



Spent conviction application

Part 1 - Information kit



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This Kit provides information about the law only and does not constitute legal advice. You should seek legal advice if you have a specific legal problem.

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Introduction

This kit is designed to assist you if you want to apply for a **Western Australian conviction to be declared spent**. 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. This kit does not cover applications to have a Commonwealth conviction spent.

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 describes how to complete, file and serve the relevant form and affidavits required for an application for a serious conviction to be spent. **Part 2** includes the **form, affidavits and a letter** you will need for an application for a serious conviction to be spent.

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

You can request a **hard copy** of this kit by contacting the **Legal Aid WA Infoline** on **1300 650 57** 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 Information about the law > Crime, police and victims of crime > Criminal records and spent convictions > Applying for old convictions to be spent, scroll down to the link to Part 1 and Part 2 of the kit. **Part 2 (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.

The State Law Publisher (SLP) is the official publisher of Western Australian legislation and statutory information. SLP maintains a website (www.slp.wa.gov.au) that stores current copies of all legislation.

To find a copy of a piece of legislation referred to in this kit you can either telephone the SLP on (08) 6552 6000, attend their office in person (Ground Floor, 10 William Street, Perth) or go to its website. If you go to their office to access legislation they may charge you a fee. If you access the legislation on its website there is no cost.

If you are accessing legislation on the SLP website (www.slp.wa.gov.au) click on the **Click HERE for Western Australian Legislation Database** button. This will then take you to a page allowing you to select **Acts** or **Subsidiary legislation**. If you are looking for an Act, for example the *Criminal Code* click on the **in force** link. Then select the alpha letter of the name of the Act, for example **C** for **Criminal Code** and navigate to the heading of your Act. If you click on this link you can select to view the Act in PDF, Word or HTML. If you are looking for a piece of subsidiary legislation, for example the *Criminal Procedure Rules 2005 (WA)* you click on the **in force** link under the heading **Subsidiary legislation**.

Definitions and terms

Term	Definition
Affidavit	An affidavit is sworn evidence in written form.
Criminal History	Also known as a 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.

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 at sentencing you can apply later to have the conviction declared spent.

The procedure for making an application to have a conviction declared spent is contained in 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** 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).

When can you apply 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 sentence 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 of a fine of up to \$500, was imposed in relation to the latest conviction, the latest conviction will not cause the waiting period to start again (an example could be a minor traffic offence).

If the waiting period has started 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, 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

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 www.police.wa.gov.au. This application form must be posted to the WA police at the address shown on the form. There is **no fee** for this application.

Alternatively, you may 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 www.police.wa.gov.au, 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, you can apply to a judge of the District Court to have that conviction declared to be spent. If your application succeeds you will get a Spent Conviction Order for that conviction.

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 to make a spent conviction order for the same conviction within the last 2 years.

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

To make an application you will need to:

- get information
- complete, file and serve court forms
- pay the filing fee
- go to court in person, and
- possibly, take other people to court with you who can support your application.

Before you apply

Please note

If possible Step 1 and Step 2 should be started at the same time as there may be some delay in processing your application for the documents.

Step 1: Obtain a copy of your Criminal History

You will need to provide a copy of your Criminal History when you make an application to have a conviction declared spent. A Criminal History document can also be called a History for Court. The court will want a copy of this document because the court will want to know the type of prior convictions you have and whether you have any new convictions following the old conviction the subject of your spent conviction application.

You will need to obtain a copy of your Criminal History from the WA Police. To do this you will need to submit a form called **Application for Documents Outside of the Freedom of Information Act 1992** to the WA Police Information Release Centre. A copy of this form can be downloaded from the **WA Police website**: www.police.wa.gov.au under Online Services > Apply for Information > [History for Court](#).

When you submit the Application for Documents Outside of the *Freedom of Information Act 1992* Form you will need to provide a copy of photo identification (eg proof of age card or passport).

Once you have completed the Form and obtained a copy of your photo identification you will need to mail them to:

WA Police Information Release Centre
Locked Bag 20
PERTH BUSINESS CENTRE WA 6849

Alternatively, you can hand deliver them to:

WA Police Information Release Centre
Level 5, Westralia Square
141 St George's Terrace
PERTH WA 6000

There is no fee payable when you submit this Form.

Generally, it will take five business days to process this Form however you should allow further time for postage.

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

For further information about obtaining a copy of your Criminal History you can telephone the WA Police Information Release Centre on (08) 6229 5900.

Criminal History in another State or Territory

Where you have a criminal history in another State or Territory then you should request copies of these records as well. Please check with the police department in the relevant State or Territory as to the procedure for obtaining these records.

Step 2: Preparing for letters, references and reports

You will need to get letters, references and reports to support your application for a spent conviction. The person providing this information must be willing to be a witness in court for you. Often people who provide letters and references may not need to come to court. However, they should be prepared to come to court if necessary. These witnesses should be prepared to speak about your character and anything else to do with your personal circumstances.

When thinking about who might be an appropriate witness, you could ask the following people:

- **friends and 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 because of your conviction, or could not be promoted, you could ask that employer to write a letter confirming that, and
- if your serious old conviction was caused by dependence on drugs or alcohol, or some other medical (including psychiatric) condition, you should see your **doctor** and ask your doctor to carry out medical tests, which might show that you are no longer suffering from any dependence or any medical disorder. The results of these tests can be used in your application to help prove that you are rehabilitated.

This information is put in writing first. All letters, references or reports should be:

- typed or neatly hand written
- include an acknowledgement that the writer has prepared the document in support of your application for a spent conviction
- signed
- dated
- if appropriate, be on business letterhead
- all letters, references and reports are to be addressed to the **District Court of Western Australia**
- the length of a letter should be 1 or 1½ A4 pages however a report can be a longer document, and
- although it may be cheaper to print your application on two sides of A4 paper, all documents must be presented on a single sided A4 page.

Once a person has written a letter, reference or report it will need to be attached to an affidavit sworn or affirmed by them.

Letter or reference 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. The 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

The employer reference can cover the same things as the references 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 your using habits have changed since the conviction. The best way to do this is to obtain a letter or report from your doctor.

The letter or report from your doctor is commonly called a **Report** or **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 charge a fee to prepare reports.

If your doctor does not want to carry out tests for you (for example, liver function tests), they might be able to refer you to another doctor who is experienced in carrying out tests for court cases. You will have to pay to have tests carried out and to get a report from that doctor. You should get legal advice about whether test results are likely to be important in your case.

If you can get a report from your doctor, it would normally be a lot shorter than those from friends, family and employers. The following information can be in the report:

- how long the doctor has known you as a patient
- a general description of your health, illnesses or disabilities
- what was 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 or drug tests, the results of those tests and what they mean, and
- anything else the doctor wants to say.

Where to apply

All applications to have an old conviction declared spent are made at the District Court.

Regional applications

If you are based in a region you can make an application for an old conviction to be spent at your nearest District Court registry office. Please see the end of this kit for a list of these offices. If you are making an application in a region you can elect to have your application heard in the region or have your application heard in Perth. Having your application heard in Perth may mean that your application is dealt with more quickly as if your application is heard in the region you may need to wait for the court circuit which may be some months away.

If you are applying in the region but you would like your application heard in Perth you should let the staff at the court registry know.

What forms do I need?

The form that is needed to make this application is called a Notice of Motion. You will find this form in Part 2 of this kit. The form may also be available from the District Court registry office.

You must fill in your own form with all the information about your case. The following information will help you fill it in. You will have to type out or neatly print each form with all the information about your particular case.

If you have access to a computer and the Internet, you can download Word versions of the forms from the **Legal Aid WA website**: www.legalaid.wa.gov.au so that you may type in your information.

To make your application the first thing you must do is to file (hand in or post in) the following documents at the District Court Registry:

- Notice of Motion (1 original and 2 copies)
- your affidavit (1 original and 2 copies), and
- affidavits of people who have given you references or reports in support of your application (1 original and 2 copies of each).

How to complete the notice of motion

You can use the Notice of Motion form provided in Part 2 of this kit if you wish.

Front page

HELD AT _____	This is the place of the court where your application will be heard. It will be at Perth, or the regional court where you apply. Leave this blank. The court staff will fill this in when you file the documents.								
No:	Leave this blank. The court staff will give the application form a number when you file it.								
Matter:	Fill in your full name next to the word "Applicant". The Commissioner of Police is the other party and can make submissions to the Court in relation to your application. The Commissioner of Police will normally send a solicitor to the court hearing, and that solicitor will present the Commissioner's point of view, and provide any further information to the Court that may be relevant. Normally, a solicitor from the State Solicitor's Office will represent the Commissioner.								
Date of document/Date of filing, Name, Address, Telephone	Put 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.								
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. You will be able to fill in the details accurately from the information on your criminal record. You should put the information in columns showing the court, date, offence and penalty, as shown in the following example :								
<table border="1"> <thead> <tr> <th>Court Name</th> <th>Court Date</th> <th>Offence</th> <th>Penalty</th> </tr> </thead> <tbody> <tr> <td>PERTH DC</td> <td>22.12.1982</td> <td>Possess Quantity of Cannabis Resin With Intent To Sell/Supply</td> <td>2 yrs imprisonment minimum 5 mths</td> </tr> </tbody> </table>		Court Name	Court Date	Offence	Penalty	PERTH DC	22.12.1982	Possess Quantity of Cannabis Resin With Intent To Sell/Supply	2 yrs imprisonment minimum 5 mths
Court Name	Court Date	Offence	Penalty						
PERTH DC	22.12.1982	Possess Quantity of Cannabis Resin With Intent To Sell/Supply	2 yrs imprisonment minimum 5 mths						
	At the end of the list of your convictions, there is a request that the hearing not be held in public. You can ask for the hearing to be in public if you want to, however there is usually no reason why you would want this.								
Address and Signature of the Applicant	Write your address in the space provided. This is the address to which the solicitors for the Commissioner of Police will send any documents. Sign the form and date it.								

How to complete your affidavit

You can use the affidavit provided in Part 2 of this kit if you wish.

An affidavit is sworn or affirmed evidence in written form. 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. It is a criminal offence to swear or affirm something in an affidavit that you know is not true.

Use the affidavit at the back of this kit as a model for your own. You may neatly print your details on the front page of the affidavit; however, the body of the affidavit must be **typed**. Below are some instructions on how to fill out the affidavit.

After you have filled out the affidavit, you will need to take the affidavit and any annexures to an authorised witness to swear or affirm. Please see ***Who can witness your affidavit?*** below for a list of these people. Do not sign the affidavit until you are with the authorised witness.

Front page

No.	Leave this blank. The court staff will put in the same number as they put on the Notice of Motion form when you file it.
Between:	Put in your name as the Applicant. The Respondent is always The Commissioner of Police.
Affidavit of	Put in your name, because you are the person making out this particular affidavit.
Date of document/Date of filing, Name, Address, Telephone	Put in each of these details.

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 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 formatting requirements for your affidavit. These formatting 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
- 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" clause. The authorised witness will fill this out, when your affidavit is signed.

Your affidavit must conclude with a statement that indicates:

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

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		
	Description	Page No:
A	Criminal History	13 – 16

Who can witness your affidavit?

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

- a Justice of the Peace
- an experienced legal practitioner (a person who has been a legal practitioner for at least 2 years) so long as they have not assisted you in preparing the affidavit or with the proceedings to apply 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 and any mining registrar appointed under the *Mining Act 1978* (WA).

Signing and witnessing an affidavit

For your affidavit to be a legal document you will need to sign it in the presence of an authorised witness. It is important that you do not sign your affidavit until you are with the authorised witness.

Prior to signing the affidavit in the presence of an authorised witness, you will be required to say orally an oath or affirmation 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 is yours, and
- if necessary, that any attachment to the affidavit is the attachment referred to in the affidavit. You should take your annexures with you when you go to sign your affidavit.

You will need to sign the swearing clause on the last page of your affidavit and the bottom of every other page of your affidavit.

If you have made any handwritten changes to your affidavit you will need to sign or initial these changes.

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 other page of your affidavit
- sign or initial any handwritten changes that have been made to your affidavit

How other people (your witnesses) should complete affidavits in support of your case

A convenient way to get the information from other people (your witnesses) before the court in support of your case is to use the affidavit provided with this kit. This is a short standard form of affidavit.

Note: Anyone who provides an affidavit must be willing to go to court with you as a witness if necessary.

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 making out 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.

Some things that your witness must remember when they are writing their affidavit are:

- their affidavit must be written in the first person, using words like **I** and **me**
- their affidavit must state where they live and their occupation
- their affidavit must be divided into numbered paragraphs
- dates, sums and other numbers must be expressed in figures and not words
- each page of their affidavit, including any annexures must be consecutively numbered in the top right hand corner
- the information that they put in your affidavit should be within their own knowledge.

Each page

As with your affidavit, each page must comply with the formatting requirements listed under the heading **Each page** above.

Last page

As with your affidavit, the final part of your witnesses' affidavit is the "swearing" clause. The authorised witness will fill this out, when your affidavit is signed.

Your affidavit must conclude with a statement that says:

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

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 removal of driver's licence disqualification 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

	Description	Page No:
A	Letter of support for spent conviction application	13 – 16

Signing and witnessing an affidavit

The way your witness must sign and have their affidavit witnessed is the same as the process you completed to have your affidavit signed and witnessed. See the headings **Who can witness your affidavit?** and **Signing and witnessing an affidavit** above for an outline of this process.

I've completed my Notice of Motion and compiled the affidavits, what do I do next?

Filing the documents

Applications are made at the District Court, which has an office (**registry**) in Perth and at most major regional centres. See **Court Contacts and further information** at the end of this kit for a list of court registry locations.

An application is made by filling in the Notice of Motion form and affidavits and presenting them over the counter at the District Court Registry. You also can mail them to the Registry. This is called **filing the documents**. You must file:

- Notice of Motion (the original plus 2 copies)
- your affidavit (the original plus 2 copies), and
- affidavits in support (the original plus 2 copies).

Filing fee

There is a court fee for filing your application at the court. You must pay the filing fee by payment in person or 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.

You can apply for the fee to be reduced by lodging a **Form 2: Application to Reduce Fees** with your application. 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. You should provide a photocopy of your health care card or pension card with the Form 2.

If you have any questions about making an application for the fee to be reduced please contact the District Court.

Setting of hearing date

After the court registry staff receive your application 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 **listing the case**. This may happen immediately or after a short time.

Once a time and date is 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 on which 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.

Serving the documents

Once you have filed the Notice of Motion form and affidavits in support and received the copies back from the court, you will need to give the stamped copy of the Notice of Motion and affidavits to the Commissioner of Police. This is called **servicing the documents**. You must serve the stamped copy of the Notice of Motion and a copy of each affidavit on the Commissioner of Police by delivering them **by hand or by post** to this address:

WA Police Legal Service – Summons and Subpoena Unit
Level 4, 2 Adelaide Terrace
East Perth WA 6004

Keep the remaining copy of the Notice of Motion and affidavits for your records.

When you serve the documents on the Commissioner of Police you should also give them a letter. **A sample letter is at the end of this kit**. In your letter you can ask the Commissioner of Police to tell you whether he wants the other people who have sworn or affirmed affidavits to come to court for the hearing. **In general**, witnesses are not needed at the hearing, however, they may be needed in your case.

You should make an extra copy of your letter for your own records. When you go to the Commissioner of Police you should ask the person to whom you give the documents, to write on your copy of the letter that they have received the documents and ask them to write their name and sign and date it.

Affidavit of service

After you have served the Commissioner of Police you must complete an affidavit of service setting out how you served them with the application (ie by attending at their office). An affidavit of service is attached to this kit. You should annex (attach) to the affidavit the extra 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.

Tell your witnesses the date of the court hearing

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

Checklist for preparation and lodgement of court documents

- Legal advice as to whether conviction is a serious conviction
- Legal advice as to whether the waiting period has lapsed
- Obtained a copy of your Criminal History
- 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 Notice of Motion and signed it
- Completed your affidavit in support
 - Annexures attached as required and table at front of affidavit completed
 - Affidavit sworn in front of an authorised witness
- Have final affidavits of others who have done letters/references/reports which are signed and have been witnessed by an authorised witness
- Made 2 copies of:
 - Notice of Motion
 - Your affidavit and annexures
 - Other people's affidavits
- Lodged **original** and copies of each document with the registry of the **District Court**.
- Noted court date and time on your copy of the Notice of Motion.
- One copy of each document kept by you
- Completed covering letter to the Commissioner of Police.
- Enclosed sealed copies of Notice of Motion, your affidavit and other people's affidavits and served on the Commissioner of Police
- Filed your affidavit of service
- Told witnesses of court date and time
- Ensure that you keep a copy of all documents for your personal records

Before the hearing

The solicitors for the Commissioner of Police will 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 solicitors for the Commissioner of Police and want to check if they intend opposing your application contact the **WA Police Legal and Legislative Services** on **9263 2522**. The WA Police Legal and Legislative Services may then give you the contact details for the solicitor who will be appearing at the hearing.

If you can talk to the solicitor who is acting for the Commissioner of Police 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 particular trouble coming to court (your doctor or employer, for example) you could explain this. The solicitor can think about whether they really do need that person to come to court. You may not be able to talk to the solicitor acting for the Commissioner of Police until you go to court.

At the hearing

Go to the court building on the date on which your case has been listed. Locate your courtroom. Take copies of all the documents you have prepared and filed with you to court.

Solicitor may represent the Commissioner of Police

A solicitor usually represents the Commissioner of Police. The solicitor is entitled to oppose your application and submit to the judge that your application should not be granted. However, if the solicitor for the Commissioner of Police does not oppose your application, he or she will inform the judge. The judge will then be more likely to grant the application and make an order for a spent conviction.

If the solicitor for the Commissioner of Police opposes your application, your matter may be adjourned to another day for a hearing. At the hearing you may have to give spoken evidence. Your evidence will generally be the same as what you have said in your affidavit. The people who gave written evidence for you, by way of letters or references and reports attached to affidavits may also have to give spoken evidence.

You and the witnesses who give evidence on your behalf can be questioned by the judge and by the solicitor for the Commissioner of Police.

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 imposed when you were convicted
- the length of time since the conviction
- if the conviction staying on your record stops or may stop you from working in a particular profession, trade, business or employment
- if you have taken steps to rehabilitate yourself since you committed the offence
- if 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. However, the judge can order you to pay the Commissioner of Police's costs if satisfied that the application is 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 solicitors 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 the WA Police and to you. You do not need to do anything. You should then get a letter from the WA Police after the hearing. This should tell you that the court order has been noted on the police records.

If you do not get a letter from WA Police within one month, you can ring the **WA Police Information Release Centre** 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 spent conviction order

Having a Spent Conviction Order means that you may not have to tell anyone that you were charged with and convicted of an offence. However, in some situations you will still have to provide information about your convictions. Some of these situations are described below.

Discrimination

A spent conviction order may mean that people cannot discriminate against you for having a 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 order 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). 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 the 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 if you are:

- being considered for release by the Parole Board or the Supervised Release Review Board
- being considered for appointment as a Justice of the Peace
- being appointed or considered for appointment as a police constable, special constable, Aboriginal aide 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 Youth Justice Services or the Prisons Division of the Department of Justice (Corrective Services Division) when assessing, reporting about or classifying persons charged or convicted of offences
- a contract worker authorised under section 151 of the *Prisons Act 1981 (WA)* to perform the functions of a superintendent or a prison officer when 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)*
- applying to be licensed as a security agent, security officer, security consultant or security installer under the *Security and Related Activities (Control) Act 1996 (WA)*

- applying for the issue of a licence under the *Firearms Act 1973 (WA)*
- authorised or being considered for authorisation to exercise a Schedule power under the *Court Security and Custodial Services Act 1999 (WA)*
- 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 and Family Support Division) 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 and Family Support Division), 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
- employed or being considered for employment in the Disability Services Commission
- employed or being considered for employment with an organisation that is funded by the Disability Services Commission.

This is not a comprehensive list and so you should **get legal advice** as to your particular circumstances before proceeding with the application.

Exceptions for certain convictions for the protection of children

There are special considerations in disclosing a conviction that has been spent for certain jobs involving children. If you are employed or seeking employment in certain jobs, an employer or a prospective employer can ask you to disclose all convictions for certain offences and may lawfully discriminate against you if you have a conviction for one of these offences. This applies even if a spent conviction order was made. Offences that must be disclosed, even if a spent conviction order has been made include:

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

The type of jobs where you will have to disclose a conviction for one of the above offences even if it has been spent include:

- any form of employment normally carried out wholly or partly within the precincts of a:
 - care centre
 - pre-school centre, or
 - place where a child care service is conducted or carried on
- being considered for participation in the safety house scheme organised by the Safety House Association of WA

- being assessed for suitability for adoptive parenthood, or
- being employed or considered for employment by the Department of Sport and Recreation.

Working with Children Check

A Working with Children Check is a national criminal record check that is compulsory for people who carry out **child-related work** in Western Australia. If you have applied for a working with children check a criminal record check is made.

A criminal record check will provide information about every:

- conviction (including some juvenile convictions) against you for an offence in WA or anywhere else in Australia
- charge laid against you for an offence in WA or anywhere else in Australia, and
- pending charges against you for specific offences in WA or anywhere else in Australia.

A criminal record check will also include information about any conviction that has been spent in WA or anywhere else in Australia.

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

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 conviction that has been spent and you are not sure whether you have to disclose it you should seek legal advice as soon as possible.

Court etiquette

Be on time – The time should be written on your Notice of Motion. 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 any sunglasses or hats. You will not be allowed into court in a singlet or without shoes.

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

Court room behaviour – When entering and leaving the courtroom it is customary to 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, otherwise remain quietly seated. Address the judge as “Your Honour”.

Court contacts and further information

Courts

Perth District Court
500 Hay Street
PERTH WA 6000
Ph. (08) 9425 2344
Fax. (08) 9425 2268

Country courthouses with a District Court registry office

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

Other addresses

WA Police Information Release Centre
Western Australia Police
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 **Information About the Law**.

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 by conducting a search of Legal Aid WA's website: www.legalaid.wa.gov.au using the title of this Kit.

TELEPHONE INFOLINE: 1300 650 579 (General Enquiries)

Infoline open Monday to Friday 9.00 am to 4.00 pm
(Australian Western Standard Time) except public holidays

Translating and Interpreting Service 131 450
National Relay Service (for hearing and speech impaired) 133 677
www.legalaid.wa.gov.au

Perth Office

32 St Georges Terrace
Perth, WA 6000
1300 650 579
(08) 9261 6222

Southwest Regional Office

7th 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

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

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