

Spent Convictions Scheme

The spent convictions scheme makes rules about when a conviction can be 'spent', which means it no longer appears on most police checks.

Some types of convictions are spent automatically if you do not offend again for a certain period of time. You do not need to make an application for convictions spent automatically.

Serious convictions will appear on your police check unless a Court orders that they be spent.

To see whether you need a Court order to have your conviction(s) spent -

Step one: Read through the information below to see if your conviction is serious and if you are eligible to apply to have it spent.

Step two: If you are eligible, complete the applicant checklist on page 3, this is to help you prepare.

Step three: Complete the Form 1 – Application for a Spent Conviction Order at page 5 and file it with your closest Magistrates' Court by email, post or in person.

Visit our website at www.mcv.vic.gov.au/criminal-matters/spent-convictions-scheme for more information.

You can also visit www.justice.vic.gov.au/spent-convictions for general information about the spent convictions scheme.

Do you need to apply to the Court for a spent conviction order?

Convictions that are already spent

You do not need to apply for a spent conviction order for:

- **Most convictions with a sentence of imprisonment of 30 months or less:** If your prison sentence was 30 months or less and was not a sexual or serious violence offence, it will be spent automatically after the waiting period ends.
- **Younger offenders and some outcomes:** Some convictions, including non-conviction outcomes and convictions for offences committed when a person was under the age of 15, are spent immediately from the date of a person's conviction.
- **Non-conviction outcomes with conditions:** If a Court attached conditions to your conviction, the conviction will be automatically spent when the conditions are completed.

Calculating the waiting period

A waiting period is the amount of time you must wait after you are convicted before it can be spent. It is 10 years for adults who were 21 years or older at the time of sentencing, and 5 years for children and young people who were under 21 years old at the time of sentencing.

A new conviction for an offence during the waiting period will restart the waiting period, unless:

- The Court found you guilty but made the order 'without conviction'
- No penalty is ordered
- The only penalty is a fine of no more than 10 penalty units
- The only penalty is an order to pay a victim compensation (such as for pain and suffering) or restitution (such as to restore stolen property)

If you have re-offended after the waiting period has finished, you may still apply to have the first conviction spent.

What are sexual offences and serious violence offences?

Sexual offence is:

Crimes Act 1958

- subdivision 8A - Rape, sexual assault and associated sexual offences
- subdivision 8B - Sexual offences against children
- subdivision 8C - Incest
- subdivision 8D - Child abuse material
- subdivision 8E - Sexual offences against persons with a cognitive impairment or mental illness
- subdivision 8F - Sexual servitude
- subdivision 8FAA – Commercial sexual services
- subdivision 8FA - Bestiality
- section 327(2) - Failure to disclose a sexual offence committed against a child under the age of 16 years
- section 49C(2) - Failure by person in authority to protect child from sexual offence as in force before the commencement of section 16 of the Crimes Amendment (Sexual Offences) Act 2016.

Sex Work Act 1994

- section 5(1) - Causing or inducing child to take part in sex work
- section 6(1) - Obtaining payment for sexual services provided by a child
- section 7(1) - Agreement for provision of sexual services by a child
- section 8(1) - Forcing person into or to remain in sex work
- section 9(1) - Forcing person to provide financial support out of sex work
- section 11(1) - Allowing child to take part in sex work

Other offences – any Victorian Act

An offence an element of which involves—

- any person engaging in sexual activity; or
- any person taking part in a sexual act; or
- commercial sexual services; or
- a sexual performance involving a child; or
- an intention that any of the conduct referred to above is to occur; or soliciting, procuring, enabling or threatening any of the conduct referred above; or inducing or knowingly allowing a child to enter or remain on premises so that any of the conduct referred to above may occur;
- child abuse material;
- indecency;
- an offence of attempting to commit, or of incitement or conspiracy to commit any of the above.

Serious violence offence is:

A conviction for committing, conspiracy to commit, incitement to commit or attempting to commit:

- Murder
- Manslaughter (except for culpable driving causing death).
- An offence against any of the following sections of the Crimes Act 1958—
 - section 5A (child homicide);
 - section 5B (homicide by firearm);
 - section 9AD (defensive homicide), if the offender was convicted and sentenced to imprisonment;
 - section 15A (causing serious injury intentionally in circumstances of gross violence);
 - section 15B (causing serious injury recklessly in circumstances of gross violence);
 - section 16 (causing serious injury intentionally);
 - section 17 (causing serious injury recklessly);
 - section 63A (kidnapping);
 - section 197A (arson causing death).
- An offence at common law of kidnapping.
- Offences either in Victoria or elsewhere that have the same elements as any of the above

Applicant checklist

Eligibility:

To be eligible, you must tick all boxes under either the Adult or Child/Young Offender heading.

Adult offender

- ☐ I was 21 years or older at the time of sentencing
- ☐ I was convicted in Victoria
- ☐ I was convicted of either:
 - a serious violence offence or sexual offence (see page 2 for more detail), but I was not given a prison sentence, or
 - an offence, other than a serious violence or sexual offence, and sentenced to a term of imprisonment of more than 30 months, but less than five years for the individual charge
- ☐ I have completed the waiting period of 10 years without re-offending (see page 1)

Child/Young offender

- ☐ I was 15 years or older at the time of offending, but under 21 years old when I was sentenced
- ☐ I was convicted in Victoria
- ☐ I was convicted of either:
 - a serious violence offence or sexual offence (see page 2 for more detail), or
 - an offence where I was sentenced to a term of imprisonment of more than 30 months
- ☐ I have completed the waiting period of 5 years without re-offending (see page 1)

Supporting documents to be filed with Application:

Required

- ☐ A copy of my National Police Check (NPC) is attached, this may also include a digital National Police Check (eNPCs). Police checks can be obtained from Victoria Police or an Australian Criminal Intelligence Commission accredited body.
- ☐ The NPC I have attached is not older than 6 months.
- ☐ Additional material supporting my application is attached. Include any other material you wish the Court to consider e.g. information in support of your rehabilitation.

Previous applications:

If you applied to have a conviction spent within the last two years and your application was refused, you must provide new information before you can apply again.

- ☐ I have not applied to the Magistrates' Court of Victoria for a Spent Conviction Order in relation to this conviction and been refused within the last two years
- or
- ☐ I have applied to the Magistrates' Court of Victoria for a Spent Conviction Order in relation to this conviction and been refused within the last two years, and I have new information in support of my application.

Guardian:

A guardian can complete this form on your behalf if you have a guardian appointed to you under the *Guardianship and Administration Act 2019*.

- ☐ A copy of the guardianship order is attached to this application.

Court process

Before starting your application

- Complete the checklist on page 3 to check that you are eligible to apply
- Prepare the required documents detailed on page 3
- There is no fee for this application

Submitting your application

- Give your application (with the National Police Check and supporting documents) to your nearest Magistrates' Court by post, email or in person
- The Court will give you a copy of your application with a Court case number.
- The Court will send a copy of your application to the Chief Commissioner of Police and the Attorney-General

How your application is decided

- If the Chief Commissioner of Police or the Attorney-General have concerns about your application, they may ask the Court for an opportunity to make submissions about your application. They must ask for this within 28 days of getting your application from the Court.
- If the Chief Commissioner of Police and the Attorney-General **do not** ask to make any submissions regarding your application, a Magistrate may decide your application without a hearing.
- If the Chief Commissioner of Police or Attorney-General **do** ask to provide information to the Court, the Court must hold a hearing.
- If there is a hearing, the Court will send you a letter or email with the date and time to attend.
- It may take between 4 to 8 weeks for the Court to let you know whether there will be a hearing or the outcome of your application.

Receiving a decision

- A Magistrate can refuse or grant your application.
- You will be told the outcome by post or email. If there is a hearing, you will also be told in person.
- The Court will also tell the Chief Commissioner of Police and Attorney-General the outcome.
- If your application is granted, your spent conviction will no longer show on a police check unless an exemption applies.

Case number:

1. Person applying to have a conviction spent

Applicant's name

Date of Birth

Gender

Pronouns

	☐ Male ☐ Female ☐ Other:	
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Address Details

What are the best ways to contact you?

Preferred method
of contact

Telephone:

☐

Email:

☐

Do you identify as Aboriginal and/or Torres Strait Islander?

Collecting this data helps the Court to better understand how the Court is being used by Aboriginal and/or Torres Strait Islanders and to plan for improved Court services for Aboriginal and Torres Strait Islander peoples

- ☐ Aboriginal
 ☐ Torres Strait Islander
 ☐ Both Aboriginal and Torres Strait Islander
☐ Neither
 ☐ Prefer not to say

2. Guardianship

If the convicted person has a disability within the meaning of the *Equal Opportunity Act 2010*, the person's guardian may apply on behalf of the person in relation to a serious conviction of the person.

Are you making this application on behalf of someone?

☐ Yes – complete below

☐ No – continue to section 3

Name

- ☐ I am the convicted person's guardian within the meaning of the *Guardianship and Administration Act 2019* and I have **attached** a copy of the guardianship order to this application.

Address

What is the best way to contact you?

Telephone:

Email:

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3. Details of conviction

The following circumstances apply to this application (select one side only)

Adult offender	Child/Young Offender
☐ I was 21 years or older at the time of sentencing	☐ I was 15 years or older at the time of offending, but under 21 years old when I was sentenced
☐ I was convicted in Victoria	☐ I was convicted in Victoria
☐ I was convicted of either: ▪ a serious violence offence or sexual offence, but I was not given a prison sentence, or ▪ an offence, other than a serious violence or sexual offence, and sentenced to a term of imprisonment of more than 30 months, but less than five years for the individual charge	☐ I was convicted of either: ▪ a serious violence offence or sexual offence, or ▪ an offence where I was sentenced to a term of imprisonment of more than 30 months
☐ I have completed the waiting period of 10 years without re-offending	☐ I have completed the waiting period of 5 years without re-offending

Conviction details – conviction(s) that this application seeks to have spent:

☐ Children's Court	☐ Magistrates' Court	☐ County Court	☐ Supreme Court
Case number (if known)			
Court location			
Date of hearing			
Offence details			
Sentence imposed			

☐ There are other convictions that this application relates to, please see **Form 2** attached (Select if applies)

4. Previous Applications for a Spent Conviction Order

Is this the first time you have applied for a Spent Conviction Order in relation to this conviction?

☐ Yes – proceed section 5	☐ No – provide details of previous application/order
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Court Location

Date

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If a previous application was refused, you must wait two years before applying again, unless you have new information you want the court to consider. Please provide the new information in the box below.

If you need more space you may attach additional pages, statements or affidavits.

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5. Details of subsequent convictions

Have you been convicted of any other offences, in any jurisdiction, since the conviction you are applying to be spent?

Some subsequent convictions may restart the waiting period you need to complete before your initial conviction(s) can be spent.

☐ Yes – if yes, complete below

☐ No – proceed to section 6

Details of subsequent conviction(s)

☐ Children's Court ☐ Magistrates' Court ☐ County Court ☐ Supreme Court

☐ Other (*please specify*):

Case number (<i>if known</i>)	
Court location	
Date of hearing	
Offence details	
Sentence imposed	

☐ Children's Court ☐ Magistrates' Court ☐ County Court ☐ Supreme Court

☐ Other (*please specify*):

Case number (<i>if known</i>)	
Court location	
Date of hearing	
Offence details	
Sentence imposed	

6. Reasons for your application and supporting material

Please provide any information you wish the Court to consider in assessing your application. You can include a statement below and/or attach supporting material to this form.

You may consider including information around the circumstances of your offending, your current circumstances and what has helped you rehabilitate since the offending.

You can add more information on additional paper if you need to.

7. Signature of the Applicant

I, _____ born on _____ / _____ / _____
declare that the contents of my application are true and correct to the best of my knowledge and belief.

(Signature)

REGISTRY USE ONLY

Date Received	
Court Location	

8. Next steps

Submitting your application

- Give your application (with National Police Check and supporting documents) to your nearest Magistrates' Court by post, email or in person
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