

Spent Conviction Order at the time of sentence

At the time of sentence for an offence, a court may order that your criminal conviction is 'spent'. This is called making a Spent Conviction Order (SCO).

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. However, sometimes you will have to disclose or acknowledge a conviction even if it is a spent conviction. Some examples of these exceptions are included here.

What is a spent conviction?

A criminal conviction that is 'spent' generally does not have to be disclosed to anyone, unless a particular law makes it a requirement to disclose it in certain circumstances.

If you are generally of good character and have committed a relatively minor offence, getting a spent conviction may help you to move on from your mistake and avoid it affecting your life in a significant way.

What is a Spent Conviction Order at the time of sentence?

When you are convicted of a criminal offence (by pleading guilty or by being found guilty), the magistrate or judge must consider what penalty to give you. This is called your 'sentence'. When giving you your sentence, the court may make an order under section 45 of the *Sentencing Act 1995* (WA) that your conviction is spent. This is called a **Spent Conviction Order (SCO)**.

When can a court make a Spent Conviction Order?

A court can consider making a SCO if you are given a penalty for your offence that is less serious, such as a fine.

The court cannot make a SCO if you are given any one of the following more serious penalties as your sentence:

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

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

Even if the court can consider making a SCO, it must be satisfied that you meet the criteria under section 45 *Sentencing Act 1995* (WA) before it can make the order.

What do I need to show to get a Spent Conviction Order?

Under section 45 *Sentencing Act 1995* (WA) a judge or magistrate can only make a SCO if they decide 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 was trivial, or
 - because of your previous good character.

A SCO will not be given to you just because you want to have a clean record, perhaps for future travel or employment.

You will need to show that the offence was a “one-off” and that you will not offend again. You will need to show that either the offence was not at all serious, or you are a person of good character. It will help if you can show 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, each 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 character reference should be dated and signed.

Can I get help applying for a Spent Conviction Order?

Yes, if you are appearing in the Magistrates Court you can ask for help from a Legal Aid WA duty lawyer before court.

If you meet the criteria to apply for a SCO, the duty lawyer can give you advice about how to prepare for the application and make the application for you in court.

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

Once you have been sentenced, there is no way of asking for your conviction to be spent unless you wait for a certain period of time, which is generally 10 years.

There is a Legal Aid WA webpage about **Applying for old convictions to be spent**. This provides some further information and a link to the detailed **Spent convictions application kit**. This kit will help you to understand when and how to apply for an old conviction to be spent. Find it here www.legalaid.wa.gov.au/find-legal-answers/crime/criminal-records-and-spent-convictions.

What is the effect of having a spent conviction?

If you get a SCO at the time of sentence, you still have to follow the penalty you are given, and any orders the court makes. The SCO does not change a driver’s licence disqualification, or any other part of your penalty.

Once convicted of an offence you have a criminal record. However if your conviction is spent, the conviction will not appear on a National Police Certificate.

Generally, if your conviction is spent, you do not have to tell anyone about the conviction. However, there are exceptions where you must disclose your 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. Alternatively, you

can submit an online complaint form through the the WA government website [www.wa.gov.au/make a discrimination and harassment complaint](http://www.wa.gov.au/make-a-discrimination-and-harassment-complaint).

What if I am convicted of a reportable offence?

If you are convicted of a reportable offence and granted a SCO at the time of sentence, this does not affect:

- your reporting obligations as a reportable offender
- 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 your obligations as a reportable offender, get legal advice.

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 general 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 officer, police auxiliary officer, 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 or in 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), if you may in the course of your duties deal with children and their families or with sensitive and confidential information about children and their families
- being engaged or considered for engagement by the Department of Communities (Child Protection) 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 or the Mental Health Commission
- being employed or considered for employment at the Department of Communities (Disability Services) or an organisation funded by the Department of Communities (Disability Services)
- 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

Under the *Spent Convictions Act 1998* (WA) there are special circumstances when spent convictions must be disclosed, to help protect children. These circumstances are when you are:

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

However, you only have to disclose a spent conviction in these circumstances if it is for one of the offences listed below. Similarly, a person may only lawfully discriminate against you in these circumstances if your spent conviction is for one of the offences listed below.

The offences are:

- any of the following under the *Criminal Code* (WA) if committed against a person who was under 18 years old at the time:
 - Chapter XXVII - homicide, suicide, concealing birth
 - Chapter XXIX - endangering life or health
 - Chapter XXX - assaults
 - Chapter XXXIII – offences against liberty
 - Section 343 - child stealing
 - Section 344 – desertion of children
 - a corresponding offence in Queensland, NSW, Norfolk Island or the Commonwealth.
- any of the following under the *Criminal Code* (WA):
 - Chapter XXII - offences against morality
 - Chapter XXXI - sexual offences
 - a corresponding offence in Queensland, NSW, Norfolk Island or the Commonwealth.

If you have a spent conviction and you are not sure whether you must disclose it, or you believe you

have been unlawfully discriminated against, you should get legal advice as soon as possible.

Exception for Working with Children Check

Under the *Spent Convictions Act 1998* (WA) there is also an exception that requires spent convictions to be disclosed when you apply for a 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 apply for a Working with Children Check a criminal record check is done. A criminal record check provides information about every:

- court conviction for an offence in WA or another jurisdiction,
- charge for an offence in WA or another jurisdiction, that the court dealt with in a way other than by conviction, and
- pending charge for certain very serious offences in WA or another Australian jurisdiction.

The criminal record check will include any spent convictions you may have.

More information on Working with Children Checks is on the WA government website www.wa.gov.au/workingwithchildrencheck.

Exception for NDIS Worker Screening Check

Under the *Spent Convictions Act 1998* (WA) there is also an exception that requires spent convictions to be disclosed when you apply to be a National Disability Insurance Scheme (NDIS) worker.

To apply to be an NDIS worker you must apply for an NDIS Worker Screening Check.

As part of the Screening Check a criminal record check is done. The criminal record check will include any spent convictions you may have.

More information on NDIS Worker Screening Checks is on the WA government website www.wa.gov.au/ndisworker screening check.

What if I have a new offence?

If you commit a new offence after you receive a spent conviction, all your previous convictions, including the spent conviction, may be taken into account when you are sentenced for the new offence.

This means the judge or magistrate can be told about all your convictions, including any spent convictions and can use this information to decide what penalty to give you for the new offence.

Where can I get more information?

There is information on the **Legal Aid WA website** www.legalaid.wa.gov.au under Find Legal Answers – Crime, covering the following topics:

- **Criminal records**
- **What is a spent conviction**
- **Spent Conviction Orders in sentencing**
- **References for court**
- **Applying for old convictions to be spent**

The **Legal Aid WA Infoline 1300 650 579** or **Legal Yarn for First Nations callers 1800 319 803**, are available for information and referral.

LEGAL AID WA OFFICES



Infoline: 1300 650 579
Legal Yarn: 1800 319 803
(for First Nations callers)



Translating & Interpreting Service:
131 450



Website/InfoChat:
www.legalaid.wa.gov.au



National Relay Service: 133 677
(for hearing and speech impaired)

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