

# FIT AND PROPER PERSON DECLARATIONS



This Fact Sheet, December 2017, is provided to potential members and accredited individuals, and renewing members and accredited individuals, of Exercise & Sports Science Australia ('ESSA') as general information in relation to the declarations you are required to sign to satisfy ESSA's requirement that you are a 'fit and proper person'.

The advice contained in this Fact Sheet is general advice. It is not intended to be, and should not be interpreted as, legal advice. Each individual's situation is unique and will be considered by ESSA on a case by case basis. If, after reading this Fact Sheet, you still have questions regarding how the declarations apply to you, it is recommended that you seek independent legal advice prior to signing the declarations.

## FIT AND PROPER PERSONS

Under ESSA's Constitution and ESSA's Accreditation Regulations for Individuals, ESSA may only admit 'fit and proper persons' as members or accredited individuals. In determining if an individual is 'fit and proper', the ESSA Board will give regard to whether the person has any:

- prior convictions; or
- prior ethics and disciplinary penalties as determined by ESSA, other professional bodies, regulatory boards or complaint commissions/Office of the Health Ombudsman or their equivalent jurisdictional bodies.

## MANDATORY DECLARATIONS

At the time of initial membership and accreditation, as well as at the time of renewal, individuals are required to sign mandatory declarations as set out in ESSA's Mandatory Declarations Policy. To make a false declaration may breach ESSA's Code of Professional Conduct and Ethical Practice and may attract disciplinary action.

Two of the mandatory declarations which you will be required to sign relate to ESSA's requirement that you are a 'fit and proper person'. These declarations are:

- **Criminal History:** "I have declared to ESSA any prior convictions unless they are spent convictions." ('Criminal History Declaration')
- **Ethics History:** "I have declared to ESSA any prior ethics and disciplinary penalties as determined by ESSA, other professional bodies, regulatory boards or complaint commissions." ('Ethics History Declaration')

## CONSIDERATION OF DECLARATIONS

Having a criminal history or ethics history does not automatically mean you cannot be a member of ESSA or accredited with ESSA. ESSA considers each application and situation on its merits, and on a case by case basis.

## CRIMINAL HISTORY

If you have a criminal history, that is, any prior convictions, there are some things you need to know before signing the Criminal History Declaration.

## SPENT CONVICTIONS

Legislative schemes relating to spent convictions allow an individual not to disclose certain criminal convictions in particular circumstances, and prohibit the unauthorised use or disclosure of information about that conviction. The spent convictions schemes are administered differently in each Australian state and territory. For further details about spent convictions in your state or territory, please refer to [Appendix 1](#) of this Fact Sheet.

If you have a conviction that is 'spent', you are legally not required to declare this to ESSA and may sign the Criminal History Declaration without declaring this conviction.

However, it is important to note that not all convictions become spent and there are exemptions to the spent convictions schemes. For example, registered health professionals must disclose spent convictions for the purposes of criminal clearance checks. Spent convictions must also be disclosed for the purposes of Working with Children checks. You will therefore need to consider your personal circumstances, and your legislative obligations, in relation to whether or not your spent convictions need to be disclosed to any entity.

## FREQUENTLY ASKED QUESTIONS

### *1. How do I know if my conviction is spent?*

Not all convictions become spent. You will need to consider the legislation relating to spent convictions for the jurisdiction of your conviction to determine if the conviction is spent. [Appendix 1](#) of this Fact Sheet gives you more information on where you can find information on spent convictions in each Australian state and territory.

### *2. If I have a criminal and / or ethics history to declare to ESSA, what information do I need to provide?*

The information you need to provide for a Criminal History Declaration or Ethics History Declaration is listed on ESSA's Criminal/Ethics History to Declare form.

### *3. I have declared a criminal and / or ethics history to ESSA. How does ESSA assess whether I am eligible for membership or accreditation?*

ESSA considers the information you have declared and how it relates to the safe and effective practice of exercise and sports science professionals in determining whether or not you are eligible for membership or accreditation.

### *4. What happens if I declare a spent conviction to ESSA?*

ESSA is not permitted to take a spent conviction into account in determining eligibility for membership and/or accreditation. If ESSA receives any information about a conviction that is spent, this information will not be considered during ESSA's membership/accreditation assessment process.

### *5. What about international convictions, do I have to declare these?*

Yes, you have to declare your prior convictions and prior ethics and disciplinary penalties from jurisdictions outside of Australia.

### *6. What happens if I don't declare something from my criminal history and / or ethics history that is not spent?*

To not declare something relevant from your criminal history and / or ethics history may be a breach of ESSA's Code of Professional Conduct and Ethical Practice. This may result in ESSA conducting an ethical investigation and taking action such as suspending your eligibility for accreditation and/or membership, or permanently excluding you from ESSA.

### *7. How does ESSA manage my Criminal History Declaration and Ethics History Declaration?*

Your Criminal History Declaration or Ethics History Declaration should be submitted to ESSA using the Criminal/Ethics History to Declare form. This form, and any additional information which you are required to submit, must be submitted to ESSA pursuant to the instructions on the form. ESSA considers the information you submit separately from its other membership and accreditation application and renewal processes.

### *8. How much extra time will processing my Criminal History / Ethics History add to the processing of my application for accreditation with ESSA?*

It may delay the outcome of your application by up to 3 months, however this will depend on the nature of your declared criminal history or ethics history.

## FREQUENTLY ASKED QUESTIONS

**9. If I declared a criminal history and / or ethics history for my renewal, what will happen to my accreditation while this is processed?**

If you declare a criminal and / or ethics history for your renewal, ESSA will not process your renewal until your criminal and / or ethics history has been assessed. However, ESSA will always tell you before a change is made to your accreditation status.

**10. ESSA rejected my application for membership or accreditation due to my criminal history and / or ethics history, can I appeal?**

Yes, you can appeal to the ESSA Membership and Accreditation Appeals Panel. Information about how to submit an appeal is available on the ESSA website: [www.essa.org.au/what-do-i-do-if-i-do-not-meet-the-essa-requirements-for-membership-or-accreditation/](http://www.essa.org.au/what-do-i-do-if-i-do-not-meet-the-essa-requirements-for-membership-or-accreditation/)

**11. Who can I complain to if I think there has been a breach of privacy related to my criminal history and / or ethics history?**

If you think there has been a breach of privacy related to the criminal history and / or ethics history which you have declared to ESSA, you can make a complaint in writing to ESSA's Chief Executive Officer by writing to [ceo@essa.org.au](mailto:ceo@essa.org.au). You may also be able to make a complaint to the Office of the Australian Information Commissioner (OAIC). Information on the types of complaints the OAIC accepts and their complaints process is available from the OAIC website. [www.oaic.gov.au/individuals/](http://www.oaic.gov.au/individuals/)

**12. I have parking fines/speeding tickets, do these need to be declared to ESSA?**

This depends on the spent conviction legislation in your state or territory. Please refer to [Appendix 1](#) of this Fact Sheet for further information.

**13. I have been charged with Driving Under the Influence (DUI) or drug possession, do I have to declare this?**

It will depend on whether you were convicted of the DUI or drug possession, and when that conviction occurred.

**14. I was convicted of assault when I was 18 but have turned my life around and am now 25, do I need to declare this conviction to ESSA?**

As you were convicted of the assault and the conviction is not yet spent, you would need to declare it as part of your Criminal History Declaration to ESSA.

**15. I was charged with break and enter five years ago but no conviction was recorded, do I need to declare this to ESSA?**

If no conviction was recorded, you will not be required to declare the break and enter charge with ESSA. The declaration only relates to prior convictions.

**16. I was investigated by the Health Care Complaints Commission and received a letter of warning. Do I have to declare this to ESSA?**

Generally, you would not need to declare a letter of warning to ESSA as part of your Ethics History Declaration as no penalty has been imposed on your practice as an exercise and sports science professional.

**17. I am currently being investigated by the Health Care Complaints Commission and received an interim prohibition order. Do I have to declare this to ESSA?**

Yes, you have to declare any prohibition or interim prohibition order to ESSA as part of your Ethics History Declaration as it is a penalty that has been imposed on your practice as an exercise and sports science professional.

**18. I received a violation order from the Australian Sports Anti-Doping Authority (ASADA), do I have to declare this?**

Yes, you have to declare any sanctions or violation orders from ASADA to ESSA as part of your Ethics History Declaration as it is a penalty that has been imposed on your practice as an exercise and sports science professional.

**19. What information do I have to declare for a Working with Children check if I want to work with children?**

All Australian states and territories run schemes to check an individual's suitability to work with children. Refer to [Appendix 1](#) of this Fact Sheet for more information. If you apply for Working with Children check, you will have to declare your complete criminal history, including spent convictions. ESSA does not conduct Working with Children checks.

## APPENDIX 1 – ADDITIONAL INFORMATION

### SPENT CONVICTIONS SCHEMES

The following resources provide guidance on Spent Convictions Schemes in the Australian Commonwealth, state and territory jurisdictions:

Australian Human Rights Commission: Comparative Table of Legislation on Spent Convictions <https://www.humanrights.gov.au/publications/human-rights-comparative-table-legislation-spent-convictions>

Commonwealth: Office of the Australian Information Commissioner – Privacy fact sheet 41 – Commonwealth spent convictions scheme <https://oaic.gov.au/individuals/privacy-fact-sheets/general/privacy-fact-sheet-41-commonwealth-spent-convictions-scheme>

Queensland: Queensland Government – Criminal records website <https://www.qld.gov.au/law/crime-and-police/criminal-records-and-history-checks/criminal-records>

New South Wales: NSW Police Force – FAQ's [http://www.police.nsw.gov.au/online\\_services/criminal\\_history\\_check/criminal\\_history/faqs](http://www.police.nsw.gov.au/online_services/criminal_history_check/criminal_history/faqs)

**Victoria: There is currently no spent conviction scheme in Victoria**

Tasmania: Tasmania Police – Release Guidelines (Annulled Convictions) <http://www.police.tas.gov.au/services-online/police-history-record-checks/release-guidelines/>

South Australia: Legal Services Commission of South Australia – State offences <http://www.lawhandbook.sa.gov.au/ch13s07s02s02.php>

Western Australia: Western Australia Police Force – FAQ: spent convictions <https://www.police.wa.gov.au/FAQ?cat=Spent+Convictions&c=bee4c7ce-36a1-4a5c-84d9-042099fb697c#all>

Northern Territory: Darwin Community Legal Service Fact sheet – Employment and Criminal Records <https://www.dcls.org.au/wp-content/uploads/2015/08/EMPLOYMENT-AND-CRIMINAL-RECORDS.pdf>

Australian Capital Territory: ACT Government – Access Canberra: spent convictions <https://www.accesscanberra.act.gov.au/ci/fattach/get/136276/1490136338/redirect/1/session/filename/Spent+Convictions+Information>

AHPRA  
<https://www.ahpra.gov.au/Registration/Registration-Standards/Criminal-history.aspx>

### WORKING WITH CHILDREN CHECK/SCREENING

The following resources provide guidance on Spent Convictions Schemes in Australian state and territory jurisdictions:

Queensland: Queensland Government: Blue Card Services <https://www.bluecard.qld.gov.au/about.html>

New South Wales: Office of the Children's Guardian [http://www.kidsguardian.nsw.gov.au/ArticleDocuments/191/FS13\\_Disqualifying\\_offences\\_Schedule2\\_May2015.pdf.aspx?Embed=Y](http://www.kidsguardian.nsw.gov.au/ArticleDocuments/191/FS13_Disqualifying_offences_Schedule2_May2015.pdf.aspx?Embed=Y)

Victoria: Victoria State Government: Justice and Regulation: Working with Children Check – Your National Criminal History <http://www.workingwithchildren.vic.gov.au/home/applications/the+application+process/what+is+checked/>

Fact sheet – Working with children check: Relevant offences under the Working with Children Act 2005 [http://assets.justice.vic.gov.au/wwcc/resources/8617d1af-cdca-4acb-80a3-306de5a26103/list-of-offences\\_08\\_2017\\_final.pdf](http://assets.justice.vic.gov.au/wwcc/resources/8617d1af-cdca-4acb-80a3-306de5a26103/list-of-offences_08_2017_final.pdf)

Tasmania: Tasmanian Government: Department of Justice – Working with Children <http://www.justice.tas.gov.au/working-with-children>

Exemptions from Registration fact sheet [http://www.justice.tas.gov.au/\\_data/assets/pdf\\_file/0007/284362/Exemptions\\_from\\_Registration.pdf](http://www.justice.tas.gov.au/_data/assets/pdf_file/0007/284362/Exemptions_from_Registration.pdf)

South Australia: Government of South Australia: Department of Communities and Social Inclusion – Child-related employment screening <https://screening.dcsi.sa.gov.au/screening-process/types-of-screening/child-related-employment>

Western Australia: Government of Western Australia: Working with Children Check <https://workingwithchildren.wa.gov.au/> Fact sheets and booklets <https://workingwithchildren.wa.gov.au/resources/publications/fact-sheets-booklets>

Northern Territory: Northern Territory Government: Working with children clearance: apply and renew <https://nt.gov.au/emergency/community-safety/apply-for-a-working-with-children-clearance>

Australian Capital Territory: ACT Government: Access Canberra: Working with vulnerable people (WWVP) registration [https://www.accesscanberra.act.gov.au/app/answers/detail/a\\_id/1804/~/working-with-vulnerable-people-%28wwvp%29-registration](https://www.accesscanberra.act.gov.au/app/answers/detail/a_id/1804/~/working-with-vulnerable-people-%28wwvp%29-registration)