



**Victorian Aboriginal Legal Service
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Mr Greg Byrne - Director
Criminal Law Policy
Department of Justice
GPO Box 4356QQ
MELBOURNE VIC 3001

11 October 2004

Dear Mr Byrne,

Re: Uniform Spent Convictions: A proposed Model Discussion Paper (August 2004)

Please find VALS submission in response to the Uniform Spent Convictions: A proposed Model Discussion Paper (August 2004). We apologise for any inconvenience caused in sending this submission at this late date. We feel that further discussion is required on the topic of a spent conviction scheme and request to be included in such discussions.

Yours Sincerely,

Greta Jubb
Research Officer



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Uniform Spent Convictions: A proposed Model Discussion Paper (August 2004)

VALS supports the establishment of a Uniform Spent Convictions Scheme (scheme). The benefit of the scheme will be that:

- Discrimination on the basis of criminal record will no longer be legal in Victoria. Currently, there is no spent conviction scheme in Victoria that safeguards the rights of ex-offenders.
- It will provide uniformity across the States and Territories that currently do have a spent conviction scheme.

The introduction of a scheme could potentially have the following impact on Victorian Indigenous Australians:

- A barrier to participation in society, such as employment, will be overcome. Arguably, unemployment contributes to dysfunction within the Indigenous community (ie: alcohol abuse/family violence etc).
- The number of Official Aboriginal Prison Visitors will increase. Currently, there are only two Official Aboriginal Prison Visitors. VALS argued in a submission to the Scrutiny of Acts and Regulations Committee in response to the inquiry into 'Discrimination in the Law' in June 2004 that :
 - potential prison visitor candidates are discriminated against on the basis of their criminal record, as their record is treated as grounds for refusing to appoint them as Aboriginal Official Prison Visitors. In this submission VALs called for the enactment of legislation in Victoria based on existing spent record legislation.
- Bring to the forefront the manner in which the Victims of Crimes Assistance Tribunal (VOCAT) arguably discriminates against people with a criminal record. The VOCAT discriminates against people with a criminal record as it takes a criminal history into consideration when deciding upon the entitlements of a victim (Section 54 Victims of Crime Assistance Act 1996). The requirement has a detrimental impact on Indigenous Australians, who are over-represented in the criminal justice system, by limiting their entitlements. VALS raised such arguments in a submission in response to 'Review of Services to Victims of Crime in the Victorian Indigenous Community'.

- As Indigenous Australians are over-represented within the criminal justice system and more likely to commit minor offences, it is likely that the Scheme will have a substantial impact on the lives of Indigenous Australians.
- Will help Indigenous Australians break the cycle of crime which will lead to a reduction in recidivism.
- Will give many Indigenous Australians a second chance.
- Recognise that an ex-offender has ‘done his/her time’ and is entitled to move on with a clean slate. Discrimination on the basis of a criminal record virtually subjects an ex-offender to a life sentence as they are punished for the rest of their lives.
- Recognise that rehabilitation is impeded by discrimination on the basis of criminal record [(Law Reform Commission - Anti-Discrimination Act 1977 (NSW) [Report 92 (1999)]].¹⁸⁸

VALS has the following comments about the following recommendations in the Uniform Spent Convictions: A proposed Model Discussion Paper (August 2004):

Recommendation 1

VALS agrees with this recommendation.

Recommendation 8

Given the differences in the various jurisdictions in Australia, VALS agrees with this recommendation.

Recommendation 9

VALS agrees with this recommendation.

Recommendation 10

VALS agrees with this recommendation. In practical terms, it makes sense as some spent convictions may be revived in certain circumstances. However, there should be safeguards in place to ensure the confidentiality of records relating to a spent conviction.

Recommendation 11

VALS is not convinced that a uniform spent conviction scheme should be limited to less serious offences. An argument for not limiting the scheme to less serious offences is the difficulty in defining seriousness (ie: lack of consistency among the various jurisdictions). There is a concern that denying perpetrators of serious offences access to the spent conviction scheme will lead to a form of discrimination that the scheme is attempting to overcome (ie: discrimination on the basis of serious criminal record). One justification of the spent conviction scheme (ie: likelihood of recidivism decreases over

time/conviction can no longer be regarded as an accurate indication of a past offenders future conduct) applies equally to less serious and serious offences. The Howard League for Penal Reform, found in 1972 that the longer a convicted person "goes straight", the less likely it is that he or she will commit another crime.¹

Recommendation 12

For a spent conviction scheme to be as 'broad as possible', the spent conviction scheme should apply to serious offences.

Recommendation 15

VALS is concerned by this recommendation. It creates an arbitrary and unfair distinction between juveniles in detention facilities and adult prisons that works to the disadvantage of the former. The elements of the spent conviction scheme designed for juveniles should be available to all juveniles regardless of where they are imprisoned.

Recommendation 16

VALS considers that a sexual offence should not be excluded from the operation of a spent convictions scheme solely on the basis that it is a sexual offence.

Recommendation 17

This recommendation does make sense, as the offence is serious enough to require that offenders are registered and monitored for a period

Recommendation 18

VALS supports this recommendation on the basis that it is currently applied consistently throughout Australia. A national spent conviction scheme should consider pre-existing universal practice.

Recommendation 19

VALS agrees with a distinction between juvenile and adult offenders. The former should be given more of an opportunity to a fresh start in light of their youth. Once again, VALS supports this recommendation because it is universally applied in all Australian jurisdictions.

Recommendation 20

VALS has no reason to question the reliability of research that indicates that 10 years is an appropriate waiting period for adults. However, VALS questions the figure of a five year waiting period for juveniles, given that research indicates that juvenile offenders who reoffend do so within four years.

¹ Knowler, Jeanette 'Living down the past - Spent convictions schemes in Australia'

Recommendation 21

VALS is concerned by this recommendation. It creates an arbitrary and unfair distinction between cases of juveniles heard in the Children's Court and a Higher Court who are of similar ages (ie 17 or 18 etc). VALS agrees that there should be a

Recommendation 22

This recommendation is logical. If this was not the case then people with long sentences (ie: murder) would be advantaged in comparison to people with shorter sentences. The former would have to wait a shorter time than the latter for the spent conviction scheme to activate.

Recommendation 23

VALS is concerned that recommendation 23 in conflict with recommendation 3. VALS is also concerned that the exclusion of a finding of guilt without a criminal conviction from the Spent Conviction Scheme will disadvantage children whose fall into this category.

Recommendation 24

This recommendation is in line with VALS' expectations of a scheme. A benefit of this element of the scheme is that it will create a disincentive to re-offend.

Recommendation 32

VALS argues that exempt groups should have access to spent convictions that are directly relevant to that group only. If irrelevant information was permissible it would defeat the purposes of a spent conviction scheme. The scheme makes convictions 'spent' precisely because they are no longer relevant.

Recommendation 34

VALS endorses this recommendation and adds that the impact of changes to legislation on Indigenous Australians should be considered, hence consultation with the Indigenous community should also occur. There is a need to review exemptions to see if they will have a discriminatory effect on certain people.

Recommendation 35

Exemptions should be administered:

On a jurisdictional basis, in accordance with nationally developed guidelines

Recommendation 36

VALS agrees with this recommendation. This recommendation is in line with a theme of a national spent conviction scheme (ie: universality and consistency). There should not

be a distinction between those who commit an offence in an Australian or non-Australian jurisdiction.

Recommendation 38

VALS agrees with this recommendation. This will mean that the scheme will apply to all Australians regardless of culture or socio-economic status. There is the danger that if an ex-offender was required to go through an ‘application process’ for a spent scheme that the scheme will not be accessible to all Australians. For instance, barriers such as poverty and education level could result in some people being denied access to the scheme.

Recommendation 40

VALS agrees with this recommendation. There should not be a stigma attached to having a spent conviction. This would defeat the purpose of a spent conviction scheme (ie: discrimination on the basis of the existence of a criminal record at some time).

Recommendation 43

VALS agrees with this recommendation. Exceptions to this recommendation, should be based on considerations of what is ‘relevant’ to a Court case.

Recommendation 44

VALS supports the need to punish the disclosure of a spent conviction in order for the scheme to be effective. However, the practical effect of this recommendation is to create an exemption in favour of the media, which means the media can disclose spent convictions mentioned in open Court. VALS questions whether this exemption is going too far, and there is more concern about the interests of the media and the expense of the ex-offender.

Recommendation 45

VALS agrees with this recommendation. It will work towards preventing an illegal market of spent convictions (ie: bribery).

Recommendation 48

VALS argues that discrimination on the basis of a spent conviction should be grounds for formal complaint, and there should not be an exemption to this rule.

Recommendation 50

VALS supports the need for further consideration and consultation with the Indigenous Australian community.

Recommendation: 58

Reasonable steps should also be taken to inform offenders, criminal justice officials and legal practitioners and Indigenous Australians of the introduction of a spent convictions scheme in Victoria.

Additional concerns: VALS raises the query of whether the national spent conviction scheme will operate retrospectively.

Graeme Davis

Issue for children

No conviction but held accountable (still on record?) so disadvantaged in comparison to someone with a conviction for a shorter period than children are still under scrutiny.