



Western Australia

Spent Convictions Act 1988

# **Spent Convictions Regulations 1992**

**Reprint 3: The regulations as at 4 September 2015**

## Guide for using this reprint

### *What the reprint includes*



### *Endnotes, Compilation table, and Table of provisions that have not come into operation*

1. Details about the original regulations and legislation that has amended its text are shown in the Compilation table in endnote 1, at the back of the reprint. The table also shows any previous reprint.
2. Transitional, savings, modifying or other provisions identified in the Compilation table may be important. The table may refer to another endnote setting out the text of these provisions in full.
3. A table of provisions that have not come into operation, to be found in endnote 1a if it is needed, lists any provisions of the regulations being reprinted that have not come into operation and any amendments that have not come into operation. The full text is set out in another endnote that is referred to in the table.

### *Notes amongst text (italicised and within square brackets)*

1. If the reprint includes a regulation that was inserted, or has been amended, since the regulations being reprinted were made, editorial notes at the foot of the regulation give some history of how the regulation came to be as it is. If the regulation replaced an earlier regulation, no history of the earlier regulation is given (the full history of the regulations is in the Compilation table).

Notes of this kind may also be at the foot of Schedules or headings.

2. The other kind of editorial note shows something has been —
  - removed (because it was repealed or deleted from the law); or
  - omitted under the *Reprints Act 1984* s. 7(4) (because, although still technically part of the text, it no longer has any effect).

The text of anything removed or omitted can be found in an earlier reprint (if there is one) or one of the written laws identified in the Compilation table.

### *Reprint numbering and date*

1. The reprint number (in the footer of each page of the document) shows how many times the regulations have been reprinted. For example, numbering a reprint as “Reprint 3” would mean that the reprint was the 3<sup>rd</sup> reprint since the regulations were published. Reprint numbering was implemented as from 1 January 2003.
2. The information in the reprint is current on the date shown as the date as at which the regulations are reprinted. That date is not the date when the reprint was published by the State Law Publisher and it is probably not the date when the most recent amendment had effect.

## Spent Convictions Regulations 1992

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Western Australia

Reprinted under the  
*Reprints Act 1984* as  
at 4 September 2015

Spent Convictions Act 1988

## Spent Convictions Regulations 1992

### 1. Citation

These regulations may be cited as the *Spent Convictions Regulations 1992*<sup>1</sup>.

### 2. Commencement

These regulations come into operation on the day on which the Act comes into operation<sup>1</sup>.

### 3. Minor punishment, amount prescribed (Act s. 3)

For the purposes of the definition of “minor punishment” in section 3 of the Act, the amount of \$500 is prescribed.

*[Regulation 3 inserted in Gazette 4 Nov 2005 p. 5318.]*

*[4. Deleted in Gazette 4 Nov 2005 p. 5318.]*

### 5. Application form prescribed (Act s. 7(1))

The form of application set out in Schedule 1 is prescribed for the purposes of section 7(1) of the Act.

**6A. Persons and laws prescribed (Act s. 28(2))**

For the purposes of section 28(2) of the Act —

- (a) each person mentioned in an item in the Table is prescribed in respect of the law mentioned in the item; and
- (b) each law mentioned in an item in the Table is prescribed.

**Table**

<b>Item</b>	<b>Prescribed person</b>	<b>Prescribed law</b>
1.	Children's Guardian	<i>Child Protection (Working with Children) Act 2012</i> (New South Wales)
2.	Secretary to the Department of Justice	<i>Working with Children Act 2005</i> (Victoria)
3.	Commissioner for Children and Young People and Child Guardian	<i>Commission for Children and Young People and Child Guardian Act 2000</i> (Queensland)
4.	Queensland College of Teachers	<i>Education (Queensland College of Teachers) Act 2005</i> (Queensland)

<b>Item</b>	<b>Prescribed person</b>	<b>Prescribed law</b>
5A.	Chief executive officer of the Public Safety Business Agency	<i>Working with Children (Risk Management Screening) Act 2000</i> (Queensland)
5.	Screening Authority	<i>Care and Protection of Children Act</i> (Northern Territory)
6.	Commissioner for fair trading	<i>Working with Vulnerable People (Background Checking) Act 2011</i> (Australian Capital Territory)
7.	Department for Communities and Social Inclusion Screening Unit	<i>Children's Protection Regulations 2010</i> (South Australia)
8.	Registrar	<i>Registration to Work with Vulnerable People Act 2013</i> (Tasmania)

*[Regulation 6A inserted in Gazette 24 Dec 2010 p. 6806-7; amended in Gazette 13 Aug 2013 p. 3737; 13 Jun 2014 p. 1897; 23 Sep 2014 p. 3477.]*

**6. Form of notice (Act s. 33(2))**

The form of notice set out in Schedule 2 is prescribed for the purposes of section 33(2) of the Act.

**Schedule 1**

[r. 5]

[Heading inserted in Gazette 1 Apr 2008 p. 1280.]

*SPENT CONVICTIONS ACT 1988* — SECTION 7(1)

**APPLICATION FOR CERTIFICATE THAT LESSER CONVICTION IS  
SPENT**

**Particulars of applicant —**

SURNAME: .....
OTHER NAMES: .....
ANY NAME PREVIOUSLY USED (ALIAS): .....
DATE OF BIRTH: ...../...../..... PLACE OF BIRTH: .....
RESIDENTIAL ADDRESS: .....
.....
POSTAL ADDRESS (If different from above): .....
.....

I apply to the Commissioner of Police for a certificate that any lesser Western Australian convictions that may be eligible in accordance with the *Spent Convictions Act 1988* are spent.

Signature of applicant: \_\_\_\_\_  
(To be signed in the presence of an authorised witness\*)

\* see Information for Applicant

**Declaration of authorised witness —**

I declare that I have —

- sighted original identification documentation that confirms the identity of the applicant; and
- witnessed the applicant's signature.

Signature of witness: \_\_\_\_\_

Full name of witness: \_\_\_\_\_

Authority of witness: \_\_\_\_\_

Date:    /    /

INFORMATION FOR APPLICANT

**1. Use of this form**

This form is only to be used for lesser convictions for offences against the law of Western Australia.

A lesser conviction is one for which imprisonment for one year or less, and a fine of less than \$15 000, was imposed.

All other convictions only become spent by order of the District Court.

**2. When application can be made**

An application for a certificate that a lesser conviction is spent cannot be made until a period has expired after the conviction without any further conviction being incurred (unless no punishment or only a fine of \$500 or less was awarded for the further conviction).

The period is 10 years plus any period of imprisonment relevant to the conviction.

There are rules in the *Spent Convictions Act 1988* section 11 for working out this period.

The period is different if there is a subsequent conviction.

**3. Witnessing the signature of applicant**

The following persons are authorised to witness the applicant's signature —

- an Australia Post officer;
- a police officer;
- any other person listed in the *Oaths, Affidavits and Statutory Declarations Act 2005* Schedule 2.

**4. Evidence of identity**

Identification documents to a value of 100 points, as set out below must be produced and sighted by the person witnessing the applicant's signature. At least one identification document must include a photograph of the applicant.

***Primary Identification***

70 points for each document produced —

- Birth certificate (not extract of birth)
- Australian passport (current or expired within last 2 years)
- Current overseas passport
- Australian citizenship certificate.

***Secondary Identification***

Category 1

40 points for the first document produced;

25 points for each additional document produced —

- Drivers' licence with photo identity issued under the *Road Traffic (Authorisation to Drive) Act 2008*, or equivalent licence issued by another State or Territory
- A current photo card as defined in the *Western Australian Photo Card Regulations 2014* regulation 3
- Licence with photo identity issued under the *Firearms Act 1973*, or equivalent licence issued by another State or Territory
- Employee identity card (with photo identity) issued by a State or Commonwealth government department or agency
- Photo identity card issued by a tertiary education institution
- Learners' permit issued under the *Road Traffic (Authorisation to Drive) Act 2008*, or equivalent permit issued by another State or Territory
- Department of Veteran Affairs card
- Centrelink or Social Security card.

Category 2

25 points for each document produced —

- Proof of age card issued under the *Liquor Control Regulations 1989* regulation 18B
- Medicare card

- Local government rates notice
- Property lease/rental agreement
- Property insurance papers
- Motor vehicle registration or insurance papers
- Professional or trade association card.

**Category 3**

25 points for each document produced —

(Each document must be from a different organisation)

- Utility bills (e.g. telephone, gas, electricity, water)
- Credit or bank account card
- Bank statement or passbook.

**5. Issue of certificate**

The certificate will be posted to the postal address shown in the application. Should this change you should notify the Commissioner of Police.

*[Schedule 1 inserted in Gazette 1 Apr 2008 p. 1280-3; amended in Gazette 27 Jun 2014 p. 2351; 10 Feb 2015 p. 621.]*

## **Schedule 2**

[Regulation 6]

### *SPENT CONVICTIONS ACT 1988*

Notice under section 33(2)

#### **THE EFFECT OF A CONVICTION BECOMING SPENT**

The following is a summary of the legal effect of a conviction becoming spent under the *Spent Convictions Act 1988*.

#### REFERENCES TO CONVICTIONS IN STATE LAWS

A reference in a law of this State to a conviction of a person does not include a spent conviction.

#### DISCLOSURE

The conviction and the charge that led to it do not have to be disclosed by the person concerned or anyone else, except where required in court or tribunal proceedings, and even then the court or tribunal has to act to avoid or minimize publicity.

#### ACCESS TO CRIMINAL RECORDS

It is an offence for a person to obtain information about a spent conviction, or the charge that led to it, from official criminal records, unless the person has a lawful reason.

#### CHARACTER ASSESSMENT

A person who would otherwise be able under a law of this State to take into account a conviction or the charge that led to it when assessing a person's character or fitness cannot do so in the case of a spent conviction.

#### DISCRIMINATION

##### Applicants for employment

A person from whom a person is seeking employment cannot use a spent conviction against the applicant —

- in arrangements made for deciding who should be offered employment

- in deciding who should be offered employment
- in the terms or conditions on which employment is offered.

#### Employees

An employer cannot use a spent conviction against an employee —

- in the terms or conditions of employment provided
- in access to opportunities for promotion, transfer, training or any other benefits
- to dismiss the employee
- otherwise to the detriment of the employee.

#### Persons who apply to be appointed, or who are appointed, as commission agents

The position is similar as for applicants for employment and employees.

#### Employment agencies

An employment agency cannot use a spent conviction to discriminate against a person in relation to any service that it provides —

- by refusing to provide the service
- in the terms or conditions on which the service is offered
- in the way in which it provides the service.

#### Unions and employer organisations

A union or employer organisation cannot use a spent conviction against a person —

- to reject an application for membership
- in setting the terms or conditions of admission to membership
- to take away membership or vary its terms
- in access to benefits provided
- otherwise to the detriment of the person.

Contract workers

A principal cannot use a spent conviction against a contract worker —

- to refuse to allow the contract worker to work
- in the terms or conditions on which the contract worker is allowed to work
- in access to any benefits associated with the contract work
- otherwise to the detriment of the contract worker.

Occupational licensing bodies

A body that has the power to confer an authorisation or a qualification for the carrying on of an occupation cannot use a spent conviction against a person —

- to deprive the person of the authorisation or qualification
- in setting the terms and conditions on which the person may hold the authorisation or qualification.

How to complain

If you believe that a person has discriminated against you in a way that is prohibited, you may lodge a complaint under the *Equal Opportunity Act 1984* with the Commissioner for Equal Opportunity.

EXCEPTIONS

There are a number of exceptions to the above.

There is general exception for decisions as to bail for a court appearance.

The other exceptions relate to persons who are being considered for certain positions (for example, police or prison officers, school teachers and other school staff) or who have applied for certain authorisations (for example, security agents, child care or education and care service providers, casino employees). These exceptions are in Schedule 3 to the Act which was added by the *Spent Convictions Regulations 1992*. This should be referred to for particulars.

*[Schedule 2 amended in Gazette 4 Nov 2005 p. 5319; 12 Dec 2014 p. 4720.]*

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## Notes

- <sup>1</sup> This reprint is a compilation as at 4 September 2015 of the *Spent Convictions Regulations 1992* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

### Compilation table

Citation	Gazettal	Commencement
<i>Spent Convictions Regulations 1992</i>	26 Jun 1992 p. 2715-22	1 Jul 1992 (see r. 2 and <i>Gazette</i> 26 Jun 1992 p. 2644)
<b>Reprint 1: The <i>Spent Convictions Regulations 1992</i> as at 12 Dec 2003</b>		
<i>Spent Convictions Amendment Regulations 2005</i>	4 Nov 2005 p. 5318-19	4 Nov 2005
<i>Spent Convictions Amendment Regulations 2007</i>	1 Apr 2008 p. 1280-3	r. 1 and 2: 1 Apr 2008 (see r. 2(a)); Regulations other than r. 1 and 2: 2 Apr 2008 (see r. 2(b))
<b>Reprint 2: The <i>Spent Convictions Regulations 1992</i> as at 16 May 2008</b> (includes amendments listed above)		
<i>Spent Convictions Amendment Regulations (No. 2) 2010</i>	24 Dec 2010 p. 6806-7	r. 1 and 2: 24 Dec 2010 (see r. 2(a)); Regulations other than r. 1 and 2: 25 Dec 2010 (see r. 2(b))
<i>Spent Convictions Amendment Regulations (No. 2) 2013</i>	13 Aug 2013 p. 3736-7	r. 1 and 2: 13 Aug 2013 (see r. 2(a)); Regulations other than r. 1 and 2: 14 Aug 2013 (see r. 2(b))
<i>Spent Convictions Amendment Regulations (No. 2) 2014</i>	13 Jun 2014 p. 1897	r. 1 and 2: 13 Jun 2014 (see r. 2(a)); Regulations other than r. 1 and 2: 14 Jun 2014 (see r. 2(b))
<i>Spent Convictions Amendment Regulations (No. 3) 2014</i>	27 Jun 2014 p. 2351	r. 1 and 2: 27 Jun 2014 (see r. 2(a)); Regulations other than r. 1 and 2: 1 Jul 2014 (see r. 2(b)(i) and <i>Gazette</i> 17 Jun 2014 p. 1955)
<i>Spent Convictions Amendment Regulations (No. 5) 2014</i>	23 Sep 2014 p. 3476-7	r. 1 and 2: 23 Sep 2014 (see r. 2(a)); Regulations other than r. 1 and 2: 24 Sep 2014 (see r. 2(b))

## **Spent Convictions Regulations 1992**

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<b>Citation</b>	<b>Gazettal</b>	<b>Commencement</b>
<i>Spent Convictions Amendment Regulations 2014</i>	12 Dec 2014 p. 4719-20	r. 1 and 2: 12 Dec 2014 (see r. 2(a)); Regulations other than r. 1 and 2: 13 Dec 2014 (see r. 2(b))
<i>Spent Convictions Amendment Regulations 2015</i>	10 Feb 2015 p. 621	r. 1 and 2: 10 Feb 2015 (see r. 2(a)); Regulations other than r. 1 and 2: 27 Apr 2015 (see r. 2(b) and <i>Gazette</i> 17 Apr 2015 p. 1371)
<b>Reprint 3: The <i>Spent Convictions Regulations 1992</i> as at 4 Sep 2015</b> (includes amendments listed above)		

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