

Spent conviction order at the time of sentence



A spent conviction order (SCO) is a court order that a criminal conviction is spent. You generally do not have to tell anyone about a spent conviction. This can help you with employment, finance, travel and other aspects of life.

Sometimes you will have to disclose or acknowledge a conviction even if you have a spent conviction order. Some examples of these exceptions are included.

Can I get a spent conviction order when I am sentenced?

When you have been convicted of an offence (by pleading guilty or by being found guilty) the magistrate or judge must consider what penalty to impose. At the time of sentencing you may ask the court to make a SCO. This is done under section 45 of the *Sentencing Act 1995* (WA).

A court cannot make a SCO if you are sentenced to one of the following:

- intensive supervision order
- suspended term of imprisonment
- conditional suspended term of imprisonment
- term of imprisonment.

If you are on a Pre-Sentence Order (PSO), at the time of sentence the court may only make a SCO if the PSO applies to a simple offence and the court is satisfied you have complied with any programme requirements imposed under the PSO. A simple offence is one that must be dealt with in the Magistrates Court.

What do I need to show to get a spent conviction order?

A court cannot make a SCO unless the judge or magistrate decides that:

- you are unlikely to commit such an offence again, and
- you should be relieved of the negative effects of the conviction:

- because the offence itself was trivial, or
- because of your previous good character.

A spent conviction order will not be given to you automatically, just because you want to have a clean record for future travel or employment.

You should try to show that the offence was a “one-off” and that you will not re-offend. If possible, you should show that the offence was trivial (not at all serious), or that you are a person of good character, or both.

Do I need character references?

It is a good idea to bring written character references with you to court to show that you are a person of good character. Where possible, the written character reference should be in letter format and include information:

- about how the person knows you (e.g. employer, family friend)
- that the person knows about the offence, and knows that the reference is for court proceedings related to the offence
- about their opinion of your character, and
- that the offence is out of character for you.

A written character reference should be dated and signed.

What is the effect of having a spent conviction order?

If you get a SCO when you are sentenced, you still have to comply with the sentence, and any orders

the court makes. The SCO does not change a driver's licence disqualification, or any other part of the penalty.

Once convicted of an offence you have a criminal record. However if you are granted a SCO the conviction will not appear on a national police certificate.

Generally, if you receive a SCO you do not have to tell anyone about the conviction. However, there are exceptions where you must disclose your spent conviction. See the heading "Exceptions – when you must disclose a spent conviction and when it may be lawful to discriminate against you" below.

People cannot usually discriminate against you for having a conviction if it is a spent conviction. It is unlawful for employers, associations, licensing boards, qualifying authorities and employment agencies to discriminate against you because of a spent conviction. However, there are exceptions where it may be lawful to discriminate against you. See the heading "Exceptions – when you must disclose a spent conviction and when it may be lawful to discriminate against you" below.

If you believe someone may have discriminated against you unlawfully, you can complain to the **Equal Opportunity Commission** on either (08) 9216 3900 or free-call 1800 198 149.

What if I am a reportable offender?

If you are a reportable offender and the offence to which you pleaded guilty or were found guilty becomes spent, this does not affect:

- your reporting obligations
- the inclusion of information on the register
- any prohibition order
- the status of the offence as a reportable offence
- consideration of your total criminal record for the purposes of the *Community Protection (Offender Reporting) Act 2004* (WA).

If you are unsure about the impact on you, get legal advice.

Can I get a spent conviction order after I have been sentenced?

You can usually apply to have your old West Australian conviction spent 10 years after the sentence has finished, or in some cases 10 years after it was imposed.

Once you have been sentenced, there is no way of getting a spent conviction order until the waiting period (generally 10 years) has lapsed. For more information, see the Legal Aid WA Information Sheet **Wiping Away an Old Conviction**.

Exceptions – when you must disclose a spent conviction and when it may be lawful to discriminate against you

If you have a spent conviction you do not have to disclose it unless you are required to do so by the *Spent Convictions Act 1998* (WA). Some of the circumstances when you are required by this Act to disclose your spent conviction include when you are:

- being considered by the Prisoners Review Board, Mentally Impaired Accused Review Board or the Supervised Release Review Board
- being considered for appointment as a justice of the peace
- being appointed or considered for appointment as a police constable, special constable, Aboriginal police liaison officer or police cadet
- being appointed or considered for appointment by the police to a position where the duties require or may require the provision of services to, or to deal in any manner with, persons not of full legal capacity
- being considered for employment as a prison officer under the *Prisons Act 1981* (WA)
- holding or applying to be issued with a permit to do high level security work under the *Prisons Act 1981* (WA)
- being considered for employment or a contract for work involving assessing, reporting about or classifying prisoners

- being employed or considered for employment under the *Gold Corporation Act 1987* (WA)
- being considered for the grant of a licence as a casino key employee or casino employee under the *Casino Control (Burswood Island) (Licensing of Employees) Regulations 1985* (WA)
- holding a licence or permit or applying for renewal of a licence or permit as a security agent, security officer, security consultant, or security installer under the *Security and Related Activities (Control) Act 1996* (WA)
- applying for the issue of a licence under the *Firearms Act 1973* (WA)
- being considered for authorisations under the *Court Security and Custodial Services Act 1999* (WA) or the *Corruption and Crime Commission Act 2003* (WA)
- appointed or being considered for appointment, as the Public Trustee or in some jobs to assist the Public Trustee under the *Public Trustee Act 1941* (WA) and the *Public Sector Management Act 1994* (WA)
- appointed or being considered for appointment, as the Public Advocate and some jobs to assist the Public Advocate under the *Guardianship and Administration Act 1990* (WA) and the *Public Sector Management Act 1994* (WA)
- designated or being considered for designation as a security officer under the *Public Transport Authority Act 2003* (WA)
- being appointed or considered for appointment to a position where the duties may require you to come into contact with children in a school, community kindergarten, college or hostel
- applying for a licence or permit to provide a child care service
- being employed or considered for employment or placed as a student or trainee or being engaged in an unpaid capacity with the Department of Communities (Child Protection and Family Support)
- being engaged or considered for engagement by the Department of Communities (Child Protection and Family Support) either for reward or in an unpaid capacity to provide overnight care
- being employed, seconded or considered for employment, whether paid or unpaid or as a student, at the Department of Health
- being employed or considered for employment at the Department of Communities (Disability Services Commission) or an organisation funded by the Disability Services Commission
- applying for an Australian visa.

For the full list of circumstances when you must disclose your spent conviction, see the *Spent Convictions Act 1998* (WA). If you are not sure if you have to disclose your spent conviction, get legal advice.

In these situations all convictions, including spent convictions, can be taken into account when considering your character. It may be lawful for employers, associations, licensing boards, qualifying authorities and employment agencies to discriminate against you in these circumstances.

Exceptions for the protection of children

There are special considerations for jobs that might involve contact with children. In these situations, an employer may lawfully discriminate against you for a conviction for certain offences. This applies even if a SCO has been made.

A spent conviction for some offences has to be disclosed if you are:

- being considered for any form of employment carried out wholly or partly within the precincts of a:
 - school
 - care centre
 - pre-school centre, or
 - place where a child care service is conducted
- being considered for participation in the safety house scheme organised by the Safety House Association of WA
- being assessed for suitability for adoptive parenthood
- employed or being considered for employment by the Department of Local Government, Sport and Cultural Industries.

The offences that have to be disclosed, even if the conviction is spent, are:

- all assaults
- offences against morality
- depriving someone of their liberty
- sexual offences
- child stealing
- desertion of children
- endangering someone's life or health
- homicide, suicide and concealment of birth.

If you have a SCO and you are not sure whether you have to disclose it, or you believe you have been unlawfully discriminated against, you should seek legal advice as soon as possible.

Working with Children Check

A Working with Children Check is a national criminal record check that is compulsory for people who carry out child-related work in Western Australia.

If you have applied for a working with children check a criminal record check is made.

A criminal record check will provide information about every:

- conviction for an offence in WA or another jurisdiction, and
- charge for an offence in WA or another jurisdiction.

The criminal record check will include spent convictions.

More information on Working with Children Checks can be obtained from the [Working with Children Check website](http://www.workingwithchildren.wa.gov.au) (www.workingwithchildren.wa.gov.au).

What if I am charged with another offence later?

Your spent conviction can be taken into account if you are before a court at any time in the future. The judge or magistrate can be told about all your convictions, including spent convictions.

If you are charged with a traffic offence and have a prior **traffic conviction**, this prior conviction may be taken into account by a court for a period of 20 years from the date of conviction. This is the case even if you received a SCO for your prior conviction.

For many traffic offences (for example, drink driving offences), having prior relevant convictions means you must receive a higher penalty for the current offence. If you were given a SCO for a prior offence it does not change the fact that you must receive a higher penalty for the current offence.

Where can I get more information?

Legal Aid WA

Go to Legal Aid WA's **website** at: www.legalaid.wa.gov.au under Find legal answers/ Crime/ Criminal records and spent convictions for information, videos and a self-help kit about:

- Spent convictions generally
- Spent Conviction Orders at sentencing
- Applying for old convictions to be spent
- Criminal records.

Court registry locations and contact details

See the following websites for each of the courts:

- www.magistratescourt.wa.gov.au
- www.childrencourt.wa.gov.au
- www.districtcourt.wa.gov.au
- www.supremecourt.wa.gov.au.

Legal Aid WA Offices

TELEPHONE INFOLINE: 1300 650 579 (General Enquiries)
Infoline open Monday to Friday 9.00 am to 4.00 pm
(Australian Western Standard Time) except public holidays

Translating and Interpreting Service 131 450
National Relay Service (for hearing and speech impaired) 133 677

www.legalaid.wa.gov.au

Perth Office

32 St Georges Terrace, Perth, WA 6000
1300 650 579
(08) 9261 6222

Southwest Regional Office

7th Floor, Bunbury Tower, 61 Victoria Street, Bunbury, WA 6230
(08) 9721 2277

Great Southern Regional Office

Unit 3, 43-47 Duke Street, Albany, WA 6330
(08) 9892 9700

Goldfields Regional Office

Suite 3, 120 Egan Street, Kalgoorlie, WA 6430
(08) 9025 1300

Midwest & Gascoyne Regional Office

Unit 8, The Boardwalk, 273 Foreshore Drive, Geraldton, WA 6530
(08) 9921 0200

Pilbara Regional Office

28 Throssell Road, South Hedland, WA 6722
(08) 9172 3733

West Kimberley Regional Office

Upper Level, Woody's Arcade, 15-17 Dampier Terrace, Broome, WA 6725
(08) 9195 5888

East Kimberley Regional Office

98 Konkerberry Drive, Kununurra, WA 6743
(08) 9166 5800

Indian Ocean Office

Administration Building, 20 Jalan Pantai
Christmas Island, Indian Ocean, WA 6798
(08) 9164 7529

This information contains a summary of the law and is correct at the date of publication. It is not legal advice. You should always seek legal advice about your individual situation. Any services referred to which are not operated by Legal Aid Western Australia are not endorsed or approved by Legal Aid Western Australia.

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