

# 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**

Sergeant Wayne Gatt, Secretary, Police Association of Victoria.

**The CHAIR:** I call the hearing open again. This is the inquiry into legislated spent conviction schemes. As you know, Wayne, this is being recorded. You are protected by parliamentary privilege for anything that you say here, and no action can be taken against you. Of course we cannot protect you outside of here. But if you want to just have a chat, and we will ask a few questions afterwards.

**Sgt GATT:** No worries. Thanks. I will be fairly brief. We have really constrained our comments to the parts that, in our view, count. But in effect I suppose I should qualify that we represent over 16 000 sworn police and PSOs in Victoria, and their employment interests of course. So in doing that we are in a unique position to provide advice with respect to the work that they do in the community, and of course issues of spent convictions will to some extent directly impact upon them in their working days. I should also qualify that we are not in any way fundamentally opposed to a spent conviction scheme. We recognise its application and its operation in other parts of the country. We understand, I suppose, the underpinning premise that the rehabilitative benefits of having a spent conviction scheme can lead to better criminal justice outcomes in the long term as well, so we very much understand that. We very much respect its place, but we have some comments with respect to the operation should one be delivered in Victoria, and particularly with regard to the impact on policing and policing initiatives that our members would be involved in. It is difficult when you are asked to comment on something in the absence of a bill, and I note that there was a bill put—

**The CHAIR:** That is right, but that is not—

**Sgt GATT:** But that is not the content here.

**The CHAIR:** Yes.

**Sgt GATT:** So I will refrain in my comments from referring to the bill and I will try to be more general in terms of the application, recognising of course that a scheme can be developed and moulded to meet these issues, so I will talk more about issues.

**The CHAIR:** Great.

**Sgt GATT:** Some schemes that operate operate under the premise of waiting periods, so that is the necessary period from where a conviction is recorded against an individual to the point at which it should be then spent. So in referring to waiting periods, that is the term that I am referring to. We would say that there is a range of scenarios where it is entirely appropriate for the determination, particularly of good character, for convictions to be considered outside of a waiting period. We have regard to good character in two categories, one being employment in particular, so employment activities such as law enforcement, teaching, social work, aged care. Those sorts of occupations require information to suitably determine the vulnerability of members of our community and the people engaged in that sort of work. That is the first category. The other category is good character with respect to licensing that is undertaken and sometimes processed by Victoria Police. So, for example, for liquor licensing purposes, for public transport drivers and in the issuance of working with children checks, these also require accurate information that in our view may require some consideration to the application of waiting periods as they would apply.

I suppose what we are saying is that there should not ordinarily be just a black-and-white situation in a perfect world—that all of the circumstances need to be considered. We understand that it is difficult to have an elastic band situation; otherwise that is entirely discretionary. But our view is that the circumstances and the rules in relation to a spent conviction scheme need to vary relevant to the employment type or the reason that an application is being made and also to the nature and the type of offence that that person received a conviction for. So if we are to give some very crude examples of how this may operate, and of course you could consider many varied combinations of these, but in simple terms an aged-care professional providing a record of convictions for employment and an unlawful assault conviction, and what might the impact be in terms of community confidence and indeed the safety of vulnerable people, some of the most vulnerable people in the community. Our view would be that whilst we do not say what that period should be in any way, shape or form,

we say that in the compilation and the determination of what a scheme should look like, you should factor in the importance of ensuring people in those situations are protected and the nature of the offending, and draw a line with respect to both of those issues together, rather than having a blanket or cut-off period that is applied to everything. We would say the same but perhaps different circumstances should be applied to somebody driving a taxi with a careless driving charge—perhaps a lesser risk, but still a relevant risk, but different circumstances, different offending, and certainly different consequences, different vulnerabilities that apply for the type of employment that is sought in that case and the type of offending.

So I suppose the point we are trying to demonstrate in the provision of those two different examples is how no two situations are necessarily served by very hard and fast rules, but indeed that the severity of the offence that has been convicted against and the nature and the importance and the vulnerability of people that checks with respect to a person's conviction history seek to protect against or secure those vulnerable people need to be offset against each other. So hopefully I have made myself clear with respect to that element.

**The CHAIR:** Absolutely.

**Sgt GATT:** The second area is that obviously we have a view that police need full access to conviction information for the purpose of investigations, so retaining the ability to understand police intelligence, that that is not lost when convictions are necessarily spent and that some visibility, or visibility, is retained in convictions for police purposes.

It is important particularly for police to maintain it for the purposes of recruitment practices. So we say there will be areas where integrity is most paramount, absolutely paramount. The industry that we represent in particular is one of those where we say understanding the full conviction history of someone, even though it may go back quite some time, remains relevant in an industry like ours. Assessing the integrity, the character and the suitability of people to perform such important roles in the community is important. We are not saying that it is just police and only police. No doubt there will be other occupations where that ought be considered. But again I suppose what we say here is that you should not have—

A best practice model would not just have one set of rules that says after 10 years they just magically vanish. It really depends on the nature of what you ought be applying for, the nature of why that history ought be known.

The other area where we think there should be an ability for police to go back into time, unfettered by a spent convictions scheme, would be two further areas—that is, the application of international requests for information regarding visas, as they are monitored by Victoria Police and its information is then provided to international agencies, which sometimes might require the disclosure of information that goes beyond any legislation that is held within Victoria, so consideration needs to be given to at the very least providing Victoria Police members with clear guidance as to what that ought be. So whether that ought be the request of the agency or what the conviction history has then become.

The other area where we think it is immensely important is in requests from the Department of Health and Human Services with respect to protection applications, particularly with respect to child protection and the need for, again, the most vulnerable people to be protected by access to the fullest possible information available, and sadly that will in our view include all convictions, not just those that are outside spent waiting periods. So they are just two areas where we think some significant thought needs to be applied to having exemptions. Again, not a one-size-fits-all approach.

The other area that we think should be exempt from a spent convictions process is evidence that is tendered during or pre-conviction, so, for example, tendency evidence. So where police use evidence of similar fact to actually go to have a matter found proven requires police, for example, at times identifying that a person was engaged in similar activities previously, and in those circumstances Victoria Police will rely on conviction histories. We say that there should be a complete ability for police, in the interests of criminal justice going forward, to rely on similar fact evidence that relates to previous convictions irrespective of when they occurred. They may be insignificant, they may be many, many years between repeat, but if they are relied on, at times they can provide vital evidence that can lead to the future or present convictions of people for quite serious offences. So they are probably only the three areas that we see challenges—that are not insurmountable in our

view but require careful thought and consideration to ensure that the interests of all Victorians are considered, not just the person that is subject to the spent conviction.

**The CHAIR:** Thank you. That is really helpful, and it is really helpful hearing it from you, because a lot of it already currently, under the current policy, applies, so things like working with children, things like evidence in court if the disclosure of prior convictions is allowed. I think it is good to clarify that that should—

**Sgt GATT:** Remain.

**The CHAIR:** remain.

**Sgt GATT:** And as we say, in the absence of having a scheme in front of you, we seek to cautiously represent all of the principles that we say ought be adopted and considered.

**The CHAIR:** Certainly we are looking at those exceptions to spent conviction legislation. The other side of that, which has been raised with us, would be exceptions to the waiting period—on good character or for other reasons. This was particularly strongly presented to us by the Woor-Dungin group today. They were saying that in some circumstances with that 10 years for what may have been convictions as a result of being a victim—of being traumatised as a child et cetera—they would like the opportunity to waive that so they could take on a kinship application, so that they could take on a job. Would you or your association think that that is worthwhile considering?

**Sgt GATT:** Well, I suppose without notice all I would say is I think that is a position that is consistent with what we are ascertaining around it is horses for courses. So you look at the severity of the issue and you look at the nature of the application: the reason for which you will be presenting that information. So we say again, if we go back to the aged care and the unlawful assault, unlawful assault is a summary offence in Victoria—it is a minor issue—but in the circumstances of aged care it might be highly relevant, and any of us that have persons in aged care would recognise the importance of that.

**The CHAIR:** So even if it was committed 20 years ago?

**Sgt GATT:** It may be relevant. Again, we are not sure that you necessarily in best practice are served by black-and-white rules, but certainly rules that consider the potential vulnerability and need for that information and the severity of the offence, because an assault charge is an example where you can have an enormous range of offending in that category, even within a summary assault. So understanding what motivated, what drove that offending may be very relevant, despite the fact that it was 20 years later. There may be some situations in particular roles where you say, 'Look, it's relevant that people have access to all of that information'. At least then they can make an educated decision. They may choose to exclude or to ignore or to mitigate that in some way, but at least they can enter into those arrangements and those considerations with the information. I think there are some cases, like you talk about with taxidriviers and careless driving, where you say, 'Well, how long is enough?'

**The CHAIR:** How long is enough. I think what was raised with us before was also sometimes the checks, the way that information is presented, can be misleading, and that goes to your assault—having to understand the circumstances that occurred. We were just hearing about someone who had been fined for vehicle theft; they had not paid the fine. When you look at their police check, there are two charges for vehicle theft. Then they entered into another arrangement; failed that. So they now have what looks like three vehicle theft convictions on their police check when in actual fact it was one, with failure to pay a fine.

**Sgt GATT:** And criminal histories at times can be difficult even for police to understand.

**The CHAIR:** Yes, that is right.

**Sgt GATT:** So without fully understanding the circumstances of each case, and the way charges are written at times and appear on print, they can look more serious perhaps than they are at times, and sometimes quite the opposite.

**The CHAIR:** And vice versa.

**Sgt GATT:** Vice versa; completely. So the words on the page do not often indicate the severity, and that is why one of the important factors to consider is the vulnerability and the nature of the reason why you are asking somebody to provide that information.

**The CHAIR:** And is that something that we probably should consider as well—the information that is provided? Given that there are now up to 700 000 police checks being done per annum in Victoria and the information that is now being made available, should we consider what that looks like and how we can educate an employer to understand that information?

**Sgt GATT:** Or we could seek further advice and information to try and understand that, I suppose, and understand what the potential risks are. But I think employers, generally speaking, who are engaged for example in that employment context, who are engaged in employing people from community, will be very aware and acutely aware, I think, of the potential risk factors in their industry. I think, generally speaking, they will then be armed with that information to make an assessment. In some industries, though, the simple presence of that conviction will preclude them from employment irrespective. So they are some of the other considerations that need to be made—that that may not be discretionary on the employer.

**The CHAIR:** No, that is right.

**Sgt GATT:** In some cases police can overlook it, but again, they have the ability and the context of assessing the circumstances and saying, ‘Well, that was a summary offence; it was really a very minor matter’, and there are some cases where that does occur. Minor, minor traffic issues from way back or issues that impacted people as juveniles or children—these are things that can be dealt with and worked through. It becomes more difficult when it is not the police and they have access to less information, and I understand that is probably why other statutes look at more black-and-white lines, say, because it is very hard to ask people to do that. But I suppose what we try to note is that in areas like aged care, where the risks are significant, or in medicine or in health, for example, where it is of significance, things like evidence of sexual assault and the like or some assaults that may be indicators in that area may be very, very relevant, and the risk to the community in those contexts might be considerable.

**Dr KIEU:** I have a question. Thank you for coming in. You raised a few of the issues here, one in particular the disclosure to international requests. I just want to expand on that a little bit. For example, for someone here going to the US—now that the visa application or visa waiver conditions are very strict—if the person puts down the spent conviction and says that, no, they do not need to disclose that, then the other party, the US immigration, requests and gets information from you, that would affect that particular application for a visit. Secondly, moreover, presumably we would have a clause in the bill that gives a penalty to someone who discloses a spent conviction, just to protect that particular person. Now, if that information goes overseas—outside the jurisdiction of the state of Victoria or even to another state in the commonwealth—how would you deal with that? Because if that information goes to social media in the US, I mean, we all here would be exposed, and then there is nothing much the law here could do with that.

**Sgt GATT:** I think that goes to my earlier point about needing to make it explicitly clear in those circumstances, particularly with requests of that nature, as to what the agency providing that information ought do in those circumstances. Despite the fact that the United States in this case makes a request for all convictions, well, what does that mean? Does that mean because it is operating outside the Victorian jurisdiction that it means everything, or does it mean that we ought take that to mean what it means in Victoria?

**The CHAIR:** And maybe that is where we need to check with what the commonwealth is doing and what every other jurisdiction is doing, because—

**Sgt GATT:** Again this goes to that point of horses for courses—

**The CHAIR:** You would want consistency.

**Sgt GATT:** Yes, consistency, but also horses for courses—so having rules for that application, assessing what the international implications are there for Victorians and setting rules for that request, for the nature of those requests. And it may be in those circumstances that it is quite appropriate to go all the way back. It may

be that it is appropriate to, say, have a 10-year, 15-year—whatever the case might be—waiting period applied. But you do need the clarity.

I suppose the only other point I have not made is that we do think there needs to be some consideration for the resource impact on whatever agency is then given this great responsibility of now providing this information. If that ends up invariably being Victoria Police, there is a resourcing burden that confronts us with that, because it is not as easy as just simply doing a records check and a printout. It requires some discernment, I suppose, then to make sure that the output actually meets the request and the nature of the request.

**Ms LOVELL:** I was just going to say, following up on the US thing that you just mentioned, there is a grey area there too that people who have a spent conviction would need to be very aware of because, you know, if someone had a spent conviction and they went to the US, the first thing that is asked of you as you enter the country is, 'Have you got any criminal convictions?'. So they think it has been spent and say, 'No', and then for some reason they are caught up with something in the States. If there is an application made to here and they release a spent conviction, they could then be caught up in immigration problems in the States as well for having lied on that form.

**Dr KIEU:** And be excluded from entering for five years, 10 years.

**Ms LOVELL:** Yes.

**Dr KIEU:** Just on another point, you have mentioned the types of convictions and the waiting period—the crime-free period. What about the number of prior convictions? Should that be taken into consideration for a conviction to be spent?

**Sgt GATT:** Sorry, I am not sure I understand your question.

**Dr KIEU:** Sorry, I meant: in order for a conviction to be spent, the type of conviction has to be considered and also a waiting period has to be considered.

**Sgt GATT:** That is right, yes.

**Dr KIEU:** What about the number of prior convictions? They may or may not be related to that particular conviction that is being considered for being spent.

**Sgt GATT:** It is a very interesting question. I think you have to have some regard, to be quite honest, for patterns of offending that might be quite distinct and different; it is still offending behaviour. And whilst, you know, you may have offending in 1980 with respect to minor traffic, often what we see in criminal histories of individuals is that offending can change. It can start with offending history, it can then go to minor drug use, but it can then continue and grow and worsen. I suppose, from our perspective, one of the things we see a spent convictions scheme operating in is situations where people may have very isolated offending that then stops and is without blemish for a period of time. That is more the operation that we would expect to see a scheme operate in, rather than saying, 'Well, that was a very minor matter, a traffic matter. We'll let that one go', but the very next day—indeed six months later—there was an escalation or it continued. So is not about having things drop off the bottom of the parcel shelf. It is about saying, 'Well, is there a period where the person failed to receive any further convictions?', and indeed—

**Ms LOVELL:** So what period would the Police Association see as a genuine period for non-committing of crimes before a crime is spent?

**Sgt GATT:** Again, I think that is a difficult question for us to answer here without notice, to be honest, and I think you would have to give due consideration to the nature of the need for that information and the severity of the offence. It may be a sliding scale in terms of considering both of those objectives, and so it may be quite different depending on what you put them together for.

**Ms LOVELL:** And do you think it should be much lower for juvenile offenders?

**Sgt GATT:** I think, with respect to juvenile offenders and offending in general, there is a common acceptance that young people—particularly young men, for example—engage in risk-taking behaviour, for example, in their adolescence, and so there has to be some consideration. Indeed our current processes with respect to youth justice in Victoria already regard this and consider this, so I think they are probably definitely categories where some consideration has to be given to that.

**Ms LOVELL:** What about crimes that may have happened some period of time ago that are no longer a crime? You remember that we expunged all the historical convictions for homosexuality. Are there other crimes that you see we should be looking at expunging those convictions because they are no longer a crime?

**Sgt GATT:** Again, without notice, none that come to mind, but indeed if a crime is no longer on the statute books you have to ask yourself some serious questions as to why—if it were committed today, if the same act were to be committed today—you would recognise a conviction in the past. Indeed if the same thing were to occur today and it was considered lawful activity in Victoria, then why would you be concerned with it in the past?

There is one other area, if I might. There has to be some consideration in our view too with respect to consistency between registries and spent convictions. So, for example, if somebody were to have a conviction that automatically saw them placed on a register—for example, made a prohibited person under the Firearms Act, or they were to then be placed on the sex offender register—we say that despite whatever waiting period be applied to that, it ought not be shorter than the period of time that the person remains on that register. This goes to that point of being careful about setting waiting periods. So let's just say, for argument's sake, the waiting period is 10 years for a particular offence and that makes you a prohibited person under a firearms offence. It would be nonsensical for somebody to remain a prohibited person yet not have that conviction recorded all through that period, because if they were then to commit further offences as a prohibited person the court ought be able to consider convictions that were committed that led to them being made a prohibited person in the first instance.

**Ms LOVELL:** So how long are people normally placed on the prohibited persons list or the sex offenders list?

**Sgt GATT:** Again, without notice I would have to go and get that information for you, but it would be broadly available within the statute books. I am not saying that this thinking or this consideration ought be limited only to the sex offender register or to prohibited persons under the Firearms Act. What I am trying to highlight is the need for convictions to remain constant—

**Dr KIEU:** Consistency.

**Sgt GATT:** and consistency, because if somebody is to offend, then it is normal and appropriate in our view that consideration be given to convictions that led to them being made that prohibited—

**Ms LOVELL:** So if the conviction was bad enough that they were placed on the sex offenders register for life, they should never have that conviction spent?

**Sgt GATT:** Correct.

**Ms LOVELL:** Yes, exactly. Not that they should be dropped off the register after the spent conviction reaches 10 years.

**Sgt GATT:** No. And if you are a prohibited person for 10 years, and let's just say—

**Ms LOVELL:** Spent at seven.

**Sgt GATT:** the spent conviction was for seven, then what happens in the last three years that that person offends? Does it mean then the court cannot have regard for those?

**Ms LOVELL:** So if they are on there for 10 years, you should not be able to spend their conviction for 10 years.

**Sgt GATT:** Yes. So it is about consistency with the statute books.

**The CHAIR:** Absolutely, and I think in many ways we have had this discretionary police policy since 1994, I think, that has generally operated in that regard, but it has been discretionary, and in actual fact some people have said that by legislating this we are actually going to reduce the resources required by police because there will be an automatic spending of certain offences at a 10-year period that will not require a police officer to consider that. But I agree with you, there has got to be this discretion. There are certain offences that will never be spent—serious sex offences. In fact the current proposal would be, or many people would say, all sex offences cannot be spent.

**Sgt GATT:** And that is, say, some of the reasons why similar fact evidence is so important, because it is relied on particularly in cases like sexual offending, for example, to provide really solid evidence that as part of a broader case can help convict persons and keep the community safe. So we need to make sure that we retain our ability for police to do that. Indeed, I think the community would take a broader view, and whilst we do not speak for the broader community here, our members would certainly take the view that there is a right to know in certain circumstances with very serious offending.

**Ms LOVELL:** What are your thoughts on people who are fined or found guilty but without conviction? At the moment people are saying they have no convictions, but it comes up on their police check that they have been found guilty of that crime.

**Sgt GATT:** Well, again, in certain circumstances it is important. I made the point about police recruitment, for example, and that is one that is useful to us. Whilst somebody may not have a conviction recorded, I will make the point that ‘without conviction’ it is not necessarily handed out in isolation too. There are plenty of cases where people are given repeatedly a finding of guilt without conviction, rightly or wrongly. It just happens; it occurs. But it also would give, for example, Victoria Police as a prospective employer a fairly good insight into somebody’s capability and propensity to reoffend, and potentially their suitability as a member of Victoria Police. So we are saying that is an example where we would know very, very well, but that may have application in other areas as well. Again, it still may have some value in certain settings.

**Ms LOVELL:** I do not know if you have looked at any of the schemes in other states, but are you able to tell us any of the benefits for the other states of having these spent convictions schemes that we do not have here in Victoria?

**Sgt GATT:** Well, not in great detail. Our research team have obviously reviewed that. But suffice to say that—and I opened with that statement that we are not fundamentally opposed—we recognise the rehabilitative imperative and the fact that some people make mistakes. Not everything ought be a life sentence. But that said, you have to balance that against the broader community’s interest and the need for us to maintain a safe and secure Victoria for all Victorians and the fact that some markets in some areas are regulated, so you need to balance all of those factors.

**The CHAIR:** When we look across all the other jurisdictions, many of them put it that the person has been imprisoned for no more than 30 months and that that would be the top end of convictions that may be spent. The UK would say four years, and WA actually has it open to discretion—that if it is over a year you can by application ask for your convictions to be spent. If someone is sentenced for two and a half years but no longer, do you think that is—

**Sgt GATT:** Is the question whether or not a person was actually sentenced to that period?

**The CHAIR:** Yes.

**Sgt GATT:** Or whether the offence would deliver a potential sentence?

**The CHAIR:** No, sentenced.

**Sgt GATT:** That being the mechanism by which a conviction is spent?

**The CHAIR:** That being the limit to whether a conviction could be spent. If they were sentenced to 36 months, their conviction could never be spent.

**Sgt GATT:** I suppose what we are then asking is the degree of confidence with which we say that there is consistency in the criminal justice system in terms of providing adequate sentencing arrangements. I think that is, if I can be fair, an area of some conjecture within the community at the moment. I think there is a range of varying views as to how consistently courts get this right. Not taking anything away from judicial discretion, but it is just that: discretion. You can have situations where there are vastly different outcomes. It is difficult, I think, if the bar is—

What the sentence is in that environment could be open to question. I think that is a difficult measure to use.

**The CHAIR:** Okay. I think that is interesting because I think we are trying to find out how, you know— That is the measure that is currently used under the police policy.

**Sgt GATT:** Yes, it is.

**The CHAIR:** But people have argued either way that—

**Sgt GATT:** Again it depends, I suppose, on the degree of confidence you have in the system to get it right. If you have a high level of confidence that the system always gets it right—that the appropriate sentence is always provided—then you will be entirely comfortable with that proposition.

**Dr KIEU:** But nothing is perfect.

**Sgt GATT:** Nothing is ever perfect. But if you have some doubt and you say that perhaps sentences are inconsistently applied or provided, then it could have a degree of unfairness in that process as well.

**The CHAIR:** Yes.

**Sgt GATT:** That is all I am suggesting. I am not saying it is not a system that ought to be adopted.

**The CHAIR:** That is right. I mean, someone may get a harsher sentence—

**Sgt GATT:** Absolutely.

**The CHAIR:** than another person purely because of their circumstances, and they would be excluded from the spent convictions scheme.

**Sgt GATT:** There are many cases being openly involved in discourse in the Victorian community at the moment that compare quite serious offending and sentencing outcomes with some minor or moderate sentencing outcomes with what apparently deliver stiffer sentencing outcomes. So that is what I am saying: the length of sentencing of itself, whilst it may sound like the best measuring stick, may not actually be, but it really comes down to your level of confidence.

**The CHAIR:** I think what we are learning is that it is the length of sentencing and the type of offence, so if it is a sex offence it cannot be spent, and there would be some violent crimes that would not be able to be spent either. Would there be certain offences that you do not think should ever be spent?

**Sgt GATT:** Well, I think sexual offences—I think we would have to agree there—and I think criminologists provide some fairly good research with respect to reoffending and potential reoffending in these areas, and I think they are the people you ought probably be asking those questions of, so areas where offending seems to grow, worsen or develop, or it may be indicative of future offending. We heard today, for example, discourse within government about strangulation offences. So here you have an emergent potential offence on the statute books, potentially, where the research tells you in no uncertain terms that this sort of offending is a precursor for much, much more serious violent behaviour, particularly against women. If you were to consider that, you ought say, ‘Why should you ever remove that?’, because it provides a really strong piece of information that ought be seriously considered in certain circumstances. So I do think it comes to the nature of offences, and that

is why at the start I said you cannot take a one-size-fits-all approach and apply it here. I think that provides a really tangible example of something that you say, 'Well, it may have occurred 20 years ago, but it may be entirely relevant in certain circumstances to consider that'. It is just interesting that we talked about that in the community today.

**The CHAIR:** I know; that is right. I listened to the minister this morning.

**Sgt GATT:** And it is not an offence on the books today, but if it were to become one, based on the reason why it may be considered as an offence for statute in the future, it gives you cause to ponder whether or not that should ever be spent.

**The CHAIR:** I think that is interesting because we were listening to some other data that was saying that if someone has not offended for six to seven years, their likelihood of offending is equal to someone who has never offended—so if a person has been completely crime free for six to seven years, the statistics say they have as much likelihood of offending as someone who has never offended—but you would say some historical violence, like strangulation, should be kept there because—

**Sgt GATT:** Well, we provide that as an example—

**The CHAIR:** As an example, yes.

**Sgt GATT:** and to some extent it is a moot point, because we do not have—

**The CHAIR:** It is very hypothetical, yes.

**Sgt GATT:** It is hypothetical because we do not have it on the books as yet. But if you accept the research and you accept the evidence that it is a strong predictor of future behaviour, criminologists will tell us that there are other indicators of potentially violent behaviour, for example, into the future. That is why I say I would seek advice from those that are well researched in those areas. Police can provide anecdotal evidence and it will be anecdotal at best, but I think there are bodies of evidence and research out there that would lead to areas where there should be some consideration to saying they should never be taken away.

**The CHAIR:** Yes, I think that is absolutely the case. Actually there has been general consensus on that largely.

**Dr KIEU:** Just coming back to the multiple prior convictions, you raise the point, which is interesting to me, that as a police officer you must be aware of cases where sometimes a car is stopped for a minor offence against a traffic rule, but then actually deep down sometimes you find out that there has been some criminal behaviour behind that, like drug trafficking, possession and something like that. So it sounds like the number of prior convictions is one of the criteria that should be taken into account in terms of having a conviction spent or not; would you agree with that?

**Sgt GATT:** Sorry, could you just help me to understand that a little, please.

**Dr KIEU:** I am sorry, I was just mumbling to myself, that is all. What I am saying is we have been talking about the types of conviction that could be spent, the waiting period and the sentence for that conviction of 30 months or 6 months; and also another one that we have discussed before is the multiple offences. So I am just thinking aloud that sometimes the number of prior convictions or sometimes a seemingly minor offence could be the predictor for something bigger, because not everything people have done or committed could be caught—for example, when a car is stopped over a minor traffic offence, that might turn out to be something bigger than that.

**Sgt GATT:** It may be. And, look, no two circumstances are the same. Maybe in the past you could have said that every person in their early teens started out with minor shop stealing ended up, if they continued on a trajectory, and got worse and worse.

**The CHAIR:** Serious first offences, yes.

**Sgt GATT:** I think we are seeing trends that buck that, particularly in youth offending. Our members are engaged more in dealing with young offenders now who commence offending in a very serious way, in high-harm offending, high-risk offending. So it is not necessarily the case that it always starts at a low level. Sometimes it can start at a very, very high-impact level as well. But, you know, I go to my point earlier: if we are talking about circumstances where the proximity between convictions is fairly short, then there is a pattern of behaviour there too, and clearly there should be some consideration given to that. Automatically when we consider in our minds a spent convictions scheme we are talking about a scheme that has to consider significant periods of non-offending in between, not histories that are littered with different types of offending.

**Dr KIEU:** I would like to raise another point. For the sexual offences and maybe the armed robbery or assault offences, there are various degrees from the very minor to the very severe and serious. But not all of them are listed on the registries. Now you talk about the consistency with the registries and the spent convictions. Regarding sexual offences, for example, if I am right, not all the sexual offences will be registered in the registry. So once it is on the register, would that indicate the severity of that type of conviction or particular conviction?

**Sgt GATT:** Generally speaking, yes, and again without hindsight I cannot be certain, but I would suggest that most sex offences trigger a period of time on a registry. Firearms offences, for example, would be the same. Many offences, indeed many indictable offences automatically make a person a prohibited person. If the period of potential imprisonment is long enough, then they would automatically become a prohibited person for a period of time after they have been convicted for that offence. So certainly consistency is important. There are some offences, I think, where no matter whether or not they trigger that registry, there will be a sense within the community and an expectation that those things ought never be lost and removed. I think if they are not tripped up into the registry it probably asks a greater question of why the registry does not consider them than it does for what the spent conviction scheme does.

**The CHAIR:** And I think the point that you make about police needing this information as part of investigations or when someone commits another offence that this material is unlocked, possibly with due regard to protecting that person during the process from that material becoming unduly available.

**Sgt GATT:** Yes. I mean, the two examples that you provide are quite serious cases, I might add, so in the case of sexual offending we would probably consider all forms of sexual offending to be very serious matters. In the case of robberies and armed robberies, despite that there is a sliding scale, that is theft with a degree of violence. It is very serious. They are very serious offences on the statute book. They are not thefts. They are not just property offences. They are coupled with armed persons. So they are quite serious offences in the scheme of things.

**Dr KIEU:** But, for example, sexting may be considered a sexual offence but would that be—

**Sgt GATT:** That is a very interesting offence because it is often seen to impact young men and women. I should almost say they are young persons really in the circumstances. They can trigger quite serious offences because by definition they then fall into—in some cases, say, for example—the manufacture of child pornography, which is a very serious offence by anyone's assessment. But in the context of sexting with young people it can be constructed in such a way that that young person never had the mindset or the maturity to have committed that offence in a way that was for the purpose of what that offence was written for. Again that probably goes to a question of whether or not the offence is fit for purpose for application to those sorts of situations or whether or not the statute ought be amended to properly cater for sexting as an issue that is arising. Many police will be confronted with situations where circumstances like that then result in quite grave charges being laid against young people, for example. I think it speaks more to the appropriateness of the offence in that case—and that is a really good example—than it necessarily does to the operation of that conviction scheme.

**The CHAIR:** Yes.

**Sgt GATT:** It is all complex stuff.

**The CHAIR:** Lots to think about.

**Sgt GATT:** Sorry.

**The CHAIR:** No, no, no.

**Sgt GATT:** I would like it to be clean cut, but it is probably not too easy.

**The CHAIR:** That is right. We look across all the jurisdictions and we can see that there are patterns of continuity. But I think there has probably been a lot of copying and, maybe given the time that we have had to consider this, we may think of something that is specific to Victoria and meets our needs.

**Sgt GATT:** Yes, and we may have best practice in Victoria.

**The CHAIR:** That is right, so we may lead now, with the benefit of hindsight, on the other schemes.

**Sgt GATT:** They would be our members' insights.

**The CHAIR:** I appreciate that. That is great. Thank you.

**Sgt GATT:** No worries. Thanks for your time.

**Witness withdrew.**