



**THIRTY-SEVENTH PARLIAMENT**

**REPORT 12**  
**JOINT STANDING COMMITTEE ON DELEGATED**  
**LEGISLATION**  
***SPENT CONVICTIONS (ACT AMENDMENT)***  
***REGULATIONS 2005***

Presented by Mr Peter Watson MLA (Chairman)

and

Hon Ray Halligan MLC (Deputy Chairman)

September 2005

## JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION

### Date first appointed:

June 28 2001

### Terms of Reference:

The following is an extract from Schedule 1 of the Legislative Council Standing orders:

**“3. Delegated Legislation Committee**

- 3.1 A *Delegated Legislation Committee* is established.
- 3.2 The Committee consists of 8 members, 4 of whom are appointed from each House. The Chairman must be a member of the Committee who supports the Government.
- 3.3 A quorum is 4 members of whom at least 1 is a member of the Council and 1 a member of the Assembly.
- 3.4 A report of the Committee is to be presented to each House by a member of each House appointed for the purpose by the Committee.
- 3.5 Upon its publication, whether under section 41(1)(a) of the *Interpretation Act 1984* or another written law, an instrument stands referred to the Committee for consideration.
- 3.6 In its consideration of an instrument, the Committee is to inquire whether the instrument –
  - (a) is authorized or contemplated by the empowering enactment;
  - (b) has an adverse effect on existing rights, interests, or legitimate expectations beyond giving effect to a purpose authorized or contemplated by the empowering enactment;
  - (c) ousts or modifies the rules of fairness; or
  - (d) deprives a person aggrieved by a decision of the ability to obtain review of the merits of that decision or seek judicial review; or
  - (e) imposes terms and conditions regulating any review that would be likely to cause the review to be illusory or impracticable;
  - (f) contains provisions that, for any reason, would be more appropriately contained in an Act.
- 3.7 In this clause –
  - “adverse effect” includes abrogation, deprivation, extinguishment, diminution, and a compulsory acquisition, transfer, or assignment;
  - “instrument” means –
    - (a) subsidiary legislation in the form in which, and with the content it has, when it is published;
    - (b) an instrument, not being subsidiary legislation, that is made subject to disallowance by either House under a written law;
  - “subsidiary legislation” has the meaning given to it by section 5 of the *Interpretation Act 1984*.”

### Members as at the time of this inquiry:

Mr Peter Watson MLA (Chairman)	Mr Tony Simpson MLA
Hon Ray Halligan MLC (Deputy Chairman)	Ms Judy Hughes MLA
Hon Barbara Scott MLC	Hon Shelley Archer MLC
Dr Graham Jacobs MLA	Hon Vincent Catania MLC

### Staff as at the time of this inquiry:

Mr Paul Grant, Advisory Officer (Legal)	Kerry-Jayne Braat, Committee Clerk
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# REPORT OF THE JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION

## IN RELATION TO THE

### *SPENT CONVICTIONS (ACT AMENDMENT) REGULATIONS 2005*

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#### **1 BACKGROUND**

- 1.1 The purpose of this report is to bring to the attention of the Parliament recent amendments to the *Spent Convictions Act 1988* (**the Act**) which have been brought into effect by subsidiary legislation.

#### **2 THE ACT**

- 2.1 The long title of the Act states that it is:

*“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.”*

- 2.2 Under the Act a person who has been convicted of certain offences may apply to have that conviction “*spent*” so that it does not appear on their criminal record, if they have not re-offended for 10 years after the offence.
- 2.3 Sections 14 and 15 of the Act establish certain specified exceptions to the effect of a conviction becoming spent, primarily in the context of court proceedings or the issuing of a spent conviction certificate by the Commissioner of Police.
- 2.4 Section 16 of the Act provides for further exceptions to be made by way of regulations:

#### ***“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.”*

2.5 In his Second Reading Speech on the Spent Convictions Bill 1988, Hon Robert Pearce MLA, Leader of the House, stated:

*“Apart from specified exceptions, the Bill will make it unlawful for employers, professional and trade associations, licensing boards or authorities and employment agencies to discriminate against a person because of a spent conviction. The provisions of the Equal Opportunity Act will apply in such cases. There are, of course, occasions when criminal records are explicitly taken into account in employment situations and by licensing and registration bodies such as the medical, dental and barristers’ boards. The Bill therefore provides that regulations may insert a schedule or schedules into the Act, specifying situations in which a spent conviction can, without constituting an unlawful discrimination, be taken into account in employment situations or by licensing boards or authorities. Possible examples where this might occur are provided in the table to section 9A of the Queensland Criminal Law (Rehabilitation of Offenders) Act 1986. This refers, among others, to police, prison and school*

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*personnel and to the employment of persons who have the care and control of children.”<sup>1</sup>*

- 2.6 Schedule 3 of the Act, a copy of which is attached at **Appendix 1**, lists the majority of exceptions to the effect of a spent conviction.
- 2.7 Section 16 of the Act is therefore a type of “*Henry VIII*” clause. A “*Henry VIII*” clause has been described as:

*“A clause of an Act of Parliament which enables the Act to be expressly or impliedly amended by subordinate legislation or Executive action.”<sup>2</sup>*

### **3 SPENT CONVICTIONS (ACT AMENDMENT) REGULATIONS 2005**

- 3.1 The *Spent Convictions (Act Amendment) Regulations 2005* (**amendment regulations**), gazetted on May 31 2005, made significant amendments to Schedule 3 of the Act.
- 3.2 The Committee understands from the explanatory memorandum provided with the amendment regulations that the amendment regulations were made following advice from the State Solicitor’s Office concerning the authority of the Western Australia Police to release to other agencies, in certain circumstances, offender records.
- 3.3 The amendment regulations enable those listed agencies that deal with children and vulnerable persons to obtain offender records from the Western Australia Police in relation to both existing and proposed employees, as well as volunteers and vocational students.
- 3.4 The following agencies in particular are affected by the amendment regulations:
- Department of Education and Training;
  - Department of Education Services;
  - Country High Schools Hostels Authority;
  - Western Australian College of Teaching;
  - Department for Community Development;
  - Department of Health; and

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<sup>1</sup> Hon Robert Pearce MLA, Leader of the House, Western Australia, Legislative Assembly, *Parliamentary Debates (Hansard)*, October 12 1988, pp3577-8.

<sup>2</sup> Queensland, Legislative Assembly, Scrutiny of Legislation Committee, *The Use of “Henry VIII” clauses in Queensland legislation*, January 1997, p24.

- Disability Services Commission.
- 3.5 Certain specified persons under the *Working with Children (Criminal Record Checking) Act 2004* are also made exempt from the operation of the Act by the amendment regulations.

#### **4 PREVIOUS COMMITTEE REPORTS AND *HENRY VIII* CLAUSES GENERALLY**

- 4.1 Concerns have been expressed about the use of “*Henry VIII*” clauses and their adverse impact on parliamentary scrutiny in a number of reports by committees of the Legislative Council in recent years.<sup>3</sup>
- 4.2 In particular, the First Report of the former Standing Committee on Public Administration and Finance in relation to the *Planning Appeals Amendment Bill 2001* included a copy of an internal memorandum of advice of the Joint Standing Committee on Delegated Legislation which stated the following on the subject of “*Henry VIII*” clauses:

*““Henry VIII clause” is a generic term for a section in an Act of Parliament that enables the Act or another Act to be amended by subordinate legislation made by the Executive. It is the power given to the Executive to override the intention of Parliament expressed in an Act that causes consternation over the use of Henry VIII clauses.*

*The objection to such clauses is that by delegating to the Executive the power to amend Acts of Parliament, they have insufficient regard to the principle of separation of powers and ultimately the institution of Parliament in its role as supreme legislature. Henry VIII clauses in all but limited circumstances erode the sovereign function of Parliament to legislate.*

*The Donoughmore Committee on Ministers’ Powers recommended in 1932 that the use of Henry VIII clauses should be discontinued in all but the most exceptional cases and then only for the purpose of bringing an Act into operation with a finite life of one year after the passing of the Act. The Donoughmore Committee based its findings on the potential for abuse such a provision allowed rather than on actual evidence of abuse of the power.*

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<sup>3</sup> See, for instance: Western Australia, Legislative Council, Legislation Committee, Report 24, *State Administrative Tribunal Bill 2003 and the State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Bill 2003*, October 2004, pp64-66; Western Australia, Legislative Council, Standing Committee on Legislation, Report 21, *Corruption and Crime Commission Act 2003 and the Corruption and Crime Commission Amendment Bill 2003*, December 2003, p182; and Western Australia, Legislative Council, Uniform Legislation and General Purposes Committee, Report 17, *Architects Bill 2003*, June 2004, pp18-21.



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*In relation to Henry VIII clauses, Professor Dennis Pearce in his authoritative text on Delegated Legislation in Australia and New Zealand states:-*

*“This is an approach to legislating that should be resisted. Parliamentarians pay too little heed to the regulation-making sections of Acts. If “Henry VIII” clauses are allowed to pass by default, the parliamentary institution is placed in jeopardy.”*

*The Delegated Legislation Committee is relatively powerless in its opposition to the use of Henry VIII clauses because they appear in principal legislation, and only have effect via subordinate legislation. In scrutinising regulations made under Henry VIII powers the Committee is attempting to “shut the gate after the horse has bolted.”*

...

*The [Delegated Legislation] Committee is of the view that Henry VIII clauses should not be used as “insurance” against unforeseen consequences or as a substitute for careful drafting or for mere administrative convenience. As the Queensland Scrutiny of Legislation Committee commented in its 1997 report on Henry VIII clauses:*

*“‘Henry VIII’ clauses should not be inserted into hastily drafted legislation to be introduced in a restrictive timetable as a substitute for careful well developed drafting.”*

...

*The [Delegated Legislation] Committee has previously stated:*

*“A common reason given for use of the “Henry VIII” clause is the shorter length of time taken to promulgate delegated legislation compared to the parliamentary procedure required to amend an Act. There are longstanding and traditional reasons why the procedures for enactment of legislation is structured in the way that it is, not least of which is the fact that the monarch after whom the circumvention of this process has been named “is regarded popularly as the impersonation of executive autocracy”.*

*The [Delegated Legislation] Committee remains of the view that Henry VIII clauses should only be used in limited circumstances such as proclaiming an Act, amending a State Agreement Act, to assist with*

*reprinting or consolidation of Acts or matters of a purely administrative nature.”<sup>4</sup>*

4.3 The Committee has twice previously presented reports to the Parliament on regulations made under the Act.

4.4 In 1998 the Committee expressed “*serious reservations*” about s 16 of the Act, and recommended that the Act be amended to provide that exceptions from the spent convictions scheme should be effected by way of an amendment Act rather than regulations.<sup>5</sup>

4.5 In 2000 the Committee stated in relation to the Act that it:

*“... remains concerned that the extension to the number of exceptions granted under the Act are matters that more properly ought to be scrutinised by Parliament by debating a Bill amending the Act rather than by way of regulation made by the Executive.”<sup>6</sup>*

4.6 Although the Act was enacted with the “*Henry VIII*” clause, the extent to which this power is being utilised has been of continuing concern to the Committee.

4.7 Accordingly, the Committee decided to bring to the Parliament’s attention the current extent of the exceptions from the operation of the Act that have been made by way of regulations that have both inserted Schedule 3 in to the Act and subsequently amended that Schedule.



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**Mr Peter Watson MLA**

**Chairman**

**September 22 2005**

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<sup>4</sup> Internal memorandum of advice of the Joint Standing Committee on Delegated Legislation, dated November 21 2001, Appendix 4, pp49-60, Western Australia, Legislative Council, Standing Committee on Public Administration and Finance, Report 1, *Planning Appeals Amendment Bill 2001*, March 2002, pp50-52.

<sup>5</sup> Western Australia, Delegated Legislation Joint Committee (1987-2001), Report 38, *Spent Convictions (Act Amendment) Regulations (No 3) 1998*, December 16 1998, p1.

<sup>6</sup> Western Australia, Delegated Legislation Joint Committee (1987-2001), Report 53, *Spent Convictions (Act Amendment) Regulations 2000* and *Spent Convictions (Act Amendment) Regulations (No 2) 2000*, November 23 2000, p3.

**APPENDIX 1**  
**SCHEDULE 3 OF THE *SPENT CONVICTIONS ACT 1988***



# APPENDIX 1

## SCHEDULE 3 OF THE *SPENT CONVICTIONS ACT 1988*

### *Spent Convictions Act 1988*

#### Schedule 3 Exceptions to Part 3

cl. 1

### 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

	Person excepted	Provisions of Part 3
1.	The Parole 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
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 aboriginal aide 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
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	Section 18 and Division 4

**Spent Convictions Act 1988**  
**Exceptions to Part 3     Schedule 3**

cl. 1

	<b>Person excepted</b>	<b>Provisions of Part 3</b>
	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.	
5.	<p>A person —</p> <p>(a) who is employed, or who is being considered for employment, as a prison officer under the <i>Prisons Act 1981</i>; or</p> <p>(b) who holds, or who is applying to be issued with, a permit to do high-level security work as defined in that Act.</p>	Section 18, 19, 20, 22 and Division 4
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 applying to be licensed as a security agent, security officer, security consultant or security installer under the <i>Security and Related Activities (Control) Act 1996</i> .	Section 22 and Division 4
9.	A person applying for the issue of a licence under the <i>Firearms Act 1973</i> .	Division 4
10.	A person employed in the Community and Juvenile Justice Division or the Prisons Division of the Department of Justice when (in the course of the person's duties) assessing, reporting about or classifying persons charged with or convicted of offences.	Division 4

**Spent Convictions Act 1988**  
**Schedule 3**      Exceptions to Part 3

**cl. 1**

<b>Person excepted</b>	<b>Provisions of Part 3</b>
10A. A contract worker who is authorised under section 15I 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 —	Section 18 and Division 4
(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> ;	
(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> ;	

**Spent Convictions Act 1988**  
**Exceptions to Part 3     Schedule 3**

cl. 1

Person excepted	Provisions of Part 3
(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) deleted]	
12. A person —	Section 18, 19, 20, 22 and Division 4
(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	



**Spent Convictions Act 1988****Schedule 3** Exceptions to Part 3**cl. 1**

Person excepted	Provisions of Part 3
(b) who holds, or who is applying to be issued with, a permit to do high-level security work as defined in that Act.	
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
(2) In the case of a person referred to in item 2 to 9, 10B or 12 of the table to subclause (1), the exception in that subclause extends to any other person who —	
(a) has appointed, employed, seconded or engaged the person or is considering the person for appointment, employment, secondment or engagement;	
(b) has issued a permit to the person or is considering issuing a permit to the person;	
(c) is considering granting or issuing a licence to the person; or	
(d) has authorised the person or is considering the person for authorisation,	
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.

**Spent Convictions Act 1988**  
Exceptions to Part 3      **Schedule 3**

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**cl. 1**

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3. A person who is a member of the governing body of a 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*.

**Spent Convictions Act 1988****Schedule 3**      Exceptions to Part 3**cl. 1**

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.

**Spent Convictions Act 1988**  
**Exceptions to Part 3      Schedule 3**

cl. 1

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- (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 or placed the person or is considering the person for employment, appointment 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 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.	Sections 18 and 20 and Division 4

**Spent Convictions Act 1988****Schedule 3** Exceptions to Part 3**cl. 1**

	<b>Person excepted</b>	<b>Provisions of Part 3</b>
2.	<p>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 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
3.	<p>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 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
4.	<p>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 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
5.	<p>A person applying for a licence or permit to provide a child care service under the <i>Community Services Act 1972</i>.</p>	Sections 18 and 20 and Division 4

**Spent Convictions Act 1988**  
**Exceptions to Part 3      Schedule 3**

cl. 1

	<b>Person excepted</b>	<b>Provisions of Part 3</b>
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.

**Spent Convictions Act 1988****Schedule 3**      Exceptions to Part 3**cl. 1**

- (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*.
  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 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 or 12 of the table to subclause (1);
  - (b) item 1, 2, 6 to 10, 12, 13, 15 or 17 of the table to subclause (3);

**Spent Convictions Act 1988**  
**Exceptions to Part 3      Schedule 3**

**cl. 2**

- (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; 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.]*

**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**

<b>Person excepted</b>		<b>Provisions of Part 3</b>
<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



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	<b>Person excepted</b>	<b>Provisions of Part 3</b>
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

- (2) The offences for the purposes of subclause (1) are —
- (a) offences under the following provisions of *The Criminal Code* —
    - (i) Chapter XXII (offences against morality);
    - (ii) Chapter XXVIII (homicide, suicide, concealment of birth);
    - (iii) Chapter XXIX (offences endangering life or health);
    - (iv) Chapter XXX (assaults);
    - (v) Chapter XXXI (sexual offences);
    - (vi) Chapter XXXIII (offences against liberty);
    - (vii) Section 343 (child stealing);
    - (viii) Section 344 (desertion of children);
  - (b) an offence against the law of a foreign country that corresponds to an offence referred to in paragraph (a); and
  - (c) an offence against the law of a jurisdiction named in Schedule 2 that corresponds to an offence referred to in paragraph (a).
- (3) Except for an offence that comes within subclause (2)(a)(i) or (v), an offence is not one to which that subclause applies unless the person in respect of whom the offence was committed was under 18 years of age when the offence was committed.
- (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

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- (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.]*

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

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

**Table**

- Activ Foundation
- Autism Association of Western Australia (Inc)
- Catholic Care for Intellectually Handicapped Persons
- Cerebral Palsy Association of WA Inc
- Citizen Advocacy WA
- Disability Services Commission
- Enjel Inc
- Florence Hummerston (Westcare) Accommodation Services

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

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

- (a) offences under the following provisions of *The Criminal Code* —
- (i) Chapter XXII (offences against morality);
  - (ii) Chapter XXVIII (homicide, suicide, concealment of birth);
  - (iii) Chapter XXIX (offences endangering life or health);
  - (iv) Chapter XXX (assaults);

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- (v) Chapter XXXI (sexual offences);
    - (vi) Chapter XXXIII (offences against liberty); and
    - (vii) Section 344 (desertion of children);
  - (b) an offence against the law of a foreign country that corresponds to an offence referred to in paragraph (a); and
  - (c) an offence against the law of a jurisdiction named in Schedule 2 that corresponds to an offence referred to in paragraph (a).
- (3) The exception in subclause (1) extends to any person who is considering another person for employment as referred to in that subclause.

*[Clause 3 inserted in Gazette 12 Jul 1994 p. 3365-6; amended in Gazette 5 May 1998 p. 2331; 26 Nov 2004 p. 5313; amended by Act No. 10 of 1998 s. 65(3).]*