

Response to recommendations made to the Victorian Government by the Legal and Social Issues Committee in its report,  
*Inquiry into a Legislated Spent Convictions Scheme*

#	Committee Recommendation	Victorian Government Response
1A	<p><b>A framework for Controlled Disclosure of Criminal Record Information for Victoria</b></p> <p>The Committee recommends that the Victorian Government introduce legislation for a Controlled Disclosure of Criminal Record Information Framework for Victoria that includes the following elements:</p>	<p><b>Support in principle</b></p> <p>The Government supports the intent of the recommendation and commits to the development of legislation to introduce a spent convictions scheme in Victoria (the scheme).</p> <p>The Government acknowledges that individuals who have previously committed an offence and who have demonstrated their ability to rehabilitate should again have the opportunity contribute to society. The practical elements of establishing and designing the legislative framework for the scheme are complex and multifaceted. The Committee referred some key questions about the design of the scheme back to the Victorian Government. Research and analysis is underway to resolve the outstanding policy issues to ensure that an effective and fair spent convictions scheme is developed.</p>
1	<p><b>Administration of justice exemption</b></p> <p>There is no constraint on the use of criminal record information by the police and courts who have access to criminal data information indefinitely.</p>	<p><b>Support in full</b></p>
2	<p><b>Public Safety Exemptions</b></p> <p>Certain employers and other third parties are exempt from the framework, where full disclosure of relevant past convictions is necessary for their risk management. This includes:</p> <ul style="list-style-type: none"> <li>• Working with children and vulnerable people</li> <li>• Registration with a child screening unit and / or Victorian Institute of Teaching</li> <li>• Registration and accreditation of health professionals</li> <li>• Employment or contact with prisons or the police force</li> <li>• Prohibited persons under the <i>Assisted Reproductive Treatment Act 2008</i></li> <li>• Casino or gaming licences</li> <li>• Sex Work service providers licence</li> <li>• Operator Accreditation under the <i>Bus Safety Act 2009</i></li> <li>• Commercial Passenger Vehicles Victoria (<i>Commercial Passenger Vehicle Industry Act 2017</i>)</li> <li>• Firearms licence (<i>Firearms Act 1996</i>)</li> <li>• Admission to legal profession (<i>Legal Profession Act 2004</i>)</li> <li>• Independent Broad Based Anti-corruption Commission</li> <li>• Poppy industry (<i>Drugs, Poisons and Controlled Substance Act 1981</i>)</li> <li>• Honorary justice (<i>Honorary Justices Act 2014</i>)</li> </ul>	<p><b>Support in principle</b></p> <p>The Government agrees that full disclosure of past criminal records must be released for the purposes of enabling certain employers and third parties to make well-informed risk assessments.</p> <p>A successful scheme must strike the right balance between managing risks and supporting rehabilitation and reform.</p> <p>All spent convictions schemes in other states and territories have similar public safety exemptions. Consultation and analysis is underway to ensure all appropriate entities are included.</p>

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	<ul style="list-style-type: none"> <li>• Court services Victoria</li> <li>• Immigration (<i>Migration Act 1958</i>)</li> <li>• Office of the Victorian information commissioner (<i>Privacy and Data Protection Act 2014</i>)</li> <li>• Elected or appointed public positions, where relevant.</li> </ul>	
3	<p><b>Eligibility Criteria</b></p> <p>A conviction for any type of offence should be considered a conviction under the framework.</p> <p><b>Stream 1: Controlled disclosure through an automatic mechanism</b></p> <p>The following criminal record information should be eligible for protection from disclosure to employers and other third parties through an automatic mechanism:</p> <ul style="list-style-type: none"> <li>• Current investigations and pending charges</li> <li>• Any findings or orders imposed by Courts that do not result in conviction subject to completion of any conditions in line with sections 5, 7 and 8 of the Sentencing Act 1991 (Vic). Subject to prescribed exemptions, where a conviction resulted in a maximum prison sentence of 12 to less than 30 months, to be determined by the government on the basis of a full investigation. Sexual and serious violent offences to remain subject to disclosure. <ul style="list-style-type: none"> <li>○ For adult offenders after a crime-free period of five to ten years, commencing from the time of conviction.</li> <li>○ For juvenile offenders after a crime-free period of three to five years, commencing from the time of conviction.</li> <li>○ Suggested crime-free periods are a guide. Final crime-free periods to be determined by the government on the basis of a full investigation.</li> </ul> </li> </ul> <p>Summary offences should not affect the waiting period excluding indictable offences heard summarily.</p> <p>Once a conviction is eligible for controlled disclosure under the framework, it should not be disclosed later if the person receives another conviction.</p> <p><b>Stream 2: Controlled Disclosure through an application process</b></p> <p>Those individuals who do not strictly meet the eligibility requirements for Stream 1: Controlled disclosure through an application process, can apply to the court which originally heard their case, once they have served their sentence, for their criminal information to be protected if they can demonstrate:</p> <ul style="list-style-type: none"> <li>• rehabilitation</li> <li>• consideration of the views of victims of their crime</li> </ul>	<p><b>Support in principle</b></p> <p>The Government supports the key elements of this recommendation:</p> <ul style="list-style-type: none"> <li>- a conviction for any type of offence should be considered a conviction under the scheme</li> <li>- certain convictions, for serious offending, should fall outside the scheme</li> <li>- there should be a crime-free period, in which a person with a conviction must avoid significant re-offending in order to obtain the benefits of the scheme</li> <li>- a distinct approach for juvenile convictions is warranted.</li> </ul> <p>Specific eligibility criteria must be determined together with other key elements of the scheme. Work is underway to ensure the eligibility criteria strikes the right balance between the benefits of rehabilitation for individuals and managing risks to community safety.</p>

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	<ul style="list-style-type: none"> <li>potential benefit to the offender and the community.</li> </ul> <p>Applications to the court can also be on the basis of:</p> <ul style="list-style-type: none"> <li>applications for a waiver of or reduction in the crime-free period</li> <li>applications for minor offences not to reset the crime-free period.</li> </ul>	
4	<p><b>Protections</b></p> <p>Sanctions for the disclosure of irrelevant or protected criminal record information should align with the intentions of the <i>Data and Privacy Protection Act 2014</i>.</p> <p>The controlled disclosure framework should also include penalties for the following:</p> <ul style="list-style-type: none"> <li>unlawful disclosure of a person's protected criminal record</li> <li>unlawfully obtaining information in relation to a protected criminal record</li> <li>threatening to disclose a person's protected criminal record</li> <li>considering a conviction protected from disclosure for an unauthorised purpose</li> <li>A 'reasonable awareness' test is to be applied</li> </ul> <p>The controlled disclosure framework should include an exemption for use of this information in the administration of justice.</p>	<p><b>Support in principle</b></p> <p>The Government agrees that the scheme should include sanctions and associated penalties. Work is underway to ensure the appropriate offences and penalties are included in the scheme.</p>
5	<p><b>Amend the <i>Equal Opportunity Act 2010 (Vic)</i></b></p> <p>Supplementary to the framework the Government amend the <i>Equal Opportunity Act 2010</i> to include non-disclosable criminal record information as a protected attribute to prevent discrimination on the basis of an irrelevant criminal record.</p>	<p><b>Support in principle</b></p> <p>Work is underway to determine the scope of anti-discrimination protections necessary to support reintegration and to ensure the effectiveness of the scheme.</p>
6	<p><b>Guidelines for the community and employers</b></p> <p>The Victorian Government should develop practical Guidelines for the community and employers to clarify rights and responsibilities regarding the use of criminal record information.</p>	<p><b>Support in full</b></p>
7	<p><b>Existing mechanisms</b></p> <p>The proposed framework should not interfere with the following:</p> <ul style="list-style-type: none"> <li>existing oversight and complaints mechanisms, such as complaints to the Office of the Victorian Information Commissioner.</li> <li>criminal record checks under current policy and legislation, particularly in relation to irrelevant criminal records.</li> </ul>	<p><b>Support in full</b></p>
8	<p><b>Review process</b></p>	<p><b>Support in full</b></p>

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	The Government should review the operation of a controlled disclosure framework, particularly in terms of potential administrative burdens for the courts or police, 4 years after commencement in Victoria.	
9	<p><b>Data collection</b></p> <p>More robust data is needed to better understand recidivism and develop successful methods of rehabilitation of offenders. The lack of robust data to provide evidence for an ideal waiting period for example, was astounding. The government should not proceed without ensuring the establishment of measures to better understand outcomes in Victoria as the result of implementation of the Committee's recommended framework.</p>	<b>Support in full</b>
10	<p><b>Independent entity responsible for criminal record checks</b></p> <p>Given the increase in criminal record checks and the increasing burden this places on Victoria Police, the government should investigate the need for establishment of an independent statutory entity responsible for criminal record checks in Victoria.</p>	<b>Support in full</b>