

A GUIDE TO

**UNDERSTANDING
VICTORIA'S
SPENT
CONVICTION
SCHEME**

JUNE 2021

This is not legal advice

This guide is general information. It is not legal advice.

If you need legal advice about your particular circumstances, speak to a lawyer.

Laws can change. This information is accurate as at July 2021.

You can find your closest community legal centre at:

fclc.org.au/find_a_community_legal_centre

TABLE OF CONTENTS

WHAT IS A SPENT CONVICTION?	1
HOW DOES A CONVICTION BECOME SPENT?	3
• <i>Immediately</i>	4
• <i>After the 'conviction period'</i>	6
• <i>On application to the Court</i>	9
WHEN CAN A SPENT CONVICTION BE DISCLOSED?	13
• <i>Police checks</i>	14
• <i>In legal proceedings</i>	19
• <i>Information sharing</i>	20
• <i>Unlawful disclosure</i>	22
GETTING HELP	23

WHAT IS A SPENT CONVICTION?

A 'spent conviction' is a crime you were found guilty of at court that won't show up on most criminal record checks (police checks).

HAS THERE ALWAYS BEEN SPENT CONVICTIONS IN VICTORIA?

No. The Spent Convictions Act is new. It will start in December 2021.

Before this, convictions would appear on every criminal record check no matter how minor or old.

WHY IS THIS IMPORTANT?

Criminal convictions can be huge barriers to getting a job, getting housing, or accessing services.

Without a spent convictions scheme, criminal convictions can show up no matter how old they are.

With the scheme, old convictions won't show up on most police checks and people can move on with their lives more easily.

HOW DOES A CONVICTION BECOME SPENT?

There are 3 ways that a conviction can become spent:

1. Immediately

2. After the 'conviction period'

3. On an application to the Court

CONVICTIONS THAT ARE IMMEDIATELY SPENT

A conviction is spent on the day you were convicted if:

- You were found guilty but it was recorded 'without conviction'
- You were found not guilty by reason of mental impairment, or you were found unfit to be tried
- You were under 15 at the time you committed an offence
- You were sentenced in the Children's Court and the only penalty was a fine
- The conviction was for an infringement

These convictions are spent automatically, which means you don't have to do anything.

These convictions use technical legal terms. If you are unsure whether your conviction will be immediately spent, you should talk to a lawyer.

What if you had to do conditions when you were found guilty?

You must complete all conditions attached to your conviction for it to become spent.

For example:

If you have to write a letter of apology, do community service, or attend rehabilitation - you must complete these first, then your conviction will be spent.

AFTER THE 'CONVICTION FREE' PERIOD

Some convictions will become spent after the 'conviction free period' has ended.

The conviction free period starts on the day you were convicted by the court.

These convictions are spent automatically, which means you don't have to do anything.

WHICH CONVICTIONS WILL BECOME SPENT AFTER THE 'CONVICTION FREE PERIOD'?

If you were:

- Sentenced to under 30 months of imprisonment or detention,
- Not convicted for a sexual offence, or
- Not convicted for a serious violence offence (e.g.: murder, manslaughter, intentionally or recklessly causing serious injury, kidnapping, or arson causing death)

your conviction **will** become automatically spent after the 'conviction free period'.

Not eligible?
you may be able
to apply to the
Magistrates' Court
see page 9

HOW LONG IS THE 'CONVICTION FREE PERIOD'?

If you were sentenced as a child or a young person it is **5 years**.

For everyone else it is **10 years** - including people under 18 found guilty in an adult court.

WHAT IF I AM FOUND GUILTY OF ANOTHER OFFENCE BEFORE THE 5 OR 10 YEARS IS UP?

Being found guilty of a new offence during the conviction free period could make the clock restart. In other words, you might have to start the 5 or 10 years from the beginning.

The clock **won't** restart if:

- You got a fine for less than 10 penalty units.
- The only penalty was a compensation order,
- No penalty was imposed, or
- You were found guilty 'without conviction'

Example 1

It's been 3 years since you were convicted (as an adult) for drug possession. You have been found guilty again for drug possession.

The court found you guilty 'without conviction' and gave you a fine.

Your original 'conviction free period' stays the same.

You still have 7 years before the first conviction will become spent

Example 2

It's been 6 years since you were convicted for shop theft. You have been convicted again for assault.

You were sentenced to 10 days in imprisonment.

You 'conviction free period' for shop theft starts again.

You now have to wait 10 years for both convictions to become spent

APPLYING TO THE MAGISTRATES' COURT

If your conviction is not eligible to become spent automatically after the conviction free period, you may be able to apply to the Magistrates' Court for a spent conviction order.

What if I have a disability and can't apply myself?

Your guardian can apply on your behalf.

Can anyone oppose my application?

Yes. The Attorney General or the Chief Commissioner of Police can tell the court if they oppose (or support) your application.

CAN ANYONE APPLY?

No.

You can only apply if:

- You were given a 'serious conviction', **and**
- The 'conviction free period' has finished —

AND one of the following is true for you:

- you were a child or young offender when the conviction was given, **or**
- you were an adult (or found guilty in an adult court) convicted of a sexual offence or serious violence offence and no term of imprisonment was imposed, **or**
- you were an adult (or found guilty in an adult court) and you were sentenced to less than 5 years imprisonment.

WHAT IS A 'SERIOUS CONVICTION'?

A 'serious conviction' is a conviction considered too serious to become spent automatically after the conviction free period.

A 'serious conviction' is when you were:

- sentenced to more than 30 months of imprisonment or detention; or
- found guilty of a sexual offence; or
- found guilty of a serious violence offence.

The conviction free period for a serious conviction is the same as other convictions:

- 5 years for children
- 10 years for adults
(including people under 18 found guilty in an adult court).

WHAT WILL THE COURT CONSIDER?

In deciding whether or not to make a spent conviction order, the Court will consider:

- the nature, circumstance and seriousness of the offence
- the impact on any victims of the offence
- your personal circumstances
- factors of incarceration and specific impacts if you are Aboriginal or Torres Strait Islander
- your age and maturity at the time of the offence
- any rehabilitation you have done
- any risk to public safety in making the order
- any other relevant matters

WHEN CAN A SPENT CONVICTION STILL BE DISCLOSED?

There are 3 areas where your spent conviction can still be disclosed:

1. Police checks for some jobs

2. In legal proceedings

3. Information sharing

POLICE CHECKS

There are still some employers and licensing & regulating bodies who are allowed to see your spent convictions.

They are only allowed to have your spent conviction information for specific purposes.

If you are applying for a job, a license, or other accreditation with these places and they require a police check, your spent conviction will show up.

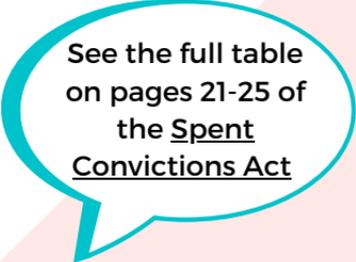
Example

If you are applying for a Working with Children Check, you will need to submit a police check to the Department of Justice and Community Safety.

They are allowed to see your spent convictions for the purpose of assessing your eligibility for working with children.

JOBS, LICENCES, AND REGISTRATIONS WHERE SPENT CONVICTIONS WILL SHOW UP

- Working, volunteering or providing care for children
- Health practitioner registration
- Commercial vehicle driver or owner accreditation
- Jobs with Corrections Victoria
- Jobs with Court Services Victoria
- Disability workers
- Public transport drivers
- Jobs with the Independent Broad-based Anti-Corruption Commission
- Jobs with the Office of the Victorian Information Commissioner
- Boxing and combat sport licenses
- Registration as a marriage celebrant
- Immigration matters
- Licenses to grow and process poppy plants
- Appointments of honorary justices
- Firearms licenses
- Gambling licenses
- Registration as a teacher
- Admission as a lawyer



See the full table
on pages 21-25 of
the Spent
Convictions Act

CAN I BE REFUSED A JOB BECAUSE OF A SPENT CONVICTION?

Sometimes.

For some types of jobs, a spent conviction might mean you won't get the job.

An employer **can** discriminate against you because of your spent conviction if:

- There is legislation that says they can, (e.g.: the Spent Convictions Act)
- A court has ordered them to, **or**
- They have applied to VCAT for an exemption.

Examples

The Victorian Institute of Teaching is allowed to see spent convictions for their role of regulating teachers.

Victoria Police is allowed to see spent convictions when they are employing people.

Or the Business Licensing Authority is allowed to see spent convictions when they are deciding whether to give out licenses for sex work.

When you apply for a job or license with these places, your spent convictions will show up on your police check - and it **could** mean you won't get the job or license.

DISCRIMINATION

Generally, it will be illegal for you to be discriminated against because of your spent conviction.

This means that if someone knows you have a spent conviction, they can't treat you worse because of it.

There are some exceptions - like the examples on the previous page.

IF SOMEONE DISCRIMINATES AGAINST YOU (UNLAWFULLY)



Learn more about
discrimination at:
humanrights.vic.gov.au

You can make a complaint to the Victorian Equal Opportunity and Human Rights Commission.

You can also speak to a lawyer, a Community Legal Centre, or Victoria Legal Aid.

LEGAL PROCEEDINGS

As part of the disclosure of your criminal record, a court or tribunal can disclose your spent convictions to any person.

This includes the publication or sharing of court decisions.

CAN I GET INFORMATION ABOUT MY SPENT CONVICTIONS?

Yes.

You can ask the police, court, or tribunal for your criminal record that includes your spent convictions.

INFORMATION SHARING

Police, courts and tribunals can disclose spent convictions (as part of a criminal record) to other police, courts and tribunals. They can do this when exercising their lawful powers or for a law enforcement purpose

WHAT ABOUT CORRECTIONS?

Corrections can still collect, use and disclose you spent convictions.

But they can only do this if it is lawful under corrections legislation.

WHO ELSE CAN POLICE DISCLOSE TO FOR INFORMATION SHARING?

As part of the disclosure of your criminal record, the police can also disclose your spent convictions to:

- Commissioner for Children and Young People
- Secretary of the Department of Education and Training
- Secretary to the Department of Health and Human Services
- Secretary to the Department of Home Affairs
- Secretary to the Department of Justice and Community Safety
- Victoria Police

ARE THERE RULES ABOUT WHEN THEY CAN DISCLOSE?

Yes. These places can only have your spent conviction information for special reasons - like immigration, child safety, or family violence.

See the full table on pages 21-25 of the Spent Convictions Act .

What if they break the rules?

See 'unlawful disclosure' on the next page

UNLAWFUL DISCLOSURE

It is illegal for someone, including the police, to share information about your spent conviction when they aren't allowed to.

This is called 'unlawful disclosure'.

It is also illegal for someone to lie in order to get your spent conviction information.

WHAT IS THE PENALTY?

If someone unlawfully discloses your spent conviction they can be fined up to 40 penalty units.

If someone lies to get your spent conviction information they can be fined up to 20 penalty units.

NEED HELP?

Spent convictions law is new and complex.

How it works will also change depending on the regulations.

If you think you are eligible to have an old conviction spent, call your local community legal centre or the Victoria Legal Aid helpline.

If you think you have been unlawfully discriminated against talk to the Victorian Equal Opportunity and Human Rights Commission.



www.fclc.org.au/find_a_community_legal_centre



Victoria Legal Aid: 1300 792 387

Human Rights Commission: 1300 292 153

The logo for Fitzroy Legal Service is a dark blue, irregularly shaped rectangle with a white border. The text "Fitzroy Legal Service" is written in white, bold, sans-serif font, centered within the rectangle. The background of the entire image is white, with two light pink triangular shapes in the top-left and bottom-right corners.

**Fitzroy
Legal
Service**