



WOOR-DUNGIN
A New Partnership between Aboriginal Organisations and Philanthropy

The Hon Martin Pakula MP
Attorney-General for Victoria
By email: Martin.Pakula@parliament.vic.gov.au

Dear Attorney-General,

Woor-Dungin Criminal Record Discrimination Project

Thank you for your letter of 21 September 2017. I am pleased that you have asked the Department of Justice and Regulation to look into historical practices of recording care and protection matters in the same way as criminal offences, and I welcome your commitment to examine whether legislation may be required to correct these records to ensure that they are recorded appropriately. I also saw reports of the Parliamentary debate about this issue on 15 November 2017, and I am pleased that there will be action on this soon, as foreshadowed by Minister Mikakos.

I wanted to let you know a bit more about the background to our work on this issue. One of the first people we spoke to as part of our project was Taungurung Elder Uncle Larry Walsh. Uncle Larry came to us and said that he had been asked by his community to represent them, but was getting turned down for positions on committees based on his criminal record check.

He also told us that he had been treated as a criminal from a very young age, and even called a 'disgrace to your race' by a Magistrate who reprimanded him for having a criminal record dating back to the 1950s. Uncle Larry couldn't understand how this could be, because the Magistrate was referring to a period when he was only 2 or 3 years old.

In fact, Uncle Larry was only a few years old when the government took him from his mother Melva and made him part of the Stolen Generation. When this happened to Uncle Larry, police charged him, and that charge and the 'sentence' of the Children's Court was recorded and kept as part of his criminal record. Uncle Larry felt relieved and vindicated when our research uncovered what had happened, and why he always felt like he'd been labelled as a criminal by everyone from an early age despite having done nothing wrong.

It's clearly unfair and unjust that an innocent child could be given a criminal record merely for being removed from his family. It is hard to see how anyone could argue that this wrong should not be righted. However, Uncle Larry's early experiences of discrimination and ill-treatment have continued to affect him throughout his life. Fixing up these historic records won't address the hardship and unfairness that Uncle Larry and others like him continue to experience, and it's just as unfair to ignore them.

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That is why Uncle Larry is also calling on the government to introduce a legislated spent convictions scheme.

Uncle Larry was the keynote speaker at Woor-Dungin's annual general meeting earlier this month. He said in his speech that a legislated spent convictions scheme is needed to address the issues he still faces today, but equally importantly, to help the next generation of Aboriginal people applying for jobs. Uncle Larry was interviewed by National Indigenous Television after the speech and in the NITV news was reported saying "the first step is an apology, but an apology without a spent convictions act is not good enough. That's step one. Expungement [of care and protection-related criminal records] is step two".

As Uncle Larry says, correcting these records is an important way of righting historic wrongs, but it would be much more meaningful if it was accompanied by changes that will help all of the Aboriginal people we've heard from, who are struggling with the effects of this injustice now.

Many other practical issues have been raised with us by Aboriginal people during this project that are clearly the consequence of the lack of a spent convictions scheme and protection from discrimination on the grounds of irrelevant criminal history in Victoria. I am aware that you are considering whether to introduce a spent convictions scheme in Victoria from a number of public statements I have seen from you, as well as the 2014 ALP policy platform. I want to urge you to do this now, without further delay.

The lack of a spent conviction scheme means Victoria is out of step with every other Australian state and territory. In the absence of a legislative scheme, we're relying on the Victoria Police guidelines, which are not good enough. Aboriginal people we've spoken to say that these guidelines result in uncertainty and inconsistency. They don't know where they stand, and even when they've moved on and rehabilitated, they're uncertain about what will come up on their records they are embarrassed and ashamed, so they simply avoid applying for jobs.

The scale of criminal record checking, and the seriousness of the consequences of the use and misuse of this information for everyone involved means that something more than a discretionary, policy-based approach to releasing this information is needed. Last year, Victoria Police conducted nearly 700,000 criminal record checks. This is up from about 3,500 checks conducted in 1993, and 186,000 in 2012.

Aboriginal unemployment in Victoria is around 16%, compared with 6% for the general population. Labour-force participation is at much lower rates for Aboriginal people. Helping Aboriginal people get into jobs is something the government talks about in many of its policy frameworks. Clearing this area up is something your government can do that will make a real difference for us.

Our project has also uncovered many other problems caused by the lack of a spent convictions scheme in Victoria. These are broader than just employment, touching on kinship care, access to education and training, self-determination and even access to identified positions for Koories. The lack of certainty and clarity also creates challenges for Aboriginal organisations and Aboriginal employment services who want to employ

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Aboriginal people, but don't know whether they can, or how to deal with criminal history information.

To demonstrate how serious this issue is for Aboriginal people in Victoria, we will be making a submission to the Aboriginal Justice Forum, calling for:

1. a legislated spent convictions scheme for Victoria; and
2. changes to the *Equal Opportunity Act 2010* (Vic) to protect people from discrimination on the grounds of irrelevant criminal records.

We see this as a natural fit for the Aboriginal Justice Agreement framework, which was set up to enable government to work with Aboriginal people to address priority issues for community. These reforms have widespread support as a priority for Aboriginal Victorians and we're calling on the government to implement them. These reforms are about justice and fairness, addressing disadvantage, meeting shared goals for the community in terms of outcomes and aspirations for Aboriginal people. They are about achieving access to employment, and certainty for employees and employers alike, and ensuring that Victoria is brought up to speed with every other jurisdiction in Australia through the introduction of a legislated spent convictions scheme.

I would welcome the opportunity to talk to you about the problems we're facing, and work with you to bring about the changes we think will help fix them.

Thank you



Michael Bell

Convenor
Criminal Record Discrimination Project Advisory Committee

Chief Executive Officer
Winda-Mara Aboriginal Corporation