



APPLICATION FOR SPENT CONVICTION ORDER and/or EXEMPTION ORDER

Magistrates Court of South Australia

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Spent Convictions Act 2009

Section 8A and 13A

Court Use

Date Filed:

Date Posted:

Service on the
Attorney-General:

Service on the
Commissioner of Police:

Service on the designated
Minister:

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

Applicant

| | | | | | |
|-----------|---------------|------------------|-----------|-------|-----------|
| Full Name | | | | DOB | |
| | dd/mm/yyyy | | | | |
| Address | Street | | Telephone | | Facsimile |
| | DX | City/Town/Suburb | | State | Postcode |
| | Email Address | | | | |

NOTICE TO THE APPLICANT

Regulation 5A of the *Spent Convictions Regulations 2011* provides the details and accompanying documents that an application under section 8A or section 13A 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 (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) and 8A(6) of the *Spent Convictions Act 2009*. Please include in your application any matters under section 8A(5) or section 8A(6) 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 Exemption Application (section 13A)

The applicant is applying to have the following spent conviction/s exempt:

First offence

Offence (including the statutory provision of the offence):

Court name where the conviction was recorded or finding of guilt was made:

Date the conviction was recorded or finding of guilt was made:

Date the conviction became spent (this date is the date the finding of guilt was made if the conviction was immediately spent pursuant to section 4(1a) of the *Spent Convictions Act 2009*):

Penalty that was imposed (if applicable):

For the purpose/s of:

- working with, or caring for, vulnerable people (sch 1, cl 7)
- activities associated with a character test (sch 1, cl 8)

Second offence

Offence (including the statutory provision of the offence):

Court name where the conviction was recorded or finding of guilt was made:

Date the conviction was recorded or finding of guilt was made:

Date the conviction became spent (this date is the date the finding of guilt was made if the conviction was immediately spent pursuant to section 4(1a) of the *Spent Convictions Act 2009*):

Penalty that was imposed (if applicable):

For the purpose/s of:

- working with, or caring for, vulnerable people (sch 1, cl 7)
- activities associated with a character test (sch 1, cl 8)

Space for additional offences is available in the attachment to this Form

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 13A 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 13A(6) of the *Spent Convictions Act 2009*. Please include in your application any matters under section 13A(6) that may be relevant to your application. Section 13A is included at the back of this Form.

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

If yes, please provide the following details:

The conviction or finding of guilt 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

.....
Date

.....
APPLICANT

| | | | |
|------------------------|-----------|-----------|---------------|
| Hearing details | 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, COMMISSIONER OF POLICE AND DESIGNATED MINISTER

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.

If an exemption order application is made for the purpose of working with or caring for vulnerable people, the designated Minister must also be served with a copy of this application 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.

Additional Details of Exemption Application

Offence

Offence (including the statutory provision of the offence):

Court name where the conviction was recorded or finding of guilt was made:

Date the conviction was recorded or finding of guilt was made:

Penalty that was imposed (if applicable):

Date the conviction became spent (this date is the date the finding of guilt was made if the conviction was immediately spent pursuant to section 4(1a) of the *Spent Convictions Act 2009*):

For the purpose/s of:

working with, or caring for, vulnerable people (sch 1, cl 7)

activities associated with a character test (sch 1, cl 8)

Offence

Offence (including the statutory provision of the offence):

Court name where the conviction was recorded or finding of guilt was made:

Date the conviction was recorded or finding of guilt was made:

Penalty that was imposed (if applicable):

Date the conviction became spent (this date is the date the finding of guilt was made if the conviction was immediately spent pursuant to section 4(1a) of the *Spent Convictions Act 2009*):

For the purpose/s of:

- working with, or caring for, vulnerable people (sch 1, cl 7)
- activities associated with a character test (sch 1, cl 8)

Offence

Offence (including the statutory provision of the offence):

Court name where the conviction was recorded or finding of guilt was made:

Date the conviction was recorded or finding of guilt was made:

Penalty that was imposed (if applicable):

Date the conviction became spent (this date is the date the finding of guilt was made if the conviction was immediately spent pursuant to section 4(1a) of the *Spent Convictions Act 2009*):

For the purpose/s of:

- working with, or caring for, vulnerable people (sch 1, cl 7)
- activities associated with a character test (sch 1, cl 8)

Offence

Offence (including the statutory provision of the offence):

Court name where the conviction was recorded or finding of guilt was made:

Date the conviction was recorded or finding of guilt was made:

Penalty that was imposed (if applicable):

Date the conviction became spent (this date is the date the finding of guilt was made if the conviction was immediately spent pursuant to section 4(1a) of the *Spent Convictions Act 2009*):

For the purpose/s of:

- working with, or caring for, vulnerable people (sch 1, cl 7)
- activities associated with a character test (sch 1, cl 8)

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 13A 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 13A(6) of the *Spent Convictions Act 2009*. Please include in your application any matters under section 13A(6) that may be relevant to your application.

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 (subject to subsection (6)) 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.
- (6) In the case of a designated sex-related offence, the qualified magistrate may make an order under this section without reference to any matters set out in subsection (5) if the qualified magistrate is satisfied—
 - (a) that the offence is a designated sex-related offence; and
 - (b) that the conduct constituting the offence has ceased, by operation of law, to be an offence.

13A—Exclusions may not apply

- (1) A person in relation to whom a conviction for an offence is spent may apply to a qualified magistrate for an order that 1 or more of clauses 7 and 8 of Schedule 1 do not apply in relation to the offence.
- (2) An application under this section must be made in accordance with the regulations.
- (3) An application for an order under this section in relation to an offence may not be made if a qualified magistrate has refused to make an order under this section in relation to the same offence within the preceding 2 years.
- (4) An application under this section may not be made in respect of a conviction for an offence against the laws of another jurisdiction.
- (5) Schedule 2 applies to an application under this section and to proceedings on an application.
- (6) 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
 - (c) in the case of an application that relates to clause 7 of Schedule 1—if the offence involved a vulnerable person or persons; and
 - (d) 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
 - (e) any penalty imposed, and any other order or requirement made or imposed by a court, in relation to the offence; and
 - (f) 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
 - (g) whether the removal of the exclusion by operation of an order under this section might present a risk to children, vulnerable persons or the public more generally (and, if so, the extent of that risk); and
 - (h) whether there is any public interest served in not making the order; and
 - (i) any other matter considered relevant by the qualified magistrate.
- (7) An order under this section will have effect according to its terms.
- (8) An order under this section does not limit the operation of clause 9A of Schedule 1 in any respect.

