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PROJECT

A Legislated Spent Convictions Scheme for Victoria:

Recommendations for Reform

May 2017

About Liberty Victoria

Liberty Victoria is one of Australia's leading civil liberties organisations. It has been working to defend and extend human rights and freedoms in Victoria for over 70 years. The aims of Liberty Victoria are to:

- Help foster a society based on the democratic participation of all its members and the principles of justice, openness, the right to dissent and respect for diversity;
- Secure the equal rights of everyone and oppose any abuse or excessive power by the state against its people;
- Influence public debate and government policy on a range of human rights issues;
- Prepare submissions to government, support court cases defending infringements of civil liberties, issue media releases and hold events.

About Rights Advocacy Project

Liberty Victoria's Rights Advocacy Project is a community of lawyers and activists working to advance human rights in Australia. We work across a range of issues including equality, government accountability, refugee and asylum seeker rights and criminal justice reform. Each year we recruit volunteers to work in one of three teams and provide them with strategic advocacy training. These teams undertake year-long projects, supervised by leading human rights experts from Liberty Victoria.

Foreword

Formerly Young Liberty for Law Reform, Rights Advocacy Project ('RAP') is a community of lawyers and activists working to advance human rights in Australia. We're part of Liberty Victoria, one of Australia's leading human rights organisations. We work across a range of issues including equality, government accountability, refugee and asylum seeker rights and criminal justice reform. The criminal justice team has been inspired to reintroduce momentum to the debate about criminal record discrimination in Victoria.

The introduction of laws to govern how convictions are removed from a criminal record is a simple and straightforward reform. All other jurisdictions in Australia have laws that provide for the removal of certain less serious convictions from the records of past offenders who have not gone on to reoffend. This goes to the heart of our criminal justice system. Offenders should be punished appropriately but they should also be given the opportunity to actively contribute to society once that punishment has been delivered. By allowing minor findings of guilt to remain on records, and not making it unlawful to discriminate against someone because of an irrelevant criminal record, the ability for past offenders to contribute to society through employment or other means is limited.

However, repeated calls from numerous legal advocacy groups to introduce a legislated spent convictions scheme have gone unanswered. This is not acceptable. Discrimination on the basis of an irrelevant criminal record is an issue that thousands of Victorians face on a daily basis.

In the report that follows, we build on the prior research and work of other advocacy bodies — including the Law Institute of Victoria and the Woor-Dungin Criminal Record Discrimination Project in particular — to highlight the problem and recommend options for reform. We have drawn on the experiences of other jurisdictions to shape our recommendations.

We hope that by adding another voice against discrimination in this area, the calls for reform may finally be heard.

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Executive summary

This report advocates for the introduction of legislation to govern the disclosure of past convictions in Victoria ('a legislated spent convictions scheme'). The report is separated into four chapters.

In Chapter 1, we present our case on the need for reform. Here, we discuss what a legislated spent convictions scheme is and how convictions are currently disclosed in Victoria. We then turn to how Victorians are at a disadvantage compared to other Australian jurisdictions and the need for complementary reforms to our equal opportunity legislation.

In Chapter 2, we look to the experiences of other Australian jurisdictions, all of which have introduced a legislated spent convictions scheme.

In Chapter 3, we briefly discuss the broad history of work undertaken by government agencies and other advocacy bodies in pushing for reform across the nation.

In Chapter 4, we present our recommendations for reform, based on our review of schemes in other jurisdictions.

At Appendix A we have included a table comparing the key provisions of all the legislated spent convictions schemes in Australia.

1. The need for reform

A legislated spent convictions scheme

1.1. Once a person is found guilty of a crime, information about that crime will stay on a person's criminal record unless that conviction is overturned, quashed, annulled or spent. Convictions are referred to as 'spent' when they are removed from official records or prevented from disclosure after a mandated period of time. A conviction can only be spent if a person does not go on to reoffend during the mandated waiting period.

1.2. Victoria is the only Australian jurisdiction without legislation that provides for convictions to be spent (see Appendix A). Instead, the information on a person's criminal record is governed by a Victoria Police information release policy.[1] Under this policy, if an adult has been found guilty of an offence within the past 10 years, Victoria Police will disclose all prior findings of guilt as part of a criminal history check. This means that any crimes that a person has been found guilty of, even where that person did not receive a conviction, will still show up on their record. Victoria Police will also release information on pending charges where a person has not yet been found guilty.

1.3. RAP agrees with the Law Institute of Victoria ('LIV') that this policy 'frustrates and undermines the intentions of Parliament and the judiciary in providing for findings of guilt without conviction'.[2] This would also be particularly surprising to people sentenced to a finding of guilt without conviction. RAP supports calls from the LIV for reform in this area to 'not only prevent discrimination but clarify an area of considerable public confusion'.[3]

1.4. Spent convictions schemes limit the ongoing stigma of a conviction after punishment has been delivered and an appropriate period of time has passed. They enable the rehabilitative and deterrent purposes of punishment to have a real and practical outcome. In this way, offenders are encouraged to rehabilitate themselves in the pursuit of a clean record and they are deterred from reoffending as it would open up disclosure of all their prior offences.

1.5. RAP's position is guided by the belief that such an important area of potential discrimination should not be left to the discretion of Victoria Police and should instead be guided by legislation. Legislation would also enable equality and reciprocity with the rest of Australia.

1.6. Further, a well-rounded spent convictions scheme enshrined in law should include amendments to the *Equal Opportunity Act 2010* (Vic) to ensure that any discrimination on the basis of an irrelevant criminal record is unlawful and protected within the *Charter of Human Rights and Responsibilities Act 2006* (Vic) ('the *Charter*') (see [1.18] – [1.34] below).

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[1] Victoria Police, *Information Release Policy* (November 2016).
[2] Law Institute of Victoria, *Introduction of Spent Conviction Legislation in Victoria* (submission to the Attorney-General, 22 April 2015) 2.
[3] Ibid.

The current situation in Victoria

1.7. The Victoria Police information release policy is subject to revision by Victoria Police at any time. The most recent policy at the time of writing was published in November 2016.

1.8. Under this policy, Victoria Police releases details of prior convictions and findings of guilt according to the following guidelines:

- If the individual was an adult when last found guilty of an offence and has been found guilty of an offence in the past ten years, all findings of guilt will be released, including juvenile offences.
- If the individual was a child when last found guilty of an offence and has been found guilty of an offence in the past five years, all findings of guilt will be released.
- If ten years have lapsed since the last finding of guilt, then only the offences that resulted in a custodial sentence of longer than 30 months will be released.
- If the record contains an offence that resulted in a custodial sentence longer than 30 months, then that offence will always be released, no matter how much time has passed.
- 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.[4]

1.9. The policy means any prior convictions can haunt a person forever. No convictions are ever permanently removed from a person's record. Some offences may temporarily stop being disclosed if a person has not been found guilty of an offence for ten years. However, if they are ever found guilty of an offence again in the future, all prior findings of guilt will be disclosed.

1.10. The policy undermines other legislation that governs criminal records. In particular, it contradicts the ability for courts to choose not to record a conviction.

1.11. The *Sentencing Act 1991* (Vic) states the factors a court must take into account when deciding whether or not to record a conviction. These factors include, among other things, 'the impact of the recording of a conviction on the offender's economic or social well-being or on his or her employment prospects'.[5] The section goes on to state that 'a finding of guilt without the recording of a conviction must not be taken to be a conviction for any purpose' other than as otherwise provided by that or any other Act.[6] So while a judge or magistrate can choose not

[4] Victoria Police, *Information Release Policy* (November 2016) 1-2. The policy also includes exceptions to these guidelines where a person's full criminal history will be disclosed no matter how much time has passed. These include registration with a child-screening unit or the Victorian Institute of Teaching; disclosure under the *Assisted Reproductive Treatment Act 2008* (Vic); registration and accreditation of health professionals; admission to the legal profession; employment or contact with prisons or police forces; casino and gaming licences; prostitution service provider's licences; operator accreditation under the *Bus Safety Act 2009* (Vic); private security licences; taxi services commission; firearms licences; disclosure to the Independent Broad-based Anti-Corruption Commission; poppy industry accreditation; appointment of honorary justices; marriage celebrants registration; disclosure to Court Services Victoria; and immigration under the *Migration Act 1958* (Vic). Victoria Police will also disclose details of all serious violent or sex offences for employment or voluntary work with children or vulnerable people.

[5] *Sentencing Act 1991* (Vic) s 8(1)(c).

[6] Ibid s 8(2).

to record a conviction in order to aid a person's employment prospects, that finding of guilt without a conviction will remain on their record in the same way as a conviction and would be disclosed to a future employer.

1.12. Further, a criminal record for the purposes of a criminal proceeding in a Victorian court includes all findings of guilt that have not been set aside, except a conviction or finding of guilt by a Children's Court made more than 10 years before the hearing at which it is sought to be proved.[7] This creates a paradox. The courts recognise that old convictions committed when a person was a juvenile are not appropriate in criminal proceedings, but Victoria Police may continue to disclose such offences to employers and government agencies.

Victorians at a disadvantage

1.13. The content of criminal history checks affects a vast number of Victorians. The use of criminal history checks has grown significantly, particularly in pre-employment screening. In 2015–16, Victoria Police conducted 691,029 criminal history checks (compared to 3,459 checks in 1992–93).[8]

1.14. In September 2016, McDonald's announced that it would introduce mandatory criminal history checks across its stores in Australia.[9] The lack of a scheme consistent with other jurisdictions gives rise to some absurd results. Take for example a 22 year-old who committed some minor offences as a juvenile but who has not reoffended for some years. If she applies for a job in a McDonald's restaurant in the Albury-Wodonga region, whether or not her prior convictions would be disclosed to the potential employer would depend on the law enforcement agency responsible for releasing her information.

1.15. If her convictions were to be released by a New South Wales authority, then they would not be disclosed if they were committed more than three years ago and she had not been convicted of another offence since. If she committed the offences in Victoria and was applying to a Victorian McDonald's, her convictions would be disclosed if she had been found guilty of an offence within the past five years. Further, in New South Wales, a finding without conviction in the Children's Court immediately becomes spent from a juvenile's record. In Victoria, all findings of guilt, including those without conviction and those in the Children's Court, remain on a juvenile's record until they have not been found guilty of another offence for five years.

1.16. An inconsistency also exists for offences committed within Victoria, depending on whether a person is charged with an offence against Commonwealth or Victorian laws. Convictions for Commonwealth offences will be permanently spent from a person's record if they receive a sentence of 30 months imprisonment or less and do not commit another relevant offence

[7] *Criminal Procedure Act 2009* (Vic) s 3 (definition of conviction, criminal record, and previous conviction).
[8] Victoria Police, *Annual Report 2015–2016* (2016) 19; Fitzroy Legal Service and Job Watch, *Criminal Records in Victoria: Proposals for Reform* (2005) 8.
[9] Daniel Meers, 'McDonald's to Introduce Criminal Background Checks as Derryn Hinch outs Paedophile Employee Named', *The Daily Telegraph* (Online), 13 September 2016.

within the next 10 years. Once a Commonwealth conviction is spent, it does not have to be disclosed and it cannot be taken into account (with some particular exceptions).

1.17. Importantly, the Commonwealth scheme incorporates the schemes of the other jurisdictions. Where a conviction is spent *under the law* of a state or territory, it is treated as spent for Commonwealth purposes and is not required to be disclosed.[10] Until Victoria enacts laws that provide for spent convictions, the Commonwealth scheme does not recognise Victorian convictions as spent.

Perpetuating discrimination

1.18. By not providing for spent convictions through a formal legislative scheme, successive Victorian governments have made Victorians more susceptible to potential discrimination on the basis of their criminal record, particularly in the area of employment. This potential area for discrimination is two-pronged: employers have access to significantly more information on Victorians' prior dealings with the criminal justice system; and, those employers are not expressly prohibited from discriminating on the basis of an 'irrelevant criminal record'.

1.19. In the area of employment, an irrelevant criminal record is a criminal record that has no bearing on a person's ability to 'perform the inherent requirements of a particular job'.[11] Discrimination on the basis of an irrelevant criminal record is not unlawful under federal anti-discrimination law or under the Victorian *Equal Opportunity Act 2010* (Vic). It is only unlawful to discriminate on the basis of an irrelevant criminal record in Tasmania and the Northern Territory.[12]

1.20. Under federal law, discrimination on the basis of an irrelevant criminal record can be investigated by the Australian Human Rights Commissioner.[13] However, any recommendations of the Commissioner that arise from that investigation are not enforceable. For example, in *Mr CG v NSW (RailCorp NSW)*,[14] the Commission found that RailCorp discriminated against Mr CG when refusing to employ him as a marketing analyst based on prior driving offences. It recommended that RailCorp compensate Mr CG in the form of $7,500 for the hurt and humiliation suffered by him and to provide training to the human resources team to prevent further discrimination. Mr CG was not offered employment and RailCorp declined to compensate him.[15]

1.21. Under the Tasmanian statute, unlawful discrimination occurs 'when a person is treated unfairly, or is denied the same opportunities as others, because they have, or are thought to

[10] *Crimes Act 1914* (Cth) s 85ZV.
[11] Australian Human Rights Commission, 'Criminal Record' (Australian Human Rights Commission, 2016) <https://www.humanrights.gov.au/quick-guide/12003>.
[12] *Anti-Discrimination Act 1998* (Tas) s 16; *Anti-Discrimination Act* (NT) s 19.
[13] *Australian Human Rights Commission Act 1986* (Cth) s 3; *Australian Human Rights Commission Regulations 1989* (Cth) reg 4.
[14] [2012] AustHRC 48.
[15] See, Marilyn Pittard, 'Discrimination Law: Constraints on Criminal Record Checks in Recruitment' (2012) *Employment Law Bulletin* 124, 125-6.

have, a criminal record that is irrelevant'.[16] The Act also extends to discrimination against someone due to their association with someone with a criminal record. To be unlawful, discrimination on the basis of an irrelevant criminal record must occur in relation to work, training/studying, the provision or access to facilities or services, buying or selling goods, club activities, hotels and pubs, housing and accommodation, business premises, the design or implementation of state laws, or the making of industrial awards.

1.22. In Tasmania, all criminal records that do not result in a finding of guilt (including investigations or withdrawn charges) are irrelevant, as well as any convictions that have otherwise been spent or quashed.[17] In addition, a criminal record will be irrelevant 'if the circumstances of the offence are not directly relevant to the circumstances of the possible discrimination'.[18] Some organisations are exempt from the prohibition of discrimination on the basis of criminal record, such as organisations that require working with children checks.

1.23. In the Northern Territory, discrimination on the basis of an irrelevant criminal record is also prohibited.[19] There, an irrelevant criminal record includes a conviction that has been spent as well as any record relating to arrest, interrogation or criminal proceedings where no further action has been taken, no charge has been laid, the charge has been dismissed, the prosecution was withdrawn, the person was discharged with or without conviction, the person was found not guilty, or the conviction was quashed or set aside or pardoned. Further, an irrelevant criminal record includes a record relating to arrest, interrogation or criminal proceedings where 'the circumstances relating to the offence for which the person was found guilty are not directly relevant to the situation in which the discrimination arises'.[20]

1.24. The Northern Territory scheme includes an exemption allowing for discrimination on the basis of an irrelevant criminal record in the area of work. Employment discrimination on the basis of an irrelevant criminal record is lawful where 'the work principally involves the care, instruction or supervision of vulnerable persons' and 'the discrimination is reasonably necessary to protect the physical, psychological or emotional well-being of those vulnerable persons, having regard to all of the relevant circumstances of the case including the person's actions'.[21]

[16] Equal Opportunity Tasmania, *Irrelevant Criminal Record Discrimination* (Equal Opportunity Tasmania, 2016) <http://equalopportunity.tas.gov.au/__data/assets/pdf_file/0016/330091/oadc_A4_irreleventcriminalrecord_final.pdf>.
[17] Ibid.
[18] Ibid.
[19] *Anti-Discrimination Act 1992* (NT) s 19.
[20] Ibid s 4 (definition of 'irrelevant criminal record').
[21] Ibid s 37.

Human rights implications in Victoria

1.25. A spent convictions scheme engages the human rights of non-discrimination and privacy as protected under the *Charter*. RAP concurs with the Human Rights Law Centre that 'where rights are engaged and promoted, this is a positive outcome because society would no longer be needlessly depriving itself of the talents and energies of people in whose positive development it has a distinct interest'.[22]

1.26. The right to equality before the law in s 8 of the *Charter* provides for 'equal protection of the law without discrimination' and 'equal and effective protection against discrimination'. Under the *Charter*, discrimination has the meaning set out in the *Equal Opportunity Act 2010* (Vic) and includes discrimination on the basis of the attributes set out in s 6 of that Act.[23] An irrelevant criminal record is not currently a protected attribute. Therefore, until the *Equal Opportunity Act 2010* (Vic) is amended, discrimination on the basis of an irrelevant criminal record is neither a violation of Victorian anti-discrimination law nor an express breach of the human right to equality before the law under the *Charter*.

1.27. Victorians also have a right not to have their privacy unlawfully or arbitrarily interfered with pursuant to s 13 of the *Charter*. This right operates as a negative obligation and allows for lawful interference with a person's privacy.

1.28. The privacy protections provided for in the *Charter* are modelled on article 17 of the International Covenant on Civil and Political Rights ('ICCPR').[24] In *Kracke,* Bell J held that '[t]he fundamental values which the right to privacy expresses are the physical and psychological integrity, the individual and social identity and the autonomy and inherent dignity of the person'.[25]

1.29. The scope of the right to privacy may therefore include employment. In *ZZ v Secretary, Department of Justice*,[26] the Supreme Court of Victoria considered whether human rights under the *Charter* must be taken into account by the Department of Justice when issuing assessment notices made under the *Working With Children Act 2005* (Vic). In this case, ZZ committed non-sexual offences more than ten years prior to seeking an assessment under the Act in order to work as a bus driver. The assessment notice was refused by the Department and Victorian Civil and Administrative Tribunal, which held that such a notice would put children 'at risk' and was not in the public interest.[27]

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[22] Human Rights Law Resource Centre, *Submission to the Standing Committee of Attorneys-General: Draft Model Spent Convictions Bill* (21 January 2009) 3.
[23] *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 3.
[24] *Kracke v Mental Health Review Board (General)* [2009] VCAT 646 [591] (Bell J).
[25] *Kracke v Mental Health Review Board (General)* [2009] VCAT 646 (23 April 2009); (2009) 29 VAR 1, [620]. Similarly, the UK Court of Appeal has held that the right to privacy as provided for in the *European Convention on Human Rights* protects a person from disclosure of irrelevant convictions or police cautions. See, *R (on the application of T) v Greater Manchester Chief Constable* [2013] EQCA Civ 25 (29 January 2013); *Leander v Sweden* (1987) 9 EHHR 433.
[26] [2013] VSC 267 (22 May 2013).
[27] Ibid, [3]-[4].

1.30. Justice Bell noted that whether the ICCPR and the *Charter* provide for a right to work 'is an unresolved question'. Nonetheless, Bell J was willing to:

> *assume without deciding* that the right to privacy in art 17(1) of the International Covenant on Civil and Political Rights and s 13(a) of the Charter are engaged where employment restrictions impact sufficiently upon the personal relationships of the individual and otherwise upon his or her capacity to experience a private life. In my view, the refusal decision under the Working with Children Act has that impact here. ZZ has a definite intention and desire to work as a bus driver. For him, obtaining that employment is not a remote or hypothetical prospect. Putting aside the matters at issue in the present case, he appears to be suited and qualified for that employment. His personal circumstances are such that not many fields of employment are open to him. Being a bus driver is one of them. Without employment, he risks becoming welfare dependent and socially isolated. Those impacts are highly personal in nature and operate together (on the assumed position) to bring his kind of case, which would not be unique, into the scope of art 17(1) and s 13(a).[28]

1.31. His Honour went on to note that if such an assumption was correct, then the provisions governing the assessment notice should be 'interpreted in a way that did not produce arbitrary interference with ZZ's right to privacy'.[29]

1.32. The ZZ case is significant in regard to human rights jurisprudence in Victoria, even though the human rights issues were left unresolved. As ZZ was sentenced to a term of imprisonment of 6 years (with a 3.5 year non-parole period), his conviction would not have been spent under any of the spent conviction schemes in Australia. However, this case demonstrates that consideration of an *irrelevant* criminal record may still be a breach of the right to privacy in certain circumstances. Given the uncertainty in this area, a spent convictions scheme that incorporates amendments to the *Equal Opportunity Act 2010* (Vic) should be introduced in order to resolve the issue.

1.33. Given the number of exceptions to the Victoria Police information release policy where a person's full criminal history will be disclosed, there are many instances where, even with a legislated spent convictions scheme, Victorians may be denied opportunities on the basis of an irrelevant criminal record. Inclusion of an irrelevant criminal record as an attribute which cannot be used as a basis for discrimination would provide a certain safeguard so that where convictions are disclosed, they would only be taken into account where appropriate.

1.34. Amendment of the *Equal Opportunity Act 2010* (Vic) is therefore important for a number of reasons. Firstly, it would make it unlawful to discriminate on the basis of an irrelevant criminal record. Secondly, it would clarify how the *Charter* interacts with prior convictions and the right to privacy and equality before the law. Thirdly, it would bring Victoria in-line with other jurisdictions, such as Tasmania and the Northern Territory. Most importantly, it would mean that all Victorians would be treated equally: any past conviction, whether it is spent or not, would only be taken into account where it is *relevant* to the decision being made.

[28] Ibid [94].
[29] Ibid [95].

The value of a criminal record

1.35. RAP acknowledges that criminal record checks have an important function. There are some crimes, such as those for which a significant period of imprisonment has been imposed or particular sex offences, that should never be spent from a record. Likewise, there are some jobs for which it will be necessary for spent convictions to be disclosed. For example, all interactions with the criminal justice system would continue to need to be disclosed for entry into particular professions, such as disclosure to the Victorian Legal Admissions Board for admission to the legal profession.

1.36. Importantly, the Working with Children Check would still require disclosure of all serious sexual, violent or drug crimes ever committed over a person's lifetime in order to assess that person's suitability for working with children.

1.37. However, where a person has demonstrated that they can live a life free of offending, then so too should they be free of those convictions from a prior life. The ability to escape the burden of past minor offending should be provided for in legislation and not be at the discretion of Victoria Police. Where a conviction continues to be required to be disclosed, it only makes sense that such a conviction should only be taken into account where it is relevant to the decision being made (and not for an irrelevant purpose).

2. History of reform

2.1. Spent convictions legislation has progressively been introduced in every jurisdiction in Australia, with the exception of Victoria, over the past 30 years. A comprehensive comparison of how each scheme operates across Australia is provided in Appendix A.

2.2. Movements for reform have come from all sides of politics and have garnered bipartisan support in their introduction. These efforts have all occurred in the name of rehabilitation.

2.3. The first legislated spent convictions scheme was introduced in Queensland through the *Criminal Law (Rehabilitation of Offenders) Act 1986* (Qld). The Act was introduced by the Hon. Neville Harper, Minister for Justice and Attorney-General in the Joh Bjelke-Petersen Government. The Attorney-General stated at the time:

> The blemish of a criminal record, which places in jeopardy future prospects for full participation in the life of the community, will effectively be removed for those offenders who qualify for rehabilitation … An incentive is being provided to encourage offenders to rehabilitate themselves, to cast aside the social stigma associated with a criminal conviction.[30]

2.4. The Western Australian scheme was introduced in 1988 by the Hon Joe Berinson, Attorney-General in the Labor Government led by Premier Peter Dowding.[31] The scheme was introduced as part of a broader package of 'tough on crime' initiatives. Nonetheless, it was recognised that the success of such initiatives would only occur if criminals had an incentive not to reoffend. The Attorney-General stated in his second reading speech that:

> the Government remains committed to the fundamental proposition that criminal offenders must be appropriately punished. However, it is also believed that people should have the opportunity to be relieved of the social stigma and other consequences of a criminal record where that is justified by a blameless conduct for a lengthy period. That is in the interests not only of the offenders concerned but also of the general community as well.[32]

2.5. The Commonwealth scheme was introduced not long after this in 1989. Pt VIIC was inserted into the *Crimes Act 1914* (Cth) by the *Crimes Legislation Amendment Act 1989* (Cth). The amending Act was introduced by the Hon Lionel Bowen, Attorney-General in the Hawke Labor Government, in response to the Australian Law Reform Commission's 1987 report on *Spent Convictions* and the success of the Queensland scheme.[33]

2.6. In April 1991, the NSW Criminal Records Bill 1991 was second read by the Hon. Edward Pickering, Minister for Police and Emergency Services in the Nick Greiner Coalition

[30] Queensland, 'Criminal Law (Rehabilitation of Offenders) Bill', *Parliamentary Debates*, Legislative Assembly, 12 March 1986, 4110 (Neville Harper, Minister for Justice and Attorney-General).
[31] Western Australia, 'Spent Convictions Bill: Second Reading', *Parliamentary Debates*, Legislative Council, 22 September 1988, 3283 (Joe Berinson, Attorney-General).
[32] Ibid 3285.
[33] Commonwealth, 'Crimes Legislation Amendment Bill 1989: Second Reading', *Parliamentary Debates*, House of Representatives, 11 May 1989, 2543 (Lionel Bowen, Attorney-General).

Government.[34] The Act has been in force since May 1991. At the time of introduction, the Minister emphasised that:

> Many offenders' only contact with the criminal courts involves relatively minor offences, often committed when they were young. Despite subsequently lengthy periods of crime-free behaviour, a substantial portion of these people are unable to live down past indiscretions because they are required to reveal their convictions to employers, insurers, licensing bodies, and the like, thereby often becoming subject to mistrust and suspicion. Even people who have prospered and who have suffered no real problems as a result of having an old criminal record, often feel very insecure because of the possibility that one day they will be embarrassed by details of their past convictions being revealed. After an appropriate period, an old criminal record loses validity as a reliable indicator that a person may reoffend. Its maintenance should not therefore prejudice the person's rehabilitation. The discrimination which often follows revelation of an old criminal record impedes the successful rehabilitation of offenders at a time when they have proved they present no risk to society … Punishment for minor offences should not be indefinite.[35]

2.7. Spent convictions legislation was introduced in the Northern Territory under the Perron Country Liberal Government in 1992 and commenced in March 1993. The long title of the Act is:

> An Act to facilitate the more effective rehabilitation of certain offenders by providing that, in certain circumstances, their criminal records relating to relatively minor offences may be spent and not form part of their criminal history, and for related purposes.

2.8. In the Australian Capital Territory, the Hon Gary Humphries (Treasurer, Attorney-General and Minister for Justice and Community Safety) introduced the Spent Convictions Bill 2000 under the Carnell Liberal Government after consultation on an exposure draft.[36] He said the legislation 'recognises the importance of rehabilitation' and considered that the disclosure of old criminal records 'has the potential to seriously and unfairly disadvantage a person with regard to obtaining employment, accommodation and other services'.[37] The Act came into force in March 2001.

2.9. The Tasmanian Attorney-General in the Bacon Labor Government, the Hon Judy Jackson, introduced the Annulled Convictions Bill 2003 on 19 August 2003.[38] At that time, Tasmania's anti-discrimination legislation already prohibited discrimination on the grounds of an irrelevant criminal record. The annulled convictions legislation was introduced to otherwise remove the ongoing stigma of old convictions and ensure that people weren't unfairly disadvantaged in gaining employment or access to services.[39]

2.10. In South Australia, the spent convictions legislation passed the Parliament led by the Rann Labor Government after multiple attempts by an Independent member, the Hon Bob Such, to

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[34] New South Wales, 'Criminal Records Bill: Second Reading', *Parliamentary Debates*, Legislative Council, 10 April 1991, 1791 – 1793 (Edward Pickering, Minister for Police and Emergency Services and Vice-President of the Executive Council).
[35] Ibid 1792.
[36] Australian Capital Territory, 'Spent Convictions Bill 2000', *Parliamentary Debates*, Legislative Assembly, 11 May 2000, 1425 (Gary Humphries, Treasurer, Attorney-General and Minister for Justice and Community Safety).
[37] Ibid 1428.
[38] Tasmania, 'Annulled Convictions Bill 2003: Second Reading', *Parliamentary Debates*, Legislative Assembly, 19 August 2003, 109 (Judy Jackson, Attorney-General).
[39] Ibid.

introduce a private members' Bill.[40] It was supported by both sides of Parliament.[41] The Independent member welcomed the support of the government:

> The matter of spent convictions has been a passion of mine for some time. In fact, on Wednesday 5 May 2004, I introduced a spent convictions bill, and I have been trying ever since to get a spent convictions bill into this house, and through the council and passed into law. I must say that I am absolutely delighted that, following the meeting of the Standing Committee of Attorneys-General of Australia, the Attorney-General here has cooperated and worked to provide a bill, which I now introduce, which is very similar to what I have been advocating and have introduced before. I trust that this time we can get the bill through and allow people who have done silly minor things in their past to get on with their life and have a fresh start.[42]

2.11. In November 2014, the Victorian Labor Party made an election commitment to: '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'.[43]

2.12. In February 2017, the Greens introduced a private member's Bill in the Victorian Parliament to provide for a legislated spent convictions scheme.[44]

2.13. The schemes in other jurisdictions are important not only for comparative purposes, but because it is rare that a person would be covered by only one scheme. Most often, people consent to National Police History Checks. These checks are conducted by the jurisdiction in which the request is made, and that jurisdiction then requests the criminal history details of the person from all the other jurisdictions in Australia. Each jurisdiction will release criminal history information to the co-ordinating jurisdiction on the basis of its own scheme. Therefore, if a person committed the same offence at around the same time in each state and territory in Australia, that offence would only show up on the person's national police history check if it was not spent under the scheme of the state that offence was committed in.

2.14. For this reason, a nationally uniform spent convictions scheme is preferable. However, in the absence of a national scheme, there is a need for Victoria to catch up to the other states and territories and introduce legislation to protect its citizens.

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[40] South Australia, 'Spent Convictions Bill: Second Reading', *Parliamentary Debates*, Legislative Assembly, 24 September 2009, 4095; South Australia, 'Spent Convictions (No. 2) Bill: Second Reading', *Parliamentary Debates*, Legislative Assembly, 29 October 2009, 4555.

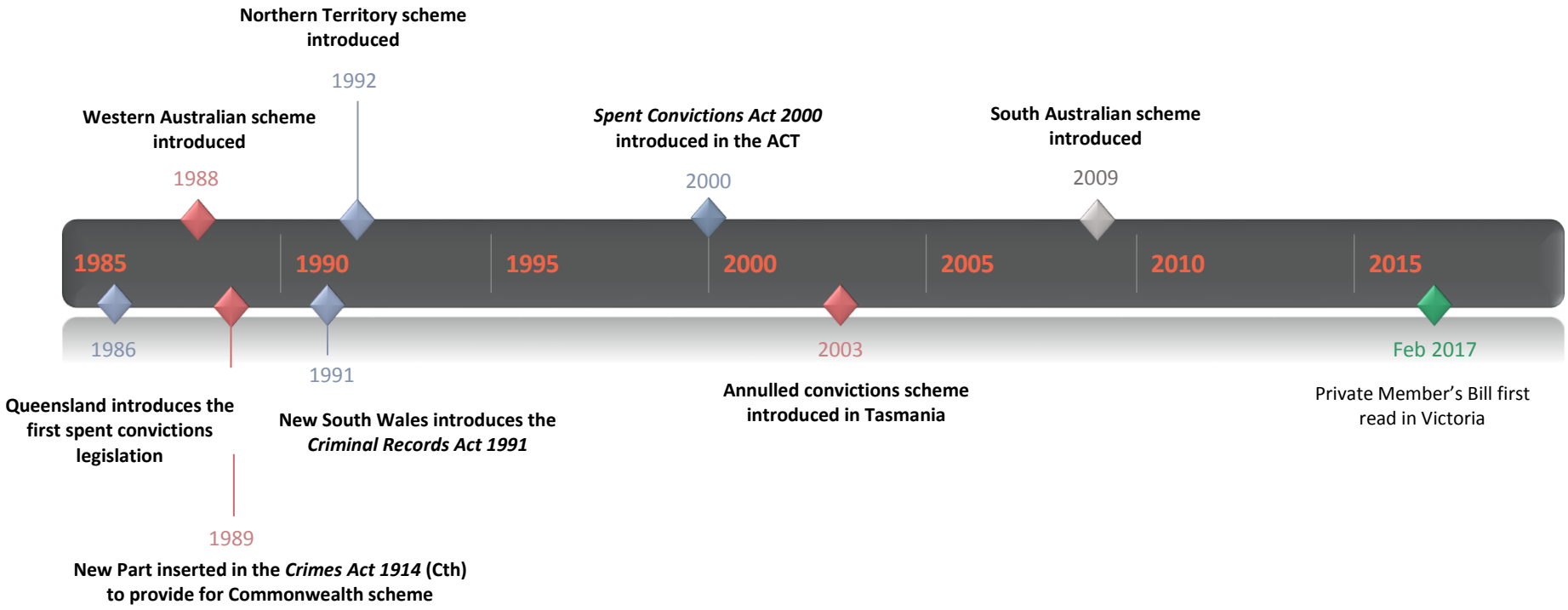
[41] South Australia, 'Spent Convictions (No. 2) Bill: Second Reading', *Parliamentary Debates*, Legislative Council, 2 December 2009.

[42] South Australia, 'Spent Convictions Bill: Second Reading', *Parliamentary Debates*, Legislative Assembly, 24 September 2009, 4095 (Bob Such).

[43] Victorian Labor, *Platform 2014* (Victorian Labor Party, 2014) 67.

[44] Victoria, 'Spent Convictions Bill 2017: Introduction and First Reading', *Parliamentary Debates*, Legislative Council, 7 February 2017, 37 (Sue Pennicuik); Leave has not been given for the Bill to be second read, meaning the text of the Bill is not publicly available.

Figure 1. A timeline of spent convictions legislation in Australia



3. Other research and calls for reform

3.1. Over the past 30 years there have been repeated calls for reform of the treatment of past convictions from advocates and key stakeholders. Following the successful introduction of the Queensland scheme in 1986, efforts were initially concentrated on the establishment of a nationwide framework compatible with existing and proposed spent convictions schemes in State and Territory jurisdictions. The Australian Law Reform Commission conducted an inquiry into spent convictions in 1987, which set out early proposals for a national scheme.[45]

3.2. Since 2004, national consistency in spent convictions schemes has been on the agenda of the Council of Australian Governments (COAG).[46] A discussion paper was circulated by the relevant Ministers in 2004.

3.3. By 2008, each jurisdiction was tasked with consulting on draft legislation. A Model Spent Convictions Bill was released in 2009. Various key bodies made submissions on the Model Bill, including the Australian Human Rights Commission, the Law Association of Australia, the Human Rights Law Centre, Community Legal Centres, Monash University and the Office of the Privacy Commissioner. However, nothing eventuated from the Model Bill and all jurisdictions except for Victoria chose to either continue with their individual legislated schemes or introduce new state-based legislation.

3.4. Meanwhile, a number of other government bodies recommended spent convictions reform as part of their work. In 2004, spent convictions formed a primary aspect of the Australian Human Rights Commission's inquiry into *Discrimination in Employment on the Basis of Criminal Records*.[47]

3.5. In 2005, Fitzroy Legal Service and Job Watch published a report titled *Criminal Records in Victoria: Proposals for Reform*.[48] It recommended, among other things, that a person should only need to disclose an unspent conviction and that equal opportunity and anti-discrimination laws should be amended to prohibit discrimination on the basis of an irrelevant criminal record.

3.6. The 2008 review of the *Equal Opportunity Act 2010* (Vic) recommended that the Act be amended to include 'irrelevant criminal record' as a protected attribute.[49] It also noted that

[45] Australian Law Reform Commission, *Spent Convictions*, Report No 37 (1987).
[46] Spent convictions reform was the responsibility of the Standing Committee of Attorneys-General, which became the Standing Council on Law and Justice in 2011 and is now known as the Law, Crime and Community Safety Council.
[47] See Australian Human Rights and Equal Opportunity Commission (HREOC), *Discrimination in Employment on the Basis of Criminal Records*, Discussion paper, December 2004. HREOC has also published *On the Record: Guidelines for the Prevention of Discrimination in Employment on the Basis of Criminal Records* (2005, revised in 2007 and 2012).
[48] Fitzroy Legal Service and Job Watch, *Criminal Records in Victoria: Proposals for Reform* (2005); See also the *Off the Record* blog, which contains a short documentary about irrelevant criminal record discrimination <https://offtherecordcampaign.wordpress.com/>.
[49] Julian Gardner, *An Equality Act for a Fairer Victoria: Equal Opportunity Review Final Report* (Department of Justice, June 2008) 99.

discrimination on the basis of an irrelevant criminal record 'has disproportionate impact on Indigenous people and perpetuates disadvantage'.[50]

3.7. In April 2015, the LIV published a detailed submission to the Victorian Attorney-General, advocating for the introduction of a Victorian scheme.[51] It recommended, among other things, that a spent conviction scheme only apply to recorded convictions; offences should be immediately spent following findings of guilt that are dismissed or at the end of a bond, adjournment or undertaking; offences, other than sexual offences, that attract a sentence of 30 months or less should be eligible to become spent after 10 years from the date of conviction; convictions should be spent automatically (and not on application); and new offences should be created for unlawful disclosure of spent convictions.

3.8. More recently, in February 2016, Woor-Dungin launched the Criminal Record Discrimination Project with a view to highlight how discrimination on the basis of a criminal record disproportionately affects Aboriginal people.[52] They are currently consulting with members of the Aboriginal community across Victoria, as well as Aboriginal legal organisations and key stakeholders, on the best spent convictions model to address this disproportionate discrimination. Woor-Dungin has also produced a variety of criminal record fact sheets that provide information on rights and responsibilities in regard to disclosure of a criminal record.[53]

[50] Ibid 100.
[51] LIV submission, above n 3.
[52] Woor-Dungin, *Criminal Record Discrimination Project* (2017) <www.woor-dungin.com.au/criminal-record-discrimination>.
[53] Woor-Dungin, *Criminal Record Fact Sheets* (2017) < http://www.woor-dungin.com.au/criminal-record-fact-sheets>.

4. Recommendations for reform

4.1. The following recommendations for reform represent the legislated spent convictions scheme that RAP prefers, in light of the experiences of other jurisdictions (detailed in Appendix A) and current Victoria Police practices. We recognise that there are many ways to introduce such a scheme, as demonstrated by the diversity of the legislation across Australia. In this vein, we support the schemes recommended by other organisations, including the LIV and Woor-Dungin, who have benefited from consultation with members of their respective communities. The recommendations that follow are consistent with those schemes recommended by other organisations and are founded on comparative analysis and best practice across Australia.

Definition of a conviction

4.2. RAP recommends legislation that operates to clear minor offences from criminal records in the most straightforward and fair way. RAP therefore supports a broad definition of conviction in the interests of the integrity of the scheme. In this way, all types of interactions with the criminal justice system could come within the scheme and be capable of being cleared from a criminal record after the applicable waiting period has expired.

4.3. We recommend that the definition of conviction be taken from the Commonwealth and New South Wales schemes to include:

- All convictions (whether summary or on indictment);
- Findings of guilt;
- Matters taken into account;
- Findings that an offence is proven; and
- Orders of the Children's Court.

4.4. Alternatively, a narrow definition of conviction could be employed, with all other types of outcomes sitting outside the scheme. Given Victoria Police's current policy of including findings of guilt within their spent convictions policy, we are of the view that a scheme that includes findings of guilt within its ambit is more appropriate. In this way, all dispositions that come within the scope of the current policy would be covered by the scheme.

4.5. A wide definition of conviction would aid the simplicity and scope of the scheme but should only be employed if it operates in conjunction with our other recommendations, particularly waiting periods that differ according to the type of conviction, a definition of 'minor conviction' that limits when the waiting period restarts and automatic spending of convictions at the end of the waiting period.

Recommendation 1

RAP recommends a legislated scheme that includes a broad definition of conviction, coupled with varied waiting periods for different types of convictions.

Conviction capable of being spent

4.6. The types of convictions that may be spent vary across the jurisdictions. RAP supports the current policy of Victoria Police that allows for convictions of 30 months' imprisonment or less to become spent. This is the same practice currently employed under the Commonwealth and Queensland schemes. A threshold of 30 months' imprisonment or less would also provide consistency for people found guilty of both Victorian and Commonwealth offences.

4.7. RAP is aware that there may be some types of offences for which there may be some resistance to convictions becoming spent. While RAP prefers a scheme that has equality and rehabilitation at its heart, we understand that Parliament may wish to reserve this right for particular offences. Most jurisdictions do not allow for convictions for sexual offences or convictions of body corporates to be spent.

4.8. Rather than a blanket ban on all sexual offences, RAP recommends a scheme where serious sexual offences that cannot automatically be spent are defined in a separate schedule. In addition, a person should be able to apply for convictions for scheduled offences to be spent at the end of the relevant waiting period. This would allow for circumstances where a minor indiscretion (such as a one-off conviction for a sexting offence between peers) could either be automatically spent or spent on application after the relevant waiting period.

4.9. This could operate in a similar manner to the South Australian scheme which has provisions specific to eligible and designated sexual offences.

4.10. We expect such circumstances to be of minimal frequency given that the scheme is targeted at minor offences and a person could only apply to spend a scheduled offence if they received a sentence of imprisonment of 30 months or less and had not reoffended since that conviction.

Recommendation 2

RAP recommends a legislated scheme that allows for convictions that resulted in no term of imprisonment or a sentence of 30 months' imprisonment or less to be spent.

RAP recommends that any offence types to be excluded from the scheme be specifically included in a schedule. A person should be able to apply for consideration of a scheduled offence to be removed from their record at the end of the relevant waiting period.

Waiting period

4.11. RAP recommends that the waiting period that applies before a conviction becomes spent differ according to the type of conviction, the type of offence and the age of the offender. This approach concords with the schemes in New South Wales, Queensland, the Australian Capital Territory and the Northern Territory, which recognise that the impact an offence has on a person's record and future rehabilitative prospects should depend on the gravity of the conviction.

4.12. Varied waiting periods, including the ability for particular convictions to be immediately spent, are crucial if a wide definition of conviction is employed in the scheme (see Recommendation 1).

4.13. Most jurisdictions employ a 10-year waiting period for convictions recorded in the adult courts and a 5-year waiting period for convictions recorded in the Children's Court (including Queensland, Tasmania, South Australia, the Australian Capital Territory and the Northern Territory). In NSW, a 3-year waiting period for juvenile offenders applies.

4.14. In some jurisdictions, there are particular dispositions that will be spent immediately. In New South Wales and the Australian Capital Territory any finding of guilt without conviction is spent immediately. Similarly, in the Northern Territory, where a conviction is not recorded and a person is discharged, the order is immediately spent. In New South Wales, the Australian Capital Territory and the Northern Territory, where a bond or undertaking is imposed the order is spent from a person's record once the conditions on that order have been successfully completed.

4.15. In Queensland, there is an added distinction between adult indictable offences and adult summary/other offences. Given that Victoria has clearly distinguished between the seriousness it attaches to summary and indictable offences, RAP believes that different waiting periods should apply.

4.16. Drawing on the waiting periods provided for in other jurisdictions, RAP recommends that the following waiting periods apply:

10 years	Adults (indictable offences)
5 years	Adult (summary and other offences)
3 years	Juveniles
Immediate	Findings of guilt with no conviction Proven offences with no conviction Bonds, adjournments and undertakings, following the completion of conditions Discharged offences

4.17. For consistency, the waiting period should commence from the date of conviction, as is the case in the Commonwealth, Queensland, Tasmanian and South Australian schemes. This is also the approach currently taken by Victoria Police.

Recommendation 3

RAP recommends a scheme that allows for varied waiting periods that apply to different types of convictions.

The waiting period should commence from the date of conviction.

Effect of conviction during the waiting period

4.18. A subsequent conviction during the waiting period for a conviction typically 'restarts the clock' for earlier offences. This is consistent with the principle that an individual can only claim the benefit of a spent convictions scheme in the absence of subsequent offending.

4.19. However, to prevent unjust outcomes when a subsequent offence constitutes a minor relapse, RAP recommends that a conviction defined as a 'minor conviction' should not restart the waiting period for a prior conviction. This would allow for circumstances in which an individual commits a minor offence, which is not necessarily indicative of any significant propensity to reoffend.

4.20. In line with the Model Spent Convictions Bill and the South Australian scheme, RAP recommends that a definition for a 'minor conviction' be included as:

> a conviction for which no penalty is imposed;
> a conviction for which the penalty is a fine of $500 or less; or
> a conviction for which the penalty is a fine greater than $500 as prescribed by the regulations.

4.21. Similarly, RAP believes that past convictions should not be capable of haunting a person forever. Once a waiting period has successfully been completed without any subsequent offending, a conviction should be permanently spent. In concordance with the Commonwealth, New South Wales, the Australian Capital Territory, Western Australia, Tasmania and South Australia, a conviction should not be 'revived' by subsequent offending once it has become spent.

Recommendation 4

RAP recommends that the Act include a definition of a 'minor conviction'.

A minor conviction should be defined as a conviction for which no penalty is imposed; for which the penalty is a fine of $500 or less; or where prescribed by regulations.

A minor conviction should not disrupt the waiting period of a conviction not yet spent.

A conviction should not be capable of being revived after the waiting period has been served and the conviction has been spent.

Means by which convictions become spent

4.22. RAP recommends a scheme where convictions become spent automatically at the end of the waiting period (rather than requiring an application). Only the Western Australian scheme requires applications for all convictions; RAP considers this unnecessarily burdensome.

4.23. However, if the government is minded to carve out convictions for particular offence types, RAP recommends that such convictions be capable of being spent on application to ensure

that convictions that can be reasonably considered as warranting removal from a record are capable of being spent.

Recommendation 5

RAP recommends that all convictions that are capable of being spent within the scheme are spent automatically when the applicable time period expires.

For any offences included in a schedule of exceptions, RAP recommends that these still be capable of being spent upon application at the end of the waiting period.

Consequences of conviction becoming spent

4.24. Consistent with the other Australian schemes and current Victoria Police practice, once a conviction is spent a person should not be required to disclose information regarding a spent conviction and that person's criminal history is taken to refer only to convictions which are not spent.

4.25. Information on a person's criminal history would still be held by Victoria Police and required to be disclosed under particular legislation, including those required to be disclosed for the purposes of a Working with Children Check. The interaction between the spent convictions scheme and other legislation should be included as a schedule to the Act.

Recommendation 6

RAP recommends that once a conviction is spent it is no longer a part of a person's criminal history and that person is not required to disclose information regarding that spent conviction.

Consequences of disclosing spent convictions

4.26. RAP believes that there is little value in a spent convictions scheme unless there are consequences for unlawful disclosure and discrimination on the basis of a spent conviction.

4.27. RAP prefers the approach taken in Tasmania whereby a person is not required to disclose a spent conviction and it is an offence to unlawfully disclose a conviction that has been spent. A spent conviction should not be taken into account in assessing a person's character other than for authorised purposes. Such authorised purposes could include for admission to particular professions, but should be listed in the legislation.

4.28. In Tasmania, it is also unlawful to threaten to disclose spent conviction information. There are particular offences for disclosing spent conviction information without lawful authority and for fraudulently or dishonestly obtaining spent conviction information.

Recommendation 7

RAP recommends that the consequences of disclosure of spent convictions be modelled on those in Tasmania, including that it is an offence to disclose a spent conviction without lawful authority, the consideration of a spent conviction is unlawful except for an authorised purpose, and it is unlawful to threaten to disclose spent conviction information.

Anti-discrimination reforms

4.29. A well-rounded spent convictions scheme would be introduced as a package that includes amendments to Victoria's *Equal Opportunity Act 2010* (Vic). Such amendments would make it unlawful to discriminate on the basis of spent, quashed, or annulled convictions, or any irrelevant criminal record.

4.30. We recommend that the *Equal Opportunity Act 2010* (Vic) be amended to prohibit discrimination on the basis of an 'irrelevant criminal record', as is the case in Tasmania and the Northern Territory, which would also bring discrimination on the basis of an 'irrelevant criminal record' within the scope of the *Charter*. This approach also clarifies the position regarding the right to privacy and employment, which remains uncertain in Victoria.

4.31. Specifically, 'irrelevant criminal record' should be added to the list of attributes in s 6 of the *Equal Opportunity Act 2010* (Vic) for which discrimination is prohibited, and an accompanying definition of 'irrelevant criminal record' inserted in the s 4 list of definitions.

4.32. RAP recommends drawing on the definition employed in s 3 of the Tasmanian *Anti-Discrimination Act 1998* (Tas). The Victorian definition should identify that spent, quashed, or annulled convictions are irrelevant, as well as any conviction where the circumstances relating to the offence for which the person was convicted are not directly relevant to the situation in which the discrimination arises.

4.33. In Western Australia, anti-discrimination provisions are included within the *Spent Convictions Act 1988* (WA) and breach of those provisions may be dealt with as if they were a breach of the *Equal Opportunity Act 1984* (WA). RAP prefers a more straightforward approach that amends the *Equal Opportunity Act 2010* (Vic) as it would assist in the clarity of the operation of that Act and more directly engage with the *Charter*.

Recommendation 8

RAP recommends that the Equal Opportunity Act 2010 *(Vic) be amended to include 'irrelevant criminal record' within the list of attributes against which it is unlawful to discriminate.*

List of recommendations

Recommendation 1

Victoria adopt a legislated scheme that includes a broad definition of conviction, coupled with varied waiting periods for different types of convictions.

Recommendation 2

The scheme allow convictions that resulted in no term of imprisonment or a sentence of 30 months' imprisonment or less to be spent.

Any offence types to be excluded from the scheme should be specifically included in a schedule. A person should be able to apply for consideration of a scheduled offence to be removed from their record at the end of the relevant waiting period.

Recommendation 3

The scheme allow for varied waiting periods that apply to different types of convictions.

The waiting period should commence from the date of conviction.

Recommendation 4

The legislation include a definition of a 'minor conviction'.

A minor conviction should be defined as a conviction for which no penalty is imposed; for which the penalty is a fine of $500 or less; or where prescribed by regulations.

A minor conviction should not disrupt the waiting period of a conviction not yet spent.

A conviction should not be capable of being revived by subsequent offending after it is spent.

Recommendation 5

All convictions capable of being spent within the scheme be spent automatically when the applicable time period expires.

Any offences included in a schedule of exceptions should be capable of being spent upon application at the end of the waiting period.

Recommendation 6

Once a conviction is spent it is no longer a part of a person's criminal history and that person is not required to disclose information regarding that spent conviction.

Recommendation 7

The consequences of disclosure of spent convictions be modelled on those in Tasmania, including that it is an offence to disclose a spent conviction without lawful authority, consideration of a spent conviction is unlawful except for an authorised purpose, and it is unlawful to threaten to disclose spent conviction information.

Recommendation 8

The *Equal Opportunity Act 2010* (Vic) be amended to include an 'irrelevant criminal record' within the list of attributes against which it is unlawful to discriminate.

Appendix A: Spent Convictions Schemes in Australia

FEATURES	CTH	NSW	QLD	ACT	NT	WA	TAS	SA
Legislation	*Crimes Act 1914* pt VIIC	*Criminal Records Act 1991*	*Criminal Law (Rehabilitation of Offenders) Act 1986*	*Spent Convictions Act 2000*	*Criminal Records (Spent Convictions) Act 1992*	*Spent Convictions Act 1988*	*Annulled Convictions Act 2003*	*Spent Convictions Act 2009*
Definition of conviction	• Conviction whether summary or on indictment. • Finding of guilt. • No finding of guilt but matter taken into account re: sentence for another offence.	• Conviction whether summary or on indictment. • Finding of guilt/that offence proved. • Order that person be of good behaviour. • Order made by the Children's Court.	• Conviction by or before any Court.	• Conviction whether summary or on indictment. • Person charged, charge proved but disposed of without conviction.	• Any conviction. • Finding that offence proved. • Any other order made without proceeding to conviction which constitutes a criminal record under the Act.	• Any Conviction. • Charge disposed of without conviction. The definition does not include: • Life sentence. • Children's conviction.	• Conviction whether summary or on indictment.	• Conviction whether summary or on indictment. • Finding of guilt. • A finding that an offence has been proved. • No finding of guilt but matter taken into account re: sentence for another offence.
Conviction capable of becoming spent	Sentence with no imprisonment, 30 month sentence or less, or a pardon for reason other than that a person was wrongly convicted.	6 month sentence or less (subject to exceptions for sexual offence, body corporate and prescribed convictions – see below).	Sentence with no imprisonment or a 30 month sentence or less.	6 month sentence or less (subject to exceptions for sexual offence, body corporate and prescribed convictions – see below).	6 month sentence or less (subject to exceptions for sexual offence, body corporate and prescribed convictions – see below).	**Serious conviction** • sentence of more than 1 year or for an indeterminate period. • fine of $15,000 or more. • By application. **Lesser conviction** • sentence less than 1 year and not for an indeterminate period.	6 month sentence or less (subject to exceptions for sexual offence and prescribed convictions – see below).	**Eligible adult offence** • sentence of 12 months or less. **Eligible juvenile offence** • sentence of 24 months or less. **Eligible sex offence** • sex offence for which no period of imprisonment imposed. • Designated sex offence (those involving consenting adults or offences that would not have been an offence if the persons were not of the same sex)

FEATURES	CTH	NSW	QLD	ACT	NT	WA	TAS	SA
Length of waiting period	10 years (adult). 5 years (child).	10 years (adult). 3 years (child). Certain convictions spent before this including: • A finding of guilt or that offence proven without conviction is spent immediately • An order in Children's Court dismissing charge and cautioning is spent immediately • Good behaviour bond are spent upon satisfactory completion of conditions.	10 years (adult indictable). 5 years (other offences/offenders).	10 years (adult). 5 years (child). Certain convictions spent before this include: • A finding without conviction & order in Children's Court dismissing charge and cautioning are immediate. • Good behaviour bond spent upon satisfactory completion of conditions.	10 years (adult). 5 years (child). Certain convictions spent before this include: • Conviction not recorded and person discharged is immediately spent. • Where offence proved and no conviction, conviction spent subject to completion of certain conditions.	10 years (adult). 3 years for minor drug offences (possession of drug paraphernalia or simple cannabis possession).	10 years (adult). 5 years (child).	10 years (adult). 5 years (child). Certain convictions spent before this includes a finding of guilt without conviction.
Commencement of waiting period	From the date of conviction.	At the end of the period of imprisonment served.	From the date of conviction.	At the end of the period of imprisonment served.	At the end of the period of imprisonment served.	At the date of conviction or at the end of the term of imprisonment for which the person is sentenced (regardless of amount of time served).	From the date of conviction.	From the date of conviction.
Effect of conviction during the waiting period	The waiting period automatically restarts for a person convicted of a further Commonwealth or Territory indictable offence or a State or foreign offence (whether summarily or on indictment), where that offence was committed during the waiting period. A court may order that the waiting period restarts when a person is convicted summarily	The 'crime free period' equals a period a period in which a person has not been convicted of an offence punishable by imprisonment or has not been in prison for any offence or unlawfully at large. The 'crime free period' for orders of the Children's Court equals a period in which the person has not been subject to a control order person has not been convicted of an	The waiting period restarts on the date a person is convicted of another offence in Queensland or elsewhere. Convictions for which the 'rehabilitation period' has expired will be revived by subsequent convictions. Convictions that will not restart the waiting period or revive spent convictions include convictions for simple	'Crime-free period' equals a period in which the person has not been: • Subject to a control order; • Convicted of an offence punishable by imprisonment; • In prison because of a conviction for an offence; • Unlawfully at large for an offence. Spent convictions are generally not revived.	Waiting period is the period in which a person has not been convicted of an offence punishable by imprisonment or served any part of a sentence of imprisonment. The waiting period for the spending of a traffic conviction will only be restarted by another traffic conviction (and a conviction for a traffic offence will not restart the waiting period for non-traffic convictions).	Waiting period restarts when the person incurs another conviction, unless the new conviction does not include punishment or a fine less than $100 is imposed. The waiting period does not restart for a conviction already spent.	The waiting period restarts from the day a person is convicted of an offence punishable by a term of imprisonment. The waiting period for the annulment of a traffic offence will only be restarted by another traffic offence (and a conviction for a traffic offence will not restart the waiting period for non-traffic offences). A spent conviction may only be revived by court	The waiting period restarts for offences that have not been spent from the day a person is convicted of another offence, unless it is a conviction where the person is discharged without penalty or where the penalty imposed is less than $500 (unless otherwise prescribed by regulations), or the conviction is quashed or the person is pardoned.

FEATURES	CTH	NSW	QLD	ACT	NT	WA	TAS	SA
	of a Commonwealth or Territory offence, where that offence was committed during the waiting period. A conviction which is spent is not revived by a subsequent conviction.	offence punishable by imprisonment or has not been in prison for any offence or unlawfully at large. A conviction which is spent is not revived by a subsequent conviction.	offences, regulatory offences, or offences dealt with summarily (unless otherwise ordered by the court).	They may be revived in specific cases where a conviction occurs after the crime-free period for offending that was committed during the crime-free period.	All spent convictions are revived by subsequent convictions of the same type (ie, a traffic conviction will revive a spent traffic conviction and a non-traffic conviction will revive a spent non-traffic conviction).		order in specific circumstances (eg where the offender is convicted of the same offence multiple times and the court believes it futile for the person to continue to have the benefit of the annulment, or other public interest grounds).	A conviction which is spent is not revived by a subsequent conviction.
Means by which convictions become spent	Automatic – upon expiration of waiting period (subject to no further conviction as listed above).	Automatic - upon expiration of waiting period (subject to no further conviction as listed above).	Automatic - upon expiration of waiting period (subject to no further conviction as listed above).	Automatic - upon expiration of waiting period (subject to no further conviction as listed above).	For adult offenders and juvenile offenders convicted in the Juvenile Court, automatic - upon expiration of waiting period (subject to no further conviction as listed above). For Juvenile Offenders convicted in an adult Court, upon application to the Police Commissioner.	**Serious conviction:** Upon application to district court judge who will exercise discretion. **Lesser conviction:** Upon application to the Commissioner of Police.	Automatic - upon expiration of waiting period (subject to no further conviction as listed above).	For eligible adult and juvenile offences: automatic - upon expiration of waiting period (subject to no further conviction as listed above). For eligible sex offences: upon application to a qualified magistrate following the expiration of the waiting period.
Consequence of conviction becoming spent	You are not required to disclose to any person for any purpose that you have been charged with/convicted of that offence.	You are not required to disclose information regarding a spent conviction. Your criminal history is taken to refer only to convictions which are not spent.	You are not to disclose your spent conviction to another person unless you wish to do so.	You are not required to disclose information regarding a spent conviction. Your criminal history is taken to refer only to convictions which are not spent.	You are not required to disclose information regarding a spent conviction. Your criminal history is taken to refer only to convictions which are not spent.	Reference in any law to conviction does not include spent conviction. You are not required to disclose or acknowledge a spent conviction.	You are not required to disclose information regarding a spent conviction. Your criminal history is taken to refer only to convictions which are not spent.	You are not required to disclose information regarding a spent conviction. Your criminal history is taken to refer only to convictions which are not spent.
Consequences of disclosing spent convictions	A person who knows, or could reasonably be expected to know that a person's conviction is spent should not disclose that fact to any other person without consent and should not take the spent conviction into account. A person may complain to Privacy Commissioner	A person is not entitled to take a spent conviction into account in assessing a person's character. It is an offence to disclose spent conviction information without lawful authority.	A person must only disclose another person's spent conviction if they have authority. It is lawful to deny a conviction and there is It is an offence to contravene any provision of the Act.	A person is not entitled to take a spent conviction into account in assessing a person's character. It is an offence to disclose spent conviction information without lawful authority.	A person is not entitled to take a spent conviction into account for an unauthorised purpose. It is an offence to disclose spent conviction information without lawful authority and for a person with access to spent conviction information,	A person is not entitled to take a spent conviction into account in assessing a person's character. An employer, commission agent etc cannot discriminate against a job applicant or contract worker on the basis of a spent conviction. It is unlawful	A person is not entitled to take a spent conviction into account in assessing a person's character or for an unauthorised purpose. It is unlawful to threaten to disclose spent conviction information. It is an offence to disclose spent	A spent conviction, or non-disclosure of a spent conviction, cannot be a ground for refusal or revocation of any appointment, post, status or privilege. In the application of any statutory instrument, reference to a person's character is not to be taken as allowing the

FEATURES	CTH	NSW	QLD	ACT	NT	WA	TAS	SA
	about act or practice of a person/agency that may be in breach of the Act.	It is an offence for a person to fraudulently or dishonestly obtain spent conviction information.		It is an offence for a person to fraudulently or dishonestly obtain spent conviction information.	who knows or should reasonably be expected to know that a conviction is spent, to disclose the information other than in accordance with the Act. It is an offence for a person to fraudulently or dishonestly obtain spent conviction information.	for an organisation of workers, a qualification authority or employment agency to discriminate against a person on the basis of a spent conviction. Contraventions may be lodged as if they were a contravention of the *Equal Opportunity Act 1984* (WA). A person is not to disclose or acknowledge matters relating to the spent conviction of another person. It is an offence to obtain spent conviction information without lawful authority.	conviction information without lawful authority. It is an offence for a person to fraudulently or dishonestly obtain spent conviction information.	spent conviction to be taken into account. Can be taken into account when considering fairness/character for some positions (e.g. care of children). Can apply to a qualified magistrate for an exemption. It is an offence for a person to fraudulently or dishonestly obtain spent conviction information. It is an offence for those with access to spent convictions either through work with public records or other business activities to disclose information about a spent conviction where they knew or ought to have known the information was about a spent conviction.
Treatment of convictions in other jurisdictions	Where a conviction is spent under a law of another state or territory, it is spent for Cth purposes. If a law of a state or territory provides that it is lawful not to disclose a spent conviction, then it is not required to be disclosed for Cth purposes.	All convictions, no matter where they were committed, are spent in accordance with the NSW provisions (in relation to their disclosure in NSW).	A conviction that can be spent under the Act includes any conviction, no matter where it is recorded (in relation to its disclosure in Qld).	The Act applies to convictions for Cth offences, State offences and foreign offences (in relation to their disclosure in the ACT).	A conviction that can be spent under the Act includes a conviction in a State or another Territory of the Cth (in relation to its disclosure in the NT).	The Act applies to offences against a law of WA or of a foreign country. Convictions against a law of Qld, NSW or the Cth will be spent in WA if they qualify to be spent under the schemes in those jurisdictions.	The Act applies to convictions for offences against the laws of the other States, the laws of the Cth and the laws of other countries (in relation to their disclosure in Tas).	The Act includes a mutual recognition principle whereby a conviction that has been spent under corresponding law of a recognised jurisdiction will be spent for the purposes of the SA scheme. If no corresponding law exists, convictions (including foreign convictions) will be spent in accordance with the SA scheme.

FEATURES	CTH	NSW	QLD	ACT	NT	WA	TAS	SA
Exceptions to the scheme	Information on spent convictions may be taken into account by or disclosed to a person or body dealing with information about persons who work, or seek to work , with children, and for certain law enforcement purposes. A conviction against a body corporate is not capable of becoming spent. Information on all sexual offences and any offence against the person committed against a victim under the age of 18 must be disclosed for designated positions in Commonwealth authorities that involve access to national security information.	Convictions for defined sexual offences, convictions imposed against bodies corporate and convictions prescribed by the regulations are not capable of becoming spent. A person convicted of an arson offence must disclose a spent conviction for arson or attempted arson if they seek employment in fire fighting or fire prevention. A person must continue to disclose spent convictions for the purposes of employment in certain occupations (eg, employment as a judge or application for a working with children check). It is not an offence for an officer in charge of the Criminal Records Section of the NSW Police Force to disclose spent convictions in specified circumstances.	Applicants for particular positions set out in the Act must disclose particular offence types listed in relation to that position (eg, applicants to become police officers must disclose contraventions of or failures to comply with any provisions of law, whether committed in Queensland or elsewhere). It is not an offence to disclose a spent conviction in specified circumstances, e.g. in the reporting of judicial proceedings.	Convictions for defined sexual offences, convictions imposed against bodies corporate and convictions proscribed by the regulations are not capable of becoming spent. A spent conviction must be disclosed in relation to an application by a person convicted of arson or attempted arson to be involved in fire fighting or fire prevention. It is not an offence for an archive, library, or law enforcement agency to release information about a spent conviction in specified circumstances. Disclosure is required in specified circumstances, such for the purpose of employment in certain professions, court proceedings or working with children, older people or people with a disability.	Convictions for defined sexual offences, an offence by a body corporate or a prescribed offence are not capable of being spent (the regulations do not currently prescribe any additional offences). The Commissioner of Police, law enforcement agency or a person employed by or working for an archive or a library may disclose information about spent convictions in specified circumstances.	Specific professions and appointments are listed in a schedule to the Act which require all convictions (including spent convictions) to be disclosed. Certain persons employed to work with children must disclose particular offences listed in the schedule including listed sexual offences and assaults.	Defined sexual convictions cannot be spent. Particular professions for which annulled convictions must still be disclosed are set out in Schedule 1 to the Act. It is not an offence for a Justice Agency, archive, library, or court to release information about an annulled conviction in specified circumstances.	Non-designated sexual offences are not capable of being spent. Convictions of a body corporate or otherwise prescribed are also not capable of being spent. Persons can apply for eligible sex offences to be spent on application to a qualified magistrate. Certain government and justice agencies and libraries and archives are excluded from the non-disclosure provisions in specified circumstances. Assessments for working with or caring for children or vulnerable people are excluded from the non-disclosure provisions. A person must disclose any arson offences when applying to be a fire-fighter, police officer or corrections officer.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