

# DRAFT MODEL SPENT CONVICTIONS BILL – RESPONSE TO CONSULTATION PAPER



## WOMEN'S HEALTH VICTORIA

GPO Box 1160  
Melbourne Vic 3001  
Telephone: (03) 9662 3755  
Contact: Marilyn Beaumont  
[whv@whv.org.au](mailto:whv@whv.org.au)  
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Criminal Law Policy  
Department of Justice  
GPO Box 4356  
MELBOURNE VIC 3001  
[legalpolicysubmissions@justice.vic.gov.au](mailto:legalpolicysubmissions@justice.vic.gov.au)

## Draft Model Spent Convictions Bill

### INTRODUCTION

The vision of Women's Health Victoria is for a society that takes a proactive approach to health and wellbeing, is empowering and respectful of women and girls and takes into account the diversity of their life experiences.

Women's Health Victoria is a statewide women's health promotion, information and advocacy service. We are a non government organisation primarily funded by sections of the Victorian Department of Human Services. We work with health professionals and policy makers to influence and inform health policy and service delivery for women.

The work of Women's Health Victoria is underpinned by a social model of health. We are committed to reducing inequities which arise from the social, economic and environmental determinants of health. These determinants are experienced differently by women and men. By incorporating a gendered approach to health promotion work that focuses on women, interventions to reduce inequality and improve health outcomes will be more effective and equitable.

WHV's advocacy to improve women's health and well being works beyond working with individual women and aims to change systems and structures that impact on particular sections of the community. Our advocacy operates principally at two levels:

- with health service providers (within a social view of health this includes housing, income etc) to improve the translation of research and evidence into health services practice
- with public policy makers including government departments and politicians to ensure healthy public policy for women.

Of additional relevance to this submission is WHV's provision of staff expertise to improving the health and wellbeing of women in and post prison. Part of this work has involved active participation on the Victorian Governments Victorian Women's Correctional Services Advisory Committee since 2003. This Committee was

established to bring together individuals who make a significant contribution in the area of women's correctional services, to work with the following terms of reference:

1. Provide advice to the Minister for Corrections on strategic directions and service requirements for women in the Victorian correctional services system.
2. Have input into the development of policy, including research and evaluation that leads to the development of best practice in the delivery of services and programs for women offenders and prisoners.
3. Provide a forum for discussion of ongoing issues that arise in relation to women in the correctional services system.
4. Consider matters referred by the Minister for Corrections.

In addition, WHV participated on the Victorian Corrections Health Board, from 2001 until it was disbanded in 2008. WHV continues its contribution on the newly constituted Department of Justice Clinical Advisory Committee to provide expert advice to the newly established Justice Health.

## **SUBMISSION**

Women's Health Victoria (WHV) welcomes the opportunity to make a contribution to the project to design a national model Bill for a spent convictions scheme which would provide for certain criminal convictions to be disregarded, for most purposes, after a sufficient period of good behaviour. Evidence demonstrates that people who come before the criminal justice system are usually the most disadvantaged in our community, in particular women<sup>1</sup>. For this population already significantly disadvantaged, carrying a conviction for life maintains stigma and further diminishes opportunities.

We note that all Australian jurisdictions except Victoria and South Australia already have such schemes but that the legislation varies from one jurisdiction to another, and that no jurisdiction has given a commitment to adopt a model Bill. We consider adoption of a national model Bill for spent convictions scheme by all Australian jurisdictions to be an important initiative for the health and wellbeing of women exiting prison, and a significant incentive to diminish re-offending.

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### **Victorian women prisoners**

The number of women in prison in Victoria more than doubled during the period 1997-2005. With a major part of this increase occurring between 1998 and 2003, where the number of female prisoners in Victoria increased by 84 per cent, this was three times the increase in the male prisoner population over the same period<sup>2</sup>.

Identified drivers of this increase in the female prisoner population since 1998 included:

- an increase in violent and drug-related offending
- an increase in the use of remand, particularly for women with complex drug and mental health treatment needs

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<sup>1</sup> Victorian Department of Justice, November 2005. Better Pathways: an integrated response to women's offending and re-offending.

<sup>2</sup> Victorian Department of Justice, November 2005. Better Pathways: an integrated response to women's offending and re-offending.p.6

- an increase in breaches of non-custodial orders
- a decline in the use of prison as a 'last resort', demonstrated by an increase in the proportion of women sentenced to a short term of imprisonment who have no prior imprisonment or community corrections history<sup>3</sup>.

'Better Pathways: an Integrated Response to Women's Offending and Re-offending' which commenced development in 2003 has been implemented from 2005 through to the current period. This work recognises that there needs to be a long term commitment and investment in making systemic change. It aims to promote service enhancements in prevention, early intervention, diversion, rehabilitation and transitional support initiatives that support women at risk of offending or re-offending. WHV believes that a spent convictions scheme is an important component of rehabilitation.

### **Impact of criminal history checks**

The number of criminal-history checks on Australians has increased six-fold in the last 7 years in a mandated culture of caution<sup>4</sup>. There is evidence of the requirement to have police checks for an increasing range of reasons and real problems exist with the use of criminal history checks to screen job applicants.

For example in Victoria police checks are mandated as a process to screen out potential offenders as:

- employees in areas of work and volunteering which require involvement with vulnerable population groups such as care of children and the aged;
- potential parents who have a record of sexual or violent offences who wish to access assisted reproductive technology.

Significant areas of women's traditional employment and volunteering is in areas of responsibility for vulnerable population groups such as teaching, nursing, child care, and home based care of the aged.

The majority of women offenders experience entrenched disadvantage which is a contributing factor to their incarceration and a direct contributor to poor mental and physical health. With a significant proportion of these women having responsibility for dependent children as single parents or giving birth to children in prison WHV believes that meaningful, long term employment for women exiting prison is a significant contributor to breaking the cycle of disadvantage and improving their health and wellbeing and that of their dependent children. Having a criminal record is a major barrier to achieving this.

### **Which offences could become spent?**

WHV supports the Bill's proposal not to spend a conviction in a case where a person, if tried as an adult, was sentenced to more than 12 months jail, or, if tried as a juvenile, was sentenced to more than 24 months' detention. In addition we support lack of distinction in the draft Bill on the category of offence.

Of primary importance is how seriously the court viewed this offence in its circumstances as demonstrated by the sentence imposed. This proposal will benefit 40% of female prisoners in Victoria who serve less than 12 months, most of whom

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<sup>3</sup> Victorian Department of Justice, November 2005. Better Pathways: an integrated response to women's offending and re-offending. Page 7.

<sup>4</sup> Weekend Australian January 10-11 2009 The Nation 3 'Criminal Checks are Big Business'

are in to 20 to 49 age bracket with potentially significant numbers of years in the paid and unpaid workforce.

### **What about sexual offences?**

WHV does not support the proposal that sex offences could never in any circumstances become spent. We do support the capacity in the model Bill to permit sex offences to become spent in limited circumstances. We support the process outlined whereby the offender is able to apply to court after the qualifying period of good behaviour. If the application is denied, the offender is able to reapply for a further 2 years.

In addition, we suggest consideration of a cap on the number of such applications that can be made by one person as there would be some sex offence convictions which should never be spent and the courts should not be clogged up with vexatious applications.

We support the proposal that an application to the court for an order declaring that a sex offence conviction is spent can only be made in the jurisdiction where the conviction was incurred, unless it was an overseas jurisdiction.

### **What about a minor offence?**

WHV agrees with the proposal that the qualifying period should not be broken if the person commits a further offence that results in no penalty as given in the examples of a parking or littering offence.

### **Overseas offences**

The proposed spent convictions scheme should apply Australia's human rights and legal standards not those of jurisdictions where a range of freedoms enjoyed in Australia are not available eg. freedom of expression. Given the issues which arise where an overseas offence does not correspond with any offence known to local law, WHV supports the option that overseas convictions could become spent on application to the court as a way to respond to many possible different circumstances.

### **Exceptions**

WHV accepts that situations will exist where disclosure is relevant following a spent conviction. It is impossible to expunge all records of processes around the criminal justice system including the media coverage. When an application to have a conviction spent is granted by the courts, it should be made explicit that where the individual's interest in putting the offence behind them is outweighed by the public interest in community safety public records will continue to exist. This may be in libraries and archives which should be able to be retained.

### **Consequences**

WHV supports that it should be unlawful for a person who has access to official records or who knows that a conviction is spent to disclose any information about it.