

Removing historical homosexual convictions

Certain criminal convictions can be removed from your record. The law that covers removing convictions in South Australia is the *Spent Convictions Act 2009* (**the SCA**). Removing a conviction is called 'spending' it.

Spent convictions do not appear on a police records check and do not have to be disclosed if you are asked about your criminal history. The spent conviction is not a proper ground for refusing you an appointment or position, or dismissing you from an appointment or position. There are exceptions to these rules, but they do not apply to the types of spent convictions discussed in this fact sheet.

Many different types of offence can be removed under the SCA, but there are special provisions to remove convictions for homosexual behaviour, to recognise that homosexual activity between consenting adults **should never have been a crime**. This fact sheet explains the process for applying to spend a historical homosexual conviction.

To spend a historical homosexual conviction, you will need to apply to a Magistrate. Usually they can decide your application based on the documents you submit and you will not have to see the Magistrate in person (a **hearing**). See **Do I have to go to Court?** (on page 4) for more information.

Which historical homosexual convictions can be spent?

- Decriminalised sexual offences:

*Note - These are the legal names of the offences that used to apply, although today many of these words are considered offensive. We use them here for legal accuracy only. If the words cause you distress, see **Where can I get emotional support during the process?** (on page 4).

- Buggery
 - Gross indecency by a male person with another male person
 - Procuring or attempting to procure an act of buggery or gross indecency between two other persons
 - Soliciting with a view to inducing another person to commit an act of buggery or gross indecency, if doing so causes offence to the other person
 - Any other offence involving consenting adults (or in some cases 16 or 17 year olds) engaging in sexual intercourse, or another form of sexual activity.
- Public decency offences:
 - In the past, the police and courts used public order offences to punish behaviour related to homosexuality. For example, charges of 'disorderly or offensive behaviour' or 'offensive language' were used.
 - If you were convicted of a non-sexual offence and you think you were only charged because your behaviour was related to homosexuality, you can apply to have it removed. It may have already been automatically removed for some purposes, however if you make an application you can have it removed for all purposes.

If you aren't sure whether your conviction is eligible to be spent, you should seek legal advice. See **Where can I get help to apply to spend a historical homosexual conviction?** (on page 4).

What do I have to prove to have the offence spent?

The Magistrate will need to be sure that your actions would no longer be a crime today. For sexual offences, the Magistrate will need information about the age of any other person involved in the sexual activity, and whether they consented to the activity.

If you are asking the Magistrate to spend a public decency offence, they will also have to be satisfied that you were only charged with the offence because your actions were considered to be related to homosexuality.

You are not required to show good behaviour or rehabilitation and you are not required to justify your behaviour to anyone. You simply have to show that what you did at the time is no longer a crime today.

The Magistrate will only consider whether your own actions would still be a crime; it does not matter if another person's behaviour would still be a crime (for example, if another person involved in the sexual activity was over 17 and you were under 17).

Who can apply?

Normally, the person who was convicted must apply. However, if that person has passed away or has a mental incapacity, someone can apply on their behalf. This person can be:

- Their spouse, domestic partner, or adult sibling or child
- A person appointed as their guardian (if they are incapacitated)
- A person appointed as the executor or administrator of their estate (if they are deceased)
- Any other person that the Magistrate considers is appropriate to make the application.

How do I apply?

You will need to fill out the Magistrates Court Criminal Form 110. This can be obtained by:

- downloading it from the website www.courts.sa.gov.au
- writing to the Courts at the following address to request a copy of the form:
The Registrar
Adelaide Magistrates Court
PO Box 6115, Halifax Street
Adelaide SA 5000
- Attending the Magistrates Court in person to request a copy of the form. Call the Court on (08) 8204 2444 to ask about your nearest court location.

You will need to lodge your form in person by attending the Magistrates Court and lodging the form at a registry counter.

What information needs to be included?

When you fill out the form, you will need to state:

- Your name, date of birth, address and contact details
- If you are applying on someone's behalf:
 - the name, date of birth and address (if applicable) of the convicted person; and
 - your eligibility to apply on behalf of the convicted person
- details of the conviction you want removed, including:
 - identifying the offence you were convicted for
 - the name of the court where the conviction was recorded
 - the date on which the conviction was recorded
- information explaining the circumstances that led to your conviction and that shows why your conduct would no longer be considered a crime.

If you do not have some of these details, see the section below **I don't remember the details of my conviction - how do I find them?**

You will need to attach a National Police Check to your application, which can be obtained online or by applying at a police station. You need 100 points of identification to obtain the police check. The National Police Check must have been processed within the 6 months prior to the application.

You must also attach any transcript or copy of sentencing remarks from the original court proceedings, if you have them in your possession. However, if you do not have them, you are not required to obtain them.

What does it cost to apply?

The application to spend the conviction is free. However, there will be a cost for obtaining your National Police Check.

I don't remember the details of my conviction - how do I find them?

Your National Police Check will have some of the relevant details.

You can also contact the Courts Administration Authority about accessing Court records. You will need to provide them with as much information as you can recall to help them locate the relevant files. This will include your name, your date of birth, your address at the time of offending, and anything you can recall about the conviction, such as the year, where the Court was located and what the charge was.

You can contact the Courts on (08) 8204 2444 or email enquiry@courts.sa.gov.au.

Who will be told about my application?

Your privacy will be respected throughout this process. However, the Attorney-General and the Commissioner of Police will be told about your application confidentially.

You may be sent letters or emails about your application. If you are concerned about privacy, you should try to arrange a postal or email address that only you have access to, and list this as your contact address on the application.

Do I have to go to Court?

You might not have to go to Court and see the Magistrate in person (a **hearing**). The SCA allows the Magistrate to decide your application based only on documents if they think it is appropriate and if the Attorney-General or Commissioner of Police do not object.

If you do need to attend a hearing, the Court will notify you of the time and date. The hearing must be held in private unless you consent to a public hearing or if the Magistrate decides that in the circumstances the hearing should be public.

Where can I get help to apply to spend a historical homosexual conviction?

- The Legal Services Commission, telephone 1300 366 424
- A community legal centre
- A private lawyer (for referrals call the Law Society on 8229 0200). You will be responsible for the fees of a private lawyer.

Where can I get emotional support during the process?

Reliving the time you were convicted for homosexual conduct might be distressing. If you require support, you may wish to contact one of the following services:

- Council On The Ageing SA, Rainbow Hub for information and referral phone (08) 8232 0422
- QLife, phone 1800 184 527 (3pm to midnight daily)
- Lifeline, phone 13 11 14

