



# Privacy fact sheet 41

## Commonwealth spent convictions scheme

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The Commonwealth spent convictions scheme (the Scheme) allows an individual not to disclose certain criminal convictions in particular circumstances, and prohibits unauthorised use or disclosure of information about the conviction. The Scheme applies to convictions for less serious Commonwealth, state (including the Northern Territory and ACT) and foreign offences. It also covers pardons and quashed convictions. A conviction for a state offence may also be covered by a spent conviction scheme in the relevant state or territory.

### When is a conviction covered by the Scheme?

The Scheme is outlined in [Part VIIC of the Crimes Act 1914](#) (Part VIIC). Rights and obligations under the Scheme arise where an individual is convicted of a less serious Commonwealth, state or foreign offence and

- it is a 'spent conviction', or
- the individual has been granted a 'pardon' in relation to that conviction, or
- the conviction has been 'quashed'.

Importantly, the Scheme generally does not apply to more serious convictions, where the individual has been sentenced to imprisonment for more than 30 months.

In this context, a pardon means a free and absolute pardon granted to an individual because he or she was wrongly convicted of an offence. A quashed conviction is a conviction that a court has set aside.

For the purposes of the Scheme, an individual is taken to have been convicted of an offence if:

- they have been convicted of the offence, or

- they have been found guilty of the offence but discharged without conviction, or
- they have not been found guilty of the offence but a court has taken it into account in sentencing them for another offence.

Importantly, the scope of rights and obligations under the Scheme will vary depending on:

- whether the conviction is for a Commonwealth, state or foreign offence,
- who knows or is being told about a spent conviction, and
- where the person being told is located.

### When is a conviction spent?

Under the Scheme an individual's conviction is spent where:

- (a) the individual has been granted a pardon for a reason other than that the individual was wrongly convicted of the offence, or
- (b) the individual was not sentenced to imprisonment for the offence (or not imprisoned for more than 30 months) and the waiting period for the offence has ended.

The waiting period is ten years beginning on the day on which the individual was convicted of the offence, or five years in the case of a juvenile offender (generally being a person under the age of 18 except in Queensland where it is under the age of 17).

The waiting period is intended to demonstrate that an individual has been of ‘good behaviour’ since being convicted.

An individual who is convicted of a further offence committed during the waiting period will generally lose the right to have the earlier conviction treated as spent until the waiting period for the later conviction is ended.

### When does an individual have a right not to disclose their conviction?

Broadly speaking, the Scheme gives an individual the **right not to tell** another person

or authority about the existence of their spent conviction (a right of non-disclosure).

This includes the right to claim on oath that the individual was not charged with or convicted of the offence.

However, the right of non-disclosure is a limited right. As explained in the table below, whether an individual has the right to not disclose their conviction will vary according to whether the conviction was for a Commonwealth, state or foreign offence, and the location and nature of the person or authority that is receiving information about the individual’s conviction history.

These three factors determine the persons and authorities to which the individual is permitted to **not** disclose the existence of the spent conviction.

**Table 1: Who can an individual not tell about their spent conviction?**

Type of conviction	Recipient located in Australian external territory or Jervis Bay Territory <sup>1</sup>	Recipient located in State <sup>2</sup> (including the ACT and Northern Territory)	Recipient located in Foreign country
Conviction for a Commonwealth offence or an offence of an Australian external territory or Jervis Bay Territory	Any person	Any person	Commonwealth or state authority <sup>3</sup>
Conviction for a state offence (including ACT and Northern Territory offences)	Any person	Commonwealth authority	Commonwealth authority
Conviction for a foreign offence	Any person	Commonwealth authority	Commonwealth authority

<sup>1</sup> For further information on Australian Territories please see <http://www.regional.gov.au/territories/>.

<sup>2</sup> For clarity – offices of Commonwealth authorities are usually located in a ‘state’ (for these purposes including the ACT or NT).

<sup>3</sup> Commonwealth authority includes a Commonwealth Minister, Commonwealth Department Commonwealth statutory office, body or tribunal, the Defence Force, a federal court, the Supreme Court of the ACT and the Australian Federal Police. A similar definition applies in relation to State authorities.

## What obligations apply to persons and authorities that handle information about convictions?

It is unlawful for a person or authority to disclose an individual's spent conviction or take it into account **where the individual has a right of non-disclosure** (that is, a right to not disclose the fact that they were charged with or convicted of the offence, as set out in Table 1 above).

In some circumstances the prohibitions on use and disclosure do not apply, for example those involving people who work with children (for more information, see discussion below).

### Commonwealth convictions

**Anyone** who knows, or who could reasonably be expected to know, that a conviction in relation to a **Commonwealth** offence is spent is prohibited from disclosing the fact that the individual was charged with, or convicted of, the offence to:

- any other person (including a state or Commonwealth authority) in a state, Australian external territory or Jervis Bay Territory
- a state or Commonwealth authority in a foreign country.

### State convictions

**Anyone** who knows, or who could reasonably be expected to know, that a conviction for a **state** offence (including a conviction under an ACT or Northern Territory law) is spent is prohibited from disclosing the fact that the individual was charged with, or convicted of, the offence to:

- any other person (including a state or Commonwealth authority) in an Australian external territory or Jervis Bay Territory

- a Commonwealth authority in a state or foreign country.

### Foreign convictions

**Anyone** who knows, or who could reasonably be expected to know, that a conviction for an offence of another country is spent, is prohibited from disclosing the fact that the individual was charged with, or convicted of, the offence to:

- any other person (including a state or Commonwealth authority) in an Australian external territory or the Jervis Bay Territory
- a Commonwealth authority in a state or foreign country.

## When must a spent conviction not be taken into account?

Where an individual has a right not to disclose the existence of a spent conviction in particular circumstances or for a particular purpose, **anyone** else who knows or could reasonably be expected to know that the conviction is spent cannot take account of it in those circumstances or for that purpose.

For example, where an individual inadvertently discloses information about a conviction during an interview, in circumstances where they have a right not to disclose that information, the Scheme would prevent the authority from using that information in assessing the individual's eligibility for employment, unless an exclusion applies.

## Obligations related to quashed convictions and pardons

Similar obligations apply in relation to quashed or pardoned convictions. However, there is no restriction on the types of convictions that may be quashed or pardoned (including more serious convictions, where the individual was

sentenced to imprisonment for more than 30 months). Additionally, the waiting period does not apply to quashed or pardoned convictions.

### What if the individual consents to the disclosure?

If the individual consents to having their spent, quashed or pardoned conviction (or the fact that they were charged with the offence) disclosed, the prohibitions described above will not apply.

### Exclusions

In some cases an individual will **not have a right to withhold information about a conviction** that otherwise meets the requirements to be spent.

Similarly, some persons and authorities are permitted to request, disclose and take information on spent convictions into account in **limited circumstances**.

The most important exclusion from the Scheme enables a person who is assessing an individual's suitability to **work with children** to obtain, disclose and use information about that individual's spent conviction.

Other important exclusions relate to:

- law enforcement agencies for the purpose of:
  - making decisions in relation to prosecution or sentencing matters
  - assessing prospective employees and consultants
  - making certain disclosures to another law enforcement agency
- AUSTRAC and intelligence or security agencies, for the purpose of assessing prospective employees and consultants

- courts or tribunals making decisions, including sentencing decisions
- a person who makes a decision under *the Australian Citizenship Act 2007* or the *Migration Act 1958*.<sup>4</sup>

### Interaction with the Privacy Act

Entities that are subject to the *Privacy Act 1988* must also ensure that they comply with their obligations under the Privacy Act when handling information about individuals' criminal convictions, for example, in relation to keeping the information secure and up to date.

Authorities and persons who are not covered by the Privacy Act will still be subject to the provisions of Part VIIC; for example, small business operators.

### What happens if someone has not complied with the Scheme?

An individual who believes that a **person** or a **Commonwealth or state authority** has breached the provisions of Part VIIC can [complain to the Office of the Australian Information Commissioner](#).

In addition the [Australian Human Rights Commission can investigate a complaint](#) about discrimination in employment based on a criminal record.

#### For further information

**telephone:** 1300 363 992

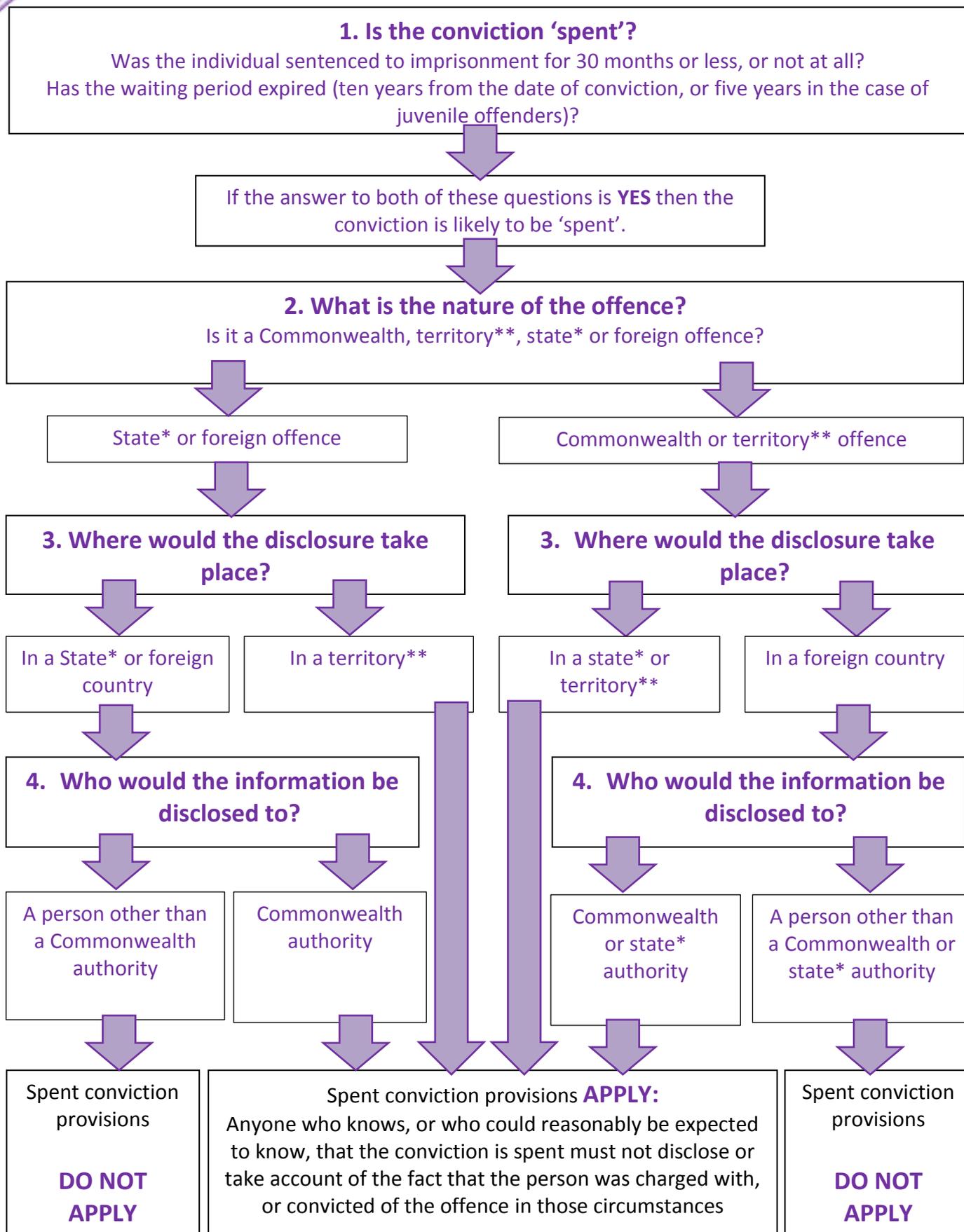
**email:** [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)

**write:** GPO Box 5218, Sydney NSW 2001

Or visit our website at [www.oaic.gov.au](http://www.oaic.gov.au)

<sup>4</sup> For detailed information about exclusions see [Part VIIC, Division 6 of the Crimes Act 1914](#) and Regulations 7A and 8 and Schedule 3 of the [Crimes Regulations 1990](#).

## Commonwealth spent convictions scheme: A step-by-step guide



\*Note: a reference to a state includes a reference to the ACT and the Northern Territory.

\*\* For the purposes of the Scheme, 'territory' means an Australian external territory or the Jervis Bay Territory.