QUEENSLAND COUNCIL FOR CIVIL LIBERTIES
GPO Box 2281 Brisbane 4001
visit us at www.qccl.org.au

The Senate, Legal & Constitutional Committee

By Email: legcon.sen@aph.gov.au

Dear Sir

Enquiry into the Crimes Amendment (Working with Children – Criminal History) Bill 2009

Thank you for your invitation to make a submission in relation to this bill which makes substantial changes to the existing spent conviction provisions of the *Crimes Act.*

This legislation permits the disclosure of the fact that a person has been convicted of ***any*** offence to various bodies for the purposes of determining a person's fitness to work with children. As we understand the legislation the effect of it will be that when seeking employment involving children, citizens will be required to disclose not only the fact that they have been convicted but the fact that they have been convicted and subsequently pardoned or had their conviction quashed.

In our submission it is critical that society affords every opportunity to offenders to rehabilitate themselves. Fundamental to this process in our view is that the cloud which hangs over a person who has been convicted of an offence should be removed at the earliest possible opportunity.

In assessing how this is to be achieved the Council agrees that the older a conviction becomes the less relevant it is to any decision making process and in predicting a person's future conduct.[1]

The Bill raises two issues of concern for the Council

The Council accepts that there is a legitimate interest in the protection of children and that it is appropriate to make it a requirement that those who have been convicted of sexual offences relating to children to disclose that information when they apply for employment with children. However, the Council is strenuously opposed to the proposition that persons who have had their convictions quashed or been pardoned should be required to disclose this information. The quashing of their conviction or a person's pardon must mean that they didn't commit the offence. How then it can in any rational sense be proper to require them to disclose the fact they were charged?

The second issue is that as we read the bill it will require the disclosure of ***all*** convictions and no matter how old. It is our submission that this requirement goes too far. The principles by which exemptions from spent convictions legislation should be assessed were in our respectful submission accurately stated by the Law Reform Commission[2] as follows:-

[1] Australian Law Reform Commission Report Number 37 *Spent Convictions* paragraph 15.
[2] *Op cit paragraph 43.*

1. Exempt convictions should be substantially relevant to the exercise of power or the performance of the duty or function for which they may be taking into account;
2. The harm that might be caused if the exempted convictions or convictions of that kind had to be disregarded should substantially outweigh the harm the convicted persons that would be caused by taking into account; and
3. The persons to whom the exempted convictions are to be disclosed and acknowledged must be lawfully entitled to take them into account.

We accept that persons convicted of sexual offences involving minors, when applying for work involving minors, fall within these principles. However, even in the case of sexual offences some may be of little or no relevance e.g., a man who has been convicted of unlawful carnal knowledge at the age of 18 with a 16 year old girl is required to disclose this conviction no matter how old they may be at the time of disclosure and despite the fact that usually such a conviction says nothing whatsoever about their propensity to have sex with children.

It is the Council's submission that a proper inquiry needs to be conducted to assess what types of offences might signify that a person has the propensity to mistreat minors and also over what period that propensity might continue.

It is often maintained in public debate that those who commit sexual offences are in fact more likely to re-offend than those who commit other types of offences.

However we observe that there are studies which contradict this proposition. McSherry et al in *"Preventative Detention for 'Dangerous' Offenders in Australia"*[3] – make the following observation:

> "Most serious and violent criminals do not have previous convictions for violence and do not repeat their offending. One study has concluded that there is no empirical evidence supporting the conclusion that sex offenders are more likely to engage in repeat offending than non-sex offenders. Another concluded that a sex offender recidivism and parolee revocation rates are lower than for other parolees. An oft-cited review (or "meta-analysis") of studies examining recidivism (re-offending) rates of sex offenders, while acknowledging problems of relying on re-conviction rates and the limited follow-up period of some studies, found that only 13.4% committed a new sexual offence within 4-5 years (citations omitted)."

Public policy in this area must proceed on a scientific basis. The government should appoint an expert panel to review the evidence to identify those offences which, in addition to those of a sexual nature involving children, ought to be exempted from the Spent Convictions legislation having regard to the principles set out above.

We trust this is of assistance to you in your deliberations.

Yours faithfully,

Michael Cope
President
For and on behalf the
Queensland Council for Civil Liberties
28 September 2009

[3] Monash University December 2006 page 12