

## **ADDITIONAL COMMENTS BY THE AUSTRALIAN GREENS**

1.1 This Bill provides for Commonwealth pardoned, spent or quashed convictions to be disclosed in criminal history information provided by CrimTrac or the AFP to employers assessing a prospective employee's suitability through a Working with Children Check.

1.2 This Bill was subjected to a very rapid inquiry, which was going to proceed without an opportunity to discuss its merits or weaknesses in a public hearing due to the large load of legislation before this Committee. Given the very divergent views the Committee did have a brief half day Inquiry which proved to be very useful in clarifying a number of core issues that had not been communicated clearly in the Explanatory Memorandum or Bill.

1.3 Several thoughtful submissions appreciated the gravity of the legal principles at stake in disclosing spent, pardoned or quashed convictions because in so doing incentives and reward for rehabilitation are removed, or a person's name is marked for life even when they were wrongly convicted or exonerated. Other submissions described the cumbersome nature of current screening processes that are not linked nationally, and welcomed efforts to streamline processes and strengthen measures to protect children.

1.4 QLD Law Society noted that the 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,' urging the government to commission further research, invite public discussion and reasoned parliamentary debate. The Law Council was critical that the safeguards regime, 'offer little protection in the circumstances.'

1.5 The Privacy Commissioner contended that it is important to ensure that any information on such convictions, "is relevant to the purpose it will be used for...given the sensitivity attached to this information and the potential for an individual to be stigmatised, embarrassed or discriminated against if it is mishandled," and suggests a number of safeguards that screening units do not use irrelevant criminal history information, and that such information only be used for a relevant purpose."

1.6 The Australian Greens acknowledge an epidemic of sexual violence against women and children across Australia at shamefully high levels. The Greens also believe that it is every child's right to experience the conditions for optimal health, growth and development, and protection from violence and abuse. In examining the Bill in question, it remains unclear as to how disclosing spent, quashed or pardoned convictions can in this instance better protect children's human rights.

1.7 Along with the government of Victoria, the Greens do not support the sharing of information relating to non-convictions as it would be inconsistent with the

principle of innocent until proven guilty and is inconsistent with human rights which Victorian and ACT citizens enjoy through their Charters of Human Rights.

1.8 The Australian Greens support the Committees recommendation for a review of the legislation after three years of operation. In addition the Greens believe the Bill should be amended to:

- 1) Take account of the Privacy Commissioner's sensible suggestions, in particular to disclose quashed, spent or pardoned convictions only where the offence is demonstrably relevant to the situation, where a causal link can be established between the offence and the type of employment.
- 2) Provide a definition of 'working with children' for the purposes of disclosing convictions under Commonwealth laws in order to provide guidance to the states and proscribing authorities as to the scope of situations under which disclosures could be deemed appropriate. Not only legal and civil liberties experts were concerned with this issue, the Australian Childhood Foundation agreed that a definition would give some purpose to the legislation.
- 3) Provide consequential amendments to the Human Rights and Equal Opportunity Commission Act to make discrimination on the ground of criminal record unlawful.
- 4) Address the inconsistency between the Explanatory Memorandum and the Bill noted by the Law Council in proposed s85ZZGE to include the prohibition into the Bill that is referred to in the EM.

**Senator Scott Ludlam**