

LA301

SPENT CONVICTIONS ACT 1988
SPENT CONVICTIONS REGULATIONS 1992

Made by His Excellency the Governor in Executive Council.

Citation

1. These regulations may be cited as the *Spent Convictions Regulations 1992*.

Commencement

2. These regulations come into operation on the day on which the Act comes into operation.

Schedule 2 to the Act amended

3. Schedule 2 to the Act is amended by adding the following items —

Commonwealth and Norfolk Island

- “
2. A conviction for an offence against Commonwealth law or a law of Norfolk Island incurred by a person where —
 - (a) the conviction has become spent under Part VIIC of the *Crimes Act 1914* of the Commonwealth; and
 - (b) Division 3 of that Part has not ceased to apply to the person in relation to the offence.
- ”.

New South Wales

3. A conviction against the law of New South Wales that is spent under the *Criminal Records Act 1991* of that State.

Schedule 3 added to the Act

4. The Act is amended by adding after Schedule 2 the following Schedule —

“

SCHEDULE 3

[ss. 16 and 33]

EXCEPTIONS TO PART 3**Exceptions as to all spent convictions**

1. The persons specified in the first column of the table to this clause are excepted from the provisions of Part 3 specified in the second column in respect of all spent convictions.

TABLE

PERSON EXCEPTED	PROVISIONS OF PART 3
1. The Parole Board established by the <i>Offenders Community Corrections Act 1963</i>	Division 4
2. A person being considered for appointment as a Justice of the Peace under the <i>Justices Act 1902</i>	Division 4
3. A person being considered for appointment as a constable or aboriginal aide under the <i>Police Act 1892</i>	Section 18 and Division 4
4. A person being considered for appointment as a special constable or police cadet under the <i>Police Act 1892</i>	Division 4
5. A person being considered for employment as a prison officer under the <i>Prisons Act 1981</i>	Section 18 and Division 4
6. A person being considered for employment under the <i>Gold Corporation Act 1987</i>	Section 18 and Division 4
7. A person being considered for the grant of a licence as a casino key employee or casino employee under the <i>Casino Control (Burswood Island) (Licensing of Employees) Regulations 1985</i>	Section 22 and Division 4
8. A person applying to be licensed as a security agent or security guard under the <i>Security Agents Act 1976</i>	Section 22 and Division 4
9. A person applying for the issue of a licence under the <i>Firearms Act 1973</i>	Division 4

Exceptions as to spent convictions for certain offences in order to protect children

2. (1) The persons specified in the first column of the table to this subclause are excepted from the provisions of Part 3 specified in the second column in respect of a spent conviction for an offence referred to in subclause (2), as qualified by subclause (3).

TABLE

PERSON EXCEPTED	PROVISIONS OF PART 3
1. A person being considered for appointment as a teacher as defined in section 3 of the <i>Education Act 1928</i>	Section 18 and Division 4
2. A person applying for a permit to conduct or carry on a care centre or pre-school centre under the <i>Education Act 1928</i>	Section 22 and Division 4
3. A person applying for a licence or permit to provide a child care service under the <i>Community Services Act 1972</i>	Section 22 and Division 4
4. A person being considered for any form of employment normally 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 or carried on	Section 18 and Division 4
5. A person being considered for licensing as a foster parent under the <i>Child Welfare Act 1947</i>	Division 4
6. A person being considered for participation in the safety house scheme organized by the Safety House Association of Western Australia Incorporated	Division 4

(2) The offences for the purposes of subclause (1) are —

- (a) offences under the following provisions of *The Criminal Code* —
 - (i) Chapter XXII (offences against morality);
 - (ii) Chapter XXVIII (homicide, suicide, concealment of birth);
 - (iii) Chapter XXIX (offences endangering life or health);
 - (iv) Chapter XXX (assaults);
 - (v) Chapter XXXIA (sexual assaults);
 - (vi) Chapter XXXIII (offences against liberty);
 - (vii) Section 343 (child stealing);
 - (viii) Section 344 (desertion of children);
- (b) an offence against the law of a foreign country that corresponds to an offence referred to in paragraph (a); and
- (c) an offence against the law of a jurisdiction named in Schedule 2 that corresponds to an offence referred to in paragraph (a).

(3) Except for an offence that comes within subclause (2) (a) (i) or (v), an offence is not one to which that subclause applies unless the person in respect of whom the offence was committed was under 18 years of age when the offence was committed.

”.

Date of conviction	Name and place of court	Offence	Sentence imposed	If imprisoned give date of release
(Continue on separate sheet if necessary)				

I, the person named in paragraph 2 above, solemnly and sincerely declare that the information I have supplied in this application is true and correct and I make this solemn declaration by virtue of Section 106 of the *Evidence Act 1906*.

Signature: _____

¹¹See note 3 at the foot of this form

Declared at _____ this _____ day of _____
19 ____

before me _____
Police Officer; or

Other⁵ _____
(Show designation)

CERTIFICATE OF IDENTITY

<p>I _____ of (name and address of person before whom above declaration made)</p> <p>certify that I have verified the identity of the applicant by sighting one of the following documents —</p> <p>(a) DRIVER'S LICENCE NUMBER: _____ EXPIRY: _____</p> <p>(b) PASSPORT NUMBER: _____ EXPIRY: _____</p> <p>COUNTRY OF ISSUE: _____</p> <p>(c) OTHER _____ (specify)</p>
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FOR OFFICIAL USE

TO CRIMINAL RECORDS SECTION			
Application forwarded by: SURNAME: _____ RANK: _____ No: _____			
TO BE COMPLETED BY THE OFFICER IN CHARGE, CRIMINAL RECORDS SECTION			
Record Checked by: _____		Certificate Issued/Not Issued	
Date: _____		Record Noted By: _____ OIC Initials: _____	
CLEARANCE CERTIFICATE REQUIRED YES/NO	STATION AT WHICH APPLICATION MADE	GENERAL RECEIPT ISSUED	DATE

INFORMATION FOR APPLICANT**1. Use of this form**

This form is only to be used for lesser convictions (see note (1) at the beginning of the form).

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 \$100 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 section 11 of the Act for working out this period.

The period is different if there is a subsequent conviction.

3. Making of declaration

If the applicant resides in Western Australia the declaration in the form must be made before a police officer.

If the application is completed outside Western Australia the declaration must be made before a person authorized to take a statutory declaration under the *Declarations and Attestations Act 1913*. These include —

- (a) a justice of the peace appointed in another State or Territory;
- (b) a Commissioner for declarations appointed under the *Statutory Declarations Act 1959* of the Commonwealth; or
- (c) an officer of the Commonwealth public service.

4. 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 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 organizations

A union or employer organization 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 authorization or a qualification for the carrying on of an occupation cannot use a spent conviction against a person —

- . to deprive the person of the authorization or qualification
- . in setting the terms and conditions on which the person may hold the authorization 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, 5 Mill Street, Perth 6000 (Tel: 222 8999).

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 licences (for example, security agents, child care 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.

By His Excellency's Command,

M. C. WAUCHOPE, Clerk of the Council.
