

Western Australia

## **Spent Convictions Act 1988**

---

As at 28 Jun 2010

Version 05-k0-01

Extract from [www.slp.wa.gov.au](http://www.slp.wa.gov.au), see that website for further information



## Spent Convictions Act 1988

---

### CONTENTS

---

#### **Part 1 — Preliminary**

1.	Short title	2
2.	Commencement	2
3.	Terms used in this Act	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	9
15.	Bail decisions	9
16.	Further exceptions	10

	<b>Division 3 — Discrimination on ground of spent conviction</b>	
17.	Terms used in this Division	10
18.	Discrimination against job applicants and employees	11
19.	Discrimination against commission agents	12
20.	Discrimination against contract workers	12
21.	Discrimination by organisations of workers and employers	13
22.	Discrimination by authorities that confer qualifications etc.	13
23.	Discrimination by employment agencies	14
24.	Enforcement of this Division	14
	<b>Division 4 — Other effects</b>	
25.	Interpretation of written laws	15
26.	Assessment of character not to have regard to spent convictions	15
27.	Disclosure or acknowledgment of spent convictions	15
28.	Unlawful access to criminal records	16
	<b>Part 4 — Miscellaneous</b>	
29.	Application of certain provisions of <i>Equal Opportunity Act 1984</i>	17
30.	Revival of sentence after parole etc.	17
31.	Prerogative of mercy not affected	18
32.	Act applies to convictions incurred before commencement	18
33.	Regulations	18
	<b>Schedule 1 — Provisions relating to application under section 6(1)</b>	
1.	The application	19
2.	Parties to the application	19
3.	The hearing	19
4.	Rules of evidence not to apply	20
5.	Powers of judge and officers	20
6.	Witnesses	20
7.	Alternatives to holding a hearing	20
8.	Costs	21

9.	Copy of order to be furnished	21
----	-------------------------------	----

**Schedule 2 — Convictions in other jurisdictions**

1.	Queensland	22
2.	Commonwealth and Norfolk Island	22
3.	New South Wales	22

**Schedule 3 — Exceptions to Part 3**

1.	Exceptions as to all spent convictions	23
2.	Exceptions as to spent convictions for certain offences in order to protect children	37

**Notes**

Compilation table	40
Provisions that have not come into operation	43



Western Australia

## **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 charge, and for connected purposes.**

*[Long title amended by No. 84 of 2004 s. 80.]*

## **Part 1 — Preliminary**

**1. Short title**

This Act may be cited as the *Spent Convictions Act 1988* <sup>1</sup>.

**2. Commencement**

This Act shall come into operation on such day as is fixed by proclamation <sup>1</sup>.

**3. Terms used in this Act**

- (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*<sup>2</sup>;

- (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*<sup>2</sup>;
- (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*<sup>3</sup> was deemed not to be a conviction;
  - (c) a conviction that under section 40(2) of the *Child Welfare Act 1947*<sup>4</sup> 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* <sup>2</sup>; and
  - (ii) section 34 or 34B of the *Child Welfare Act 1947* <sup>4</sup>;
- (ab) a conviction that under section 20 of the *Offenders Community Corrections Act 1963* <sup>3</sup> was deemed not to be a conviction;
- (ac) a conviction that under section 40(2) of the *Child Welfare Act 1947* <sup>4</sup> 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;
    - (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. Terms used in this Division**

- (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;
  - (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;
- (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 acknowledgment 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 acknowledgment of 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.

**Spent Convictions Act 1988**

**Part 3** Effect of a conviction becoming spent

**Division 4** Other effects

**s. 28**

---

**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 67 of the *Sentence Administration Act 2003*;
- (ab) section 70 of the *Sentence Administration Act 1995*; or
- (b) section 44(2) of the *Offenders Community Corrections Act 1963*<sup>3</sup>.

*[Section 30 inserted by No. 78 of 1995 s. 123; amended by No. 50 of 2003 s. 29(3).]*

**s. 31**

---

**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

**cl. 4**

---

(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.

**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.

*[Clause 2 inserted in Gazette 26 Jun 1992 p. 2715.]*

**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.

*[Clause 3 inserted in Gazette 26 Jun 1992 p. 2715.]*

## Schedule 3

[s. 16 and 33]

### Exceptions to Part 3

*[Heading inserted in Gazette 26 Jun 1992 p. 2716.]*

#### 1.     **Exceptions as to all spent convictions**

- (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 all spent convictions.

**Table**

	<b>Person excepted</b>	<b>Provisions of Part 3</b>
1.	The Prisoners Review Board established by the <i>Sentence Administration Act 2003</i> .	Division 4
1A.	The Supervised Release Review Board established under the <i>Young Offenders Act 1994</i> .	Division 4
1B.	The Mentally Impaired Accused Review Board established by the <i>Criminal Law (Mentally Impaired Accused) Act 1996</i> .	Division 4
2.	A person being considered for appointment as a Justice of the Peace under the <i>Justices of the Peace Act 2004</i> .	Division 4
3.	A person appointed as or being considered for appointment as a constable or police auxiliary officer or Aboriginal police liaison officer under the <i>Police Act 1892</i> .	Section 18 and Division 4
4.	A person appointed as or being considered for appointment as a special constable or police cadet under the <i>Police Act 1892</i> .	Division 4

**cl. 1**

---

	<b>Person excepted</b>	<b>Provisions of Part 3</b>
4A.	A person appointed, or being considered for appointment, by the Commissioner of Police acting as an employing authority under the <i>Public Sector Management Act 1994</i> to an office, post or position the duties of which are such that the holder of it is, or may be required, to provide services to persons who are not of full legal capacity or to deal in any manner with persons who are not of full legal capacity.	Section 18 and 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
6.	A person employed or 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 who holds a licence or permit, or who is applying for the issue or renewal of a licence or permit, 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	Division 4

Person excepted	Provisions of Part 3
licence under the <i>Firearms Act 1973</i> .	
10. A person employed in the Department of Corrective Services when (in the course of the person's duties) assessing, reporting about or classifying persons charged with or convicted of offences.	Division 4
10A. A contract worker who is authorised under section 151 of the <i>Prisons Act 1981</i> to perform the functions of a superintendent or a prison officer when (in the course of the person's duties) assessing, reporting about or classifying persons charged with or convicted of offences.	Division 4
10B. A person — (a) appointed as or being considered for appointment as the Commissioner under the <i>Corruption and Crime Commission Act 2003</i> ; (b) appointed as or being considered for appointment as the Parliamentary Inspector of the Corruption and Crime Commission under the <i>Corruption and Crime Commission Act 2003</i> ; (c) appointed as or being considered for appointment as an officer of the Corruption and Crime Commission under section 179 of the <i>Corruption and Crime Commission Act 2003</i> ;	Section 18 and Division 4

**cl. 1**

	<b>Person excepted</b>	<b>Provisions of Part 3</b>
	(d) seconded or otherwise engaged, or being considered for secondment or engagement, as an officer of the Corruption and Crime Commission under section 181 of the <i>Corruption and Crime Commission Act 2003</i> ;	
	(e) engaged or being considered for engagement as an officer of the Corruption and Crime Commission under section 182 of the <i>Corruption and Crime Commission Act 2003</i> ;	
	(f) appointed as or being considered for appointment as an employee of the Parliamentary Inspector of the Corruption and Crime Commission under section 210 of the <i>Corruption and Crime Commission Act 2003</i> ;	
	(g) seconded or otherwise engaged, or being considered for secondment or engagement, as an officer of the Parliamentary Inspector of the Corruption and Crime Commission under section 212 of the <i>Corruption and Crime Commission Act 2003</i> ;	
	(h) engaged or being considered for engagement as an officer of the Parliamentary Inspector of the Corruption and Crime Commission under section 213 of the <i>Corruption and Crime Commission Act 2003</i> .	
11.	A person who is designated, or who is being considered for designation, as a security officer under the <i>Public Transport Authority Act 2003</i> section 56(2).	Sections 18, 20 and 22 and Division 4



Person excepted	Provisions of Part 3
12. A person — (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.	Section 18, 19, 20, 22 and Division 4
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.	Division 4
14. A person — (a) who is appointed, or is being considered for appointment, as the Public Trustee under the <i>Public Trustee Act 1941</i> section 4; or (b) who, pursuant to the <i>Public Trustee Act 1941</i> section 6, is appointed, transferred or seconded, or is being considered for appointment, transfer or secondment, under the <i>Public Sector Management Act 1994</i> Part 3 for the purposes of assisting the Public Trustee to perform his or her functions; or (c) whose services the Public Trustee makes use of, or is considering making use of, under the <i>Public</i>	Sections 18 and 20 and Division 4

**cl. 1**

Person excepted	Provisions of Part 3
<i>Trustee Act 1941</i> section 6A; or	
(d) who is engaged or appointed, or is being considered for engagement or appointment, under the <i>Public Sector Management Act 1994</i> section 100 for the purposes referred to in paragraph (b); or	
(e) who provides, or has offered to provide, services on a voluntary basis for the purposes referred to in paragraph (b).	
15. A person —	Sections 18 and 20 and Division 4
(a) who is appointed, or is being considered for appointment, as the Public Advocate under the <i>Guardianship and Administration Act 1990</i> section 91; or	
(b) who is appointed, or is being considered for appointment, under the <i>Guardianship and Administration Act 1990</i> section 93 to act as Public Advocate; or	
(c) who, pursuant to the <i>Guardianship and Administration Act 1990</i> section 94, is appointed, transferred or seconded, or is being considered for appointment, transfer or secondment, under <i>Public Sector Management Act 1994</i> Part 3 for the purposes of assisting the Public Advocate to perform his or her functions; or	
(d) who is engaged or appointed, or is being considered for engagement or appointment, under the <i>Public</i>	

Person excepted	Provisions of Part 3
<i>Sector Management Act 1994</i> section 100 for the purposes referred to in paragraph (c); or	
(e) who provides, or has offered to provide, services on a voluntary basis for the purposes referred to in paragraph (c).	

- (2) In the case of a person referred to in item 2 to 9, 10B, 11, 12, 14 or 15 of the Table to subclause (1), the exception in that subclause extends to any other person —

- (a) who has appointed, designated, employed, transferred, seconded or engaged the person or is considering the person for appointment, designation, employment, transfer, secondment or engagement; or
- (b) who has issued a permit to the person or is considering issuing a permit to the person; or
- (c) who is considering granting or issuing a licence to the person; or
- (d) who has authorised the person or is considering the person for authorisation; or
- (e) for whom the person provides, or has offered to provide, services on a voluntary basis,

whichever is relevant for the purposes of the item.

- (3) The persons specified in the table to this subclause are excepted from the provisions of sections 18, 19, 20 and 22 and Division 4 of Part 3 in respect of all spent convictions.

**Table**

- 1. A person who is employed, or who is being considered for employment, in the Department of Education and Training.
- 2. A person who is employed, or who is being considered for employment, in the Department of Education Services.
- 3. A person who is a member of the governing body of a

**cl. 1**

---

school that is registered under Part 4 of the *School Education Act 1999* or who is named as a member of the governing body in an application for registration made under section 158 of that Act.

4. A person who is employed, or who is being considered for employment, in a school that is registered under Part 4 of the *School Education Act 1999*.
5. A person who is a member of the governing body of a community kindergarten that is registered under Part 5 of the *School Education Act 1999* or who is named as a member of the governing body in an application for registration made under section 193 of that Act.
6. A person who is employed, or who is being considered for employment, in a community kindergarten that is registered under Part 5 of the *School Education Act 1999*.
7. A person who is engaged, or who is being considered for engagement, whether for reward or not, to carry out duties that may require the person to come into contact with children of a school (whether in or outside school premises) for purposes related to school activities, for purposes related to health or for religious purposes.
8. A person who is engaged, or who is being considered for engagement, whether for reward or not, to carry out duties that may require the person to come into contact with children of a community kindergarten that is registered under Part 5 of the *School Education Act 1999* (whether in or outside the premises of the community kindergarten) for purposes related to activities of the community kindergarten, for purposes related to health or for religious purposes.
9. A person who is employed, or who is being considered for employment, in a college established under section 35 of the *Vocational Education and Training Act 1996*.
10. A person who is employed, or who is being considered for employment, by a registered training provider under the *Vocational Education and Training Act 1996*.
11. A person who is a member of the governing body of an organisation registered under the *Education Service*

*Providers (Full Fee Overseas Students) Registration Act 1991* or is named as a member of the governing body in an application for the registration of an organisation made under that Act.

12. A person who is employed, or who is being considered for employment, by an organisation registered under the *Education Service Providers (Full Fee Overseas Students) Registration Act 1991*.
13. A person who is employed, or who is being considered for employment, by the Country High Schools Hostels Authority.
14. A person who has been appointed, or who is being considered for appointment, as a member of the Board established under section 7 of the *Western Australian College of Teaching Act 2004*.
15. A person who is employed, or who is being considered for employment, by the Western Australian College of Teaching.
16. A person who is registered or provisionally registered as a teacher or holds a limited authority to teach under the *Western Australian College of Teaching Act 2004* or who has applied for membership of the Western Australian College of Teaching in the category of registration as a teacher, provisional registration as a teacher or limited authority to teach.
17. A person who is employed, or who is being considered for employment, by an organisation that has obtained funding or is proposing to obtain funding under a funding agreement with the Minister administering the *School Education Act 1999*.
18. A person who is placed, or who is being considered for placement, in a school as part of a course of training that the person is undertaking for the purpose of obtaining a vocational qualification.

**cl. 1**

---

19. A person who is employed, or who is being considered for employment, in the Department of Housing and Works to carry out duties that may require the person to come into contact with children of a school (whether in or outside school premises).
- (4) In the case of a person referred to in an item of the table to subclause (3), the exception in that subclause extends to any other person —
- (a) who has employed, appointed, engaged or placed the person or is considering the person for employment, appointment, engagement or placement;
  - (b) who has registered a school, community kindergarten or organisation of whose governing body the person is a member or is considering registering a school, community kindergarten or organisation of whose governing body the person is named as a member;
  - (c) for whom the person provides, or has offered to provide, services on a voluntary basis; or
  - (d) who has registered, provisionally registered or issued limited authority to the person or is considering registering, provisionally registering or issuing limited authority to the person,
- whichever is relevant for the purposes of the item.
- (5) 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 all spent convictions.

**Table**

	<b>Person excepted</b>	<b>Provisions of Part 3</b>
1.	A person who is employed, or who is being considered for employment, by the Director General of the Department for Community Development <sup>5</sup> if the person may in the course of the person's duties deal with children and their families or	Sections 18 and 20 and Division 4

<b>Person excepted</b>	<b>Provisions of Part 3</b>
with sensitive and confidential information about children and their families.	
<p>2. A person —</p> <p>(a) who is placed, or who is being considered for placement, as a student or trainee; or</p> <p>(b) who is engaged, or who is being considered for engagement, in an unpaid capacity,</p> <p>in the Department for Community Development 5 if the person may in the course of the person's service deal with children and their families or with sensitive and confidential information about children and their families.</p>	Sections 18 and 20 and Division 4
<p>3. A person who is a member, or who is being considered for membership, of a committee or other body advising the Minister for Community Development or the Director General of the Department for Community Development 5 if the committee or body may in the course of performing its functions deal with children and their families or with sensitive and confidential information about children and their families.</p>	Sections 18 and 20 and Division 4
<p>4. A person who has been engaged, or who is being considered for engagement, either for reward or in an unpaid capacity by the Department for Community Development 5 to provide overnight care for a child or children, whether in the person's home or otherwise.</p>	Sections 18 and 20 and Division 4
<p>4A. A person who is employed, or who is</p>	Sections 18

**cl. 1**

---

	<b>Person excepted</b>	<b>Provisions of Part 3</b>
	being considered for employment, in the Department of Housing and Works if the person may in the course of the person's duties deal with children and their families or with sensitive and confidential information about children and their families.	and 20 and Division 4
5.	A person applying for a licence or permit to provide a child care service under the <i>Community Services Act 1972</i> .	Sections 18 and 20 and Division 4
6.	A person applying under section 38(1) of the <i>Adoption Act 1994</i> to be assessed for suitability for adoptive parenthood.	Division 4

(6) In the case of a person referred to in an item of the table to subclause (5), the exception in that subclause extends to any other person who —

- (a) has employed, placed, appointed or engaged the person or is considering the person for employment, placement, appointment or engagement;
- (b) is considering issuing or granting a licence or permit to the person; or
- (c) is assessing the suitability of the person,

whichever is relevant for the purposes of the item.

(7) The persons specified in the table to this subclause are excepted from the provisions of sections 18, 19, 20 and 22 and Division 4 of Part 3 in respect of all spent convictions.

**Table**

1. A person who is employed or seconded, or who is being considered for employment or secondment, by the Director General of the Department of Health under the —
  - (a) *Health Act 1911*;
  - (b) *Hospitals and Health Services Act 1927*;



- (c) *Mental Health Act 1996*; or
  - (d) *Alcohol and Drug Authority Act 1974*.
- 2. A person who is placed, or who is being considered for placement, as a student undertaking a practicum or in an unpaid capacity in the Department of Health.
- (8) In the case of a person referred to in an item of the table to subclause (7) the exception in that subclause extends to any other person who has employed, seconded or placed the person or is considering the person for employment, secondment or placement.
- (9) The persons specified in the table to this subclause are excepted from the provisions of sections 18, 19, 20 and 22 and Division 4 of Part 3 in respect of all spent convictions.

**Table**

- 1. A person who is employed, or who is being considered for employment, in the Disability Services Commission referred to in section 6 of the *Disability Services Act 1993*.
- 1A. A person who is placed, or who is being considered for placement, in an unpaid capacity in the Disability Services Commission referred to in section 6 of the *Disability Services Act 1993*.
- 2. A person who is appointed, or who is being considered for appointment, as a member of the board of the Disability Services Commission referred to in section 7 of the *Disability Services Act 1993*.
- 3. A person who is a member, or who is being considered for appointment as a member, of the Ministerial Advisory Council on Disability referred to in section 22 of the *Disability Services Act 1993*.
- 4. A person who is a member, or who is being considered for appointment or election as a member, of the governing body of an organisation that is funded by the Disability Services Commission under Part 4 or 4A of the *Disability Services Act 1993*.
- 5. A person who is employed, or who is being considered for

**cl. 2**

---

employment, in an organisation that is funded by the Disability Services Commission under Part 4 or 4A of the *Disability Services Act 1993*.

6. A person who is placed, or who is being considered for placement, in an unpaid capacity in an organisation that is funded by the Disability Services Commission under Part 4 or 4A of the *Disability Services Act 1993*.
- (10) In the case of a person referred to in an item of the table to subclause (9), the exception in that subclause extends to any other person who has employed, placed or appointed the person or is considering the person for employment, placement or appointment.
- (11) In the case of a person referred to in —
- (a) item 5, 11, 12, 14 or 15 of the table to subclause (1);
  - (b) item 1, 2, 6 to 10, 12, 13, 15 or 17 of the table to subclause (3);
  - (c) item 1 of the table to subclause (5);
  - (d) item 1 of the table to subclause (7); or
  - (e) item 1 or 5 of the table to subclause (9),
- the exception in the relevant subclause extends to any other person who is or may become the principal of that person for the purposes of section 20.
- [Clause 1 inserted in Gazette 26 Jun 1992 p. 2716; amended by Act No. 104 of 1994 s. 236; No. 78 of 1995 s. 124; No. 27 of 1996 s. 96; No. 43 of 1999 s. 20; No. 47 of 1999 s. 38; No. 48 of 2003 s. 62 (as amended by No. 78 of 2003 s. 35(13)); No. 50 of 2003 s. 29(3); No. 78 of 2003 s. 74(2); No. 59 of 2004 s. 141; No. 41 of 2006 s. 96; No. 65 of 2006 s. 70; No. 4 of 2008 s. 82; No. 8 of 2008 s. 19; No. 42 of 2009 s. 23; amended in Gazette 27 Feb 1998 p. 1035; 9 Oct 1998 p. 5594; 2 Jun 2000 p. 2667; 28 Jul 2000 p. 4013; 17 Aug 2001 p. 4346; 1 Feb 2002 p. 517; 26 Nov 2004 p. 5312-13; 31 May 2005 p. 2414-19; 24 Oct 2006 p. 4491-2; 18 Aug 2009 p. 3239; 29 Jan 2010 p. 197-9.]*

**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
<i>[1-3. deleted]</i>	
4. A person being considered for any form of employment normally carried out wholly or partly within the precincts of a care centre, pre-school centre or place where a child care service is conducted or carried on.	Section 18 and Division 4
<i>[5. deleted]</i>	
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
8. A person who is employed or who is being considered for employment in the Department of Sport and Recreation.	Sections 18 and 20 and Division 4
9. A person who is employed, or who is being considered for employment, in the Department of Housing and Works.	Sections 18 and 20 and Division 4

- (2) The offences for the purposes of subclause (1) are —
- (a) offences under the following provisions of *The Criminal Code* —

**cl. 2**

---

- (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.
- (4) In the case of a person referred to in an item of the table to subclause (1), the exception in that subclause extends to any other person who —
- (a) is considering the person for employment or has employed the person; or
  - (b) is considering the person for participation in a scheme,
- whichever is relevant for the purposes of the item.
- (5) In the case of a person referred to in item 8 of the table to subclause (1), the exception in that subclause extends to any other person who is or may become the principal of that person for the purposes of section 20.
- (6) The persons specified in the table to this subclause are excepted from the provisions of sections 27 and 28 in respect of all spent convictions.

**Table**

1. A person in respect of whom section 34 of the *Working with Children (Criminal Record Checking) Act 2004* applies.
2. A person making, or giving effect to, a request for a criminal record check as defined in section 4 of the *Working with Children (Criminal Record Checking) Act 2004*.

*[Clause 2 inserted in Gazette 26 Jun 1992 p. 2716-17; amended by Act No. 9 of 1994 s. 145; No. 10 of 1998 s. 65(2); No. 36 of 1999 s. 247; amended in Gazette 30 Dec 2003 p. 5727; 26 Nov 2004 p. 5313; 31 May 2005 p. 2420; 24 Oct 2006 p. 4492.]*

*[3. Deleted in Gazette 24 Oct 2006 p. 4492.]*

**Notes**

- <sup>1</sup> This is a compilation of the *Spent Convictions Act 1988* and includes the amendments made by the other written laws referred to in the following table <sup>1a, 6</sup>. The table also contains information about any reprint.

**Compilation table**

<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Spent Convictions Act 1988</i>	55 of 1988	8 Dec 1988	s. 1 and 2: 8 Dec 1988; Act other than s. 1 and 2: 1 Jul 1992 (see s. 2 and <i>Gazette</i> 26 Jun 1992 p. 2644)
<i>Spent Convictions Amendment Act 1989</i>	24 of 1989	8 Dec 1989	8 Dec 1989 (see s. 2)
<i>Spent Convictions Regulations 1992</i> published in <i>Gazette</i> 26 Jun 1992 p. 2715-22			1 Jul 1992 (see r. 2 and <i>Gazette</i> 26 Jun 1992 p. 2644)
<b>Reprint of the <i>Spent Convictions Act 1988</i> as at 4 Nov 1992</b> (includes amendments listed above)			
<i>Adoption Act 1994</i> s. 145	9 of 1994	15 Apr 1994	1 Jan 1995 (see s. 2 and <i>Gazette</i> 25 Nov 1994 p. 5905)
<i>Spent Convictions (Amendment of Act, Schedule 3) Regulations 1994</i> published in <i>Gazette</i> 12 Jul 1994 p. 3365-6			12 Jul 1994
<i>Young Offenders Act 1994</i> s. 236	104 of 1994	11 Jan 1995	13 Mar 1995 (see s. 2 and <i>Gazette</i> 10 Mar 1995 p. 895)
<i>Sentencing (Consequential Provisions) Act 1995</i> Pt. 74	78 of 1995	16 Jan 1996	4 Nov 1996 (see s. 2(1) and <i>Gazette</i> 25 Oct 1996 p. 5632)
<i>Security and Related Activities (Control) Act 1996</i> s. 96	27 of 1996	22 Jul 1996	1 Apr 1997 (see s. 2 and <i>Gazette</i> 27 Mar 1997 p. 1693)
<b>Reprint of the <i>Spent Convictions Act 1988</i> as at 19 Nov 1996</b> (includes amendments listed above except those in the <i>Security and Related Activities (Control) Act 1996</i> )			
<i>Spent Convictions (Act Amendment) Regulations 1998</i> published in <i>Gazette</i> 27 Feb 1998 p. 1035			27 Feb 1998
<i>Statutes (Repeals and Minor Amendments) Act (No. 2) 1998</i> s. 65	10 of 1998	30 Apr 1998	30 Apr 1998 (see s. 2(1))

Short title	Number and year	Assent	Commencement
<i>Spent Convictions (Act Amendment) Regulations (No. 2) 1998</i> published in <i>Gazette</i> 5 May 1998 p. 2331			5 May 1998
<i>Spent Convictions (Act Amendment) Regulations (No. 3) 1998</i> published in <i>Gazette</i> 9 Oct 1998 p. 5593-4			9 Oct 1998
<i>School Education Act 1999</i> s. 247	36 of 1999	2 Nov 1999	1 Jan 2001 (see s. 2 and <i>Gazette</i> 29 Dec 2000 p. 7904)
<i>Prisons Amendment Act 1999</i> s. 20	43 of 1999	8 Dec 1999	18 Dec 1999 (see s. 2(2) and <i>Gazette</i> 17 Dec 1999 p. 6175)
<i>Court Security and Custodial Services (Consequential Provisions) Act 1999</i> Pt. 11	47 of 1999	8 Dec 1999	18 Dec 1999 (see s. 2 and <i>Gazette</i> 17 Dec 1999 p. 6175-6)
<i>Spent Convictions (Act Amendment) Regulations 2000</i> published in <i>Gazette</i> 2 Jun 2000 p. 2667			2 Jun 2000
<i>Spent Convictions (Act Amendment) Regulations (No. 2) 2000</i> published in <i>Gazette</i> 28 Jul 2000 p. 4013			28 Jul 2000
<b>Reprint of the <i>Spent Convictions Act 1988</i> as at 1 Sep 2000</b> (includes amendments listed above except those in the <i>School Education Act 1999</i> ) (correction in <i>Gazette</i> 6 Oct 2000 p. 5591)			
<i>Spent Convictions (Act Amendment) Regulations (No. 2) 2001</i> published in <i>Gazette</i> 17 Aug 2001 p. 4346			17 Aug 2001
<i>Spent Convictions (Act Amendment) Regulations (No. 3) 2001</i> published in <i>Gazette</i> 1 Feb 2002 p. 517			1 Feb 2002
<i>Corruption and Crime Commission Act 2003</i> s. 62	48 of 2003 (as amended by No. 78 of 2003 s. 35(13))	3 Jul 2003	1 Jan 2004 (see s. 2 and <i>Gazette</i> 30 Dec 2003 p. 5723)
<i>Sentencing Legislation Amendment and Repeal Act 2003</i> s. 29(3)	50 of 2003	9 Jul 2003	31 Aug 2003 (see s. 2 and <i>Gazette</i> 29 Aug 2003 p. 3833)
<i>Corruption and Crime Commission Amendment and Repeal Act 2003</i> s. 74(2)	78 of 2003	22 Dec 2003	7 Jul 2004 (see s. 2 and <i>Gazette</i> 6 Jul 2004 p. 2697)
<i>Spent Convictions (Act Amendment) Regulations 2003</i> published in <i>Gazette</i> 30 Dec 2003 p. 5726-7			30 Dec 2003

## Spent Convictions Act 1988

Short title	Number and year	Assent	Commencement
<i>Courts Legislation Amendment and Repeal Act 2004</i> s. 141	59 of 2004	23 Nov 2004	1 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7128)
<i>Spent Convictions (Act Amendment) Regulations 2004</i> published in <i>Gazette</i> 26 Nov 2004 p. 5312-13			26 Nov 2004
<i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004</i> s. 80	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129 (correction in <i>Gazette</i> 7 Jan 2005 p. 53))
<i>Spent Convictions (Act Amendment) Regulations 2005</i> published in <i>Gazette</i> 31 May 2005 p. 2413-20			31 May 2005
<b>Reprint 4: The Spent Convictions Act 1988 as at 8 Jul 2005</b> (includes amendments listed above)			
<i>Spent Convictions (Act Amendment) Regulations (No. 2) 2005</i> published in <i>Gazette</i> 4 Nov 2005 p. 5319-20			4 Nov 2005
<i>Parole and Sentencing Legislation Amendment Act 2006</i> s. 96	41 of 2006	22 Sep 2006	28 Jan 2007 (see s. 2 and <i>Gazette</i> 29 Dec 2006 p. 5867)
<i>Spent Convictions (Act Amendment) Regulations 2006</i> published in <i>Gazette</i> 24 Oct 2006 p. 4491-2			24 Oct 2006
<i>Prisons and Sentencing Legislation Amendment Act 2006</i> Pt. 11	65 of 2006	8 Dec 2006	4 Apr 2007 (see s. 2 and <i>Gazette</i> 3 Apr 2007 p. 1491)
<b>Reprint 5: The Spent Convictions Act 1988 as at 1 Jun 2007</b> (includes amendments listed above)			
<i>Police Amendment Act 2008</i> s. 19	8 of 2008	31 Mar 2008	1 Apr 2008 (see s. 2(1))
<i>Security and Related Activities (Control) Amendment Act 2008</i> s. 82	4 of 2008	2 Apr 2008	13 Dec 2009 (see s. 2 and <i>Gazette</i> 4 Dec 2009 p. 4919)
<i>Spent Convictions (Act Amendment) Regulations 2009</i> published in <i>Gazette</i> 18 Aug 2009 p. 3238-9			r. 1 and 2: 18 Aug 2009 (see r. 2(a)); Regulations other than r. 1 and 2: 19 Aug 2009 (see r. 2(b))



Short title	Number and year	Assent	Commencement
<i>Spent Convictions (Act Amendment) Regulations (No. 2) 2009</i> published in <i>Gazette</i> 29 Jan 2010 p. 197-9			r. 1 and 2: 29 Jan 2010 (see r. 2(a)); Regulations other than r. 1 and 2: 30 Jan 2010 (see r. 2(b))
<i>Police Amendment Act 2009</i> s. 23	42 of 2009	3 Dec 2009	13 Mar 2010 (see s. 2(b) and <i>Gazette</i> 12 Mar 2010 p. 941)

<sup>1a</sup> On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

### Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
<i>Machinery of Government (Miscellaneous Amendments) Act 2006</i> Pt. 3 Div. 5 <sup>8</sup>	28 of 2006	26 Jun 2006	To be proclaimed (see s. 2)
<i>Working with Children (Criminal Record Checking) Amendment Act 2010</i> Pt. 3 <sup>10</sup>	7 of 2010	27 May 2010	To be proclaimed (see s. 2)
<i>Standardisation of Formatting Act 2010</i> s. 4 <sup>11</sup>	19 of 2010	28 Jun 2010	To be proclaimed (see s. 2(b))

<sup>2</sup> *The Criminal Code* s. 19, 661, 662 and 669 were repealed by the *Sentencing (Consequential Provisions) Act 1995* s. 26.

<sup>3</sup> The *Offenders Community Corrections Act 1963* was repealed by the *Sentencing (Consequential Provisions) Act 1995* s. 77.

<sup>4</sup> The *Child Welfare Act 1947* s. 34, 34B and 40 were repealed by the *Young Offenders Act 1994*, which was repealed by the *Children and Community Services Act 2004* s. 250(1)(a).

<sup>5</sup> Under the *Alteration of Statutory Designations Order 2007* a reference in any law to the Department of Community Development is, unless the contrary is intended, to be read and construed as a reference to the Department for Child Protection.

<sup>6</sup> The *Children and Community Services Act 2004* Sch. 2 cl. 25 had not come into operation when it was deleted by the *Statutes (Repeals and Miscellaneous Amendments) Act 2009* s. 32(4).

<sup>7</sup> Footnote no longer applicable.

<sup>8</sup> On the date as at which this compilation was prepared, the *Machinery of Government (Miscellaneous Amendments) Act 2006* Pt. 3 Div. 5<sup>9</sup> had not come into operation. It reads as follows:

### **Part 3 — Attorney General, and Justice**

#### **Division 5 — *Spent Convictions Act 1988***

**42. The Act amended**

The amendments in this Division are to the *Spent Convictions Act 1988*.

**43. Schedule 3 amended**

Schedule 3 clause 1 item 10 of the Table is amended by deleting “Community and Juvenile Justice Division or the Prisons Division of the Department of Justice” and inserting instead —

department of the Public Service principally assisting  
in the administration of this Act

<sup>9</sup> The amendment to item 10 in the table to Sch. 3 cl. 1 in the *Machinery of Government (Miscellaneous Amendments) Act 2006* Pt. 3 Div. 5 would conflict with amendments in the *Prisons and Sentencing Legislation Amendment Act 2006* s. 70.

<sup>10</sup> On the date as at which this compilation was prepared, the *Working with Children (Criminal Record Checking) Amendment Act 2010* Pt. 3 had not come into operation. It reads as follows:

### **Part 3 — *Spent Convictions Act 1988* amended**

**26. Act amended**

This Part amends the *Spent Convictions Act 1988*.

**27. Section 28 amended**

(1) Before section 28(1) insert:

(1A) In this section —

**child** means a person under 18 years of age;

**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.

- (2) Delete section 28(2) and insert:
- (2) Subsection (1) does not apply to a prescribed person if —
  - (a) the person is required or permitted under a prescribed law of the Commonwealth, another State or a Territory to obtain or deal with information about a person who works, or seeks to work, with a child; and
  - (b) the purpose of obtaining the information from an official criminal record is to obtain or deal with the information in accordance with the prescribed law.

**28. Schedule 3 amended**

After Schedule 3 clause 2(6) insert:

- (7) The CEO as defined in the *Working with Children (Criminal Record Checking) Act 2004* section 4 is excepted from the provisions of section 28(1) in respect of all spent convictions in disclosing information under section 37(2) of that Act if the disclosure is to a corresponding authority as defined in section 37(1) of that Act and that authority is a person prescribed under section 28(2).

<sup>11</sup> On the date as at which this compilation was prepared, the *Standardisation of Formatting Act 2010* s. 4 had not come into operation. It reads as follows:

**4. Schedule headings reformatted**

- (1) This section amends the Acts listed in the Table.
- (2) In each Schedule listed in the Table:
  - (a) if there is a title set out in the Table for the Schedule — after the identifier for the Schedule insert that title;

- (b) if there is a shoulder note set out in the Table for the Schedule — at the end of the heading to the Schedule insert that shoulder note;
- (c) reformat the heading to the Schedule, as amended by paragraphs (a) and (b) if applicable, so that it is in the current format.

**Table**

<b>Act</b>	<b>Identifier</b>	<b>Title</b>	<b>Shoulder note</b>
<i>Spent Convictions Act 1988</i>	Schedule 1		
	Schedule 2		
	Schedule 3		