

Spent Convictions Act 2021

Factsheet

What is a 'spent conviction'?

A spent conviction is a record of a criminal offence (a 'conviction') that does not appear on a person's police record check in most circumstances.

The person does not have to tell people about it (with limited exceptions) and they cannot be asked about it unless an exemption applies.

How does a conviction become spent?

Many convictions are spent immediately or after a set 'conviction period' without reoffending (apart from some minor offences).

Convictions for offending committed before a person turned 15 are all spent immediately.

For most 'serious convictions' an application must be made to the Magistrates' Court (see page 3). There are a few exceptions to this, such as where a conviction was not recorded or where a conviction can never be spent.

Which convictions are spent immediately?

People under 15 years at time of offending:

A conviction for any offence (including a serious conviction), whatever the sentence imposed, if the person was younger than 15 at the time of offending, once any conditions of the penalty have been completed (eg completing a period of good behaviour).

People aged 15 years and over at time of offending:

A conviction is spent immediately where:

- The court made a 'without conviction' finding
- The conviction was for an infringement (fine)
- The only penalty was a Children's Court fine, or
- The conviction was a qualified finding of guilt under the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997*

Which convictions are spent once the conviction period has passed?

If a conviction is not a 'serious conviction' or is not eligible to be spent immediately, the conviction will become spent once the relevant conviction period has passed without any further offending (except for some minor offences).

If the person was aged 15-20 when they were sentenced, the conviction period is five years.

If the person was 21 years or older when they were sentenced, the conviction period is 10 years.

If the person reoffends during these periods (apart from some minor offences), the conviction period restarts.

Which convictions require an application to the court to be spent?

Most 'serious convictions' require an application to the Magistrates' Court for a conviction to be spent where a person was aged 15 or over at the time of offending.

An application can be made to the Magistrates' Court once the relevant conviction period has been completed without any further offending (apart from some minor offences).

Information about how to apply can be found on the [Magistrates' Court website](#).

What is a 'serious conviction'?

A serious conviction is a conviction for:

- a sexual offence,
- a serious violence offence (such as murder, manslaughter, some serious injury offences and kidnapping), or
- any other type of offence if 30 months' imprisonment or detention in a youth justice facility, or longer, was imposed.

More details about serious violence offences and sexual offences can be found at:

www.justice.vic.gov.au/serious-convictions-and-applying-for-a-spent-convictions-order



Can all convictions become spent?

No, some convictions for serious offending by adults 21 years or older (at the time of sentencing) can never be spent. This includes where:

- The conviction is for a serious violence offence or sexual offence and imprisonment was imposed
- Any conviction for which a prison sentence of more than 5 years was imposed

Does the Spent Convictions Act apply to all convictions?

The Act applies to convictions for Victorian offences. It also applies to overseas convictions if there is a corresponding Victorian law.

There are different spent conviction schemes which apply to Commonwealth offences and offences from other states and territories. Interstate or Commonwealth offences that are spent under their laws will not appear on your criminal record.

When can a spent conviction be disclosed?

In some circumstances, courts, police, and certain agencies have an exemption to access spent convictions information for a particular purpose or may have legal permission to ask about it in special circumstances. This includes Working with Children Checks, some types of licences, some occupational accreditations and regulation processes (such as for health professionals, teachers and lawyers), family violence and child safety information sharing, child protection and immigration decision making.

In these circumstances, a spent conviction will appear on a police record check.

A spent driving conviction will appear on a driver history report issued by VicRoads.

Are there penalties for unlawful disclosure or discrimination relating to a spent conviction?

Under the *Equal Opportunity Act 2010*, discrimination because of a spent conviction is unlawful.

There are penalties for unlawful disclosure of spent convictions.

If you believe you have been discriminated against because of a spent conviction, you can contact [Victorian Equal Opportunity and Human Rights Commission \(VEOHRC\)](https://www.vic.gov.au/vic-eohrc).

More information

Find more information about what the *Spent Convictions Act 2021* means for you visit: justice.vic.gov.au/spent-convictions

Disclaimer

The information in this factsheet is a general guide only and you should seek legal advice about how the law applies to your circumstances.

Court Applications

Spent Convictions Orders

When can an application be made to the Magistrates' Court for a 'serious conviction' to become spent?

The Magistrates' Court can spend a conviction by making a Spent Conviction Order. An application for an order can be made if:

- 1a. the person was 15 years or older at the time of offending, but under 21 years old at the time of sentencing, and convicted for:
 - a serious violence offence or sexual offence; or
 - any other offence if sentenced to a youth justice centre order or youth residential centre order of more than 30 months;

OR

- 1b. the person was 21 years or older at the time of sentencing, and convicted for:
 - a serious violence offence or sexual offence, but not given a prison sentence; or
 - any other offence if the person was given a prison sentence of more than 30 months, but less than five years for the individual charge (not total effective sentence);

AND

2. the person has completed the relevant five or 10 year conviction period without any further offending (apart from some minor offences).

Serious violence or sexual offences are defined in the *Spent Convictions Act 2021*, you can find more information at: www.justice.vic.gov.au/serious-convictions-and-applying-for-a-spent-convictions-order

Which offences can never be spent?

A person is not eligible to make an application for a particular conviction if they were 21 years or older when sentenced and:

- committed a serious violence or sexual offence where imprisonment was imposed;

OR

- committed another type of offence with a term of imprisonment of more than 5 years.

These convictions can never be spent.

How can a person apply for a spent conviction order?

To apply for a spent conviction order, a person needs to complete the application form:

mcv.vic.gov.au/criminal-matters/spentconvictions-scheme/applying-spent-convictionorder

You can submit this to the Magistrates' Court via email, post, or in person. There is no fee.

A person can apply for multiple convictions to be spent, as long as the conviction period is completed for each.

A person must include a recent copy of a National Police Check with their application. A fee applies to obtain this check.

The Magistrates' Court will send you a sealed copy of your application once you have submitted it. This must then be forwarded to the Attorney-General (via the Department of Justice and Community Safety) and the Chief Commissioner of Police (via Victoria Police) to the email addresses on the form. These parties will review applications and can decide to make submissions.

What does the Magistrate consider?

The Magistrate must consider a number of factors in determining an application, including the circumstances of the offence and the applicant, and any demonstrated rehabilitation. A person can provide information to support their application when completing the form. The Magistrate will review everything provided in an application to make their decision.

How is a decision made?

The Magistrate may make a decision based on the information provided or decide to hold a hearing. If the Attorney-General or the Chief Commissioner of Police make a submission on a person's application, a hearing must be held.

If there is no hearing, the Magistrates' Court will contact the person with the outcome of the application.

If a spent conviction order is granted, the conviction will no longer appear on the person's police record check in most circumstances. If the application is refused, the conviction will continue to be disclosed on a criminal record in all circumstances.