

SPENT CONVICTIONS ACT 1988

(No. 55 of 1988)

ARRANGEMENT

PART 1—PRELIMINARY

Section

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

PART 2—REQUIREMENTS FOR CONVICTIONS TO BECOME SPENT

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

PART 3—EFFECT OF A CONVICTION BECOMING SPENT

Division 1—Application

12. Application
13. Effect on other laws

- Section*
- Division 2—Exceptions*
14. Position of courts etc.
 15. Bail decisions
 16. Further exceptions

Division 3—Discrimination on ground of spent conviction

17. Interpretation
18. Discrimination against applicants and employees
19. Discrimination against commission agents
20. Discrimination against contract workers
21. Professional or trade organizations etc.
22. Qualifying authorities
23. Employment agencies
24. Enforcement of this Division

Division 4—Other effects

25. Interpretation of written laws
26. Spent convictions in relation to assessment of character
27. Disclosure or acknowledgement of spent convictions
28. Unlawful access to criminal records

PART 4—MISCELLANEOUS

29. Application of certain provisions of *Equal Opportunity Act 1984*
30. Revival of sentence under *Offenders Probation and Parole Act 1963*
31. Prerogative of mercy
32. Application to convictions incurred before commencement
33. Regulations

SCHEDULE 1

PROVISIONS RELATING TO APPLICATION UNDER SECTION 6 (1)

- Clause*
1. The application
 2. Parties to the application
 3. The hearing
 4. Rules of evidence not to apply
 5. Powers of judge and officers
 6. Witnesses
 7. Alternatives to holding a hearing
 8. Costs
 9. Copy of order to be furnished

SCHEDULE 2

CONVICTIONS IN OTHER JURISDICTIONS

1. Queensland

WESTERN AUSTRALIA

SPENT CONVICTIONS ACT

No. 55 of 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.

[Assented to 8 December 1988]

The Parliament of Western Australia enacts as follows:

PART 1—PRELIMINARY

Short title

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

Commencement

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

Definitions

3. (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.

(2) For the purposes of this Act—

(a) references to imprisonment do not include a sentence of imprisonment until a fine is paid or a recognizance is entered into under section 19 (5) or (6) of *The Criminal Code*;

(b) references to imprisonment for an indeterminate period include detention under section 19 (6a) (a), 661 or 662 of *The Criminal Code*;

(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.

Convictions to which Act does not apply

4. (1) Sections 6 and 7 do not apply to—

- (a) a conviction by the Children's Court of Western Australia; or
- (b) a conviction that is deemed not to be a conviction by section 20 of the *Offenders Probation and Parole Act 1963*.

(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.

Act binds Crown

5. This Act binds the Crown.

PART 2—REQUIREMENTS FOR CONVICTIONS TO BECOME SPENT**Serious convictions**

6. (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.

(5) An appeal against a decision of the judge shall lie to a single judge of the Supreme Court on a question of law.

Lesser convictions

7. (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).

Convictions in other jurisdictions

8. (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.

Meaning of “serious conviction”

9. 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.

Meaning of “lesser conviction”

10. (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.

Meaning of “prescribed period”

11. (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

Application

12. This Part applies to—

- (a) a dismissal under—
 - (i) section 669 (1) (a) of *The Criminal Code*; or
 - (ii) section 24 of the *Children’s Court of Western Australia Act 1988*; 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.

Effect on other laws

13. This Part has effect notwithstanding any other written law.

*Division 2—Exceptions***Position of courts etc.**

14. (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 minimize publication of that evidence.

Bail decisions

15. 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.

Further exceptions

16. (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, organization, 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 two or more of the foregoing.

Division 3—Discrimination on ground of spent conviction

Interpretation

17. (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.

Discrimination against applicants and employees

18. (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.

Discrimination against commission agents

19. (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.

Discrimination against contract workers

20. 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.

Professional or trade organizations etc.

21. (1) This sections applies to an organization of employees and to an organization of employers.

(2) It is unlawful for an organization to which this section applies or for a committee of management of such an organization or for a member of such a committee of management to discriminate against a person who is not a member of the organization 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 organization is prepared to admit the person to membership.

(3) It is unlawful for an organization to which this section applies or for the committee of management of such an organization or for a member of such a committee of management to discriminate against a person who is a member of the organization 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 organization;
- (b) by depriving the person of membership or varying the terms of membership; or
- (c) by subjecting the person to any other detriment.

Qualifying authorities

22. It is unlawful for an authority that is empowered to confer, renew, extend, revoke or withdraw an authorization 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 authorization or qualification;
- (b) in the terms or conditions on which it is prepared to confer the authorization or qualification or to renew or extend the authorization or qualification; or
- (c) by revoking or withdrawing the authorization or qualification or varying the terms or conditions upon which it is held.

Employment agencies

23. 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.

Enforcement of this Division

24. (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***Interpretation of written laws**

25. (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 acknowledgement of a spent conviction or the charge to which the conviction relates.

Spent convictions in relation to assessment of character

26. (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.

Disclosure or acknowledgement of spent convictions

27. (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.

Unlawful access to criminal records

28. (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

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

29. 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.

Revival of sentence under *Offenders Probation and Parole Act 1963*

30. 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, by virtue of section 44 (2) of the *Offenders Probation and Parole Act 1963*, not to have been discharged from the sentence of imprisonment imposed in respect of that conviction.

Prerogative of mercy

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

Application to convictions incurred before commencement

32. (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.

Regulations

33. (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)

The application

1. (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.

Parties to the application

2. (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 authorized 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.

The hearing

3. (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.

Rules of evidence not to apply

4. 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.

Powers of judge and officers

5. 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).

Witnesses

6. 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.

Alternatives to holding a hearing

7. 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.

Costs

8. (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.

Copy of order to be furnished

9. 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

Queensland

1. 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.
-