



Spent conviction application

Part 1 - Information kit



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Introduction

This kit is designed to assist you if you want to apply for a **Western Australian (WA) conviction to be declared spent**. A WA conviction means a conviction for an offence against a WA law. This kit does not cover applications to have a Commonwealth conviction spent. A Commonwealth conviction means a conviction for an offence against a Commonwealth law.

There are different processes for applying for a WA conviction to be spent, depending on whether it is a lesser conviction or a serious conviction. This kit deals mainly with applying for a serious conviction to be spent but also includes information about applying for a lesser conviction to be spent. The difference between a lesser conviction and a serious conviction is noted below under the heading **What is a conviction?**

Please note, there are two parts to this kit. This is **Part 1** which is the **Information kit**. It includes all the information about when and how you may apply to get a conviction declared spent and tells you how to complete, file and serve the relevant form and affidavits you need for an application for a serious conviction to be spent. **Part 2** includes the **form, affidavits and a letter** you will need to use for an application for a serious conviction to be spent. Note that if you apply online using eLodgment, you will not need to use the Notice of Motion form included in Part 2. There is more information about this in Part 1 of the kit.

It is important that you use both parts of the kit together.

You can ask for a **hard copy** of this kit by contacting the **Legal Aid WA Infoline** on **1300 650 579** or any Legal Aid WA office. You can access an **electronic copy** of this kit online on the **Legal Aid WA website**: www.legalaid.wa.gov.au under Education & Resources > Self-help kits and guides > Removing old convictions or disqualifications > [Spent Conviction Application Kit Part 1 & Part 2](#). **Part 2, which contains the form, letter and affidavits, is in word format so you may download it and type directly into each document.**

How to find legislation

There are some references to legislation in this kit. You do not need to look up the legislation in order to use this kit, however, if you would like to access it, there is information here to help you.

You may access WA **Acts** or **Subsidiary legislation** from this website: www.legislation.wa.gov.au. If you are looking for an Act, click on the **In force** link under the heading **Acts**. Then select the alpha letter of the name of the Act, for example **S** for *Spent Convictions Act 1988* (WA) and scroll to find this Act. You can choose to open the Act in different formats, but PDF format is recommended. If you are looking for a piece of subsidiary legislation, for example the *Rules of the Supreme Court 1971* (WA), click on the **In force** link under the heading **Subsidiary legislation**, and follow the same process as you do for accessing an Act.

Definitions and terms

Term	Definition
Affidavit	An affidavit is information in writing that is sworn or affirmed to be true and can be used as evidence in court.
Criminal History or History for Court	This is a certified document listing all of your WA criminal and traffic convictions, including non-disclosable outcomes such as spent convictions and convictions recorded when you were a young offender.
eCourts portal	The online system that is used to give electronic documents to a court. You must be registered to use the eCourts portal.
eLodgment	The process of using the eCourts portal to give electronic documents to a court.

What is a spent conviction order?

A spent conviction order is a **court order** that a **criminal conviction** is spent so that you may not have to acknowledge or declare that conviction. If you are asked about your criminal record, you may not have to mention a conviction if a spent conviction order was made.

You can be granted a spent conviction at the time you receive your sentence. If you did not receive a spent conviction when you were sentenced, after a waiting period you can apply to have the conviction declared spent.

The procedure for making an application to have a conviction declared spent is contained in legislation, namely the *Rules of the Supreme Court 1971* (WA) and the *Spent Convictions Act 1988* (WA).

What is a conviction?

A conviction is a record that a person has committed a particular offence. A conviction may be recorded either following a plea of guilty or after an accused person is found guilty at trial.

There are two kinds of convictions for the purposes of an application for a spent conviction. The two kinds are called **serious convictions** and **lesser convictions**. The way to apply for your conviction to be spent is different for each.

Serious convictions

A **serious conviction** is one where you have committed an offence and you were:

- sentenced to imprisonment for more than one year, or
- fined \$15,000 (fifteen thousand dollars) or more.

Lesser convictions

A **lesser conviction** is one where you have committed an offence and you were:

- sentenced to imprisonment for one year or less, or

- fined less than \$15,000 (fifteen thousand dollars).

Waiting period before applying to have a conviction spent

The period of time you must wait before applying for any conviction to be declared spent is generally 10 years, **plus** the length of any term of imprisonment imposed for that offence. The period of imprisonment counted is the term of imprisonment imposed, not the actual time spent in prison.

The 10 year period is reduced to 3 years if your conviction was recorded on or after 1 August 2011 for an offence of possess cannabis (but not a cannabis plant, cannabis resin or any other cannabis derivative) or an offence of possess drug paraphernalia in or on which there is cannabis.

Convicted of further offence(s) – multiple unspent convictions

If you are convicted of another offence or offences before your previous conviction is spent, usually the 10 year waiting period will start again from the date of the latest conviction.

However, if **no punishment, or only minor punishment** was imposed in relation to the latest conviction, the latest conviction will not cause the waiting period to start again. Minor punishment means:

- if the conviction was entered before 3 August 2023, a fine of no more than \$500, or
- if the conviction was entered on or after 3 August 2023, a fine of no more than \$1,500.

If the waiting period does start again, the time you must wait before you can apply for any of your convictions to be spent is:

- 10 years from the date of your latest conviction, **plus**
- the longest period of imprisonment calculated from any of your convictions that are not yet spent.

If a sentence of imprisonment for a conviction was made cumulative (on top of other terms of imprisonment), the calculated period of imprisonment for that conviction is the total period of imprisonment when the sentences to be served cumulatively are added together.

The 10 year period is reduced to 3 years if all of your unspent convictions were recorded on or after 1 August 2011 for offences of possess cannabis (but not a cannabis plant, cannabis resin or any other cannabis derivative), or possess drug paraphernalia in or on which there is cannabis.

Examples

A person convicted of stealing as a servant and sentenced to 3 years imprisonment must wait 13 years (10yrs + 3 yrs) before applying to have the conviction spent.

The same person convicted of a fraud offence 1 year after the stealing as a servant conviction and sentenced to 14 months imprisonment to be served concurrently with the 3 year sentence, must wait 13 years (10 yrs + 3 yrs) from the date of the fraud conviction before applying to have both convictions spent. This is because there has been a further conviction causing the waiting period to be calculated again and causing it to start again from the date of the latest conviction. The waiting period is calculated as 10 years plus the longest period of imprisonment for all convictions that are not yet spent. As 3 years is longer than 14 months, 3 years must be added, making the total waiting period 13 years.

If the same person is in the same situation, but the 14 month sentence of imprisonment for the fraud offence is ordered to be served cumulatively on the 3 years imprisonment for the stealing as a servant offence, the waiting period becomes 14 years and 2 months (10yrs + 3yrs + 14 mths). This is because the period of imprisonment is calculated by adding together those sentences of imprisonment that were made cumulative on one another. Once again, this waiting period starts from the date of the fraud conviction as it is the latest conviction.

If the waiting period for your conviction has not ended, your conviction cannot be spent.

If you are not sure whether the waiting period has ended in your case, get legal advice.

Applying to have a lesser conviction spent

After the waiting period has ended, you can apply to the Commissioner of Police for a lesser conviction to be declared spent in one of the following two ways.

One way is to submit a form called an 'Application for certificate that lesser conviction is spent', available from your local police station or the WA police website at <https://www.police.wa.gov.au/Police-Direct/Apply-for-Information>. This application form must be posted to the WA police at the address shown on the form. There is **no fee** for this application.

The other way is to apply for a National Police Certificate and any lesser convictions that are eligible to be spent will automatically be spent and will not show up on the Certificate. There is, however, **a fee** to apply for a National Police Certificate. To apply you may either complete the form and make payment online on the WA police website at <https://www.police.wa.gov.au/Police-Direct/National-Police-Certificates>, or apply in person at a participating Australia Post outlet.

Subsequent serious conviction

If you have a lesser conviction and are then convicted of another offence which is a serious conviction, the lesser conviction will be treated like a serious conviction and the requirements for applying to have a serious conviction spent will apply to both convictions.

Applying to have a serious conviction spent

If you have a serious conviction on your record, after the waiting period has ended, you can apply to the District Court to have that conviction declared to be spent.

You cannot apply to have a serious conviction declared spent if:

- you received a sentence of life imprisonment for your conviction, or
- a judge has already refused, within the last 2 years, to declare the same conviction to be spent.

You should think about **why** you want your conviction to be declared spent. For more information, see **Consequences of having a spent conviction order** at the end of this kit.

You should be aware that if you want to apply to have a serious conviction spent you will need to:

- get supporting information
- prepare documents

- file documents at the court and pay a filing fee
- serve documents on the police
- go to court in person, and
- possibly, take other people to court with you who can support your application.

The remainder of this kit is designed to help you to apply to the District Court to have a serious old conviction spent.

Where to apply

All applications to have a serious old conviction spent are made to the District Court and are decided by a judge in that court.

You apply to the District Court by providing the court with an application form and supporting documents. This is called filing your application.

You can choose to file your application electronically through eLodgment, or in person, by post or by email at a District Court registry (office) anywhere in the State. There is a registry in Perth and in most major regional centres. See **Court Contacts and further information** at the end of this kit for a list of District Court registries in regional areas.

Choosing where to have your application heard

If you live in a regional area you can ask to have your application heard in that region, or you can ask to have your application heard in Perth. If you ask to have your application heard in your regional area you might have to wait longer because the District Court does not operate all the time in regional areas. It might be quicker if you ask to have your application heard in Perth.

If you file your application at a regional District Court registry but you would like your application heard in Perth, you should tell the staff at the registry.

How to apply

To apply for your old conviction to be spent, you need to file an application form and supporting information with the court. The court will then set a date for a judge to hear your application. You will need to serve your application form and supporting information on the Commissioner of Police so they can prepare a response to your application. The Commissioner of Police will usually be represented by a solicitor when your application is heard in court.

To apply you need to:

- get a copy of your Criminal History
- get information from people to support your application (eg letters, references, reports)
- get affidavits from these people to go with their information
- prepare your affidavit to support your application
- complete, file and serve an application form together with the affidavits
- pay the filing fee
- go to court in person, and
- possibly, take the other people who support your application to court with you.

The process for applying is different depending on whether you file your application with the court electronically using eLodgment, or file it in person, by email or by post.

If you are filing by eLodgment, the application form will be available online and you need to complete it electronically in the eLodgment system and upload supporting documents electronically into the system. For full details, see later in this kit under **Filing online through eLodgment**.

If you are filing in person, by email, or by post, then you need to use a form called a Notice of Motion which is filed together with your supporting documents. For full details, see later in this kit under **Filing in person, by post or by email**.

Gathering information before you apply

There are a number of documents you need to obtain and prepare before you can file your application.

Firstly, you need to obtain your Criminal History and any letters, references and reports in support of your application.

Then you need to prepare your own affidavit and ask for affidavits from anyone who has written a letter, reference or report in support.

Factors to consider when gathering information

When you are preparing your application and considering what supporting information you might need, it is useful to know what the judge will want to hear about when your application comes before the court.

The judge will want to know:

- whether having the conviction on your record stops you, or may stop you, from working in a particular job, profession, trade or business
- whether you have taken steps to rehabilitate yourself since you committed the offence
- whether there were things about the offence or your personal circumstances at the time, which made the offence less serious than other offences of the same type
- your circumstances at the time you make the application, including whether you are working.

How to get a copy of your Criminal History

You need to provide a copy of your Criminal History when you make an application to have an old conviction declared spent. A Criminal History is sometimes called a **History for Court**.

The court will want a copy of this document so it can see the types of prior convictions you have. It will also want to see if you have any new convictions since the old conviction which is the subject of your application.

You can request a copy of your Criminal History from the WA Police. To do this you need to:

- go to the **WA Police website**: www.police.wa.gov.au under Online Services > Apply for Information > [History for Court](#)

- download and complete the form called **Application for Documents Outside of the *Freedom of Information Act 1992***
- obtain a copy of your **photo identification** (eg driver's licence, passport or photo card).

Once you have completed the form and obtained a copy of your photo identification, you need to deliver them to WA Police in one of these ways:

- email to: PublicAccess@police.wa.gov.au
- post to:
WA Police Force Public Access
Locked Bag 20
PERTH BUSINESS CENTRE WA 6849
- hand deliver to:
WA Police Force Public Access
Level 5, Westralia Square
141 St George's Terrace
PERTH WA 6000

It is free to request your Criminal History, there is no fee payable when you submit the form.

Once your form is received by WA Police, it will generally take five business days for it to be processed.

Note, you *cannot* obtain a copy of your Criminal History from a general police station.

If you have queries about obtaining a copy of your Criminal History you can telephone the Public Access unit of WA Police on (08) 6229 5900 or email them at PublicAccess@police.wa.gov.au.

Criminal history in another State or Territory

If you have a criminal history in another State or Territory, the court needs to know about this as well. You need to obtain a copy of a document that shows your criminal history in the other State or Territory. Please check with the police department in the relevant State or Territory as to the procedure for obtaining such a document.

Obtaining letters, references and reports in support

You can get letters, references and reports from people to support your application. These might refer to your character, health, work and other information relevant to your application

Each person providing information in support must be willing to be a witness in court for you. Often people who provide information in support do not need to come to court, however, they should be prepared to come to court in case it is necessary. These witnesses should be prepared to speak about the information in their letter, reference or report and to answer questions about that information and about you. This may include talking about your character and your personal circumstances.

When thinking about who might be appropriate as a witness, you could ask one or more of the following people:

- **friends or relatives** may be able to provide a written character reference and possibly be a witness for you in court.
- your **employer** may be prepared to write a work-related character reference and possibly be a witness in court for you. You may also have previous employers who could write references or give information to the court for you. For example, if you previously lost your job or could not be promoted because of your conviction, you could ask that employer to write a letter confirming this, and
- if your serious old conviction was caused by dependence on drugs or alcohol, or some other health issue, your **doctor** may be able to provide a report that explains the issue you had and why it is no longer a problem. You may need to see your doctor and ask them to carry out medical tests to show that you are no longer suffering from the dependence or health issue. The results of these tests can be included in the doctor's report to show that you are rehabilitated.

All letters, references or reports are first given to the court in writing. They should:

- be typed or neatly handwritten
- include an acknowledgement that the writer has prepared the document in support of your application to have an old conviction declared spent
- be signed
- be dated
- if appropriate, be on business letterhead
- be addressed to the **District Court of Western Australia**
- be 1 or 1½ A4 pages for a letter, however a report can be longer, and
- if lodging a hard copy, be printed on single sided A4 pages, not back and front.

Once a person has written a letter, reference or report, it will need to be **attached to an affidavit**. There is information below about how a witness should complete their affidavit.

Letters or references from friends or family

Ask friends and relatives whether they would be prepared to write a character reference and be a witness in court for you. These references are to show that you are of good character and have rehabilitated yourself.

A letter from a friend or relative might include information about:

- how they know you, for example, as a family member or long-term friend
- how long they have known you
- their observations of your character over the years, particularly at the time you incurred your serious old conviction, if they knew you then
- their observations of your character now
- what they think of your character now
- if your old conviction was drug or alcohol related, any observations they can make about your drinking or drug use then and now, and
- anything else they want to say.

Letter or reference from employer

An employer reference can cover the same things as a reference from family or friends (see above). An employer might also be able to say the following things:

- how long you have worked for them and in what position
- what your income is
- what will happen to your job if you cannot get your serious old conviction removed
- what will happen to your job if you can get your serious old conviction removed, eg whether you could be promoted and earn more money, and
- anything else the employer wants to say.

Letter or report from doctor

If you offended whilst under the influence of drugs or alcohol, it is important that you tell the court whether or not you are still using drugs or alcohol and how your habits have changed since the conviction. The best way to do this is to obtain a letter or report from your doctor that talks about how your use of drugs or alcohol has changed

The letter or report from your doctor is commonly called a **medical report** and is sometimes hard to get. Some doctors may not give reports to their patients in person, particularly if they are to be used in court. Some doctors will not go to court for their patients. You should accept your doctor's decision if they cannot help you. Most doctors will ask you to pay them to prepare a medical report.

It may be useful to get tests done to show that you are not using drugs or alcohol now. The results of the tests could be included in the medical report from your doctor. You will have to pay to have tests carried out. Before you pay for tests to be done, you should get legal advice about whether test results are likely to be important in your case.

If your doctor does not want to carry out tests for you, they might be able to refer you to another doctor who is experienced in carrying out tests for court cases.

If you get a report from your doctor, it will normally be a lot shorter than a letter from a friend, family member or employer. The following information might be in the report:

- how long the doctor has known you as a patient
- a general description of your health, illnesses or disabilities
- what is known of your medical condition (particularly drugs and alcohol) at the time you committed your old offence
- what is known of your medical condition (particularly drugs and alcohol) now
- if there have been tests, such as liver function tests related to alcohol use or drug tests, the results of those tests and what they mean, and
- anything else the doctor wants to say.

How to complete your affidavit

An affidavit is sworn or affirmed evidence in written form. When you are in court, the solicitor for the Commissioner of Police or the judge can ask you questions about anything in your affidavit. It

is important that the content of your affidavit is true and accurate. When you sign your affidavit in the presence of an authorised witness, you swear or affirm that the contents are true. It is a criminal offence to swear or affirm something in an affidavit that you know is not true.

You can use the blank affidavit provided in Part 2 of this kit if you wish. You may neatly print your details on the front page of the affidavit, however, the **main part of the affidavit must be typed**.

If you have access to a computer and the Internet, you can download a Word version of this blank affidavit from the Legal Aid WA website: www.legalaid.wa.gov.au under Education and Resources > Self-help kits and guides > Removing old convictions > [Spent Conviction Application Part 2](#). This way you can type in all the information.

Below are some instructions on how to fill out your affidavit and how to get it signed and witnessed in the presence of an authorised witness. Do not sign your affidavit until you are with the authorised witness.

Front page

CIVO No.	Leave this blank. The court staff will fill this in if you are filing in person, by post or by email. If you are filing by eLodgment, put in the case (reference) number you received when lodging your application.
BETWEEN:	Put in your full name as the Applicant. The Respondent is always The Commissioner of Police.
AFFIDAVIT OF	Put in your full name, as the person providing this particular affidavit.
Date of document, Date of filing, Name, Address, Telephone	Put in each of these details.

Also on the front page of your affidavit is a table with the heading Annexures. Instructions on how to fill in the details in this table are below, under **Annexures (Attachments)**.

Page 2

After the word 'I' put your full name. After the word 'of' put your full address. In the space after the words 'Western Australia' fill in your occupation. The introductory words then finish off with the phrase 'being duly sworn make oath or say/do solemnly and sincerely declare and swear/affirm as follows:' Cross out whichever one is not applicable to you.

The affidavit provided with this kit contains useful headings, which are designed to prompt you to put in relevant information. You can ignore them or change them if you wish.

In relation to the heading number 6 'As to the other offences in my Criminal History, the circumstances were as follows:' if you do have other criminal convictions, you will need to specify the date of the conviction, court, nature of the offence, penalty imposed and the jurisdiction in

which it occurred, for example, whether it was an offence against the laws of the Commonwealth, State, Territory or a foreign country. You will then need to set out what the circumstances were for each offence.

Each page

There are some requirements for how you present the information in your affidavit. These requirements are:

- your affidavit must be completed by neatly printing or typing the information in consecutive numbered paragraphs
- you must use white A4 paper, either blank or ruled sheets
- you can use as many pages as you need to set out all the information relating to your case; however, your affidavit should be printed on only one side of the paper, not double-sided
- each page of your affidavit, including any annexures, must be consecutively numbered in the top right hand corner
- each line of your affidavit must have a space of not less than 6mm between them
- the left hand margin of your affidavit must be at least 40mm wide
- your affidavit should be fastened only at the top left hand corner
- your affidavit must not have sheets folded.

Some things to remember when you are writing your affidavit are:

- your affidavit must be written in the first person, using words like **I** and **me**
- your affidavit must state where you live and your occupation
- your affidavit must be divided into numbered paragraphs
- dates, sums and other numbers must be expressed in figures and not words
- the information that you put in your affidavit should be within your own knowledge
- when creating your affidavit, keep in mind the things you must prove to the judge to succeed in your application.

Last page

The final part of the affidavit is the 'swearing' or 'affirming' clause. This clause says:

- that your affidavit is sworn or affirmed by you in the presence of an authorised witness, and
- where and when it is sworn or affirmed.

This is where you must sign the affidavit in the presence of an authorised witness. There is information about this under the heading below: **Signing and witnessing an affidavit.**

Annexures (attachments)

You should attach the following documents to your affidavit:

- a copy of your Criminal History, and
- any other relevant documents.

When you attach copies of documents to your affidavit these are called '**annexures**'. In the content of your affidavit, you must indicate what your annexure is, for **example**:

3. *Annexed to this Affidavit and marked with the letter “A” is a copy of my Criminal History.*

On your annexure you will need to put the consecutive letter in the top centre of the document. So, following the above example, on the copy of your Criminal History you would put the letter ‘A’ in the top centre of that document.

On the front page of your affidavit is a table with the heading **Annexures**. Fill in the details of your annexures indicating the correct consecutive letter, a description of the document and on what pages the annexure is located, as shown in the following **example**:

Annexures

Annexure	Description	Page No:
A	Criminal History	13-16

Signing and witnessing an affidavit

To make your affidavit a legal document, you must sign the swearing clause on the last page of your affidavit and the bottom of every page of your affidavit, in the presence of an authorised witness. **It is important that you do not sign your affidavit until you are with the authorised witness.**

When signing the affidavit in the presence of an authorised witness, you must say an oath or affirmation out loud confirming:

- that you are the person named as the maker of the affidavit
- that the contents of the affidavit are true
- that the signature or mark on the affidavit is yours, and
- if there are any attachments, that each attachment to the affidavit is the attachment referred to in the affidavit. You should take all your annexures with you when you go to sign your affidavit.

If you have made any handwritten changes to your affidavit you will need to sign or initial these changes in the presence of the authorised witness.

Once you have signed your affidavit the authorised witness will:

- sign underneath the swearing clause, noting their name and qualification as an authorised witness
- sign each page of your affidavit, and
- sign or initial any handwritten changes that have been made to your affidavit.

Who is authorised to witness an affidavit?

An authorised witness for an affidavit that is made at a place within Western Australia is:

- a Justice of the Peace

- an experienced legal practitioner (a person who has been a legal practitioner for at least 2 years) as long as they have not assisted you in preparing the affidavit or assisted you with the process of applying to have your old conviction declared spent
- a public notary within the meaning of the *Public Notaries Act 1979* (WA)
- any registrar or clerk of a court, or any mining registrar appointed under the *Mining Act 1978* (WA).

How your witnesses should complete their affidavits

A person providing information in support of your application is a witness and must complete an affidavit that refers to the information in support.

Your witnesses can use the blank affidavit provided in Part 2 of this kit if they wish. They may neatly print their details on the front page of the affidavit, however, the **main part of the affidavit must be typed**.

If they have access to a computer and the Internet, they can download a Word version of this blank affidavit from the Legal Aid WA website: www.legalaid.wa.gov.au under Education and Resources > Self-help kits and guides > Removing old convictions > [Spent Conviction Application Part 2](#). This way they can type in all the information.

Below are some instructions on how to fill out their affidavit and how to get it signed and witnessed in the presence of an authorised witness. They must not sign their affidavit until they are with the authorised witness.

Note: Anyone who provides an affidavit in support of your application must be willing to go to court as a witness if necessary, to give information to the court in person.

Front page

The front page of affidavits from your witnesses are filled out in the same way as the front page of your affidavit, with only one change. After the words 'Affidavit of _____', the witness puts in their own full name as the person providing this particular affidavit.

Page 2

After the word 'I', the witness puts their full name. After the word 'of', they put their full address. In the space after the words 'Western Australia', they fill in their occupation. The introductory words then finish off with the phrase 'being duly sworn make oath and say/do solemnly and sincerely declare and affirm as follows:' They should cross out whichever one is not applicable to them.

The witness should complete their affidavit by neatly printing or typing the information in consecutive numbered paragraphs. They should use A4 paper, either blank or ruled sheets. They can use as many pages as they need to set out all the information relating to your case.

Each page

As with your affidavit, there are some requirements for how a witness must present the information in their affidavit. These requirements are:

- their affidavit must be completed by neatly printing or typing the information in consecutive numbered paragraphs

- they must use white A4 paper, either blank or ruled sheets
- they can use as many pages as they need to set out all the information relating to your case; however, their affidavit should be printed on only one side of the paper, not double-sided
- each page of their affidavit, including any annexures, must be consecutively numbered in the top right hand corner
- each line of their affidavit must have a space of not less than 6mm between them
- the left hand margin of their affidavit must be at least 40mm wide
- their affidavit should be fastened only at the top left hand corner
- their affidavit must not have sheets folded.

Some things for your witness to remember when they are writing their affidavit are:

- it must be written in the first person, using words like **I** and **me**
- it must state where they live and their occupation
- it must be divided into numbered paragraphs
- dates, sums and other numbers must be expressed in figures and not words
- the information in their affidavit should be within their own knowledge
- when creating their affidavit, they should keep in mind the things that are relevant to your application.

Last page

The final part of the affidavit is the ‘swearing’ or ‘affirming’ clause. This clause says:

- that their affidavit is sworn or affirmed by them in the presence of an authorised witness, and
- where and when it is sworn or affirmed.

This is where the person must sign the affidavit in the presence of an authorised witness, in the same way that you had to sign and witness your affidavit. There is information about this under the heading above: **Signing and witnessing an affidavit.**

Annexures (attachments)

If the witness has written a letter, reference or report they should attach this document to their affidavit as an annexure.

The process for making reference to an annexure is the same as in your affidavit. In the content of their affidavit, he or she needs to indicate what the annexure is, for example:

3. Annexed to this Affidavit and marked with the letter “A” is a copy of my letter of support for spent conviction application.

On the annexure he or she will need to put the consecutive letter in the top centre of the document. So in the example, on the copy of letter of support for spent conviction application, they would put the letter “A” in the top centre of that document.

On the front page of their affidavit is a table with the heading **Annexures**. They will need to fill in the details of their annexures indicating the correct consecutive letter, a description of the document and on what page(s) the annexure is located, as shown in the following example:

Annexures

Annexure	Description	Page No:
A	Letter of support for spent conviction application	10-12

Signing and witnessing their affidavit

The way your witness must sign and have their affidavit witnessed is the same as the process you followed for signing and witnessing your affidavit, as described under the headings above: **Signing and witnessing an affidavit** and **Who is authorised to witness an affidavit?**

Filing your application and supporting documents

Once you have your supporting documents (Criminal History, your affidavit and any other affidavits with supporting letters, references or reports attached), you are ready to prepare and file your application together with these supporting documents. How you prepare and file your application depends on whether you are going to file online using the eLodgment option, or file in person, by post or by email.

If you choose to file using eLodgment, the application form will be available online and you will need to complete it electronically in the eLodgment system. You will need to upload your supporting documents electronically into the system. For full details, see below.

If you choose to file in person, by email, or by post, then you need to complete an application form called a Notice of Motion. This is then filed together with your supporting documents. For full details, see below.

Filing online through eLodgment

To file your application and supporting documents using eLodgment, you first need to log into the eCourts portal of Western Australia at <https://ecourts.justice.wa.gov.au/eCourtsPortal/>. Under the heading 'Lodgment', you need to click on 'eLodgment'. Then go to 'Lodge a document'. You then need to make a number of selections:

- Under 'Jurisdiction', select 'District Court'
- Under 'Division', select 'Civil'
- Under 'Location', select the court location where the application will be heard, such as Perth, or the regional court location
- Under 'Please select the type of document to be lodged', select 'Application for an order under Spent Convictions Act s6', then click 'Next'.

You then need to follow these steps:

- On the page, titled 'Contact Information for this Lodgment', you are required to put in your contact details. Once you have done so, click 'Next'.
- Fill in the applicant's details – you are the applicant, so fill in your details. If you have a concession card select the box and provide your concession card number. Then click 'Next'.

- The following page asks you to confirm that you have entered the correct applicant. If everything is correct, click 'Next'.
- The system should now automatically fill in the details for the respondent (the Commissioner of Police). Again, click 'Next'. You will be asked to confirm that the respondent is correct. Click 'Next'.
- You are then required to fill in the details of the serious old conviction/s that you are applying to have spent. Use the information from your Criminal History.
- After this, you need to lodge the application. This will result in a case (or reference) number being allocated to your application. Make sure you note down this number, as you need it for filing the affidavits.
- Pay the filing fee by entering your Credit Card details or via direct debit (see below, under *Filing Fee*).
- Lodge your affidavit as well as any other affidavits from people providing information in support of your application. These must be in Adobe Acrobat (.pdf) format and must be uploaded as separate documents. To lodge your affidavit:
 - Scan your affidavit with any annexures it may have and save as one document in Adobe Acrobat (.pdf) format, ready for uploading.
 - Scan each other affidavit with any annexures each of them may have as one document and save each one separately in Adobe Acrobat (.pdf) format, ready for uploading.
 - Go back to 'Lodge document' and under 'Please select the type of document to be lodged', select 'Affidavit of'.
 - On the following page, where you need to enter the contact information for the lodgment, after 'Reference', enter the reference number you received when you lodged your application. Once you have entered the reference number, the system will automatically fill in your details.
 - You then need to upload your own affidavit.
 - Once you have uploaded your own affidavit, go back to 'Lodge document'. Under 'Please select the type of document to be lodged', select 'Affidavit of'. Again, enter the reference number. Complete the appropriate details as necessary for the next affidavit, then upload the affidavit.
 - Repeat this process for any remaining affidavits.

The eLodgment system creates filed versions of your application form and all supporting documents. The filed versions will have an official court stamp on them, which you can print out.

Filing fee

Once you have lodged your application, a **Payment** screen appears. The Payment screen lists all of the documents for which you need to pay a fee, and how much you have to pay. The different payment options are displayed below this. You can choose to pay either by direct debit (but only if you have previously set up direct debit) or by credit card.

If paying by direct debit, click the 'Pay via Direct Debit' button. If paying by credit card, fill in the relevant details in the 'Credit Card Payment' section and then click the 'Pay via Credit Card' button. It is important that you do **not** close the browser until the following links appear: 'View Receipt' and 'View Completed Batch'.

You can click the 'View Receipt' link to view the receipt on the screen. You can then print it. If you click the 'View Completed Batch' link, you can view the completed document batch (this shows your application and all the documents you have uploaded in support).

Applying for a reduced fee

If you have a valid concession card and you entered your card number in the applicant details section, you will automatically be asked to pay a reduced filing fee at the payment stage.

Even if you do not have a concession card you may wish to apply for a reduced fee for other reasons, for example because you are under financial hardship. In this case, you must apply for a reduced fee before filing your application. You will need to download and complete a **Form 2: Application to Reduce Fee** from the District Court website (www.districtcourt.wa.gov.au) under Court Fees. You can also obtain a copy from the District Court registry.

You then need to lodge the Form 2 with the court. To do this, after logging into the eCourts Portal, select eLodgment, then Lodge a Document. Make the same selections as explained above under **Filing online through eLodgment**. However, under 'Please select the type of document to be lodged', select 'Application to Reduce Fee', and any other details if applicable, then click 'Next'.

On the next page, enter your contact details and click 'Next'. The following page (headed 'Add Applicant') requires you to enter your details. Once you have done so, click 'Next'. You are then taken to a page which asks you to confirm the applicant. If the details are correct, click 'Next'.

After that, you will need to upload the following documents together as one scanned document:

- the completed and signed Form 2
- a copy of both sides of your concession card (if using one)
- a copy of the court document you intend to file that requires the fee (this is your Notice of Motion).

Make sure that you scan all of these documents together, as you can only upload one document. Once you have uploaded the document, click 'Next'. Check if all details are entered correctly, then click 'Lodge'.

You will then need to wait until you receive notice from the District Court that the fee reduction has been approved. You will receive an email telling you that you have a new message from the eCourts Portal. Log into the eCourts system and view 'Incoming Documents' on the home page. You can open and print this document. If your application to reduce fees has been approved, the document will contain the Fee Reduction reference number.

You can now go back to 'Lodge a document' and, under 'Please select the type of document to be lodged', select 'Application for an order under Spent Convictions Act s6'. Just underneath, where it says 'If an application to reduce the fee on this document has been granted please enter the matter number and year', put in your Fee Reduction reference number. Then continue the process outlined above under **Filing online through eLodgment**.

Getting a court hearing date

If you file your application online through eLodgment, and your hearing will be in **Perth**, then you will be asked to select the hearing date as part of the filing process. The **hearing date** is when a

judge will hear your application in court. After you have filled in the details of your application, you will be taken to a screen headed 'Select Hearing Details' where you can select a hearing date.

However, if the hearing is in a **regional court**, for example Geraldton, you will not be able to select a hearing date. The screen will say 'There are no available time slots; please contact the court to request hearings to be made available.' You will then need to contact the court by email and ask them for a hearing date. The court will then allocate a hearing date on your behalf. Where various dates are available, they may ask you to select one; once you have done so, you will receive an email back from the court confirming the date. Note, in this case, you will not be able to proceed with the eLodgment process. Instead, you will need to email your application and other documents to the court. The court will then lodge the application in the eLodgment system on your behalf.

Once your application is lodged, the eLodgment system creates filed versions of your application form and affidavits bearing the official court stamp and hearing date, which you can print out.

You must go to court on the hearing date.

Filing in person, by post or by email

If you are filing your application in person, by email or by post, you first need to complete a form called a **Notice of Motion**. You can use the Notice of Motion provided in Part 2 of this kit if you wish. It may also be available from the District Court registry office.

How to complete the Notice of Motion

If you have access to a computer and the internet, you can download a Word version of the Notice of Motion from the Legal Aid WA website: www.legalaid.wa.gov.au under Education and Resources > Self-help kits and guides > Removing old convictions > [Spent Conviction Application Kit Part 2](#). This allows you to type directly into this form.

The following information will help you complete the Notice of Motion. You must type or neatly print your content.

HELD AT _____ _____	Leave this blank. The court staff will fill this in when you file the form. It is the place where the court will hear your application (Perth or a regional court location).
CIVO No:	Leave this blank. The court staff will fill this in when you file the form. It is the application number.
BETWEEN:	Fill in your full name next to the word 'Applicant'. The Commissioner of Police is the 'Respondent' (the other party).
Date of document, Date of filing, Name, Address, Telephone	Fill in each of these details.
COURT USE ONLY	Leave the spaces in this section blank. The court staff will fill in details of the hearing date and time.

In the table on the first page		Fill in the details of the serious old conviction/s that you are applying to have spent in the table provided. Use the information from your Criminal History. Put the information in columns showing the court, date, offence and penalty, as shown in the following example:		
	Court Name	Court Date	Offence	Penalty
1.	PERTH DC	22.12.1982	Possess quantity of cannabis resin with intent to sell/supply	2 yrs imprisonment
At the end of the table listing your convictions		Here you can choose whether to have the hearing in public. There is usually no reason you would want the hearing in public. Put a line through 'requests' if you do not want it to be in public.		
Date and Applicant's signature and address		Sign the form and date it. Write your address in the space provided. This is the address the solicitor for the Commissioner of Police will use to send you any documents.		

Filing the Notice of Motion and supporting affidavits

You can present the Notice of Motion and supporting affidavits in person over the counter at a District Court registry, or you can post or email them to the registry. This is called filing or lodging the documents. See **Court Contacts and further information** at the end of this kit for details of court locations, postal addresses and email addresses for filing.

You must file:

- the Notice of Motion (original plus 2 copies)
- your affidavit (original plus 2 copies), and
- affidavits of people who have given you letters, references or reports in support of your application (original plus 2 copies of each).

If it is difficult for you to make 2 copies of each of these documents, when you file the originals the court may be able to help by making the copies for you.

Filing fee

There is a court fee for filing your Notice of Motion at the court. You must pay the filing fee by payment in person or by sending in a cheque. Please check with the District Court the current fee for lodging your application. The contact details for the District Court can be found under **Court contacts and further information** at the end of this Kit.

Applying for a reduced fee

When filing your Notice of Motion, if you show that you have a valid concession card then you will automatically get a reduced fee.

Even if you do not have a concession card, you may apply for the fee to be reduced for other reasons, for example, because you are experiencing financial hardship. You can apply for the fee

to be reduced by lodging a **Form 2: Application to Reduce Fees** with your Notice of Motion. A copy of this form can be downloaded from the District Court website (www.districtcourt.wa.gov.au) under Court Fees or obtained from the District Court registry.

If you have any questions about having your filing fee reduced, please contact the District Court.

Getting a court hearing date

After the court registry staff receive your Notice of Motion, they will stamp the original and 1 copy of each document. They will then check when a judge is available to hear your application. This is called getting a **hearing date**. This may happen immediately or after a short time.

Once a hearing time and date are arranged, court registry staff will insert the case number and the hearing details on each stamped document. The registry will keep the original Notice of Motion and original affidavits and return the copies of these documents to you, either by handing them back to you at the time of filing, or by posting them to you.

The stamped Notice of Motion that you receive back from the Court registry will contain the time and date when your case will be heard. You must go to court on that day. If it has not already been done, you should note the time and date on the other copy of the Notice of Motion, which you should keep for your own records.

Tell your witnesses the court hearing date

Once you have filed your application and supporting documents you will be given a date to come to court for the hearing of your application. You must go to court on that day.

Also, tell all your witnesses (that is, the people who made affidavits for you) the court hearing date and court location. Tell them as soon as possible so that they can arrange to be available on that day, if required.

Serving the documents

A copy of all the documents you have filed with the court must also be given to the Commissioner of Police. This is called **serving the documents**.

If you have **filed your application through eLodgment**, the system will generate a copy of your application and affidavits with an official court stamp on them. You need to print out these documents and serve them on the Commissioner of Police. You should print out another copy for yourself, to use when you are in court.

If you have **filed your application in person, by post or by email**, you need to serve the stamped copy of the Notice of Motion and affidavits on the Commissioner of Police. Keep the remaining copy of the Notice of Motion and affidavits for yourself, to use when you are in court.

To serve the stamped documents on the Commissioner of Police you must deliver them **by hand or by post** to this address:

WA Police Legal Services – Summons and Subpoena Unit
Level 9, 141 St George's Terrace
Perth WA 6000

When you serve the documents on the Commissioner of Police you should provide a letter that confirms what you are serving and asks if the other people who have given affidavits are required to come to court for the hearing. In general, witnesses are not needed at the hearing, however, they may be needed in your case.

A sample letter to police is in Part 2 of this kit. You should make an extra copy of this letter. When you serve the documents on police you should ask the person who receives them to write on this copy of the letter that they have received the documents and to include their name, signature and the date. This is your proof that the police have been served with the documents.

Affidavit of service

After you have served the documents on the Commissioner of Police you must complete an affidavit of service setting out how you served them (eg by attending at their office or by posting them).

An affidavit of service is in Part 2 of this kit. If you have access to a computer and the Internet, you can download a Word version of the blank affidavit of service from the Legal Aid WA website: www.legalaid.wa.gov.au under Education and Resources > Self-help kits and guides > Removing old convictions > [Spent Conviction Application Part 2](#). This way you can type in all the information.

You should annex (attach) to the affidavit the copy of the letter that you had signed by the person you delivered the documents to. The letter should be referred to in the affidavit as Annexure “A” and you should write ‘Annexure “A” ’ on the top of the letter. The affidavit then needs to be signed by you in the presence of an authorised witness.

Once you have signed the affidavit of service, you need to file it at the District Court. Again, this can be done through eLodgment if that is how you filed your original application, or in person, by post or by email at a District Court registry. If filing it through eLodgment, you go through a similar process to that outlined above (see ‘[Filing online through eLodgment](#)’). However, under ‘Please select the type of document to be lodged’, select ‘Affidavit of service’. On the following page, where you need to enter the contact information for the lodgment, after ‘Reference’, enter the reference number you received when you lodged your application.

Checklist for your application

- ☐ Obtained legal advice as to whether the conviction is a serious conviction
- ☐ Obtained legal advice as to whether the waiting period has lapsed
- ☐ Obtained a copy of your Criminal History (History for Court)
- ☐ Obtained letters, references and reports (if necessary) from friends/relatives/employer/doctor
 - ☐ Checked that friends/relatives/employer/doctor willing to swear or affirm an affidavit and go to court
- ☐ Completed your affidavit in support
 - ☐ Annexures attached as required and table at front of affidavit completed
 - ☐ Affidavit sworn or affirmed in front of an authorised witness
- ☐ Obtained final affidavits of others who have done letters/references/reports which are signed and have been witnessed by an authorised witness
- ☐ Unless applying electronically using eLodgment, completed Notice of Motion and signed it
- ☐ Unless filing electronically using eLodgment, made or asked court to make, 2 copies of:
 - ☐ Notice of Motion
 - ☐ Your affidavit and annexures
 - ☐ Other people's affidavits
- ☐ Unless filing electronically using eLodgment, filed original and copies of Notice of Motion and affidavits with the registry of the District Court and
 - ☐ Noted date and time of court hearing on your copy of the Notice of Motion
 - ☐ Kept one copy of each document
- ☐ Where filing electronically using eLodgment:
 - ☐ Completed and submitted the online application form
 - ☐ Uploaded affidavits separately in pdf format
 - ☐ Printed off copies of the stamped versions of the submitted forms
- ☐ Completed covering letter to the Commissioner of Police
- ☐ Enclosed sealed copies of Notice of Motion, or online application form printed from eLodgment, your affidavit and other people's affidavits and served all of these on the Commissioner of Police
- ☐ Filed your affidavit of service
- ☐ Told witnesses the court date and time and location
- ☐ Ensured that you have a copy of all documents for your personal records and for use during the hearing in court.

Before your court date

The Commissioner of Police is the 'Respondent' to your application and can make submissions to the Court about your application. The Commissioner is usually represented by a solicitor from the State Solicitor's Office who will consider your application before the hearing and represent the Commissioner of Police at the hearing.

Before the hearing, the solicitor for the Commissioner of Police will generally contact you if there is a problem with your application or if they intend to oppose your application. If you have not heard from the solicitor and want to check if they intend opposing your application, contact the State Solicitors Office on 9264 1888 and ask to speak to the solicitor dealing with your application.

You may not be able to talk to the solicitor until you go to court.

If you do talk to the solicitor, you can ask them if they want your witnesses to come to court. They might want some witnesses but not others. If one of your witnesses has a particular difficulty coming to court (your doctor or employer, for example), you can explain this. The solicitor can think about whether they really need that person to come to court.

At court

On your court date, go to the court building early and find your courtroom. Take copies of all the documents you have prepared and filed with you.

Solicitor may represent the Commissioner of Police

In court, the Commissioner of Police is usually represented by a solicitor from the State Solicitor's Office. This solicitor presents the Commissioner's point of view and provides any further information to the judge to assist the judge in making a decision about your application.

The solicitor can oppose your application and suggest to the judge that your application should not be granted. Alternatively, the solicitor can tell the judge that they do not have a problem with your application being granted. In this case, the judge is more likely to grant your application and make an order for a spent conviction.

If the solicitor for the Commissioner of Police opposes your application, your application may be put off (adjourned) to another day for a full hearing of the evidence to help the judge decide whether or not to grant your application.

At a hearing you may have to give spoken evidence. The things you say in evidence will generally be the same as the things you said in your affidavit. The people who gave affidavits with letters, references or reports in support of your application are your witnesses and they may also have to come to the hearing and give spoken evidence.

During the hearing, you and your witnesses can be asked questions by the judge and by the solicitor for the Commissioner of Police.

Factors the judge will consider

When deciding whether to make a spent conviction order, the judge will consider the following:

- the nature of the offence, and how serious it was

- the length and kind of sentence you were given when you were convicted
- the length of time since the conviction
- whether having the conviction on your record stops you, or may stop you, from working in a particular profession, trade, business or employment
- whether you have taken steps to rehabilitate yourself since you committed the offence
- whether there were things about the circumstances of the offence itself, and your personal circumstances at the time, which made the offence more or less serious than other offences of the same type
- your circumstances at the time of making the application, which includes your employment history, and
- whether the public, or particular authorities, have an interest in knowing that you have been convicted.

Remember that you need to prove to the judge that these things should be decided in your favour. If you can, you should include information about these things in your application.

Decision

After hearing all the evidence, the judge may grant or dismiss (not grant) your application.

Costs

The *Spent Convictions Act 1988* (WA) says that usually each party should pay their own legal costs for an application for a spent conviction. However, the judge can order you to pay the legal costs of the Commissioner of Police if satisfied that your application was vexatious, misconceived or lacking in substance or if the circumstances justify doing so.

After the hearing

If your application was not successful, you do not need to do anything immediately.

If the judge has ordered that you pay the legal costs of the Commissioner of Police, you will receive notification from the solicitor for the Commissioner about where and how to pay.

If your application was successful, a court officer will carry out a process called **extracting the order**. This means that the court order is written down and made official. They will send a copy of the order to WA Police and to you. You do not need to do anything with this. You should then get a letter from WA Police saying that the court order to make a spent conviction has been noted on the police records.

If you do not get a letter from WA Police within one month, you can submit an online enquiry form at <https://www.police.wa.gov.au/Contact-Us/Other-enquiries>. Alternatively, you can ring **WA Police Force Public Access** on **(08) 6229 5900**. Ask to speak to the officer who deals with spent convictions and inform them that you would like to check that the police have received a copy of the court order.

Consequences of having a conviction spent

Having a conviction declared spent means that you may not have to tell anyone that you were charged with and convicted of the offence. However, in some situations you will still have to provide information about your conviction. Some of these situations are described below.

Discrimination

A spent conviction may mean that people cannot discriminate against you for having that conviction. If someone does discriminate against you because of a conviction that has been spent, you may have grounds to lodge a complaint under the *Equal Opportunity Act 1984* (WA).

However, there are some situations where it may be lawful to discriminate against you, even if a spent conviction has been made. These exceptions are set out in the *Spent Convictions Act 1988* (WA).

If you think you have been unlawfully discriminated against because of a conviction that has been spent, it is recommended that you get legal advice as to whether or not your situation falls within one of the exceptions. Alternatively, if you would like to lodge a complaint about unlawful discrimination, contact the **Equal Opportunity Commission** on **(08) 9216 3900** or **1800 198 149** (free call), or fill in an online complaint form on the '[Make a discrimination and harassment complaint](#)' webpage hosted by the WA government. The Equal Opportunity Commission website (<http://www.eoc.wa.gov.au>) also has information about making a complaint.

Offender reporting obligations

If you have been convicted of a reportable offence and you are subsequently successful in having your old conviction spent this does not affect:

- the status of the offence as a reportable offence
- the consideration of the offence as part of your total criminal record for the purposes of the *Community Protection (Offender Reporting) Act 2004* (WA)
- inclusion of information about the offence in the Sex Offenders Register
- any reporting obligations you have, or
- any prohibition order you are subject to.

If you are a reportable offender and you are successful in your application to have your old conviction spent, it is recommended you obtain legal advice about your:

- obligations to disclose the conviction to certain people, and
- ongoing reporting obligations.

Do I have to disclose a spent conviction?

General exceptions

Although you generally do not have to disclose spent convictions, there are specific exceptions when you must disclose them. **The following list is not a full list of all the exceptions. A list of all of the exceptions is contained in the *Spent Convictions Act 1988* (WA).**

If you are asked about prior convictions, you **must disclose convictions that have been spent in situations including where you are:**

- being considered for release by the Prisoners 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 officer, police auxiliary officer, Aboriginal police liaison officer, special constable or police cadet
- being appointed or considered for appointment by the Commissioner of Police to a position where the duties require or may require the provision of services or to deal with in any manner, with persons not of full legal capacity
- employed or 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)
- employed in the Department of Corrective Services, or a contract worker performing the functions of a superintendent or a prison officer, involving assessing, reporting about or classifying persons charged with or convicted of offences
- 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 (i.e. a security officer, security consultant, security installer or security bodyguard) under the *Security and Related Activities (Control) Act 1996* (WA)
- applying for the issue of a licence under the *Firearms Act 1973* (WA)
- authorised or being considered for authorisation to exercise a Schedule power as defined in the *Court Security and Custodial Services Act 1999* (WA), or are the holder of, or are applying to be issued with, a permit to do high-level security work as defined in that Act
- employed or being considered for employment as a teacher
- employed or being considered for employment at a community kindergarten or college
- applying for a licence or permit to provide a child care service
- employed or being considered for employment or placed as a student or trainee or working in an unpaid capacity with the Department of Communities (Child Protection) dealing with children and their families or with sensitive and confidential information about children and their families
- engaged or being considered for engagement by the Department for Communities (Child Protection), either for payment or non-payment, to provide overnight care for a child or children
- employed, seconded or being considered for employment, whether paid or unpaid or as a student, in the Department of Health or the Mental Health Commission
- employed or being considered for employment at the Department of Communities (Disability Services)
- employed or being considered for employment with an organisation that is funded by the Department of Communities (Disability Services).

Exceptions for certain convictions for the protection of children

Under the *Spent Convictions Act 1998* (WA) there are special circumstances when spent convictions must be disclosed, to help protect children. These circumstances are when you are:

- being considered for any form of employment carried out wholly or partly within the precincts of a:
 - care centre
 - pre-school centre, or
 - place where a child care service is conducted
- being considered for the safety house scheme run by the Safety House Association of WA
- being assessed for adoptive parenthood
- employed or being considered for employment by the Department of Local Government, Sport and Cultural Industries
- employed or being considered for employment by the Department of Communities (Housing).

However, you only have to disclose a spent conviction in these circumstances if it is **for one of the offences listed below**. Similarly, a person may only lawfully discriminate against you in these circumstances if your spent conviction is for one of the offences listed below.

The offences are:

- any of the following under the *Criminal Code* (WA) if committed against a person who was under 18 years old at the time:
 - Chapter XXVII - homicide, suicide, concealing birth
 - Chapter XXIX - endangering life or health
 - Chapter XXX - assaults
 - Chapter XXXIII – offences against liberty
 - Section 343 - child stealing
 - Section 344 – desertion of children
 - a corresponding offence in Queensland, NSW, Norfolk Island or the Commonwealth.
- any of the following under the *Criminal Code* (WA):
 - Chapter XXII - offences against morality
 - Chapter XXXI - sexual offences
 - a corresponding offence in Queensland, NSW, Norfolk Island or the Commonwealth.

Exception for Working with Children Check

Under the *Spent Convictions Act 1998* (WA) there is also an exception that requires spent convictions to be disclosed when you apply for a 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 apply for a Working with Children Check a criminal record check is done. A criminal record check will provide information about every:

- court conviction for an offence in WA or another jurisdiction,

- charge for an offence in WA or another jurisdiction, that the court dealt with in a way other than by conviction, and
- pending charge for certain very serious offences in WA or another Australian jurisdiction.

The criminal record check will include any spent convictions you may have.

More information on Working with Children Checks is on the WA government website www.wa.gov.au/working-with-children-check.

Exception for NDIS Worker Screening Check

Under the *Spent Convictions Act 1998* (WA) there is also an exception that requires spent convictions to be disclosed when you apply to be a National Disability Insurance Scheme (NDIS) worker.

To apply to be an NDIS worker you must apply for an NDIS Worker Screening Check.

As part of the Screening Check a criminal record check is done. The criminal record check will include any spent convictions you may have.

More information on NDIS Worker Screening Checks is on the WA government website www.wa.gov.au/ndis-worker-screening-check.

Criminal justice exceptions

If you come before a court for sentencing, a conviction that has been spent **can** be taken into account when the court is deciding what penalty to impose or whether to give you bail.

Seek legal advice

If you have a spent conviction and you are not sure whether you must disclose it, or you believe you have been unlawfully discriminated against because of your spent conviction, you should get legal advice as soon as possible.

Court rules

Here are some things to remember whenever you go to court.

Be on time – The time should be written on your Notice of Motion, or the stamped version of your online application if you have lodged electronically. If you are not sure, ring the court and check. If you are late for court or do not come at all, things might happen in your absence, for example, your application might be dismissed without you having a say.

Dress neatly – Take off your sunglasses and hat. You will not be allowed into court in a singlet or without shoes.

No mobile phones, food or drink – Turn off mobile phones and any other electronic devices before entering the court. Do not take any food or drink into court.

Courtroom behaviour – When entering and leaving the courtroom, you should bow towards the judge. Stand up when the judge enters and leaves the courtroom. Stand up when you are being spoken to or when you wish to speak to the judge, otherwise remain quietly seated. Address the judge as 'Your Honour'.

Court contacts and further information

District Court at Perth

District Court registry
500 Hay Street
PERTH WA 6000
Ph. (08) 9425 2128
Email: civildc@justice.wa.gov.au

Regional courthouses with a District Court registry

Albany 184 Stirling Terrace ALBANY WA 6330 Telephone: (08) 9845 5200 Facsimile: (08) 9841 7920 Email: albanycourt@justice.wa.gov.au	Carnarvon Cnr Robinson Street & Olivia Tce CARNARVON WA 6701 Telephone: (08) 9941 1082 Facsimile: (08) 9941 2779 Email: carnarvoncourt@justice.wa.gov.au	Geraldton Marine Terrace GERALDTON WA 6530 Telephone: (08) 9921 3722 Facsimile: (08) 9964 1864 Email: GeraldtonCourt@justice.wa.gov.au
Broome Hamersley Street BROOME WA 6725 Telephone: (08) 9192 1137 Facsimile: (08) 9192 1878 Email: broomecourt@justice.wa.gov.au	Derby Loch Street DERBY WA 6728 Telephone: (08) 9191 1406 Facsimile: (08) 9193 1025 Email: derbycourt@justice.wa.gov.au	Kalgoorlie Brookman Street KALGOORLIE WA 6430 Telephone: (08) 9093 5300 Facsimile: (08) 9021 2005 Email: kalgoorliecourt@justice.wa.gov.au
Bunbury 3 Stephen Street BUNBURY WA 6230 Telephone: (08) 9781 4200 Facsimile: (08) 9721 8180 Email: bunburycourt@justice.wa.gov.au	Esperance 100 Dempster Street ESPERANCE WA 6450 Telephone: (08) 9071 2444 Facsimile: (08) 9071 2288 Email: esperancecourt@justice.wa.gov.au	Kununurra Coolibah Drive KUNUNURRA WA 6743 Telephone: (08) 9168 1011 Facsimile: (08) 9168 1103 Email: kununurracourt@justice.wa.gov.au
Busselton 12 Stanley Street BUSSELTON WA 6280 Telephone: (08) 9754 9666 Facsimile: (08) 9752 4950 Email: busseltoncourt@justice.wa.gov.au	Karratha Balmoral Road KARRATHA WA 6714 Telephone: (08) 9185 2922 Facsimile: (08) 9185 2413 Email: karrathacourt@justice.wa.gov.au	South Hedland Hawke Place SOUTH HEDLAND WA 6722 Telephone: (08) 9172 9300 Facsimile: (08) 9172 9330 Email: southhedlandcourt@justice.wa.gov.au

Other addresses

WA Police Force Public Access
Level 5, Westralia Square
141 St George's Tce
PERTH WA 6000
Tel: (08) 6229 5900

Legal Aid WA

Legal Aid WA produces a variety of legal information web pages that might assist you with your legal issues. To access these pages, go to Legal Aid WA's website at www.legalaid.wa.gov.au under **Find Legal Answers**.

You can request a hard copy of this kit by:

- contacting the Legal Aid WA Infoline on 1300 650 579
- attending at a Legal Aid WA office and requesting a copy

You can also access this kit online on Legal Aid WA's website at www.legalaid.wa.gov.au: go to Education & Resources > Self-help kits and guides > Removing old convictions or disqualifications.

TELEPHONE INFOLINE: 1300 650 579 (General Enquiries)

Legal Yarn for First Nations callers: 1800 319 803

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

Perth Office 32 St Georges Terrace Perth, WA 6000 1300 650 579 (08) 9261 6222	Southwest Regional Office 7 th Floor, Bunbury Tower, 61 Victoria Street Bunbury, WA 6230 (08) 9721 2277	West Kimberley Regional Office Upper Level, Woody's Arcade, 15-17 Dampier Terrace, Broome, WA 6725 (08) 9195 5888
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	Pilbara Regional Office 28 Throssell Road, South Hedland, WA 6722 (08) 9172 3733
East Kimberley Regional Office 98 Konkerberry Drive, Kununurra, WA 6743 (08) 9166 5800	Midwest & Gascoyne Regional Office Unit 8, The Boardwalk, 273 Foreshore Drive, Geraldton, WA 6530 (08) 9921 0200	Indian Ocean Office Administration Building, 20 Jalan Pantai, Christmas Island, Indian Ocean, WA 6798 (08) 9164 7529

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