

Legal and Social Issues Committee  
Inquiry into a Legislated Spent Convictions Scheme  
Parliament House, Spring St  
East Melbourne VIC 3002

We refer to the Legal and Social Issues Committee's call for submissions and we welcome the opportunity contribute to the Inquiry into a Legislated Spent Convictions Scheme.

### **Inner Melbourne Community Legal**

Inner Melbourne Community Legal (IMCL) is an independent not-for-profit community legal centre working for social purpose. Our vision is an Australia where the law is fair and everyone has access to legal help, a place where there is a shared sense of fairness and wellbeing. We contribute to achieving this by building fairer laws, fairer legal outcomes, and improved wellbeing in our local community through the law. We do this by providing free accessible legal help, legal education, and challenging unfair laws through law reform and advocacy.

Since 1978 we have been assisting people on low incomes who live in or engage with a community service in the inner Melbourne area. We are a passionate and dedicated team of expert community lawyers, administrative and project staff supported by volunteer law students and pro bono corporate partners. We work in close partnership with other community organisations to identify systemic issues and provide holistic and integrated legal help to the most disadvantaged members of the community. We are funded by government, other grants and donations.

### **A legislated spent conviction scheme**

Victoria is the only jurisdiction in Australia that does not have a legislated scheme for convictions to become spent. Currently, the disclosure of criminal record information is governed solely by Victoria Police's own information release policy.

Criminal record checks are increasingly becoming common practice from major employers. In 2017/18, Victoria Police reported that 716,768 criminal record checks were conducted, an increase of 25,739 criminal record checks from the previous year.

This practice is so common that an entire sub-economy has been established for businesses to provide criminal record checks to employers in relation potential employees. These businesses seek to profit off the stigma that is often associated with any prior criminal offending.

A legislated spent convictions scheme allows people who have been involved in the criminal justice system the opportunity to leave behind the stigma attached to this. It is particularly significant in relation to minor offences and significantly aged convictions or findings of guilt.

This opportunity to make a fresh start aligns with the principle that sentences should be proportionate to the seriousness of the harm. Accordingly, there should be an appropriate time

whereby a person's desistance from the justice system earns them the right to shed the prejudice that attaches to a criminal conviction or finding of guilt.

IMCL supports the implementation of a legislated spent conviction scheme for Victoria. In 2017, Liberty Victoria's Rights Advocacy Project (**RAP**), *A Legislated Spent Conviction's Scheme for Victoria: Recommendations for Reform*, presented a well-reasoned and comprehensive case for the need for reform. IMCL endorses all eight of the recommendations outlined in the RAP publication.

IMCL is a member organisation of the Federation of Community Legal Centres (FCLC). We have had the opportunity to review the FCLC's draft submission to the inquiry on this issue. IMCL endorses the recommendations made by the FCLC in their submission to this inquiry.

Our submission and further recommendations draw upon the lived experiences of our clients to illustrate some of the issues in the current Victoria Police information release policy.

### IMCL recommendations

1. A criminal record information check should not disclose pending charges, in particular where the charge relates to a minor offence
2. A criminal record information check should not disclose diversion matters whilst a person is complying with the conditions of their diversion Plan
3. A subsequent minor conviction should not restart the waiting period for a prior conviction to become spent
4. A minor conviction or finding of guilt should be capable of becoming spent
5. Once a conviction becomes spent it should not be capable of being revived by a subsequent offence

### Disclosure of pending charges and diversion matters

#### **Case study: Sally – the disclosure of pending criminal charge causes employer to rescind offer of employment**

Sally is 30 years old. Sally had experienced serious incidents of family violence in her previous relationship. In her current marriage, Sally and her husband were having financial difficulties. Sally's husband began to demean her, exhibited controlling behaviour, and had on many occasions threatened to divorce her. After one incident, Sally became frustrated and threw a lamp at her husband. This left her husband with a small cut on his arm. The police were called and Sally was charged with unlawful assault and assault with a weapon. Sally was remorseful for her actions and accepted full responsibility. Five months later, Sally's matter was resolved at court via diversion.

Sally had been working in the aged care sector since 2012 on a casual basis. In recognition of Sally's experience and capability, Sally's employment agency offered her a permanent position. However, in the period before the diversion program was finalised at court and before the

employment contract was signed, the employment agency conducted a criminal record information check. This check disclosed that Sally had pending charges. The employment agency contacted Sally to inform her that the offer of employment was withdrawn on the basis of the unsatisfactory criminal record information check.

Sally's story illustrates the highly prejudicial nature of criminal record information. Even though a criminal record information check indicates on the certificate that charges are pending, and cannot be regarded as a finding of guilt, the incomplete information was considered sufficient for the employment agency to withdraw her offer of employment.

Criminal matters routinely take many months to finalise. Given the summary criminal jurisdiction in Victoria is experiencing large delays, the disclosure of pending charges can have significant impacts without any finding of guilt being made by a court. Considering the prejudicial nature of criminal record information, the disclosure of pending charges impinges upon the presumption of innocence.

As demonstrated in Sally's story, the disclosure of the pending charges had acted as a form of punishment by causing Sally to have her employment offer withdrawn. This is particularly unjust when the matter is eventually resolved without a formal finding of guilt; in Sally's case the charges were discharged after compliance with her diversion program.

We recommend that a legislated spent conviction scheme includes provisions that prohibit the disclosure of pending charges, in particular where the charge relates to a minor offence.

We also support provisions that prohibit the disclosure of diversion matters whilst a person is in the process of completing the conditions of their diversion Plan.

#### **Recommendation:**

1. A criminal record information check should not disclose pending charges, in particular where the charge relates to a minor offence
2. A criminal record information check should not disclose diversion matters whilst a person is complying with the conditions of their diversion Plan

#### **Minor convictions restarting the waiting period for convictions to become spent**

##### **Case study: Joshua – a disproportionate punishment for a minor offence**

Joshua is 31 years old. Due to an offence he committed when he was 20, Joshua was placed on the Sex Offenders Register (the Register) for 8 years. Joshua's name was due to be removed from the Register in 2015.

In 2015, before Joshua's name was removed, he was charged under the *Sex Offenders Act 2004* with two counts of failing to comply with reporting obligations. The charges were minor – failing to annually re-report a persisting gym membership, which Joshua had previously reported, and failing to report a Twitter account, which Joshua did not use. Fortunately, in this

instance, we were able to assist Joshua to successfully contest the charges. This meant that Joshua's name would be removed from the Register in 2015.

If the contest was unsuccessful and resulted in a finding of guilt, the waiting period for Joshua to be removed from the Register would have restarted and matters from 9 years prior would have been disclosed for a further 10 years. In comparison to the relatively minor charges, the impact to Joshua of a further 10 years on the Register would be a sizeable and disproportionate punishment.

Though Joshua's matter is in the context of the Sex Offenders Register, comparisons can be reasonably drawn to a legislated spent convictions scheme. As highlighted in Sally's story, criminal record information can be highly prejudicial and its disclosure can have significant impacts upon a person's future prospects. The real and foreseeable consequences to individuals, if minor convictions restarted the waiting period, would likely be disproportionate to the harm caused by the offending behaviour.

Accordingly, we support RAP's recommendation that subsequent minor convictions should not restart the waiting period for a previous conviction to become spent.

**Recommendation:**

3. A subsequent minor conviction should not restart the waiting period for a prior conviction to become spent

**The revival of a spent conviction**

**Case study: Dwayne – singular incident threatens to derail 15 years of work**

Dwayne is 34 years old and has been diagnosed with bipolar disorder and manic depression. As a juvenile, Dwayne was found guilty in the Children's Court for minor offences involving drug possession and criminal damage. Convictions were not recorded. As an adult, Dwayne has been found guilty of a singular charge of possession of cannabis. Again, no conviction was recorded. Dwayne's last finding of guilt occurred when he was 18 years old – over 15 years ago.

During an incident in 2018, Dwayne jumped on a car and caused damage to the bonnet. The police attended the scene and conveyed Dwayne to a hospital under the *Mental Health Act*. He was later charged with criminal damage and unlawful assault. At the time of the incident, Dwayne was experiencing hard times. Two days earlier, Dwayne had been released from a psychiatric ward and, due to a family breakdown, he was also sleeping rough for the first time in his life.

Dwayne is very concerned about the impact a new finding of guilt will have on his future prospects. Dwayne aspires to become a teacher and has ambitions to work overseas.

However, under the current Victoria Police information release policy, if Dwayne is found guilty for a new offence, all of his prior findings of guilt will be released, including the juvenile offences. This is despite the prior offences being minor, no convictions having been recorded, and the last finding of guilt occurring over 15 years ago.

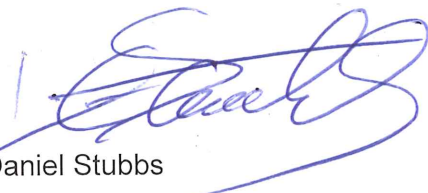
The current practice also contributes unnecessary strain on the criminal justice system. Initially, Dwayne was willing to accept a guilty plea. However, due to the potential impacts of having his entire criminal record information released to future employer, Dwayne has invested significant time and resources to contest these offences. In addition to the burden to himself, Dwayne's matter also places demands on the limited resources of the police to prosecute and on the courts to have the matter heard.

**Recommendation:**

4. A minor conviction or finding of guilt should be capable of becoming spent
5. Once a conviction becomes spent it should not be capable of being revived by a subsequent offence

If you would like to discuss these submissions in further detail, please contact our lawyer Lloyd Murphy on 9328 1885 or at [lloyd.murphy@imcl.org.au](mailto:lloyd.murphy@imcl.org.au).

Yours sincerely



Daniel Stubbs

**Chief Executive Officer**