



# Victoria Police Spent Convictions Disclosure Fact Sheet

(Effective 1 December 2021)

## Introduction

Victoria Police applies the Victorian *Spent Convictions Act 2021* (Act) to the disclosure of criminal history information to individuals and organisations outside of Victoria Police. This fact sheet outlines the general provisions of the Act that Victoria Police applies when police records checks are conducted for the purposes of employment, occupational licensing or registration and for voluntary work.

The Act provides an exemption to the disclosure of spent convictions by Victoria Police to specific agencies for prescribed functions under a prescribed law, and to other police forces and organisations with responsibility for law enforcement or the administration of justice.

## Consent

Victoria Police does not disclose criminal history information to any organisation outside the sphere of law enforcement and/or the administration of justice without the individual's written consent. An individual must complete the appropriate application form, include approved identity verification details and pay a fee.

## What will be disclosed

Victoria Police will disclose criminal history information based on the provisions within the Act. Offences may be spent *immediately* or *automatically* upon the completion of a conviction period.

On 1 July 2022, eligible offences may be spent through the court application process.

## Immediately spent

The following will be spent immediately and will not appear on general employment police records checks:

- If the finding of guilt is "without conviction" (subject to the completion of conditions, if any)
- If the offence was committed when the offender was under 15 years of age
- If the penalty imposed is a fine by the Children's Court

A conviction period does not apply to convictions that are immediately spent.

## **Automatically spent - expiry of conviction period**

A conviction period is a set time after sentencing where there are no further convictions.

- For convictions of a child or young offender<sup>1</sup>, sentenced under any of the relevant legislation listed in S.9 of the Act, the conviction period is 5 years.
- For convictions of adults, the conviction period is 10 years.

## **Serious convictions**

Convictions that are considered “serious convictions” do not expire on the completion of a conviction period (5 or 10 years). Serious convictions will not become spent and will continue to be disclosed<sup>2</sup>.

A serious conviction<sup>3</sup> includes:

- A conviction where the detention or term of imprisonment is more than 30 months
- The conviction is the result of a sexual offence
- The conviction is the result of a serious violence offence.

## **Commencement and recommencement of a conviction period**

The conviction period commences on the day the court makes the finding of guilt.

If a subsequent conviction occurs during the conviction period (5 or 10 years) then the conviction period for that first offence recommences from the commencement of the subsequent conviction period.

- The recommencement of the conviction period does not apply if the result of the subsequent conviction:
  - Is a fine not exceeding 10 penalty units
  - Where the only penalty imposed is a payment of restitution or compensation
  - For which no penalty is imposed
  - For which no conviction is recorded by the court (finding of guilt “without conviction”).

<sup>1</sup> A child offender is defined as a person who is aged less than 18 years of age at the time of offending. A young offender is defined as being less than 21 years of age at the time of sentencing.

<sup>2</sup> From 1 July 2022, in certain circumstances some serious convictions may be successfully spent via the court application process.

<sup>3</sup> Serious convictions with a result of without conviction can become spent immediately (subject to completion of conditions, if any).

## Exemptions

There are some circumstances where spent convictions will be disclosed, these are listed in the Act (and associated regulations).

If the police record check is for:

- A child-screening unit (eg. Working with Children Check Victoria)
- Registration with the Victorian Institute of Teaching (*Education and Training Reform Act 2006*)
- Worker screening for the National Disability Insurance Scheme (*Worker Screening Act 2020*)
- Disability worker registration (*Disability Service Safeguards Act 2018*)
- Registration and accreditation of health professionals (*Health Practitioner Regulation National Law 2009*)
- Employment with prisons or state or territory police forces
- Casino licence (*Casino Control Act 1991*)
- Gaming licence (*Gambling Regulation Act 2003*)
- Prostitution service provider's licence (*Prostitution Control Act 1994*)
- Bus operator accreditation (*Bus Safety Act 2009*)
- Private security licence (*Private Security Amendment Act 2010*)
- Driver accreditation with Commercial Passenger Vehicles Victoria (*Commercial Passenger Vehicle Industry Act 2017*)
- Firearms licence (*Firearms Act 1996*)
- Admission to legal profession (*Legal Profession Act 2004*)
- Independent Broad-based Anti-corruption Commission (*Independent Broad-based Anti-corruption Commission Act 2011*)
- Poppy industry (*Drugs, Poisons and Controlled Substance Act 1981*)
- Honorary Justice (*The Honorary Justices Act 2014*)
- Marriage celebrant registration (*Marriage Act 1961 of the Commonwealth*)
- Court Services Victoria (*Public Administration Act 2004*)
- Immigration (*Migration Act 1958*)
- Office of the Victorian Information Commissioner (*Privacy and Data Protection Act 2014*)

## Police records obtained from other Australian police jurisdictions

As part of the national police records check criminal history information is obtained from other police jurisdictions. The relevant state/territory's spent convictions legislation is applied before it is disclosed. The Act allows all records provided by interstate jurisdictions to be disclosed on a police check. For further information on interstate spent convictions legislation, please refer to the relevant police jurisdiction's website.

## Information on a National Police Certificate

Applicants who believe the information disclosed on a Victoria Police issued National Police Certificate is incorrect should contact:

Dispute Resolution

Public Enquiry Service

GPO Box 919

or

[policecheckvic@police.vic.gov.au](mailto:policecheckvic@police.vic.gov.au)

Melbourne VIC 3001

Applicants should be prepared to provide comparison fingerprints in some circumstances. No fee will be charged for taking comparison fingerprints. Arrangements will be made for the destruction of fingerprints upon resolution of the dispute.

## Privacy Statement

Victoria Police is committed to maintaining the privacy of the personal information that it collects, stores, uses and discloses and adheres to strict privacy and confidentiality policies. Personal information is treated in accordance with the *Privacy and Data Protection Act 2014*. An individual may gain access to their information by making an application through the Victoria Police, Freedom of Information Division. For further information go to <https://www.police.vic.gov.au/freedom-information>