

### What is a spent conviction?

**A 'spent' conviction is a one that can't be disclosed and will not show on a police record check.**

Spent convictions legislation limits the use and disclosure of older, less serious convictions and findings of guilt. In South Australia, the [Spent Convictions Act 2009](#) sets out the law on when a conviction is not disclosed on a person's criminal record.

Spent convictions schemes provide protection for persons from unreasonable discrimination based on minor or old convictions after a period free of re-offending. They aim to rehabilitate offenders by not making their past mistakes affect the rest of their lives if they have been on the right side of the law for some time.

A conviction is spent immediately if a court finds an offence proved or a defendant guilty, but orders that no conviction is recorded against them. Otherwise, a conviction is spent if it is pardoned or quashed, or the qualification period has lapsed. A quashed conviction is a conviction that has been set aside by the Court. A pardon means a free and absolute pardon that has been granted to a person because he/she was wrongly convicted of a Commonwealth, Territory, State or foreign offence.

### **Certain convictions are never considered to be spent.**

Spent convictions are not included in a criminal history report unless the category of employment or purpose of the screening application is considered exempt from the workings of the relevant spent convictions scheme that applies. Unless applying for particular types of work (see below), a person who has spent convictions does not have to disclose them to prospective employers, and employers cannot refuse to employ someone on the basis of spent convictions.

### More information

The information that can be made available about a person's criminal history varies between the different Australian states and territories, and is dependent on the relevant laws or policies in each jurisdiction.

Each police agency will apply the relevant spent convictions legislation/information release policy prior to disclosure. For further information about their release policies and any legislation that affects them, contact the individual police agencies directly.

The following summary of each jurisdiction's policies and approach to spent convictions (from [CrimTrac](#)) explains how spent convictions legislation might affect you.

#### South Australia

The [Spent Convictions Act 2009 \(SA\)](#) governs the information released in a national Police Check.

A spent conviction, according to the Act, is one that cannot be disclosed or taken into consideration for any purpose. It is an offence to release information regarding the convictions of a person if those convictions are deemed to be 'spent' under the Act.

**Eligible convictions become spent following a 10 year conviction and proven offence-free period for adults, and a 5 year conviction and proven offence-free period for juveniles.**

The Act defines a conviction as:

- a formal finding of guilt by a Court;
- a finding by a Court that an offence has been proved.

**Certain convictions are never considered be spent.** These include but are not limited to:

- convictions of sex offences;
- convictions where a sentence is imposed of more than 12 months imprisonment for an adult, or 24 months imprisonment for a juvenile.

Schedule 1 of the Act sets out a number of exceptions to the rule where spent convictions can be released. Some examples of this include:

- the care of children;
- the care of vulnerable people (including the aged and persons with a disability, illness or impairment);
- activities associated with statutory character tests for licensing.

Interstate offences are released in accordance with that State or Territory's spent conviction / rehabilitation legislation and policy. Intelligence-type information is not released.

## New South Wales

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In New South Wales the [Criminal Records Act 1991 \(NSW\)](#) governs the effect of a person's conviction for a relatively minor offence (if the person completes a period of crime-free behaviour). The Act makes provision with respect to quashed convictions and pardons.

In relation to NSW convictions, a conviction generally becomes a "spent conviction" if a person has had a 10 year crime-free period from the date of the conviction. However, certain convictions may not become spent. These include:

- where a prison sentence of more than 6 months has been imposed (periodic or home detention is not considered a prison sentence);
- convictions against companies and other corporate bodies;
- sexual offences pursuant to the *Criminal Records Act 1991*; and
- convictions prescribed by the Regulations.

## Queensland

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Under Queensland's [Criminal Law \(Rehabilitation of Offenders\) Act 1986](#) a conviction automatically becomes spent upon completion of the prescribed (rehabilitation) period. This period is:

- 10 years for indictable offences where the offender was an adult at the time of conviction; and
- 5 years for other (summary offences or where the offender was a juvenile).

Where a person is convicted of a subsequent offence (an offence other than a simple or regulatory offence) during the rehabilitation period, the period runs from the date of the subsequent conviction.

Convictions where the offender is sentenced to more than 30 months imprisonment (whether or not that sentence is suspended) are excluded from the regime.

Once the rehabilitation period has expired, it is lawful for a person to deny (including under oath) that the person has been convicted of the offence, and the conviction must be disregarded for occupational licensing purposes (subject to certain exceptions, see below). It is unlawful for any person to disclose the conviction unless:

- the convicted person consents;
- the Minister has granted a permit authorising disclosure (where there is a legitimate and sufficient purpose for disclosing);
- the disclosure is subject to an exemption.

### Victoria Police

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For the purposes of employment, voluntary work or occupational licensing/registration, police may restrict the release of a person's police record according to the Victoria Police "Information Release Policy". If you have a police record the "Information Release Policy" may take into account the age of the police record and the purpose for which the information is being released.

If 10 years have elapsed since you were last found guilty of an offence, police will, in most instances, advise that you have no disclosable court outcomes. However, a record over 10 years may be released if:

- it includes a term of imprisonment longer than 30 months;
- it includes a serious, violent or sexual offence and the check is for the purpose of working with children, elderly people or disabled people;
- it is in the interests of crime prevention or public safety.

Findings of guilt without conviction and good behaviour bonds may be released. Recent charges or outstanding matters under investigation that have not yet gone to court may also be released.

### Western Australia

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Under the provisions of Section 7(1) of the [Spent Convictions Act 1988 \(WA\)](#) only "lesser convictions" can be spent by Western Australia Police, after a time period of 10 years plus any term of imprisonment that may have been imposed. A lesser conviction is one for which imprisonment of 12 months or less, or a fine of less than \$15,000 was imposed.

All other convictions, such as "serious convictions" applicable under Section 6 of the Act can only be spent by applying to the District Court. At the time of sentencing, the Court may make a "spent conviction order" under the [Sentencing Act 1995 \(WA\)](#) that the conviction is a spent conviction for the purposes of the [Spent Convictions Act 1988 \(WA\)](#).

### Commonwealth

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A Spent Convictions Scheme is the main element of the Commonwealth [Crimes Act 1914](#), which deals with aspects of the collection, use and disclosure of old conviction information (see [part VII-C](#)). According to the Act, a spent conviction is a conviction of a Commonwealth, Territory, State or foreign offence that satisfies all of the following conditions:

- it is 10 years since the date of the conviction (or 5 years for juvenile offenders); AND
- the individual was not sentenced to imprisonment or was not sentenced to imprisonment for more than 30 months; AND
- the individual has not re-offended during the 10 years (5 years for juvenile offenders) waiting period; AND
- a statutory or prescribed exclusion does not apply. (A full list of exclusions is available from the Office of the Australian Information Commissioner).

The law affects Commonwealth authorities in the following ways:

- a person with a conviction protected by Part VIIC does not have to disclose that conviction to any person, including a Commonwealth authority, unless an exclusion applies;
- Commonwealth authorities are prohibited from accessing, disclosing or taking into account spent convictions of Commonwealth offences.

Part VIIC and the Crimes Regulations 1990 provide for statutory or regulatory exclusions that will prevent certain Commonwealth convictions from being spent in certain circumstances.