**Submission to the Victorian Parliament's Inquiry into a Legislated Spent Convictions Scheme**

Dear Chairperson

Victoria Legal Aid supports a legislated spent convictions scheme for Victoria

Victoria Legal Aid (VLA) welcomes the opportunity to contribute to the consideration of a legislated spent convictions scheme for Victoria.

VLA supports the introduction of a legislated spent convictions scheme to reduce unfairness and promote participation in employment and community life by people who have previously been involved in the criminal justice system.

A person’s rehabilitation and reintegration back into the community should be a priority for the whole community, and efforts must be made to remove hard barriers to achieving this objective. Access to employment and participation in community life support social inclusion, and are protective factors against further offending.

**Anticipated benefits of a legislated spent convictions scheme**

In our view, a legislated spent convictions scheme will provide a level of independence and rigour to the release of criminal history information that cannot be achieved by existing arrangements allowing the administrative release of criminal history information under the Victoria Police Information Release Policy.

We are particularly concerned about the current administrative release of criminal history information where a conviction has not been recorded. This approach effectively undermines the decision of the Magistrate or Judge where there has been a decision in reliance on section 8 of the *Sentencing Act 1991* not to record a conviction, taking into account the impact of a conviction on a person’s economic or social well‑being or on his or her employment prospects.

**Casey’s story**

We recently assisted Casey (not her real name) to overcome the damaging legacy of her criminal history and move on with her life.

Casey has agreed to share her experience with the committee.

**How criminal justice outcomes can have wider impacts on work and community participation**

I am a proud Aboriginal woman and a mum, and have felt first-hand the impact of criminal record discrimination and the working with children check’s scheme on my ability to work. My whole life I’ve worked in a field to give back to my community and loved my job and the positive impact I could have.

In 2016 and 2017, I was involved in some criminal offending. My issues started due to a drug addiction I had developed due to chronic health issues. After a lifetime of not being involved in any criminal behaviour or drug taking, I found myself in a dark place – for the first time I felt my life was out of control and my connection with my kids and my community failing.

While I accept my criminal offending, and take full responsibility for it, it was for minor property and assault charges, yet I was taken by the police and placed in custody. I got sent to a women’s prison and then a mental health facility with no idea of what was happening with my criminal charges. I felt lost and unable to understand what was going on. I ended up being inside for 2 to 3 months.

I was represented by a legal aid lawyer, who advocated for a community corrections order that was aimed at rehabilitating me. As my offending was rooted in my drug addiction and mental health issues, the conditions of the CCO were tailored to encourage my rehabilitation. Through the services and supports I obtained through my order, and my engagement with my community beyond this, I was able to maintain my abstinence, seek counselling and successfully complete many programs that helped me get myself and my family back.

I felt I could be me again – that was until I told my employer about my offending and Human Resources told me that I could no longer work in my job due to the Department removing my Working with Children check and my criminal record. My immediate boss was really supportive but there was nothing they could do – I lost my job and I felt like I was back to square one.

I made submissions to the Department to get my Working with Children Check back with the help of another legal aid lawyer. I was successful because of all the references and support letters I could provide that proved I deserved to continue my work but also that others believed in me. Despite this, every job I applied for, I got knocked back for my criminal record even though it did not relate to the work I was applying for. Each time I was told “Sorry Casey, if only it was not for your criminal record”. Because this was okay under the law and there was no time limit on when my criminal record would show my offending, I fell into despair – without a stable job I loved I could not get myself and family out of financial insecurity. I could not move on with my life.

It was only when my former boss advocated for me and rehired me despite my criminal record that I had the opportunity to re-enter the workforce and put my life back together again. I’m no longer financially struggling and I have been able to support myself and my children.

We share concerns about the particular impact of criminal history on people of Aboriginal and Torres Strait Islander background. We endorse the dedicated work undertaken by Woor-Dungin over a number of years to document and share these impacts to make the issue of unfair treatment on the basis of a person’s criminal history a priority issue for Victoria.

**Accessibility of the scheme**

We have some concerns about the accessibility of the proposed process that will require a person to initiate an application to the County Court in order for a conviction to become spent. VLA does not provide a duty lawyer service to the County or Supreme Courts and has no existing funding arrangements to assist clients with making these applications.

We envisage that without significant assistance, this process will be onerous for our clients and others in the community. In our view, the process of applying to the County Court must be accessible and there must be adequate support to assist people to represent themselves when making these applications to ensure that the intended benefit of the scheme can be realised, especially for people living in vulnerable circumstances.

We also support extending the imprisonment threshold from 6 to 12 months for convictions to become automatically spent after the qualifying period without application to the County Court to assist with the administration and accessibility of the scheme.

**Protection against discrimination on the basis of irrelevant criminal record under the *Equal Opportunity Act 2010* (Vic)**

Any legislated spent convictions scheme must be accompanied by the inclusion of ‘irrelevant criminal record’ as a protected attribute under the *Equal Opportunity Act 2010.* This will provide important rights and protection for people with criminal histories to ensure the mere existence of a criminal history is not a barrier to a person’s participation in areas of public life, including their access to education, goods and services, accommodation and employment. Specifically, from our practice experience, we regularly see clients with criminal histories who are currently excluded from employment where that criminal history is not relevant to the genuine and reasonable requirements of the employment. As seen in Casey’s story above, this can provide a real barrier to rehabilitation and financial stability.

Protection against discrimination on the basis of irrelevant criminal record will also help to ensure that a person with a criminal record does not experience unfair treatment while they are waiting for a conviction to become spent. This is particularly important given that the proposed legislated spent convictions scheme will include specific qualifying periods and requires proactive steps to be taken for certain convictions to become spent.

Once again, thank you for the opportunity to contribute to your consideration of this important issue. Please contact Josephine Parkinson, Strategic Policy Manager, Criminal Law at josephine.parkinson@vla.vic.gov.au if you would like any further information.

Yours faithfully

**Louise Glanville**
Chief Executive Officer