

Inquiry into a Legislated Spent Convictions Scheme

Liberty Victoria's Response to Question taken on notice at public hearing on 1 July 2019

In the limited time available to us, we have conducted some preliminary research. There are some annual reports which note that complaints have been made on the basis of individuals feeling that they had been discriminated against due to an irrelevant criminal record.

We've not been able to find specific cases where such a protected attribute has been upheld in a court or tribunal, though the research in respect of this was not finalised.

Further, many of the complaints are often settled outside of a tribunal or court setting, with the local Human Rights or Anti-Discrimination Commission. For example, the attached Annual Report for 2015-16 from the Tasmanian Anti-Discrimination Commission at page 42 notes a case study where a person who had been a prisoner was refused entry and service to a local store in a small town. A complaint was made by this person and the staff of Equal Opportunity Tasmania contacted the store and provided the store with information about discrimination on the basis of an irrelevant criminal record. The store owner had not been aware that discrimination on the basis of an irrelevant criminal record was unlawful and agreed to serve the person that had complained. Although this is not a court ruling, it's a positive application of the relevant law and produced an outcome where the person was protected because discrimination on the basis of an irrelevant criminal record was unlawful. Further, the fact that there are not many rulings that we have been able to find where the protected attribute was upheld, does not mean that having this as part of an anti-discrimination scheme is ineffective. In fact, the education about it to the public and businesses, government departments and individuals being aware that they cannot discriminate on the basis of an irrelevant record may mean in fact that having this as a protected attribute is working because there are less complaints of people being discriminated against.

Regards

Martin