

Western Australia

Spent Convictions Regulations 1992

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Western Australia

Spent Convictions Regulations 1992

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Spent Convictions Regulations 1992

1. Citation

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

2. Commencement

These regulations come into operation on the day on which the Act comes into operation¹.

3. “Minor punishment”, amount prescribed (Act s. 3)

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

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

[4. Repealed in Gazette 4 Nov 2005 p. 5318.]

5. Application form prescribed for section 7(1)

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

6. Notice under section 33(2)

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

Schedule 1

Schedule 1

[Regulation 5]

SPENT CONVICTIONS ACT 1988 — SECTION 7(1)

APPLICATION FOR CERTIFICATE THAT LESSER CONVICTION⁽¹⁾ IS SPENT

TO THE COMMISSIONER OF POLICE

- 1. I, the person named in paragraph 2 below, apply for a certificate under section 7(1) of the Spent Convictions Act 1988 that the following conviction(s) incurred by me⁽²⁾ is/are spent:

Table with 5 columns: Date of Conviction, Name and place of court, Offence, Sentence imposed, If imprisoned give date of release. Includes a row for '(Continue on separate sheet if necessary)'.

- 2. My particulars are as follows —

Form with fields for SURNAME, OTHER NAMES, ANY NAME PREVIOUSLY USED (ALIAS), DATE OF BIRTH, PLACE OF BIRTH, RESIDENTIAL ADDRESS, and POSTAL ADDRESS.

- 3. I have not been convicted⁽³⁾ since the date of any conviction shown in paragraph 1 above (except as mentioned in that paragraph)

OR⁽⁴⁾

I have incurred the following conviction(s)⁽³⁾ since the date of any conviction shown in paragraph 1 above

Schedule 1

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

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

Signature: _____

Declared at _____ this _____ day of _____
20 ____

before me _____

Police Officer; or

Other ⁽⁵⁾ _____

(Show designation)

CERTIFICATE OF IDENTITY

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

Schedule 1

FOR OFFICIAL USE

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

INFORMATION FOR APPLICANT

1. Use of this form

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

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

2. When application can be made

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

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

There are rules in section 11 of the Act for working out this period.

The period is different if there is a subsequent conviction.

3. Making of declaration

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

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

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

4. Issue of certificate

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

- (1) A lesser conviction is one for which imprisonment for 1 year or less, or a fine of less than \$15 000, was imposed
- (2) The application can only relate to a conviction for an offence against the law of Western Australia or of a foreign country
- (3) All convictions must be disclosed here, whether against the law of Western Australia, the Commonwealth, any State or Territory or a foreign country
- (4) Delete one of these statements
- (5) See clause 3 under “Information for applicant”

[Schedule 1 amended in Gazette 4 Nov 2005 p. 5318-19.]

Schedule 2

[Regulation 6]

SPENT CONVICTIONS ACT 1988

Notice under section 33(2)

THE EFFECT OF A CONVICTION BECOMING SPENT

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

REFERENCES TO CONVICTIONS IN STATE LAWS

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

DISCLOSURE

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

ACCESS TO CRIMINAL RECORDS

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

CHARACTER ASSESSMENT

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

DISCRIMINATION

Applicants for employment

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

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

Employees

An employer cannot use a spent conviction against an employee —

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

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

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

Employment agencies

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

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

Unions and employer organizations

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

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

Schedule 2

Contract workers

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

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

Occupational licensing bodies

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

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

How to complain

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

EXCEPTIONS

There are a number of exceptions to the above.

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

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

[Schedule 2 amended in Gazette 4 Nov 2005 p. 5319.]

Notes

- ¹ This is a compilation of the *Spent Convictions Regulations 1992* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

Compilation table

Citation	Gazettal	Commencement
<i>Spent Convictions Regulations 1992</i>	26 Jun 1992 p. 2715-22	1 Jul 1992 (see r. 2 and <i>Gazette</i> 26 Jun 1992 p. 2644)
Reprint 1: The <i>Spent Convictions Regulations 1992</i> as at 12 Dec 2003		
<i>Spent Convictions Amendment Regulations 2005</i>	4 Nov 2005 p. 5318-19	4 Nov 2005