



# APPLICATION FOR SPENT CONVICTION ORDER

**Magistrates Court of South Australia**

[www.courts.sa.gov.au](http://www.courts.sa.gov.au)

*Spent Convictions Act 2009*

Sections 8A, 8B, and 8C

### Court Use

Date Filed:  
Date Posted:  
Service on the Attorney-General:  
Service on the Commissioner of Police:

Registry				Action No	
Address	Street		Telephone		Facsimile
	City/Town/Suburb		State	Postcode	DX
Email Address					

### Applicant

Full Name					DOB
					<i>dd/mm/yyyy</i>
Address	Street		Telephone		Facsimile
	City/Town/Suburb		State	Postcode	DX
Email Address					

File number to which the conviction relates:

Is the Applicant the convicted person?  Yes  No

If no, please identify your relationship to the convicted person:

- The convicted person's spouse or domestic partner
- An adult sibling or child of the convicted person
- The convicted person's guardian
- The executor or administrator of the convicted person's estate
- Other – please detail your relationship to the convicted person below:

*Note: a person specified by Schedule 2, clause 1A of the Spent Convictions Act 2009 may apply on behalf of the convicted person to have a conviction for a designated sex-related offence or a conviction for a prescribed public decency offence spent if the convicted person is deceased or is a person with a mental incapacity (section 8B(2) and section 8C(2)).*

### Convicted Person

*Note: The convicted person's details must be provided if the applicant is not the convicted person. If the applicant is the convicted person, this section can be left blank.*

Full Name				DOB	
					<i>dd/mm/yyyy</i>
Address	Street				
	City/Town/Suburb		State	Postcode	

### NOTICE TO THE APPLICANT

Regulation 5A of the *Spent Convictions Regulations 2011* provides the details and accompanying documents that an application under section 8A, section 8B or section 8C of the *Spent Convictions Act 2009* must set out or include. Please ensure that you have included all the required details and accompanying documents in your application.

## Details of Spent Conviction Application for Eligible Sex Offence (section 8A)

The applicant is applying to have the following eligible sex offence/s spent:

### First offence

Offence (including the statutory provision of the offence):

Court name where the conviction was recorded:

Date the conviction was recorded:

Penalty that was imposed:

### Second offence

Offence (including the statutory provision of the offence):

Court name where the conviction was recorded:

Date the conviction was recorded:

Penalty that was imposed:

Details of any further information that the applicant would like to submit in support of the application (circumstances and seriousness of offence, the circumstances of the applicant etc.)

The decision to make an order under section 8A of the *Spent Convictions Act 2009* is at the discretion of the qualified magistrate. The matters that a qualified magistrate must have regard to when deciding whether to make an order are set out in section 8A(5) of the *Spent Convictions Act 2009*. Please include in your application any matters under section 8A(5) that may be relevant to your application. Section 8A is included at the back of this Form.

Has an application been made to spend any of the above convictions in the preceding 2 years?      Yes       No

If yes, please provide the following details:

The conviction the application was in regard to:

The application was made on the                  day of    20

The application was refused on the                  day of    20

Any further information the applicant considers relevant

## Details of Spent Conviction Application for Designated Sex-Related Offence (section 8B)

The applicant is applying to have the following designated sex-related offence/s spent:

### First offence

Offence (including the statutory provision of the offence or a description of the common law offence):

Court name where the conviction was recorded:

Date the conviction was recorded:

### Second offence

Offence (including the statutory provision of the offence or a description of the common law offence):

Court name where the conviction was recorded:

Date the conviction was recorded:

Details of any further information that the applicant would like to submit in support of the application (e.g. circumstances of the offence)

The qualified magistrate must be satisfied that the offence is a designated sex-related offence and the conduct engaged in by the convicted person or constituting the offence would not, at the time the application is considered, constitute an offence under the law of the State (section 8B(5)). The qualified magistrate must have regard to the matters set out in section 8B(6) of the *Spent Convictions Act 2009* in determining whether the conduct engaged in or constituting the offence is, at the time of the application, an offence under the law of South Australia. Please include in your application any matters under section 8B(5) or 8B(6) that may be relevant to your application. Section 8B is included at the back of this Form.

## Details of Spent Conviction Application for Prescribed Public Decency Offence (section 8C)

The applicant is applying to have the following prescribed public decency offence/s spent:

### First offence

Offence (including the statutory provision of the offence or a description of the common law offence):

Court name where the conviction was recorded:

Date the conviction was recorded:

### Second offence

Offence (including the statutory provision of the offence or a description of the common law offence):

Court name where the conviction was recorded:

Date the conviction was recorded:

Details of any further information that the applicant would like to submit in support of the application (e.g. circumstances of the offence)

The qualified magistrate must be satisfied of the matters in section 8C(6) of the *Spent Convictions Act 2009*. The qualified magistrate must have regard to the matters set out in section 8C(8) of the *Spent Convictions Act 2009* in determining whether the conduct engaged in or constituting the offence is, at the time of the application, an offence under the law of South Australia. Please include in your application any matters under sections 8C(6) or 8C(8) that may be relevant to your application. Section 8C is included at the back of this Form.

.....  
Date

.....  
APPLICANT

<b>Hearing details</b>	Registry		Date
	Address		Time am/pm
	Telephone	Facsimile	Email Address

### NOTICE TO APPLICANT

If you have any transcript or sentencing remarks made in connection with the above conviction/s or findings these must be attached to the application.

Rule 61.01 of the *Magistrates Court Rules 1992* requires that you must attach a National Police Check to the application. Only a National Police Check processed within 6 months before the date of filing the application will be accepted.

You do not need to attend the hearing unless you are notified to do so by the Registrar.

**NOTICE TO THE ATTORNEY-GENERAL AND COMMISSIONER OF POLICE**

If you wish to intervene and request a hearing in these proceedings you must notify the applicant and the Registrar in writing 7 days before the hearing date.

**IMPORTANT NOTICE TO THE REGISTRAR**

A copy of this application must be served on the Attorney-General and the Commissioner of Police at least 4 weeks before the day appointed for hearing the application.

Where a qualified Magistrate requires the attendance of the applicant, all potential parties must be notified at least 7 days prior to the hearing date.

## RELEVANT SECTIONS OF THE *SPENT CONVICTIONS ACT 2009*

### 8A—Spent conviction for an eligible sex offence

- (1) A conviction for an eligible sex offence is spent if, on application by the convicted person in accordance with the regulations, a qualified magistrate makes an order that the conviction is spent.
- (2) An application for an order under this section in respect of a conviction—
  - (a) may not be made until the completion of the qualification period for the conviction; and
  - (b) may not be made if a qualified magistrate has refused to make an order under this section in respect of the same conviction within the preceding 2 years.
- (3) An application under this section may not be made in respect of a conviction for an offence against the laws of another jurisdiction.
- (4) Schedule 2 applies to an application under this section and to proceedings on an application.
- (5) The making of an order under this section is at the discretion of the qualified magistrate and that discretion will be exercised having regard to—
  - (a) the nature, circumstances and seriousness of the offence; and
  - (b) if a victim impact statement was furnished to the sentencing court in connection with the sentencing of the applicant for the offence (and that statement is available to the qualified magistrate)—anything referred to in that statement; and
  - (c) any penalty imposed, and any other order or requirement made or imposed by a court, in relation to the offence; and
  - (d) the length of time since the conviction; and
  - (e) all the circumstances of the applicant, including the circumstances of the applicant at the time of the commission of the offence and at the time of the application and whether the applicant appears to have rehabilitated and to be of good character; and
  - (f) whether the spending of the conviction and the non-disclosure of the offence to other persons by operation of an order under this section might present a risk to the public (and, if so, the extent of that risk); and
  - (g) whether there is any other public interest served in not making the order; and
  - (h) any other matter considered relevant by the qualified magistrate.

### 8B—Spent conviction for designated sex-related offence

- (1) A conviction for a designated sex-related offence is spent if, on application in accordance with the regulations, a qualified magistrate makes an order in accordance with subsection (5) that the conviction is spent.
- (2) The following persons may apply for an order under this section:
  - (a) the convicted person;
  - (b) a person specified in Schedule 2 clause 1A, in the circumstances specified.
- (3) An application under this section may not be made in respect of a conviction for an offence against the laws of another jurisdiction.
- (4) Schedule 2 applies to an application under this section and to proceedings on an application.
- (5) A qualified magistrate must make an order that a conviction for an offence is spent if satisfied that—
  - (a) the offence is a designated sex-related offence; and
  - (b) the conduct engaged in by the convicted person or constituting the offence would not, at the time the application is considered, constitute an offence under the law of the State.
- (6) In considering matters in subsection (5)(b) relating to an offence that falls within the ambit of paragraph (c) or (d) of the definition of **designated sex-related offence** (or an offence of attempting, or of conspiracy or incitement, to commit such an offence), the qualified magistrate must have regard to—
  - (a) whether any person involved in the conduct that was the subject of the conviction did or did not consent to the conduct; and
  - (b) the ages and respective ages of any persons involved in the conduct that was the subject of the conviction; and
  - (c) any other matter the qualified magistrate reasonably considers relevant in the circumstances.

### 8C—Spent conviction for prescribed public decency offence

- (1) A conviction for a prescribed public decency offence is spent if, on application in accordance with the regulations, a qualified magistrate makes an order in accordance with subsection (6) that the conviction is spent.
- (2) The following persons may apply for an order under this section:
  - (a) the convicted person;
  - (b) a person specified in Schedule 2 clause 1A, in the circumstances specified.
- (3) An application under this section may not be made in respect of a conviction for an offence against the laws of another jurisdiction.
- (4) An application for an order under this section may be made irrespective of whether the conviction the subject of the application has been spent under section 8.

- (5) Schedule 2 applies to an application under this section and to proceedings on an application.
- (6) A qualified magistrate must make an order that a conviction for an offence is spent if satisfied that—
  - (a) the offence is a prescribed public decency offence; and
  - (b) the convicted person would not have been charged with the offence but for the fact that the conduct engaged in by the person or constituting the offence was suspected of being, or being connected to, homosexual activity; and
  - (c) the conduct engaged in by the convicted person or constituting the offence would not, at the time the application is considered, constitute an offence under the law of the State.
- (7) Despite the fact that a conviction for a prescribed public decency offence may be spent under section 8, the qualified magistrate may make an order under subsection (6) that the conviction is spent under this section and, accordingly, the order applies for the purposes of Schedule 1 clause a1(1)(c).
- (8) In considering matters in subsection (6)(c), the qualified magistrate must have regard to the following:
  - (a) whether any person involved in the conduct that was the subject of the conviction did or did not consent to the conduct;
  - (b) the ages and respective ages of any persons involved in the conduct that was the subject of the conviction;
  - (c) any other matter the qualified magistrate reasonably considers relevant in the circumstances.