



Parliament of Victoria
Legislative Council
Legal and Social Issues Committee
By email: spentconvictionsinquiry@parliament.vic.gov.au

9 July 2019

Dear Committee

Jesuit Social Services welcomes the opportunity to respond to the inquiry into a Spent Convictions Scheme in Victoria.

Jesuit Social Services supports the introduction of a spent convictions scheme in Victoria to ensure a person's criminal record does not unfairly impact their ability to obtain employment and fully participate in society.

[Jesuit Social Services: Who we are and what we do](#)

Jesuit Social Services has over 40 years' experience working with individuals and communities experiencing disadvantage. Our work draws our attention to the multiple and interrelated factors that cause disadvantage, push people to the margins, diminish communities' capacity to shape their future, and damage the natural environment we all depend on.

We work with people with significant barriers to participation and social and economic inclusion. We accompany them, address their needs and partner with community, business and government to support them to reach their potential and exercise their full citizenship. Our service delivery and advocacy focuses on the key areas of justice and crime prevention; mental health and well-being; settlement and community-building; education, training and employment; gender and ecological justice.

Jesuit Social Services' research and advocacy is grounded in the knowledge, expertise and experiences of program staff and participants, as well as academic research and evidence. We seek to influence policies, practices, legislation and budget investment to positively influence participants' lives and improve approaches to address long term social challenges. We do this by working collaboratively with the community sector to build coalitions and alliances around key issues, and building strong relationships with key decision-makers and the community.

[Why we need a spent convictions scheme in Victoria](#)

Many of the people we work with struggle to obtain employment due to their criminal record, which can negatively impact their overall mental and physical well-being. We can't expect people to turn their lives around if they don't have access to a secure roof over their head and the opportunity to contribute to society through education and employment.

In Victoria, a legislated spent convictions scheme that would allow people not to disclose old convictions for minor offences is long overdue. As the committee is aware, Victoria is the only jurisdiction in Australia without a legislated spent convictions scheme. Western Australia was the first state to introduce such a scheme in 1988 and all other states and territories, as well as the Commonwealth, have since legislated similar schemes, with South Australia the last to do so in 2004.

In Victoria, authority currently rests with Victoria Police to decide whether, and which, past convictions are disclosed when a person applies for a criminal record check. Victoria Police's 'Information Release Policy' sets out the guidelines applied when releasing a person's criminal history information. However, these guidelines are not set out in legislation and the police retain significant discretion over their application. For example, in some circumstances, offences that are over 10 years old will be released, including under the broad exception where "the release of information is considered to be in the interests of security, crime prevention or the administration of justice and/or otherwise necessary for the proper, legal or statutory assessment of an applicant". The police can also disclose when a person is under investigation or has been charged with an offence and is awaiting the final court outcome. Jesuit Social Services believes that the disclosure of a person's criminal history should be regulated by legislation and not left to the discretion of the Victoria Police through guidelines which may lack necessary protections.

Disproportionate impact on Indigenous communities

Aboriginal and Torres Strait Islander people are vastly overrepresented in the criminal justice system and thus more likely to be impacted by the disclosure of criminal records. In Victoria, as of 30 June 2018, Aboriginal and Torres Strait Islander people made up 9 per cent of the adult prisoner population,¹ despite only accounting for 0.8 per cent of the population, according to the 2016 census.² Unemployment among Aboriginal and Torres Strait Islander people in Victoria is also disproportionately high, with 14 per cent of Aboriginal Victorians unemployed compared to 7 per cent of non-Aboriginal Victorians in 2016.³

As noted by Aboriginal-led advocacy group Woor-Dungin, the absence of a spent convictions scheme works to "entrench the disadvantage and discrimination already faced by Aboriginal people in Victoria, limiting their opportunities to make valuable contributions to their communities and Victoria generally".⁴ We welcome the committee's commitment to have regard to the experience of Aboriginal and Torres Strait Islander people in considering the proposed scheme, as set out in the inquiry's terms of reference.

Disadvantage, unemployment and rehabilitation

Jesuit Social Services' research into locational disadvantage, conducted over the last 20 years, has consistently shown that a small number of communities across the state are experiencing a complex web of entrenched disadvantage, with a disproportionate incidence of factors such as unemployment and contact with the justice system.

In Victoria, for example, our *Dropping off the Edge 2015* research found that in comparison to the rest of the state, those living in the three per cent most disadvantaged postcodes in the state were:

- twice as likely to have criminal convictions;
- 3 times more likely to be experiencing long term unemployment;
- 2.6 times more likely to have experienced domestic violence; and

¹ Australian Bureau of Statistics, 'VICTORIA – Snapshot at 30 June 2018', *Prisoners in Australia, 2018*, <https://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4517.0~2018~Main%20Features~Victoria~22>

² Australian Bureau of Statistics, 2016 Census QuickStats, Victoria, https://quickstats.censusdata.abs.gov.au/census_services/getproduct/census/2016/quickstat/2?opendocument

³ Victoria State Government (2018) '2018 Victorian Government Aboriginal Affairs Report', <https://www.vic.gov.au/aboriginalvictoria/policy/victorian-aboriginal-affairs-framework/aboriginal-affairs-report-2018.html>

⁴ Woor-Dungin, Criminal Record Discrimination Project Submission to Aboriginal Justice Forum 49, Swan Hill, December 2017, https://www.parliament.vic.gov.au/images/S5 - Woor-Dungin_Redacted.pdf, p. 10.

- 2.4 times more likely to be on disability support.

We know that education and employment are key protective factors against involvement in the criminal justice system and help to mitigate feelings of disempowerment, seclusion and stigma. Recent research by the Australian Institute of Health and Welfare found that 54 per cent of people entering prison reported they were unemployed during the 30 days before being imprisoned, and around one in three prison entrants had a high-school education level of Year 9 or below.⁵

It should also be recognised that it is often the most marginalised and disadvantaged members of our community that end up in our prisons. The Victorian Youth Parole Board annual survey of 226 young people involved with youth justice in 2017 found that:

- 70 per cent were victims of abuse, trauma or neglect;
- 65 per cent had previously been suspended or expelled from school;
- 53 per cent presented with mental health issues;
- 30 per cent had a history of self-harm or suicidal ideation;
- 41 per cent presented with cognitive difficulties that affect their daily functioning;
- 11 per cent were registered with Disability Services; and
- 58 per cent had a history of both alcohol and drug misuse.

A spent convictions scheme would be particularly important for this vulnerable group, who often have multiple and complex needs. Minor convictions can be a significant barrier to social and economic participation and only further entrench disadvantage.

Better responses for young people

Case study: James

As a young kid, James was no different to others his age – he dreamed of the job he would one day pursue. But he found himself on a path where he “just wanted to break rules” and ultimately received a criminal conviction.

“There’s a lot of jobs that I was restricted from that I was aiming for in my teen years,” James says.

“As a little kid I wanted to be a police officer, obviously I can’t do that anymore. I’ve also wanted to be a security guard – I can’t do that anymore”.

James went through a rough patch while he struggled to find work and experienced the stigma associated with his offending as a young man.

“All it takes is someone to tell their boss that he’s an ex criminal and it’s a put off,” he says.

In time, James heard about the Jobs Victoria Employment Network (JVEN), run by Jesuit Social Services, which assists Victorians experiencing barriers to employment into jobs, including people with justice system involvement. Through the program, he has now found steady employment.

For James, having a job helps him support his young family.

“It means my son has a roof over his head, it means he has clothes on his back and food in his belly, which is the main thing for me,” he says.

“I can hopefully give my kids things that I never had in my childhood. That’s what it means to me.”

⁵ Australian Institute of Health and Welfare (2018) ‘The health of Australia’s prisoners 2018’, <https://www.aihw.gov.au/reports/prisoners/health-australia-prisoners-2018/contents/summary>

Our justice programs are based on the belief that all people exiting prison should have the same opportunities as others across society to access employment, housing and education in order to help get their lives back on track. An effective youth justice system is one that holds young people accountable for their actions while supporting them to learn about the impacts of their offending on others, to rehabilitate and re-socialise them, and to ultimately prevent re-offending.

It is equally important to recognise that many young people will grow out of offending as they mature. Research shows that the brain continues to develop until the age of at least 25, as does the ability to control impulsivity, judgement, planning for the future, foresight of consequences and other characteristics that form moral culpability.⁶

A small number of vulnerable children continue to enter the criminal justice system at a very young age. We know that the children most likely to offend are often the ones who have faced the toughest circumstances growing up, and that the most effective approach to prevent young children's trajectories into the justice system is to address the issues driving their vulnerability — issues such as family dysfunction, trauma, abuse and neglect.

Jesuit Social Services' vision for the youth justice system is to enable young people who offend (or are at risk of offending) to lead healthy, productive and crime-free lives. A spent convictions scheme that will help people, including those who may have offended at a young age, to enter or re-enter the workforce is a positive step toward a more positive, rehabilitative approach to justice and crime prevention in Victoria.

Helping young people transition to the community

- Jesuit Social Services delivers the Youth Justice Community Support Service (YJCSS) in Victoria, which helps prevent re-offending by focusing on a young person's development and reconnecting them with family and community, as well as pathways to social and economic participation.
- A 2013 evaluation of YJCSS found that it had improved outcomes for young people in the system — in 76 per cent of cases there was improved engagement with employment; 80 per cent of cases resulted in improved participation in education; and 97 per cent resulted in improved engagement with family.
- Jesuit Social Services believes that being able to work holistically with a young person, their family and their community is critical to ensure that the young person is held in a net of support.

[A fair, effective spent convictions model](#)

Jesuit Social Services recognises that organisations such as Woor-Dungin, Liberty Victoria and the Law Institute of Victoria are well-placed to advise on the specifics of the most effective model. We note that these organisations have a position that, generally, sentences of 30 months or less should be eligible to be automatically spent, following a waiting period.

In our view, any model should be founded on the recognition that all people deserve a second chance. Once a person is sentenced to prison, our focus should be on their effective rehabilitation. A protracted waiting period for people who commit relatively minor offenses should be avoided. We support a process where eligible convictions are spent automatically, so as to not place the administrative burden on people.

⁶ Gilbert, R., and Wilson, A. (2009) 'Staying strong on the outside: improving the post-release experience of indigenous young adults', *Indigenous Justice Clearinghouse*, <https://www.indigenousjustice.gov.au/wp-content/uploads/mp/files/publications/files/brief004.v1.pdf>, p. 1.



We call on the committee to carefully consider other points raised by Woor-Dungin, whose submission is informed by extensive consultation with Aboriginal organisations, individuals and other groups. These include that the *Equal Opportunity Act 2010* (Vic) be amended to prohibit discrimination on the basis of an irrelevant criminal record, as well as including a provision that would enable people to request that a conviction be spent when it falls outside the prescribed sentence-length.

We appreciate the committee taking our views into account.

Yours sincerely



Sally Parnell – Acting CEO, Jesuit Social Services