

# Parliament of Victoria



Inquiry case study

Inquiry into a  
legislated spent  
convictions scheme

# Inquiry case study

This case study explores the inquiry into a legislated spent convictions scheme conducted by the Legislative Council Legal and Social Issues Committee in 2019. It has been produced to accompany our ‘How to host a committee inquiry’ guide, which provides a framework for running an inquiry process with your class.

The case study includes:

- [Background information](#)
- [The inquiry process](#)
- [Exploring perspectives](#)
- [Forming your response and recommendations](#)
- [Glossary](#)

The ‘Background information’ and ‘The inquiry process’ sections provide specific details about what happened at each step of the inquiry process.

The ‘Exploring perspectives’ section provides stories that offer examples of people’s lived experiences, along with information about what’s happening in other jurisdictions. This could form the basis for the research phase of the ‘How to host a committee inquiry’ guide or serve as a supplement to students’ own research.

The ‘Forming your response and recommendations’ section is designed to help students develop their recommendations for a spent convictions scheme. The questions encourage students to consider a range of perspectives and, as a consequence, the list of questions is extensive. You may decide that it is more appropriate to select, or have students select, the specific questions to address, or use expert or jigsaw groupings.

# Background

A spent convictions scheme is an administrative system that prevents the disclosure of older and minor criminal offences on a person's [criminal record check](#).

Under a spent convictions scheme, a person's convictions are no longer disclosed on a criminal record check after a certain length of time in certain circumstances. For example, for a [conviction](#) to become 'spent', a person must not commit any further offences within a certain timeframe, such as 10 years.

The purpose of a spent convictions scheme is to prevent people being unfairly treated for minor offences committed in the past.

Without a spent convictions scheme, people who committed minor offences a long time ago may face barriers to employment and other opportunities. A spent convictions scheme can reduce this problem, however, the legislation must be carefully drafted—if too many convictions become 'spent', or the wrong sorts of convictions, then inappropriate people may be able to get into positions where they might commit future crimes.

**More information about the Legal and Social Issues Committee, and this inquiry, can be found on the parliament's website, including the final report, transcripts from public hearings and submissions.**

# The inquiry process

## Referral to committee

In May 2019, the Legislative Council (Parliament of Victoria) referred the *Inquiry into a legislated spent convictions scheme* to its Legal and Social Issues Committee. This followed the introduction of a [private member's bill](#), the 'Spent Convictions Bill 2019 (Vic)', by Fiona Patten MLC which sought to legislate a spent convictions scheme for Victoria. Ms Patten was also the Chair of the Legal and Social Issues Committee.

## Terms of reference

The Committee was required to investigate whether there was a need for a legislated spent convictions scheme in Victoria and to consider any impacts a scheme would have for law enforcement and the community.

On 2 May 2019, the Legislative Council agreed to the following motion:

That -

1. pursuant to Standing Order 23.02 and Sessional Order 22, this House requires the Legal and Social Issues Committee to inquire into, consider and report, no later than Tuesday, 27 August 2019, on the need for and potential impact of laws in Victoria to govern the disclosure of criminal history records, otherwise known as a legislated spent convictions scheme;
2. the Committee should consider the design of such a scheme that would be appropriate for Victoria, including, but not limited to —
  - a. the types of criminal records that should be capable of becoming spent;
  - b. the mechanism by which convictions become spent;

- c. any “crime-free period” that should apply before a conviction may be spent including whether this should vary according to the age of the offender and type of conviction;
  - d. the effect of subsequent convictions during the crime- free period;
  - e. the consequences of a conviction becoming spent;
  - f. any offences and penalties that should apply for non-compliance with the scheme, including for disclosing or taking into account a spent conviction where this is not permitted;
  - g. interaction between a Victorian scheme and other jurisdictions;
  - h. appropriate exceptions, such as for particular offence categories or specific regulatory schemes; and
  - i. the interaction between any proposed ‘scheme’ and other legislation, such as the Assisted Reproductive Treatment Act 2008 and the Working with Children Act 2005;
3. in considering the need for and design of a legislated spent convictions scheme, the Committee should have regard to the experience of groups in our community who suffer particular disadvantage due to past convictions, such as young people and Aboriginal and Torres Strait Islander people; and
4. the Committee should be guided by the public interest in ensuring that the disclosure of criminal history records in Victoria operates in a fair and transparent manner and balances the interests of offender rehabilitation and reintegration with community safety, including the safety of vulnerable Victorians and the safety and wellbeing of victims.



**The full Terms of reference document for the spent convictions inquiry can be downloaded [here](#).**

## Research, public submissions and hearings

An important part of the inquiry process is evidence-gathering, so that a committee can understand an issue and use this knowledge to inform its recommendations. The committee received evidence from the public in two ways: through public written [submissions](#) and at [public hearings](#). The inquiry received 45 submissions and the committee held four public hearings between May and July 2019. A cross-section of the community participated in the hearings, with the committee hearing from law enforcement, legal advocacy groups, advocates for victims of crime and people with criminal records.



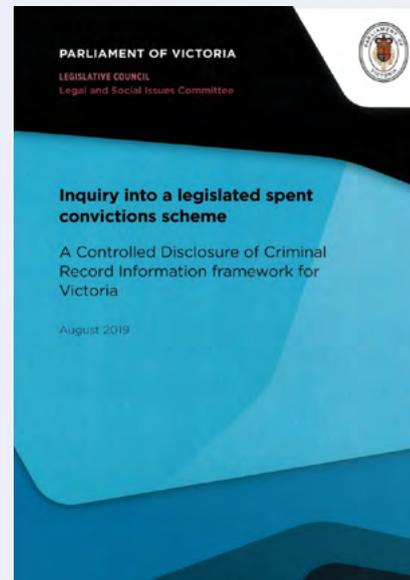
*Community members from a range of organisations shared their views on whether there should be a legislated spent convictions scheme in Victoria.*

**In October 2019, members of the Legislative Council’s Legal and Social Issues Committee and two community representatives met to discuss controlled disclosure of old criminal records in a live-streamed panel discussion. [Click to watch.](#)**

## The committee report

The committee produced a final report which made one recommendation: that the Victorian government should introduce a legislated spent convictions scheme, the ‘Controlled Disclosure of Criminal Record Information Framework.’ Key features of the committee’s proposed framework were:

- waiting periods before eligible convictions could be spent:
  - 10 years for adults
  - 5 years for children
- the development of two processes for spent convictions:
  - automatic process –
    - convictions which resulted in a sentence of less than 30 months imprisonment should be automatically spent after the waiting period
  - application process –
    - convictions not eligible under the automatic process may also be spent, if a person demonstrates: rehabilitation, consideration of harm to any victims, and potential benefits to the person or community
- protections against disclosure of spent convictions without consent; including penalties for unlawful disclosure
- amending the *Equal Opportunity Act 2010* (Vic) so that someone with a spent conviction cannot be discriminated against.



## Government response

In its [government response](#), the Victorian government supported the committee's recommendation to legislate a Victorian spent convictions scheme.

In October 2020, the then Victorian Attorney-General (the Honourable Jill Hennessy MP) introduced the 'Spent Convictions Bill 2020 (Vic)' to the Legislative Assembly on behalf of the Victorian government. The government's bill featured many of the components from the Legal and Social Issue's Committees proposed framework, including:

- two processes for spending a conviction: automatically and by application
- a 10-year waiting period for adults and a 5-year waiting period for children before a conviction could be spent
- protections for unlawful disclosures of a person's spent conviction(s) including penalties
- amending the *Equal Opportunity Act 2010 (Vic)* so that a person with a spent conviction cannot be discriminated against.

However, compared to the committee's report, the bill had different rules for eligible convictions that could be spent. Convictions that included any sentence of imprisonment were not eligible for the automatic process. Instead, people who had been sentenced to less than five years imprisonment would need to apply for a spent conviction to the Magistrates' Court.

On 18 March 2021, the 'Spent Convictions Bill 2020 (Vic)' was passed by both Houses of Parliament. The *Spent Convictions Act 2020 (Vic)* received royal assent on 30 March 2021.

# Exploring perspectives

As part of exploring the different perspectives that may be considered in this committee inquiry, you should consider what the benefits of a spent convictions scheme might be, who stands to benefit and what criteria there should be for a spent convictions scheme. You should also consider what adverse effects a spent convictions scheme might have and if there are strategies and criteria that could be included to reduce the adverse effects.

The information and questions below will help you identify and evaluate the arguments that different [stakeholders](#) may have about spent convictions schemes, which can be used as a starting point to develop your own arguments and criteria for a spent convictions scheme.

## **Sarah's story**

*Sarah (not real name) was present when her partner at the time had a physical fight with another person on public transport. Whilst she was not directly involved, Sarah was implicated and charged. She did not receive any jail time but was required to complete a good behaviour bond.*

*Not long after the incident involving her partner, Sarah was directly involved in an aggressive altercation with hospital staff whilst admitted for mental health and substance use issues. She was charged and received an undertaking from the court. An undertaking is an agreement made between an offender and the courts where the offender promises to fulfil (undertake) certain conditions, such as refraining from drinking alcohol or attending rehabilitation programs; in return a conviction is not recorded by the court.*

*It has been over 10 years since both these incidents occurred. Despite not receiving a serious sentence for either incident, both charges still appear on Sarah's [criminal record check](#). This has prevented her from obtaining a Working with Children Check, which meant that she could not get a job she was applying for.*

### **Questions to consider:**

- How could a spent convictions scheme impact someone like Sarah?  
Consider:
  - How you would you characterise Sarah's offending? Is this an example of minor offending?
  - What consequences are there or might there be for disclosing Sarah's criminal record?
  - Are Sarah's offences relevant to her job application, given that she has not committed any further offences for over 10 years?



*Committee members consulted widely to gather a range of perspectives, including a site visit to Winda-Mara Aboriginal Corporation in Heywood, to discuss the concerns of their community and the committee's terms of reference.*

## **Paul's story**

*In his early twenties, Paul (not real name) was convicted for several armed robberies and sentenced to over 10 years jail. He served 6 years of his sentence before he was released for good behaviour.*

*During his time in prison, Paul participated in many education and rehabilitation activities conducted by the prison. Since his release, Paul has not re-offended.*

*Paul has struggled to find employment since leaving prison.*

## **Questions to consider:**

- How would you describe the type of offences committed by Paul?
- How might Paul's crimes have affected other people? Should this effect be taken into consideration when deciding whether the offense/s should become spent?
- What considerations need to be taken into account for any potential employers? You might like to consider:
  - What might happen if employers did not know about his past when deciding whether to give him a job?
  - Would it be fair to employers if they didn't know about his past?
  - Is it fair to Paul to have to disclose something that happened in the past and that he has served time for?
- Under the law armed robbery is a serious offence. What are the reasons these types of offences might be excluded from a spent convictions scheme? Are there other types of offences that should be excluded?

## Other jurisdictions

Below is a summary of spent convictions schemes in other jurisdictions.

- What considerations might each of the jurisdictions have taken into account when developing their own spent convictions schemes?
- How might the needs of Victoria be similar or different? How then can other jurisdictions inform what might happen in Victoria?

	<b>New South Wales</b>	<b>Queensland</b>	<b>Australian Capital Territory</b>	<b>Northern Territory</b>	<b>Western Australia</b>	<b>Tasmania</b>	<b>South Australia</b>
<b>Types of convictions that can be spent</b>	Sentence is less than 6 months imprisonment.	Sentence is less than 30 months imprisonment.	Sentence is less than 6 months imprisonment.	Sentence is less than 6 months imprisonment.	Sentence is less than 1-year imprisonment.	Sentence is less than 6 months imprisonment.	Sentence is less than 12 months (adult) or 24 months (child) imprisonment.
<b>How does a conviction become spent?</b>	Automatic after waiting period	Automatic after waiting period	Automatic after waiting period	Automatic after waiting period	By application to courts or police	Automatic after waiting period	Automatic after waiting period
<b>Waiting period</b>	10 years (adult) 3 years (child)	10 years (adult) 5 years (child)	10 years (adult) 5 years (child)	10 years (adult) 5 years (child)	10 years (adult) 2 years (child)	10 years (adult) 5 years (child)	10 years (adult) 5 years (child)

# Forming your response and recommendations

There is a range of evidence that committees take into consideration when conducting their inquiries: people's lived experiences, perspectives from relevant organisations, industry experts, academic experts, and other jurisdictions including, at times, relevant international jurisdictions. In considering the stories from Sarah and Paul, and what is happening in other jurisdictions, what committee recommendation might you make for a spent convictions scheme?

The questions below are designed to help you think about the various aspects of a spent convictions scheme for your recommendations, which, for instance, could form the basis of a committee report.

## **Type of offence**

- What offences could be spent and what should always be disclosed?
- Are there certain types of offences that should never become spent, regardless of the length of sentence? What offences cannot be spent in other jurisdictions?
- Who determines the seriousness of an offence?
  - For instance, parliament by listing in the legislation offences that are eligible or not eligible to be spent, or should the courts determine how serious an offence on a case-by-case basis?

## **How does a conviction become spent?**

- How should a conviction become spent?
  - Should it be automatic or should an individual have to apply to courts or police?
  - What are the advantages and disadvantages of it being automatic?
  - What are the advantages and disadvantages of having the

courts or police decide on a case-by-case basis?

- How long should people wait, without committing other offences, before their conviction will be spent?
  - What are the advantages of shorter or longer waiting periods?
  - Should the waiting period be different for adults versus children?
  - Are there other groups that should have different waiting periods?
- If a person re-offends (in legal terms this is called [recidivism](#)) should all prior offences (whether previously spent or not) be disclosable on [criminal record checks](#)?

### **Consequences of a spent convictions scheme**

- How might ongoing disclosure of old offences undermine a person's efforts to rehabilitate and reintegrate back into society?
- How might having a criminal record limit people's access to employment, housing, government support, education and opportunities to be part of community groups?
- How might knowing that a conviction could be spent in the future incentivise a person not to commit any more crimes?
- How might stigmas attached to having a criminal record create significant barriers for people and have ongoing effects on their mental health, wellbeing and sense of belonging in the community?
- Is access to a person's full criminal record in the interests of community safety? Why or why not?
- Is accessing a criminal record an important part of determining the suitability of a candidate for employment?
  - Are there some jobs where it might be important for people to have impeccable records? Why/why not?
- Should having a criminal history be an element of the punishment when you commit a crime? Why/why not?
- Does a spent convictions scheme interfere with the functions of law enforcement or the courts if a person's entire criminal history is not available during future criminal proceedings? Why/why not?

# Glossary

A **conviction** is a formal declaration by a judge in a court of law that someone has been found guilty of a criminal offence.

A **criminal record check** is a summary of a person's history with the criminal justice system. It can include convictions, other findings, charges, court appearances and matters awaiting trial. Employers sometimes request criminal record checks when deciding whether to hire people. Employers may choose not to hire people if they have been convicted of crimes in the past.

A **government response** is a formal response responding to a committee's report, including whether the government supports any of the recommendations a committee has made. A government is required to respond within six months.

A **private member's bill** is a proposed law, or amendment to the law, that was introduced to Parliament by a legislator who is not a part of (or acting on behalf of) the government.

A **public hearing** is a public forum for people or organisations to provide evidence to a committee for its inquiry. Invited stakeholders speak directly with committee members and answer questions. This gives the committee a chance to explore and better understand issues.

**Recidivism** refers to when a person repeatedly commits criminal offences, often even after being convicted and punished by the criminal justice system.

The **secretariat** is the parliamentary staff who assist committee members conduct parliamentary inquiries. They are not affiliated with any political parties, rather they are apolitical public servants.

# Glossary

A **stakeholder** is an individual or organisation who has been identified as having expertise, knowledge or special interest in the topic. Stakeholders can include people who have been personally affected or have personal knowledge of the issues an inquiry is examining.

A **submission** is a written contribution to a parliamentary inquiry; any person or organisation can make a submission. Submissions add to a committee's knowledge and understanding of issues relevant to the inquiry and may influence any recommendations.

The **terms of reference** is the instructions a parliamentary committee is given on what issues they should investigate or consider as part of an inquiry. It is used to guide the committee's investigation and provide insight to the type of stakeholders that are important to speak to.