be something like that?

Ms WALKER: Yes, and that is why certainly recommendation 9 addresses that—about the provisions regarding disclosure if a conviction is spent unless authorised by law—so it does not disappear into the ether.

Ms LOVELL: So it is still there, but it is in a locked file?

The CHAIR: So it is still there. That is right.

Ms WALKER: Yes.

Ms LOVELL: So it could be accessed by maybe the courts or the police if they wanted?

Ms WALKER: Yes, and look, that might be extraordinarily relevant for somebody who was dealing with a family violence matter.

Ms LOVELL: Yes, absolutely.

Ms WALKER: I do not see that there are any barriers to Parliament looking at having exceptions to that. Certainly, as I said, two of the exceptions that we are saying would be that we are not proposing that serious sexual offences be spent in any form, but you may want to look at low-level sexual offending or what comes under the guise of sexual offending when that person has offended as a juvenile, which may come under that heading but may not be as serious as you first imagine when somebody mentions a sexual offence. The Sentencing Act defines serious sexual offending and defines serious violent offending. We are not proposing that either of those would come under this scheme. I would be very surprised if somebody received under 30 months for either of those two types of offending. So it is not to capture absolutely everything. We are talking about low-level offending in general, which would attract no more than 30 months.

Ms LOVELL: I am still a bit confused. So the low-level offending that is going to be spent would be completely wiped from someone's record? Or there would be a locked file where it is accessible to the courts?

The CHAIR: Maybe to clarify: I think where Mr O'Donohue was going, where that conversation was going, was on that 'no conviction recorded' low-level offending. So at the moment a 'no conviction recorded' is not a 'no conviction recorded'—

Ms HAZMI: It is recorded.

The CHAIR: but the proposal is that a 'no conviction recorded' would be automatically spent.

Ms LOVELL: Yes, but that is not what I am asking. What I am trying to get clarification on is: once something is spent, whether it is a 'no conviction recorded' or whether it is something else that is spent, is there any record of it at all kept? Does it become spent so it is just completely wiped from the LEAP databases or is there a locked file that is available to the police?

Ms WALKER: There is a locked file that is available, yes.

Ms MAXWELL: And so if you were applying for a police check, I think for certain positions the police can use discretionary—

The CHAIR: That would be disclosed. So if you were applying to be a lawyer or you were applying to be a police officer, that would be disclosed.

Ms WALKER: Or working with children.

Ms MAXWELL: Welcome tonight, and thank you so much for coming on this cold, wet night.

Ms WALKER: Thanks for inviting us.

Ms MAXWELL: A pleasure. One of the questions that I have refers back to recommendation 6—the waiting period commences on the date of the conviction. My question really is around why the conviction as opposed to if they have been incarcerated. Why not once they are no longer incarcerated, because obviously they are not going to reoffend whilst being incarcerated?

Ms WALKER: Recommendation 6 is the waiting period, so it is not spent. Sorry, I think I misunderstood your question then. Did you say that automatically from the conviction?

Ms MAXWELL: No. So the waiting period commences on the date of conviction?

Ms HAZMI: Yes, rather than the end of the incarceration period.

Dr KIEU: I will give you an example. So the waiting period is 10 years and the conviction is two years, so why—

Ms MAXWELL: Because they are not going to offend while they are incarcerated.

Ms WALKER: And they do. They can.

Ms LOVELL: But there is less likelihood of them being able to.

Ms MAXWELL: If it is for a very minor offence.

Ms WALKER: Yes, so from the date of conviction. Well, I mean, a 10-year period, less 30 months—you have still got about 7.5 years in the community that that person has to remain offence free.

Ms LOVELL: But even if it is a juvenile, it is three years, and if they are incarcerated for two years out of that three years, they do not have the opportunity to reoffend. Does that incarceration period count towards it when it could be two-thirds of the sentence?

Ms WALKER: Certainly if the person is a juvenile, no. We are not talking about a juvenile who goes to prison.

Ms LOVELL: No, but they would go to juvenile detention.

Ms WALKER: To detention, yes. And generally, in terms of periods of detention they have longer periods on parole than they do in the detention facility. So if somebody receives the two years that you say, that person may undertake nine months, 10 months of that detention on good behaviour and then spend the remainder on a youth parole supervision. So that juvenile is in the community for a lot longer than what an adult would be if that adult was required to undertake that whole 30 months. You would hope that that person also would be given the opportunity of a parole supervision release in the community as well.

Ms MAXWELL: Just a follow-up from that, I know that through following our justice system over the last several years there are certainly times when we do see convictions happen that have less than community expectation sentences. We do tend to see that time and time again. So for me I guess I am just wondering about the amount of work and research that needs to be done in regard to our Sentencing Act and sentences that have been handed down, because when we talk about the 30 months of somebody being sentenced, we do have the potential for magistrates to sentence serious offenders to that period of time or less. We do not see a lot of consistency with sentencing, so somebody could potentially have a spent conviction for a serious offence spending under 30 months being incarcerated.

Ms WALKER: I think a conversation about sentencing is a very big one, and I am not sure if it could be covered in the time that we have today. If I could just say this: one of the reasons for that is because there are so few sentencing options available to courts. The most serious offence in the Magistrates Court that can be dealt with would be either an aggravated burglary, person present, or an intentionally causing injury charge. Those would be the highest levels that they could potentially deal with. I could easily say that that would attract 30 months or more. I think it would be unusual—I do not think it would be commonplace—that somebody would get under 30 months for such a serious offence, bearing in mind that the Magistrates Court has a jurisdictional limit of five years.

A lot of the offending that comes before the court that may be deemed serious—burglary is serious and assault is serious, but the circumstances that the court must take into account under section 5 of the Sentencing Act mitigate against term of imprisonment often, and the only other option that the judicial officer has is a community correction order. People forget what the Court of Appeal has said about our new community correction orders in place of suspended sentences. They are not an easy option. They are punitive in lots of ways and they are very controlled. So I am more than happy to have a conversation about sentencing—

The CHAIR: But I think tonight, given the time limits that we have, probably not.

Ms VAGHELA: I just want clarification on what was asked before in terms of the records. So you were saying that the records are kept—they are not wiped out—but it is only when, say, for example, they are applying for a job and they get the checks done; it will not appear on the checks. Am I understanding it right or not?

Ms WALKER: That is right. Unless you were applying for a job at a childcare centre.

Ms HAZMI: Dependent on the job—so a high-level job like a parliamentary officer or a legal practitioner—

Ms VAGHELA: Okay. So have we got the definition of those jobs as to—for these sorts of jobs it will appear on the record and for these sorts of jobs it will not appear on the record?

Ms WALKER: As Mr Kieu talked about, what about if somebody was applying for a job of trust? I think that it could be easily defined in relation to what would be disclosable and what would not. And we do not have any issue, with any employment applied for that requires that degree of trust—either working with children, in aged care, parliamentarians, lawyers, police—that those should be disclosable. So we do not say that they are non-disclosable.

Ms HAZMI: And perhaps the eligibility criteria for working with children is a good one to use as a basis, because that is quite stringent.

Ms VAGHELA: So the next question is—I will keep it fairly brief—quite a few times the criminals have a past history of having done low-level crimes when they were young and then when they get older they commit serious crimes. So do you think then that removing these off the record will mean an increase in crime?

Ms WALKER: I doubt it. No.

Ms VAGHELA: Because it will be, 'Oh, it's not going to be recorded anyway, so I don't need to worry' for those low-level crimes. Could this lead to an increase, or no?

Ms WALKER: No, I do not think so. I will give you another example. When the bail laws changed—and certainly everybody within the legal profession knew about it and everybody in the police knew about it; it was highly publicised—nobody who I did a bail application for from that point on knew about the changes. I do not think that that thinking is there for that cohort of people. And again, when I was talking about those vulnerable people in the community, their focus is not on, 'What can I get away with?'; it is, 'What do I need to do?'. So certainly if the services or the programs that are able to be set up for these people—and there is a lot going on at the moment, and hopefully they are successful—I think you will see a reduction in crime for those reasons rather than whether or not somebody can get away with a conviction.

Ms HAZMI: And I think for us the primary aim for this is really for a lot of juvenile offending. Who this affects the most is those who have made mistakes in their youth and want to grow up to become teachers or paramedics or something like that. Because those are real examples of real clients of our members. Those are the affected part—like, a graffiti charge when you were 14 and you cannot become a paramedic. That is the target cohort that we are looking at, and they are the vulnerable and the young because everyone makes mistakes when they are younger.

The CHAIR: And I think to clarify also, largely we have an unlegislated spent convictions scheme in place. If someone has not offended after 10 years and it is certain types of offences, it already is deemed spent. So following on from that—you mentioned serious sexual offences and serious violence offences—would there be any other offences that you would consider should not be spent?

Ms WALKER: I am sure the commonwealth would say terrorism would not be able to, but that is a commonwealth issue. Well, can I answer it like this—it kind of comes back to Ms Maxwell's question as well. We have certain categories of offending at the moment where you cannot get 30 months or under: home invasion, aggravated carjacking—all of those under category 1 now and category 2 are mandatory three-year terms of imprisonment unless, and the criteria have reduced significantly. Juveniles are not affected by it, but somebody who is 18—and 18 is still fairly young, I am sure you would all agree—gets caught up in that. So I do not think for that level of offending—the aggravated carjacking, your home invasions, aggravated injury to emergency workers and things like that—they will not be caught up in it, because you have mandatory sentencing now.

Ms LOVELL: I am keen to explore some of the cross-jurisdictional stuff because Ms Maxwell and I have an electorate that shares a border with New South Wales the entire width of our state and a border with South Australia that is half the border between South Australia and Victoria. So there are lots of opportunities for cross-jurisdictional offending. What level of recording is there of convictions or non-convictions in other states on Victorian records, if any, because it would be quite possible for someone to live in Victoria and not offend in Victoria but be offending regularly in New South Wales?

Ms WALKER: Well, they are disclosable now, so any of my clients who have criminal records in other jurisdictions alleged against them, in Victorian courts now, whether it be for a bail application or a sentencing hearing, so we do not have—hang on a second. Yes, it is released now under the Victorian information release policy.

Ms LOVELL: Is that released for police checks, for employment or working with children checks?

Ms WALKER: Yes. Part of the national police checks also will flag whether or not somebody is being investigated as well. And that person may be being investigated, which then affects their prospects of employment at that particular time, and they may never proceed to charge, or somebody is facing charges for which they are ultimately acquitted. So it has a really significant knock-on effect.

The CHAIR: Do you think we should exclude disclosure of people who have just been charged?

Ms WALKER: Yes, I do.

Ms LOVELL: And just one other thing: is there any avenue for appeal in any of the other jurisdictions where they have spent legislation if the police are really concerned that someone could reoffend? Is there any avenue for the police to appeal their convictions becoming spent?

Ms WALKER: Not that I am aware of, because I think—I know we are not discussing the bill, but in the bill there was the application to the court and there was no appeal in that from Victoria's proposal. I did not look at that specifically, and in my reading I do not believe so.

Dr KIEU: Just very quickly, touching upon the question by Ms Lovell, the legal profession represents both sides of court cases—offenders as well as the victims—and there are virtually no crimes or offences without victims. In your consultation you listed a lot of legals and some of the VicPol legals as well. So it would be interesting if you could tell us about the victims' voices that you have heard, and secondly, in connection with Ms Lovell, legally and logically a person cannot say that that person is likely to commit a crime, because we cannot do that. There is nothing to prove it, and we cannot just prejudge that kind of thing, but there are certain victims that in the past could be perceiving that the sentencing was not appropriate for the crimes committed, and also there is some circumstantial evidence and so on. So is there a venue for the victims or the public, whether we could—

Ms WALKER: I know there are certain victims' representatives. I do not know if they have been invited to this inquiry.

The CHAIR: Yes, they have.

Ms WALKER: Well, they are probably better placed to answer that question, as are the Crown, who represent the victims. But can I say this, and there has just been some legislative, or there are proposals for a legislative—oh, that has gone through, on the Open Courts Act, for suppression for victims to talk about their case in sexual offences, which has been a big difficulty, or there has been a lot of agitation on behalf of victims in relation to that. With this scheme that we are proposing there is nothing that prevents a victim from speaking out about what has happened to them. It does not make what happened go away. It makes the conviction or the recording of that conviction spent for the purposes of allowing that person to further their rehabilitation, and that is a good thing for the community. That is a better thing for the community than to restrict somebody's potential employment or their ability to obtain housing—and mental health concerns as well. So we say it is a good thing for the community because to rehabilitate somebody is the primary objective, as well as punishment and as well as protection of the community. So we say that this will address all of those things.

The CHAIR: I am conscious of time. Is there any—

Ms MAXWELL: Can I just do one very quick one, just absolutely relating back to what was just said. So for spent convictions, and Mr O'Donohue alluded to that there may be other possibilities of a diversion order where the conviction is not spent. One of my questions is: with a spent conviction, what is the possibility of partnering that with rehabilitation, so to bring that in under legislation that for certain offences it may be required, in order to have that conviction spent, that they have to actually—or are guided or requested to actually—participate in some certain rehabilitation programs?

Ms WALKER: That can be achieved in a number of ways. That can be achieved by way of a non-conviction agenda undertaking with a condition to undertake that rehabilitation, because we say that where there is a non-conviction agenda undertaking, at the end of that undertaking, once that has been completed, the record is then spent. A community correction order can be imposed, with or without conviction, and that person in undertaking that rehabilitation, upon completion of that, the offence, if there is a non-conviction, can be spent automatically, or they wait 10 years on a conviction. So absolutely it can be tied in with sentencing, and I think that would be an objective. I think it is an incentive; I really do.

Ms MAXWELL: Absolutely.

Ms WALKER: Just even the payment of a fine—I know fines do not get paid often.

The CHAIR: That is right, or unless you undertake community work.

Ms MAXWELL: Well, the focus is on rehabilitation.

Ms WALKER: Absolutely.

Ms MAXWELL: So I think that people have to actually be empowered to do that, and if we are talking about vulnerable people, they at times do not know that pathway, so to have that encouragement and that resource—

Ms WALKER: That is right, and certainly with a lot of our specialist jurisdictions now, with the ARC program and the Drug Court and things like that, that is the objective. It is to get them through that rehabilitation, because there are consequences if they do not and there are rewards if they do, and that works.

The CHAIR: What a great high point to finish on. Thank you so much for your contributions today. As I mentioned earlier, you will receive a draft transcript of the Hansard proceedings. I really appreciate your time. I think you have given us some really great insights and really added to your submission this evening. So on behalf of all of us, thank you.

Ms WALKER: Thank you for inviting us.

Witnesses withdrew.