

Wiping away an old conviction



The *Spent Convictions Act 1988* (WA) allows you to avoid disclosing certain old convictions. You generally do not have to tell anyone about a spent conviction. This can help you with employment, finance, travel and other aspects of life.

Sometimes you will have to disclose or acknowledge a conviction even if the conviction is “spent”. Some examples of these exceptions are included.

What is a spent conviction?

A conviction is a spent conviction if either:

- a spent conviction order was made when sentence was imposed, or
- the conviction is old, and a certificate or court order is given saying the conviction is spent.

Can I get a spent conviction order when I am sentenced?

This Information Sheet is about old convictions, where no spent conviction order was made at the time of sentence. For information about orders at the time you are sentenced, see Legal Aid WA information sheet called **Spent conviction order at time of sentence**. A copy of this sheet may be obtained by contacting the Legal Aid WA Infoline or from any Legal Aid WA Office.

Can my old conviction be declared spent?

An old conviction can be declared to be a spent conviction in some circumstances. There are two categories – lesser convictions and serious convictions.

A **lesser conviction** is where the sentence was imprisonment for one year or less (total sentence) or a fine of less than \$15,000.

A **serious conviction** is where the sentence given was imprisonment for more than one year (total sentence) or a fine of \$15,000 or more.

How long do I have to wait?

There is a waiting period before an application may be made to have a conviction declared spent. The waiting period is the same for a lesser conviction and a serious conviction.

If you did not receive a sentence of imprisonment, the time you must wait to make the application is 10 years.

If you received a sentence of imprisonment, the time you must wait to make an application is 10 years, plus the period of any imprisonment relevant to that conviction.

If you were convicted of possessing cannabis (but not possessing a cannabis plant, cannabis resin or any other cannabis derivative) or an offence of possessing a pipe or smoking implement containing detectable traces of cannabis, the waiting period is 3 years, as long as the conviction for that offence occurred on or after 1 August 2011.

If you have another conviction after the conviction that is the subject of your application, the waiting period will start again from the date of the latest conviction. The waiting period is then 10 years plus the longest term of imprisonment imposed for those convictions. Also if the second conviction is a serious conviction, and the first conviction was a lesser conviction, the first conviction will be treated as a serious conviction and the requirements for wiping away a serious conviction will apply to both convictions.

The only time the waiting period does not start again is when the latest conviction attracted a

minor punishment only. A minor punishment means a fine of less than \$500.

How do I apply?

Lesser convictions

A lesser conviction may become spent by applying to the Commissioner of Police after a waiting period has expired. The waiting period is generally 10 years plus the length of any term of imprisonment imposed.

There are two methods that you can use to apply to have a lesser conviction spent. The WA Police have an application form for a certificate that lesser conviction is spent. This form is available for download from the [WA Police website \(www.police.wa.gov.au\)](http://www.police.wa.gov.au). In completing this form you will need to get it witnessed by a person authorised to take a statutory declaration. Once the form is completed you will need to post it to the address given on the form. There is no fee to process this application.

The National Police Clearance form obtainable from any Australia Post Office now has a section in it where you can apply to have lesser convictions spent. A National Police Clearance form is available for download from the [WA Police website](http://www.police.wa.gov.au). You can either submit the form online or you can take this form to your nearest Australia Post outlet and submit it for processing. When you do this you will need proof of identity and to pay a fee.

If either application shows that you are eligible for a spent conviction order, a certificate must be issued and the Police Commissioner has no discretion to refuse your application.

Serious convictions

A serious conviction may be declared spent by applying to the District Court after a waiting period has expired. This period is generally 10 years plus the length of any term of imprisonment relevant to that conviction. When you apply to the District Court you will need to complete some forms and prepare an affidavit (your evidence in written form). Upon hearing your application a District

Court judge will decide whether to make your conviction spent by thinking about:

- the length and kind of sentence imposed
- the length of time since the conviction
- whether the conviction prevents or may prevent you from working in a particular profession, trade or business or in particular employment
- the offence and how serious it was
- the circumstances in which the offence was committed
- your personal circumstances at the time the offence was committed and at the time of the application
- any public interest to be served by not making an order.

The Commissioner of Police must be served with a copy of the application. The Commissioner may be represented in Court and make submissions at the hearing of the application. The Attorney General may also intervene and may be represented and make submissions at the hearing.

If an application to have a serious conviction declared spent has been made to the District Court and that application has been **refused**, another application to have the same conviction spent cannot be made until two years has expired from the date of the refusal.

Legal Aid WA has produced a **kit**, called **Spent Conviction Application Kit**, which contains information about making an application to the District Court. If you are making an application yourself, you should get a copy of this kit from the Legal Aid WA Infoline, from any Legal Aid WA office or by downloading it from the Legal Aid WA website. The kit gives you more information about how to make an application. It also gives you all the forms and letters that you will need.

What is the effect of an old conviction becoming spent?

Generally, a person with a spent conviction does not have to tell anyone about the conviction. There are, however, exceptions where you must disclose your spent conviction. See the heading **Exceptions – when you must disclose a spent**

conviction and when it may be lawful to discriminate against you below.

It is an offence to get information about a spent conviction from an official criminal record without a lawful reason.

It is unlawful for employers, associations, licensing boards, qualifying authorities and employment agencies to discriminate against a person because of a spent conviction. However, there are exceptions where it may be lawful to discriminate against you. See the heading Exceptions – when you must disclose a spent conviction and when it may be lawful to discriminate against you below.

If you believe someone may have discriminated against you unlawfully, you can complain to the **Equal Opportunity Commission** on either (08) 9216 3900 or free-call 1800 198 149.

Exceptions – when you must disclose a spent conviction and when it may be lawful to discriminate against you

If you are asked about prior convictions, you must disclose spent convictions in the following situations. The following is not an exhaustive list and only some of the circumstances where you will have to disclose the spent conviction have been listed. If you have a spent conviction and you are not sure whether you have to disclose it, you should get legal advice about your specific circumstances.

You will have to disclose a spent conviction if you are:

- being considered by the Prisoners Review Board, Mentally Impaired Accused Review Board or the Supervised Release Review Board
- being considered for appointment as a justice of the peace
- being appointed or considered for appointment as a police constable, special constable, Aboriginal police liaison officer or police cadet
- being appointed or considered for appointment by the police to a position where the duties require or may require the provision of services or to deal in any manner, with persons not of full legal capacity
- being considered for employment as a prison officer under the *Prisons Act 1981* (WA)
- holding or applying to be issued with a permit to do high level security work under the *Prisons Act 1981* (WA)
- being considered for employment or a contract for work involving assessing, reporting about or classifying prisoners
- being employed or considered for employment under the *Gold Corporation Act 1987* (WA)
- being considered for the grant of a licence as a casino key employee or casino employee under the *Casino Control (Burswood Island) (Licensing of Employees) Regulations 1985* (WA)
- holding a licence or permit or applying for renewal of a licence or permit as a security agent, security officer, security consultant, or security installer under the *Security and Related Activities (Control) Act 1996* (WA)
- applying for the issue of a licence under the *Firearms Act 1973* (WA)
- being considered for authorisations under the *Court Security and Custodial Services Act 1999* (WA) or the *Corruption and Crime Commission Act 2003* (WA)
- appointed or being considered for appointment, as the Public Trustee or in some jobs to assist the Public Trustee under the *Public Trustee Act 1941* (WA) and the *Public Sector Management Act 1994* (WA)
- appointed or being considered for appointment, as the Public Advocate and some jobs to assist the Public Advocate under the *Guardianship and Administration Act 1990* (WA) and the *Public Sector Management Act 1994* (WA)
- designated or being considered for designation as a security officer under the *Public Transport Authority Act 2003* (WA)
- being appointed or considered for appointment to a position where the duties may require you to come into contact with children in a school, community kindergarten, college or hostel
- applying for a licence or permit to provide a child care service

- being employed or considered for employment or placed as a student or trainee or being engaged in an unpaid capacity with the Department for Child Protection
- being engaged or considered for engagement by the Department for Child Protection either for reward or in an unpaid capacity to provide overnight care
- being employed, seconded or considered for employment, whether paid or unpaid or as a student, at the Department of Health
- being employed or considered for employment at the Disability Services Commission or an organisation funded by the Disability Services Commission

In these situations all convictions, including spent convictions, can be taken into account when considering your character. It may be lawful for employers, associations, licensing boards, qualifying authorities and employment agencies to discriminate against you in the above circumstances.

Exceptions for the protection of children

There are special considerations for jobs that might involve contact with children. In these situations, an employer may lawfully discriminate against you for a conviction for certain offences. This applies even if a spent conviction order has been made.

A spent conviction for some offences has to be disclosed if you are:

- being considered for any form of employment carried out wholly or partly within the precincts of a:
 - school
 - care centre
 - pre-school centre, or
 - place where a child care service is conducted
- being considered for participation in the safety house scheme organised by the Safety House Association of WA
- being assessed for suitability for adoptive parenthood
- employed or being considered for employment by the Department of Sport and Recreation

The offences that have to be disclosed, even if the conviction is spent, are:

- all assaults
- offences against morality
- depriving someone of their liberty
- sexual offences
- child stealing
- desertion of children
- endangering someone's life or health
- homicide, suicide and concealment of birth.

If you have a spent conviction order and you are not sure whether you have to disclose it or you believe you have been unlawfully discriminated against, you should seek legal advice as soon as possible.

Working with Children Check

A Working with Children Check is a national criminal record check that is compulsory for people who carry out child-related work in Western Australia.

If you have applied for a working with children check a criminal record check is made.

A criminal record check will provide information about every:

- conviction of the person for an offence in WA or another jurisdiction, and
- charge made against the person for an offence in WA or another jurisdiction.

The criminal record check will include spent convictions.

More information on Working with Children Checks can be obtained from the [Working with Children Check website](http://www.checkwwc.wa.gov.au) (www.checkwwc.wa.gov.au).

What if I am charged with another offence later?

Your spent conviction can still be taken into account if you are before a court for trial or sentencing for another offence, or for a bail application. The judge or magistrate can be told about all your convictions, including spent convictions.

Traffic convictions are taken into account as prior convictions for the purposes of determining penalty for 20 years. For many traffic offences (for example, drink driving offences), having prior convictions makes the penalty heavier. A SCO at the time of sentencing for traffic offences does not change this if you are subsequently convicted of a traffic offence.

What if my old conviction was not against a West Australian law?

If an old conviction is for a Commonwealth offence for which no imprisonment or imprisonment for 30 months or less was imposed, it will automatically be spent after the waiting period has ended.

The waiting period is:

- for an adult, 10 years, beginning on the date of conviction, and
- for a minor, 5 years, beginning on the date of conviction.

Where can I get more information?

- The Privacy Hotline, on 1300 363 992
- The Australian Government's Privacy website: <http://www.privacy.gov.au/publications> under Spent Convictions, or
- The Privacy Commissioner, GPO Box 5218, Sydney, NSW 2001.

Legal Aid WA Offices

TELEPHONE INFOLINE: 1300 650 579 (General Enquiries)

Infoline open Monday to Friday 9.00 am to 4.00 pm

(Australian Western Standard Time) except public holidays

Translating and Interpreting Service 131 450

National Relay Service (for hearing and speech impaired) 133 677

www.legalaid.wa.gov.au

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1300 650 579

(08) 9261 6222

Southwest Regional Office

7th Floor, Bunbury Tower, 61 Victoria Street, Bunbury, WA 6230

(08) 9721 2277

Great Southern Regional Office

Unit 3, 43-47 Duke Street, Albany, WA 6330

(08) 9892 9700

Goldfields Regional Office

Suite 3, 120 Egan Street, Kalgoorlie, WA 6430

(08) 9025 1300

Midwest & Gascoyne Regional Office

Unit 8, The Boardwalk, 273 Foreshore Drive, Geraldton, WA 6530

(08) 9921 0200

Pilbara Regional Office

28 Throssell Road, South Hedland, WA 6722

(08) 9172 3733

West Kimberley Regional Office

Upper Level, Woody's Arcade, 15-17 Dampier Terrace, Broome, WA 6725

(08) 9195 5888

East Kimberley Regional Office

98 Konkerberry Drive, Kununurra, WA 6743

(08) 9166 5800

Indian Ocean Office

Administration Building, 20 Jalan Pantai

Christmas Island, Indian Ocean, WA 6798

(08) 9164 7529

This information contains a summary of the law and is correct at the date of publication. It is not legal advice. You should always seek legal advice about your individual situation. Any services referred to which are not operated by Legal Aid Western Australia are not endorsed or approved by Legal Aid Western Australia.

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