

# TRANSCRIPT

## LEGISLATIVE COUNCIL LEGAL AND SOCIAL ISSUES COMMITTEE

### **Inquiry into a legislated spent convictions scheme**

Melbourne—Monday, 1 July 2019

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## WITNESS

Mr Greg Davies APM, former Victims of Crime Commissioner.

**The CHAIR:** If you are ready, we will get started. I know you have been warned that this is being recorded, and of course you would be very aware that during this process everything that you say here is protected by parliamentary privilege and no action can be taken against you. However, if you go and say something outside, we cannot offer you that same protection. Maybe if you give some opening statements, and then we will open it up to questions.

**Mr DAVIES:** Thank you. My name is Greg Davies. I was a police officer in Victoria for over 37 years. The final more than five and half of those 37 years were spent as the secretary, or CEO, of the police association. I was then offered and accepted the appointment as the inaugural victims of crime commissioner for Victoria in October 2014, and I retired from that position on 1 January this year. In the course of the duties involved in these functions and in the numerous community positions I have held in the past 40 years I have heard the views of several thousands of Victorians on a wide range of matters, including the subject of this committee's deliberations. It is curious in my mind that Victoria does not have a spent convictions scheme when every other state in the commonwealth does. While I am supportive of some of Victoria's initiatives and stances on issues that make us unique in Australia, the lack of a spent convictions scheme is not one of them.

In my experience victims of crime do not necessarily seek the throw-away-the-key outcome for offenders who have committed criminal offences against them. What the vast majority of victims of crime want is to prevent what happened to them from happening to anyone else. This altruistic response comes as a surprise to some, yet it is one that forms a recurring theme among victims of all manner of crimes. Sadly, it is one that is all too often frustrated by a system that continues to repeat its mistakes over and over while expecting the outcomes to suddenly improve.

Whether a spent convictions scheme will assist in minimising recidivism is unknown to me. Perhaps there is some interjurisdictional data that may be available to support or refute the suggestion. However, it seems to me that there is little to lose in trying something different because, as I say, doing the same thing over and over has now led to our recidivism rates being revealed by the Australian Bureau of Statistics as being more than 50 per cent. More than 50 per cent of our prison population have been incarcerated in prison before. So we are quite clearly not getting it right.

A spent convictions scheme may remove one stigma that restricts some people from improving their circumstances and therefore allow them to pursue legitimate activities rather than eventually lapse back into a life of unlawful behaviour. The Australian Bureau of Statistics also reveals that 20 per cent of Victoria's prisoners, or 1548 prisoners, are currently imprisoned for offences of violence. Despite the best efforts of many governments included, crimes against women and children are actually on the rise. One Australian woman is killed every week by someone they know. One Australian child is killed every fortnight by a parent, which is a lesser known statistic unfortunately. Fourteen per cent, or 1102 prisoners, are undergoing sentences for illicit drug offences. In my considered view, illicit drug trafficking—not use—adversely affects more people than any other offence or any combination of offences. It destroys lives and families and creates the reason that most offenders commit thefts, burglaries and robberies. Defence lawyers often and perhaps even usually cite drug use as a reason their client committed an offence, including crimes of violence. Thirteen per cent of Victorian prisoners are under sentence for sexual offences, which is 1 per cent higher than the remainder of the commonwealth. There is no doubt that Victoria has become a more violent society, and the data shows that we are marginally more likely to have crimes of a sexual nature committed here than anywhere else in the country. That 13 per cent of the prison population of this state is imprisoned because of sex crimes is a serious indictment of our community and of those given charge of protecting our community. At July 2018 there were 7666 prisoners in Victoria, and 13 per cent of that total means that more than 1000 criminal sex offenders are now in our prisons. These statistics show that 47 per cent of Victoria's prison population were incarcerated for the worst of crimes, without including murder in the crimes of violence category. That data comes from both the Australian Bureau of Statistics and the Sentencing Advisory Council of Victoria. These categories of crime, in my submission, must never be included in a spent convictions scheme. To do so would endanger the innocent even more than they are already endangered.

According to the Crime Statistics Agency of Victoria there were about 300 000 victims of crime in Victoria in the last financial year, 2017–18—300 000 people who had at least one crime committed against them. But that figure does not disclose how many people became victims of crimes on multiple occasions throughout the year. Whether you have had one offence committed against you or 20 offences committed against you, you are recorded as one unique victim. I do not believe that that is an acceptable number, and I vehemently oppose any notion that would make it easier for convicted sex offenders, rapists, assaultants or drug traffickers to worm their way into the confidence of the innocent.

However, there are large numbers of Victorians who have committed some other form of offence and, no matter how minor that offence, are branded by it by the finding of guilt for the rest of their lives. Today a Victorian of 50 years of age may have been found guilty of riding their bicycle on the footpath when they were 17 or stealing a lolly from a milk bar when they were 17—because back then 17-year-olds were dealt with by the adult courts—so that is a conviction for theft branding that person as a thief for the rest of their lives. To still have to declare that fact in any document requiring it—passport application, visa or job application, for example—begs the question: is justice being done in these or similar circumstances? I think not. If there is no danger to the community—and that is the underlying foundation that all of what is being discussed, in my view, needs to be built upon—in a person being able to wipe the slate clean after a fixed and reasonable period of time, I believe it should occur. At present there are more and more Victorians being asked to undergo a police check in relation to prospective employment. To be denied employment or to be publicly embarrassed on the basis of a historic, silly mistake is neither fair nor what the Parliament could possibly have intended at the time the legislation was created. The courts have punished people, and that should be the end of it. To continue punishing them in the manner described is unfair and does not assist the community in any demonstrable way.

To close, I believe that if the offending was not in relation to offences carrying a level 6 sentence under the Sentencing Act, being a maximum sentence of five years imprisonment, then at the expiration of a suitable period—whether that be 10, 15, 20 or 25 years—without any subsequent finding of guilt for any matter the initial finding of guilt for a relatively minor offence should be declared spent and expunged from a person's record.

**The CHAIR:** Thanks very much. We really appreciate your experience as a police officer and as an advocate for victims of crime here. Just going back to the 'never to be spent' offences, which you were saying are certainly serious drug offences, such as trafficking, or sex offences, some of the previous witnesses have suggested that there would be circumstances where that person had really turned their life around—that they had done something stupid when they were 20 that had led to a serious crime, but at 35 or 40 they were a different man or a different woman and that there should be an application to a court to have a conviction spent. Would you support something like that, or do you think, if we are making recommendations, it should be hard and fast; it is yes or no?

**Mr DAVIES:** My initial reaction is that it needs to be hard and fast, because if it is not the law of unintended consequences will immediately come into play. Now, there might be initial exceptions written into the legislation that say 'beyond a maximum five-year sentence'. There is the offence of theft—a serious, indictable offence under the Crimes Act—which from off the top my head carries a maximum 10 years. So there might well be, and I would suggest will be, circumstances where that particular offence might come into play because that could be the consequence of a silly act or a mistake—'mistake' is probably the wrong word—or something that was perhaps unintended. It is difficult to put into words, because to be convicted of a serious indictable offence there has to be a mens rea; there has to be a guilty mind to go with the guilty act. It is difficult. I cannot see that there could possibly be any circumstances where a rapist or an aggravated burglar or a home invader or a violent assaultant could possibly say, 'That was a silly mistake. Committing that rape was a silly mistake'—an abduction, you know. No, some things are beyond the pale. If we start excusing people with sexual offences, does that mean that all of a sudden they are open to working with children? Because there is no access to somebody to say, 'This person committed a sexual assault on a child, and now we're going to let them be a lifeguard at the local pool'.

**The CHAIR:** No; exactly.

**Ms LOVELL:** Fair enough. You talked about that if they are not a level 6 crime they should be spent and expunged. By expunged do you mean completely wiped from any record, or should there always be a historical record that is kept there in case that person does end up back in a court at some point in time?

**Mr DAVIES:** I think the only time that you would say that it would not be appropriate to expunge those records after a lengthy period of time—and I am not talking six months; I am not averse to the idea of 20 years, although in some respects it lessens the impact that this proposed change would make, but certainly at a minimum, at an absolute minimum, a decade—would be if the initial conviction or finding of guilt was for an offence that has a different sentencing regime for second or subsequent offences; then that offence, or a record of that offence, should be available to the courts, but perhaps nowhere else. But in any other circumstance it is a little bit like Children’s Court convictions: once somebody is before the adult court it is as though those earlier findings of guilt never occurred.

**Ms LOVELL:** Also, do you think that for crimes that are no longer an offence, like the historical same-sex offences and other crimes that are no longer an offence, we should make a recommendation that they also be expunged?

**Mr DAVIES:** I think certainly the same-sex matters that were a crime—and until we did away with capital punishment they were in fact a capital crime, believe it or not—obviously need to be completely expunged. With an offence that is no longer an offence or no longer a particular crime, that legislation having been repealed, if it has been amended or replaced with something else of a very similar nature—if somebody decided to get rid of the offence of aggravated burglary and we just go along with home invasion instead that is effectively 99 per cent the same legislation—it would be foolish, I would think, to—

**Ms LOVELL:** So each case would have to be looked at, obviously, individually, because—

**Mr DAVIES:** Yes. I think it could be done under a fairly broad umbrella that, you know, if that legislation has been repealed, such as same-sex offences as they were then, well, we are in a different century; we are in a different world. That is gone. But it is not like larceny as a servant or theft by finding. Those offences have been repealed and are now covered by section 74 of the Crimes Act: theft. In whatever circumstances, it is just theft. So those offences are still relevant to the contemporary legislation, but if they have been wiped and wiped for good, then it does not seem much point.

**Ms LOVELL:** Yes. Let me give you an example of one person that we have had come before us. A young couple in the 70s, 15 and 17, had sex. It was illegal for teenagers to have sex, so the 17-year-old male has a carnal knowledge claim against him. They have gone on and married and had children and lived their life together and are now in their 50s, but he still has a carnal knowledge claim against his name even though today two teenagers would have sex at 15 and 17 and it would no longer be a crime.

**Mr DAVIES:** Well, I do not see that there is any difference between that, in the circumstances you have outlined, and the same-sex offence type thing.

**Ms LOVELL:** That is right.

**Mr DAVIES:** We are a little more enlightened and a little more accepting of a whole range of things now than we were, and it would be fairly extraordinary, I would think, for a 17 and a 16, or a 16 and a 15-year-old nowadays to be worried about anything other than dad finding out.

**The CHAIR:** It was generally the dad finding out, I think, in the 70s.

**Mr DAVIES:** So I do not think there is any need to—

**Ms LOVELL:** And at what point do you think the period—you know, you said you are not opposed to it being 20 years but probably 10 years as a minimum—of time for expungement should start? Should it be from conviction, or should it be from release from jail?

**Mr DAVIES:** Well, it very much depends on the crime, because there is currently legislation in place prohibiting a person in possession of a firearm, for example. You cannot get lawful possession of a firearm for a certain amount of time after you have been released from prison.

**Ms LOVELL:** Okay. Yes.

**Mr DAVIES:** So those types of things would need to be considered. I think the reality is if you are imprisoned—as I say, in my view—for something that takes you beyond a five-year term of imprisonment—

**The CHAIR:** It is not going to be spent anyway.

**Mr DAVIES:** it should not ever become spent. If you have done four years, if a crime is serious enough for you to have done four years in prison, then there should be something in place, particularly given the recidivism rates that we have now, and that is that roughly 47 per cent of prisoners released from prison are back in prison within two years. That is a pretty quick turnaround.

**Ms LOVELL:** Isn't it.

**Mr DAVIES:** There have got to be a lot of people out there somewhere between the prison gates and the bus stop doing an armed robbery to get back inside so quickly. I mean, it can take the Supreme Court 19, 20 months to deal with a matter from the time it starts until it finishes, and you have got to have an offence, an arrest, an investigation and everything else before that. So that is a very quick turnaround for a serious crime. So I think if you are doing three or four years in prison, that is a very unusual sentence and one that would be beyond a magistrate for most sentencing purposes, certainly, so you would be looking at a County Court sentence for that the vast majority of times. So it will be a serious offence, probably beyond the scope of a spent conviction, but even if it was not, to spend three years in prison means it is a serious probably group of offences combined into that aggregate. And you should, I think, in those circumstances then be subjected to the applicable time, whatever it is, commencing from the time you leave prison rather than from—

**Ms LOVELL:** From release, yes.

**Mr DAVIES:** the time that you committed the offence.

**Ms LOVELL:** Do you know what percentage of prisoners actually reoffend whilst they are actually incarcerated?

**Mr DAVIES:** No, I do not. I do not have the exact, or even rough, statistics on it. I know there are a lot of offences committed. I know not all of those offences are actioned by the office of corrections for various reasons, most of them very good reasons. But, yes, certainly there is a lot of crime that occurs in prisons.

**Dr KIEU:** Thank you, Mr Davies. Your opinion, as you just stated now, that a serious offence that attracted five or 10 years sentencing should not be expunged or spent, but there was a case this morning, and also on the public record by now, that a certain person attracted 11 years sentencing and then served five and half years, but for the 40-year period since that happened the person has turned around and done a lot of good work in terms of educating and consulting and helping prisoners inside prison and on release, redeeming himself as such. Would that be a case to be considered specially, or do you think that still should not be?

**Mr DAVIES:** I think if you are sentenced to more than 11 years in prison—and we have had two instances in the last five years in Victoria where people convicted of murder have spent less time than that in prison—that is a very lengthy period of incarceration, and it must have been imposed for a very serious offence. I think there is a difference between a silly mistake and being allowed to get on with the rest of your life and committing an offence of that seriousness.

**Dr KIEU:** But people can change, don't you think?

**Mr DAVIES:** Yes, people can. But sometimes you have to live with the consequences of your own actions, and there is a difference between making a silly mistake and committing a predetermined, planned serious criminal offence that attracts that amount of imprisonment, in my view.

**Dr KIEU:** The other question is—you may or may not have the data available—we in Victoria have not had a spent convictions scheme. That scheme may be an incentive for people not to reoffend so that they can see that their life could be back to normal after a certain period. In other states people have. So are there any statistics to see that that would be an incentive for people not to reoffend in terms of statistics?

**Mr DAVIES:** Look, common sense probably says that that would be the case. I do not have any data on that. The Australian Bureau of Statistics data says that 50 per cent of prisoners across the commonwealth have been in prison before. Now, there are spent convictions schemes in every other state in Australia, yet they still have 50 per cent-plus of their prison population having been in prison in the part. So I do not know whether that interjurisdictional data is available. I would think somewhere it would be, whether that be with the Australian bureau of criminology or somewhere. I am sure there are researchers that are available to you who would be able to track that down fairly quickly. It is difficult, I think, to draw conclusions definitively from the data that is available through the Australian Bureau of Statistics.

**Dr KIEU:** Yes. I mean common sense would say so, because otherwise people would have nothing to lose because they have a stigma, they have a burden to carry all their lives, so they have—

**Mr DAVIES:** There are unfortunately people who are in that category automatically—who feel that they are in that category automatically, that have all sorts of issues that have happened in their lives that have determined rightly or wrongly that they have acted in a certain way on a number of occasions and keep going through that cycle. That contributes to our recidivism rate, that they go to a magistrate. Most of it is at the bottom of the scale of criminal offending. They go to a Magistrates Court, they get three months imprisonment and they come out in a month or whatever it might be and immediately go back to doing something again. And it will not matter if you said the minute you walk away that conviction is spent; they would still fall straight back into that lifestyle because it is all they know and they do not feel they can get out of it. And that is a more complex issue than I am capable of resolving or explaining. And I think it is—I do not know. Well, it is not for me to say.

**The CHAIR:** No, I think you are right. And look, I think spent convictions can be one tool in helping people get on a path of not reoffending.

**Mr DAVIES:** And that was part of my initial submission.

**The CHAIR:** It is only one tool. We know the reasons that people are in our justice system are complicated and complex. Just touching on where we would draw the line, most jurisdictions have said it applies if you have been in prison for less than 30 months, so you would have to be sentenced for under two and a half years to even qualify for a spent conviction scheme after 10 years. One of the interesting things that has been raised with us, and it certainly was a surprise to me, is that when there has been a no-conviction recorded—so there has been guilt but no conviction—that is still public and that is still made available in police checks. A number of people have said that a no-conviction should never be on your police check, that they should automatically be spent. In your very long experience, how does that sit with you?

**Mr DAVIES:** I cannot speak for police officers anymore, but I would think, in my experience, most police officers would say that there should not be a sentencing disposition that says, ‘Yes, the court finds that you’ve committed this offence but we won’t convict you’. You are either guilty or you are not guilty. Even a good behaviour bond says, ‘Yes, you’re convicted. Here’s a good behaviour bond. If you abide by the conditions of that bond, then the conviction will be struck out after a certain amount of time’, and then effectively there is no prior conviction because it has been struck out. But to say, ‘Yes, we’re satisfied that you committed this or these offences, but we won’t record a conviction’, is a little incongruous to me.

**The CHAIR:** I cannot find the exact section, but there is a section in the Sentencing Act that says that the court needs to bear in mind the consequences of the conviction and the impact that that would have on a range of issues, which is why they choose the—

**Mr DAVIES:** It is a shame the offender did not bear it in mind before they committed the offences.

**The CHAIR:** I think you would not have disagreement from here. Okay, so that is no-convictions.

**Mr DAVIES:** I think in my view, overarching, any system, any practices, any set of rules or regulations has to be balanced. And if they are not in balance, it is no different to a machine, it will run erratically. The whole thing will work erratically if it works at all. So if we balance it, we do the best we can for people that have perhaps made that silly mistake and had to bear the brand of the fleur-de-lis on their forehead for the rest of their lives in what is probably a negative, harmful thing to them and their prospects and their ability to contribute for themselves, for their families and for the community; and on the other side of those scales—the scales of justice, if you like—is the rest of the community. So we have to make sure that they are protected, and that should be our first and foremost priority while trying to look after people that have made a mistake, not planned and committed serious offences.

**Ms LOVELL:** Greg, also just tapping into your experience as a police officer, do you know why it is that an individual cannot apply for a police check? So what we have heard from a number of people is that they just do not apply for jobs if they say that they need to get a police check because they are uncertain whether some of their previous history will come up in it or not because of the discretionary nature now of whether things are released, and that there is no ability for them to apply for the police check first to see what would be disclosed.

**Mr DAVIES:** I do not know. I have never worked in that area. I have no idea why that would be the case. I mean certainly working with children checks you apply for yourself. I cannot see why you would not. There may be good reason. I do not know. I am sorry, but the answer is I do not know.

**Ms LOVELL:** That is okay.

**Dr KIEU:** Just another question: as a former commissioner for victims of crime, would you think that the victims, or the vast majority of them, would support the spent convictions? The reason I ask is that the impact to the individual depends on the individual. Some of the crimes maybe in the eye of the law would not attract five or 10 years, but to a certain person that would be very sensitive and would be having an impact for the rest of their lives. So what would you say from the point of view of the victims about such a scheme?

**Mr DAVIES:** Gee, that opens a can of worms literally, that question. I think there are many examples in the past, and I suppose the classic is an elderly lady living alone in the same home that she has resided in for 50 years, asleep in the front bedroom and someone throws a rock through the window in the middle of the night, and she is then frightened to go to sleep for the rest of her life. It affects her every day and every night for the rest of her life. If it were you or me, we might be tearing out to the street to try and catch whoever it was.

Five or six years ago an elderly gentleman in the inner suburbs of Melbourne had his house broken into while he was home and he was bashed almost senseless—broken bones, severe facial injuries. A Meals on Wheels person turned up three days later and there he was. They said, ‘Why haven’t you called the police or an ambulance?’. He said, ‘Oh, they’re far too busy to be dealing with me’. Everybody reacts differently. There is no one size fits all, and all we guarantee if we create something that we say is a one size fits all, is that it will fit no-one. I think we have to be as specific as we can. If it covers 99.5 per cent of the issues we are trying to deal with, then that is a very, very big win, because you could never cover 100 per cent, in my submission.

**Ms LOVELL:** Never, no. So, Greg, going back to what you said before—that a spent convictions scheme should be a minimum of 10 years—what about for juveniles?

**Mr DAVIES:** I am not aware of whether a juvenile conviction can be declared by the police in a police check. Certainly juvenile convictions or findings of guilt cannot be alleged before a magistrate in a Magistrates Court, so I would be surprised if they can—

**Ms LOVELL:** Or youth offenders, anything under 18?

**Mr DAVIES:** Well, anything that is dealt with in the Children’s Court cannot be alleged as a prior conviction in a Magistrates Court, unless the system has changed very recently and I am unaware of it.

**Ms LOVELL:** So what is being recommended?

**Mr DAVIES:** I would be surprised if the police would be able to say, ‘Yes, this person is now 42 years of age, but when they were 16 they had a finding of guilt before a Children’s Court magistrate’. I do not—

**Ms LOVELL:** From what we are being told, there must be some ability, because a lot of the recommendations to us have been 10 years for an adult sentence but five years or three years—

**The CHAIR:** Three years.

**Ms LOVELL:** Three years for a juvenile sentence.

**Mr DAVIES:** Again, I am not aware, and because we now have a Children and Young Persons Act, no longer, and I think it is, again off the top of my head, about 14 years, but it might be 13 to 15—somewhere in that range, I think—only people under the age of 17 were dealt with in the Children's Court. Everyone above that age—17 or above—were dealt with in a Magistrates Court. Nowadays we have got the children and young persons legislation that changes things dramatically, and there are people well beyond 17 being dealt with still by the Children's Court and sentenced to terms of incarceration in youth justice centres. So again the one size fits all is not going to fit, because you might be talking about a 15-year-old or you might be talking about a 20-year-old. You know, if you can drive a car, drink booze and vote and all the rest of it, it is a little different to a 15-year-old.

**The CHAIR:** That is right.

**Mr DAVIES:** Not that there is not the occasional 15-year-old that does all of that except vote.

**Ms LOVELL:** So you think it should be more whether they fit into a 10-year or a lesser period for their conviction being spent and it should be more about the seriousness of the crime that they have committed?

**Mr DAVIES:** I think the seriousness of the crime. The reason the Children's Court deal—

To police officers—and I am no lawyer, and neither are most police officers—the reason the Children's Court are seen to be 'light' in sentencing offenders who were they adults would face a much steeper offence is the cerebral culpability, if you like, that a child perhaps, whilst they know what is right and what is wrong, does not understand the consequences and the ramifications of what they have done to someone else for that someone else. The consequences, accordingly, to them are lesser than they would be if they were an adult who had the ability to know full well that 'If I belt this person over the head with that length of lead pipe, I'm going to do them severe damage'. The Children's Court very rarely—very, very rarely—would ever come within a bull's roar of the sort of sentence that someone would get at the County Court for an armed robbery, for example. But if it is punishable by a maximum of whatever it might be for whatever the offence might be, then there certainly needs to be a very measured approach to the way we do it, because otherwise—

You know, it is a very short step from being a 17-year-old who commits an armed robbery to an 18-year-old or 19-year-old to a 20, 21, 22-year-old. I think if you escape the net because of a birth certificate, that is fraught with danger too for the rest of the community.

**The CHAIR:** Yes, I think if 30 months is the sentence served that we draw the line on, a juvenile getting a 30-month sentence—

**Mr DAVIES:** Almost unheard of.

**The CHAIR:** Yes, and if they get anything more than that, the spent convictions scheme does not apply to them.

**Mr DAVIES:** Does not apply.

**The CHAIR:** But, as you say, what would get a kid a 30-month sentence would probably get an adult something a lot longer than that, so that probably gives us that room to move with juveniles.

**Mr DAVIES:** Yes, it is difficult. It is very difficult because that then works in reverse, and you say if an adult gets a 30-month sentence but it is for an offence that attracts a maximum of 15 years, like robbery, and if a juvenile does that, it is likely that they will get far less than 30 months, so they are away because the offence occurred one day before birthday X rather than one day after, and is the community at the same level of risk as they are with the adult offender?

**Ms LOVELL:** So the ability for your conviction to be spent, should that be dependent on what you are actually sentenced to or what you actually serve?

**Mr DAVIES:** No, I do not believe it should relate to what time you have served, nor to what length you are incarcerated, because that can change remarkably. There are hundreds of judicial officers in this state. Not all of them will sentence exactly the same way, so if you are unlucky enough to get Judge Roy Bean, the old hanging judge, then you are out of luck on a number of fronts. I think it needs to be a conviction or a finding of guilt for an offence that carries a maximum of whatever it might be that you decide upon, because as I say, we have seen two convicted murderers in the last five years in Victoria get sentences of less than 10 years when the maximum is the term of your natural life—you go to prison and do not come out until you are in a pine overcoat.

**The CHAIR:** Yes. All other jurisdictions have actually done it on time served, so it is up to 30 months.

**Mr DAVIES:** Which is itself an interesting number. Who arrived at 30 months?

**The CHAIR:** It is. I mean, look, sometimes it is less. In the ACT it is six months, so if you have served a prison sentence of greater than six months then it does not apply to you. Then there are exceptions, so for sex offences, violent offences, regardless of time served or no time served, you cannot apply for a spent conviction. The jurisdictions have used the judge's judgement to draw the line. But are you suggesting that actually we should look at, if it was an aggravated burglary—

**Mr DAVIES:** Twenty-five years maximum.

**The CHAIR:** Twenty-five years maximum, but that person only served two years because, for whatever reason, that was what the judge gave them. Aggravated burglary would be a violent offence, so it would not qualify under our spent convictions.

**Mr DAVIES:** It is not necessarily a violent offence. If you break into someone's home, believing that somebody is in the house or have a reasonable expectation that someone should be home, that is an aggravated burglary. It is also if you are armed with a weapon or a firearm or an explosive as well. But it can be two or more of you and you believe somebody is at home. It does not necessarily have to be a violence thing, so that is another quirk in the system.

**The CHAIR:** That is interesting. We are looking at what exceptions would be made in the legislation, and that varies between different jurisdictions. Certainly I think everyone is kind of unanimous in that if it was a sex offence it is excluded from the spent conviction process, although there would be some conversations about those low-level sex offences, that there should be a means to apply for a spent conviction, and then for violent offences that is deemed excluded from the scheme as well.

**Mr DAVIES:** Yes. I think that is a really good starting point.

**The CHAIR:** Yes. Would there be any others that you would exclude?

**Mr DAVIES:** I think drug trafficking, when we look at the amount of money and effort and angst that is being caused in the community, as you are well aware, in the last years. As I say, it is rare nowadays to see a defence lawyer not say, 'My client's struggling with ice', or whatever it might be, 'and that's the reason these things happened. It's terribly out of character'. We all know nothing good ever comes from using something like ice. You never hear, 'Yes, that's right. Greg Davies, when he was on ice, that's when he opened that orphanage'. You know, nothing good ever comes from it. Peddling that sort of stuff to our children is a horrendous thing to do in my view.

**Dr KIEU:** I have a question: you addressed just now that one of the concerns that we have is that sentencing is varied from judge to judge.

**Mr DAVIES:** Yes.

**Dr KIEU:** So a number of six months or 30 months is quite an arbitrary cut-off point. Then you stated that what may be considered is the maximum sentence for a particular offence rather than just the sentence.

**Mr DAVIES:** Yes.

**Dr KIEU:** So what is your recommendation for a maximum number of years in the sentencing that should not be spent?

**Mr DAVIES:** In my view, and I mentioned in my introduction, a five-year maximum. Now, that—

**Dr KIEU:** That is the five-year maximum for that particular crime.

**Mr DAVIES:** Yes. Within the Sentencing Act I think it is a level 6. I have got it written down here, if you will bear with me one second. Yes, level 6 sentence under the Sentencing Act, which is a maximum of five years. Five years is a very long time.

**Dr KIEU:** Yes, it is.

**Mr DAVIES:** You are going to miss two Olympics if you are in at the wrong time.

**The CHAIR:** Thank you.

**Mr DAVIES:** Thank you very much. Thank you for the invitation.

**The CHAIR:** Really appreciated it—appreciated your insights and long experience in this area.

**Mr DAVIES:** Thank you very much. Thank you for your time.

**Witness withdrew.**