

The Secretary
Legislative Council, Legal and Social Issues Committee
Parliament House, Spring Street
East Melbourne, VIC 3002

By email: spentconvictionsinquiry@parliament.vic.gov.au

9 July 2019

Legislated spent convictions scheme inquiry

Thank you for the opportunity to make a submission on a spent convictions scheme for Victoria.

Justice Connect is an ACNC registered charity and accredited community legal centre. We have worked for more than 25 years to improve legal and life outcomes for vulnerable people and community groups, through our specialist services and pro bono network of over 10,000 lawyers.

Expertise relevant for this submission

For this submission we are drawing on our expertise and longstanding experience with:

- vulnerable clients (particularly through the intensive support provided by our Homeless Law service)
- not-for-profit community groups who rely heavily on volunteers to provide their services (supported by our specialist Not-for-profit Law service).

To elaborate Homeless Law's *Closing the Revolving Door* project is working with people with convictions; it works towards breaking the cycle between imprisonment and homelessness by providing prisoners with intensive legal help and post-release support to sustain housing and remove barriers to accessing safe, post-release housing. In the last 12 months of this project, 59 Victorian prisoners have been offered specialist legal help to sustain tenancies or resolve housing debts, with 80% of finalised legal matters being successfully resolved. This includes directly preventing 20 prisoners with complex needs from being evicted into homelessness systems.

By providing free legal help Justice Connect's internationally recognised Not-for-profit Law service supports not-for-profit organisations and social enterprises across Australia (in Victoria alone, there are an estimated 189,000 of these groups). Annually we respond to more than 1,600 legal enquiries, train more than 3,000 people and our website (www.nfplaw.org.au with over 350 free legal resources) with more than 430,000 unique page views.

Our recommendation

We recommend that a spent convictions scheme be introduced in Victoria, bringing it into alignment with other states, territories and federal law.

Why we make this recommendation

An appropriately drafted spent convictions scheme will allow more people to contribute positively to society; to progress with rehabilitation including by being able to secure work. Paid employment supports gaining and retaining secure housing, among other benefits. Volunteering not only helps to mitigate social isolation (both of those who volunteer and those supported through the efforts of volunteers), it can also be a pathway to paid employment.

It is possible to balance this socially and economically worthwhile outcome — more people in paid or volunteer work, and a reduction in the associated health and homelessness risks — without undermining the need for appropriate screening checks for people working with vulnerable cohorts.

Breaking the cycle between prisons & homelessness: the importance of a spent convictions scheme

Our work helping prisoners stay housed and reducing barriers to accessing housing demonstrates that secure, safe housing is an essential first step to successfully reintegrating in to the community. However housing is only one piece of the reintegration puzzle. In order to sustain housing and successfully reintegrate, access to employment, whether paid or voluntary, is vital. Given the lack of public and community housing, employment is also essential to enable individuals to sustain private rental properties post-release, which would otherwise be unaffordable.

Of those currently in Australian prisons, 33% were experiencing homelessness prior to incarceration, and more than half of Australian prisoners expect to be homeless upon release.¹ Former prisoners are also twice as likely to return to prison within nine months of release if they are homeless² and recent research suggests that the risk of homelessness increases for prisoners 6 months after release.³

Our ability to use legal assistance to prevent homelessness would be enhanced if Victoria had a spent convictions scheme. By increasing access to employment opportunities there is a flow-on improvement in the capacity to sustain a tenancy, especially one that we have got

¹ Australian Institute of Health and Welfare, 'The Health of Australia's Prisoners 2018', 2019, pp. 22-24 <https://www.aihw.gov.au/reports/prisoners/health-australia-prisoners-2018>.

² Eileen Baldry et al, 'Ex-Prisoners, Homelessness and the State in Australia', (2006) 39 *The Australian and New Zealand Journal of Criminology* 20, 24.

³ Moschion J and Johnson G (2019) 'Homelessness and Incarceration: A Reciprocal Relationship', *Journal of Quantitative Criminology*. <https://doi.org/10.1007/s10940-019-09407>

'back on track' post-release. While certain offences would not be spent without the expiration of a specified period, even for these offences a clear timeline provides an incentive for remaining conviction free.

Volunteering and spent convictions

The vast majority of not-for-profit community groups we work with involve volunteers. The most recent Australian Charities Report (2017)⁴ states:

- 49% of charities operate without any paid staff
- 65% of charities are small with 36% of these having revenue of less than \$50,000
- 3.3 million people volunteer and 12.6 million people are employed by charities.⁵

It is clear from these statistics that without a sufficient and ongoing pool of volunteers (and paid staff), key services will not be provided to local communities. In economic terms alone, governments rely on these community services being provided. Government regularly contracts charities to deliver key social services in the knowledge that their funding leverages greater impact as a result of the volunteer effort these organisations garner.⁶

Many volunteer (and paid positions) require screening requirements to be satisfied – commonly these include Working with Children Checks (**WWCC**) and/ or police checks.

The problem is that the current system for working with children checks (WWCCs) and criminal record checks is opaque and unfair. A spent convictions scheme would provide clarity and certainty.

1. *Understanding and compliance with screening checks is patchy.*

We know this from the hundreds of trainings⁷ for not-for-profit organisations we have conducted on topics including governance, volunteer management and screening checks. We have provided training to a diverse range of groups including to women currently in prison (to educate them on how to get involved in community groups post-release and volunteer rights), and drug and alcohol support groups (who by their very nature rely on people with convictions to support and assist others). These are just two examples of groups who are very concerned and confused about where they stand on the issue of spent convictions.

Outside the legislative requirements to undertake screening checks like WWCCs, some not-for-profit organisations have obligations to conduct these checks as part of their (government) funding agreement or other contractual obligation.

Further, as many organisations wish to be child safe organisations and follow best practice, they undertake screening checks with employees or volunteers even where they may not be required by law.

⁴ <https://www.acnc.gov.au/tools/reports/australian-charities-report-2017> : based on data received from the 2017 Annual Information Statements of approximately 47,000 charities.

⁵ It is worth noting that these statistics do not capture the even broader pool of organisations that are not-for-profits; only about 10% of not-for-profits are registered charities.

⁶ See Contribution of the Not-for-Profit Sector, Productivity Commission Research Report, January 2010, available at <https://www.pc.gov.au/inquiries/completed/not-for-profit/report/not-for-profit-report.pdf>.

⁷ In 2018-2019, Justice Connect's Not-for-profit Law Training social enterprise trained 4,179 individuals in nearly 200 training sessions.

2. *The screening requirements are complex and can be a lifetime barrier to volunteering.*

Currently, a person with historic drug offences on their record could be prevented from obtaining a WWCC as these convictions sit on a person's record indefinitely. This is compounded by the fact that people have to apply for the WWCC and wait for it to be rejected before appealing the decision to the Victorian Civil and Administrative Tribunal. This is a stressful situation and detrimental for a person who may have fully rehabilitated from their past behaviour. People are effectively punished again for trying to engage with society, and in many cases volunteer their time for the benefit of others.

Generally speaking, while discrimination laws protect people from discrimination on the basis of having a criminal record, this is of no help if they cannot pass the requisite screening process. A person will not even get a foot in the door if the organisation's legal, policy or contractual obligations do not allow them to be involved in the organisation without a satisfactory screening check, such as a WWCC.

3. *Criminal record checks are problematic.*

A person with a theft conviction on their record from their teenage years may fail a criminal record check where their proposed voluntary role could involve handling cash. This is despite the offence being decades earlier when they were a young person.

The discretion that police currently have over what they decide to release in a criminal record check is opaque and can cause uncertainty, particularly as it may depend on how the assessing officer categorises the purpose for the check.

If a historic conviction is revealed as part of the check this requires the person not only to have this discussion with the organisation they are wishing to work for (either in a paid or voluntary basis), but also for the organisation to store this personal and confidential information for their records. Many not-for-profit organisations (especially those that are completely volunteer-run) may not have appropriate systems to store this type of information, or even fully understand their obligations regarding storing sensitive personal information. As a result, this causes additional burdens not only for the individual, but for the organisation they are working or volunteering with.

Allowing individuals to be freed from their historic convictions will enable and encourage more people to work and volunteer their time, for the benefit of the whole community.

It will also encourage people with criminal convictions to work towards a clean record in the knowledge that eventually their criminal record will be spent, enabling them to access volunteer and employment opportunities without the fear of discrimination and rejection.

It will also benefit many not-for-profit organisations in widening the number of people who can work with them (in paid and voluntary roles).

We know that Victoria needs a more progressive and transparent approach to screening checks for people with a criminal record. A spent convictions scheme is an important step towards this goal.

We would be happy to provide evidence in person to the Committee and elaborate on our submission. The lead contact on this submission is Sue Woodward, Head of Not-for-profit Law, Justice Connect (sue.woodward@justiceconnect.org.au).

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'Chris Povey', written over a light blue horizontal line.

Chris Povey
CEO
Justice Connect