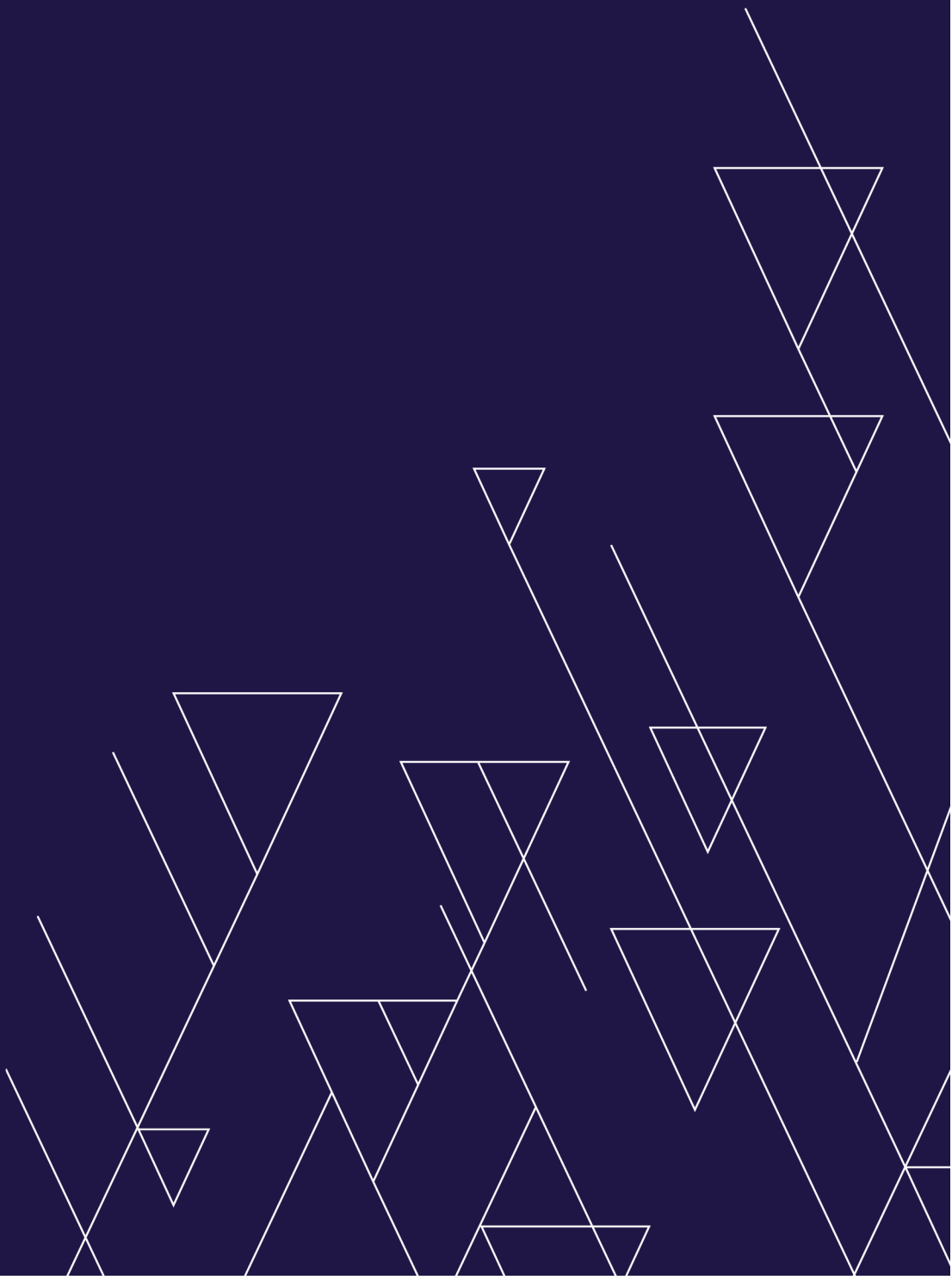
Review of the *Spent Convictions Act 2021*

Department of Justice and Community Safety

November 2023



VICTORIA State Government | Justice and Community Safety

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Acknowledgement of Country

The Department of Justice and Community Safety (DJCS) acknowledges Aboriginal[1] and Torres Strait Islander people as the First Peoples and Traditional Owners and custodians of the land and waterways currently known as Victoria. We acknowledge and pay our respects to ancestors of this country, Elders, knowledge holders and leaders – past and present.

We extend that respect to all Aboriginal and Torres Strait Islander peoples. We recognise that Aboriginal and Torres Strait Islander communities are steeped in culture and lore, having existed within Australia continuously for over 65,000 years.

We acknowledge the ongoing leadership of Aboriginal communities across Victoria in striving to build on these strengths to address inequalities and improve Aboriginal justice outcomes.

1. Executive Summary

The review focuses on evaluating the operation and effectiveness of the *Spent Convictions Act 2021* (the Act) since its commencement and identifying opportunities for improvement.

This report:

- outlines the development of the Act, including amendments made to the Act in 2023
- summarises the background and scope of the review, including the stakeholder and public engagement undertaken as part of the review
- identifies key issues raised by stakeholders and members of the public through the review, about the operation of the Act and whether it is achieving its aims, and
- proposes recommendations for improvements in the operation and implementation of the Act, as well as identifying matters that require further consideration.

The review was supported by the significant feedback provided by stakeholders and by members of the public who engaged in a consultation process through the Engage Victoria website. **Appendix A** includes a list of stakeholders who contributed feedback. The review is grateful to these stakeholders and community members for their significant contributions and looks forward to continued engagement on the implementation of the review recommendations.

1.1 Key findings

The review found broad support for the spent convictions scheme and the value of its intent, to acknowledge that 'people who have worked hard to turn their lives around deserve the opportunity to move on from minor historical offending', reducing the stigma affecting Victorians with past convictions from participating in the community.[2] While stakeholder feedback indicates the Act is generally appropriately structured and correctly targeted, the review identified opportunities for improvement to better ensure that the operation of the Act meets its objectives.

Key findings of the review relate to opportunities for improving the accessibility of the spent convictions scheme. The review identified a lack of awareness and clarity about the operation of the Act in the community and by agencies and professionals who support people with convictions.

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[1] The term Aboriginal is used in this document to respectfully refer to Aboriginal and Torres Strait Islander people. This is in accordance with the preference of the Aboriginal Justice Caucus.

[2] Victoria, *Parliamentary Debates*, Legislative Assembly, 28 October 2020, 2980 (Jill Hennessy, Attorney-General and Minister for Coordination of Justice and Community Safety) ('Spent Convictions Bill Second Reading Speech').

This impacts one of the key objectives of the Act, which is to facilitate the rehabilitation of people with historical or minor convictions by reducing barriers to training, housing, employment and other opportunities.

The review found that further work with Aboriginal stakeholders is needed to improve cultural safety in the court application process for spent conviction orders.

The review highlights that accessibility of the spent convictions scheme can also be improved by streamlining court application processes, which currently present a barrier to potential applicants. These processes include the requirement in the Act for an applicant to serve their application on the Attorney-General and Chief Commissioner of Police (Chief Commissioner).

The review considered the disclosure of spent conviction information under the Act. The review found that there is a need to further consider the appropriateness of current exemptions to the Act and ensure a regular process of review for exemptions. If a person or body has an exemption allowing them to disclose spent convictions, the review found that disclosures should be limited to the purposes for which they have the exemption to protect against the use of spent conviction information for inappropriate purposes.

The review identified opportunities to amend the Act to improve protections against the disclosure of spent conviction information, provide greater clarity, and ensure consistency in the treatment of certain types of convictions. These proposed amendments were in response to several findings, including that:

- the definition of the terms ‘conviction’ and ‘conviction period’ would benefit from further clarity in the Act
- the operation of the conviction period, which must be completed before certain convictions can be spent and can be restarted by subsequent convictions, would benefit from further clarity in the Act
- Consideration should be given to ensuring that the Act more closely aligns eligibility to have a conviction spent with the hierarchy of sentencing outcomes
- that aggregate sentences (where multiple offences are given one combined sentence) may be ineligible to be spent where the individual offences could otherwise be spent
- findings of guilt under historical mental health provisions should be eligible to be spent under the Act, and
- matters less than findings of guilt should be protected from disclosures under the Act.

1.2 Recommendations

The review has identified opportunities for improvement and made 25 recommendations for the Victorian Government to consider. Further engagement with stakeholders on the implementation of the recommendations, if accepted, will be critical, particularly where legislative amendments are proposed.

The recommendations of the review are:

- **Recommendation 1:** Develop further guidance, promotional materials and activities to improve awareness and understanding of the Act among the public, service providers and people with past convictions, including:

  (a) review online information and guidance and improve accessibility,

  (b) run a public awareness campaign,

(c) update police check forms or related guidance materials to include information on the spent convictions scheme,

(d) develop further guidance and support for agencies and organisations working with people with convictions, and

(e) develop further guidance for people in prisons and transition and reintegration programs regarding the spent convictions scheme.

- **Recommendation 2:** Develop further information and guidance materials to support the application process for a spent conviction order, including:

  (a) amend the application form and supporting materials to improve accessibility and include further guidance for applicants,

  (b) provide further guidance to legal practitioners to assist them to understand decision-making considerations and enable advice for clients, and

  (c) provide further guidance to community service workers to assist them to support applicants through the court process and build capability in their sector.

- **Recommendation 3:** Amend the Act to remove the requirement for personal service and enable the Magistrates' Court to provide a copy of an application for a spent conviction order to the Attorney-General and Chief Commissioner of Police after it is lodged by an applicant.
- **Recommendation 4:** The Magistrates' Court and government develop accessible general guidance materials for applicants and organisations working with applicants on what to expect from hearings for spent conviction order applications.
- **Recommendation 5:** Work with Aboriginal stakeholders, including the Aboriginal Justice Caucus and the Victorian Aboriginal Legal Service, and the Magistrates' Court of Victoria to strengthen cultural safety in the spent conviction order court application process. This may include amendments to clarify and/or expand the factors for consideration under section 19(2)(d).
- **Recommendation 6:** Further consider amending the scope of serious violence and sexual offences that may be spent through a court application under the Act.
- **Recommendation 7:** Amend the Act to clarify that serious convictions can be spent immediately if they meet the relevant criteria, for example when an order was made without conviction, as set out in section 7 of the Act.
- **Recommendation 8**: Amend the Act to replace the term 'conviction period' with a more precise and clear term such as 'rehabilitation period'.
- **Recommendation 9:** Amend section 10(2) of the Act to clarify that the conviction period will recommence only where a subsequent conviction occurs within the five or ten-year conviction period for the original conviction.
- **Recommendation 10:** Amend the Act to enable adjourned undertakings without conviction to be spent immediately under section 7, rather than after the conditions of the undertaking are completed.
- **Recommendation 11:** Amend the Act to ensure that adjourned undertakings with conviction do not recommence a conviction period.
- **Recommendation 12:** Amend the Act to ensure that convictions that are 'convicted and discharged' can be spent immediately under section 7.

- **Recommendation 13:** Review the Act to ensure consistency with the severity of different sentencing outcomes under the *Sentencing Act 1991* and other sentencing legislation and consider amendments where appropriate.
- **Recommendation 14:** Amend the Act to provide clarity regarding the terms 'conviction' and 'finding of guilt', with the definition of 'conviction' to refer to a decision by a sentencing court to record a conviction for an offence pursuant to section 8 of the *Sentencing Act 1991.*
- **Recommendation 15:** Amend the Act to allow that when an offence is ineligible to be spent due to an aggregate sentence with a custodial term of more than five years', the conviction is eligible to be spent through a court application for a spent conviction order.
- **Recommendation 16:** Amend the Act to ensure that findings of guilt under historical mental health provisions are eligible to be spent.
- **Recommendation 17:** Consider amending the Act, subject to further consultation, to clarify that infringement convictions that are challenged in court are treated the same way as other infringement convictions, and are therefore eligible to be spent immediately.
- **Recommendation 18:** Further consider the treatment of repealed offences under the Act, including whether some repealed offences should be spent immediately and whether existing exemptions under the Act should apply to these offences.
- **Recommendation 19:** Amend the Act to allow for matters less than a finding of guilt to be spent, noting the importance of carefully considering how exemptions in the Act may apply to these matters.
- **Recommendation 20:** Further consider the wording and requirements of the offence provision at section 23 of the Act to ensure clarity regarding the obligations it imposes.
- **Recommendation 21:** Amend section 21 of the Act to limit the use of spent conviction information by law enforcement agencies or other agencies with exemptions under the Act to law enforcement purposes or the purposes for which they have an exemption respectively.
- **Recommendation 22:** List exemptions for agencies to collect, use and disclose spent conviction information in the Regulations rather than in the Act.
- **Recommendation 23:** Conduct a review of the suitability of each exemption under the Act and the Regulations that allow disclosure of spent convictions. Repeat this review at regular intervals to ensure the ongoing suitability of each exemption.
- **Recommendation 24:** Amend the Act to clarify that there is no exemption for spent convictions to be disclosed for 'fit and proper person' assessments unless an agency or organisation has a specific exemption under the Act or Regulations permitting the disclosure.
- **Recommendation 25:** Commence a further review of the Act five years after the commencement of the Act, on 1 July 2027, to be tabled in Parliament a year later.

2. Introduction

2.1 Background

2.1.1 Development of the Act

Prior to the commencement of the Act, the disclosure of a person's criminal history was not subject to any legislative limitations. For police checks, Victoria Police disclosed an individual's criminal history in accordance with an internal administrative policy, the Victoria Police Information Release Policy. From 2009 to the commencement of the Act in 2021, Victoria was the only Australian jurisdiction without a legislated spent convictions scheme.

The need for a legislated scheme was highlighted through many years of community advocacy, including from the legal sector and Aboriginal communities. This included significant advocacy by the Woor-Dungin Criminal Record Discrimination Project, which emphasised the disproportionate impact that disclosable criminal record information has on Aboriginal people.

What is a spent conviction?

A spent conviction is a conviction that (unless an exemption applies):

- will not appear on a person's police check
- a person does not have to disclose to anyone
- no one is allowed to ask the person about

In 2019, following a comprehensive inquiry, the Legal and Social Issues Committee of the Legislative Council (the Committee) recommended a legislated spent convictions scheme for Victoria.[3] The government implemented this recommendation and developed the details of the scheme in consultation with a broad range of stakeholders, including law enforcement, justice sector agencies, courts, victims' representatives and Aboriginal stakeholders.

The Act was passed in March 2021 and came into effect in two stages, with most parts of the Act coming into effect on 1 December 2021 and the court application process (Division 2, Part 2) commencing on 1 July 2022.

2.1.2 Overview of the Act

The stated purposes of the Act are:

- to establish a scheme for convictions to become spent automatically or on application
- to provide for limited collection, use and disclosure of a spent conviction for the purposes of administration of justice or performance of statutory functions
- to create offences for disclosing information about a spent conviction or obtaining information about a spent conviction fraudulently or dishonestly, and
- to amend the *Equal Opportunity Act 2010* to make a spent conviction an attribute on the basis of which discrimination is prohibited under that Act.[4]

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[3] Legal and Social Issues Committee of the Legislative Council (2019) *Inquiry into a legislated spent convictions scheme: A Controlled Disclosure of Criminal Record Information framework for Victoria*, Reports (parliament.vic.gov.au).

[4] *Spent Convictions Act 2021*, s 1.

The Act established a scheme for certain convictions to become spent automatically or on application, thereby reducing the barriers these convictions pose to rehabilitation and opportunities for full participation in society, such as for employment, training and housing.

Convictions are spent immediately for offences which are committed when a person is under the age of 15, where an order was made 'without conviction', for fines issued by the Children's Court, where the only penalty is an infringement, or for qualified findings of guilt.[5]

Other convictions are eligible to become spent automatically after the relevant 'conviction period' is completed. This includes most offences for which a custodial sentence of less than 30 months was imposed.[6]

The conviction period depends on a person's age at the time of conviction. It is 10 years for adults (aged 21 years or over at the time of sentencing), and five years for children and young offenders (aged under 21 at the time of sentencing).[7] The shorter waiting period for children and young offenders recognises that young people are particularly vulnerable to discrimination and stigma on the basis of historic offending, which often affects their ability to seek employment or education opportunities and undermines rehabilitation.

'Serious convictions'[8] are not eligible to be automatically spent in most cases, but instead require an application to the Magistrates' Court after completion of the relevant conviction period. For adults, convictions for sexual and serious violence offences can never be spent if they involved a custodial sentence. These settings for serious convictions recognise the need for the spent convictions scheme to balance the objectives of rehabilitation with community safety considerations.

The Act includes a number of exemptions for certain people and bodies. The exemptions allow limited collection, use and disclosure of spent convictions for the purposes of the administration of justice and the performance of statutory functions. Certain exemptions are also detailed in the Regulations.

The Act creates an offence for disclosing a spent conviction unless it is authorised by the exemptions in the Act or Regulations. It also amends the *Equal Opportunity Act 2010* to prohibit discrimination on the basis of a spent conviction, unless an exemption applies.

Further information on the spent convictions scheme is available at: https://www.justice.vic.gov.au/spent-convictions

2.1.3 2023 legislative amendments

Following the commencement of the Act, unintended limitations in the operation of the Act were identified. These issues were addressed by amendments to the Act through the Justice Legislation Amendment Bill 2023, which came into effect on 11 October 2023. The amendments implemented the following changes to the Act:

- replaced the previous undefined concept of a 'term of imprisonment' with a clear and narrow definition of 'custodial term' to provide certainty about when a conviction can be spent and ensure the Act is accessible to those who received suspended and community-based sentences

[5] *Spent Convictions Act 2021*, s 7(1).

[6] *Spent Convictions Act 2021*, s 8.

[7] *Spent Convictions Act 2021*, s 9.

[8] *Spent Convictions Act 2021*, s 3.

- included an exemption to the Act for information sharing under the Family Violence and Child Information Sharing Schemes (FVISS and CISS) to ensure the effective operation of these important schemes
- removed unintended limitations to eligibility to have a conviction spent for some children and young people
- included an exemption for disclosing identified data containing spent conviction information to bodies performing research functions, statistical analysis and modelling, with limits to avoid publication of identified information
- clarified that the publication of court judgments and providing access to court records are not limited by the Act, and
- provided that the responsible Minister can prescribe further bodies that can receive and disclose spent conviction information where necessary.

2.2 Purpose and scope of review

Section 25 of the Act required the Attorney-General[9] to review the operation of the Act after the first anniversary of its commencement.[10] A report of the review must be tabled in Parliament by 31 December 2023.

The review is an opportunity for government to monitor and evaluate the operation of the Act. The review assessed:

- whether the Act is meeting its stated objectives
- any challenges in the implementation of the Act, and
- any unintended or negative implications of the Act's operation.

The review has been conducted by DJCS and this is the report of the review.

2.2.1 Terms of reference

The following Terms of Reference guided the review:

1. Review the Act and identify options for reforms necessary to ensure the Act is meeting its stated objectives, considering:
    a. whether the provisions and operation of the Act support the aims of removing discrimination and barriers to rehabilitation for people who have previously offended and maintaining public safety
    b. the accessibility of the spent conviction order application and determination processes for cohorts who are overrepresented in the criminal justice system or who are disproportionately impacted by the justice system, including Aboriginal people
    c. the impact of the Act on people with convictions eligible to be spent
    d. the impact of the Act on key agencies involved in the administration and operation of the Act, including the Magistrates' Court, Victoria Police and legal services

[9] Section 25 requires 'the Minister' to review the operation of the Act. As the Attorney-General is the Minister responsible for the *Spent Convictions Act 2021*, the Attorney-General is responsible for the review.

[10] The Act came into operation on 1 December 2021, and the court application process (Division 2 of Part 2) commenced on 1 July 2022. The statutory review commenced on 1 July 2023, one year after all provisions of the Act have come into operation.

e. the impact of the Act on other agencies and bodies who may request, collect and use criminal record check information for the purpose of licensing and regulation, employment, law enforcement, community or other services and risk assessments, and

f. whether any changes are necessary to improve the operation of the Act.

2. In conducting the review, consideration will be given to:

a. whether the scope of the Act remains appropriate, including the definition of 'serious violence offence' and other relevant definitions

b. opportunities to improve the efficiency, accessibility and transparency of application processes under the Act

c. opportunities to ensure the Magistrates' Court receives the relevant information when determining whether to grant a spent conviction order, such as information about the applicant's rehabilitation and any subsequent convictions

d. opportunities for the Magistrates' Court to give greater consideration to the systemic and background factors effecting Aboriginal applicants and victims' circumstances, and

e. other issues that arise in relation to the operation of the Act.

2.3 How the review was conducted

2.3.1 Stakeholder engagement

The review involved gathering evidence and consulting with a broad range of stakeholders impacted by or involved in the administration of the Act. This included:

- inviting stakeholder input through the distribution of a discussion paper to key stakeholders in the justice sector, victim-focused services, Aboriginal Community Controlled Organisations, government departments and agencies, human rights organisations, housing services and employment services, and
- meeting with stakeholders on request to further consult on the discussion paper.

The review considered the feedback from stakeholders and identified key issues and recommendations to improve the Act's operation and effectiveness.

2.3.2 Public consultation process

A survey on the Engage Victoria online platform was conducted to support public input into the review. This survey received responses from 154 members of the public. 57 percent of survey participants (87) were women, three percent (five) preferred to self-describe and 30 percent (46) were men; 10 percent (14) of participants identified as Aboriginal and/or Torres Strait Islander; and 18 percent (28) of participants reported being culturally and/or linguistically diverse.

The consultation process sought information about the public's knowledge of the Act, the impact of the Act on members of the public, and feedback on potential improvements to the Act. Most survey

participants (84) reported being impacted by the spent convictions scheme (50)[11], knowing someone who is impacted (19)[12] or working with someone who is impacted (21)[13].

Feedback from the public consultation process was considered during the review and is outlined in this report.

Appendix B contains a detailed summary of the Engage Victoria survey data.

[11] 23 participants reported having a spent conviction, 18 reported wanting a conviction spent and nine stated they could not have a conviction spent.

[12] 13 participants reported knowing someone with a spent conviction and six stated they knew someone who could not have a conviction spent.

[13] 11 participants reported working with clients with a spent conviction and four stated they worked with clients who could not have their conviction spent.

Detailed feedback, findings and recommendations

The following sections 3, 4 and 5 explores each matter considered by the review, outlining the context, feedback received from stakeholders, findings of the review and any recommendations made.

The sections are structured as follows:

Section 3. Accessibility of the spent convictions scheme discusses the topics and themes relating to accessibility, including awareness of the Act and court application processes.

Section 4. Treatment of different types of convictions discusses the eligibility of different types of convictions to be spent and when they can be spent (automatically, after a conviction period, by application or never).

Section 5. Exemptions allowing disclosure of spent convictions discusses the permitted use of spent conviction information under the Act.

3. Accessibility of the spent convictions scheme

3.1 General awareness and knowledge of the Act

3.1.1 Context

The Act was introduced to limit the disclosure of minor or historic convictions, thereby removing unfair barriers to opportunities such as housing, employment and training. A key challenge to the successful implementation of the scheme is that people may have convictions spent automatically or be eligible to apply to the Magistrates' Court to have their conviction spent but may not be aware of this. This may lead to people believing that their conviction will appear on a police check and therefore not seeking opportunities, such as employment or services, that the Act seeks to promote access to.

When convictions are spent automatically, there is no notification process to inform people that their conviction is spent. This is because the criteria under the Act are applied manually to a person's criminal record whenever they make an application for a police check. Given there is no notification process, people may be unaware that a conviction is no longer required to be disclosed or will not appear on the police check, unless an exemption applies.

Individuals can determine if their conviction is spent by applying the legislative criteria themselves, seeking legal advice or by applying for a police check for a purpose where an exemption to the Act doesn't apply (for example, for general employment).

The lack of awareness that a conviction has been automatically spent has the potential to lead to inadvertent disclosures to prospective employers creating scope for bias and discrimination. Further, people who are unaware of the automatic process may avoid applying for jobs or positions, based on a belief that a conviction will still be disclosed during the application process. Similarly, many people who may be eligible to apply to the Magistrates' Court to have a serious conviction spent may lack awareness of their eligibility.

While there is information available publicly about the Act, including on the Magistrates' Court[14] and DJCS websites,[15] and guidelines produced by the Victorian Equal Opportunity and Human

[14] www.mcv.vic.gov.au/criminal-matters/spent-convictions-scheme, accessed 27 October 2023.

[15] www.justice.vic.gov.au/spent-convictions, accessed 27 October 2023.

Rights Commission,[16] there is substantial scope to broaden community awareness and knowledge about the scheme, through increased public education and promotion. This is integral to ensuring that the benefits of the scheme are available to a larger proportion of the people that the Act was designed to benefit.

3.1.2 Feedback received

Several stakeholders provided feedback about the lack of community awareness of the scheme. Stakeholders[17] emphasised the need to invest in community legal education to increase awareness of the scheme and explain the court application process.

Stakeholders noted the need for guidance for legal practitioners to assist people to understand the operation of the Act. Vacro recommended the funding of a specialist based at a Victorian reintegration service to support people to understand their eligibility and apply for a conviction to be spent. Vacro also noted the importance of raising awareness among people in prison who may have historic convictions that have been automatically spent or are eligible to be spent via application, which they noted is likely to provide hope and discourage people from reoffending post-release.

Fitzroy Legal Service (FLS) suggested creating an electronic record that enables people to see their criminal history at no cost, to see which convictions are eligible to be automatically spent or eligible to apply to be spent, creating an easy way for people to check the eligibility of their offences without requiring a paid police check.

The Aboriginal Justice Caucus (Caucus) highlighted the need for targeted materials and outreach activities to increase awareness of the Act in Aboriginal communities across Victoria. Caucus emphasised that the Act was developed in response to significant advocacy from Aboriginal stakeholders and that it is vital for the benefits of the scheme to reach Aboriginal people. The Victorian Aboriginal Legal Service (VALS) considered that general knowledge regarding the Act and the application process in the Victorian Aboriginal community is poor and they recommended that the government provide funding for community outreach and legal education about the Act.

Victoria Police also noted that community awareness of the scheme could be improved through a community engagement program provided in multiple languages on a range of platforms, including social media.

As part of the Engage Victoria consultation, participants were asked to rate their own awareness of the Act and public knowledge of the Act.

Knowledge about the basic features of the Act, including that convictions can be spent immediately, following a conviction period or through court application, varied among participants of the consultation. 22 percent of participants stated that they were not aware of these aspects of the Act, 42 percent stated that they were somewhat aware and 36 percent of participants stated they were very aware. Additionally, of the 154 participants, the vast majority (140 people) did not believe that there is good public awareness of the Act.

One participant, who reported having a historical conviction, stated that they found it difficult to understand the information online and that they were unable to get information about the scheme from their local court. They stated that their lack of awareness of the scheme had been a barrier to employment as they had not applied for jobs due to their conviction.

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[16] Victorian Equal Opportunity and Human Rights Commission, *Spent Conviction Discrimination Guideline: Complying with the Equal Opportunity Act 2010*, https://www.humanrights.vic.gov.au/static/adc2ca4452ff3af6474ddf70bf04b634/Resource-Spent_Conviction_Discrimination_Guideline-Complying_with_the_EOA_2010.pdf, accessed 19 October 2023.

[17] Rethinking Criminal Records Project, Victorian Aboriginal Legal Service, Law and Advocacy Centre for Women and Fitzroy Legal Service.

Participants suggested several ways to improve awareness of the Act, across the public, service providers and for people with past convictions. Participants suggested notifying people about the Act when a police check is required for employment, at the time of sentencing and providing information to service providers working with individuals with convictions. Participants also suggested a number of methods to raise public awareness through social media campaigns, media campaigns and flyers, and service providers stated that they would benefit from information sessions and training about the Act.

3.1.3 Findings

There is a strong need and a range of opportunities to improve the awareness and understanding of the Act within the general community, among service providers and among people with past convictions.

Urgent action to improve awareness is a high priority, noting that key stakeholders and 91 percent of Engage Victoria survey participants did not believe there was a good understanding of the Act in the community and suggested several ways to improve awareness.

There are several options for general and targeted awareness raising of the spent convictions scheme for government to pursue. It is important that awareness raising is delivered in multiple languages and on multiple platforms and is designed to best support the groups disproportionately affected by the criminal justice system and the professionals supporting them.

Recommendation 1

Develop further guidance, promotional materials and activities to improve awareness and understanding of the Act among the public, service providers and people with past convictions, including:

(a) review online information and guidance and improve accessibility,

(b) run a public awareness campaign,

(c) update police check forms or related guidance materials to include information on the spent convictions scheme,

(d) develop further guidance and support for agencies and organisations working with people with convictions, and

(e) develop further guidance for people in prisons and transition and reintegration programs regarding the spent convictions scheme.

3.2 Court application process

3.2.1 Context

Individuals with more serious convictions that are not eligible to be spent automatically may be eligible to apply to the Magistrates' Court of Victoria for a spent conviction order. An overview of the serious convictions that may be spent through a court order is provided at **section 4.2**.

Where an order is granted, the conviction becomes spent and is protected from disclosure in the same ways as convictions that are automatically spent.

Most applications received to date have been filed by applicants who do not have a lawyer representing them, which highlights the importance of ensuring that the application process is clear and accessible. This is particularly important for groups of people that are overrepresented in the criminal justice system and experiencing disadvantage.

Issues with applications received to date demonstrate some of the challenges faced by individuals navigating the application process. For example, the Act requires an application to set out information in support of the applicant's rehabilitation. However, many of the applications received to date contained limited or no supporting material.

A number of applications have also been received which seek to spend convictions that are out of the scope of the Act, such as convictions from other Australian jurisdictions or where an application is not required as the conviction(s) has been spent automatically. This indicates a lack of awareness of the spent convictions scheme, including the scope of the court application process, in the community (see also **section 3.1**).

Additionally, under section 11 of the Act, an applicant must first apply to the Magistrates' Court, obtain a 'sealed' copy of their application, and then serve this copy on the Attorney-General and the Chief Commissioner. If an application is sent only to the Attorney-General and/or the Chief Commissioner, without first being submitted to and 'sealed' by the court, the application cannot be processed and progressed. As at 30 September 2023, 40 'unsealed' applications had been received by the Attorney-General and 66 unsealed applications had been received by the Chief Commissioner, 23 of which have later become sealed applications.

3.2.2 Outcomes of spent conviction order applications

The below data details the spent conviction order applications that have progressed through the Magistrates' Court since the court application process commenced operation on 1 July 2022 to 30 September 2023 at **Table 1.**

Table 1: Outcomes in spent conviction order applications

	Number	Percentage
	Applications	Applications
Granted	64	59.3%
Withdrawn	10	9.3%
Struck out	6	5.5%
Refused	6	5.5%
Being processed	22	20.4%
Total	**108**	

3.2.3 Feedback received

Application form

Most stakeholders advised that the spent conviction order application form could be revised to include further guidance to applicants about the types of convictions which are eligible to be spent through the court application process. Stakeholders also noted that the application form would benefit from the inclusion of examples of the types of supporting documents that a Magistrate is likely to consider when determining an application.

The courts' feedback noted that while the Magistrates' Court registry assistance is available to applicants and some guidance is included in the application form, many applicants would benefit from the assistance of a lawyer. The Magistrates' Court advised that unrepresented applicants often have questions about eligibility under the scheme, the court application process and what types of supporting materials are relevant in determining an application.

Some stakeholders, including Community Legal Centres (CLCs), the Law Institute of Victoria (LIV) and Victoria Police, advised that comprehensive guidance about the types of supporting material that could be provided in support of an application would be useful. In particular, stakeholders stressed the importance of guidance about and examples of material that might constitute

'information in support of the rehabilitation of the applicant', as required under section 12(1) of the Act.

To date, in eight applications further information has been sought beyond what was initially included in the applications to assess individuals' rehabilitation. Stakeholders suggested that providing improved information about the type and amount of supporting material required may both assist applicants and reduce delays in the court application process.

Proposed guidance could include noting the relevance of supporting documentation such as character references, evidence of employment, clear drug screenings, psychological reports and any other relevant categories of supporting information.

Victoria Police also suggested including an acknowledgement in the application form that spent convictions will continue to be disclosable to specified agencies under the Act, such as for a Working with Children Check. They noted that this would reduce misunderstandings and complaints about the effect of spent conviction orders.

Application process

Engage Victoria survey participants noted uncertainty about how to apply for a spent conviction order. In addition, some service providers that participated in the consultation were also unsure how to assist their clients to make an application.

Stakeholders raised that the court application process can be particularly difficult to navigate for vulnerable Victorians, including those with a disability, including cognitive impairments, and those from culturally and linguistically diverse backgrounds. The lack of accessibility and cultural safety in the court process for Aboriginal Victorians was also raised.

A number of participants also highlighted the need for people to be informed about the spent conviction order application process at the time of sentencing, and when their conviction is eligible to be 'spent'. One participant suggested that courts should be required to state in their sentencing remarks *"whether a conviction may become spent and, if so, the date it will become spent. In the case of a serious conviction, the court should advise the defendant of their right to apply for their conviction to become spent*."

One participant noted that they found the court application process "*thorough…very supportive and felt that [their] matter was dealt with fairly*" but they were concerned that some spent conviction order applications are dealt with 'on the papers' (without a hearing), noting that in those cases, an applicant cannot attend to support their application in person.

Funding for legal and other supports

Several stakeholders including CLCs, the Victorian Bar and the Victorian Council of Social Services (VCOSS) noted that legal and social services have not received specific funding to assist with implementation of the Act. Such assistance could support community outreach, legal education, help completing application forms and legal representation at hearings. VCOSS argued that this support needs to be sustained and systemic support to enable workers to provide direct assistance to applicants and build capability in the sector.

Victoria Legal Aid (VLA) advised that people who would likely benefit most from having their conviction spent are also those who are least likely to be able to navigate the spent convictions scheme, including the court application process, on their own or afford a private lawyer to assist them. They noted that a person's chances of gaining employment are significantly advanced if a conviction is spent – but that a person's chances of accessing the process and succeeding on an application are significantly reduced without legal representation, which is often unaffordable to those without employment.

3.2.4 Findings

Applicants face significant challenges when navigating the application process, particularly in the absence of support from a legal or community services professional. Analysis of stakeholder feedback and application data highlights a gap in applicants' and support services' understanding of the application process for a spent conviction order.

Further guidance is needed to provide clarity to applicants, legal representatives and support workers about the application process, and applicants would benefit from greater supports to navigate the application process.

Recommendation 2

Develop further information and guidance materials to support the application process for a spent conviction order, including:

(a) amend the application form and supporting materials to improve accessibility and include further guidance for applicants,

(b) provide further guidance to legal practitioners to assist them to understand decision-making considerations and enable advice for clients, and

(c) provide further guidance to community service workers to assist them to support applicants through the court process and build capability in their sector.

3.3 Personal service

3.3.1 Context

In order to apply for a spent conviction order, the Act requires applicants to first obtain a 'sealed' copy of their application from the Magistrates' Court, and then personally serve the sealed application on both the Attorney-General and the Chief Commissioner.[18] This requires the applicant to first apply to the Magistrates' Court, either in person, by post or by email, and then separately email the Attorney-General and Chief Commissioner their application once sealed.

This multi-step application process adds complexity, particularly for unrepresented applicants. Numerous applications to date have not been properly served by either not completing the second step or completing the steps in the wrong order (see **section 3.2.1**).[19]

3.3.2 Feedback received

Stakeholders overwhelmingly noted that the requirement for personal service by applicants adds unnecessary complexity to a scheme intended to be accessible to the greatest extent possible within the context of a formal court process. Additionally, stakeholders have noted that unnecessary contact with police can be distressing for people with disclosable criminal record information, especially self-represented applicants.

The Magistrates' Court noted its support for a mechanism for the court registry to provide notice of spent conviction applications, including providing copies of sealed applications to relevant parties. The court distinguished this from any obligations of formally 'serving' the applications on other parties, noting this would be an inappropriate role for the court.

[18] *Spent Convictions Act 2021*, s 13.

[19] As at 30 September 2021, there has been a total of 66 unsealed applications received, and of these, 23 have gone on to become sealed applications.

While participants of the Engage Victoria consultation did not specifically reference personal service of spent conviction order applications, many participants did highlight the need for a clearly outlined process for these applications. Participants highlighted the need for individuals to be informed of the process of applying for spent conviction orders at the time of sentencing, as well as when their conviction is eligible to be spent.

3.3.3 Findings

Noting stakeholder feedback and application data, the current personal service requirements in the Act are evidently complex and unnecessary, creating barriers for applicants to apply for a spent conviction order. It is possible to streamline and simplify the court application process by removing the requirement for applicants to serve the application on the Attorney-General and Chief Commissioner and enabling the Magistrates' Court to provide applications to the Attorney-General and Chief Commissioner after they are lodged with the court.

Recommendation 3

Amend the Act to remove the requirement for personal service and enable the Magistrates' Court to provide a copy of an application for a spent conviction order to the Attorney-General and Chief Commissioner of Police after it is lodged by an applicant.

3.4 Reasons for refusal of an application

3.4.1 Context

In determining whether to grant a spent conviction order, the Magistrates' Court must consider a number of factors, including:

- the nature, circumstances and seriousness of the offence to which the application relates,
- the impact on any victim of the offence to which the application relates (explored in further detail in **section 3.8**),
- the personal circumstances of the applicant,
- unique factors of background affecting Aboriginal or Torres Strait Islander persons (explored in further detail at **section 3.9**),
- the age and maturity of the applicant when the offence was committed,
- any demonstrated rehabilitation of the applicant,
- any risk to public safety of making a spent conviction order for the conviction, and
- any other matter that the court considers relevant.[20]

The Act does not require the court to provide formal reasons for the refusal or striking out of a spent conviction order application. Therefore, particularly in circumstances where an application is determined without a hearing, an applicant may not receive information regarding the reasons for the decision.

While some spent conviction orders include details about the basis for the refusal, confusion about the reasons for refusal have led some applicants to seek clarification from the Magistrates' Court registry about the basis of a decision where their application has been refused.

[20] *Spent Convictions Act 2021*, s 19.

3.4.2 Feedback received

Some stakeholders recommended that the Magistrates' Court should be required to provide formal reasons for refusing or striking out applications for a spent conviction order. This would support procedural fairness and transparency, to enable applicants to understand why their application was refused and what 'new information' might be relevant to a further application under section 11(4)(b) of the Act.

Stakeholders, including FLS, also note that requiring decision-makers to provide written reasons for refusal may also promote consistency in decisions and processes and support the development of the law. Stakeholders suggest that the provision of reasons may also provide a cost-savings mechanism, as it may support applicants to be better prepared when reapplying for a spent conviction order after their two-year waiting period. Additionally, some stakeholders recommended that the right to review a refusal should be enshrined in the Act.

Victoria Police noted that providing reasons for unsuccessful applications could decrease unfounded complaints about unfavourable disclosures on national police checks and unfounded complaints regarding unlawful disclosures and breaches of the Act. Further, providing this information would allow clarity and insight for Victoria Police to make more informed decisions when considering applications. Victoria Police also note that it may improve the ability to provide advice to Magistrates on the interpretation of contested terms in the Act.

The Magistrates' Court noted that currently, for matters where a refusal has been ordered by a Magistrate, the reason(s) for the refusal are contained within the form of the order. They note that any recurring issues concerning reasons for refusal should be addressed operationally, rather than through legislative prescription, and have highlighted that any relevant legislative amendments will involve operational, resourcing and other considerations.

3.4.3 Findings

Consideration of the application data highlights that the majority of applications for a spent conviction order were granted by the Magistrates' Court, with only six per cent of applications refused. Introducing a statutory requirement for the Magistrates' Court to provide reasons for refusal is likely to impose a cost and resourcing burden on the Magistrates' Court that outweighs the benefit to the court and other stakeholders. In light of this, reliance on the reason(s) for refusal that are contained in the form of the order and other operational solutions to this issue are more appropriate than prescribing a requirement for formal reasons.

Some stakeholders noted that providing reasons for refusal may enable applicants to be better prepared when applying for a spent conviction order. Alternatively, delivering further guidance and materials on the Act, as outlined in **Recommendations 1 and 2** will address some of these concerns by supporting applicants to be better informed when preparing their application.

3.5 Submissions by the Attorney-General and Chief Commissioner of Police

3.5.1 Context

After receiving an application for a spent conviction order, the Attorney-General and the Chief Commissioner may make submissions to the Magistrates' Court regarding the application.[21] The Attorney-General and Chief Commissioner must notify the Magistrates' Court if they will, or will not, make a submission in relation to each spent conviction order application.

[21] *Spent Convictions Act 2021*, s 14.

3.5.2 Feedback received

Stakeholders, including FLS, Uniting Church Australia, the Victorian Bar and Victoria Police, considered whether the Attorney-General and the Chief Commissioner could be given the current 28-day period to notify the Magistrates' Court that they do want to make a submission, and if no notification is made, this be taken as confirmation that no submission will be made. Victoria Police supports this, provided an adequate and reliable application notification process is established.

However, some stakeholders, including the Magistrates' Court, observed that this requirement does serve a purpose from an operational perspective, to put the position of the Attorney-General and Chief Commissioner beyond doubt when a Magistrate determines an application.

VLA feedback noted that enabling the Attorney-General to make a submission in respect of any application unduly complicates and politicises the court application process. They recommend that spent conviction proceedings should not require the Attorney-General to be invited to hearings and not specify that the Attorney-General may make submissions. The Attorney-General could seek leave to intervene if appropriate.

In contrast, VLA noted that Victoria Police is an independent statutory agency, which provides separation from the executive government and depoliticises this process. Additionally, VLA and other stakeholders suggested that the absence of funded legal assistance for applicants also compounds the unfairness for applicants where the Attorney-General and Chief Commissioner are involved.

3.5.3 Findings

The Attorney-General and the Chief Commissioner hold particular expertise in relation to the operation of the Act and, in relation to the Chief Commissioner, the nature of applicants' convictions that may assist the Magistrates' Court. Further, as a government minister, the Attorney-General represents and is accountable to the Victorian community. The Attorney-General is therefore well placed to make submissions reflective of community expectations of the operation of the Act. It is therefore appropriate for the Attorney-General and Chief Commissioner to be parties to spent conviction order proceedings and have the option to make submissions.

While there may be opportunities to streamline the process for submissions by only requiring the Attorney-General and the Chief Commissioner to notify the court if they do intend to make submissions, that this would still require the parties to consider each application and may not offer significant benefit or change from current practice.

3.6 Directions hearing process

3.6.1 Context

If the Attorney-General or Chief Commissioner intend to make a submission for a spent conviction order application, the matter is listed for a directions hearing. Where neither intend to make a submission, an application may be allocated a listing date when it will be determined 'on the papers', that is, without a hearing.[22]

A directions hearing provides an opportunity for representatives of the Attorney-General and the Chief Commissioner to outline the basis for any submissions. In some cases, further directions hearings may be held to allow the applicant to provide further evidence in support of their application, for example regarding their rehabilitation.

[22] Spent Convictions Act 2021, s 15.

In a hearing, the Magistrates' Court is not bound by the rules of evidence and may inform itself in any way the court thinks fit. The court must consider the substance of the application without regard to technicalities or legal forms that are not set out under the Act.

3.6.2 Feedback received

The Magistrates' Court advised that the conduct of directions hearings is a matter for the court and does not require legislative intervention. The purpose of a directions hearing is to enable case management of the progression of the proceeding. To this end, a directions hearing is to be conducted with sufficient flexibility to enable the matter to be procedurally managed by a judicial officer in the circumstances necessary and appropriate. The Magistrates' Court notes that, while the purposes of the directions hearing will be noted in court by the presiding judicial officer, particularly where a litigant is self-represented, it should not be an avenue for further guidance about the application process as this would have a significant impact on court resources. The Magistrates' Court considered that such guidance and support should be provided before the matter gets to court.

Victoria Police considered that further information regarding a directions hearing should be given to applicants, in an accessible format, prior to attending court. Such information could include the purpose of the directions hearing, what might be required of the applicant and whether the applicant needs to undertake any preparation beforehand. The provision of such information would assist in facilitating an application process that is less intimidating for the applicant.

3.6.3 Findings

Further guidance to applicants and the professionals supporting them on the procedures for directions hearings, the purpose of the hearings and what is required from them when preparing for and attending a directions hearing would improve accessibility for applicants and may improve the efficiency of hearings.

Noting that the courts operate independently from government and that the conduct of proceedings, including directions hearings, are a matter for the courts, further, general guidance to applicants about what to expect in a directions hearing will support the accessibility of the application process. While it is not appropriate to legislate regarding such guidance, general guidance materials can be developed in consultation with relevant stakeholders to improve applicants' experience of the court application process.

Recommendation 4

The Magistrates' Court and government develop accessible general guidance materials for applicants and organisations working with applicants on what to expect from hearings for spent conviction order applications.

3.7 Closed hearings

3.7.1 Context

The Act requires that a hearing for a spent conviction order application must be closed to the public unless the Magistrates' Court considers that the circumstances of the case justify the hearing being open to the public.[23]

Closed hearings are consistent with practice in South Australia and Western Australia, the only other jurisdictions with court application processes for spent convictions schemes. Closed hearings

[23] *Spent Convictions Act 2021*, s 16(2).

reflect the highly sensitive and personal nature of the information disclosed in a spent conviction order application.

Courts hear a range of other matters with similarly sensitive personal information. Where sensitive matters are being considered, legislation may require the court to be closed[24] or a court may make an order to close the court.[25] Alternatively, courts are also able to hold open hearings but limit the ability for sensitive information to be published through non-publication orders or legislative restrictions on publication of identifying information.[26]

3.7.2 Feedback received

Several stakeholders, including VLA, the Victorian Bar, Victoria Police, and the Uniting Church in Australia, stated that they supported the Act's current requirement that hearings be closed to the public unless the court decides otherwise. Stakeholders noted that this upholds the intention of the Act to promote rehabilitation and reduces potential stigma of the release of conviction information.

Victoria Police noted that open hearings would compromise an individual's privacy, dissuade potential applications, and undermine the purpose of the Act to allow individuals to rehabilitate without the stigma of having been convicted of a crime. Victoria Police noted that allowing public hearings may deter people from applying due to fears of public shaming and exposure of information that could have reputational damage. Victoria Police also note that from the perspective of victims, closed court arrangements also enable discretion, as the hearing may involve the disclosure of highly sensitive and personal information.

In contrast, the Victims of Crime Commissioner (VOCC) noted that the default position of having closed hearings for spent conviction orders excludes victims and other interested parties from participating in the process and denies them natural justice. The VOCC highlighted the importance of open justice and open courtrooms and suggested that as an alternative to closed hearings, courts can hold open hearings and limit the information that is published.

Three participants (out of a total of 154) in the Engage Victoria consultation also expressed concerns about closed hearings in the context of the right for victims to be present at hearings. Participants who raised this issue also stated that victims should be made aware of the date of the hearing and be informed when a conviction has been spent. Feedback from stakeholders about the impact on victims of closed hearings is further detailed in **section 3.8**.

3.7.3 Findings

Personal and highly sensitive information, including about past offending, is disclosed during spent conviction application hearings. Making this information available through an open court process would undermine a key aim of the Act, to reduce the stigma and discrimination of having past convictions accessible to the public.

The presence of members of the public, including the media, in hearings where they would be able to hear highly sensitive details of past offending and other information, such as an applicant's rehabilitation and personal circumstances, would reasonably deter applicants.

Open hearings may also increase the risk of unlawful disclosures of spent convictions and/or discrimination based on a spent conviction, with the more people able to attend and hear details of a conviction, the more opportunities there will be for disclosure and discrimination.

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[24] For example, under the *Status of Children Act 1974* or *Reproductive Treatment Act 2008*.

[25] For example, the Children's Court may close the court under section 523 of the *Children Youth and Families Act 2005.*

[26] For example, see section 534 of the *Children Youth and Families Act 2005.*

The Act includes a range of safeguards to ensure public safety and the integrity of the process, including consideration of applications by a Magistrate, the ability for the Attorney-General and the Chief Commissioner to make submissions regarding applications and the exemptions that allow the continued disclosure and use of spent convictions for law enforcement and other statutory functions.

Consideration was given to alternative options for protecting applicant information, including allowing open hearings with the option to seek non-publication orders or case-by-case orders closing the court. However, people may still be deterred from applying for a spent conviction order due to the knowledge that anyone could be present in court to hear their personal details, even if those people cannot use or disclose that information lawfully. Similarly, even if media are not permitted to publish identifying information, the prospect of an applicant seeing their de-identified circumstances published may still deter applications for spent conviction orders.

Unless the court makes a standing non-publication order, applicants would also be required to apply to the court for such orders. As noted in **section 3.2**, most applications received to date have been filed by applicants who do not have legal representation. Stakeholders have also raised concerns about the court process being complex and inaccessible. In light of this, alternative options to closed hearings would not provide adequate protections to applicants' criminal history information because applicants are unlikely to have the knowledge or understanding of court processes to apply for a non-publication order or order to close the court.

The danger of unlawful disclosure of spent convictions or discrimination based on spent convictions would also remain in these circumstances. For example, if a current or potential employer can be present in an open hearing, if the spent conviction order is granted, they are not permitted to use or disclose information about the conviction. However, there is no way to limit their knowledge of the conviction which risks the possibility of spent conviction discrimination with limited consequences or options for enforcement.

Having regard to multiple stakeholders support for maintaining the Act's requirement for closed hearings, the risks to the accessibility and use of the spent convictions scheme if open hearings were conducted as a default, and the safeguards in place in the Act to maintain public safety, it is most appropriate to retain the current provisions of the Act regarding this issue.

3.8 Victim involvement

3.8.1 Context

When determining whether to make a spent conviction order, one of the factors the Magistrates' Court must consider is 'the impact on any victim of the offence to which the application relates'.[27] The Act does not provide legislative guidance on how this is to occur in practice.

Victoria Police advised that in circumstances where sentencing remarks of a higher court are available which speak to victim impact, they use that information in responding to the application or assisting the Magistrates' Court with further assessment, rather than direct victim engagement.

3.8.2 Feedback received

VCOSS, the Victorian Bar, VLA, VALS and the LIV considered it inappropriate for victims to be involved in the spent conviction order application and hearing process, while Victoria Police cautioned against victim involvement being mandatory. VCOSS, VLA, VALS and the LIV noted that the spent conviction application process is separate and distinct from the sentencing process, and

[27] *Spent Convictions Act 2021*, s 19(2)(b).

therefore should not involve victims. VLA noted that the relevance of the connection between the offending and impact on the victim is less clear during an application for a spent conviction order because the process is separate from the sentencing process and focuses on the rehabilitation of the applicant. Stakeholders also raised concerns about the risk of retraumatising victims by re-exposing them to a matter that has often long been finalised by the courts.

VALS called for the reference to victim considerations to be removed from the Act to bring the Act in line with that of all other states and territories, except South Australia,[28] noting that the spent conviction process is founded in the appreciation of the applicant's rehabilitation and should not take victim impacts into account. VALS also noted that once a person has finished their sentence and successfully completed the conviction period, they should not continue to be punished for the conviction. The importance of closure for victims in the legal process was also raised, and it was noted that having victims involved in the spent convictions process may tether victims indefinitely to the incident that led to the conviction.

VCOSS noted that another significant issue to be considered is the risk that victim involvement in the application and hearing process creates adversarial conditions analogous to a trial. It was noted that the purpose of the application and hearing process is to determine whether a previous conviction should be spent, not to re-prosecute the matter, and that the application and hearing process should reflect this objective.

The Magistrates' Court advised they have received internal feedback in respect of the potential risk of re-traumatisation of victims, who, by virtue of the spent convictions process may be put back in contact, directly or indirectly, with a perpetrator after a protracted period of time, noting the considerable period between conviction and eligibility for an application to be made under the Act. The Magistrates' Court noted that if a provision inviting victim participation were developed, careful consideration would need to be given about how that opportunity would be enlivened in practical terms.

The LIV noted that the Act is a response to the unintended consequences of the criminal justice system on offender rehabilitation and is not a means to soften the legitimate consequences of a criminal act, which is addressed through sentencing. Therefore, the relevance of the connection between the offending and impact on the victim is less clear at the stage of a spent conviction order application compared to sentencing. The LIV also raised concerns about reconsidering victims' circumstances and the impact on a victim of an offence given that this would have already occurred at sentencing and risks significantly retraumatising victims.

Stakeholders noted that the Act primarily exists to promote the rehabilitation of people with past convictions, and that consideration of victims' circumstances and the impact on a victim of an offence has the potential to undermine the overarching purpose of the Act. These stakeholders noted that the Act strikes the right balance between rehabilitation and community safety through factors including:

- limitations on the types of offences which can be spent automatically,
- requiring people to wait for their five or 10-year conviction period before convictions can be spent,
- the requirement of an application to the Magistrates' Court for more serious offences to be spent, and

[28] Victoria and South Australia are the only jurisdictions with spent convictions schemes that allow Magistrate discretion as to victim impacts.

- the exemptions within the Act for the disclosure of spent conviction information, which serve to provide further safeguards for the administration of justice and community safety, therefore protecting victims.

The Victorian Bar highlighted that courts are able to consider the impact on victims of a spent conviction application without having to hear from the victims themselves, as is often done by courts in sentencing where a victim cannot be identified. The Victorian Bar suggested that there is no need to provide any further guidance in the Act, as the current process appears sufficient and provides enough scope for the court to consider victim impacts.

Victoria Police cautioned against legislative amendment to require victim involvement in the spent conviction application process. It was suggested that, in circumstances where sentencing remarks are available which speak to victim impact, Victoria Police would use that information in responding to the application or assisting the court with further assessment, rather than direct victim engagement. Victoria Police suggested that consideration could be given to a mechanism to allow victims to elect, at the time a conviction is made, whether to be notified of any future application for a spent conviction in relation to the offence to minimise the risk of retraumatising victims.

Conversely, the VOCC highlighted that various inquiries into spent convictions schemes have acknowledged the need to consider the impact on victims in these schemes, including comments from the Australian Law Reform Commission,[29] and in the terms of reference for the Victorian Parliament's Legislative and Social Issues Committee's *Inquiry into a legislated spent convictions scheme*.[30] The VOCC also noted that when introducing the Act into Parliament, the then-Attorney-General noted the need for the scheme to balance offender rehabilitation with the 'severe and lasting harm caused to victims of these offences'.[31]

Accordingly, the VOCC has called for formal mechanisms to increase victim participation in the court application process, including a victim notification scheme and formalised consideration of victim impact during decision-making, with increased opportunities for victims to participate in the process. The VOCC suggested that, although the Victims Register was not established for the purpose of spent convictions, its purpose and scope could be extended so that eligible victims who have consented could be notified of a spent conviction order. This would give victims the choice about whether they wish to be notified and participate in the spent conviction order process. The VOCC proposed that whether or not a Victims Register is created, victims should be given the opportunity to provide an updated Victim Impact Statement in applications for spent conviction orders and to attend hearings for spent conviction orders. The VOCC also notes the Act should ensure that hearings are adjourned where there is insufficient victim impact available for the court to make an informed decision. Safe and Equal also recommended that when considering victim impacts for victim survivors of family violence, risk and safety considerations should be at the forefront.

Stakeholders who raised greater victim involvement supported consultation with victims and organisations working directly with victims on how victim involvement can be facilitated in a trauma-informed way.

Two participants in the Engage Victoria consultation who expressed concerns about closed hearings in the context of the right for victims to be present at hearings also stated that victims should be made aware of the date of the hearing and be informed when a conviction has been spent.

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[29] The Australian Law Reform Commission, *Spent Convictions* (Report No 37, 1987), 4.

[30] Legal and Social Issues Committee of the Legislative Council (2019) *Inquiry into a legislated spent convictions scheme: A Controlled Disclosure of Criminal Record Information framework for Victoria*, Reports (parliament.vic.gov.au), viii.

[31] Victoria, *Parliamentary Debates*, Legislative Assembly, 28 October 2020 (Jill Hennessy, Attorney-General).

Nine participants raised concerns regarding the impact the Act has on victims. Some of the issues raised by participants include:

- victims would benefit from the right to be able to make submissions regarding spent conviction order applications
- victims should be made aware when a conviction is spent, and
- some participants stated that convictions should never be 'spent' due to the impact certain crimes have on victims.

3.8.3 Findings

There were differing views among stakeholders regarding victim involvement in spent conviction order applications. The VOCC and some respondents to the Engage Victoria survey called for formal mechanisms to notify victims of applications and facilitate victim participation in the court process. A wide range of other stakeholders submitted that the involvement of victims in the court process would not be appropriate. They argued the spent convictions scheme is intended to promote rehabilitation and address the disproportionate consequences of having to disclose historic and minor convictions. Creating an adversarial process where a victim can speak against the application is antithetical to these aims and risks creating a process that re-prosecutes the offence or further punishes applicants.

Stakeholders identified that there is also a considerable risk that victims may be re-traumatised through exposure to the court application process. This may include reminding victims of the offence and the harm they experienced, and their response to the granting of a spent conviction order they may not feel is justified.

Even if a notification process was adopted, there are significant operational barriers to notifying victims when someone applies for a conviction to be spent. Generally, a person will be applying for a spent conviction order at least five to 10 years after they were convicted. Given that Victoria Police records do not generally maintain up to date contact information for victims once a matter is finalised, there are difficulties in contacting victims a significant period of time after a conviction.

For certain offences, a victim may have registered on the Victorian Victims Register, which could enable victim contact. However, this register was not established for use in the spent convictions scheme and its enabling legislation does not consider its use for spent convictions. Legislative amendments and operational reforms would need to be considered to use the register for this purpose.

Currently, when determining whether to spend a conviction, Magistrates must consider the impact on any victim of the relevant offence. The court can consider the impact on victims based on sentencing remarks and other materials from the time of sentencing, and by reference to materials detailing the particulars of the offending. The court also retains the ability to seek further information should it require it in making a determination.

In line with the submissions from the majority of stakeholders, it appears that the existing process is the appropriate means for considering the impact on victims. In reaching this conclusion the review notes the ability of the court to have regard to impact on victims, the intent of the Act to further rehabilitation, its distinction from processes of punishment and sentencing, and the risks of direct victim involvement in retraumatising victims. In light of this, no amendments to this section of the Act are recommended at this stage.

3.9 Factors and processes relevant to Aboriginal people

3.9.1 Context

The court is required to take into account the unique systemic and background factors affecting Aboriginal people when making a decision about whether to grant a spent conviction order.[32]

The Act requires the court to consider:

- factors relating to the incarceration of Aboriginal and Torres Strait Islander people; and
- the impacts on Aboriginal and Torres Strait Islander people of the disclosure of a criminal record.

3.9.2 Feedback received

Some stakeholders, including the Victorian Bar, suggested that Magistrates could benefit from further guidance when considering the factors outlined in section 19(2)(d) of the Act. This may be achieved through guidance material and training to assist courts in applying the section. Such guidance is likely to benefit applicants, legal representatives and the court. The Victorian Bar suggested this should address the impact of a criminal record on employment, kinship care, housing and access to other services for Aboriginal people.

Stakeholders have also noted that improving the cultural safety mechanisms embedded in court processes could enable the Magistrates' Court to be more responsive to the circumstances of Aboriginal applicants, who often face barriers to engaging with the justice system.

Some stakeholders, including VALS, VLA and the Law and Advocacy Centre for Women (LACW), stated that the scheme is inaccessible to Aboriginal people and does not operate in a way that is culturally safe or trauma-informed. Stakeholders noted that improving cultural safety within court processes may encourage more Aboriginal people to engage in the spent convictions scheme, leading to improved outcomes.

Noting the *Yoorrook for Justice* Report[33] (the Report) is currently being considered by government, stakeholders including Victoria Police and VLA consider any amendments to better support implementation of section 19(2)(d) of the Act should align with supported recommendations from the Report as they relate to Victorian courts. VALS and VLA suggested amending the Act to draw out the factors for consideration would provide clarity to both applicants, especially unrepresented applicants, and courts. In addition, stakeholders note that updating bench books and other guidance materials would assist courts in applying this section.

The Aboriginal Justice Caucus (Caucus) has advised of the importance in ensuring an Aboriginal lens for Aboriginal applicants. Caucus members noted that there would be value in establishing a special panel or Aboriginal advisers, like the Aboriginal Elders in Koori Court, or involvement of Koori Court workers, to support Magistrates considering applications from Aboriginal people. Caucus members highlighted that cultural safety requires ensuring that Aboriginal people are designing and delivering services and supports for Aboriginal people.

VALS noted that the application process could be strengthened by reference to specific factors that impact Aboriginal people's engagement with the criminal legal system. In particular, VALS noted that formal processes and engagement with courts can create particular challenges for Aboriginal people. VALS made a number of recommendations, including:

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[32] *Spent Convictions Act 2021,* s 19(2)(d).

[33] Yoorrook Justice Commission, *Yoorrook for Justice: Report into Victoria's Child Protection and Criminal Justice Systems* (2023).

- the application process should be relocated to the Victorian Civil and Administrative Tribunal's jurisdiction,
- the Magistrates' Court should provide an option of having the application heard in a Koori Court room, or other less formal venues, and
- the government should fund Spent Convictions Koori Officer or Liaison roles in all courts or alternate forums that hear spent conviction applications, with this role empowered to undertake all activities that the officer sees fit to assist Aboriginal people in making applications under the scheme.

10 percent of participants (14 participants) in the Engage Victoria consultation process identified as Aboriginal. Two of these participants commented on the scheme and Aboriginal people, particularly in relation to awareness of the scheme in the community. One of these participants stated that no Aboriginal person they had spoken to was aware of how to apply for a spent conviction order. This is consistent with the general responses highlighted in **section 3.1** raised by participants that awareness needs to be improved about the Act (see **section 3.1.3**).

Another participant, who did not identify as an Aboriginal person, highlighted that discriminatory barriers to housing and employment exist for Aboriginal people and that the Act "*offers a vital second chance to adults who have previously committed an offence and provide an opportunity to set their lives on a better path.*"

3.9.3 Findings

Noting stakeholder concerns about the lack of cultural safety of the spent convictions scheme further work is required to ensure the scheme, particularly the court application process, is culturally safe for Aboriginal people. This work must be shaped by Aboriginal communities.

Stakeholder and public feedback also raised the lack of awareness of the Act in the Aboriginal community (see **Recommendations 1 and 2)**. Activities to raise awareness of the spent convictions scheme and understanding of the court application process under these recommendations must include specific, culturally appropriate materials and supports for Aboriginal Victorians, delivered in partnership with Aboriginal communities.

Recommendation 5

Work with Aboriginal stakeholders, including the Aboriginal Justice Caucus and the Victorian Aboriginal Legal Service, and the Magistrates' Court of Victoria to strengthen cultural safety in the spent conviction order court application process. This may include amendments to clarify and/or expand the factors for consideration under section 19(2)(d).

4. Treatment of different types of convictions

4.1 Definitions of 'serious violence offence' and 'sexual offence'

4.1.1 Context

The term 'serious violence offence' in the Act is defined with reference to the *Serious Offenders Act 2018.*[34] The term 'sexual offence' in the Act is defined with reference to section 4 of the *Criminal Procedure Act 2009,* but does not include intimate image offences.[35]

These definitions are important as both serious violence and sexual offences are considered serious convictions under the Act.[36] In most cases, serious convictions are not eligible to be spent automatically, and require a court order to be spent.[37] Further, both serious violence and sexual offences are not eligible to be spent if the conviction included a custodial sentence and the person was aged 21 or older at the time of sentencing.[38]

4.1.2 Feedback received

Some stakeholders suggest keeping the current definition of 'serious violence offence' in the Act or using a definition from another, existing scheme rather than creating a new definition. It is noted that having multiple definitions for a single concept across different pieces of legislation can cause confusion. Stakeholder feedback also noted that given the *Serious Offenders Act 2018* identifies certain serious violence offences as serious enough to warrant 'enhanced protection for the community',[39] the treatment of these offences aligns with the purpose of the definition of serious violence offence in the Act.

Conversely, Victoria Police suggests that a new definition unique to the Act should be created. Victoria Police consider that the definition of 'serious violence offence' fails to capture a range of violent offences that are of comparable seriousness and attract similar penalties to those offences that fall under the current definition.

The VOCC noted that requiring a court application for a conviction to be spent recognises the need to balance rehabilitation with risks to community safety, and also recognises the harm such offences caused to victims. As such, the VOCC states that it is important that this definition continues to capture a wide range of offences.

Victoria Police also raise concerns that the definition of 'sexual offence' currently excludes image-based sexual abuse and suggest possible amendments so that image-based sexual abuse offences are treated similarly to physical sexual offences.

Various stakeholders commented on the related issue of the scope of serious violence offences eligible to be spent under the scheme. This broader issue is addressed further in **section 4.2**.

4.1.3 Findings

Stakeholder feedback highlights the importance of considering which 'serious violence offence' and 'sexual offence' are eligible to be spent and how this can be done in a way that continues to

[34] *Serious Offenders Act 2018*, Schedule 2, Part 2.

[35] *Spent Convictions Act 2021*, s 3.

[36] *Spent Convictions Act 2021*, s 3.

[37] *Spent Convictions Act 2021*, s 8 and 11.

[38] *Spent Convictions Act 2021*, s 11(1)(b)(i).

[39] *Serious Offenders Act 2018*, s 1.

promote community safety. There is a strong rationale to ensure that these definitions are consistent with other legislation. It is noted that relevant risks to public safety are mitigated through various safeguards in the Act, including exemptions to the Act allowing access to full information by courts, law enforcement agencies and other agencies specified in the Act.

The definitions of 'serious violence offence' and 'sexual offence' are derived from the *Serious Offenders Act 2018* and *Criminal Procedure Act 2009* respectively. The definitions in these Acts have been carefully developed to reflect the seriousness of the offences they capture and have been, and will continue to be, subject to comprehensive scrutiny and review. It would be inconsistent and unnecessary to create separate definitions of these terms for the Act, noting that this would lead to different treatment of offences at the time of offence to when the conviction is eligible to be spent.

However, the definition of 'sexual offence' differs slightly from that of the *Criminal Procedure Act 2009* by excluding intimate image offences. These offences were excluded at the time of drafting the Act, acknowledging the different nature of the offending to other sexual offences. Image-based sexual offences were moved from the *Summary Offences Act 1966* to the *Crimes Act 1958* following the commencement of the Act.[40] This responded to the Victorian Law Reform Commission Report on *Improving the Response of the Justice System to Sexual Offences*, which recommended that these offences be treated more seriously.[41] While stakeholders were not asked for feedback specifically on the exclusion of image-based offences in the definition of 'sexual offence' during the review, further consideration of this aspect of the definition may be needed in light of these changes.

The protections sought by stakeholders through expanding the list of offences are instead achieved through the various safeguards in the Act. Exemptions in the Act allow bodies like courts, law enforcement agencies and other agencies to use and disclose convictions even if they are spent. The Act also allows for the disclosure of spent convictions on Working With Children Checks and disclosure on police checks sought for various high risk registrations, licences and occupations.

The need for applicants to wait for the conviction period to expire without any relevant re-offending, and to be able to demonstrate rehabilitation before a serious conviction can be spent further protects against risks to public safety.

Any serious offences not captured within the definitions of 'serious violence offence' and 'sexual offence' will still be captured by the definition of 'serious conviction' where a custodial term of more than 30 months was imposed for the offence. This provides a key safeguard that ensures that these convictions require a court order to become spent and are only eligible to be spent after a conviction period without further offending lapses. A further safeguard contained in the Act is that any offences for which a custodial term of more than five years was imposed are not able to be spent.

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[40] *Justice Legislation Amendment (Sexual Offences and Other Matters) Act 2022*, Part 3.
Note that the changes do not extend to the offence of 'upskirting', which remains a summary offence.

[41] Recommendation 52 of the Victorian Law Reform Commission, *Improving the Response of the Justice System to Sexual Offences*: *Report*, September 2021, VLRC_Improving_Justice_System_Response_to_Sex_Offences_Report_web.pdf (lawreform.vic.gov.au), accessed 15 November 2023.

4.2 Treatment of serious convictions

4.2.1 Context

Serious convictions include sexual offences, serious violence offences and offences for which a term of imprisonment of more than 30 months was imposed.[42] In almost all cases, serious convictions may only be spent through an order of the Magistrates' Court.

A person who was a child or young offender (under the age of 21 at the time of sentencing), is eligible to apply to have any serious conviction spent.[43] A person who is not a child or a young offender is eligible to apply for a spent conviction order for:

- a serious violence offence or a sexual offence, where no custodial term was imposed for the conviction, and
- other serious convictions where any custodial term imposed was not more than five years.[44]

4.2.2 Feedback received

VALS, Vacro, LIV, VLA, FLS, the Victorian Bar and Law and LACW considered the treatment of serious violence offences to be restrictive and to have the potential to undermine the rehabilitative intent of the scheme.

The LIV and the Victorian Bar noted that certain serious violence offences are less serious and carry lower penalties than many other types of serious convictions, yet they are not eligible to be spent under the scheme if any term of imprisonment was imposed. Conversely, serious convictions apart from serious violence or sexual offences, can be spent where a term of imprisonment of less than five years was imposed.

VCOSS noted that their members recommended consultation to develop options for expanding the scheme to include people currently excluded from the scheme, including people with convictions for serious violence offences. VALS also recommended that the Act should be amended such that all serious convictions should be eligible to be spent by application, removing limitations on eligibility based on the custodial sentences imposed for convictions.

CLC stakeholders noted that many clients experiencing unstable housing or homelessness, or multiple minor offences, are often refused bail and therefore more likely to be sentenced to a time-served custodial sentence due to having spent time on remand, even for offending which would not have otherwise attracted a custodial term. VLA expressed concern that the inability to have a serious conviction spent where it attracted a custodial sentence is likely to have disproportionate impacts on communities that are over-policed, including Aboriginal people and people of colour.

LACW and FLS proposed that the scope of convictions that can be spent by application should be expanded to include serious violence offences even where imprisonment was imposed and where the individual was over 21. It was proposed that this would allow the Magistrates' Court to consider each application on a case-by-case basis and take into account any exceptional or mitigating circumstances of the offending in determining whether it is appropriate for the conviction to be spent.

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[42] *Spent Convictions Act 2021*, s 3.

[43] *Spent Convictions Act 2021*, s 11(1)(a).

[44] *Spent Convictions Act 2021*, s 11(1)(b).

For example, FLS noted that a sexual offence includes any offence which involves an element of indecency,[45] noting a case study of a client who faced a charge for indecent exposure for public urination during a period of homelessness and vulnerability. FLS highlighted that such a conviction would be treated as a sexual offence under the Act if a custodial sentence was imposed. FLS recommended that judicial discretion be available for all serious convictions rather than excluding eligibility based on periods of imprisonment.

Similarly, one participant in the Engage Victoria survey noted that the circumstances of the offence should be considered when determining whether a conviction will be spent and highlighted the importance of considering rehabilitation.

Vacro noted that many people who were convicted of serious offences over the age of 21 would benefit significantly from the opportunity to have their conviction spent, without posing an increased risk to the community. Vacro suggested that there should be an opportunity for people with convictions for sexual or serious violence offences to apply to the Magistrates' Court to have their conviction spent. It was suggested that a longer non-offending period or higher standard of proof regarding rehabilitation could apply to this cohort.

The LIV highlighted that there are significant safeguards in the Act, including the requirement that all serious convictions (unless where the offender was under 15) be subject to an application which will be carefully and rigorously assessed by the Magistrates' Court, along with the fact that convictions involving five or more years' imprisonment are ineligible to be spent.

In response to the Engage Victoria consultation, 14 participants also generally noted the barriers to employment and housing for individuals that have convictions, highlighting the importance of eligibility to have convictions spent to support rehabilitation and ensure that people are able to move on with their lives without facing discrimination based on past convictions.

Conversely, the VOCC expressed concern about serious convictions committed by young offenders (under the age of 21) being eligible to be spent, given the severity of these offences and impacts on victims. The VOCC suggested that consideration be given to prohibiting certain serious convictions from being spent (for example rape and murder) or lowering the age of a 'young offender' to those over the age of 18 rather than 21, noting that some members of the community may consider an offender over the age of 18 to be an adult.

Some responses from the Engage Victoria consultation also highlighted concerns regarding the treatment of serious offences. Eight participants had strong views regarding sexual offences, stating that people convicted of sexual offences should never be able to have their conviction spent. Four participants raised concerns regarding serious convictions being spent automatically, which is possible if a person was under 15 at the time of the offence. Five participants also stated that offences such as drug-related offences, sexual offences and serious violence offences should not be able to be spent automatically, with three of these participants stating that these offences should never be spent.

However, feedback from seven participants was consistent with the current approach to serious convictions in the Act and, as noted above, 14 participants noted the importance of eligibility to have convictions spent to support the rehabilitative objectives of the Act.

4.2.3 Findings

As highlighted by the range of stakeholder feedback received, the treatment of serious convictions in the Act must carefully balance supporting rehabilitation with the need to ensure community safety.

[45] *Criminal Procedure Act 2009*, s 4(1)(e).

Significant feedback from stakeholders highlighted concerns with the blanket ineligibility for people with serious violence and sexual offences that have a custodial sentence to apply for a spent conviction order. This can disproportionately affect vulnerable Victorians, such as those experiencing homelessness and communities that are overpoliced, including Aboriginal people and people of colour. These offence categories are broad and may capture convictions that do not pose a risk to public safety.

Serious violence and sexual offences do include convictions at the very high end of seriousness, including murder and rape. If these categories are amended to be eligible to be spent by application, the need for safeguards to ensure community safety will be paramount. Further consideration of the types of offences and specific circumstances that may be affected by such a change would be an important step in considering the appropriateness of potential amendment to the scheme.

If the eligibility for court applications was expanded, there are a range of safeguards already in place in the Act to ensure community safety. In particular, the judicial oversight of all spent conviction order applications will ensure a careful consideration of each applicant and their conviction.

As a further safeguard, exemptions in the Act allow bodies like courts, law enforcement agencies and other agencies to use and share convictions even if they are spent. The Act also allows for the disclosure of spent convictions on Working With Children Checks and disclosure on police checks sought for various registrations, licences and occupations. Similarly, the need for applicants to wait for the conviction period to expire without any relevant re-offending, and to be able to demonstrate rehabilitation before a serious conviction can be spent, are additional safeguards.

Regarding the definition and eligibility of young offenders, who can apply to have convictions for any offence spent, the Act's definition of a 'young offender' aligns with the differential treatment of young people in the criminal justice system and mirrors the definition of a young offender in the *Sentencing Act 1991*.[46] The eligibility of young people under the age of 21 to apply to have a serious conviction spent is also consistent with the intention of removing barriers to rehabilitation and participation. As noted in the Act's second reading speech, it is particularly important for young people to be able to benefit from educational, employment and housing opportunities, as these are crucial to a young person's development, rehabilitation and life trajectory.[47]

In light of the complex issues and diverse perspectives regarding this matter, the review finds that further consideration of the treatment of serious violence and sexual offences under the Act is appropriate.

Recommendation 6

Further consider amending the scope of serious violence and sexual offences that may be spent through a court application under the Act.

4.3 Serious convictions that can be spent immediately

4.3.1 Context

Generally, a serious conviction requires a court order to become spent. In rare instances, a serious conviction may also fall within the criteria for a conviction that can be spent immediately. An example is where a person is found guilty of a sexual offence without conviction and without

[46] *Sentencing Act 1991*, s 3(1).

[47] Victoria, *Parliamentary Debates,* Legislative Assembly, 28 October 2020, 2980, Jill Hennessy (Attorney-General).

receiving a term of imprisonment.[48] In such cases, although eligible to be spent immediately, there is an argument for such convictions to require a court application before being spent.

4.3.2 Feedback received

The LIV, FLS, VLA and the Victorian Bar suggested that serious convictions should be spent immediately in circumstances where the relevant criteria are met. These stakeholders noted that, in the rare instances in which a serious violence or sexual offence results in a 'without conviction' outcome, this is based on the many complex factors taken into account by the sentencing decision-maker, including the nature and seriousness of the offence, the age, character and history of the person, and the impact of recording a conviction on the person's ability to participate in society. On this basis, it was considered consistent with the Act for such convictions to be spent immediately. It was suggested that section 7 be amended to remove any doubt that such convictions may be spent immediately. VALS also advocated that the Act should not be amended to prevent eligible serious convictions from being spent immediately. The LIV suggested an alternative approach may be for such convictions to require a court application to be spent, as an additional safeguard mechanism, but not be subject to a 'conviction period'.

Victoria Police consider that all serious convictions, including those eligible to be spent immediately, should require a court application to become spent, on the basis that they consider this aligns with community expectations and enhances community safety.

The VOCC expressed concern that serious convictions committed when a person was under the age of 15 can be spent immediately, noting that in such cases, the impact on victims cannot be considered by a court before the conviction is spent. The VOCC recommended that all convictions, including serious convictions, committed by an individual under the age of 15 should be subject to a court application.

4.3.3 Findings

There is significant support for a serious conviction being spent immediately in the rare instances in which the relevant eligibility criteria is met. The criteria for convictions being spent immediately include where no conviction is recorded by the court, where there is a qualified finding of guilt or where the only penalty is a fine or infringement.[49] Therefore, it is expected that the sentencing court found significant mitigating factors to justify imposing a low-level sentence where a conviction meets the eligibility criteria to be spent immediately. Similarly, rehabilitation is particularly important for those under the age of 15, and even for serious convictions, having them immediately spent is appropriate. The review notes that the sentences imposed for the convictions in question would consider community safety and the impact on victims and notes that a further application process for children in contact with the justice system to have their conviction spent is not necessary or appropriate.

Allowing these convictions to be spent immediately is unlikely to present significant risks to community safety and, in these cases, there is a strong rationale for the rehabilitative benefits of such convictions being spent immediately.

In light of these findings, amendments to the Act to clarify that this is the case would provide certainty to individuals affected and the agencies administering the spent convictions scheme.

Recommendation 7

[48] In such cases, the conviction appears to fall within both sections 7 (immediately spent) and 11 (can be spent by application to the court after the relevant five or 10-year conviction period).

[49] *Spent Convictions Act 2021*, s 7(1).

Amend the Act to clarify that serious convictions can be spent immediately if they meet the relevant criteria, for example when an order was made without conviction, as set out in section 7 of the Act.

4.4 Length of conviction periods

4.4.1 Context

A 'conviction period' is a period of five years for people aged under 21 at the time of sentencing, and 10 years for people 21 or older at the time of sentencing.[50] The conviction period determines how long a person needs to wait before a conviction becomes eligible to be spent, either automatically,[51] or through a court application.[52] A relevant, subsequent conviction within the conviction period causes the conviction period to restart.[53] Minor convictions will not cause the conviction period to recommence, including where no penalty is ordered, where no conviction is recorded, where the only penalty is a fine of up to 10 penalty units, or the only penalty is an order to pay compensation.[54]

The current conviction periods in the Victorian scheme align with most other Australian jurisdictions' schemes, all of which have a waiting period[55] of 10 years for adults, and most of which have a waiting period of five years for children.[56] The five-year conviction period under the Victorian scheme is available to people under the age of 21 at the time of sentencing, whereas the five-year period only applies to children under the age of 18 in other jurisdictions' schemes.

4.4.2 Feedback received

VCOSS, VALS, CLC stakeholders and the Rethinking Criminal Records Project raised concerns about what they consider to be the arbitrary and onerous nature of conviction periods. Stakeholders suggested that time periods should be shortened to support the rehabilitation of those who experience economic and social exclusion and stigmatisation from previous offending. VALS raised concerns that a five-year waiting period has significant impacts on education and employment opportunities for children and young people, especially since young people are particularly vulnerable to stigma and discrimination in employment settings and are at high risk of reoffending and becoming trapped in a cycle of offending behaviour.

Similarly, in the Engage Victoria consultation, eleven participants believed conviction periods for individuals both under and over 21 years at the time of sentencing should be reduced. Three participants stated that convictions for individuals who are over 21 at the time of sentencing should be reduced from 10 years to five or seven years. One participant suggested that the conviction period for individuals above 21 should be reduced to two years.

Further stakeholder input suggested that the five-year conviction period that applies to children and young offenders should be extended from people aged under 21 to people aged under 25 at the time of sentencing. Stakeholders also questioned whether the commencement of the conviction period should remain the date of the finding of guilt or instead be the date of offending. It was

[50] *Spent Convictions Act 2021*, s 9.

[51] *Spent Convictions Act 2021*, s 8.

[52] *Spent Convictions Act 2021*, s 11.

[53] *Spent Convictions Act 2021*, s 10(2).

[54] *Spent Convictions Act 2021*, s 10(3).

[55] The *Spent Convictions Act 2021* uses the term 'conviction period', however other jurisdictions use the terms 'waiting period', 'rehabilitation period' or 'crime-free period'.

[56] With the exception of NSW, which has a crime-free period of ten years, and three years for convictions in the Children's Court, and Western Australia, which has a waiting period of 10 years for adults and three years for minor drug offences.

noted that the date of sentencing can be impacted by various factors that are not attributable to the individual, including delays in the investigation, prosecution, and judicial determination of a charge.

VALS and the Rethinking Criminal Records Project highlighted the disproportionate effects conviction periods often have on Aboriginal people, given that Aboriginal people are over-represented in the criminal justice system, often experience financial disadvantage and stigmatisation, and have lower life expectancies compared to non-Aboriginal people.

Conversely, five participants in the Engage Victoria consultation stated that the length of conviction periods should be increased, noting the impact that crimes have on victims. One participant suggested that the conviction period for individuals over 21 at the time of sentencing should be increased to 15 years.

In relation to terminology, VALS recommended that references to a 'conviction period' be substituted with clearer and more precise language, such as 'waiting period', to ensure that the scheme is easily understood and more accessible.

4.4.3 Findings

While there is support among stakeholders and community members for conviction periods to be shortened to support the rehabilitation of those with minor and historical convictions, the review finds that the current conviction periods strike an appropriate balance between facilitating the rehabilitation of individuals and maintaining community safety. The minimum five or 10-year waiting periods provide an important safeguard, ensuring that individuals have achieved a significant time without most reoffending, demonstrating the lack of risk they present to community safety. The consistency between conviction periods in the Act and the waiting periods in other Australian jurisdictions' legislation demonstrates the appropriateness of current settings.

The Act's application of a five-year conviction period to those who were under 21 at the time of sentencing rather than limiting this to those under 18 is more expansive than the approach in other jurisdictions. However, as stakeholders have highlighted, ensuring a broader approach for young people is appropriate to ensure that the stigma of past convictions does not undermine rehabilitation for young people. This is consistent with Victoria's youth justice system, which provides for access to this system for people who are up to 21 years at time of sentence.

The review finds that the term 'conviction period' could be substituted with a term such as 'waiting period' or 'crime free period' to improve the clarity and accessibility of the Act and align the terminology with other jurisdictions' schemes.

Recommendation 8

Amend the Act to replace the term 'conviction period' with a more precise and clear term such as 'rehabilitation period'.

4.5 Timing of subsequent convictions

4.5.1 Context

Certain convictions are eligible to be spent after the completion of a conviction period without further offending (with some minor exceptions). If there is a relevant subsequent conviction within the conviction period, the conviction period restarts from the day of the subsequent conviction.[57]

Unlike the Commonwealth scheme, the Act does not expressly state that the subsequent conviction must occur within the conviction period, however this appears to have been the intention

[57] *Spent Convictions Act 2021*, s 10(2).

of the Act.[58] The lack of clarity in the Act has led to one application for a spent conviction order being refused on the basis that the conviction period was restarted by a subsequent conviction that occurred after the conviction period had finished.

Under the Act, the conviction period will not recommence if the subsequent conviction is for a minor conviction for which:

- no penalty is ordered
- the only penalty is a fine of up to 10 penalty units
- the only penalty is an order to pay victim compensation or restitution, or
- the person is found guilty but no conviction is recorded by the court.[59]

4.5.2 Feedback received

The stakeholders[60] who provided feedback on this issue all agreed that a conviction period should only restart where the subsequent offence takes place during the conviction period, and that if the subsequent conviction takes place after the conviction period has expired, the subsequent conviction should not affect the ability for the original conviction to be spent. It was noted that this approach reflects an appreciation of a person remaining 'crime free' for a significant period of time. Stakeholders also recommended that the Act be clarified to give effect to this intention.

Types of offences that cause the conviction period to recommence

Two CLC stakeholders raised concerns that the threshold for the recommencing of the conviction period is too low. It was considered that conviction periods should not be restarted by a subsequent conviction for low-level offending.

Stakeholders noted that Aboriginal people are often over-policed and are disproportionality charged, remanded and convicted of low-level offences, many of which arise out of poverty or lack of supports. It was noted that setting a low threshold for the recommencement of a conviction period means that many individuals trapped in a cycle of offending will never have a genuine opportunity for rehabilitation and reintegration.

4.5.3 Findings

Noting stakeholder agreement that a conviction period should only recommence where a subsequent offence takes place during the conviction period, the Act should be amended to clarify this. This will ensure that the Act operates as intended and is applied consistently.

Noting the concerns that the threshold for restarting the conviction period is too low, the review notes that the threshold for restarting the conviction period was initially designed to ensure that there is a period of rehabilitation before a conviction becomes eligible to be spent. Given limited stakeholder input on this point, this matter should be further considered in the ongoing evaluation of the Act.

Recommendation 9

[58] Explanatory Memorandum Clause 10 reads: "Subclause (2) sets out how the conviction period restarts if a person receives a subsequent conviction before the original conviction period ends".

[59] *Spent Convictions Act 2021*, s 10(3).

[60] The courts, Law Institute of Victoria, Fitzroy Legal Service, Victoria Legal Aid, Victorian Aboriginal Legal Service, the Victorian Bar and Victoria Police.

Amend section 10(2) of the Act to clarify that the conviction period will recommence only where a subsequent conviction occurs within the five or ten-year conviction period for the original conviction.

4.6 Adjourned undertakings

4.6.1 Context

Where a charge is proven, the court may order an adjourned undertaking with or without recording a conviction. This allows a person to be released into the community unsupervised for up to five years. There are conditions attached to the undertaking and if a person breaches the conditions, the court may impose a different sentence. The court may only impose an undertaking if a person agrees to it. In 2021-22, the Magistrates' Court imposed adjourned undertakings in around 13 percent of all cases, with higher courts ordering adjourned undertakings in around one per cent of cases.[61]

Convictions with a sentence of a fine can currently be spent faster than convictions with an adjourned undertaking, even though an adjourned undertaking is a less serious sentencing option in the sentencing hierarchy.[62] An adjourned undertaking without conviction becomes spent at the end of the undertaking period, after the attached conditions (such as alcohol treatment or maintaining good behaviour) are completed.[63] In contrast, a fine without conviction is spent immediately at the date of the sentencing hearing, rather than when the fine is paid.[64]

It is noted that this issue does not apply to adjourned undertakings imposed with conviction, as these convictions become spent after the expiry of the relevant five or 10-year conviction period.

There are also inconsistencies in how an adjourned undertaking affects a conviction period for a previous offence in comparison with fines. Under the Act, a fine of 10 penalty units or less with conviction, or an order made without conviction, will not cause the conviction period to recommence.[65] However, although it is a lesser penalty than a fine in the sentencing hierarchy, a conviction period will recommence where a person is released on an adjourned undertaking with conviction.[66]

4.6.2 Feedback received

Multiple stakeholders[67] suggested that an adjourned undertaking without conviction should be treated the same way as a fine and spent immediately, given that an adjourned undertaking is less serious in the sentencing hierarchy. It was noted that this would enable people sentenced to an adjourned undertaking to access the rehabilitative benefits of the scheme immediately.

Several CLCs highlighted the significant impact that the ineligibility of an adjourned undertaking to be immediately spent has on sentencing considerations. It was noted that lawyers are often instructed by clients to accept the higher penalty of a fine because the delay in having a conviction spent for an adjourned undertaking would impact a client's work or travel prospects. Concerns

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[61] Sentencing Council of Victoria, *Sentencing Types for Adults*, https://www.sentencingcouncil.vic.gov.au/about-sentencing/dismissal-discharge-adjournment, accessed 17 October 2023.

[62] *Sentencing Act 1991*, s 5(7); *Bell v The Queen* [2016] VSCA 203, [47].

[63] *Spent Convictions Act 2021*, s 7(2).

[64] *Spent Convictions Act 2021*, s 7(1).

[65] *Spent Convictions Act 2021*, s 10(3).

[66] *Sentencing Act 1991*, s 72.

[67] The Law and Advocacy Centre for Women, Law Institute of Victoria, Victorian Aboriginal Legal Service, Inner Melbourne Community Legal, Southside Justice, Fitzroy Legal Service, Victoria Legal Aid and the Victorian Bar.

were also raised that those experiencing financial hardship often receive an adjourned undertaking in place of a fine, because of the impact of an imposition of a financial penalty and are thereby disproportionately excluded from the benefit of having a conviction spent immediately.

Similarly, one participant in the Engage Victoria consultation noted that it seems counter-intuitive that adjourned undertakings without conviction, being a lesser sentence than a fine without conviction, take longer to be immediately spent.

Victoria Police recommended that no change should be made to the Act regarding adjourned undertakings with conviction. It was considered appropriate that a person complete any conditions attached to an undertaking prior to it being automatically spent. It was noted that allowing convictions to be spent prior to the satisfactory completion of these conditions is inconsistent with community expectations that non-compliance with a court sentence will be treated seriously by the justice system, given that the goal of adjourned undertakings is to provide an offender the opportunity to reform their behaviour and prevent further contact with the criminal justice system.

Effect of an adjourned undertaking on conviction period

Stakeholders[68] suggested that, given an adjourned undertaking is a less serious sentencing option than a fine, an adjourned undertaking with conviction should not re-enliven the conviction period. Conversely, Victoria Police suggested it is appropriate for an adjourned undertaking with conviction to recommence the conviction period.

Treatment of 'convicted and discharged' sentences

Victoria Police expressed concern that the Act, in relation to Children's Court fines, treats a 'convicted and discharged' result more seriously than the imposition of a fine with a conviction, which is spent with immediate effect.[69] Victoria Police notes that although a conviction and discharge outcome is lower on the sentencing hierarchy than a fine, it is currently disclosed as part of a young person's criminal history, whereas a fine is immediately spent and not disclosed.

Victoria Police considered it appropriate for a convicted and discharged result in the Children's Court to be included in section 7, thereby being spent with immediate effect. Such an inclusion would be consistent with s10(3)(c) of the Act which provides convictions for which no penalty is imposed in the adult jurisdiction (such as 'convicted and discharged') do not recommence a conviction period. Victoria Police indicated support for the Act's treatment of the sentencing hierarchy (as in s10(3)(c) and s7) being reviewed in its entirety to ensure consistency with other legislation applicable to sentencing in the adult and children's criminal jurisdictions.

4.6.3 Findings

Most stakeholders agree that adjourned undertakings without conviction should be treated consistently with fines in the Act. This would enable adjourned undertakings to be spent immediately at the time of sentencing and to not recommence a conviction period.

Additionally, it is appropriate to enable convictions that are 'convicted and discharged' in the Children's Court in section 7 to be spent automatically, as this will ensure consistency in the approach to like sentences for adults and children under the Act. A further general review of the Act's treatment of the sentencing hierarchy is also recommended to ensure a consistent approach.

Recommendation 10

Amend the Act to enable adjourned undertakings without conviction to be spent immediately under section 7, rather than after the conditions of the undertaking are completed.

[68] The Law Institute of Victoria, Victorian Aboriginal Legal Service, Fitzroy Legal Service and the Victorian Bar.

[69] *Spent Convictions Act 2021*, s 7(d).

Recommendation 11

Amend the Act to ensure that adjourned undertakings with conviction do not recommence a conviction period.

Recommendation 12

Amend the Act to ensure that convictions that are 'convicted and discharged' can be spent immediately under section 7.

Recommendation 13

Review the Act to ensure consistency with the severity of different sentencing outcomes under the *Sentencing Act 1991* and other sentencing legislation and consider amendments where appropriate.

4.7 Use and interpretation of the term 'conviction'

4.7.1 Context

The Act provides that a conviction is spent with immediate effect at the time the person is convicted where 'the conviction is not recorded by a court'.[70] It appears that the term 'conviction' in section 7 is intended to refer to a sentencing court's discretion regarding whether or not to record a conviction.[71] This is reflected in the Second Reading Speech, which states that 'non-conviction' outcomes and convictions recorded against children under 15 years old will be spent immediately'.[72]

However, the term 'conviction' is defined in section 5 of the Act by reference to 'a finding of guilt', which could lead to the interpretation that a conviction can only be spent immediately under section 7 if there is no finding of guilt. As a result of the interaction between sections 5 and 7, some confusion has arisen about whether a conviction can be spent immediately under section 7 if there has been a finding of guilt (which is required by the section 5 definition).

4.7.2 Feedback received

The stakeholders who provided feedback on this issue recommended amending the Act to clarify and simplify the definition of the term 'conviction', to ensure that it is used consistently across the Act. Such amendments would clarify that 'non-conviction' outcomes where there is a finding of guilt are spent immediately.

Victoria Police noted that 'conviction' is used interchangeably within the Act to mean 'conviction' (in terms of sentenced 'with conviction') and a finding of guilt by the courts (whether or not a conviction was recorded). Similarly, the LIV raised concerns that the definition of 'conviction' is difficult for clients to understand as most members of the public do not understand the differences between 'criminal record', 'finding of guilt' and 'conviction'. It was suggested that the Act could instead refer to a 'finding of guilt' or a 'conviction' as required.

[70] *Spent Convictions Act 2021*, s 7(1)(a).

[71] Pursuant to *Sentencing Act 1991*, s 8.

[72] Victoria, *Parliamentary Debates*, Legislative Assembly, 28 October 2020, 2980 (Jill Hennessy, Attorney-General and Minister for Coordination of Justice and Community Safety) ('Spent Convictions Bill Second Reading Speech').

4.7.3 Findings

The term 'conviction' is used to refer to different concepts in different sections of the Act. Amendments to clarify the definition of the term 'conviction' will add clarity and ensure that the term is used consistently throughout the Act. There is broad support among stakeholders for amendments to the Act which clarify the definitions of the terms 'conviction' and 'finding of guilt'.

Recommendation 14

Amend the Act to provide clarity regarding the terms 'conviction' and 'finding of guilt', with the definition of 'conviction' to refer to a decision by a sentencing court to record a conviction for an offence pursuant to section 8 of the *Sentencing Act 1991.*

4.8 Treatment of aggregate sentences

4.8.1 Context

An aggregate sentence allows for simplicity by enabling the court to determine a single sentence that applies to several charges before the court, rather than separate sentences for each charge. Aggregate sentences are often used for custodial sentences, imposing a single term of imprisonment for several offences rather than determining which portion of the custodial term applies to each sentence. Aggregate sentences can be a useful tool to reduce the complexity of the sentencing process for large, consolidated pleas and to ensure the overall sentence reflects the totality of offending.

From 2016 to 2020, more than 90 percent of sentences imposed for individual charges in the Magistrates' Court were part of an aggregate prison sentence, and for higher courts, aggregate prison sentences accounted for approximately 15 to 18 percent of sentences for individual charges.[73]

Aggregate sentences present an issue for the spent convictions scheme, as the Act relies on the sentence imposed for each conviction to determine whether that conviction is a serious conviction. In circumstances where a minor conviction is included in an aggregate sentence, the aggregate sentence applies to each conviction, including the minor conviction. This can result in minor convictions attracting the treatment of more serious convictions under the Act.

4.8.2 Feedback received

Four out of the six stakeholders who provided input on this issue supported a method to identify when an individual conviction that is part of an aggregate sentence should be spent, to ensure the intent of the scheme is upheld and applied consistently, regardless of how a sentence is structured.

Stakeholders noted the potential unfairness and injustice that may arise for a person sentenced to an aggregate sentence compared to someone who receives individual sentences. For instance, if a person is sentenced to an aggregate term of more than 30 months' imprisonment for several offences, each conviction is deemed to have a sentence of more than 30 months and therefore deemed to be serious convictions that require a court application to be spent. However, if the person received individual sentences, which would likely each involve shorter custodial terms, some or all of the convictions may be spent automatically.

[73] McGorrery P and Bathy Z, *Aggregate Prison Sentences in Victoria*, Sentencing Advisory Council, Victorian Government, https://www.sentencingcouncil.vic.gov.au/sites/default/files/2023-04/aggregate_prison_sentences_in_victoria.pdf, accessed 4 August 2023.

Additionally, the Sentencing Advisory Council highlighted that serious convictions which can never be spent under the Act[74] may be enlivened more often because, while none of the individual offences may have received a term of more than five years' imprisonment, the imposition of an aggregate sentence of more than five years would apply to each offence and render them serious convictions that can never be spent.

VLA suggested judicial education to ensure minor convictions are not grouped together with serious violence offences or sexual offences may enable more convictions to be spent where possible. VLA advised that judicial education alone is unlikely to be sufficient and also suggested a system to identify convictions in an aggregate sentence that may be eligible to be spent. Vacro suggested that the nature of the offence, rather than the sentence period, should be considered when determining whether a conviction is eligible to be spent. They suggested this may enable less serious offences to be spent when a court makes an aggregate sentence.

Operational issues

Victoria Police noted the difficulty in identifying which part of an aggregate sentence could be apportioned to each individual offence. Victoria Police also expressed concern about changes to the way aggregate sentences are treated given the administrative burden already involved in manually altering data entries where a conviction is spent though the court application process.

The LIV also noted issues with operationalising an alternative approach to aggregate sentences under the Act, given that there is no requirement in Victoria for sentencing judges, when imposing an aggregate sentence, to announce an indicative sentence for the individual offences. As such, there is no basis in judgments or court records to use to allocate periods of a custodial sentence to each charge.

4.8.3 Findings

There is substantial support for a method to identify when an individual conviction that is part of an aggregate sentence should be spent. However, given the difficulties with apportioning aggregate sentences to individual offences, there also significant challenges with operationalising such an approach.

Further consideration is needed, in consultation with stakeholders, to determine whether there are feasible ways to address the impact of aggregate sentences on convictions that would otherwise have been eligible to be spent automatically.

As a first step, it is appropriate to amend the Act so that a conviction with an aggregate sentence of more than five years' imprisonment is eligible to be the subject of a court application. This will enable convictions that would otherwise be ineligible to be spent due to an aggregate sentence of over five years' imprisonment being imposed, to be considered by the Magistrates' Court.

Recommendation 15

Amend the Act to allow that when an offence is ineligible to be spent due to an aggregate sentence with a custodial term of more than five years', the conviction is eligible to be spent through a court application for a spent conviction order.

[74] *Spent Convictions Act 2021*, s 11(1)(c).

4.9 Historical findings of guilt under mental health provisions

4.9.1 Context

Convictions for offences under specified sections of the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* ('CMIA') or equivalent sections of foreign laws become spent immediately if they are qualified findings of guilt.[75] However, the Act does not capture a qualified finding of guilt under Victorian legislation prior to the enactment of the CMIA. Prior to this, different laws governed individuals found unfit to plead or found not guilty by reason of mental capacity.[76]

4.9.2 Feedback received

The eight stakeholders, including the courts,[77] who provided input on this issue expressed support for amendments to ensure that findings of guilt under historical mental health provisions are also eligible to be spent.

Victoria Police noted that amending the Act to incorporate findings of guilt under historical mental health provisions would align the Act with contemporary mental health reforms, such as the recommendations from the Royal Commission into Victoria's Mental Health System. However, Victoria Police noted that the development and implementation of such a model would be complex and costly, as the legislation in question prior to the introduction of the CMIA is disparate and relevant convictions may be difficult to identify.

4.9.3 Findings

Amendments to the Act to enable qualified findings of guilt under historical mental health provisions to be eligible to be spent under the Act will ensure consistency in the treatment of qualified findings of guilt under the CMIA and equivalent historical acts. This consistent approach ensures equitable treatment irrespective of when the person was sentenced and removes the unintended outcome that someone who offended more recently is entitled to have their conviction spent when a person with a historical conviction cannot. This will also support alignment with ongoing mental health reforms and avoid the stigma and discrimination based on criminal records for the vulnerable individuals who have received these findings of guilt.

Stakeholders have indicated broad support for such amendments. It is noted that operational issues associated with such amendments will be considered in consultation with Victoria Police.

Recommendation 16

Amend the Act to ensure that findings of guilt under historical mental health provisions are eligible to be spent.

[75] *Spent Convictions Act 2021*, s 7(1)(b).

[76] Prior to the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997*, the provisions concerning persons found by a court to be either unfit to plead or not guilty on the ground of insanity were contained in the *Crimes Act 1958*, the *Corrections Act 1986*, the *Mental Health Act 1986* and the *Intellectually Disabled Persons' Services Act 1986.*

[77] The courts provided a joint submission on behalf of Court Services Victoria, the Magistrates' Court, the County Court, the Supreme Court and the Children's Court.

4.10 Convictions spent automatically with immediate effect

4.10.1 Context

A number of convictions are spent automatically under the scheme, either immediately at the time of a finding of guilt or following the relevant conviction period.

Convictions are eligible to be spent immediately where:

- the conviction is not recorded by a court – there is a finding of guilt made 'without conviction'
- the conviction is a qualified finding of guilt under the CMIA or corresponding foreign law
- the conviction (including a serious conviction) is for an offence committed when the person was under the age of 15
- the only penalty is a fine imposed by the Children's Court, or
- the conviction is an infringement (fine) conviction.[78]

4.10.2 Feedback received

Convictions for offences committed when the person was under the age of 15

The VOCC raised concerns about the appropriateness of all convictions, including serious convictions, being spent with immediate effect where a person is under 15 years of age. The VOCC noted that serious convictions often have long-lasting impacts on victims and when a conviction is immediately spent, the impact on victims cannot be considered by the Magistrates' Court. The VOCC recommended that all 'serious convictions' committed when a person was under 15 years of age should require a court application so that the court has the opportunity to take into account the impacts on a victim of the offence in determining whether the conviction should be spent.

Findings of guilt for which no conviction is recorded

Some stakeholders raised concerns about findings of guilt for which no conviction is recorded by the court being automatically spent, on the basis that a decision to not record a conviction is not always an indication that the offence is less serious. It was noted that in determining when to record a conviction with respect to an offence, the sentencing court needs to consider the nature of the offence; the character and past history of the offender; and the impact of the recording of a conviction on the offender's economic or social wellbeing or on his or her employment prospects.[79]

Stakeholders highlighted that in light of this, the court may decide to not record a conviction not because the offence was not serious, but because the court is applying a lesser sanction for other reasons, such as prospects of rehabilitation. It was proposed that one option to address this issue would be to allow the court to specifically deal with whether or not an offence should be automatically spent under the Act rather than trying to interpret the intention of the court through the absence of a recorded conviction.

Where an 'infringement conviction' becomes a court conviction upon challenge

The courts raised concerns about a potential inconsistency in the spent conviction process where an 'infringement conviction' becomes a court conviction upon challenge. It was noted that an infringement conviction is immediately spent under the Act,[80] however a person who receives an infringement notice may elect to have the matter heard and determined by the Magistrates'

[78] *Spent Convictions Act 2021*, s 7.

[79] *Sentencing Act 1991*, s 8(1).

[80] *Spent Conviction Act 2021*, s 7(1)(e).

Court.[81] It is noted that where a court fine is imposed, it is unclear whether a court fine would be treated as an infringement conviction and therefore eligible to be spent automatically under the Act.

4.10.3 Findings

Individuals convicted of offences when they are children are particularly vulnerable to further contact with the justice system and entrenched economic and social disadvantage if opportunities for rehabilitation are not available at the earliest stage possible. These factors support the Act's current provisions allowing convictions received by those under 15 years to be spent immediately, even if they are serious convictions.

For findings of guilt where no conviction is recorded, although sentencing courts may have considered a range of factors in determining not to record a conviction, these factors are all relevant to whether the conviction should be eligible to be spent immediately. Given that these factors are weighed carefully with public safety considerations at sentencing, the current treatment of findings of guilt without conviction under the Act are appropriate.

Regarding the treatment of infringement convictions that are challenged in court, it may be appropriate to ensure that the Act continues to treat these convictions as infringement convictions, allowing them to be spent immediately. Given there is minimal feedback received on this point, further consultation is required to confirm that this amendment to the Act is appropriate.

Recommendation 17

Consider amending the Act, subject to further consultation, to clarify that infringement convictions that are challenged in court are treated the same way as other infringement convictions, and are therefore eligible to be spent immediately.

4.11 Treatment of repealed offences

4.11.1 Context

The *Sex Work Decriminalisation Act 2022* provides for the repeal of the *Sex Work Act 1994* and certain offences associated with sex work, thereby enabling regulation of the sex work industry through existing business laws. Stakeholders have sought to clarify how the Act impacts on the introduction of the *Sex Work Decriminalisation Act 2022* and on repealed offences more broadly.

There are no provisions in the Act treating repealed offences uniquely, meaning that such convictions may be spent automatically or by application but the relevant conviction periods still apply.

4.11.2 Feedback received

The LIV considered that convictions for repealed offences under the *Sex Work Act 1994* should be eligible to be spent immediately under the Act. The LIV noted that a uniform approach to repealed convictions is inappropriate given the various reasons why offences may be repealed, including that an offence has been replaced with a corresponding updated offence or where society's view on the inherent criminality of conduct in question has evolved. The LIV proposed that each repealed law should be considered individually to determine whether offences under the repealed law should be spent immediately. It was proposed that one method to achieve this would be a Schedule setting out a list of repealed offences that are deemed suitable to be immediately spent.

[81] *Infringements Act 2006*, s 40.

The LIV also proposed that the list of exempt agencies able to access spent sex work convictions should be narrowed.

Victoria Police does not support retrospective legislative provisions in the Act to address the disclosure of historical decriminalised offences. However, Victoria Police stated that the spent convictions scheme is preferable to expungement to address future repealed offences, due to the administrative and resource burden an expungement scheme would place on Victoria Police. Victoria Police stated that further consideration should be given to how the spent convictions scheme would operate for decriminalised offences to be spent prior to the conviction period expiring.

VLA and LACW noted that it would be more appropriate that repealed offences be expunged from a person's criminal history, to avoid disclosure of these offences to exempt agencies. They noted that using the spent convictions scheme to address repealed offences will not achieve the full intent of decriminalisation given the exemptions for disclosure of past convictions in the scheme. For example, a spent conviction can still appear on a list of prior convictions disclosed to a court for a child or young person.

4.11.3 Findings

Where offences are repealed to decriminalise behaviour that was previously considered an offence, it is appropriate to provide for relevant convictions to be immediately spent or expunged to reflect the policy intent of repealing the offences. This is not the case for all repealed offences, as some repealed offences may have been removed only to be replaced by updated, corresponding offences, and should therefore be considered on a case-by-case basis.

Due to the exemptions to the Act, allowing such convictions to be spent immediately may not be sufficient to protect against discrimination and stigma attached to the convictions. However, the review also notes the operational implications of expungement.

There is a need for further consideration of the repealed offences that may be affected by amendments to the Act, and the need for a nuanced approach to repealed offences and recommends further consideration of this matter.

Recommendation 18

Further consider the treatment of repealed offences under the Act, including whether some repealed offences should be spent immediately and whether existing exemptions under the Act should apply to these offences.

5. Exemptions allowing disclosure of spent convictions

5.1 Disclosure of matters less than a finding of guilt

5.1.1 Context

The Act does not apply to details of alleged offending that has not led to a 'conviction'.[82] This means that the Act does not protect individuals against disclosure of matters less than a finding of guilt, such as pending charges, investigations, intent to summons, and charges that result in acquittals. This may result in 'pending matters' being disclosed in circumstances where information about the related conviction could not be released or requested under the Act.

5.1.2 Feedback received

The Victorian Bar, VLA and LACW recommended that the scheme be expanded to prohibit disclosure of matters less than a finding of guilt to ensure that the Act protects those charged with an offence who are then not convicted (for example where a person is acquitted, the charges are withdrawn or they receive a diversion). Despite there being no finding of guilt or an acquittal, these matters can remain as pending matters in the court system for months and sometimes years. Stakeholders noted that these offences can also appear in the criminal record of an individual after they are acquitted, or if the charges are struck out or withdrawn. During this time, these matters are not protected from disclosure and, stakeholders noted, accused people can face discrimination and stigma in relation to charges where there will ultimately be no finding of guilt.

One participant also raised this issue in their Engage Victoria survey response. They suggested that if a matter does not proceed because the charges are dropped, information about the matter should not be disclosed.

The Magistrates' Court suggested that consideration be given to whether diversion and CAYPINS (Children and Young Persons Infringement Notice System) orders should be covered by the Act to limit disclosure of information about these sentences.

The LIV advised that this matter is complicated and requires careful consideration, informed by the principle that people should be entitled to the benefit of their non-guilt outcome unless there is a sufficiently compelling public interest warranting disclosure. Although a public interest exists in favour of disclosure in limited circumstances, the disclosure of non-findings of guilt should not become almost akin to a finding of guilt, which may occur if it is subject to as broad of a disclosure regime as the permitted disclosure of spent convictions due to exemptions under the Act.

The Magistrates' Court and Children's Court noted that information less than a formal conviction, including bail details in the context of pending matters, may be disclosed as part of information sharing for risk assessment and risk management purposes under the FVISS and CISS. It was noted that any expansion of the scope of the Act to limit disclosure of circumstances less than a finding of guilt would need to consider information sharing schemes to avoid any unintended impacts.

Victoria Police advised that current exemption provisions for law enforcement should remain and be further assessed to determine if there should also be additional disclosure exemption provisions. By way of context, matters under investigation are only used by Victoria Police for internal assessment purposes to support law enforcement and administration of justice. Victoria

[82] *Spent Convictions Act 2021*, s 5.
This reference to a 'conviction' means a finding of guilt. See section 3.7 for further clarification of terminology.

Police maintained the importance of exemptions for disclosure of outcomes less than a finding of guilt being preserved for law enforcement purposes.

In the context of specified disclosures under section 22 of the Act, Victoria Police advised that another challenge under the current provisions of the Act is that there is often a significant delay between the issuing of charges and outcome at court. Such delays create a risk that a person could become employed when there is an upcoming court hearing for pending charges (including potentially serious offences), in which they are ultimately found guilty, but matters cannot be disclosed in the interim. Victoria Police notes that this risk is particularly concerning for persons who may be employed or accredited in 'positions of trust'. Victoria Police argues that there is an assumed community expectation that these matters should be considered in the assessment of a person seeking employment with vulnerable cohorts and to ensure community safety. They note that the ability to undertake a fulsome assessment of a person's criminal history strongly informs the 'fit and proper' assessment.

5.1.3 Findings

The review notes the importance of preserving the presumption of innocence principle and for people to be afforded the benefit of a non-guilt outcome. Disclosure of information about matters that are less than a finding of guilt can have significant and negative consequences for people with these types of matters. Accordingly, the absence of protection by the Act from the disclosure of matters that are less than a finding of guilt undermines the presumption of innocence principle and should be addressed through amendments to the Act.

If included in the Act, the treatment of matters that are less than a finding of guilt and what exemptions may apply will need to be considered carefully to ensure that risks to public safety are managed appropriately.

Recommendation 19

Amend the Act to allow for matters less than a finding of guilt to be spent, noting the importance of carefully considering how exemptions in the Act may apply to these matters.

5.2 Use of spent conviction information by media

5.2.1 Context

The Act creates an offence preventing any person, including media representatives, from publishing spent conviction information when they knew, or reasonably should have known, the conviction was spent, unless they have an exemption under the Act.[83]

The requirement that a person must know or reasonably should have known that the conviction was spent when publishing the information provides protections to ensure that if an individual, including through a media outlet, inadvertently publishes information about a spent conviction, this would not amount to committing an offence under the Act.

5.2.2 Feedback received

Several stakeholders[84] recommended that strengthening media obligations under the spent convictions scheme is crucial to achieving the purposes of the scheme, whilst acknowledging that it is a practical difficulty that media are not always able to ascertain with certainty whether or not a conviction is spent. Similarly, the Victorian Bar recommended that there should be no exemption

[83] *Spent Convictions Act 2021*, s 23(1).

[84] The Law and Advocacy Centre for Women, Southside Justice, and Uniting Church in Australia.

for media from offences of unauthorised disclosure of spent convictions, as this would undermine the purpose of the scheme.

The LIV, VCOSS and CLC stakeholders noted that the Act should provide further clarity on the obligations of media outlets to avoid doubt about the circumstances in which spent convictions information can be published. For example, stakeholders noted that the Act could prohibit reporters from identifying people whose convictions are spent, with a 'positive duty' to find out whether a conviction is spent. Stakeholders also noted that there could also be clarification regarding whether publications are required to de-identify or remove identifying articles that continue to be accessible online, once they are made aware that a conviction has become spent.

Victoria Police supported media outlets being subject to offence provisions for the unlawful disclosure of spent convictions. Victoria Police note that an exemption for media outlets would be contrary to the purposes that underpin the Act and the positive duty on organisations under the *Equal Opportunity Act 2010* to eliminate discrimination and victimisation.

Stakeholders also noted that the terminology in the Act should be amended to provide further clarity regarding the offence provision in section 23. For example, the LIV suggested that the term 'records of convictions' be defined.

5.2.3 Findings

One of the main purposes of the Act is to limit the disclosure of a spent conviction, with the intention of reducing unnecessary barriers to employment, housing and rehabilitation. This purpose would be undermined if publishers, including media, were able to publish identifiable spent conviction information. Given the ease of electronically searching for media articles, prospective employers and other organisations would be able to access spent conviction information, risking unlawful discrimination and stigma.

The review notes the importance of protections in the Act against the disclosure of spent conviction information by media representatives. Removing these protections would significantly undermine the ability of the Act to reduce discrimination and other barriers to rehabilitation for people with certain convictions.

It is noted that a person must not disclose information that they *know or should reasonably know* to be spent conviction information and finds that this is an important safeguard to avoid inadvertently breaching the offence provision. Imposing a positive duty to find out whether the information is a spent conviction information would place an unreasonable burden on people and require access to information, such as whether a person has reoffended during the conviction period, that is not readily accessible to a third party.

However, noting that in some cases, media and other bodies may receive information that a conviction is spent, further consideration is needed to ensure that the offence provision at section 23 of the Act provides sufficient clarity about the obligations it imposes. The review also recommends further consideration of the terminology in section 23 to ensure clarity.

Recommendation 20

Further consider the wording and requirements of the offence provision at section 23 of the Act, to ensure clarity regarding the obligations it imposes regarding publishing spent conviction information.

5.3 Permitted use of spent conviction information by agencies with exemptions

5.3.1 Context

The Act contains a broad definition of a 'law enforcement agency' (LEA), which includes named organisations as well as a descriptive category including any 'agency responsible for the performance of functions or activities directed to any law enforcement function'. 'Law enforcement function' is defined to include 'the prevention, detection, investigation, prosecution or punishment of criminal offences or breaches of a law imposing a penalty or sanction for a breach', as well as functions relating to property seized or restrained under proceeds of crime laws and relating to the execution or implementation of court orders.[85]

The Act gives LEAs an exemption to receive spent conviction information.[86] However, this exemption is not limited to using spent convictions to enable performance of the agency's law enforcement function(s). There is no strict requirement that the LEA only use the spent conviction information to perform their law enforcement function, leaving open the possibility that the agency can use the spent conviction information for another purpose, such as for employment checks. If LEAs require access to spent convictions for employment purposes in addition to using spent convictions for their law enforcement purposes, this should be clearly articulated as two distinct exemptions for two separate purposes. In other cases, it will be appropriate to limit LEAs' use of spent conviction information to only their law enforcement purpose, such as in risk assessment processes for family violence services.

Similarly, while agencies prescribed or specified under the Act as having exemptions to receive spent convictions are only permitted to receive spent conviction information for the performance of prescribed functions under their prescribed legislation, the Act does not specifically restrict the use of that information once it is received by that agency. This means that organisations may be permitted to use spent conviction information for purposes other than the purpose for which they have an exemption.

5.3.2 Feedback received

The LIV and the Victorian Bar supported refining the broad definitions of 'law enforcement function' and LEA under the Act so that LEAs are only permitted to access and use spent conviction information to perform their law enforcement function, and to use information only for the limited purpose for which they have accessed it. Stakeholders suggested that the Act should clearly set out organisations' obligations with respect to the collection, use and disclosure of spent conviction information as far as possible.

Victoria Police supports the current exemptions provided to LEAs to disclose information and these provisions should remain in place. They note that disclosures made under these provisions have broad public safety benefits and there are risks for exempt agencies, should they be prevented from receiving all relevant information. Victoria Police considers that LEAs should be permitted to use spent conviction information where necessary and reasonable, for relevant law enforcement purposes, such as to keep the community safe.

Victoria Police stated that it is important that any narrowing of permitted purposes for LEAs does not prevent LEA officers from pursuing these purposes and does not create a risk that law enforcement officers inadvertently commit offences relating to unauthorised use under the Act.

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[85] *Spent Convictions Act 2021*, s 3.

[86] *Spent Convictions Act 2021*, s 21(1).

Eight participants in the Engage Victoria consultation, three of which are family violence practitioners, raised concerns regarding the impact of the Act on the Family Violence Information Sharing Scheme.[87]

5.3.3 Findings

The review notes the importance of ensuring that spent convictions disclosed for a law enforcement purpose or another defined purpose are only used for that purpose. It is noted that the current provisions are inconsistent with the exemption for law enforcement agencies in the *Information Privacy Act 2020,*[88] which limits the collection, use and disclosure of certain information for the agency's own law enforcement functions or, if disclosing to another agency, their law enforcement functions.

Limiting the permitted use of spent convictions to the performance of exempt functions would be an appropriate limitation and consistent with the objectives of the Act, which include limiting the collection, use and disclosure of spent conviction information purposes of administration of justice or performance of statutory functions.

Recommendation 21

Amend section 21 of the Act to limit the use of spent conviction information by law enforcement agencies or other agencies with exemptions under the Act to law enforcement purposes or the purposes for which they have an exemption respectively.

5.4 Exempt agencies

5.4.1 Context

Prior to the commencement of the Act, the Victoria Police Information Release Policy (Policy) provided the guidelines which administratively governed the disclosure of criminal record information in Victoria. The Act broadly 'codified' the exceptions contained in the Policy for when spent conviction information could be released. Accordingly, the Act[89] and the Regulations prescribe a broad range of exemptions for specific entities to receive spent conviction information.

The inclusion of broad exemptions in the Act risks undermining the purpose of the Act to limit the collection, use and disclosure of spent conviction information. Conversely, the current list of exempt agencies does not include equivalent interstate bodies, who would use the spent conviction information for the same purpose as their Victorian counterparts.

It is beyond the scope and capacity of the review to consider the appropriateness of each of the exempt agencies and the purposes for which they have an exemption.

5.4.2 Feedback received

Inclusion of exemptions in Regulations

A number of stakeholders, including Victoria Police, Uniting Church in Australia and the Victorian Bar, recommended listing all exempt agencies in the Regulations rather than the Act. It was considered that this would enable regular review and updates to the list of agencies and their functions, increasing the efficiency of the scheme and allowing the scheme to respond to

[87] Note that these concerns have been addressed in amendments to the Act that came into effect in October 2023. See section 2.1.3 for further information.

[88] *Information Privacy Act 2020*, s 13.

[89] *Spent Convictions Act 2021*, s 22.

community expectations. Victoria Police noted that there may be requests to expand exempt agencies, given the increase they are seeing in employers requesting police checks.

Other stakeholders suggested that it would be preferable for exemptions to be listed primarily in the Act, with the option of additional exemptions in the Regulations. These stakeholders noted that agencies need certainty in their operations and being subject to sunsetting reviews at 10-year intervals as required for all regulations reduces that certainty. Further, it was noted that the basis for exemptions does not typically change over time, making regular reviews unnecessary.

Unlawful disclosures/contraventions of the offence provision

VCOSS and CLC stakeholders recommended establishing stronger protections against unauthorised disclosure of spent convictions. It was noted that there should be a specific and accessible reporting mechanism to ensure accountability where law enforcement and other exempt agencies disclose spent convictions in contravention of the Act. It was suggested that unlawful disclosures could impact upon an agency's exemption status or involve compensation for those impacted by unlawful disclosures.

Through the Engage Victoria consultation, one service provider also highlighted the fact that employers may request prospective employees to tick a 'working unsupervised with vulnerable people' box on police checks when the person's role does not include this requirement. The participant stated that this leads to most employers requesting candidates tick the 'working unsupervised with vulnerable people' box. The participant raised concerns that this undermines the intended purpose of the spent convictions scheme because the prospective employer can view the candidate's complete offence history and utilise that information to 'screen them out of the job'. The participant also highlighted that employers can potentially misuse this information to apply selective or discriminatory hiring practices by employers at the early recruitment stage to reduce the pool of candidates, and or to keep those who they deem 'undesirable' out of their workplaces.

5.4.3 Findings

There is broad support for listing all exempt agencies in the Regulations rather than the Act. This will enable a process for a regular review of exempt agencies through the sunsetting (automatic repeal) or renewal of exemptions after a set period of time. As is the usual practice for sunsetting or renewal of regulations, impacted agencies would be consulted prior to any changes the exemptions.

Noting the feedback regarding protections to ensure that spent convictions are not disclosed contrary to or beyond the permitted exemptions in the Act, further consideration of operational safeguards may be appropriate to address these matters, rather than legislative amendment.

Recommendation 22

List exemptions for agencies to collect, use and disclose spent conviction information in the Regulations rather than in the Act.

Recommendation 23

Conduct a review of the suitability of each exemption under the Act and the Regulations that allow disclosure of spent convictions. Repeat this review at regular intervals to ensure the ongoing suitability of each exemption.

5.5 Fit and proper person assessments

5.5.1 Context

Legislative and regulatory 'fit and proper person' tests typically involve an individual submitting an application and character references to a professional organisation or regulatory body, for the purposes of assessing whether the person is 'fit and proper' to be licensed, accredited or become a member of a certain organisation or profession.

Under the Commonwealth spent convictions scheme, case law indicates that the Commonwealth legislation limits an entity's ability to consider spent convictions as part of a 'fit and proper person' assessment.[90] In the Victorian context, the Act does not expressly contain similar exclusions. Therefore, there is less clarity about whether spent convictions can be considered in determining a 'fit and proper person' test in Victoria. This will depend on the statutory context in which the fit and proper purpose assessment arises.

5.5.2 Feedback received

Some stakeholders suggested that the Act should not exclude consideration of spent convictions in 'fit and proper person' assessments, however stakeholders stated that clarification in the legislation may be needed. It was considered that excluding consideration of spent convictions in 'fit and proper' person assessments would hinder an effective assessment of whether a person is a suitable for a licence, permit or registration. However, some stakeholders suggested that it would be appropriate to exclude offences committed as a young person from a 'fit and proper person' assessment, where the individual has demonstrated rehabilitation.

The Victorian Bar suggested that the Act should exclude the consideration of spent convictions in determining whether a person meets 'fit and proper person' assessments in all circumstances. They noted that a person whose conviction has been spent should get the full benefit of that spent conviction and that it would appear inconsistent with the intent of the scheme to allow spent convictions to be used in a 'fit and proper person' assessment.

5.5.3 Findings

Greater clarity is required in the Act about the use of spent conviction information for the purposes of 'fit and proper person' assessments. Enabling disclosures for the purpose of *all* 'fit and proper person' assessments may result in the disclosure of a spent conviction where the information is not particularly relevant or required for the assessment being conducted. Spent conviction information should only be permitted in such assessments if their purposes would attract exemptions more broadly under the Act, such as for law enforcement purposes.

The review therefore finds that it is appropriate for disclosure of spent conviction information for 'fit and proper person' assessments to be limited to where an agency or organisation has a specific exemption to the prohibition on disclosure under the Act.

Recommendation 24

Amend the Act to clarify that there is no exemption for spent convictions to be disclosed for 'fit and proper person' assessments unless an agency or organisation has a specific exemption under the Act or Regulations permitting the disclosure.

[90] See *Frugtniet v Australian Securities and Investments Commission* [2019] HCA 16.

6. Other matters

6.1 Further review of the Act

The review has highlighted a range of issues with the operation and provisions of the Act. Reforms to implement the recommendations of the review will require work across agencies that implement the Act, and it will take time for these improvements to take effect. Additionally, this initial evaluation of the Act was conducted a year after the Act commenced, and as the Act continues to operate over coming years, further opportunities for improvement are likely to be identified. The limited timeframe available to conduct this review, over a six-month period, has also constrained the review's ability to work with stakeholders and address more complex issues in depth.

In light of the complex nature of the Act and the need for ongoing improvements and monitoring, it would be appropriate for a further review to be undertaken in future to assess the effectiveness of reforms in response to this review and the potential need for further improvements. To allow sufficient time to implement the recommendations from this review and consider the general operations of the Act in more detail, that a further review five years after the commencement of the Act would be appropriate.

Recommendation 25

Commence a further review of the Act five years after the commencement of the Act, on 1 July 2027, to be tabled in Parliament a year later.

7. Conclusion

The review has focused on evaluating the operation of the Act and identifying reforms necessary to ensure the Act is meeting its objectives, consistent with the requirements in the Act and the terms of reference for the review.

The review examined the first year of the Act's operation and notes that the Act is broadly meeting its stated objectives, but that there are areas for improvement. The review also recognised that the Act continues to be relevant and important for community, and that this means that the operation of the Act remains a high priority in Victoria.

The review has made 25 recommendations to improve the Act and its operation. These opportunities range from amendments to the Act, to improving guidance and awareness of the Act and undertaking work with Aboriginal stakeholders to improve cultural safety in the implementation and administration of the Act.

Appendix A – List of stakeholder submissions

The following organisations provided written responses in response to the discussion paper:

- Business Licensing Authority
- Courts
  - Court Services Victoria
  - Magistrates' Court
  - County Court
  - Supreme Court
  - Children's Court
- Commission for Children and Young People
- Department of Education
- Department of Energy, Environment and Climate Action
- Department of Families, Fairness and Housing
- Department of Government Services
- Department of Justice and Community Safety
- Department of Premier and Cabinet
- Department of Transport and Planning
- Environment Protection Authority Victoria
- Fitzroy Legal Service
- Inner Melbourne Community Legal
- Law and Advocacy Centre for Women
- Law Institute of Victoria
- Office of the Victorian Information Commissioner
- Public Record Office Victoria
- Rethinking Criminal Records Project (a partnership between the RMIT University Centre for Innovative Justice, Woor-Dungin, Victorian Aboriginal Community Controlled Health Organisation and the Winda-Mara Aboriginal Corporation)
- Safe and Equal
- Sentencing Advisory Council
- Southside Justice
- Uniting Church in Australia – Synod of Victoria and Tasmania
- Victorian Association for the Care and Resettlement of Offenders
- Victims of Crime Commissioner
- Victorian Aboriginal Legal Service

- The Victorian Bar
- Victorian Council of Social Service
- Victorian Equal Opportunity and Human Rights Commission
- Victorian Legal Admissions Board
- Victoria Legal Aid
- Victoria Police

Appendix B – Engage Victoria public consultation

The review conducted public consultation through a survey on the Engage Victoria platform to obtain feedback directly from members of the public. The survey invited participants to respond to six questions about the Act, focusing on the public's knowledge of the Act, the impact of the Act on members of the public, and feedback on potential improvements to the Act.

The survey received 154 responses.

Survey Data

The survey data collected supports the feedback received from other stakeholders and informed the recommendations that have been prioritised. Common responses received through the survey are summarised below.

Feedback	Number of responses that raised this issue
Participants stated that they **did not** feel there is good public knowledge of the Act	140
Participants stated that they **did** feel there is good public knowledge of the Act	14
Participants that stated that they were **not aware** of details of how convictions can be spent under the Act	34
Participants that stated that they were **somewhat aware** of details of how convictions can be spent under the Act	65
Participants that stated that they were **very aware** of details of how convictions can be spent under the Act	55
Expand the convictions that can be automatically spent, rather than on application to the Magistrates' Court	10
No convictions should be spent	5
Some offences should not be spent, such as sexual offences against children	7
Reduce the conviction period	8
Increase the conviction period	3
Greater protections against misuse of spent conviction information, including by employers applying for unnecessary information through the police check process	7
Greater clarity on the meaning of 'serious conviction'	3
Matters with findings less than guilt should be spent	2
The definition of youth offender should be expanded	2