



# WOOR-DUNGIN

A New Partnership between Aboriginal Organisations and Philanthropy

## **Criminal Record Discrimination Project**

### **Submission to Aboriginal Justice Forum 49**

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*“This is not a soft on crime issue, this is an issue where people need to give us the opportunity to be key players here in Australia, to be upstanding members of the community, you can’t do that if you have a criminal record hanging over you like a black cloud.”*

**Uncle Larry Walsh  
Tuangurung Elder**

## Executive summary

The Woor-Dungin Criminal Record Discrimination is an Aboriginal-led collaboration between numerous community and legal organisations. It was established to respond to calls from community for a response to the range of negative impacts Aboriginal Victorians face as a result of the unregulated disclosure of, and inappropriate reliance on, old and irrelevant criminal history.

These impacts include social and economic exclusion and poor justice and health outcomes, all of which limit the capacity of Aboriginal Victorians to achieve self-determination. This submission provides specific examples of these impacts through detailed case studies. This submission also develops a model for a spent convictions scheme and anti-discrimination protections based on extensive consultation with community.

This submission calls on the Aboriginal Justice Forum to endorse the need for a legislated spent convictions scheme and anti-discrimination reforms to improve outcomes for Aboriginal Victorians. The submission asks the Aboriginal Justice Forum to note the 11 recommendations on the content of a spent convictions scheme and anti-discrimination protections developed in this submission, and requests that the Department of Justice and Regulation brief relevant Ministers seeking a commitment to proceed with these reforms as a matter of urgency.



*Criminal Record Discrimination Project fact sheet launch held at Winda Mara Aboriginal Corporation*

## Background

### What are spent convictions schemes?

Spent convictions schemes allow people not to disclose old convictions, when they were for minor offences and where a 'waiting period' (often 10 years) has passed. Most spent convictions schemes don't cover sexual offences, and many laws override them to require disclosure of old convictions in order to protect children and vulnerable people. Sometimes spent convictions schemes establish different rules for offences committed by children and adults.

### How do laws in other states protect people from discrimination because of their criminal history?

Anti-discrimination legislation can state that employers are not permitted to discriminate against someone when offering them a job, where the person has a criminal record for an offence that is 'irrelevant' to the job for which they are being employed. There are exceptions to these laws designed to protect children and vulnerable people.

### Do other States and Territories in Australia have spent convictions schemes?

Every State and Territory in Australia, as well as the Commonwealth, has a spent convictions scheme. Victoria is the only jurisdiction in Australia without a spent convictions scheme.

### Do other States and Territories have anti-discrimination protections?

The Commonwealth, Tasmania, the Northern Territory, Western Australia, and the Australian Capital Territory all provide a process for people to make a complaint about discrimination on the basis of their criminal records or spent convictions. The Commonwealth, Tasmania and the Northern Territory have legislated protections against discrimination on the basis of 'irrelevant criminal record'. Western Australia and the Australian Capital Territory have legislated protections against discrimination on the basis of 'spent convictions'.

### How do spent convictions schemes in operation across Australia differ?

Australian spent convictions schemes have many similarities, but there are some differences. *Table 1: Spent convictions schemes by state* summarises the content of each scheme currently in operation across Australia.

### Have models for spent convictions schemes been proposed for Victoria?

In 2009, a draft Model Spent Convictions Bill (Model Bill 2008) was released for consultation in Victoria. In 2015, the Law Institute of Victoria made a submission to the Victorian Government recommending a spent convictions scheme. *Table 2: Spent convictions proposals and policies* summarises the content of the above proposals. *Table 2* also summarises the key elements of the spent convictions scheme proposed in this submission.

### What are the differences in the anti-discrimination schemes in operation across Australia?

*Table 3: Protections against discrimination on the basis of 'irrelevant criminal record'* and *Table 4: Protections against discrimination on the basis of 'spent conviction'* summarise anti-discrimination legislation in other jurisdictions, and the content of proposed legislation for Victoria that is outlined in this submission.

## Introduction

The Criminal Record Discrimination Project is an Aboriginal-led collaboration between numerous community and legal organisations, overseen by an Advisory Committee that is convened by Michael Bell, CEO of Winda-Mara Aboriginal Corporation. The Criminal Record Discrimination Project was established to address calls from the community for a response to the issues faced by Aboriginal people dealing with the lack of regulation of criminal records in Victoria.

Victoria remains the only state or territory in Australia without a spent convictions scheme, and is one of several states yet to enact equal opportunity protections for people with irrelevant criminal histories. Aboriginal people in Victoria are disproportionately impacted by the lack of a spent convictions scheme and the absence of any protection from discrimination on the ground of irrelevant criminal record. In the absence of spent convictions legislation, the release of criminal history in Victoria is based on the exercise of a broad and ill-defined discretion by Victoria police. The Victoria police Information Release Policy contains many exceptions and exemptions, resulting in uncertainty and inconsistency.

The Criminal Record Discrimination Project has developed a range of responses to address these issues. Information resources have been developed for Aboriginal people to explain the operation of criminal records in the absence of a spent convictions scheme. These fact sheets also explain the ways in which the unregulated disclosure of criminal records can affect economic and social well-being and participation in community life in a range of areas of particular significance to Aboriginal people, including access to employment, insurance, kinship care and being appointed to boards and management committees. These fact sheets can be downloaded from the Victoria Legal Aid website.

Detailed case studies were also developed from interviews Woor-Dungin conducted with a number of Aboriginal people adversely impacted by the lack of regulation of criminal records in Victoria. Woor-Dungin also provided substantial support to many of those interviewed, whose support needs were in most cases directly linked to these adverse impacts.

Another project currently being developed by Woor-Dungin, will aim to provide employers and Aboriginal job seekers with examples of best practice and other resources to provide guidance on treating criminal history-related information appropriately when making employment-related decisions.

These projects have the capacity to inform Aboriginal people about the operation of the law and their rights in the absence of legislation, to highlight the adverse impacts of the current situation for legislators and policy makers, and to provide resources which can be used by employers to improve their employment practices in an uncertain and complex environment.

However, in the absence of legislation that would enable certain convictions to be spent and prevent discrimination based on irrelevant or spent convictions, these projects will remain a response to the consequences of the problem, not its cause. Without legislative reform, Aboriginal people in Victoria will continue to be disproportionately excluded from employment and limited from accessing many other opportunities for improved justice, health, social and economic outcomes.

The Criminal Record Discrimination Project therefore seeks to achieve the following reforms:

- (1) the introduction of a legislated spent convictions scheme in Victoria, and
- (2) an amendment to the *Equal Opportunity Act 2010* (Vic) to prohibit discrimination against people on the basis of an irrelevant criminal record.

This submission is intended to make the case for these reforms to the Aboriginal Justice Forum, and to demonstrate why this is a priority area for reform for Aboriginal people in Victoria. While the impacts on Aboriginal people are the focus of this submission, if these changes are made, all Victorians would benefit.

This submission has been developed following an extensive consultation process engaging a broad range of stakeholders. The process began with a detailed discussion paper issued to stakeholders, followed by a consultation forum held in April 2017.<sup>1</sup> Consultation participants strongly endorsed the need for both of these reforms.

Following the consultation, a position paper outlining the views of participants on what spent convictions legislation and amendments to Victorian equality legislation should look like was developed. As a result of the extensive consultation process, the design of these measures reflects the experiences and needs of Aboriginal people in Victoria.

This submission is based on the position paper developed from this extensive process of consultation. The recommendations in this submission reflect those endorsed by all stakeholders involved in the consultation process, and the endorsement of many others who have subsequently added their support.

Woor-Dungin is now seeking support and endorsement for the recommendations outlined in this submission from the Aboriginal Justice Forum, with the intention of finding a way forward for these much-needed reforms.

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<sup>1</sup> The discussion paper and a record of the consultation held in April 2017, is at **attachment A**.



*“If I got one thing out of being one of the Stolen Generations it’s the determination, when I get rejected, to not let that stop me. But I’m worried that we will lose talented young people that our communities have trust in, because they’re getting knocked back on the same grounds as I’m getting knocked back.*

*I know we’ve got kids who have been bright sparks and they’ve just disappeared. Perhaps it affects their own self-confidence, their own self-worth, that whilst their community trusts them, they can’t represent them.”*

**Uncle Larry Walsh**  
**Tuangurung Elder**



## Why is reform needed?

### Victoria is the only jurisdiction without spent convictions legislation

Victoria is out of step with every other Australian jurisdiction, each of which has a legislated spent convictions scheme. Most other Australian jurisdictions also have some form of anti-discrimination protection to ensure that people with irrelevant criminal records are not prevented from participating in their communities.

### The Victoria Police information release policy is inadequate

In the absence of legislation, the release of criminal history in Victoria is based on the exercise of a broad and ill-defined discretion by Victoria police. The Victoria police Information Release policy governs this discretion. This policy includes undefined terms, and contains many exceptions and exemptions. Its application results in uncertainty and inconsistency

The policy, moreover, is inconsistent with sections 8 and 76 of the *Sentencing Act 1991* (Vic), which provide for rehabilitation of offenders by enabling a court not to record a conviction where it might impede access to employment and other opportunities. Victoria police apply the Information Release policy so that findings of guilt where no conviction has been recorded are released.

The increasing reliance on criminal history checks by employers and in many other areas of life amplifies these impacts. There is evidence of increasing reliance on criminal history checking, linked to the increasing number of criminal record checks conducted in Victoria. In 2016-2017, nearly 700,000 criminal record checks were conducted by Victoria Police, up from about 3,500 a year in 1993.

Given the sensitivity of the information involved, the vast number of checks conducted, and the uncertainty and inconsistency inherent in the policy, it is clear that a more robust, statutory information management regime for criminal records is well overdue in Victoria.

### Aboriginal people are disproportionately affected

As a statement of the Victorian community's commitment to supporting the ongoing and future self-determination of Aboriginal Victorians and its faith in the capacity of individuals to learn from and overcome past mistakes the Victoria police information release policy is entirely inadequate.

The absence of a legislated spent convictions scheme has an extraordinarily harsh impact on Aboriginal Victorians. Aboriginal Victorians are statistically far more likely to be impacted by criminal records than non-Aboriginal Victorians due to a range of factors, including increased contact with the criminal justice system. Young Aboriginal offenders are more likely to have interactions with police that lead to a criminal record, and less likely than non-Aboriginal offenders to be offered cautions or other diversionary options.

Aboriginal unemployment is about 16% in Victoria, compared with a rate of about 6% for other Victorians, and Aboriginal Victorians have much lower labour market participation rates than non-Aboriginal Victorians. According to World Health Organisation research on the social determinants of health, unemployment results in low socioeconomic status and is associated with poor health and increased exposure to health risk factors. Continuing anxiety, insecurity, low self-esteem, social isolation and lack of control create social and emotional wellbeing risks that can lead to poor mental health and premature death.

The Australian Bureau of Statistics National Aboriginal and Torres Strait Islander Survey 2014-2015, 37% of Aboriginal Victorians felt that they had been unfairly treated at least one in the previous 12 months because they were Aboriginal.

The absence of a spent convictions scheme and appropriate equality laws entrench the disadvantage and discrimination already faced by Aboriginal people in Victoria, limiting their opportunities to make valuable contributions to their communities and Victoria generally.

### Changing these laws would remove a barrier to self-determination

Yet changing these laws is well within the grasp of government, and has the potential to address disadvantage on many fronts, including employment and economic participation, self-determination, and health and wellbeing and an individual and community level.

The Premier of Victoria, the Hon Daniel Andrews MP, has described self-determination as ‘ensuring Aboriginal people are the decision-makers when it comes to Aboriginal affairs. To make self-determination a reality, the way forward must be led by Aboriginal Victorians, and respected by governments.’

Many Victorian government Aboriginal policy frameworks emphasise a commitment to the principles of self-determination. In the context of Aboriginal community-controlled organisations and their workforces, these include *Korin Korin Balit-Djak*, the Aboriginal health, wellbeing and safety strategic plan 2017-2027, which identifies supporting the development of strong and sustainable Aboriginal workforce as a priority, and an investment in the health, wellbeing and safety of Victoria’s Aboriginal people and communities. Similarly, *Balit Murrup*, Victoria’s Aboriginal social and emotional wellbeing framework 2017-2027, identifies the importance of an Aboriginal mental health workforce to deliver culturally responsive services. It identifies building a skilled workforce as a key goal ‘to enable Aboriginal community-controlled organisations to self-determine and sustain a workforce that engages, builds and supports the social and emotional wellbeing of its community.’

Many Aboriginal community-controlled organisations see the absence of spent convictions legislation in Victoria as a significant barrier to self-determination, because it limits their ability to employ Aboriginal Victorians to meet the growing demand for culturally responsive services to meet the needs of the Aboriginal people, families and communities they support.

### There are many examples of the impact of these laws on Aboriginal Victorians

In this context, case studies collected as part of the Criminal Record Discrimination Project illustrate the pervasive ways in which the absence of spent convictions legislation has blighted the lives of Aboriginal Victorians.

The stories of Uncle Larry Walsh, Uncle Jack Charles, Vickie Roach and the de-identified stories of ‘Sally’, ‘Sam’, ‘Karen’, ‘Ryan’, ‘Nikki’, ‘Allen’ and ‘Julie’ illustrate the ways in which the absence of effective regulation of criminal records in Victoria has:

- profoundly affected members of the Stolen Generation by stigmatising them from an early age;
- prevented Aboriginal people from gaining employment;
- discouraged Aboriginal people from applying for employment, including applying for Aboriginal-identified positions;
- discouraged Aboriginal people from undertaking education and training;

- separated Aboriginal children from culture by limiting the capacity of Aboriginal families to care for their kin;
- impacted Aboriginal women escaping family violence;
- created uncertainty and inconsistency because police discretion, rather than legislation, is the basis for decision-making about the disclosure of criminal history;
- prevented Aboriginal leaders from serving their communities on government boards and advisory panels;
- limited the opportunity for Aboriginal elders to deliver healing programs for Aboriginal people in custody;
- limited the opportunity for Aboriginal elders to use their lived experience of the criminal justice system to help young Aboriginal people in custody get their lives back on track.

The absence of spent convictions legislation and anti-discrimination protections undermines efforts to achieve a range of Victorian government policy objectives aimed at improving outcomes for Aboriginal Victorians, and has also had an adverse impact at a community level by:

- slowing progress on the achievement of Aboriginal Justice Agreement objectives;
- undermining the intended operation of sentencing laws and policy by impeding post-sentence rehabilitation and reintegration;
- contributing to the continuing over-representation of Aboriginal people in the criminal justice system in Victoria;
- undermining the Victorian self-determination agenda and the capacity for Aboriginal people to participate in decision-making roles in government and community organisations;
- creating uncertainty and contributing to decreased labour force participation and increasing unemployment.

Many stories were shared with us illustrating these impacts. Many more Aboriginal Victorians have similar stories. A small selection of case studies describing the experiences of people we spoke to are set out in full in the next section of this submission.

## Case studies illustrating the need for reform

### Sally<sup>2</sup>

Sally is a proud Aboriginal woman and person of influence. She has a high profile in her field in Victoria. She is the oldest of a large family and from a young age she had a lot of significant cultural and family responsibilities resting on her shoulders.

“We grew up very in low socio-economic household, with a lot of violence and stuff like that. My dad was a single parent and he had depression pretty much my whole childhood. So I was always responsible for the household and keeping the family together.”

In 2013, Sally and her family moved to Melbourne to pursue work and study opportunities. Sally was finishing her degree and training fulltime in a field she’s passionate about. She had taken this up after becoming unwell with post-natal depression.

“When we first moved here neither of us had jobs, we were very naïve and didn’t know about tollway fees. I was the only one who had a driving licence in the house, and we had three of my sisters-in-law living with me, who didn’t know how to use public transport.

“We had to get around the city and we were using the GPS, and the GPS would always take you on the tollways. It wasn’t until a month or two in that the tollway fines started coming in, and by that stage, we were only on Centrelink, and I was like, ‘I can’t deal with this right now’; putting food on the table was more of a priority at that time.”

The initial fines amounted to around a couple of thousand, she estimates, but quickly increased with the addition of administrative fees.

Sally was also in the midst of a severe flare up of her post-natal depression, which had got worse after she moved away from home to Melbourne.

“I just felt so overwhelmed and lost... I’m the eldest in my family, so I have family and cultural responsibilities. I had all that extra guilt of leaving home and my kids not being raised on Country – something deeply important to the growth and development of Aboriginal children – and I worried about who’s gonna be there to look after my family.

And with the kids so young and I’m the only one responsible... It kinda just triggered the depression again and I just spiralled. I was constantly in tears, I was constantly overwhelmed.

“I had sacrificed a lot, and left everything I knew, to pursue greater opportunities not just for myself and my family, but also my wider community. And this is what happened. It was a sharp blow.”

She didn’t know where to go for help to deal with the fines, or for someone to speak to, so she ignored it. As somebody who has spent her life taking responsibility for herself and for others, this compounded her depression.

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<sup>2</sup> ‘Sally’ is a pseudonym.

“The sense of shame and guilt about being in this situation as an educated woman and a mother just made my depression worse”, she says.

“I realise now with hindsight and guidance that [avoiding the fine] has been a form of self-harm, a way of keeping myself down. And the more I avoided it the harder it was to face it”

Things came to a head one day when her car was impounded.

“I had a trolley full of shopping, rushing in the rain so I could get my kids from school, when I found my car was wheel-locked and two officers were there to take it. I was in a complete state of shock, panic and embarrassment that things had come to this. I had a real fear of being arrested.

“To compound the matter I was already starting my car with a screw-driver because I didn’t have the money to fix the ignition. I had to argue with the officers that taking the car would not resolve the fines, as the amount they would get for it would not cover the debt. And not only would I be left stranded with a trolley full of shopping, no money to catch a cab home or get my kids from school, I wouldn’t be able to look for a job to pay off my debt. It was humiliating. I finally got them to unlock my car, and let me go.

“It was always at the back of my mind after that, like a grey cloud. When I should have been studying or focusing on being with my kids, I had this fear in my mind are the police going to show up again? Or if I go shopping will they lock up my car again or arrest me?”

By 2016 her debt had risen to over \$20,000. If she had had the money to pay the full amount, she could have resolved it with no impact on her future. However, Sally’s career achievements have been largely self-funded and not financially profitable, and she can’t afford to pay the fine.

She was told that if she applied to have the fees revoked, arguing special circumstances because of her depression, or wanted to do community service instead of paying the fine, then (for some of the fines) she would have to plead guilty and may get a criminal record.

She couldn’t see a way of dealing with the situation without ending up with a permanent criminal record that would impact her career, her reputation, the community work she was doing, and her ability to travel internationally for work. So she put it to the back of her mind again.

“Seriously, I am a woman, a mother of 3, and have fought so hard to overcome adversity, trauma and hardship that were gifted to me by virtue of being born a woman of colour and mixed ethnicities, coming from a small town and being poor.

“I stood up and fought to overcome these barriers to not only break the cycle for myself, but also for my family and others within my community.

“I fought to make a difference. And then I get sick and make some mistakes. Now I am being treated like a criminal who has murdered someone. Yet my only true ‘crime’ was to be human and be fallible.

“I know what I’ve done hasn’t been ideal, but I haven’t done anything terrible either. I was overwhelmed, I was a lot younger, I wasn’t well mentally, and I had a lot going on. But, also - people make mistakes.

“I don’t want to be judged, I don’t want to be arrested, I want people to work with me so I can clear this, move on, and grow from it.”

Sally has been in touch with several community and legal organisations to try to deal with the issue, but hasn’t yet found a way forward. Meanwhile the fees continue to mount.

“Now in 2017 I am still fighting to find a solution that will not take a future from my children or leave me without a career and with a ruined reputation.

Throughout this process I have just wanted to give up and walk away from it all. I am a strong and powerful woman from the battles I have fought and overcome. I do good work in the community and I create change not just for my own family and community but others as well.

“If this is how I’ve broken down with my experience with this, and I’m educated, I’ve got good support, imagine how this is for someone who doesn’t have those things?

“They stand up to try and do something and they make a mistake and they are punished for their efforts. As a result they are driven to crime just to survive and then because of the structures of our society they are persecuted even more.”

More than anything, Sally wants to find a way to move on from her mistakes.

“I just want to resolve this so I can move on and concentrate on raising my family and being a good person who is helping to change the world, without looking over my shoulder. I want to be able to go to sleep at night without the shame and guilt draining my energy and taking from my health and wellbeing and my ability to be a mum and more.”

### Sam<sup>3</sup>

Sam is a Barkindji woman from near Mildura.

Three years ago, Sam and her partner, both in their 40s, became kinship carers for the two-year-old son of Sam's cousins, as she wasn't able to care for him.

After they had been caring for the little boy for a while, they were asked to write a list of potential respite carers, who he could stay the night with if they needed a break.

Sam's mum was on the list along with some of her sisters and cousins.

"Child Protection workers called my mum into a little office and started asking her questions about an offence from when she was younger – breach of an Apprehended Violence Order from over 20 years ago," says Sam.

The offence is unlikely to have been a barrier to being a respite carer, but the experience of being questioned about it brought up a lot of emotions for Sam's mum.

"She made a mistake but she's been a model citizen ever since. She's an elder in the community, to have that stuff raised, it's sort of disrespectful. After that mum just said 'no I don't want to be a respite carer for you, sorry, I'm not sitting there and letting the department make me feel crap'.

"I think that's what happens in a lot of cases. People get discouraged from even following through with the process, because they think they won't be allowed to be a carer anyway, or there might be shame or fear around old offences being brought up."

Sam and her partner also have a 2 year-old child of their own, who is, of course, allowed to stay over with his grandmother.

"It makes me feel sad that my mum can't help us look after the little fella, and I think she feels bad as well. We try to treat both our children equal, but because of the care situation we're restricted in a lot of things."

If Sam and her partner adopted the child then there wouldn't be any issues with him staying with her family. But for his best interests the couple have decided to keep fostering instead.

"We want to give his mum a bit more time to get better and maybe get him back," says Sam.

In the meantime, they don't have any approved respite carers who their foster son can stay with overnight, which puts them under extra stress.

"Because of what happened in mum's case the rest of them didn't want to be part of it either," she says.

"He's a kid from a trauma background so he's got a lot of extra needs and he's a lot of work that we didn't plan for, so we need a break now and then.

"But it's too hard trying to get respite carers when Child Protection are bringing up people's past from a long time ago and making them feel like criminals."

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<sup>3</sup> 'Sam' is a pseudonym.



Karen is an Aboriginal woman in her early 30s who grew up in New South Wales, just across the border from Victoria. She was raised in a healthy household, she says, where both parents went to work. She started earning a living as soon as she could

“I did a fencing course when I was 16,” she says. “From day dot I always considered myself to be working.”

But for the past decade, every time she’s tried to find a job she’s been rejected once her criminal record has been checked.

It all started when she was around 18 years old. She had just escaped a violent partner who she’d been with for five years. She was struggling with drug and alcohol addiction.

One day not long after the abusive relationship ended, she was approached by the police. There were fights happening in her area, as was common.

“The police got out of the car and came straight for me and lifted me up off the ground,” she says. “I was telling them ‘I’ll walk, let me walk’, but they were just dragging me along.”

“They knew quite well what I’d been through [as a survivor of domestic violence] - it was a very small community. But these two 6-foot police officers still manhandled me. I just blanked out and ended up hitting them.”

That split-second decision is still affecting her life today.

“I learnt off that mistake,” she says. “It really frightened me and made me grow up. I pleaded guilty and I paid my dues to them for breaking the law. They put me on an 18-month good behaviour bond.”

“I stopped being that person years ago,” she says. “I thought your past is your past, especially when you’re young and dumb. I’ve got four children now, I’m trying to move forward in life, but I still can’t get work.”

The first job she lost was an aged care role, working with Aboriginal elders. She had been at the organisation for eight months and had been sent to Sydney for training. But then when her criminal record check came back she was let go.

Karen was still determined to find a way to serve her community, so she moved to Adelaide to make a new start and pursue a qualification in Aboriginal community and aged care services.

“I’m a bit like my elder sister [who works for Koorie organisations]; she loves our community. We’re very caring people. My plan was to complete my aged care training and then go on to become an Aboriginal nurse,” she says.

But after a couple of months she was told she wouldn’t be able to continue the course, because of her police history.

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<sup>4</sup> ‘Karen’ is a pseudonym.

It's now over a decade since the conviction and it's still stopping her from serving her community or living a normal life with her four children, aged between five and twelve years old.

Earlier in 2017, Karen applied for a job at a women and children's safe house in a remote community in Victoria where she'd moved with her children. She got a job as an administrative officer, but at the end of her 3-month probation period she failed a Working With Children Check.

"The organisation was very upset to let me go," she says. "They wanted to help me clear it up but it was too late. I loved that job."

"I had to seek mental health support after I lost the job that's how depressed I was. I've moved from one town to another, but I've never got a new start."

"It depresses me because I'd like to build something for my children," she says. "One of them wants to play in the Australian Football League when he's older, how am I going to get him there without a job?"

She's become so disheartened that she's started ruling herself out of jobs wherever there is a police check. Recently, she applied for a Parks Victoria Aboriginal-identified position as a fire-fighter during the fire season. She got an interview but when they said she'd need to get a criminal record check she ruled herself out.

"I'd like to go to work every day like everyone else," she says. "I'd like to buy a house or a car. The government wants you to get a job, but when you try it's the government that stops you. It's like hitting a brick wall every single time."

"It needs to change. I'm not a murderer or rapist. It's been over 10 years and I still can't get a job."

"It's really difficult to keep going in direction you want to go in when they slap you in the face with your past all the time. You turn to alcohol. I've seen people go completely down the drain."

"I'm sitting here now in tears with my children watching me," says Karen. "People from the government should come and live in our shoes for one day. They wouldn't survive."

Ryan is an Aboriginal man in his 40s from rural Victoria. He became a member of the Country Fire Association (CFA) when he was a teenager, helping to keep his community's land safe from fire, as his family has done for generations. For him, this is an important part of his connection to Country.

In his teens and early 20s, Ryan says he was convicted for assault and being drunk and disorderly after getting into fights when he was out with friends in the evening. He got a criminal record, but was never sent to prison.

When he was around 27 he applied for a job with the Country Fire Association (CFA), which was advertising over a dozen Indigenous positions. His last conviction was at least 5 years before he applied for the CFA job, he says. In the interim Ryan had been to university, and he saw himself as being a "totally different person".

"[When the convictions happened] I was a drinker, a smoker, a partier, I was single," he says. "When I was going for the job, I didn't drink, didn't smoke, didn't do any of that sort of stuff... and I had a partner and children; my whole life was different."

Given his skills and experience, he thought he would have a good chance.

"I met all the selection criteria," he says. "I've spent my whole life working in the fields; whether it's been fencing, contracting, or livestock work. And I've been putting out fires since I signed up as a CFA member when I was fifteen."

"There was also a fitness test. I'd also just come back from winning my second international sports title, so I daresay there would be nobody else in that league of fitness applying."

After filling in an application and attending an information session Ryan was rejected. It is CFA policy that if somebody has been found guilty of certain offences, including violent crimes, their job application will usually not be accepted.

Despite leading a very different life to the one he had led as a youngster, the CFA rejection was one of several knock-backs Ryan faced around that time because of his criminal history.

"I couldn't get a job anywhere. I couldn't get work in my own town, my own co-operative," he says. "It's very depressing, especially when you tried and tried to do everything right, and try to better yourself, to get shut down like that is a big blow."

In the end he started selling drugs to support his family. "[I was] trying to make a living," he says. He was eventually charged and convicted of drug trafficking.

After serving a prison sentence, Ryan is now working as an artist and living in his hometown again. But he found out recently that he wasn't officially registered as a volunteer fire fighter anymore, and was told that because of his criminal convictions re-registering would be difficult:

"We're not just putting out random fires," he says. "If there's ever a fire out here, it is always on somebody's property that we know. Every time there's a fire, whoever is at the fire shed first jumps on a truck. We don't look at it as the CFA fire shed, it's our fire shed."

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<sup>5</sup> 'Ryan' is a pseudonym.

In 2016, he watched his neighbour's house burn down, as he no longer has the code for the fire-fighting shed across the road. He and his neighbour tried to put out the fire with a garden hose but it overwhelmed the house:

"If I was a CFA member still, that fire would've been out within two minutes," he says.  
"Instead I just stood there with this man and his wife and their 5 children, and watched their house burn to the ground."

Ryan feels that his criminal record is constantly being used to stop him from fully re-joining his community:

"It doesn't matter what corner you turn, they use the criminal record against you", he says.

Nikki is a 45-year-old Murri woman living in Melbourne.

Her mother was part of the stolen generations and her father is Irish. Growing up in Melbourne and rural Queensland, Nikki experienced domestic violence, alcohol abuse, and racism.

“I’ve got memories of me standing in class getting my hair burned, because we were the only Aboriginal kids – me and my sister were the only blackfullas in that whole high school,” she says.

When she was twelve and living with her mum’s foster parents, Nikki tried to commit suicide after being sexually abused by somebody she knew.

Her traumatic childhood affected her as she became an adult. She got into relationships with “bad boys”, and developed drug and alcohol problems.

“I guess in a way I hadn’t dealt with [the childhood abuse] and then just went on to be with these abusive men,” she says. “I thought, ‘they’re tough, they’ll look after me’.”

“[Then] when I left them, to deal with the break-up I would get on the drugs and I would get on the grog and it made me feel better than all them men; the drugs just made me feel like I didn’t need a man, you know.”

When she was in her 20s, Nikki’s then boyfriend stole a car and she was caught in it and convicted for theft.

She went on to have children, and, despite the conviction, she worked in Koori liaison roles at various organisations. But her struggle with addiction continued.

“I’d have good periods, where I’d have a good job and be clean, but then it started creeping back in. I could slowly see myself slipping and slipping and then I’ve lost jobs because of the drugs and the grog. In 2008 I pretty much hit rock bottom.”

Unable to keep up a job anymore, Nikki started making drug deliveries for a dealer. In return she got drugs for her own use and small amounts of cash - \$50 here and there. She was caught in 2008 after the police tapped her phone, was questioned for hours without a lawyer and strip-searched.

“...and of course, yeah, no legal advice... So they threatened number one, they were going to take the kids off me, and then number two, they said ‘You’re going to go to jail if you don’t tell us what we want to know.’”

It was a Friday, and she says they also warned that they could keep her in all weekend, which frightened her because she was a single mum and needed to get home to her two kids.

“I always made sure my kids never missed out on their sport...I always took them to their footy and netball on Saturday mornings. I thought, ‘Fuck, I can’t stay here all weekend’. So I just signed – I don’t even know what the hell I was signing; they just put all these papers in front of me and I just signed it because I just needed to get the hell out of there.”

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<sup>6</sup> ‘Nikki’ is a pseudonym.

After she signed the written admission of guilt, Nikki was convicted of drug trafficking in the Koori Court and received a 12 month suspended sentence. She stopped offending, got clean, had another child and started working for community organisations.

She won a prestigious volunteering award and worked at two Koori organisations, as well as winning funding to run a series of successful Koori kids singing groups.

She also sat on community action groups for many years and became the chairperson of a state-wide Koori group.

But when she went for other work, she got knocked back because of her criminal history.

In 2013, five years after her last conviction, she was offered a management position in an Aboriginal organisation and had begun training for the role. She'd sat down with the employer earlier and explained that she had a criminal history, but when the police check came back they called her and said she was "too much of a risk", she says.

Around the same time she was offered another job at an employment organisation, but the offer was withdrawn when they checked her criminal record.

"They took that job off me because of my police check and they just didn't want to even talk about it, so they offered it to the next person," she says.

The rejections dented her confidence and have put her off from applying for more mainstream or better paying jobs.

"...all these other deadly jobs would come up in government and the courts, like Koori Court Officer and you're talking like three, four times what I get paid now," she says. "Elders and staff that sort of know the system [would] be like "No don't, because it'll hurt getting the knock-back. You might get the job and then they'll say... they won't like your police check" ...So I sort of stopped looking at those high-end jobs."

She feels trapped by her convictions; as if she can only go so far because of them.

"If you're looking in terms of career development and working your way up, I feel that I'm just sort of stuck, stuck on level one. I can't move up, or into more official or senior roles."

As a result of her convictions she has ruled herself out from offering to be a kinship carer, because this involves going through a criminal record check.

"I've had family ask if I could take in [kids during a] crisis and I've had to say "no" because I don't know if I'd be allowed [because of my record] ..."

Nikki feels ashamed that despite all her contributions to society, she's still being classed as a criminal, and being made to reveal her past convictions to strangers who then don't give her a chance.

"It's all that emotional baggage, you know, no-one to talk to about it and no support. You just feel like you're locked into these certain roles... I've changed my life around and stuff, but you still feel like shit."

"I am sharing my story to bring awareness to others in Victoria who may have similar experience as myself.

"I am an Indigenous Australian woman from coastal northern NSW.

"Seven years ago I came to Melbourne to escape a 21 year relationship which had turned violent.

"I had taken my three children with one change of clothes and one thing they couldn't live without and left my husband/their father and our entire life behind as I secretly drove into the night towards a family member in Victoria.

"I believe this was a choice that saved my life due to the drug fueled violence I was facing regularly by that stage.

"Finally feeling safe, being 2000km away from my old life and ex-husband, I realized the amount of emotional, physical and mental damage myself and my three children had suffered. I started seeking help for my children and myself to begin rebuilding our lives and the long and painful task of healing. My children and I began seeing a GP, counsellor and clinical psychologist, individually and as a family with varied degrees of challenges and relief at that time. It was soon made clear to us that we were all suffering from PTSD as well as a long list of other trauma related conditions, exacerbated by the anxiety of new schools, friends, lack of support and the financial burden of living entirely on government payments. I was not coping too well and the visits with my clinical psychologist just brought more confusion at times along with seemingly more diagnoses as time went on. These included PTSD, depression, bipolar disorder, anxiety disorder with panic attacks, and night terrors.

"I realized that I needed to find other ways to heal. Culturally my people believe that the ocean is the main way we heal. I knew I had to start putting my feet in the ocean everyday if I wanted to get well. The ocean was my only hope, I believed then. Although I lived in the northern suburbs I began driving across the bridge to St Kilda each day without an e-tag. Quite honestly life was a blur and toll invoices seemed miniscule to me at the time in comparison to all other things in my life. Being in the ocean each day was not negotiable, and it worked. Each day I walked along the beach I got better and was soon able to begin rebuilding my life and being more and more emotionally stable.

"Unfortunately, the fines did not go away. Nearly 18 months of not paying tolls eventually resulted in about \$48,000 worth of fines. There was no way I could afford to pay this. By this time, I had been put onto a disability support pension due to mental health issues and although I offered a very modest payment plan from my pension I was told that the debt had to be below \$10,000 for a payment plan to be approved. This again was impossible. I felt there were no options available to me at all even when I was willing to try to fix the problem, which I explained to the sheriffs when they came to inspect my house for valuables before arresting me.

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<sup>7</sup> 'Julie' is a pseudonym.



"I appeared in Melbourne Magistrates Court. I was represented by VALS and was told I could only get representation for a guilty plea. I felt sad that the cultural significance of what I did could not be explained in court and was told it will probably never be understood by non-Indigenous Australians. My clinical psychologist had written me a letter for court explaining my state of mind during that time in my life and I felt very grateful when the magistrate decided to wipe the fines acknowledging that there was no way I could pay them. There was one other fine amongst my list that was considered criminal and could not be wiped with the civil ones. He imposed a Community Corrections Order without conviction with 20 hours community service to cover this one. I can't remember exactly what the criminal charge was. I think it might have been from a court fine for a roadside drug test.

"I have since become aware that there is no spent convictions scheme in Victoria, and also that non-conviction records can sometimes be released based on police discretion. I have been referred to the policy on what records police will release. This is really unclear. It says 'traffic offences' are treated differently, but I'm not sure if the criminal charge I had is a traffic offence."

"I have been retraining for the past few years and I am very worried that this may now appear on a criminal record check for employment, especially if it mentions drugs."

Andrew grew up with his mother and father and two brothers in Mildura. Andrew's mother had substance use and alcohol issues, and upon the death of Andrew's father, Andrew and his brothers were placed in a children's home. The brothers had a very difficult time there. He returned to live with his mother and her new partner, until his mum died suddenly. Andrew and his brothers then lived with an aunt in Robinvale. They were treated badly and Andrew and one of his brothers left to go to Melbourne when they were in their early teens.

Andrew began drinking and using drugs, and stealing to raise the money. He spent time in Youth Training Centres and then when he was about 24 years old he was sentenced to a period in Pentridge Prison for car theft, burglary and assault.

He was shocked by the experience of being locked into a cell on his own in Pentridge:

I ended up in Pentridge one time, and around 3.30 they put you in their cells, and I was the only person in the cell and I thought to myself "Well this is not the life for me". ... . It was an epiphany or whatever it was, I just knew this wasn't where I wanted to be, and I knew I wouldn't be coming back here again.

He left Pentridge determined not to continue offending. At that time he also met the woman who was to become his wife, and who strongly supported his decision not to reoffend. Andrew had a number of criminal charges pending, and he knew that it would be difficult to get a job while he was at risk of being arrested over these further offences:

I didn't want to get a job and then go walking for work one day, get pulled over by the police, and then boom, there goes my job, there goes everything, stuck back in jail.

He went to the police to have the charges dealt with finally in court; he feared a further jail term but was surprised and grateful that the magistrate recognised his determination to go straight, and gave him a suspended sentence:

I thought I'd probably end up in jail again, but even the judge was surprised, because by then, this was, I think it was more than two years since my last crime, and he even said "Wow, I can't believe that you've just gone straight" and he was amazed. And he just turned around and gave me a suspended sentence.

As he puts it, this allowed him to start again and make the life he wanted: 'once that was done I got myself a job and I've been doing that job now for 23 years. '

When Andrew first got out of prison, he was successful at getting a gardening job. He was not asked for a criminal record check for that job, and stayed there for a bit over a year. Andrew then applied for a job in manufacturing. He was not asked for a criminal record check but he was open about his past and made sure both the boss and his work colleagues knew of it. He emphasises the importance for him in being open about his past and being able to demonstrate his reliability and honesty in practical terms by being given the chance to work, and by being a responsible and successful worker. Once when the workplace was burgled, the police came to investigate, and Andrew said to his boss: "I hope you don't think it was me", and he goes "No, you're alright".

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<sup>8</sup> 'Andrew' is a pseudonym.

To Andrew, having a criminal record has not stopped him having a satisfying career because of the mutual trust in his workplace, which has always been based on honesty about his past.

It was also a different time, when he left prison and was looking for work, and employers were less likely to ask about criminal history 25 years ago than they are now. He comments that if he had been asked about his criminal record and rejected from jobs, in the end he would have gone back to criminal activities: you would just 'throw up your hands and say I give up' if you kept being rejected from work you wanted to do because of a criminal record.

Andrew knew his criminal record could however have stopped him travelling. Twenty years after his last offence, he and his wife planned a trip to the US, but he was afraid he would be rejected for a US visa:

... one of the hardest things I found with my criminal record, I actually went, applied to go to America. And if you ever go for your visa to America, oh God, I had so much drama because I had to go there and then they said "We want your criminal history"...

.. And I thought "Oh damn it, I never ever thought I'd get to see the outside of the country".

Although his offences no longer appeared on his police check, because they were from such a long time back and were regarded as minor, the US Embassy required all his history, but ultimately gave him a visa. He says, '...and I never thought I would get into America, but lo and behold they gave me six months visa and they have all my records in there in the Embassy. '

Andrew recalls being targeted by police, because he was an Aboriginal man. He had gone to his car to retrieve his and his wife's leather jackets when they were out one evening. He was passing a Cash Converter's store:

... and I'm walking down the street with these two leather jackets, all of the sudden this police car just pulls up on to the footpath, they jump out, and they come running up to me, and before I even had a word to say my partner jumped in "Andrew, you don't have to tell anybody anything. That's my jacket, that's your jacket", and then coppers turned around and jumped in their car before I even had a word to say, and they took off. ... Well I'm used to it, but my partner's not used to it.

Both Andrew's brothers who were in the children's home with Andrew have since died as a result of alcohol and substance abuse.

For Andrew, each experience of being trusted and treated with respect, and every experience of success, gives him an increased sense of happiness and success:

I thought well if you do something, you do something for yourself and you do change your life, and people sort of notice it, and it's sort of, it gives you the sort of, a bit of elevation I suppose. And so the more elevation I got, the happier I became, the more relaxed I became.

## Uncle Larry Walsh

Uncle Larry Walsh was two years old when the State government took him from his mother Melva and made him part of the Stolen Generation. What he only found out much later was that not only was he stolen, he was also branded as a criminal as a result.

He first realised that something was wrong when he was living with his foster family and the police stopped him on the street.

“The police stopped me and asked me my name, my address and my age. And they said have I ever been in trouble? Now this is someone only nine. What a stupid question to ask a nine-year-old kid! I said no, so I started walking back home because the police took off.

Next thing they came back, picked me up, took me to the police station, called me a liar, said I had a criminal record, and give me a beating.”

After that first time he was picked up by the police, Uncle Larry says he was stopped whenever a crime was committed in the area.

“If a shop got robbed, I was picked up, if a house got robbed I was picked up. They didn’t ask all the white kids, they didn’t ask the Italian kids; they came to me.”

After a few years Walsh says he “got sick of being told I had a criminal conviction I didn’t know anything about, and being pulled up for things I hadn’t done, and, so I started doin’ em.”

“It’s not saying I’m good or bad; I’m a young person being picked on, having to fight half the people in the schools I’m going to because I’m [bullied for being] the only coloured person, then having the police pick on me too... I reacted exactly how they thought I was going to react.”

In 2016 Uncle Larry discovered that on May 25th 1956, as a two-year-old, he had a case heard at Mooroopna Children’s Court, which lists his ‘offence’ as a ‘care/protection application’, and his ‘sentence’ as being ‘Committed to care of Child Welfare Services’. This is still recorded on his full police history.

This was the criminal record that the police were talking about – his removal from his mother by the State. It turns out it was standard practice until 1989 for child protection orders to be recorded as if they were convictions against the child on police documents.

“Babies, children and young persons before the Court were charged with being in need of protection and, if this charge was found proved, it would appear on a police criminal history sheet,” writes Magistrate Peter Power, in documents published by the Children’s Court.

Indeed, on a 1971 Police Criminal History Sheet in Uncle Larry’s ward file, his removal is listed as a ‘conviction’ against him.

Uncle Larry was too young to remember being taken by the police and going to court, but others recall this experience:

“After suffering the early morning trauma of being dragged away from my family, I was taken before the court, standing beside my brothers with the escort of police. We were charged with what? I can remember thinking what have we done wrong?”, says one former State Ward

This police record also followed Uncle Larry into adulthood.

“Even [at] one stage I went to court for driving without a licence, and they wanted me to plead to some other charges, but I refused. And they raised the fact that I had convictions dating back to 1956, when I was born in 53. So the police were, and the courts would hear this, and the judge would say to me: “is this right, you’ve got criminal convictions?” and I said, “Your Honour, I don’t know about 56 because I’d be about two and a half.” And yet the judge didn’t listen to that statement.

“So, the other time, the judge called me a disgrace to my race, because of, again that thing of having a conviction since 1956.”

After spending some of his teens and 20s in youth training centres and prison for offences such as theft and wilful damage, Uncle Larry saw himself “heading down the one track: going in and out of jail, going nowhere in life” and he changed course. He became an active community member and stopped stealing.

The Taungurung man is now 63, and his most recent offence, besides a non-conviction disposition in relation to squatting in empty government-owned property, is a cannabis possession charge from over 25 years ago. He’s worked for the Aboriginal Legal Service, has helped build many Aboriginal community, educational and health organisations, has advocated on the Stolen Generation and on Aboriginal deaths in custody and helps foster Aboriginal heritage and culture in Victoria.

Yet over the past decade or more, every time somebody has nominated him to sit on an Aboriginal advisory panel to government, he says he has been turned down. This includes several separate nominations to the Victorian Government Ministerial Advisory Council for Indigenous Affairs.

Uncle Larry has never been given a reason for being refused, but the applications involve a criminal record check. Uncle Larry says that he, and his wider community, believe he has been rejected because of his criminal record.

He sees this as one more violation of Aboriginal self-determination by the state.

“If your community picks you to represent [it], that should be not the government’s right to veto.”

“I’m not just suffering because of what the government forced me into [growing up without his family] and what the police forced me into, I’m suffering today because of police checks. It’s like a wound that won’t heal. You itch and scratch at it but it still won’t heal.”

Because the government doesn’t say why he can’t be on the committees, these rejections damage people’s trust in him as an elder, he says. People assume he must have committed very serious crimes.

“It creates suspicion. Was I a violent man? Was I somebody who needs to be feared or watched out for? Am I really somebody our young should learn from?”

“If I got one thing out of being one of the Stolen Generation it’s the determination, when I get rejected, to not let that stop me”, he says. “But I’m worried that we will lose talented young people that our communities have trust in, because they’re getting knocked back on the same grounds as I’m getting knocked back.”

“I know we’ve got kids who have been bright sparks and they’ve just disappeared. Perhaps it affects their own self-confidence, their own self-worth, that whilst their community trusts them, they can’t represent them.”

## Uncle Jack Charles

Uncle Jack Charles is a 74-year-old Boonwurrung and Wiradjeri elder and well-known actor.

He was born at the Royal Women's Hospital in Melbourne and taken from his mother to the City Mission Babies Home when he was just four months old, before being raised in a boys' home based in Box Hill. He was the only Aboriginal child there, and was sexually and physically abused.

"The traumatic effect of being stolen is long-reaching, it goes on and on forever and ever. Many of us develop criminal records, and my own is extensive. Organisations are ill-equipped to address that trauma because they don't have people who were stolen running them," he says.

He didn't meet any of his 13 siblings until he was a teenager, or his mum until he was 19. He later found out that two of his siblings had died at birth. He still doesn't know what happened to six of them.

After growing up in abusive institutions with no experience of being loved, he became addicted to drugs.

"When heroin had me in its grip, burgs [burglaries] became the income source I needed," he says.

Periods of his life became dominated by cycles of drug use, crime and jail. However, he also developed an interest in acting early on in his adult life and founded the first Aboriginal theatre company.

Uncle Jack's most recent conviction, for burglaries at Melbourne mansions, was over 10 years ago, and while he was in prison he took part in the Marumali healing program run by elder Auntie Lorraine Peeters, herself a survivor of the Stolen Generation. This was the catalyst for a turn-around in his life.

"That [program] relit, you might say, my f--ked-up, locked-up dreamings. Sometimes it takes a program like that, delivered by Aboriginal people, to actually work."

"From that moment on I left that jail intending to make my community better," he says.

"After I got out I tried to get back in as soon as possible to be a leading light for others."

He tried to get into prisons to mentor other Indigenous inmates, but for a decade his criminal past stood in the way of every attempt he made to do this, despite evidence that culturally-appropriate rehabilitation and using ex-offenders as mentors are effective ways to reduce re-offending.

"White man's rules..." he says. "In Aboriginal lore, once you've done your time, your banishment ends, wounds heal, and you come back into the fold. You might be limping, 'cos you've had a spear thrown in your thigh, but the point is, you're welcome back."

Uncle Jack finally got into prison as a mentor in 2016 on his 73rd birthday, but he says his visits are still at the discretion of governors and management, helped along by his reputation. He wants this to change.



“The [prison] system needs people with the lived experience. It can’t develop any new way of doing things, any constructive programs, without them.”

With the Archie Roach Foundation, where he is a board member, Uncle Jack is now regularly back inside delivering healing programs, determined to keep the next generation out of adult prisons.

"Archie had known for some time of my frustrations [of not being able to] return to prisons and youth detention centres," he says. "Archie and I have developed a council of elders, and we intend to keep a 'black watch' on prisoners and the policies that lock them up."

He believes it’s vital that people with lived experience of the criminal justice system get the chance to help younger generations turn their lives around, and he’s recruiting others to join them in the work.

“Criminal record desirable, but not essential!” he says with a grin when outlining the job description.

He's now fighting to have his past convictions ‘spent’ from his record. He’s been making the case for criminal history reform for years in his play Jack Charles Vs The Crown. Now he plans to take his case to the Supreme Court.

“I think it’s important that the state allows people to have a second chance. Those people that first came to this country on the tall ships, many of them were criminals. As a reward for settling the country and eradicating the large population of Indigenous people, their criminal records were removed and they were allowed to move on. In this modern day and age we need our criminal records expunged so that we can move on.”

“This is not a soft on crime issue, this is an issue where people need to give us the opportunity to be key players here in Australia, to be upstanding members of the community, you can’t do that if you have a criminal record hanging over you like a black cloud.”

"I want to go into these prisons and say 'look at me, fellas – if you take yourself seriously, whether you're black, white or red, in 10 years hence, you can have your criminal record expunged. Or do you wanna be a crim the rest of your life, trapped on this island, never be able to get a passport?'"

## Vickie Roach

Vickie Roach is a Yuin woman from New South Wales.

Her first contact with the criminal justice system came when she was a toddler.

“They used criminal charges against me at two and half years of age, to facilitate my removal from my mother. They charged me, the child, with being neglected,” she says. “We were so shocked when we found out.”

Her mother was still a teenager and had only recently come out of an orphanage herself when she had Vickie, having been removed from her own family as a child.

“So, because of that [neglect charge], I was in the criminal justice system already; right from then and there I had a criminal record. And then I started getting into trouble at school, and running away from the foster home. And child welfare would be brought in, and it would result in me being taken to Children’s Court.

“Normal things like back-chatting, getting rebellious, not keeping my room clean and shit would result in a call to child welfare.”

“I reckon I ended up in court half a dozen times as a child for running away, sometimes I would get remanded at Glebe Metropolitan Girls’ Shelter for a few weeks - it was horrible. It was medieval.”

Vickie says she experienced abusive physical examinations at the girls’ shelter, which was run by the Child Welfare Department.

“Other kids would get grounded, or get the strap or something, and I’d have to go to court and possibly end up in a kids’ home, which inevitably happened.”

When she was around 12 years old she was committed to a residential Girl’s Training School because of her behaviour.

“And of course kids’ homes inevitably led to jail. And that happened. They put me in jail for the very first time when I was a teenager.”

When Vickie was 14 she ran away to Nimbin and ended up getting into drugs. She was arrested aged 17 in Kings Cross in Sydney for using heroin, which she admitted to because the police said they could get help for her. Instead she got 6 months in a frightening adult prison with no rehabilitation.

She got out for four months then went back in again for minor credit fraud. After that, she had long periods out of prison, interspersed with some stints in jail.

When Vickie was in her 30s and living up in Queensland, she got a job working at a company that sold security systems, 15 years after she got out of prison. By this time Vickie had “got married, got off the dope and had a son,” she says. After a month or two, she was asked to supply a police certificate, and given 6 weeks to comply. But rather than do this she left before the deadline, assuming she would be let go anyway when her criminal history came to light.

“People will look at a written report, and go, ‘oh my God, she did this, this, this, and this.’ But it’s never as clear-cut as it looks on paper.

“After a while, I never applied for jobs anymore if there was a chance that they might check my record. I did jobs that paid cash, or worked for shonky companies.

“A lot of women go into sex work rather than even try and get other jobs. Because sex work is something you can just do, you know, you don’t need to apply to anyone. And of course sex work is criminalised, so it keeps them in the criminal justice system. “

After splitting from her partner Vickie suffered a crushing blow when she lost custody of her son.

“Even though I hadn’t used drugs for six years, the magistrate said, ‘while I appreciate your efforts to get yourself off drugs, in my considerable experience on the bench, a leopard never changes its spots.’ He looked at my criminal record, and my ex had none. And he gave my precious little baby boy to a man who he already recognised was a violent alcoholic.”

After this loss, Vickie slid back into drugs, and was jailed after she was involved in a police pursuit following a ‘smash and grab’ at a local convenience store, that a violent ex-partner had forced her into after tracking her down.

That time she got a degree while she was in prison.

“I started studying sociology, philosophy and literature. I’ve always been an avid reader and had a strong sense of justice, and I started talking with the community lawyers and activists who were coming into the jail.”

In 2007, Vickie was instrumental in a High Court challenge that struck out legislation banning prisoners who were serving three years or less from voting.

After she was released in 2008 she found work writing and talking on criminal justice issues.

Vickie sees her entry into the criminal justice system at a young age as a direct result of the trauma she and previous generations of her family experienced through being removed from family and culture.

“My mum, she grew up in institutions herself, she was one of the Stolen Generation. If it hadn’t been for mum’s history, mine would have probably never started,” she says. “It’s a dark cycle for Aboriginal people.”

*“She made a mistake but she’s been a model citizen ever since. She’s an elder in the community, to have that stuff raised, it’s sort of disrespectful. After that mum just said ‘no I don’t want to be a respite carer for you, sorry, I’m not sitting there and letting the department make me feel crap.’*

*“I think that’s what happens in a lot of cases. People get discouraged from even following through with the process, because they think they won’t be allowed to be a carer anyway, or there might be shame or fear around old offences being brought up.”*

**‘Sam’**

**Barkindji woman**

## The consultation process and reform proposals

In order to provide context for the detailed recommendations in relation to the content of legislative changes proposed to address criminal record reform, this section of the submission includes the questions considered by stakeholders during the Woor-Dungin Criminal Record Discrimination Project consultation process, and summarises the rationale for the recommendations endorsed by consultation participants and stakeholders.

The following questions were considered during the consultation process:

- (1) Should Victoria establish a legislated spent convictions scheme? If so, what should be the key features of a Victorian spent convictions scheme?
- (2) Should the *Equal Opportunity Act 2010* (Vic) be amended to prohibit discrimination against people on the basis of an irrelevant criminal record or spent conviction? If so, how should the Act be amended?

### Spent convictions scheme

#### Should Victoria establish a legislated spent convictions scheme?

Victoria is the only Australian jurisdiction without a legislated spent convictions scheme. In Victoria, in the absence of legislation, the release of information related to criminal records is governed by the Victoria Police information release policy.<sup>9</sup> Victoria Police decide which records to release based on this policy. The Victoria Police information release policy is not legislated, which means that police can exercise considerable discretion when choosing how to apply the policy.

The application of the policy results in the release of findings of guilt without conviction. This undermines section 8 of the *Sentencing Act 1991* (Vic), which gives courts a discretion to make non-conviction sentencing orders in order to minimise the impact of the recording of a conviction on a person's economic or social well-being or their employment prospects.

The discretions within the policy are not clearly articulated, and include numerous rules and exceptions to those rules which are difficult to interpret. There are also many exemptions to the policy. For example, different rules apply to 'traffic offences' but there is no definition of 'traffic offence'. This contributes to making the policy confusing and uncertain for people wanting to rely on it in order to understand what information about their criminal records will be released. Further confusion may arise because different records are released depending on the purpose of the criminal record check. Confusion and uncertainty about what information will be disclosed also deters many Aboriginal people from applying for jobs, registering for kinship care and making contributions to their communities as volunteers and board members of associations or corporations. Some Aboriginal people don't pursue opportunities because they don't wish to engage in a potentially shaming experience of being required to explain criminal history to other people.

The Victoria police information release policy does not provide certainty or an appropriate level of protection for people with criminal records in Victoria. It would be preferable to have legislation to

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<sup>9</sup> The Victoria police Information Release Policy is at **attachment B**.

regulate the release of criminal records in Victoria.

*Recommendation 1:*

*Victoria should introduce a legislated spent convictions scheme.*

**Which sentences should be capable of being spent?**

Sentences of up to 30 months' imprisonment should be capable of being spent. Penalties other than sentences of imprisonment would also be capable of being spent, such as community corrections orders and fines. This is longer than the Model Bill provision of 12 months' imprisonment. It mirrors the length of sentences covered by the Victoria Police information release policy. It was considered an achievable position as it reflected the *status quo* in Victoria, and is already used in other Australian jurisdictions (Queensland and the Commonwealth).

However, members of the consultation group commented that because Aboriginal people are over-policed and over-incarcerated, and tend to receive longer sentences than non-Aboriginal people, sentences of longer than 30 months' imprisonment would need to be capable of being spent in order to help many Aboriginal people get back on track.

The group suggested that the spent convictions scheme should include a special provision to enable people to ask for their conviction to be spent, even if their sentence was longer than 30 months' imprisonment. This would involve giving them the opportunity to explain their circumstances to a judge. Ideally this would occur at the time of sentencing, but it could also include an option for people to apply to a court or tribunal later on, having demonstrated rehabilitation.

During the consultation, the group did not determine the grounds on which a person would apply for an order to enable a sentence of more than 30 month's imprisonment to be spent.

After the consultation, Woor-Dungin undertook further research to identify models in other jurisdictions which might be adopted to reflect the group's view that some longer sentences should be able to be spent in some circumstances.

In Canada, there is a requirement for courts to take into account, and ameliorate, the historical and systemic factors that have contributed to the over-representation and over-incarceration of Aboriginal people in the justice system. In Canada, courts must take into account a range of factors which have played a part in bringing each individual Aboriginal offender into the justice system.

Canadian courts are informed about these factors in specialist reports known as '*Gladue* reports'. These reports identify the unique experience of Aboriginal people, such as removal from parents, institutional care, discrimination, lack of access to education, homelessness, poverty and substance abuse. These reports also inform the courts about culturally appropriate rehabilitation and sentencing options for the offender. The Australian Law Reform Commission's inquiry into the Incarceration rates of aboriginal and Torres Strait Islander People's is also examining this approach as part of its inquiry.

As the group observed, to ensure substantive equality in the justice system, sometimes it may be appropriate for longer sentences to be able to be spent. A '*Gladue*'-type report could be a good basis for explaining to the court why an Aboriginal person sentenced to more than 30 months' imprisonment should be able to have their conviction spent.

### *Recommendation 2:*

*Sentences of up to 30 months' imprisonment should be capable of being spent.*

*There should also be a special provision that would enable offenders sentenced to more than 30 months' imprisonment to apply to have their conviction capable of being spent after the relevant waiting period. This application could be made at the time of sentencing or at a subsequent time.*

### **Which offences should not be covered by the scheme?**

Most schemes in other states and territories exclude sexual offences from being capable of being spent. However, sexual offences where a sentence of over 30 months' imprisonment had been imposed would be excluded anyway, so this refers to relatively minor sexual offences.

Some participants raised the question of offences committed by children and young people such as 'sexting' or consensual sex that constituted a criminal offence because of the age of the participants, and were concerned that these would be unable to be spent if there was a blanket exclusion on sexual offences being spent.

It was suggested that the legislation could list specific sexual offences, which could not be spent. These would not include offences like sexting. There is precedent for treating some sexual offences involving young people as offenders differently. Judges now have discretion about whether to place young people on the sex offenders register for sexting offences, and the Government has recently announced that young people convicted of some sexual offences, such as sexting and sexual offences involving consensual underage sexual relationships, can apply for a court to exempt them from automatic registration as a sex offender.

Similarly, there is discretion for a person to obtain a Working With Children Check even if they have committed minor sexual offences as a child. It is suggested that the Working With Children Check approach be used as a guide for determining which sexual offences are capable of being spent.

### *Recommendation 3:*

*Sexual offences should not be covered by the spent convictions scheme, except for certain sexual offences committed by the person as a child or young person.*

*The sexual offences capable of being spent would be based on the categories of sexual offences which do not prevent a person from obtaining a Working With Children Check.<sup>10</sup>*

### **What happens to findings of guilt where no conviction is recorded ('non-convictions')?**

The group agreed that currently 'non-convictions' are not fulfilling the role intended in the legislation, that is, to give first time and minor offenders a second chance. They agreed with the recommendations of the Law Institute of Victoria in its 2015 submission that non-convictions should be spent immediately and not appear on a criminal record (see *Table 2*).

If the non-conviction sentence also included conditions, such as an adjourned undertaking with a condition to be of good behavior ('good behavior bond'), the sentence would be spent once the conditions were completed. For example, a 12-month good behavior bond could be spent after 12

<sup>10</sup> See: <http://assets.justice.vic.gov.au/wwcc/resources/8617d1af-cdca-4acb-80a3-306de5a26103/list+of+offences+-+jan+2016.pdf>.



months once the person had completed the condition to be of good behavior for 12 months.

#### *Recommendation 4:*

*Findings of guilt without conviction should be immediately spent. If the non-conviction sentence also included conditions, the sentence would be spent once the conditions were completed.*

#### **How long should the waiting period be before a conviction becomes spent?**

Most Australian states and territories have a waiting period of 10 years for adults before a conviction becomes spent. Against the backdrop of a history of discrimination, and after spending a long time in the criminal justice system, options are very limited for some Aboriginal people. The group heard that for some Aboriginal people, 10 years is a long time to have employment and other opportunities restricted by a continuing criminal record.

It was also observed that 10 years seems to be an arbitrary waiting period. It is not informed by evidence about recidivism and rehabilitation. Given what is now known about recidivism and rehabilitation, the group suggested waiting periods which better reflect and distinguish levels of risk and seriousness of offending. This would be more consistent with recently overhauled schemes in other jurisdictions. In Western Australia, for example, the waiting period is generally 10 years, but is three years for a cannabis possession offence.<sup>11</sup>

The group did not determine a position on a model for shorter waiting periods during the consultation. After the consultation, Woor-Dungin undertook further research to identify models in other jurisdictions which might be adopted to reflect the group's view about shorter waiting periods.

In the UK, the Rehabilitation of Offenders Act 1974 was amended in 2014 so that convictions are now 'spent' using a graduated scheme where waiting periods depend on the length of the sentence, and range from 1 - 7 years.<sup>12</sup> In the UK, as in Victoria, there are separate provisions for disclosure and closer scrutiny of a criminal record where the person seeks to work with vulnerable people or in a range of occupations requiring a more detailed assessment of risk.

#### *Recommendation 5:*

*The issues raised by the Woor-Dungin consultation should be noted in determining the appropriate waiting period before a conviction becomes spent.*

#### **What should happen if the person re-offends during the waiting period?**

Here the group referred to the Model Bill 2008, which differentiates between 'minor offences' and 'serious offences'. Only 'serious offences' mean that the waiting period has to start again. The group agreed that this seemed like a good approach.

The Model Bill 2008 defines a 'minor offence' as an offence where, on conviction—

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<sup>11</sup> *Spent Convictions Act 1988* (WA), section 11.

<sup>12</sup> *Rehabilitation of Offenders Act 1974* (UK), section 5. The waiting period for a non-custodial sentence is 1 year; the waiting periods are staggered up to a waiting period of 7 years where the sentence is between 30 months and 4 years. For a summary of the UK graduated waiting periods, see <http://hub.unlock.org.uk/wp-content/uploads/ROA-Unlock-A3-Poster.pdf>.

- (a) the defendant is discharged without penalty; or
- (b) the only penalty imposed on the defendant (disregarding any demerit points that may apply) is a fine not exceeding—
  - (i) unless an amount applies under subparagraph (ii)—\$500; or
  - (ii) an amount, greater than \$500, prescribed by the regulations for the purposes of this definition.

Offences other than ‘minor offences’ are serious offences.

*Recommendation 6:*

*For ‘minor offences’ the waiting period should continue. For ‘serious offences’ the waiting period should restart from the date of conviction of the later offence. The Model Bill 2008 definition of minor offence should be adopted.*

**Should the conviction become spent automatically after the waiting period?**

Most schemes specify that a conviction is spent automatically, as soon as the waiting period ends. Only Western Australia requires people to apply to have the conviction declared ‘spent’. An automatic process was supported by the consultation and is proposed here.

It was thought important to avoid creating unnecessary administrative hurdles for Aboriginal people, particularly where limited support may be available to help people to navigate complex legal or administrative processes.

It was added that it would be good if there was an easy way to check whether a conviction has been spent. That certainty of knowing a conviction has been spent is vital for giving people the confidence to apply for roles. For example, a person could be entitled to apply for their own criminal record without cost, which is the case in New Zealand.

*Recommendation 7:*

*Offences should become spent automatically after the relevant waiting period.*

**Should there be penalties for disclosing a spent conviction?**

Aboriginal and Torres Strait Islander Legal Services (ATSILS) in other jurisdictions warned that without penalties for unauthorised disclosure of spent convictions, spent convictions schemes can’t be enforced and do not do what they were designed to do.

To ensure compliance with the legislation there should be penalties for disclosing a spent conviction.

*Recommendation 8:*

*It should be an offence for a person to disclose a spent conviction contrary to the provisions of the spent conviction scheme.*

## Equal Opportunity Act 2010 (Vic) amendment

Should the *Equal Opportunity Act 2010* (Vic) be amended to prohibit discrimination against people on the basis of an irrelevant criminal record or spent conviction?

The Commonwealth, Tasmania, the Northern Territory, Western Australia, and the Australian Capital Territory all provide a process for people to make a complaint about discrimination on the basis of their irrelevant criminal records or convictions which have been spent. The Commonwealth, Tasmania and the Northern Territory have legislated protections against discrimination on the basis of irrelevant criminal record. Western Australia and the Australian Capital Territory have legislated protections against discrimination on the basis of spent convictions.

The experiences of ATSILS in other jurisdictions suggest that without complementary anti-discrimination protections, spent convictions schemes may be of limited use. A spent conviction scheme alone might create an offence if a conviction that had been spent was disclosed, but it would not provide a remedy for discrimination. For example, without an amendment to the *Equal Opportunity Act 2010* (Vic), if somebody was denied a job because of a *spent conviction*, they would have no right to complain to the Victorian Equal Opportunity and Human Rights Commission.

In addition, people have to wait for a number of years for a conviction to become spent. In order for people to re-integrate into the community, they need to be protected against discrimination on the basis of an *irrelevant criminal record* in the meantime.

Protection against discrimination on the ground of *irrelevant criminal record* also protects people from discrimination in relation to convictions that cannot be spent, but are not relevant to the requirements of the work.

### *Recommendation 9:*

*The Equal Opportunity Act 2010 (Vic) should be amended to prohibit discrimination on the basis of an irrelevant criminal record and spent conviction.*

What activities should be protected from discrimination on the basis of an irrelevant criminal record or spent conviction?

In the Northern Territory and Tasmania, employment, education and learning, housing, buying things or accessing services, and being a member of a club or association and government programs are all included in the legislation that protects people from discrimination on the basis of irrelevant criminal records. These are the areas where other discrimination laws (e.g. gender, race) apply, so it makes sense that it should be the same for criminal records. Amending the *Equal Opportunity Act 2010* (Vic) to include 'irrelevant criminal record' as a 'protected attribute' alone would not achieve this outcome, so other legislative changes may be required. To make these protections workable, there should also be guidelines to help people understand whether a criminal record is relevant.

#### *Recommendation 10:*

*People should be protected from discrimination on the basis of an irrelevant criminal record or spent conviction. The protections should cover employment, education and learning, housing, buying things, access to services and public places, being a member of a club or association and government programs.*

#### Should there be any exceptions to these anti-discrimination protections?

The group agreed that there would need to be provisions in Equal Opportunity legislation to protect children and vulnerable people.

However, there was a concern among the group that people with the kinds of criminal records that should not disqualify them from being kinship carers are being unfairly discriminated against. Many Aboriginal people won't even put themselves forward as a carer because of fear and uncertainty surrounding the process.

The group considered that a balanced approach was required to address these issues. The risk posed by a kinship carer with a criminal record needs to be appropriately weighted, and balanced with the significant risk to a child of growing up without an Aboriginal family.

There is currently little legal recourse for people who feel they have been unfairly rejected as kinship carers because of an irrelevant criminal record. The proposed changes to Equal Opportunity legislation could potentially address this problem.

In addition, the group felt that more information and guidance about the process is needed for prospective kinship carers. There should be greater oversight of child protection authorities when they are considering kinship care applications, and more Aboriginal people should be involved in conducting the vetting process so that it feels culturally safe for kinship carer applicants.

Recently announced changes to Working With Children Check laws and kinship care will need to be considered in this context. Kinship care is now considered to be a type of child-related work and has been added as a specific occupational field, so kinship carers will be required to pass the Working With Children Check. For the purposes of the Working With Children Check, a person is engaged in kinship care if:

- the person is a family member or other person of significance to a child; and
- the child is or has been placed in the out of home care of that person under the *Children, Youth and Families Act 2005* (Vic). Out of home care in this context means care of a child by a person other than a parent of the child.

These new laws also allow any charges against a person for serious sexual, violent or drug offences to be considered as part of Working With Children Check assessments and re-assessments, even if the person has not been found guilty of those charges. These laws define the charges that can be taken into account to include:

- a charge that has been withdrawn;
- a charge that has been discontinued;
- a conviction that has been quashed on appeal;
- a charge that has led to an acquittal.

*Recommendation 11:*

*There should be limited exceptions to the proposed anti-discrimination protections.*

*These exceptions would make it lawful to discriminate against someone with a criminal record in the context of employment only if:*

- *the person's criminal record would make it impossible for them to fulfil the inherent requirements of the work; or*
- *the employment involved working with vulnerable persons, including children, elderly people, people with physical or intellectual disability or mental illness.*

*A balanced approach is required to address these issues and exceptions should be carefully drafted.*

*The risk posed by a kinship carer with a criminal record needs to be appropriately weighted, and balanced with the significant risk to a child of growing up without an Aboriginal family.*

## Endorsements

*Our priority at VACCA is to ensure that all Aboriginal children are safe and connected to their culture and community. Having a criminal record for minor offences without the ability to consider on merit spent convictions lessens the pool of available carers for our Aboriginal children making a poor situation worse. It also means restricting employment prospects in our sector for a number of Aboriginal people. Having a criminal record should not in itself be a reason for this additional disadvantage being borne by Aboriginal people. There has to be a sensible way through this that doesn't penalise the community further. A Spent Conviction Scheme is one way forward with additional measures to allow for improved screening.*

**Muriel Bamblett, CEO, VACCA**

*I echo the call for a spent conviction scheme to be introduced in Victoria. We know that Aboriginal women are the fastest growing prison population in Victoria and most women in our jails are victims/survivors of family violence. I want to see a time where Aboriginal women are no longer criminalised, driven by family violence into homelessness, prisons, and poverty. A spent conviction scheme could help make sure that when our women do get a criminal record it doesn't plague them for the rest of their lives. It could also help make sure that when our kids are forced into out-of-home care because of family violence they remain in the community with trusted kin – not sent to non-Aboriginal carers, suffering loss of culture and identity, simply because of old, irrelevant criminal records.*

**Antoinette Braybrook, CEO, Aboriginal Family Violence Prevention and Legal Service Victoria**

*Past criminal records for minor offences can have devastating and negative long term outcomes, we know racism and discrimination effects employment opportunities for our Mob. Introducing a spent convictions scheme in Victoria can make a real difference for the health and wellbeing of every Aboriginal person living in Victoria.*

**Jill Gallagher AO, CEO, VACCHO**

*The Koorie Youth Council acknowledges the important work and advocacy of Woor-Dungin. The introduction of a spent convictions scheme will provide Aboriginal & Torres Strait Islander people freedom from the restrictive stigma of criminal records. This provides an opportunity for healing and will help to build stronger Aboriginal & Torres Strait Islander communities within Victoria.*

**Indi Clarke, Manager, Koorie Youth Council**

*A spent conviction scheme is long awaited within the State of Victoria. Time and again we have seen our community members adversely affected by their past convictions in regards to employment, housing and general community interactions. We have had to bear witness to individuals feeling that they can never fully participate in community life because their convictions are what defines them. They have been convicted, they have served their penalty, they must be allowed to move on with their lives and a spent conviction scheme assists in this process.*

**Wayne Muir, CEO, Victorian Aboriginal Legal Service**

These recommendations for reform have been endorsed by a wide range of stakeholders to date, including the following organisations:

- Aboriginal Family Violence Prevention & Legal Service Victoria (FVPLS Victoria)
- Australian Community Foundation (ACF)
- Arnold Bloch Leibler (ABL)
- Barwon South West Regional Aboriginal Justice Advisory Committee (RAJAC)
- Bouverie Centre, including Indigenous Program, Latrobe University
- Central Gippsland Local Aboriginal Justice Action Committee (LAJAC)
- Centre for Innovative Justice (RMIT University)
- Connecting Home Ltd (Stolen Generations Service)
- David Yarrow Barrister at Law
- Dhauwurd-Wurrung Elders and Community Centre
- East Gippsland Local Aboriginal Justice Action Committee (LAJAC)
- Eastern Metro Regional Aboriginal Justice Advisory Committee (RAJAC)
- Federation of Community Legal Centres
- Fellowship for Indigenous Leadership
- Fitzroy Legal Service Inc.
- Flat Out Inc
- Gippsland Regional Aboriginal Justice Advisory Committee (RAJAC)
- Greg Thomas Barrister and Solicitor
- Healesville Indigenous Community Services Association (HICSA)
- Human Rights Law Centre (HRLC)
- Job Watch
- Koorie Youth Council
- Latrobe Law School
- Law Institute of Victoria (LIV)
- Liberty Victoria's Rights Advocacy Project
- Mallee District Aboriginal Service (MDAS)
- Mental Health Legal Centre
- Njernda Aboriginal Corporation
- Portland House Foundation
- Prison Songs Impact Campaign
- Reconciliation Victoria
- Reichstein Foundation
- Tarwirri Indigenous Law Students and Lawyers Association of Victoria
- The Torch Program
- Timothy Goodwin Barrister Victorian Bar
- Victorian Aboriginal Child Care Agency (VACCA)
- Victorian Aboriginal Community Services Association (VACSAL)
- Victorian Aboriginal Legal Service (VALS)
- Victorian Association for the Care and Resettlement of Offenders (VACRO)
- Weenthunga Health Network
- Western Metro Regional Aboriginal Justice Advisory Committee (RAJAC)
- Willum Warrain Aboriginal Association Gathering Place
- Winda Mara Aboriginal Corporation (WMAC)
- Woor-Dungin

*“...all these other deadly jobs would come up in government and the courts, like Koori Court Officer and you’re talking like three, four times what I get paid now. Elders and staff that sort of know the system [would] be like ‘No don’t because it’ll hurt getting the knock-back. You might get the job and then they’ll say...they won’t like your police check.’*

*“So I sort of stopped looking at those high-end jobs.”*

**‘Nikki’**

**Murri woman**



## Conclusion

The Criminal Record Discrimination Project was established to address calls from community for a response to the specific issues faced by Aboriginal people dealing with the lack of regulation of criminal records in Victoria.

While some may argue that the current approach to managing criminal record information is adequate, and that laws screening people out of certain roles strike the right balance in protecting the community from the risk represented by prior criminal conduct, it is clear that the absence of spent convictions legislation has both real and symbolic importance for Aboriginal Victorians.

In the absence of legislation, the release of criminal history in Victoria is based on the exercise of a broad and ill-defined discretion by Victoria police. The Victoria police information release policy is an uncertain and inconsistent means of managing such sensitive information. In the face of the growing use of such sensitive information and the serious consequences which attend its use, the Victoria police information release policy may increasingly be seen as insufficient.

As a statement of the Victorian community's commitment to supporting the ongoing and future self-determination of Aboriginal Victorians, and its faith in the capacity of individuals to learn from and overcome past mistakes, however, the information release policy is utterly inadequate.

Criminal records act as a *real* barrier to employment, kinship care, representational roles, and the development of an Aboriginal workforce equipped to deliver culturally appropriate services in many critical areas. These are all opportunities that are fundamental to self-determination for Aboriginal Victorians. Criminal records are a *symbolic* barrier because they are an enduring reminder to Aboriginal people of the impacts of colonisation and intergenerational trauma and disadvantage, which in turn has ongoing effects for Aboriginal people, families and communities. Both of these barriers could be overcome if the recommendations in this submission are adopted.

Many Victorian government policies in relation to Aboriginal Victorians align with these recommendations, highlighting a disconnect with a range of poor outcomes that inaction in this area contribute to. Aboriginal employment and labour force participation rates are much lower than for non-Aboriginal Victorians. Meanwhile, efforts to advance the self-determination of Aboriginal Victorians are being undermined by the inability to confront the disproportionate impact that high rates of contact with the criminal justice system, and less access to diversionary options has on them. The twin solutions to this problem—a legislated spent convictions scheme and appropriate anti-discrimination protections—are well within the Victorian government's reach, and readily implementable. Continued failure to address these issues in the face of a united call for change from Aboriginal Victorians, moreover, risks diminishing the community's trust and confidence in broader reform initiatives.

This submission demonstrates the serious impacts on Aboriginal people and provides a clear set of recommendations to address these impacts. The recommendations have been developed by community through a careful consultation process. They have widespread support from a coalition of Aboriginal and non-Aboriginal organisations.

It is therefore recommended that the Aboriginal Justice Forum members brief ministers on the issues raised by this submission and the need for two critical reforms, a legislated spent convictions scheme and anti-discrimination protections, so that justice, health, social and economic outcomes can be improved for Aboriginal Victorians.

## Recommendation to the Aboriginal Justice Forum

The Criminal Record Discrimination Project asks that the Aboriginal Justice Forum:

- (a) **endorses** the need for the Victorian Government to commit to a legislated spent convictions scheme and amendments to the *Equal Opportunity Act 2010* (Vic) to provide protection from discrimination on the ground of irrelevant criminal record and spent convictions;
- (b) **notes** the 11 recommendations made in this submission, based on extensive consultation with Aboriginal people and organisations, and endorsed by Aboriginal and non-Aboriginal organisations, on the content of the legislated spent convictions scheme and *Equal Opportunity Act 2010* (Vic) amendments; and
- (c) **requests** that the Department of Justice and Regulation prepare a brief for relevant Ministers seeking a commitment to proceed with these reforms as a matter of urgency.

### **Recommendation 1:**

Victoria should introduce a legislated spent convictions scheme.

### **Recommendation 2:**

Sentences of up to 30 months' imprisonment should be capable of being spent.

There should also be a special provision that would enable offenders sentenced to more than 30 months' imprisonment to apply to have their conviction capable of being spent after the relevant waiting period. This application could be made at the time of sentencing or at a subsequent time.

### **Recommendation 3:**

Sexual offences should not be covered by the spent convictions scheme, except for certain sexual offences committed by the person as a child or young person.

The sexual offences capable of being spent would be based on the categories of sexual offences which do not prevent a person from obtaining a Working With Children Check.

### **Recommendation 4:**

Findings of guilt without conviction should be immediately spent. If the non-conviction sentence also included conditions, the sentence would be spent once the conditions were completed.

### **Recommendation 5:**

The issues raised by the Woor-Dungin consultation should be noted in determining the appropriate waiting period before a conviction becomes spent.

### **Recommendation 6:**

For 'minor offences' the waiting period should continue. For 'serious offences' the waiting period should restart from the date of conviction of the later offence. The Model Bill 2008 definition of minor offence should be adopted.

### **Recommendation 7:**

Offences should become spent automatically after the relevant waiting period.

### **Recommendation 8:**

It should be an offence for a person to disclose a spent conviction contrary to the provisions of the spent conviction scheme.

**Recommendation 9:**

The Equal Opportunity Act 2010 (Vic) should be amended to prohibit discrimination on the basis of an irrelevant criminal record and spent conviction.

**Recommendation 10:**

People should be protected from discrimination on the basis of an irrelevant criminal record or spent conviction. The protections should cover employment, education and learning, housing, buying things, access to services and public places, being a member of a club or association and government programs.

**Recommendation 11:**

There should be limited exceptions to the proposed anti-discrimination protections.

These exceptions would make it lawful to discriminate against someone with a criminal record in the context of employment only if:

- the person's criminal record would make it impossible for them to fulfil the inherent requirements of the work; or
- the employment involved working with vulnerable persons, including children, elderly people, people with physical or intellectual disability or mental illness.

A balanced approach is required to address these issues and exceptions should be carefully drafted. The risk posed by a kinship carer with a criminal record needs to be appropriately weighted, and balanced with the significant risk to a child of growing up without an Aboriginal family.

## List of Attachments

### Attachment A

Discussion paper and consultation paper.

### Attachment B

Victoria police Information Release Policy.

## List of Tables

*Table 1: Spent convictions schemes by state.*

*Table 2: Spent convictions proposals and policies.*

*Table 3: Protections against discrimination on the basis of 'irrelevant criminal record'.*

*Table 4: Protections against discrimination on the basis of 'spent conviction'.*

## Attachment A: Woor-Dungin Criminal Record Project Discussion Paper



# WOOR-DUNGIN

A New Partnership between Aboriginal Organisations and Philanthropy

### Criminal Record Discrimination Project Discussion Paper

***NB. This discussion paper was originally distributed 31 March 2017, with links to tables formulated prior to the CRDP Consultation held 4 April 2017. The tables now reflect CRDP's proposed position statements as developed during the Consultation***

Dear Colleagues,

Thank you for agreeing to participate in the consultation on 4 April.

Victoria is the only State in Australia that doesn't have a 'spent convictions' scheme. This means that even after 10 years, a crime can still show up on your criminal record check.

And Victoria's Equal Opportunity Act doesn't prevent employers discriminating against people because of a criminal record, even when the crime has nothing to do with the job or position they are applying for.

This means that some people find it difficult to move on with their lives. We think these laws need to be changed.

Woor-Dungin is working with others to make sure that issues for Aboriginal Victorians are fully understood by the Government and are part of the case for change.

I agreed to take on the role of Convenor of the Criminal Record Discrimination Project because access to suitable employment remains an ongoing issue for many Aboriginal people and the state of the law in Victoria is an additional barrier that prevents people getting jobs.

The Criminal Record Discrimination Project (CDRP) seeks to achieve two key reforms:

- (1) the introduction of a legislated spent convictions scheme in Victoria, and
- (2) an amendment to the *Equal Opportunity Act 2010* (Vic) to prohibit discrimination against people with an irrelevant criminal record.

We have heard from many Aboriginal people that they have faced discrimination in getting a job, getting insurance, being approved as a kinship carer, and serving on community or Government committees because they have a criminal record.

We have developed a set of fact sheets to help community understand their rights and are putting together some stories of people who have faced these problems.

The purpose of the consultation is to discuss the content of what needs to be included in a spent convictions scheme and anti-discrimination legislation.

This discussion paper has been prepared to provide you with background information to inform you about the legislation in other states and territories and also how the current legislation impacts community in Victoria.

NATSILS introduced us to Aboriginal Legal Services in other states and Stan Winford spoke to staff to find out whether there are advantages or disadvantages of the schemes in different jurisdictions, from the experience of Aboriginal communities, which we could highlight in our advocacy.

The discussion paper contains feedback and quotes from interstate Aboriginal Legal Services on some of the pros and cons of the legislation in their jurisdiction and what advice, if any, they have for us in Victoria.

It also contains feedback from services in Victoria about how the current situation negatively impacts on Aboriginal people in Victoria.

Following the consultation, a position paper will be developed outlining the draft content of a spent convictions scheme and a draft amendment to the Equal Opportunity Act.

We will seek endorsement from key stakeholders and once obtained, these will be included as recommendations for reform in a report to be tabled at an Aboriginal Justice Forum, later in the year.

The report will also contain several of the stories we have collected and will outline how the current legislation in Victoria is a barrier to achieving economic reform, self-determination and does nothing to stem rising rates of Aboriginal incarceration.

Thank you



Michael Bell

Convenor, Criminal Record Discrimination Project Advisory Committee

Chief Executive Officer, Winda-Mara Aboriginal Corporation

## Woor-Dungin

Ten years ago, Woor-Dungin was established by Aboriginal and non-Aboriginal women to increase the philanthropic investment in Aboriginal community-controlled organisations. Together, we developed a framework for reconciliation based on strong, trusting relationships.

In 2009, we received funding to pilot this framework – the Aboriginal Partnership Program – and together commenced work on realising our mission: to increase resources, build strong partnerships and share knowledge to fulfil the purpose of Aboriginal and Torres Strait Islander organisations.

Our current partners and alumni are:

- Mallee District Aboriginal Services;
- Winda-Mara Aboriginal Corporation;
- Willum Warrain Aboriginal Association;
- Njernda Aboriginal Corporation;
- Healesville Indigenous Community Services Association;
- ILBIJERRI Theatre Company.

Our direct work with our Aboriginal partners informs our advocacy, program and policy development. Maintaining culture, securing resources and employment (recruit, retain and obtain jobs for community) are our partners' identified priorities. In response, we run the following programs:

1. **Income Generation and Resources Group** sessions, to assist in accessing philanthropic funding and pro bono resources, including skilled volunteers;
2. **Maarni Aboriginal Women's Leadership Program**;
3. **Aboriginal Community Worker Support Program**, to support staff and board members;
4. **Respectful Relationships**, a program which advocates for philanthropy and Aboriginal organisations to take the time to develop genuine relationships;
5. **Criminal Record Discrimination Project (CRDP)**.

The CRDP commenced in 2015 in response to the current legislation which negatively and disproportionately impacts on Aboriginal people seeking employment, particularly in rural Victoria. An advisory committee, convened by Michael Bell and comprising 56 stakeholders oversaw the development of a set of fact sheets covering:

- Criminal records in Victoria
- Employment
- Appointment to government advisory committees
- Appointment to community boards of management
- Insurance
- Kinship care
- Recording a non-conviction in the Magistrates' Court
- Enduring Powers of Attorney

Aboriginal people who have experienced discrimination based on their criminal histories are being interviewed and their case studies included in a submission for reform to be presented at an Aboriginal Justice forum.

## **Criminal Record Discrimination Project - Discussion paper<sup>1</sup>**

This discussion paper has been prepared to support a consultation process with community in Victoria about the need for a spent convictions scheme, and legislation to protect people from discrimination based on irrelevant criminal records.

Victoria is the only state or territory in Australia without a spent conviction scheme, and one of several states without equal opportunity protection for people with criminal histories.

This discussion paper contains feedback from community and stakeholders about how the lack of legislative protection affects Aboriginal people in Victoria, and their views about the need for change.

This discussion paper includes information about spent conviction schemes and equal opportunity protections in each Australian state and territory. Aboriginal Legal Services told us about the issues we should be aware of in Victoria, based on the experience of Aboriginal people with these laws in their jurisdictions.

This discussion paper also includes proposals for reform that will be considered as part of the consultation process.

The consultation process will seek the views of community on the best approach in Victoria, which will inform the development of a position paper by Woor-Dungin.

Woor-Dungin will seek support and endorsement for the model for reform outlined in the position paper in a report to be tabled at an Aboriginal Justice Forum later this year.

## **Background**

### **What are spent convictions schemes?**

Spent convictions schemes allow people not to disclose old convictions, when they were for minor offences and where a 'waiting period' (often 10 years) has passed.

Most spent convictions schemes don't cover sexual offences, and many laws override them to require disclosure of old convictions in order to protect children or vulnerable people.

### **How do laws in other states protect people from discrimination because of their criminal history?**

Anti-discrimination legislation can state that employers are not permitted to discriminate against someone when offering them a job, where the person has a criminal record for an offence that is 'irrelevant' to the job for which they are being employed.

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<sup>1</sup> This discussion paper was prepared by Stan Winford, Associate Director of RMIT University's Centre for Innovative Justice on behalf of Woor-Dungin with the support of Christa Momot and Professor Bronwyn Naylor.



There are exceptions to these laws designed to protect children or vulnerable people.

### **Do other States and Territories in Australia have spent convictions schemes?**

Every State and Territory in Australia, as well as the Commonwealth, has a spent convictions scheme. Victoria is the only jurisdiction in Australia without a spent convictions scheme.

### **Do other States and Territories have anti-discrimination protections?**

The Commonwealth, Tasmania, the Northern Territory, Western Australia, and the Australian Capital Territory all provide a process for people to make a complaint about discrimination on the basis of their criminal records or spent convictions.

The Commonwealth, Tasmania and the Northern Territory have legislated protections against discrimination on the basis of 'irrelevant criminal record'.

Western Australia and the Australian Capital Territory have legislated protections against discrimination on the basis of 'spent convictions'.

### **What are the differences in the spent convictions schemes in operation across Australia?**

Australian spent convictions schemes have many similarities, but there are some differences.

[Table 1: Spent convictions schemes by state](#) summarises the content of each scheme in operation across Australia. It compares the following provisions in each spent conviction scheme:

- Which sentences are capable of being spent
- Which offences are not covered by the scheme
- What happens to findings of guilt where no conviction is recorded ('non-convictions')
- How long the waiting period is before a conviction becomes spent
- What happens if the person re-offends during the waiting period
- The process whereby the conviction becomes spent

A copy of *Table 1* is attached to this discussion paper in electronic form (follow the link above). Copies will be available at the consultation.

### **What are the differences in the anti-discrimination schemes in operation across Australia?**

[Table 3: Protections against discrimination on the basis of 'irrelevant criminal record'](#) and [Table 4: Protections against discrimination on the basis of 'spent conviction'](#) summarises the content of these schemes in relation to various activities including:

- Employment
- Education and training
- Housing
- Buying things, access to services, and access to public places
- Being a member of a club or association
- Government programs

These tables also compare exceptions to these rules where, for example, it will be lawful to discriminate against someone because of their criminal history or spent conviction. These exceptions include where a person's criminal record means that they cannot do the things the job requires them to do, or working with children or vulnerable people.

Copies of *Table 3* and *Table 4* are attached to this discussion paper in electronic form (follow the links above). Copies will be available at the consultation.

### **What do Aboriginal Legal Services think about the operation of these schemes in their State or Territory?**

Aboriginal Legal Services in other jurisdictions consulted overwhelmingly recommended that Victoria adopt spent convictions legislation and anti-discrimination measures.

*This type of legislation is very worthwhile. It should play an important role. It will definitely help some people.<sup>2</sup>*

One legal service consulted said 'you have a chance of setting up the best model in Victoria', and felt that even though there were some problems with the schemes, Victoria would have an opportunity to 'make them do the job they are supposed to do' for Aboriginal people.

Jurisdictions that did not have anti-discrimination measures believed that the effect of spent convictions schemes were undermined and unenforceable without them. They suggested that it was important to have greater protection from the unlawful disclosure of criminal records.

All Aboriginal Legal Services consulted felt that the spent convictions schemes in their jurisdictions were not benefitting their clients as much as they should, for a range of reasons.

A common view was that because Aboriginal people are over-policed and over-incarcerated, and tend to receive longer sentences than non-Aboriginal people, fewer Aboriginal people would meet the relatively short sentence-length criteria for convictions to become eligible to be spent, or to avoid re-offending within the relatively lengthy waiting time prescribed by spent convictions schemes. For example, one legal service commented:

*I think our scheme is fairly attractive, but it's of little benefit to our clients. Our people don't fit into it. Most have racked up a lot of convictions and get longer sentences than would fit within the scheme. This type of scheme assists people who are putting themselves up for employment and so on, but they're not the kinds of people we generally act for. A lot of our clients are coming from a long way back.<sup>3</sup>*

Many legal services suggested that consideration be given to shortening the offence-free waiting period of 10 years for adult offenders, to recognise that it was rarely achievable for their clients.

All Aboriginal legal services consulted agreed that their schemes were under-utilised because there were very low levels of awareness of them amongst their clients, and in many cases, their own staff. All consulted indicated that they believed that more needed to be done to raise awareness of these

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<sup>2</sup> Glen Dooley, Central Australian Aboriginal Legal Aid Service (NT), 22 March 2017.

<sup>3</sup> Glen Dooley, Central Australian Aboriginal Legal Aid Service (NT), 22 March 2017.

schemes and that this might lead to greater utilisation of them by Aboriginal people. Some of the suggestions for increasing knowledge and utilisation of these schemes included a greater focus on education including community legal education programs and promoting the schemes through the media.

Aboriginal legal services consulted felt that there were some shortcomings with their legislation. Many, particularly those without anti-discrimination protections, felt that their legislation was not enforceable. They felt that it needed to be backed up by other protections such as penalties for unauthorised disclosure of a spent conviction, and greater enforcement. Some also felt that the legislation designed to prevent disclosure of criminal records was undermined by various other pieces of legislation that required disclosure. Some felt that their legislation wasn't as clear as it could be, and more guidance needed to be provided about things such as the relevance of a conviction in different contexts so that people could be clearer about disclosure obligations or prohibitions.

When asked whether these measures were important for Aboriginal people, one legal service commented:

*They're seriously disadvantaged. ... They're disadvantaged because of their culture of apathy towards some of these things ... they're ashamed and shy ... they wait until the drama is over. They wait until permission has been given ... That works against them. Then there's their literacy levels. The whole mainstream system works against them. And there's still racial profiling, racial discrimination and racism.<sup>4</sup>*

Other legal services noted that Aboriginal people felt a great deal of shame about offending and that young people simply wouldn't apply for employment if they were worried about a prior conviction coming up. Another service gave the example of a working with children checking system which requires people to explain even *irrelevant* spent convictions if they want to be kinship carers:

*Because they have to speak to the Blue Card, because of the cultural issues, literacy issues and so on, they're just not equipped to. And so they don't. And that's just about an irrelevant spent conviction! It's crazy, just crazy. This happens often. It's leading to the second Stolen Generation.<sup>5</sup>*

When asked whether Victoria should establish a spent convictions scheme and protection from discrimination on the grounds of irrelevant criminal record, legal services were overwhelmingly supportive, and felt that the benefits of such schemes could be much broader than first thought. They felt that these schemes were beneficial:

*Because spent convictions assist in providing opportunities for employment; due to the Aboriginal population having much greater rates of imprisonment. Having a conviction is a barrier to employment. This means that the effect is that Aboriginal people aren't in employment, and their lower socio-economic outcomes and loss of opportunities leads to a vicious cycle.*

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<sup>4</sup> Ginny Rabeling, Aboriginal and Torres Strait Islander Legal Service (QLD), 24 March 2017.

<sup>5</sup> Ginny Rabeling, Aboriginal and Torres Strait Islander Legal Service (QLD), 24 March 2017.

*The direct effect of these schemes is employment [for Aboriginal people] but there are other benefits associated with employment, including well-being, resilience, education and freedom from poverty which can change a whole family, not just an individual and for the next generation it can have a huge spin off.<sup>6</sup>*

However, while recommending that Victoria introduce these schemes, some warned that:

*It's good legislation for some people, but if it's not really enforceable, it doesn't do what it's meant to do. You need to make sure that it can be enforced.<sup>7</sup>*

Finally, many legal services expressed surprise that Victoria didn't have either of these schemes, and noted that 'the human rights issues and the incarceration issues [for Aboriginal people in Victoria] make it really important'.

## **Context for previous attempts to reform Victorian spent convictions and equal opportunity laws and proposals for reform**

### **Campaigns and policy commitments**

In Victoria, there have been a number of campaigns and submissions calling for the introduction of a spent convictions scheme and anti-discrimination protections. These campaigns have not resulted in either reforms being legislated, but it is clear that these campaigns have influenced policy commitments and government consideration of these issues.

In recent years, the Victorian government has come close to legislating a spent convictions scheme and has also considered anti-discrimination reform. In 2009, the Bracks/Brumby Labor Government released an exposure draft spent convictions bill, based on a national uniform model bill that would have established a spent convictions scheme. At the time, Victoria and South Australia were the only two Australian states without such schemes. South Australia went on to enact spent convictions legislation based on the uniform model bill in 2009 but Victoria did not do so.

In 2010, Julian Gardner was commissioned by the Bracks/Brumby Labor Government to produce a report as part of a review of the Equal Opportunity Act. The Gardner report recommended that criminal records become a 'protected attribute' in the Equal Opportunity Act, that is, that it should be unlawful to discriminate against someone because of an irrelevant criminal record. In 2014, the Baillieu/Napthine Liberal Government went some way towards addressing criminal records reform by legislating to expunge historic gay sex offences from people's criminal records following a campaign by LGBTI groups.

Prior to the State election in November 2014, the then Labor opposition (now Andrews Labor Government) made a commitment to refer the matter of a spent convictions scheme to the Victorian Law Reform Commission if elected. This referral has not occurred within this term of government to date. The ALP policy platform prior to the election of the Andrews Labor Government in 2014 made a commitment to 'explore and consider' a spent convictions scheme. This

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<sup>6</sup> Amanda Lambden, Aboriginal Legal Rights Movement (SA), 24 March 2017.

<sup>7</sup> Ginny Rabeling, Aboriginal and Torres Strait Islander Legal Service (QLD), 24 March 2017.

commitment was repeated in media releases issued by the then Shadow, now Attorney-General, Martin Pakula MP.

Victorian community legal centres and other groups have been advocating for these reforms for some time. In 2004, the Fitzroy Legal Service, in conjunction with JobWatch, prepared a research paper on criminal record discrimination. The paper included information obtained through Freedom of Information legislation that indicated that hundreds of thousands of criminal record checks were being carried out, and that the practice of doing so was largely unregulated. The paper recommended the introduction of a spent convictions scheme and anti-discrimination protections. The research was presented to the Bracks Government. Fitzroy Legal Service also obtained funding to support a campaign designed to advocate the establishment of a spent conviction scheme to Government. As part of this a range of activities took place, including a forum with employer groups, academics and others, as well as a media campaign. In 2012, Fitzroy Legal Service produced the film “Off the record” which included interviews with people who had lived experience of the impact of having a criminal record.

### **Proposals for reform – spent convictions schemes**

In 2015, the Law Institute of Victoria provided a submission to Government recommending a spent convictions scheme and amendment to the Equal Opportunity Act. A copy of the Law Institute of Victoria 2015 submission is attached to this discussion paper.

[Table 2: Spent convictions proposals and policies](#) includes a summary of the Law Institute of Victoria’s proposal for a spent convictions scheme (as well as the Model Bill and the Victoria Police Information Release Policy).

A copy of *Table 2* is attached to this discussion paper in electronic form (follow the link above). Copies will be available at the consultation.

### **Proposals for reform – anti-discrimination protection**

In 2015, the Human Rights Law Centre, together with a range of legal and community organisations, unions and academics that assist people who experience discrimination, including Aboriginal and Torres Strait Islander people, made a submission to the Victorian government suggesting changes to the Equal Opportunity Act 2010. This submission included a call for the Equal Opportunity Act to be reformed so that ‘irrelevant criminal record’ was recognised as a ‘protected attribute’. The submission noted that:

*Individuals who are discriminated against based on an irrelevant criminal record currently have little legal recourse. People can experience discrimination during recruitment processes as a result of a criminal record from their early twenties during a very different period in their life. This can have unfair and devastating consequences for them and continues to marginalise and disenfranchise people who are often already experiencing disadvantage*

*Discrimination on the basis of criminal record is prohibited by the Australian Human Rights Commission Act 1986 (Cth), although there is no mechanism for enforcing this obligation.*

*It is also unlawful in the Northern Territory and Tasmania.*

*This amendment is consistent with the Labor Government's pledge that it will examine the merits of a spent and mistaken convictions regime in circumstances of non-violent and low-level convictions where no re-offending has occurred: 2014 ALP Platform, 67.*

[Table 3, Table 4 and Table 5](#) show how the Commonwealth, and other States and Territories in Australia have established protections against discrimination for people with criminal records.

Copies of these tables are attached to this discussion paper in electronic form (follow the link above). Copies will be available at the consultation.

## **Impact on community in Victoria**

The impact of the failure to legislate a spent convictions scheme in Victoria, or to provide protection from discrimination on the grounds of irrelevant criminal records, and the need for change are well recognised by community in Victoria.

*Past criminal records for minor offences can have devastating and negative long term outcomes, we know racism and discrimination effects employment opportunities for our Mob. Introducing a spent convictions scheme in Victoria can make a real difference for the health and wellbeing of every Aboriginal person living in Victoria.*

**Jill Gallagher AO, CEO, VACCHO.**

*I echo the call for a spent conviction scheme to be introduced in Victoria. We know that Aboriginal women are the fastest growing prison population in Victoria and most women in our jails are victims/survivors of family violence. I want to see a time where Aboriginal women are no longer criminalised, driven by family violence into homelessness, prisons, and poverty. A spent conviction scheme could help make sure that when our women do get a criminal record it doesn't plague them for the rest of their lives. It could also help make sure that when our kids are forced into out-of-home care because of family violence they remain in the community with trusted kin – not sent to non-Aboriginal carers, suffering loss of culture and identity, simply because of old, irrelevant criminal records.*

**Antoinette Braybrook, CEO, Aboriginal Family Violence Prevention and Legal Service Victoria.**

*A spent conviction scheme is long awaited within the State of Victoria. Time and again we have seen our community members adversely affected by their past convictions in regards to employment, housing and general community interactions. We have had to bear witness to individuals feeling that they can never fully participate in community life because their convictions are what defines them. They have been convicted, they have served their penalty, they must be allowed to move on with their lives and a spent conviction scheme assists in this process.*

**Wayne Muir, CEO, Victorian Aboriginal Legal Service.**

*The Koorie Youth Council acknowledges the important work and advocacy of Woor-Dungin. The introduction of a spent convictions scheme will provide Aboriginal & Torres Strait Islander people freedom from the restrictive stigma of criminal records. This provides an opportunity for healing and will help to build stronger Aboriginal & Torres Strait Islander communities within Victoria.*

**Indi Clarke, Manager, Koorie Youth Council.**

*Our priority at VACCA is to ensure that all Aboriginal children are safe and connected to their culture and community. Having a criminal record for minor offences without the ability to consider on merit spent convictions lessens the pool of available carers for our Aboriginal children making a poor situation worse. It also means restricting employment prospects in our sector for a number of Aboriginal people. Having a criminal record should not in itself be a reason for this additional disadvantage being borne by Aboriginal people. There has to be a sensible way through this that doesn't penalise the community further. A Spent Conviction Scheme is one way forward with additional measures to allow for improved screening.*

**Muriel Bamblett, CEO, VACCA.**

*Our ground-breaking work with Woor-Dungin in the Criminal Record Discrimination Project aims to quantify the impacts of Victoria's current discrimination laws, which state it is not unlawful to discriminate against someone on the basis of their criminal record.*

*The work under the CRDP is allowing us to develop a sound research base and document case studies. We expect this work to create the foundation for a more constructive approach in future and potentially to make a case for law reform. MDAS is committed to community development and change through building bridges, creating partnerships and developing strong and trusting relationships and the CRDP project is supporting these values and aims.*

**Rudolph Kirby, CEO, Mallee District Aboriginal Services.**

*We live in a time where law and order, is for want of a better term, a black and white thing. There is no room for the grey area of "in the middle". If you have a criminal conviction, you are a criminal. If you have a record, you must have done something wrong. There will be those who don't want to listen to this because it is a law and order issue, and that's where it gets tough, but equally there are those who want to do something about it.*

**Ian Hamm, Woor-Dungin Member and Chair, Connecting Home.**

*The issue that the Criminal Record Discrimination Project targets is significant. The disparity in employment for Aboriginal peoples is well documented. The over-representation of Indigenous peoples in custody is also well known. I believe this project is an essential step in assisting Aboriginal community members who have had contact with the justice system to re-enter community life and find stable employment.*

*Woor-Dungin is perfectly placed to deliver the project due to its strong community ties and Aboriginal membership base, and increasing credibility with Victorian Aboriginal communities. Not only does Woor-Dungin have the necessary networks to identify case*

*studies for the project, it has the trust of its partner organisations to deal sensitively and culturally appropriately with the persons who provide those case studies.*

**Tim Goodwin, Woor-Dungin Member and Barrister**

## **Questions for consultation**

This discussion paper has been prepared to support a consultation process with community in Victoria about the need for a spent convictions scheme, and legislation to protect people from discrimination because of irrelevant criminal records.

To guide the consultation process, these questions will be considered:

- (1) Should Victoria establish a legislated spent convictions scheme? If so, what should be the key features of a Victorian spent convictions scheme?
- (2) Should the *Equal Opportunity Act 2010* (Vic) be amended to prohibit discrimination against people on the basis of an irrelevant criminal record? If so, how should the Act be amended?

The attached tables comparing the proposals for reform will also help guide a more detailed consideration of the elements of any model community supports. This detailed consideration includes questions highlighted by the tables, such as:

- Which sentences should be capable of being spent?
- Which offences should not be covered by the scheme?
- What happens to findings of guilt where no conviction is recorded ('non-convictions')?
- How long should the waiting period be before a conviction becomes spent?
- What should happen if the person re-offends during the waiting period?
- Should the conviction become spent automatically?
- Should there be penalties for disclosing a spent conviction?
- What activities should be protected from discrimination on the basis of irrelevant criminal record or spent convictions?
- Should there be any exceptions to these anti-discrimination protections?

The consultation will also address issues with the operation of existing schemes highlighted by Aboriginal Legal Services across Australia.





## INFORMATION RELEASE POLICY

### Introduction

Victoria Police applies strict guidelines to the release of criminal history information to individuals and organisations outside Victoria Police. This information sheet sets out the general provisions of the release policy that Victoria Police applies when police records checks are conducted for the purposes of employment, occupation related licensing or registration and for voluntary work. This policy does not apply to release of information by Victoria Police to other police forces and organisations with responsibility for law enforcement or the administration of justices.

### Consent

Victoria Police does not release criminal history information to any organisation outside the sphere of law enforcement and/or the administration of justice without the individual's written consent. In order to obtain a national police certificate an individual must complete the appropriate application form, called 'Consent to Check and Release National Police Record ' and pay a fee.

### What will be released

Victoria Police release criminal history information on the basis of findings of guilt at court, and will also release details of matters currently under investigation or awaiting court hearing. It is important to note that a finding of guilt without conviction is still a finding of guilt and will be released according to the information release policy. Victoria Police release police records in accordance with any or all of the following guidelines:

- If the individual was an adult (eighteen years\* or over) when last **found guilty** of an offence and ten years have since elapsed, subject to exceptions listed below, no details of previous offences will be released.
- If the individual was a child (under eighteen years\*) when last **found guilty** of an offence and five years have since elapsed, subject to exceptions listed below, no details of previous offences will be released. (Note: Court Orders on care/protection applications will not be released regardless of the age of the order).
- If the last finding of guilt resulted in a non-custodial sentence or custodial sentence of 30 months or less, the ten or five year period commences from the day the individual was found guilty.

### PUBLIC ENQUIRY SERVICE

Victoria Police Centre,  
637 Flinders Street,  
Melbourne Victoria 3005

Information Line: 1300 881 596  
Internet: [www.police.vic.gov.au](http://www.police.vic.gov.au)  
E-mail: [policecheckvic@police.vic.gov.au](mailto:policecheckvic@police.vic.gov.au)  
Mail: GPO Box 919, Melbourne Victoria  
3001

Revised 09/17

- If the last finding of guilt is an appeal or re-hearing, the ten or five year period will be calculated from the original court date.
- If the last offence qualifies to be released, then **all** findings of guilt will be released, including juvenile offences.
- If the record contains an offence that resulted in a custodial sentence of **longer than 30 months** the offence will always be released.
- If 10 years have elapsed since the last finding of guilt, then only the offence(s) that resulted in a custodial sentence of **longer than 30 months** will be released.
- If the individual is currently under investigation or has been charged with an offence and is awaiting the final court outcome the pending matters/charges are released. It is noted on the certificate that the matter/charge cannot be regarded as a finding of guilt as either the matter is currently under investigation or the charge has not yet been determined by a court.

Please Note: Findings of guilt without conviction and findings of guilt resulting in a good behaviour bond are findings of guilt and will be released under this policy.

### Exceptions

There are some other circumstances where a record that is over ten years old will be released, these are:

1. If the record check is for the purpose of :-
  - Registration with a child-screening unit and/or Victorian Institute of Teaching
  - Assisted Reproductive Treatment (Act 2008)
  - Registration and accreditation of health professionals
  - Employment or contact with prisons or state or territory police forces
  - Casino or Gaming Licence
  - Prostitution Service Provider's Licence (Prostitution Control Act 1994)
  - Operator Accreditation under the Bus Safety Act (2009)
  - Private Security Licence (Private Security Amendment Act 2010)
  - Taxi Services Commission (Transport, Compliance & Miscellaneous Act 1983 & Road Safety Act 1986)
  - Firearms Licence (Firearms Act 1996)
  - Admission to legal profession (Legal Profession Act 2004)
  - Independent Broad-based Anti-Corruption Commission (IBAC)
  - Poppy Industry (Drugs, Poisons and Controlled Substance Act 1981)
  - Honorary Justice (The Honorary Justices Act 2014)
  - Marriage Celebrants Registration
  - Court Services Victoria
  - Immigration (Migration Act 1958)
  - Office of the Victorian Information Commissioner (Privacy and Data Protection Act 2014)
2. If the record includes a serious offence of violence or a sex offence and the records check is for the purposes of employment or voluntary work with children or vulnerable people.
3. In circumstances where the release of information is considered to be in the interests of security, crime prevention or the administration of justice and/or otherwise necessary for the proper, legal or statutory assessment of an applicant.

4. Victoria Police will release traffic offences where the court outcome was a sentence of imprisonment or detention.
5. Serious Offences where the result was 'Acquitted by reason of insanity/mental impairment' or 'Not guilty by reason of insanity/mental impairment'.

### **Police Records Obtained in Other Australian Police Jurisdictions**

Victoria Police conducts national police record checks. If information is obtained from other police jurisdictions the relevant legislation/policy is applied by that jurisdiction before it is released. In relation to legislation/policy applied by states or territories other than Victoria, please refer to the relevant police jurisdiction's website for more information.

### **Information on a National Police Certificate**

The use and retention of the information contained on the National Police Certificate may be subject to State or Commonwealth legislation. The recipient is therefore urged to make their own enquiries with respect to any applicable legislative obligations or requirements.

Applicants who dispute information recorded on the National Police Certificate should write to the Manager, Public Enquiry Service, Victoria Police, GPO Box 919 Melbourne, Victoria 3001. Applicants should be prepared to provide comparison fingerprints. No fee will be charged for taking comparison fingerprints. Fingerprints will be destroyed by Public Enquiry Service, Victoria Police upon resolution of the dispute.

### **Transgender People**

People in the community that require further information in relation to the policy for processing applications for transgender applicants should contact our information line on 1300 881 596.

### **Privacy Statement**

Public Enquiry Service is committed to maintaining the privacy of the personal information that it collects, stores, uses and discloses, and adheres to strict privacy and confidentiality policies. Personal information is treated in accordance with the Privacy and Data Protection Act 2014. An individual may gain access to their information by making an application through the Victoria Police, Freedom of Information Unit. For further information go to [www.foi.vic.gov.au](http://www.foi.vic.gov.au)

\* The age jurisdiction of Criminal Division of the Children's Court was increased on the 1<sup>st</sup> of July 2005 in accordance with the Children and Young Persons (Age Jurisdiction) Act 2004. This amendment is not retrospective and offences committed prior to this date will be released in accordance with the previous age jurisdiction of 17 years (revised02/06).

**Table 1: Spent convictions schemes by state**

	Which sentences are capable of being spent?	Which offences are not covered?	What happens to findings of guilt with no conviction recorded ('non-convictions')?	How long is the waiting period?	What if the person reoffends during the waiting period?	How does the conviction become spent?
<b>CTH -</b> <i>Crimes Act 1914</i>	≤ 30 months (2.5 years) imprisonment <b>s 85ZM(2)</b>		Treated like convictions <b>ss 85ZL, 85ZM</b>	<u>Adult</u> : 10 years; <u>Child</u> : 5 years from the date of conviction <b>s 85ZL</b>	<u>Minor offence</u> : waiting period restarts (except for Cth, NT, or ACT offences – continues unless restarted by court order) <b>ss 86ZX(1), 85ZY, 85ZM(1)</b> <u>Serious offence</u> : waiting period restarts from date of conviction of that offence <b>ss 85ZX(2), 85ZY</b>	Automatic at end of waiting period <b>s 85ZV</b>
<b>TAS -</b> <i>Annulled Convictions Act 2003</i>	≤ 6 months imprisonment <b>ss 3(1), 6</b>	Sexual offences <b>s 3(1)</b>	Treated like convictions <b>ss 3(2), 6</b>	<u>Adult</u> : 10 years; <u>Child</u> : 5 years from the date of conviction <b>s 6(2)</b>	<u>Minor offence</u> : waiting period continues <b>s 6(3)</b> <u>Serious offence</u> : waiting period continues if: - Traffic + non-traffic offence <b>s 7</b> - Non traffic + traffic offence (but not drink driving, reckless driving, dangerous driving causing harm or death) <b>s 7</b> Otherwise, waiting period restarts from date of conviction of later offence <b>s 6</b>	Automatic at end of waiting period <b>s 6</b>
<b>NT -</b> <i>Criminal Records (Spent Convictions) Act 1992</i>	≤ 6 months imprisonment <b>s 6</b>	Sexual offences <b>s 5</b>	Immediately spent <b>s 7</b>  UNLESS the sentence had conditions, then after conditions met <b>s 7(2)-(4)</b>	<u>Adult</u> : 10 years; <u>Child</u> : 5 years date of conviction, unless a sentence of imprisonment was imposed, when it runs from the end of the period of imprisonment <b>ss 6, 6A</b>	<u>Minor offence</u> : waiting period continues <b>s 6</b> <u>Serious offence</u> : waiting period continues if: - Traffic + non-traffic offence <b>s 6(4)</b> - Non traffic + traffic offence (but not drink driving, reckless driving, dangerous driving causing harm or death) <b>s 6(3)</b> Otherwise, waiting period restarts from date of conviction of later offence <b>ss 6, 10</b>	<u>Adults/Children convicted in Juvenile Court</u> : Automatic at end of waiting period <b>s 6</b>  <u>Children convicted in adult court</u> : Apply to the Police Commissioner. Commissioner must approve if waiting period has ended <b>s 6A</b>
<b>NSW -</b> <i>Criminal Records Act 1991</i>	≤ 6 months imprisonment <b>s 7(1)</b>	Sexual offences <b>s 7(1)</b>	Immediately spent <b>ss 5, 8(2)-(3)</b>  UNLESS the sentence had conditions, then after conditions met e.g. good behaviour bond complete <b>s 8(4)</b>	<u>Adult</u> : 10 years; <u>Child</u> : 3 years date of conviction, unless a sentence of imprisonment was imposed, when it runs from the end of the period of imprisonment <b>ss 9, 10</b>	<u>Minor offence</u> : waiting period continues <b>ss 9,10</b> <u>Serious offence</u> : waiting period continues if: - Traffic + non-traffic offence <b>s 11</b> - Non traffic + traffic offence (but not drink driving, reckless driving, dangerous driving causing harm or death) <b>s 11</b> Otherwise, waiting period restarts from date of conviction of later offence, or end of the sentence (if later) <b>ss 9,10</b>	Automatic at end of waiting period <b>s 8</b>
<b>QLD -</b> <i>Criminal Law (Rehabilitation of Offenders) Act 1986</i>	≤ 30 months (2.5 years) imprisonment <b>s 3(2)</b>		Non convictions are not covered by the scheme at all <b>Penalties and Sentences Act 1992 (QLD) s 12</b>  QLD Police Policy is not to release them on police checks	<u>Adult</u> : 10 years; <u>Child</u> : 5 years from the date of conviction <b>s 3(1)</b>  If sentenced on condition, the condition must be met before waiting period can end <b>s 3(1)</b>	<u>Minor offence</u> : waiting period continues (unless restarted by court order) <b>s 11(2)</b> <u>Serious offence</u> : waiting period restarts from the date of conviction of the later offence <b>s 11</b>	Automatic at end of waiting period <b>s 6</b>

Please note: These tables are summaries only and should not be regarded as providing legal advice

**Table 1: Spent convictions schemes by state**

	Which sentences are capable of being spent?	Which offences are not covered?	What happens to findings of guilt with no conviction recorded ('non-convictions')?	How long is the waiting period?	What if the person reoffends during the waiting period?	How does the conviction become spent?
<b>ACT - Spent Convictions Act 2000</b>	≤ 6 months imprisonment <b>s 11</b>	Sexual offences <b>s 11</b>	Immediately spent <b>ss 6,12</b>  UNLESS the sentence had conditions, then after conditions met <b>s 12</b>	<u>Adult</u> : 10 years; <u>Child</u> : 5 years from the date of conviction, unless a sentence of imprisonment was imposed, when it runs from the end of the period of imprisonment <b>s 13</b>	<u>Minor offence</u> : waiting period continues unless restarted by court order <b>s 13</b> <b>s 15(2)(a)</b> <u>Serious offence</u> : waiting period continues if: - Traffic + non-traffic offence <b>s 14</b> - Non traffic + traffic offence (but not culpable driving, drink driving, negligent driving causing death or injury) <b>s 14</b> Otherwise, waiting period restarts from date of conviction of later offence, or end of the sentence (if later) <b>s 15(2)(b)</b>	Automatic at end of waiting period <b>s 12</b>
<b>WA - Spent Convictions Act 1988; Young Offenders Act 1994</b>	< Life imprisonment <b>s 4(2)</b> But length of sentence is a relevant factor <b>ss 6,7</b>	Child: Murder, attempt to murder, manslaughter <b>Young Offenders Act 1994 (WA) s 189</b>	Judges do not make non-conviction orders.  But can immediately spend convictions for minor, trivial offences where offender is of good character = Spent convictions order <b>Sentencing Act 1995 (WA) ss 39(2), 45</b>	<u>Adult</u> : 10 years; 3 years for some cannabis offences from the end of the sentence, regardless of time actually served <b>s 11</b>  <u>Child</u> : 2 years From the date of conviction unless sentenced on condition, then condition must be met before waiting period can start <b>Young Offenders Act 1994 (WA) s 189</b>	<u>Minor offences</u> : waiting period continues <b>s 3(1)</b> <u>Serious offences</u> : waiting period restarts from the date of conviction of the later offence <b>s 11(5)</b>	<u>Lesser convictions (&lt; 12 months imprisonment)</u> : apply to the Commissioner of Police. Commissioner must approve if waiting period has ended <b>s 7</b> <u>Serious convictions (&gt; 12 months imprisonment or a fine of \$15,000+)</u> : apply to District Court. Judge has discretion <b>s 6</b>
<b>SA - Spent Convictions Act 2009 (SA)</b>	≤ 12 months imprisonment (adults)  ≤ 24 months (2 years) detention (child) <b>ss 3, 5</b>	Some sexual offences <b>ss 3,5, 8A</b>	Immediately spent <b>ss 3(5), 4(1a)</b>	<u>Adult</u> : 10 years; <u>Child</u> : 5 years from the date of conviction <b>s 7(1)</b>  Exceptions for child sex offenders <b>s 7(3)</b> ; <b>Child Sex Offenders Registration Act 2006 (SA) s 34</b>	<u>Minor offences</u> : waiting period continues <b>ss 3, 7(4)</b> <u>Serious offences</u> : waiting period restarts from the date of conviction of the later offence <b>s 7</b>	Automatic at end of waiting period <b>s 8</b>  <u>Some sexual offences</u> Apply to a magistrate after the waiting period has ended. Judge has discretion <b>ss 3, 5 8A</b>

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**Table 2: Spent convictions proposals and policies. The CRDP proposal was added following the consultation on 4 April 2017**

	Which sentences are capable of being spent?	Which offences are not covered?	What happens to findings of guilt with no conviction recorded ('non-convictions')?	How long is the waiting period?	What if the person reoffends during the waiting period?	How does the conviction become spent?
<b>Model Bill 2008</b>	<p>≤ 12 months imprisonment (adults)</p> <p>≤ 24 months (2 years) detention (child) <b>cl 3, 5</b></p>	Option to exclude all sexual offences <b>cl 5(2)(b)</b>	Treated like convictions <b>cl 3,7</b>	<p><u>Adult</u>: 10 years; <u>Child</u>: 5 years from the date of conviction <b>cl 7</b></p> <p>Exceptions for child sex offenders <b>cl 7; Child Sex Offenders Registration Act 2006 (SA) s 34</b></p>	<p><u>Minor offences</u>: waiting period continues <b>cl 3, 7(4)</b></p> <p><u>Serious offences</u>: waiting period restarts from the date of conviction of the later offence. <b>cl 7</b></p>	Automatic at end of waiting period <b>cl 8</b>
<b>LIV Proposal 2015</b>	≤ 30 months (2.5 years) imprisonment <b>Rec 3</b>	Sexual offences <b>Rec 3</b>	<p>Immediately spent <b>Rec 2</b></p> <p>UNLESS the sentence had conditions, then after conditions met e.g. good behaviour bond complete <b>Rec 2</b></p>	<u>Adult</u> : 10 years; <u>Child</u> : 3 years from the date of conviction <b>Recs 4, 5</b>	No recommendation	Automatic at end of waiting period <b>Rec 5</b>
<b>Vic Police Information Release Policy April 2016</b>	≤ 30 months (2.5 years) imprisonment	Many exceptions based on offences and employment	Treated like convictions	<u>Adult</u> : 10 years; <u>Child</u> : 5 years from date of conviction	At discretion of Victoria Police based on the Policy	At discretion of Victoria Police based on the Policy
<b>CRDP Proposal 2017</b>	≤ 30 months (2.5 years) imprisonment, with provisions for longer sentences to be spent in special circumstances.	Sexual offences, except for some committed by children and young people. See position paper for details.	<p>Immediately spent</p> <p>UNLESS the sentence had conditions, then after conditions met e.g. good behaviour bond complete.</p>	Consultation participants noted the issues associated with the determining the appropriate waiting period before a conviction becomes spent. A position on the length of the waiting period before a conviction becomes spent was not determined during the consultation.	<p><u>Minor offences</u>: waiting period continues</p> <p><u>Serious offences</u>: waiting period restarts from the date of conviction of the later offence.</p> <p><b>For definitions, see position paper</b></p>	Automatic at end of waiting period

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**Table 3: Protections against discrimination on the basis of ‘irrelevant criminal record’. The CRDP proposal was added following the consultation on 4 April 2017**

	Employment	Education and learning	Housing	Buying things, access to services and public places	Being a member of a club or association	Government programs	Exceptions
<b>CTH</b> - <i>Australian Human Rights Commission Act 1986</i> ; Australian Human Rights Commission Regulations 1989	Yes <b>s 3(1) reg 4(a)(iii)</b>	No	No	No	No	No	When a person’s criminal record means that they cannot do the things the job requires them to do (‘inherent requirements of the job’) <b>s 3</b>
<b>TAS</b> - <i>Anti-Discrimination Act 1998</i>	Yes <b>s 22(1)(a)</b>	Yes <b>s 22(1)(b)</b>	Yes <b>s 22(1)(d)</b>	Yes <b>s 22(1)(c)</b>	Yes <b>s 22(1)(e)</b>	State government <b>s 22(1)(f)</b>	When a person’s criminal record means that they cannot do the things the job requires them to do <b>ss 3, 16(q)</b>  Working with children <b>s 50</b>
<b>NT</b> - <i>Anti-Discrimination Act (NT)</i>	Yes <b>s 28(b)</b>	Yes <b>s 28(a)</b>	Yes <b>s 28(c)</b>	Yes <b>ss 28(d), 28(f)</b>	Yes <b>s 28(e)</b>		When a person’s criminal record means that they cannot do the things the job requires them to do (‘inherent requirements of the work’ <b>ss 4, 19(1)(q), 35(1)(b)(ii)</b>  Working with vulnerable persons, including children, elderly, people with physical or intellectual disability or mental illness <b>s 37</b>
CRDP proposal for <b>VIC</b>	Yes	Yes	Yes	Yes	Yes	Yes	When a person’s criminal record means that they cannot do the things the job requires them to do (‘inherent requirements of the work’)  Working with vulnerable persons such as children, elderly, people with physical or intellectual disability or mental illness.

**Table 4: Protections against discrimination on the basis of ‘spent conviction’. The CRDP proposal was added following the consultation on 4th April 2017**

	Employment	Education and learning	Housing	Buying things, access to services and public places	Being a member of a club or association	Government programs	Exceptions
<b>WA</b> - <i>Spent Convictions Act 1988</i> ;	Yes <b>ss 17 – 24, 29</b>	No	No	No	No	No	Working with children in residential care <b>s 25</b>
<b>ACT</b> - <i>Discrimination Act 1991</i>	Yes <b>ss 10 - 17</b>	Yes <b>s 18</b>	Yes <b>s 21</b>	Yes <b>ss 19-20</b>	Yes <b>s 21</b>	No	Working with children in residential care <b>s 25</b>
CRDP proposal for <b>VIC</b>	Yes	Yes	Yes	Yes	Yes	Yes	When a person’s criminal record means that they cannot do the things the job requires them to do (‘inherent requirements of the work’)  Working with vulnerable persons such as children, elderly, people with physical or intellectual disability or mental illness.

**Table 5: Protections against discrimination – Making complaints**

	Can a person make a complaint?	Who can they complain to?	How do they help?	What does a person need to do to make a complaint?	What can the complaints body do if they think a person has been discriminated against?	What remedy can they get?
<b>CTH</b> - <i>Australian Human Rights Commission Act 1986</i> ; Australian Human Rights Commission Regulations 1989	Yes – for discrimination on the basis of an irrelevant criminal record	Australian Human Rights Commission <b>s 32</b>	Conciliation <b>s 31(b)</b> Investigation <b>s 31(b)</b>	Apply in writing within 12 months <b>s 32</b>	Report to the Minister <b>s 31(b)</b>  No power to refer to tribunal/court <b>ss 46P and 49B</b>	Only what the employer agrees to
<b>TAS</b> - <i>Anti-Discrimination Act 1998</i>	Yes – for discrimination on the basis of an irrelevant criminal record	Anti-Discrimination Commissioner <b>s 60</b>	Conciliation <b>ss 71(1)(b), 74-75</b> Investigation <b>s 75A</b>	Apply in writing within 12 months <b>s 64</b>	Referral to Anti-Discrimination Tribunal <b>ss 71(1)(c), 78</b>	Anything the other person/org agrees to  OR  Tribunal order that the other party: <ul style="list-style-type: none"> <li>- Do not do it again</li> <li>- Pay compensation</li> <li>- Do something to fix what they did, e.g. employ the person <b>s 72</b></li> </ul>



<b>NT</b> - <i>Anti-Discrimination Act (NT)</i>	Yes – for discrimination on the basis of an irrelevant criminal record	Anti-Discrimination Commissioner NT <b>s 60</b>	Conciliation <b>ss 78, 81</b>  Investigation <b>ss 81(3), 83</b>	Apply in writing within 12 months <b>ss 66F, 67, 68</b>	Referral to Anti-Discrimination Tribunal <b>s 86(1)</b>	Anything that the other person/org agrees to  OR  A Tribunal order that the other party: <ul style="list-style-type: none"> <li>- Do not do it again</li> <li>- Pay &lt;\$60,000 compensation <b>Anti-Discrimination Regulations (NT), reg 2)</b></li> <li>- Do something to fix what they did, e.g. employ the person, publicly apologise <b>ss 88-89</b></li> </ul>
<b>WA</b> - <i>Spent Convictions Act 1988</i>	Yes – for discrimination on the basis of a spent conviction	Equal Opportunity Commissioner <b>s 29; Equal Opportunity Act 1984 s 83</b>	Conciliation <b>s 29; Equal Opportunity Act 1984 s 91</b>  Investigation <b>s 29; Equal Opportunity Act 1984 s 84</b>	Apply in writing within 12 months <b>s 29; Equal Opportunity Act 1984 s 83</b>	Referral to State Administrative Tribunal <b>s 29; Equal Opportunity Act 1984 s 93</b>	Anything that the other person/org agrees to  OR  A Tribunal order that the other party: <ul style="list-style-type: none"> <li>- Stop what they are doing</li> <li>- Do not do it again</li> <li>- Pay &lt;\$40,000 compensation</li> <li>- Do something to fix what they did <b>s 29; Equal Opportunity Act s 127</b></li> </ul>
<b>ACT</b> – <i>Human Rights Commission Act 2005 (as it relates to Discrimination Act 1991 )</i>	Yes – for discrimination on the basis of a spent conviction	Disability Commissioner <b>s 42(1)(c)</b>	Conciliation <b>s 51</b>  Investigation <b>s 52</b>	Apply in writing within 12 months <b>s 44</b>	Give the person the option of being referred to ACT Civil and Administrative Tribunal <b>ss 53A, 88</b>	Anything that the other person/org agrees to  OR  A Tribunal order that the other party <ul style="list-style-type: none"> <li>- Stop what they are doing</li> <li>- Do not do it again</li> <li>- Pay compensation</li> <li>- Do something to fix what they did <b>s 53B</b></li> </ul>