

The Centre for Excellence in Family Welfare (the Centre) is the peak body for child and family services in Victoria. For over 100 years we have advocated for the rights of children and young people to be heard, to be safe, to access education and to remain connected to family, community and culture. We represent over 150 Community Service Organisations (CSOs), students and individuals throughout Victoria working across the spectrum of child and family services, from prevention and early intervention to the provision of out-of-home care.

The Centre welcomes the opportunity to provide feedback on the introduction of a Legislated Spent Convictions Scheme (the Scheme) in Victoria. While we support the Scheme we urge the government to make sure its operation does not compromise children's safety, and that appropriate safeguards are in place.

The Centre supports the provisions in the Spent Convictions Bill 2019 (the Bill) outlined in Schedule One which provide that criminal convictions against children under the age of 18 years will be automatically spent following prescribed time periods.

Children with criminal convictions

The Victorian Sentencing Advisory Council's data indicates that less than one percent of 10-17 year olds are sentenced for criminal offences in Victoria.¹ There is a strong connection between children and young people entering the youth justice system and social and economic disadvantage. According to the 2016-2017 Youth Parole Board Annual Report analysis of youth detention demographics:

- 71% have been victims of abuse, trauma or neglect
- 56% have been expelled or suspended from school
- 40% presented with a mental health issue
- 22% have a history of self harm or suicidal ideation
- 26% presented with issues concerning their intellectual functioning
- 65% had a history of alcohol and licit and illicit drug use
- 34% have a history of parental or sibling imprisonment

¹ Reoffending by children and young people in Victoria, Fact Sheet, Sentencing Advisory Council of Victoria, www.sentencingcouncil.vic.goc.au

- 13% were homeless prior to custody.²

Those with present or past child protection involvement amount to 36% of the detention and parole population. Of the young people in custody aged 10-17 years, 18% were on current child protection orders on the day they were surveyed.³

The Youth Parole Board observes in its 2016-2017 annual report that many young people appearing before it are the victims of family violence. It *'has observed the correlation between the experience of family violence, and complex issues such as substance use, lack of life skills and poor mental health outcomes, including post traumatic stress disorder and intergenerational effects.'*⁴ It has further observed an increase in offences relating to adolescents who commit acts of family violence.

Aboriginal young people are over represented in this demographic. During 2016-2017, 18% of young people who received youth residential and youth justice centre orders were Aboriginal.⁵ Aboriginal people comprise only 0.7 percent of the Victorian population and 1.6 % of the population aged 10-19 years.⁶

There are also some culturally and linguistically diverse groups that are over represented in youth justice. Of the young people who received youth residential and youth justice orders in 2016-2017, 11% were from Maori or Pacific Islander backgrounds and 12% were from an African background.⁷

Too many children are caught up in the youth justice system because of social and economic disadvantage, or because they have been exposed to the trauma of abuse and neglect. The Centre welcomes the provisions of the Bill which will automatically prevent the disclosure of juvenile criminal history records for juvenile offences. This will strengthen incentives for rehabilitation and allow people to move on from past mistakes.

Young People in Residential Care

The Centre is concerned about the number of children in residential care who face criminal charges. Many young people who are in residential care in Victoria face an increased chance of being convicted for offences that would not merit a police callout in a family setting.⁸ Victoria Legal Aid closely examined their

² Youth Parole Board Annual Report 2016-2017.

³ Ibid.

⁴ Ibid, p19.

⁵ Ibid.

⁶ Youth Justice Review and Strategy, Meeting Needs and Reducing Offending, Executive Summary- July 2017, 9.

⁷ Youth Parole Board Annual Report 2016-2017.

⁸ <https://www.legalaid.vic.gov.au/about-us/research-and-evaluation/evaluation-projects/care-not-custody-report>, see also the NSW Joint Protocol to Reduce the contact of young people in residential out of home care with the criminal justice system, <https://www.facs.nsw.gov.au/download?file=585726>; <https://www.gov.uk/government/publications/national-protocol-on-reducing-criminalisation-of-looked-after-children>;

data and found of the children they assist with a child protection matter who are placed in residential care, two in three require legal help for criminal charges.⁹ Victoria Legal Aid has found that;

‘a clear factor pushing children from care into custody is an over-reliance by some residential care facilities on call-outs to police to manage challenging behaviour by vulnerable children, including those who have been victims of family violence. Children are being charged with minor offences, such as smashing a coffee mug, throwing a phone or spreading food around. These would be very unlikely to attract police attention if they happened in a family home’.¹⁰

The proposed Scheme will go some way towards allowing young people who have faced criminal charges when living in residential care settings to move on with their lives as these convictions will no longer be recorded for posterity.

Child Safeguarding

The Royal Commission into Institutional Responses to Child Sexual Abuse¹¹ and the Victorian Betrayal of Trust Inquiry¹² highlight how our institutions have failed our children. As part of its remit, the Royal Commission examined the failures of our Working with Children (WWC) checks and mechanisms to share information about the suitability of people who work with children in and across Australian jurisdictions.

Victoria has introduced the Victorian Child Safe Standards and Reportable Conduct Schemes to strengthen institutional responses to prevent child abuse. Child serving institutions are required to have comprehensive recruitment processes which include conducting WWC and police checks.¹³

The Centre proposes that the Bill be amended to include a separate clause which specifically deals with convictions of a sexual offence against or in the presence of a child, including offences relating to the production and possession of child pornography, when the offence was committed by an adult.

Convictions of these sexual offences should only be ‘spent’ by way of a judicial order notwithstanding whether or not the person received a custodial sentence or the length of sentence. These convictions should remain on the person’s WWC check record as they remain relevant in assessing a person’s suitability to have professional contact with children.

The issue of how to deal with sexual offence convictions against persons under the age of 18 is more complex. Section 354 of the Child Youth and Families Act 2005 provides that the Children’s Court adjourn

https://www.qfcc.qld.gov.au/sites/default/files/joint_agency_protocol_to_reduce_preventable_police_call-outs_to_residential_care_services.pdf

⁹ Ibid.

¹⁰ Ibid .

¹¹ <https://www.childabuseroyalcommission.gov.au/>

¹² https://www.parliament.vic.gov.au/file_uploads/Inquiry_into_Handling_of_Abuse_Volume_2_FINAL_web_y78t3Wpb.pdf

¹³ <https://ccyp.vic.gov.au/child-safety/being-a-child-safe-organisation/>

criminal proceedings against a child charged with a sexual offence and make a therapeutic treatment order in respect of the child. A therapeutic treatment order requires a child to complete a therapeutic treatment program in respect of the sexual offending behaviours. If the Court is satisfied that the child has attended and participated in the therapeutic treatment program under the therapeutic treatment order, it must discharge the child without any further hearing of the criminal proceedings. If the Court is not satisfied that the program has been completed the Court can recommence the criminal proceedings. In these circumstances, where a child is convicted of a sexual offence by the Children's Court, the Centre proposes that any decision to remove this conviction from the person's criminal history must be made by way of judicial order. Discretion should rest with the WWC unit as to whether the conviction should remain on the person's WWC record.

The Centre also proposes that convictions of offences that relate to the commission of physical violence against, with or in the presence of a child by an adult should also only be 'spent' subject to judicial consideration. It should be up to the discretion of the WWC check unit whether the conviction should remain on the person's working with children record even if a judicial decision has been made to remove the conviction from the person's criminal history record.

Conclusion

The Centre supports the proposed Legislated Spent Convictions Scheme and encourages the Legal and Social Issues Committee to recommend its adoption in Victoria. For many young people caught up in the youth justice system, juvenile offences can have a profound impact on their ability to move on with lives and obtain employment. Any scheme however, needs to carefully consider the child safeguarding checks that will help protect children from organisational child abuse.