

# Spent Convictions Act 2021

Factsheet – December 2021

## What is a 'spent conviction'?

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

The person does not have to tell people about it (except in a small number of circumstances) and they cannot be asked about it unless the law specifically permits the question.

## How will a conviction become spent?

Many convictions will be spent immediately from the date any conditions on the penalty are completed or automatically after a set 'crime-free' period is completed.

For most 'serious convictions' an application must be made to the Magistrates' Court. There are a few exceptions to this, such as if the person was under 15 years.

## Can all convictions become spent?

No. For example, for adults 21 years or older at the time they were sentenced, serious violence offences and sex offences where imprisonment was imposed can never become spent.

Also, an adult who has any conviction with a sentence of 5 years or more imprisonment can never have that conviction spent.

## Does the Spent Convictions Act apply to all convictions?

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

There are different Spent Convictions schemes which apply to Commonwealth offences and offences from other states. A conviction spent under such laws will be regarded as spent for the purpose of the Victorian Act also.

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

Applications can be made to the Magistrates' Court as long as all conditions are met from **1 July 2022** if:

- The person was aged 15-20 at the time they were sentenced with a 'with conviction' penalty and they completed a crime-free period of **five years**.
- The person was 21 years or older when they were sentenced and they completed the relevant crime-free period of **10 years** (as long as their conviction is not one which can 'never become spent').

## 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.

## Which convictions will become spent immediately after 1 December 2021?

### People under 15 years:

A conviction for any offence (including a serious conviction), whatever the sentence imposed, if the person was less than 15 years at the time the offence was committed, once any conditions of the penalty have been completed

### People aged 15 years and over:

- A 'without conviction' disposition (including for serious convictions) once any conditions of the penalty have been completed;
- an infringement conviction;
- a Children's Court fine (including for serious convictions);
- a qualified finding of guilt under the Crimes (Mental Impairment and Unfitness to be Tried) Act 1997 (including for serious convictions).

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## After 1 December 2021 which convictions will become spent once the crime-free period has been completed?

If not a 'serious conviction' or not eligible to be spent immediately, the conviction will become automatically spent once the relevant crime-free period has passed without further offending.

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

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

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## When can a spent conviction be disclosed?

Some agencies and employers listed in the *Spent Convictions Act 2021* or its Regulations, or in other legislation may be able to obtain information about a person's spent conviction or have legal permission to ask about it in special circumstances.

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.

## What about penalties for unlawful disclosure or discrimination relating to a spent conviction?

Discrimination because of a spent conviction is unlawful because of changes the Act makes to the *Equal Opportunity Act 2010*.

The Act also has penalties for unlawful disclosure of spent convictions.

## More information

Find more information about what the *Spent Convictions Act 2021* means for you: [www.justice.vic.gov.au/spent-convictions-act-2021](http://www.justice.vic.gov.au/spent-convictions-act-2021)

## 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.