



Western Australia

Spent Convictions Act 1988

Reprinted as at 1 September 2000

Western Australia

Spent Convictions Act 1988

CONTENTS

Part 1 — Preliminary

1.	Short title	2
2.	Interpretation	2
3.	Interpretation	2
4.	Convictions to which Act does not apply	3
5.	Act binds Crown	3

Part 2 — Requirements for convictions to become spent

6.	Serious convictions	4
7.	Lesser convictions	5
8.	Convictions in other jurisdictions	5
9.	Meaning of “serious conviction”	5
10.	Meaning of “lesser conviction”	6
11.	Meaning of “prescribed period”	6

Part 3 — Effect of a conviction becoming spent

Division 1 — Application

12.	Application of Part 3	8
13.	Effect of Part 3 on other laws	8

Division 2 — Exceptions

14.	Proceedings in courts not affected by Division 4	8
15.	Bail decisions	9
16.	Further exceptions	9

Division 3 — Discrimination on ground of spent conviction

17.	Interpretation	10
18.	Discrimination against job applicants and employees	11
19.	Discrimination against commission agents	11
20.	Discrimination against contract workers	12
21.	Discrimination by organisations of workers and employers	12
22.	Discrimination by authorities that confer qualifications etc.	13
23.	Discrimination by employment agencies	13
24.	Enforcement of this Division	14

Division 4 — Other effects

25.	Interpretation of written laws	14
26.	Assessment of character not to have regard to spent convictions	14
27.	Disclosure or acknowledgement of spent convictions	15
28.	Unlawful access to criminal records	15

Part 4 — Miscellaneous

29.	Application of certain provisions of <i>Equal Opportunity Act 1984</i>	16
30.	Revival of sentence after parole etc.	16
31.	Prerogative of mercy not affected	17
32.	Act applies to convictions incurred before commencement	17
33.	Regulations	17

Schedule 1

Schedule 2

Schedule 3

Notes

Defined Terms



Western Australia

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Spent Convictions Act 1988

An Act to make provision for a person who has been convicted of an offence against the law of this State or of a foreign country and who has not re-offended during a specified period to be rehabilitated by limiting the effects of the conviction, to enable that limitation to apply to a conviction against the law of another State or Territory to which a corresponding law thereof applies, to limit the effects of a dismissal or withdrawal of a complaint or indictment, and for connected purposes.

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Spent Convictions Act 1988*¹.

2. Interpretation

This Act shall come into operation on such day as is fixed by proclamation¹.

3. Interpretation

(1) In this Act, unless the contrary intention appears —

“Commissioner of Police” means the Commissioner of Police appointed under section 5 of the *Police Act 1892*;

“Commonwealth law” includes a law that was in force in —

(a) the territory of Papua New Guinea before 16 September 1975; and

(b) the territory of Nauru before 31 January 1968;

“conviction” means a conviction incurred by a natural person for an offence against the law of this State or of a foreign country;

“life imprisonment” includes strict security life imprisonment;

“minor punishment” means a fine not exceeding \$100 or such amount as may be prescribed;

“spent conviction” means a conviction that is spent under section 6, 7 or 8 or that is spent by virtue of a spent conviction order made under section 39 of the *Sentencing Act 1995*.

(2) For the purposes of this Act —

(a) references to imprisonment do not include —

(i) imprisonment until a fine is paid, ordered under section 58 of the *Sentencing Act 1995*; or

- (ii) a sentence of imprisonment until a fine is paid or a recognisance is entered into, that was imposed under section 19(5) or (6) of *The Criminal Code*²;
- (b) references to imprisonment for an indeterminate period include —
 - (i) indefinite imprisonment imposed under Part 14 of the *Sentencing Act 1995*;
 - (ii) detention that was ordered under section 19(6a)(a), 661 or 662 of *The Criminal Code*²;
- (c) a sentence imposed by a court outside Western Australia shall be regarded as if it were a sentence of a kind most nearly corresponding to a sentence that may be imposed by a court in Western Australia.

[Section 3 amended by No. 78 of 1995 s.120.]

4. Convictions to which Act does not apply

- (1) Sections 6 and 7 do not apply to —
 - (a) a conviction to which section 189 of the *Young Offenders Act 1994* applies;
 - (b) a conviction that under section 20 of the *Offenders Community Corrections Act 1963*³ was deemed not to be a conviction;
 - (c) a conviction that under section 40(2) of the *Child Welfare Act 1947*⁴ was deemed not to be a conviction.
- (2) A conviction for which the penalty imposed by the court is or includes a sentence of life imprisonment is not capable of becoming spent under section 6 or 7.

[Section 4 amended by No. 78 of 1995 s.121.]

5. Act binds Crown

This Act binds the Crown.

Part 2 — Requirements for convictions to become spent

6. Serious convictions

- (1) A serious conviction incurred by a person becomes spent if, on application being made by that person to a District Court judge, the judge makes an order declaring that the conviction is spent.
- (2) An application under subsection (1) may not be made by a person in respect of a conviction —
 - (a) until the prescribed period for that conviction has expired; or
 - (b) if a judge has refused to make an order under that subsection in respect of the same conviction within the preceding 2 years.
- (3) The provisions in Schedule 1 apply to an application under subsection (1) and the determination of the application.
- (4) The making of an order under subsection (1) is at the discretion of the judge and that discretion shall be exercised having regard to —
 - (a) the length and kind of sentence imposed in respect of the conviction;
 - (b) the length of time since the conviction was incurred;
 - (c) whether the conviction prevents or may prevent the applicant from engaging in a particular profession, trade or business or in a particular employment;
 - (d) all the circumstances of the applicant, including the circumstances of the applicant at the time of the commission of the offence and at the time of the application;
 - (e) the nature and seriousness of the offence;
 - (f) the circumstances surrounding the commission of the offence; and

- (g) whether there is any public interest to be served in not making an order.

[Section 6 amended by No. 24 of 1989 s.3.]

7. Lesser convictions

- (1) A lesser conviction incurred by a person becomes spent when, on application being made in the prescribed form by that person to the Commissioner of Police, the Commissioner issues to the applicant a certificate that the conviction is spent.
- (2) An application under subsection (1) may not be made by a person in respect of a conviction until the prescribed period for that conviction has expired.
- (3) The Commissioner of Police does not have a discretion to issue or not issue a certificate under subsection (1) but must issue a certificate if the application conforms with this Act.
- (4) When the Commissioner of Police issues a certificate under subsection (1) he shall also give to the person notice in the form referred to in section 33(2).

8. Convictions in other jurisdictions

- (1) A conviction for an offence against Commonwealth law or the law of another State or of a Territory is spent if it comes within a clause of Schedule 2.
- (2) Regulations may be made under section 33 amending Schedule 2 to make provision for or in relation to convictions by courts of the Commonwealth or of other States or of Territories.

9. Meaning of “serious conviction”

For the purposes of this Act “**serious conviction**” means a conviction in respect of which the sentence imposed is —

- (a) imprisonment for more than one year or for an indeterminate period; or
- (b) a fine of \$15 000 or more.

s. 10

10. Meaning of “lesser conviction”

- (1) For the purposes of this Act “**lesser conviction**” means a conviction in respect of which the sentence imposed is not a sentence referred to in section 9 or a sentence of life imprisonment.
- (2) Notwithstanding subsection (1), if a person who has incurred a lesser conviction that is not spent incurs a conviction (including a conviction for an offence against Commonwealth law or the law of another State or of a Territory) for which a sentence referred to in section 9 or a sentence of life imprisonment is imposed, the lesser conviction thereafter becomes a serious conviction for the purposes of this Act.

11. Meaning of “prescribed period”

- (1) The prescribed period for a conviction is —
 - (a) 10 years plus any period of imprisonment relevant to that conviction, reckoned in accordance with this section; or
 - (b) where applicable, the period provided for by subsection (4).
- (2) If any such imprisonment is for an indeterminate period —
 - (a) the period of 10 years commences with the day on which the person is discharged from that sentence; and
 - (b) the period of imprisonment is the actual period served.
- (3) In all other cases where a sentence of imprisonment is imposed —
 - (a) the period of 10 years commences with the day on which the conviction is incurred; and
 - (b) the period of imprisonment (if any) is the period imposed, regardless of the period actually served.
- (4) Notwithstanding subsections (2) and (3), if at the time when a person incurs a conviction, including a conviction for an offence

against Commonwealth law or the law of another State or of a Territory, (in this subsection called “**the latest conviction**”) he has any other conviction that is not a spent conviction (in this subsection called “**any previous conviction**”) —

- (a) the prescribed period that has elapsed for any previous conviction shall be disregarded and the prescribed period for the latest conviction and any previous conviction shall —
 - (i) be the longer or longest of the prescribed periods for all those convictions; and
 - (ii) that period shall commence to run from the time of the latest conviction;

and

- (b) if a sentence of imprisonment in respect of the latest conviction is ordered to be served cumulatively on a sentence of imprisonment ordered to be served in respect of any previous conviction, the period of the sentence imposed for the latest conviction shall be added to the prescribed period for that previous conviction.
- (5) In subsection (4) “**the latest conviction**” does not include a conviction for which no punishment, or only minor punishment, was imposed.

Part 3 — Effect of a conviction becoming spent

Division 1 — Application

12. Application of Part 3

This Part applies to —

- (a) a dismissal under —
 - (i) section 669(1)(a) of *The Criminal Code* ⁵; and
 - (ii) section 34 or 34B of the *Child Welfare Act 1947* ⁴;
- (ab) a conviction that under section 20 of the *Offenders Community Corrections Act 1963* ³ was deemed not to be a conviction;
- (ac) a conviction that under section 40(2) of the *Child Welfare Act 1947* ⁴ was deemed not to be a conviction; and
- (b) a charge formally made in court that a person has committed an offence where —
 - (i) the charge is withdrawn; or
 - (ii) the charge is disposed of without a conviction being recorded,

as if the dismissal or charge were a spent conviction.

[Section 12 amended by No. 78 of 1995 s.122; No. 10 of 1998 s.65(1).]

13. Effect of Part 3 on other laws

This Part has effect notwithstanding any other written law.

Division 2 — Exceptions

14. Proceedings in courts not affected by Division 4

- (1) Nothing in Division 4 affects —
 - (a) the procedure of, or evidence admissible in, proceedings of a court or tribunal that applies the laws of evidence or proceedings under section 6; or

- (b) the Commissioner of Police acting under section 7.
- (2) Without limiting subsection (1) —
 - (a) sections 25(2), 26(1) and 27 do not apply in proceedings of a court or tribunal referred to in subsection (1)(a) or proceedings under section 6;
 - (b) section 25(1) does not apply in a court or tribunal for the purpose of —
 - (i) the determination of the guilt or innocence of a person charged with an offence where a conviction is relevant to that determination; or
 - (ii) a determination of the appropriate punishment to be imposed by that court or tribunal for an offence.
- (3) A court, tribunal or judge that receives evidence of a spent conviction shall take such steps as are reasonably available to avoid or minimise publication of that evidence.

15. Bail decisions

Sections 25(1) and (2), 26(1) and 27 do not apply for the purposes of any decision relating to the bail of a person for an appearance in a court.

16. Further exceptions

- (1) Regulations may be made under section 33 —
 - (a) amending this Act by inserting a Schedule or Schedules making provision for exceptions to this Part; or
 - (b) amending any such Schedule.
- (2) An exception created under the power in subsection (1) may be expressed —
 - (a) by reference to —
 - (i) an employer, principal, organisation, authority, agency or other person who would otherwise be bound by this Part, or any class thereof;

Spent Convictions Act 1988

Part 3 Effect of a conviction becoming spent

Division 3 Discrimination on ground of spent conviction

s. 17

- (ii) an employee, contract worker, or other person who would otherwise have the benefit of this Part, or any class thereof;
- (iii) a type of employment or legal relationship to which this Part relates, or any class thereof;
- (b) to apply to —
 - (i) the whole, or any specified provision, of this Part; or
 - (ii) all spent convictions or spent convictions for specified offences or classes of offences,

or in terms that are a combination of any 2 or more of the foregoing.

Division 3 — Discrimination on ground of spent conviction

17. Interpretation

- (1) In this Division “**commission agent**”, “**committee of management**”, “**contract worker**”, “**employment**”, “**employment agency**” and “**principal**” have the respective meanings assigned to them by the *Equal Opportunity Act 1984*.
- (2) For the purposes of this Division, a person (in this subsection referred to as the “**discriminator**”) discriminates against another person (in this subsection referred to as the “**aggrieved person**”) on the ground of a spent conviction if —
 - (a) on the ground of that conviction or the charge to which it relates, the discriminator treats the aggrieved person less favourably than, in the same circumstances or in circumstances that are not materially different, the discriminator treats or would treat a person who had never incurred a conviction; or
 - (b) the discriminator requires the aggrieved person to comply with a requirement or condition that is not reasonable having regard to the circumstances of the case.

18. Discrimination against job applicants and employees

- (1) It is unlawful for an employer to discriminate against a person on the ground of a spent conviction of the person —
 - (a) in the arrangements made for the purpose of determining who should be offered employment;
 - (b) in determining who should be offered employment; or
 - (c) in the terms or conditions on which employment is offered.
- (2) It is unlawful for an employer to discriminate against an employee on the ground of a spent conviction of the employee —
 - (a) in the terms or conditions of employment that the employer affords the employee;
 - (b) by denying the employee access, or limiting the employee's access, to opportunities for promotion, transfer or training, or to any other benefits associated with employment;
 - (c) by dismissing the employee; or
 - (d) by subjecting the employee to any other detriment.

19. Discrimination against commission agents

- (1) It is unlawful for a principal to discriminate against a person on the ground of a spent conviction of the person —
 - (a) in the arrangements the principal makes for the purpose of determining who should be engaged as a commission agent;
 - (b) in determining who should be engaged as a commission agent; or
 - (c) in the terms or conditions on which the person is engaged as a commission agent.
- (2) It is unlawful for a principal to discriminate against a commission agent on the ground of a spent conviction of the commission agent —
 - (a) in the terms or conditions that the principal affords the commission agent as a commission agent;

Spent Convictions Act 1988

Part 3 Effect of a conviction becoming spent

Division 3 Discrimination on ground of spent conviction

s. 20

- (b) by denying the commission agent access, or limiting the commission agent's access, to opportunities for promotion, transfer or training, or to any other benefits associated with the position as a commission agent;
- (c) by terminating the engagement; or
- (d) by subjecting the commission agent to any other detriment.

20. Discrimination against contract workers

It is unlawful for a principal to discriminate against a contract worker on the ground of a spent conviction of the contract worker —

- (a) in the terms or conditions on which the principal allows the contract worker to work;
- (b) by not allowing the contract worker to work or continue to work;
- (c) by denying the contract worker access, or limiting the contract worker's access, to any benefit associated with the work in respect of which the contract with the employer is made; or
- (d) by subjecting the contract worker to any other detriment.

21. Discrimination by organisations of workers and employers

- (1) This section applies to an organisation of employees and to an organisation of employers.
- (2) It is unlawful for an organisation to which this section applies or for a committee of management of such an organisation or for a member of such a committee of management to discriminate against a person who is not a member of the organisation on the ground of a spent conviction of the person —
 - (a) by refusing or failing to accept the person's application for membership; or

- (b) in the terms or conditions on which the organisation is prepared to admit the person to membership.
- (3) It is unlawful for an organisation to which this section applies or for the committee of management of such an organisation or for a member of such a committee of management to discriminate against a person who is a member of the organisation on the ground of a spent conviction of the person —
 - (a) by denying the person access, or limiting the person's access, to any benefit provided by the organisation;
 - (b) by depriving the person of membership or varying the terms of membership; or
 - (c) by subjecting the person to any other detriment.

22. Discrimination by authorities that confer qualifications etc.

It is unlawful for an authority that is empowered to confer, renew, extend, revoke or withdraw an authorisation or qualification that is needed for or facilitates the practice of a profession, the carrying on of a trade or the engaging in of an occupation to discriminate against a person on the ground of a spent conviction of the person —

- (a) by refusing or failing to confer, renew or extend the authorisation or qualification;
- (b) in the terms or conditions on which it is prepared to confer the authorisation or qualification or to renew or extend the authorisation or qualification; or
- (c) by revoking or withdrawing the authorisation or qualification or varying the terms or conditions upon which it is held.

23. Discrimination by employment agencies

It is unlawful for an employment agency to discriminate against a person on the ground of a spent conviction of the person —

- (a) by refusing to provide the person with any of its services;

Spent Convictions Act 1988

Part 3 Effect of a conviction becoming spent

Division 4 Other effects

s. 24

- (b) in the terms or conditions on which it offers to provide the person with any of its services; or
- (c) in the manner in which it provides the person with any of its services.

24. Enforcement of this Division

- (1) Where it is alleged that a contravention of this Division has occurred, a complaint may be lodged under section 83(1) or (2) of the *Equal Opportunity Act 1984* as if the alleged contravention were a contravention of that Act, and the provisions of that Act shall apply accordingly.
- (2) A contravention of this Division shall not attract any sanction or consequence, whether criminal or civil, except as provided in subsection (1).
- (3) Nothing in subsection (2) prevents an action for defamation.

Division 4 — Other effects

25. Interpretation of written laws

- (1) A reference in a written law of this State (other than this Act) to a conviction of a person for an offence does not include a reference to a spent conviction.
- (2) A written law of this State that requires a person to disclose or acknowledge matters relating to a convicted person does not require the disclosure or acknowledgment of a spent conviction or the charge to which the conviction relates.

26. Assessment of character not to have regard to spent convictions

- (1) Where a written law of this State permits or allows a person to consider, take into account, or determine the good character, fitness, propriety or other like attribute of a person for the purposes of that written law, the person shall not in doing so

have regard to a spent conviction or the charge to which the conviction relates.

- (2) Failure to comply with subsection (1) is not an offence, but this subsection does not affect any other remedy that may be invoked in respect of the failure.

27. Disclosure or acknowledgement of spent convictions

- (1) Questions about a convicted person put to that person or any other person shall not be taken to relate to a spent conviction or the charge to which the conviction relates.
- (2) A rule of common law or equity, or a provision of an agreement or arrangement, that requires the disclosure or acknowledgement of matters relating to a convicted person does not require the disclosure or acknowledgement of a spent conviction or the charge to which the conviction relates.

28. Unlawful access to criminal records

- (1) A person shall not, without lawful reason, obtain information about a spent conviction, or the charge to which the conviction relates, from an official criminal record.
Penalty: \$1 000.
- (2) In subsection (1) “**official criminal record**” means a record containing information about the results of criminal proceedings kept for the purposes of its functions by any police force, court, government department, local or other public authority in Western Australia.

Part 4 — Miscellaneous

29. Application of certain provisions of *Equal Opportunity Act 1984*

Without limiting section 24, for the purposes of this Act —

- (a) the Minister has the powers conferred by sections 81 and 107(1) of the *Equal Opportunity Act 1984* on the Minister to whom the administration of that Act is committed; and
- (b) the Commissioner under that Act has the functions set out in section 80(a), (b)(i), (c), (e) and (h), section 81 and section 95 of that Act,

in relation to discrimination on the ground of a spent conviction or the charge to which it relates, as provided in Division 3 of Part 3, as if such discrimination were a form of discrimination to which that Act applies; and

- (c) sections 155, 159, 160, 161, 162 and 163 of the *Equal Opportunity Act 1984* apply as if they were set out in this Act.

30. Revival of sentence after parole etc.

If a conviction of a person has become spent under this Act, it is not revived by reason of the fact that the person is subsequently held not to have been discharged from the sentence of imprisonment imposed in respect of that conviction by reason of —

- (a) section 70 of the *Sentence Administration Act 1995*; or
- (b) section 44(2) of the *Offenders Community Corrections Act 1963*³.

[Section 30 inserted by No. 78 of 1995 s.123.]

31. Prerogative of mercy not affected

This Act does not affect the exercise of the Royal prerogative of mercy.

32. Act applies to convictions incurred before commencement

- (1) The application of this Act extends to a conviction incurred by a person before the commencement of this Act.
- (2) For the purposes of subsection (1), the prescribed period expires —
 - (a) on the commencement of this Act; or
 - (b) on the day on which it would have expired if this Act had been in force continuously since the day when the conviction was incurred,

whichever is the later.

33. Regulations

- (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.
- (2) For the purposes of section 7(4) and clause 9 of Schedule 1, a form of notice shall be prescribed by the regulations setting out the effect of a conviction becoming spent under sections 6 and 7.

Schedule 1

[s.6(3)]

Provisions relating to application under section 6(1)

1. The application

- (1) An application under section 6(1) shall be in writing and shall set out —
 - (a) all previous convictions, whether incurred in Western Australia or elsewhere;
 - (b) the employment history of the applicant since the date of the conviction in respect of which the application is being made;
 - (c) such other matters as may be prescribed.
- (2) The judge may, by notice in writing given to the applicant, require the applicant to give further information in relation to the application.
- (3) An application may be made in respect of more than one conviction.

2. Parties to the application

- (1) The Commissioner of Police is a party to the application, and —
 - (a) shall be served with a copy of the application;
 - (b) may appear at any hearing or be represented by any person authorised by him;
 - (c) may make submissions on the application, or on any incidental matter.
- (2) The Attorney General may intervene in the application, and where he does so —
 - (a) he may appear or be represented at any hearing; and
 - (b) may make submissions on the application or on any incidental matter.

3. The hearing

- (1) The hearing shall be in private unless —
 - (a) the applicant requests that the hearing be in public; or

(b) the judge considers that, in the circumstances of the case, the hearing should be in public.

- (2) Where the hearing is in private the judge may give directions, in writing or otherwise, as to who may be present.
- (3) Where the hearing is in public the judge may order that there shall not be published by any means any particulars likely to lead to the identification of the applicant.
- (4) A person shall, unless he has lawful excuse, comply with an order made under subclause (3).

Penalty: \$1 000.

4. Rules of evidence not to apply

In determining an application, the judge shall not be bound by the rules of evidence, but may inform himself on any matter in such manner as he thinks fit.

5. Powers of judge and officers

Subject to this Act, the judge and the officers of the District Court may exercise the powers and authorities vested in them in respect of the civil jurisdiction of that court so far as is necessary or expedient for the hearing and determination of applications under section 6(1).

6. Witnesses

A witness in proceedings before the judge has the same privileges and protection and is subject to the same liabilities as a witness in civil proceedings before the District Court.

7. Alternatives to holding a hearing

The judge may —

- (a) if satisfied that an application is vexatious, misconceived or lacking in substance, refuse to make an order under section 6(1) without holding a hearing;
- (b) if satisfied that it is appropriate to do so, make an order under that section without holding a hearing.

Schedule 1

8. Costs

- (1) Except as provided by subclause (2), each party to an application shall bear his own costs.
- (2) Where the judge —
 - (a) refuses to make an order as mentioned in clause 7(a); or
 - (b) is of the opinion that the circumstances justify doing so,the judge may award such costs as the judge thinks fit.
- (3) Costs awarded under subclause (2) may be registered as a judgment debt in a court of competent jurisdiction.

9. Copy of order to be furnished

Where the judge makes an order declaring that a conviction is spent, a copy of the order shall, as soon as practicable, be sent to —

- (a) the applicant together with notice in the form referred to in section 33(2); and
- (b) the Commissioner of Police.

Schedule 2

[s.8]

Convictions in other jurisdictions

1. Queensland

A conviction against the law of the State of Queensland recorded by a court in that State where, under the *Criminal Law (Rehabilitation of Offenders) Act 1986* of that State —

- (a) the rehabilitation period in relation to that conviction has expired; and
- (b) the conviction has not been revived.

2. Commonwealth and Norfolk Island

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.

3. New South Wales

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

[Schedule 2 amended in Gazette 26 June 1992 p.2715.]

Schedule 3

[ss.16 and 33]

Exceptions to Part 3

1. Exceptions as to all spent convictions

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>Sentence Administration Act 1995</i> .	Division 4
1A.	The Supervised Release Review Board established under the <i>Young Offenders Act 1994</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 — (a) who is employed, or who is being considered for employment, as a prison officer under the <i>Prisons Act 1981</i> ; or (b) who holds, or who is applying to be issued with, a permit to do high-level security work as defined in that Act.	Section 18, 19, 20, 22 and Division 4

	Person excepted	Provisions of Part 3
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, security officer, security consultant or security installer under the <i>Security and Related Activities (Control) Act 1996</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
10.	A person employed in the Offender Management Division or the Prison Services Division of the Ministry of Justice when (in the course of the person's duties) assessing, reporting about or classifying persons charged with or convicted of offences.	Division 4
11.	A person —	Section 18 and Division 4
	(a) appointed as or being considered for appointment as a member of the Anti-Corruption Commission under section 5 of the <i>Anti-Corruption Commission Act 1988</i> ;	
	(b) appointed as or being considered for appointment as an officer or employee of the Anti-Corruption Commission under section 6 of the <i>Anti-Corruption Commission Act 1988</i> ;	

Schedule 3

Person excepted	Provisions of Part 3
<ul style="list-style-type: none"> (c) seconded or being considered for secondment under section 7 of the <i>Anti-Corruption Commission Act 1988</i>; (d) appointed or being considered for appointment under section 8 of the <i>Anti-Corruption Commission Act 1988</i>; (e) appointed or being considered for appointment under section 9 of the <i>Anti-Corruption Commission Act 1988</i>; (f) engaged or being considered for engagement under section 10 of the <i>Anti-Corruption Commission Act 1988</i>. 	
<p>12. A person —</p> <ul style="list-style-type: none"> (a) who is authorised, or who is being considered for authorisation, to exercise a Schedule power as defined in the <i>Court Security and Custodial Services Act 1999</i>; or (b) who holds, or who is applying to be issued with, a permit to do high-level security work as defined in that Act. 	<p>Section 18, 19, 20, 22 and Division 4</p>
<p>13. A person authorised to exercise a power set out in Division 1, 2 or 3 of Schedule 2 to the <i>Court Security and Custodial Services Act 1999</i> when (in the course of the person's duties) assessing, reporting about or classifying persons charged with or convicted of offences.</p>	<p>Division 4</p>

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

- (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 organised by the Safety House Association of Western Australia Incorporated.	Division 4
7.	A person applying under section 38(1) of the <i>Adoption Act 1994</i> to be assessed for suitability for adoptive parenthood.	Division 4

Schedule 3

- (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 XXXI (sexual offences);
 - (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.

3. Exceptions as to spent convictions for certain offences in relation to prospective employees of certain organisations

- (1) A person being considered for employment by an organisation specified in the table to this subclause is excepted from the provisions of section 18 and Division 4 of Part 3 in respect of a spent conviction for an offence referred to in subclause (2).

Table

- Activ Foundation
- Autism Association of Western Australia (Inc)
- Catholic Care for Intellectually Handicapped Persons
- Cerebral Palsy Association of WA Inc
- Citizen Advocacy WA

- Disability Services Commission
- Enjel Inc
- Florence Hummerston (Westcare) Accommodation Services
- Goldfields Family Support Association
- Interchange Inc
- Kimberley Family Support Association
- KIRA
- Lady Lawley Cottages
- Lower Great Southern Community Living Association
- Midlands Family Support Association
- Midwest Community Living Association
- Midwest Family Support Association
- Mofflyn Child and Family Care Services
- Multiple Sclerosis Society of WA
- Newall Inc
- Nulsen Haven Association
- Paraplegic-Quadriplegic Association
- People with Disabilities (WA) Inc
- Phylos Home Support Group
- Pilbara Family Support Association
- Rocky Bay Inc
- Royal WA Institute for the Blind
- South West Community Living Association
- South West Family Support Association
- The Richmond Fellowship of WA
- Upper Great Southern Family Support Association
- Valued Independent People
- Vemvane Inc
- WA Blue Sky Inc
- Western Swan Community Living Association
- Workpower Inc

- (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);

Schedule 3

- (ii) Chapter XXVIII (homicide, suicide, concealment of birth);
 - (iii) Chapter XXIX (offences endangering life or health);
 - (iv) Chapter XXX (assaults);
 - (v) Chapter XXXI (sexual offences);
 - (vi) Chapter XXXIII (offences against liberty); and
 - (vii) 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).

[Schedule 3 inserted in Gazette 26 June 1992 pp.2716-7; amended in Gazette 12 July 1994 pp.3365-6; 27 February 1998 p.1035; 5 May 1998 p.2331; 9 October 1998 p.5594; 2 June 2000 p.2667; 28 July 2000 p.4013; amended by Act No. 9 of 1994 s.145; No. 104 of 1994 s.236; No. 78 of 1995 s.124; No. 27 of 1996 s.96; No. 10 of 1998 s.65(2) and (3); No. 43 of 1999 s.20; No. 47 of 1999 s.38.]



Notes

¹ This reprint is a compilation as at 1 September 2000 of the *Spent Convictions Act 1988* and includes the amendments effected by the other Acts referred to in Part I of the following Table and by the regulations referred to in Part II of the following Table.

Table of Acts and Regulations

Part I — Acts

Short title	Number and year	Assent	Commencement	Miscellaneous
<i>Spent Convictions Act 1988</i>	55 of 1988	8 December 1988	Proclaimed 1 July 1992 (see section 2 and <i>Gazette</i> 26 June 1992 p.2644)	
<i>Spent Convictions Amendment Act 1989</i>	24 of 1989	8 December 1989	8 December 1989 (see section 2)	
<i>Adoption Act 1994</i> , section 145	9 of 1994	15 April 1994	Proclaimed 1 January 1995 (see section 2 and <i>Gazette</i> 25 November 1994 p.5905)	
<i>Young Offenders Act 1994</i> , section 236	104 of 1994	11 January 1995	Proclaimed 13 March 1995 (see section 2 and <i>Gazette</i> 10 March 1995 p.895)	
<i>Sentencing (Consequential Provisions) Act 1995</i> , Part 74	78 of 1995	16 January 1996	Proclaimed 4 November 1996 (see section 2(1) and <i>Gazette</i> 25 October 1996 p.5632)	
<i>Security and Related Activities (Control) Act 1996</i> , section 96	27 of 1996	22 July 1996	Proclaimed 1 April 1997 (see section 2 and <i>Gazette</i> 27 March 1997 p.1693)	

Spent Convictions Act 1988

Short title	Number and year	Assent	Commencement	Miscellaneous
<i>Statutes (Repeals and Minor Amendments) Act (No. 2) 1998, section 65</i>	10 of 1998	30 April 1998	30 April 1998 (see section 2(1))	
<i>Prisons Amendment Act 1999, section 20</i>	43 of 1999	8 December 1999	18 December 1999 (see section 2(2) and <i>Gazette</i> 17 December 1999 p.6175)	
<i>Court Security and Custodial Services (Consequential Provisions) Act 1999, Part II</i>	47 of 1999	8 December 1999	Proclaimed 18 December 1999 (see section 2 and <i>Gazette</i> 17 December 1999 pp.6175-6)	

Part II — Regulations

Regulation	Gazettal	Commencement	Miscellaneous
<i>Spent Convictions Regulations 1992</i>	26 June 1992 pp.2715-22	1 July 1992 (see regulation 2 and <i>Gazette</i> 26 June 1992 p 2644)	
<i>Spent Convictions (Amendment of Act, Schedule 3) Regulations 1994</i>	12 July 1994 pp.3365-6	12 July 1994	
<i>Spent Convictions (Act Amendment) Regulations 1998</i>	27 February 1998 p.1035	27 February 1998	
<i>Spent Convictions (Act Amendment) Regulations (No. 2) 1998</i>	5 May 1998 p.2331	5 May 1998	
<i>Spent Convictions (Act Amendment) Regulations (No. 3) 1998</i>	9 October 1998 pp.5593-4	9 October 1998	
<i>Spent Convictions (Act Amendment) Regulations 2000</i>	2 June 2000 p.2667	2 June 2000	

Regulation	Gazettal	Commencement	Miscellaneous
<i>Spent Convictions (Act Amendment) Regulations (No. 2) 2000</i>	28 July 2000 p.4013	28 July 2000	

^{1a} At the date of this reprint an item of Schedule 2 of the *School Education Act 1999* (No. 36 of 1999) was not operative. It reads as follows —

“

Spent Convictions Act 1988

Schedule 3 is amended, in the Table to clause 2 —

- (a) in item 1, by deleting “teacher as defined in section 3 of the *Education Act 1928*” and substituting the following —

“

a member of the teaching staff within the meaning of the *School Education Act 1999* or as a teacher of a non-government school within the meaning of that Act

”;

and

- (b) in item 2, by deleting “a care centre or pre-school centre under the *Education Act 1928*” and substituting the following —

“

a community kindergarten registered under Part 5 of the *School Education Act 1999*

”

”

^{1b} At the date of this reprint an item of Schedule 1 of the *Sentencing Legislation Amendment and Repeal Act 1999* (No. 57 of 1999) was not operative. It reads as follows —

“

Spent Convictions Act 1988

s. 30(a)	Delete the paragraph and “or” after it and insert instead — (a) section 73 of the <i>Sentence Administration Act 1999</i> ; (ab) section 70 of the <i>Sentence Administration Act 1995</i> ; or
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Schedule 3 clause 1	In the Table, in item 1, delete “ <i>Sentence Administration Act 1995</i> ” and insert instead — <i>Sentence Administration Act 1999</i>
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- 2 *The Criminal Code* ss.19, 661 and 662 repealed by *Sentencing (Consequential Provisions) Act 1995* (No. 78 of 1995) s.26.
- 3 *Offenders Community Corrections Act 1963* repealed by the *Sentencing (Consequential Provisions) Act 1995* (No. 78 of 1995) s.77.
- 4 *Child Welfare Act 1947* ss.34, 34B and 40 repealed by the *Young Offenders Act 1994* (No. 104 of 1994).
- 5 *The Criminal Code* s.669 repealed by *Sentencing (Consequential Provisions) Act 1995* (No. 78 of 1995) s.26.

Defined Terms

[This is a list of terms defined and the provisions where they are defined.

The list is not part of the law.]

Defined Term	Provision(s)
aggrieved person	17(2)
any previous conviction	11(4)
commission agent.....	17(1)
Commissioner of Police	3(1)
committee of management	17(1)
Commonwealth law	3(1)
contract worker	17(1)
conviction.....	3(1)
discriminator	17(2)
employment	17(1)
employment agency	17(1)
lesser conviction.....	10(1)
life imprisonment	3(1)
minor punishment	3(1)
official criminal record.....	28(2)
prescribed period.....	11
principal	17(1)
serious conviction	9
spent conviction	3(1)
the latest conviction	11(4), 11(5)