



PARLIAMENT OF WESTERN AUSTRALIA

**JOINT STANDING COMMITTEE
ON
DELEGATED LEGISLATION**

THIRTY-EIGHTH REPORT:

Spent Convictions (Act Amendment) Regulations (No. 3) 1998

Presented by the Hon R L Wiese MLA (Chairman)
and
the Hon N D Griffiths MLC (Deputy Chairman)

December 1998

Joint Standing Committee on Delegated Legislation

Members

Hon Bob Wiese MLA (Chairman)
Hon Nick Griffiths MLC (Deputy Chairman)
Hon Simon O'Brien MLC
Hon Ray Halligan MLC
Hon Jim Scott MLC
Mr Bill Thomas MLA
Mr Iain MacLean MLA
Mr Norm Marlborough MLA

Advisory/Research Officer

Frank van der Kooy

Committee Clerk

Jan Paniperis

Terms of Reference

It is the function of the Committee to consider and report on any regulation that:

- (a) appears not to be within power or not to be in accord with the objects of the Act pursuant to which it purports to be made;*
- (b) unduly trespasses on established rights, freedoms or liberties;*
- (c) contains matter which ought properly to be dealt with by an Act of Parliament; or*
- (d) unduly makes rights dependent upon administrative, and not judicial, decisions.*

If the Committee is of the opinion that any other matter relating to any regulation should be brought to the notice of the House, it may report that opinion and matter to the House.

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Report of the Joint Standing Committee on Delegated Legislation

in relation to

Spent Convictions (Act Amendment) Regulations (No. 3) 1998

1 Executive Summary

- 1.1 Section 16 of the *Spent Convictions Act 1988* ('Act') clearly permits exceptions to Part 3 of the Act to be made by means of regulations. The *Spent Convictions (Act Amendment) Regulations (No. 3) 1998* ('Amendment Regulations') are within power (see Part 3 below).
- 1.2 The Committee recognises a case for the Anti-Corruption Commission to have access to spent convictions information for the purpose of appointing suitable persons to positions within the Commission.
- 1.3 The Committee continues to have serious reservations about section 16 of the Act which allows for exceptions from the spent convictions scheme to be prescribed by regulation.
- 1.4 It is the Committee's view that any exceptions under the Act should be effected by way of amendment to the Act itself (see paragraph 4.1 below).
- 1.5 The Committee recommends that when the Act is reviewed next year, the legislation should be amended to incorporate:
 - a requirement that any exceptions to the spent convictions scheme must be created by amending the Act;
 - express limitations on the use of spent convictions information collected by agencies that are granted exceptions under the Act; and
 - a prohibition on the distribution of spent convictions information to other agencies.

Introduction

- 2.1 In the exercise of its scrutiny function the Committee reviewed the *Spent Convictions (Act Amendment) Regulations (No. 3) 1998* ('Amendment Regulations') made under the *Spent Convictions Act 1988* ('Act'). A copy of the Amendment Regulations are attached and marked "Annexure A". Under the Committee's Joint Rules if the Committee is of the opinion that a matter relating to any regulation should be brought to the notice of the House, it may report that opinion and matter to the House. It is also the function of the Committee to consider and report on any regulation that appears not to be within power.
- 2.2 The broad object of the Amendment Regulations is to grant the Anti-Corruption Commission ('Commission') an exception from the operation of section 18 and Division 4 of Part 3 of the Act. Section 18 of the act prohibits discrimination against applicants and employees on the grounds of a spent conviction¹. Division 4 of Part 3 of the Act provides that it is unlawful to:
- make an assessment of a person by having regard to any spent convictions which the person may have²;

¹ Section 18 of the Act provides:

'(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.'

² Section 26 of the Act which provides:

'(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.

- ask a person about their spent convictions³; or
- access criminal records which contain spent convictions⁴.

2.3 Therefore the Amendment Regulations will permit the Commission to:

- discriminate against applicants and employees on the ground of a spent conviction;
- assess a person having regard to spent convictions;
- ask a person about any spent convictions; and
- access criminal records which contain spent convictions.

2.4 On 25 June 1998 the Committee tabled its 34th Report⁵ which reviewed the addition of the Offender Management Division of the Ministry of Justice to Schedule 3 of the Act, providing an exception from the operation of Division 4 of Part 3 of the Act. Although this report accepted that the Offender Management Division of the Ministry of Justice did need to have access to spent convictions information and acknowledged that the

(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.'

³ Section 27 of the Act which provides:

'(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.'

⁴ Section 28 of the Act which provides:

'(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.'

⁵ Western Australian Joint Standing Committee on Delegated Legislation, *Report on the Spent Convictions (Act Amendment) Regulations 1998*, 34th Report, tabled on 25 June 1998 ('34th Report').

relevant regulations were validly made pursuant to section 16 of the *Spent Convictions Act 1988*, the Committee expressed concern at the manner in which further exceptions to the *Spent Convictions Act 1988* are made by way of regulation⁶. This most recent amendment again highlighted the Committee's concern regarding the procedure used to grant exceptions to certain provisions of the Act. The Committee also had concerns regarding the nature of these Amendment Regulations and resolved to hold an inquiry with officers from the Ministry of Justice and the Commission.

- 2.5 On 26 November 1998 the Committee heard evidence from Mr Allan Thompson, Director Legislation, Ministry of Justice and Mr Graeme Charlwood, Director of Anti-Corruption Commission Investigation. During the course of the hearing, evidence was given as to the reason why the Amendment Regulations granting an exception to the limitations of the Act was required by the Commission.
- 2.6 The Amendment Regulations were published in the *Government Gazette* on 9 October 1998 and tabled in the Parliament on 20 October 1998. The Committee notes that one of its members, the Hon Jim Scott MLC, has moved a disallowance motion for Schedule 3 item 11 (f) of the Amendment Regulations, listed on the Notice Paper under Orders of the Day.

3 **Legislative Background to the Amendment Regulations**

- 3.1 The Amendment Regulations amend Schedule 3, which sets out the exceptions to the requirements of Part 3 of the Act, by adding a number of persons to the list of persons excepted from the provisions of Part 3 of the Act. In its 34th Report, the Committee accepted that using regulations to amend Schedule 3 of the Act was within power⁷. The Amendment Regulations was made pursuant to section 16 of the *Spent Convictions Act 1988* which provides as follows:

‘(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

⁶ 34th Report, paragraph 5.1, page 7.

⁷ 34th report, paragraphs 1.2, 5.1 and 7.1.

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.'

Section 33(1) of the Act provides:

'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.'

- 3.2 The legislation clearly permits amendments to be made to Schedule 3 of the Act by means of regulations. **The Committee maintains its concern at the manner in which exceptions to the restrictions imposed by the Act can be effected.**

4 The Committee's Concerns

- 4.1 The Committee reiterates the comments it made in the 34th Report:

'While the Committee accepts that the Amendment Regulations are within power, the Committee questions the effectiveness of the preservation of the original intent of Parliament in enacting the *Spent Convictions Act 1988* when the Act allows for exclusion from the scheme to be prescribed by regulation. It is the opinion of the Committee that, because the granting of exclusions from the Act goes to the very core of the intent in enacting the *Spent Convictions Act 1988*, such exclusions are more appropriately included within the Act itself, and only subject to amendment by amendment to the Act.

The Committee currently has before it a regulation providing yet another exception to the *Spent Convictions Act 1988*. The Committee expresses

concern that the ability to add to the categories of exception by way of regulation erodes the purpose for which the *Spent Convictions Act 1988* was enacted. If additional categories of exception are to be added, the Committee would prefer to see this done by way of amendment to the Act itself so that the merits of the amendment can be debated in Parliament.’⁸

4.2 Although the Committee is aware that other jurisdictions in Australia have the ability to exclude specified convictions, persons, classes of persons and circumstances from provisions of their spent convictions legislation by way of regulations⁹, the Committee is of the view that the Act should be amended to prevent the granting of any further exceptions other than by way of amendment to the Act.

4.3 As well as having general concerns regarding the procedure utilised to grant further exceptions to the Act, the Committee considered a number of specific issues relating to the Amendment Regulations as they apply to the Commission, namely:

- (1) the wide range of persons who are excepted from the application of the Act;
- (2) related to this, who is actually subject to review;
- (3) the retention of spent convictions information after it has been collected;
- (4) the potential for the Commission to use the information it obtained for other purposes; and
- (5) whether the Commission intended to share the information with other agencies.

4.4 The Committee was concerned at the wide range of people covered by the Amendment Regulations including:

- members and persons being considered for appointment as members of the Commission;
- officers, employees and persons being considered for appointment as officers and employees of the Commission;
- public servants seconded, or considered for secondment, to the Commission;

⁸ 34th Report, paragraph 5.1, page 7.

⁹ See for example, section 19(3) of the Northern Territory’s *Criminal Records (Spent Convictions) Act 1992* and section 25(3) of the New South Wales’ *Criminal Records Act 1991*.

- special investigators or persons being considered for appointment as special investigators of the Commission;
- contract staff or persons being considered for appointment as contract staff of the Commission; and
- service providers or persons being considered for engagement as service providers.¹⁰

4.5 The Committee's concerns were expressed to Mr Thompson and Mr Charlwood when they attended before the Committee to give evidence. In response, they stated:

‘Mr CHARLWOOD: If I have inferred that that is all we will use it for [ie screening special investigators], I apologise. The example I gave was for an investigator but it is important that the commission look at all its staff, particularly those it employs as permanent staff or contract staff, including service providers, because of the sort of information to which those people are likely to have access. Engaging an accountant to look at an individual's assets relating to allegations that he has received corrupt payments involves that person having access to a range of confidential information. It is appropriate that these people be vetted properly. Support staff within the Anti-Corruption Commission equally have access to a range of confidential information. It cannot be any other way; these people prepare transcripts, type reports and file papers. Although there are levels of document security within the commission, those people have access to that type of information. These people's backgrounds need to be properly vetted.’¹¹

‘Mr THOMPSON: Perhaps I could read into the transcript a paragraph of a report, which is dated 5 May 1998, that I put to the Attorney General. I will read this because of Mr Griffiths' question which relates to the broadness of the exception that is being granted. Under the heading "Discussion with Crown Solicitors Office" it states -

The granting of such an exception would, on advice from the Crown Solicitor's Office, be consistent with section 16 of the *Spent Convictions Act 1988* notwithstanding that a similarly broad exception has not been effected to date.

The reference to a "similarly broad exception" is that schedule 3 to the Act is mostly couched in terms of a person being considered for an appointment; for example, as a constable or a police aid or a person being considered for a grant

¹⁰ See item 11 (a) - (f) of the Amendment Regulations.

¹¹ Transcript of Evidence dated 26 November 1998, page 4.

of a firearms licence. It is prospectively couched in terms of future employees. The current exception is broader than that because it is couched in terms of a person appointed or being considered for appointment. To that extent it is a broader exception than that which the committee would have previously seen. In my discussion with Mr Charlwood yesterday, the general tenor, or my understanding of the reasons for that, is that the same rules are being applied from top to bottom within the organisation, and the rules for those people currently within the organisation will be the same as those for people entering the organisation.’¹²

The Committee requested, and was provided with, a copy of the report dated 5 May 1998 referred to by Mr Thompson. A copy of the report is attached and marked ‘Annexure B’.

- 4.6 The second area of concern to the Committee was who, out of the wide range of persons potentially covered by the Amendment Regulations (see paragraph 4.4 above), would actually be subject to review. In particular, would everyone who applied for a position at the Commission be checked for spent convictions? In response Mr Charlwood stated:

‘We only conduct these checks on candidates who have been through the selection process and rated by the selection panel as suitable for appointment. For example, in our last round of advertising for investigators we had more than 40 applicants, only 10 were interviewed and only six were considered suitable. The probity checks were done only on that final six.’¹³

- 4.7 Later one of the members of the Committee, the Hon. Jim Scott, asked ‘Is there any chance that anyone could access any information [on someone] who was not seriously looking for a position in the department or had been seriously considered for a position within the ACC?’¹⁴ Mr Charlwood replied:

‘Only those people who go through the selection process, reach the end and are considered by a selection panel, which then makes a recommendation to the commission that these people are suitable for appointment, are exposed to these checks and are asked to provide that authority to engage in those checks.’¹⁵

- 4.8 The Committee also heard evidence regarding an Australian Security Vetting Service form (‘ASVS’) which applicants who had reached the final stage of the selection process were required to sign. A copy of a blank ASVS is attached to this report and marked ‘Annexure C’. Mr Charlwood explained:

¹² Transcript of Evidence, page 6.

¹³ Transcript of Evidence, page 3.

¹⁴ Transcript of Evidence, page 11.

¹⁵ Transcript of Evidence, page 11.

‘The commission takes a policy view that only those people who have gone through the process of selection and are being considered for appointment will be subjected to those checks; that is, those people will be offered positions subject to satisfactory probity, referee and background checks being conducted.

All of these people sign a release authorising those checks to be conducted. They are not done without their knowledge or behind their backs; they are very much aware of it. I have not brought a form with me, but I am happy to provide one. It should explain the nature of the checks that the commission undertakes. Only those people who reach the end of the selection process are asked to sign that form and are put through that process.’¹⁶

- 4.9 Page 4 of the ASVS (see Annexure C) advises that the blank space for the insertion of an address should not be filled in ‘as its purpose is to enable the (ASVS) to send your general consent form to different agencies for organisations to obtain information under the conditions stated in the covering package letter.’ The ASVS at page 12 advises that under the Western Australian Act, ‘the applicant is under no obligation to disclose the spent conviction to (ASVS) officers or ACC staff at the present time’, but notes at page 13 that a full exclusion from the Commonwealth’s spent convictions scheme has been granted ‘to the security clearance process ... for applicants or occupations to which a SECRET or TOP SECRET level of assessment has been designated or those that are required for a law enforcement agency’.

- 4.10 During the inquiry, members of the Committee asked a number of questions regarding the ASVS:

‘Hon N.D. GRIFFITHS: Does that form entitle you to access their spent conviction records?

Mr CHARLWOOD: No, it does not. We cannot circumvent the current legislation in that regard. Checks of the prospective employee or service provider are not done in any covert way; their authority is given for these checks to be done. The form explains that the checks will be quite extensive.

The CHAIRMAN: Does the form give any indication that spent convictions will also be looked at?

Mr CHARLWOOD: No, it cannot. At this time we are not empowered under the Act to do that, but we will in the future.’¹⁷

‘Hon J.A. SCOTT: Your procedures clearly state that only those people who

¹⁶ Transcript of Evidence, page 5.

¹⁷ Transcript of Evidence, pages 5 - 6.

have signed that document will be examined for spent convictions.

Mr CHARLWOOD: Yes. One reason for that is that people must be aware of the sort of processes to which they will be exposed. Another reason is that some agencies require that sort of release before they will provide the information we are seeking. There is a dual purpose.’¹⁸

- 4.11 During the inquiry, the Committee was advised by Mr Charlwood that the Commission already has access to Commonwealth spent convictions under the *Crimes Act 1914 (Cth)*¹⁹ (‘*Crimes Act*’) by virtue of the fact the Commission is defined as a ‘law enforcement agency’.²⁰ The Committee was also informed that the Commission could also access spent conviction information in other States.²¹ When asked by the Chairman whether there was any other States’ spent convictions that the Commission does not have access to, Mr Charlwood replied, ‘Not so far as our research has indicated.’²² After

¹⁸ Transcript of Evidence, page 11.

¹⁹ The relevant section in the *Crimes Act* is section 85ZZJ, which provides:

‘Further exclusions - law enforcement agencies

(1) Division 3 does not apply in relation to:

(a) the disclosure of information by a law enforcement agency, or an employee or member of a law enforcement agency, to another law enforcement agency, or an employee or member of another law enforcement agency, where the disclosure is made in the discharge of the duties of the first-mentioned agency, employee or member;

(b) filing or recording information that comes into the possession of a law enforcement agency, or an employee or member of a law enforcement agency, where the filing or recording is done in the discharge of the duties of the agency, employee or member; or

(c) the use by a law enforcement agency of information relating to the investigation or prevention of crime, where the investigation or prevention of crime is a function of the agency.

(2) In this section:

"employee" , in relation to a law enforcement agency, includes a person engaged as a consultant to, or to perform services for, the agency or a member of the agency.’

²⁰ Transcript of Evidence, pages 1 - 2.

²¹ Transcript of Evidence, page 2.

²² Transcript of Evidence, page 2.

referring to the Commission's ability to obtain Commonwealth or Territory spent convictions, Mr Charlwood said:

'The commission took the view that its inability to access spent convictions in Western Australia, where the majority of its staff, service providers and contractors et cetera are engaged, presented a significant potential for it to engage staff who might be unsuitable to undertake work with the commission because of relevant spent convictions. As a consequence, the commission wrote to the Premier seeking to have the commission included in schedule 3 of the Spent Convictions Act to allow it to access those relevant spent convictions.'²³

- 4.12 The Committee's third major area of concern relates to the retention of spent convictions information once it had been collated. During the inquiry, Mr Charlwood was asked what happens to the information relating to unsuccessful applicants and responded, 'That information is held on file with restricted access.'²⁴ Shortly after, Mr Thompson accepted the proposition by one of the members that if the Commission is granted exception under the Act, State information will also be contained in these personnel files.²⁵ The following exchange is indicative of the Committee's concerns:

'Mr MacLEAN: I have some concerns about your holding records for people you do not employ. I can understand your holding records of people whom you employ or are considering employing at some stage in the future after they have applied. I can understand your holding records for people in the Public Service whom you employ or use from time to time. However, I do not see how you can justify holding the records of a person who is being short-listed, investigated and ruled out for employment as an investigator, especially if those records contained a spent conviction.

Mr CHARLWOOD: The commission would not have an issue with not holding those records after any period for review after their unsuccessful application had expired. Obviously the commission complies with public sector standards on selection, recruitment and appointment of staff. Reviews are available for people who have been unsuccessful. If someone were unsuccessful because of a spent conviction and was unsuitable, we would retain that information at least until the review period had expired. I do not have an issue with that and I will take it to the commission. I suspect that it would hold the same view, that once that information was no longer required to provide a reviewer with any information, it could be destroyed. If that person applied again, it would simply be a matter

²³ Transcript of Evidence, page 2.

²⁴ Transcript of Evidence, page 3.

²⁵ Transcript of Evidence, page 3.

of going through those checks again with the applicant if they reached that final stage.²⁶

- 4.13 The Committee recognises a case for the Commission to have access to Western Australian spent convictions but questions the necessity to maintain the information on the files of unsuccessful applicants beyond the usual public sector review period. On this basis, the Committee recommends that any future review of the Act should incorporate express limitations on the use of spent convictions information collected by agencies that are granted exceptions to Part 3 of the Act. This should include a limitation requiring excepted agencies like the Commission to destroy information regarding spent convictions once the purpose for which it was obtained has been completed.
- 4.14 The fourth area of concern to the Committee was the potential for the Commission to use the information it obtained for purposes beyond assessing persons for positions within the Commission. The Committee posed a number of questions in this regard:

‘The CHAIRMAN: What use can the ACC make of the spent convictions information? Is it able to use that information in any other form, even as part of its investigative work, having obtained it as an assessment of a person's suitability for employment?’

Mr CHARLWOOD: The simple answer is no. The way the regulation is couched restricts the use of the information to those people being considered for appointment to those roles. We do not use it for any other purpose.

The CHAIRMAN: It does not. Could it?

Mr CHARLWOOD: If someone wanted to misuse the information, it is possible although the restricted access to the information restrict that possibility. The commission and all its staff are very aware of the need to comply with the legislation under which it operates, both its Act and any other legislation it operates under. The commission takes great pains to ensure compliance with that legislation. It would be easy for me to say it could never happen but that may be an unrealistic answer. In my view, the controls the commission has in place internally would prevent it from happening.

The CHAIRMAN: My interpretation of the Act is that it would be an offence to use the information gained. Am I correct in making that judgment? The Act contains strong restraints on what the information can be used for.

Mr THOMPSON: That is my understanding, but not being a lawyer, I would be pleased to take that question on notice and provide a proper, written response to the committee.

²⁶

Transcript of Evidence, pages 6 - 7.

...

The CHAIRMAN: That would be appreciated. The committee is concerned that information gained in relation to an employment application could possibly be used for some other purpose, even as part of an investigation. Obviously that is not the intention of the Act, the committee would be concerned if it was.

Mr THOMPSON: That is why I want to be sure that I am not misleading the committee in any way.

Mr CHARLWOOD: It is not the intention of the Act and equally it is not the intention of the commission to use that information in that way.

Mr THOMPSON: When I was trying to work out what the commission was looking for, I spoke to the CEO of the ACC for a few minutes about whether it was the intention of the commission to try to obtain spent convictions information about persons being investigated. The CEO made it perfectly clear that the ACC's sole interest relates to current and prospective employees. It does not relate to any of the investigative functions of the ACC.²⁷

On 15 December 1998, the Ministry of Justice provided the Committee with a copy of a memorandum of advice dated 14 December 1998 from the Crown Solicitor's Office. This memorandum confirmed Mr Charlwood's assertion that the Act does not permit the Commission to use the spent convictions information obtained under the exception in Schedule 3 for any purposes beyond assessing that person for a particular position within the Commission. A copy of this advice is attached to this report and marked 'Annexure D'.

- 4.15 On this basis, the Committee is satisfied that the Act does not permit the Commission to use the information it collects under the terms of its exception for any purposes beyond assessing a person for appointment to a position.
- 4.16 The fifth area of concern to the Committee relates to whether the Commission intends to share the information it obtains under the exception with other agencies. When the Committee's concerns in this regard were outlined, Mr Charlwood provided the following response:

'Mr MacLEAN: Does this mean there is a potential for the exchange of information about people's personal lives between Western Australia and other bodies within the Commonwealth?

Mr CHARLWOOD: Not in relation to spent conviction information. Section 12 of the Anti-Corruption Commission Act provides for the commission to exchange

²⁷

Transcript of Evidence, pages 8 - 9.

information with other agencies such as those I have described, some of them are specifically mentioned in the Act. It is the view of myself and the commissioner that we are getting this information under the Spent Convictions Act to assess the suitability of people the commission is considering appointing and for no other purpose. We will not be sharing that with information with anybody else.’²⁸

The Committee notes that the Commission does not intend to share the spent convictions information it obtains pursuant to the exception with any other agencies within the Commonwealth.

- 4.17 The Committee is concerned that in the absence of clear guidelines relating to the use of spent convictions information, agencies with exceptions under Schedule 3 may share information with other agencies. The Committee recommends that when the Act is reviewed, a prohibition should be instituted to prevent the provision of spent convictions information to other agencies.
- 4.18 In the wider community, privacy issues relating to the use of personal information are becoming increasingly topical.²⁹ It is the Committee’s view that a number of the issues raised above in relation to the spent convictions scheme directly impact on important privacy issues. In particular, the retention, use and distribution of spent convictions information after it has been collected. Accordingly, the Committee strongly supports the proposed review of the Act next year³⁰ and stresses the importance of considering the privacy issues that arise in relation to the use of spent convictions information collected pursuant to exceptions to Part 3 of the Act (see paragraph 5.3 below).

5 Recommendations of the Committee

- 5.1 The Committee notes that the Act clearly permits amendments to be made to Schedule 3 of the Act by means of regulations and that the Amendment Regulations are within power. The Committee also recognises a case for the Commission to have access to spent convictions information for the purposes of appointing suitable persons to positions within the Commission.
- 5.2 The Committee has serious reservations about the ability to add to the categories of exception by way of regulation rather than amendment to the Act. In the Committee’s view this erodes the purpose for which the *Spent Convictions Act 1988* was enacted. Mr

²⁸ Transcript of Evidence, page 9.

²⁹ For example, see the *National Principles for the Fair Handling of Personal Information*, drafted by the Commonwealth Privacy Commissioner and launched by the Attorney-General on 20 February 1998, available at the Human Rights and Equal Opportunity Commission website at www.hreoc.gov.au. The Principles reflect the *OECD’s Guidelines Governing the Protection of Privacy and Transborder Flows of Personal Data* (1980).

³⁰ See Mr Thompson’s comments, Transcript of Evidence, page 8.

Thompson indicated during the Committee's inquiry that next year the Act will be subject to 'a broad review which will call for public and other submissions'.³¹ It is the Committee's recommendation that when the Act is reviewed, section 16 be amended to require that the insertion of any additional categories of exception be done by way of amendment to the Act itself. This would ensure that the merits of the amendment can be debated in Parliament.

5.3 Finally, the Committee also recommends that at the time the Act is reviewed, the legislation should be amended to incorporate:

- express limitations on the use of spent convictions information collected by agencies that are granted exceptions under the Act; and
- a prohibition on the distribution of spent convictions information to other agencies.

.....
Hon R L Wiese MLA
Chairman
December 16, 1998

³¹ Transcript of Evidence, page 8.

ANNEXURE A

9 October 1998]

GOVERNMENT GAZETTE, WA

5593

Spent Convictions Act 1988

Spent Convictions (Act Amendment) Regulations (No. 3) 1998

Made by the Governor in Executive Council.

1. Citation

These regulations may be cited as the *Spent Convictions (Act Amendment) Regulations (No. 3) 1998*.

2. Schedule 3 to the Act amended

Schedule 3 to the *Spent Convictions Act 1988** is amended by inserting after item 10 in the table to clause 1 the following item —

“

- | | |
|--|------------------------------|
| 11. A person — | Section 18 and Division 4 |
| (a) appointed as or being considered for appointment as a member of the Anti-Corruption Commission under section 5 of the <i>Anti-Corruption Commission Act 1988</i> ; | |
| (b) appointed as or being considered for appointment as an officer or employee of the Anti-Corruption Commission under section 6 of the <i>Anti-Corruption Commission Act 1988</i> ; | |
| (c) seconded or being considered for secondment under section 7 of the <i>Anti-Corruption Commission Act 1988</i> ; | |
| (d) appointed or being considered for appointment under section 8 of the <i>Anti-Corruption Commission Act 1988</i> ; | |
| (e) appointed or being considered for appointment under section 9 of the <i>Anti-Corruption Commission Act 1988</i> ; | |
| (f) engaged or being considered for engagement under section 10 of the <i>Anti-Corruption Commission Act 1988</i> . | |

”

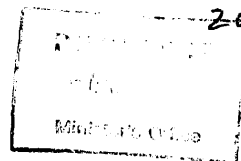
[* Reprinted as at 19 November 1996.
For amendments to 9 September 1998 see 1997 Index to
Legislation of Western Australia, Table 1, p. 217, Act No. 10
of 1998 and Gazette 27 February and 5 May 1998.]



ANNEXURE B

Author: Allan Thompson 92641840
Origin: Policy and Legislation

Min 44859



MOJ: 98/00729
Premier Ref: D9806768
ACC Ref: 980821

HON ATTORNEY GENERAL

**SPENT CONVICTIONS ACT 1988: REQUEST FROM ANTI-CORRUPTION
COMMISSION (ACC) FOR EXCEPTION UNDER THE ACT**

Background

On 24 March 1998 the Chairman of the Anti-Corruption Commission wrote to the Hon Premier requesting an exemption for the organisation, under Schedule 3 of the *Spent Convictions Act 1988*, from the provisions of Division 4 of Part 3 and section 18 of the Act.

Division 4 of Part 3 of the Act provides that it is unlawful to access criminal records which contain spent convictions. It is also unlawful to ask a person about their spent convictions or to make an assessment of a person by having regard to any spent convictions which the person may have. Section 18 of the Act provides that it is unlawful for an employer to discriminate against applicants and employees on the ground of a spent conviction.

In support of its request the Anti-Corruption Commission pointed out in its letter to the Premier that "Section 16 of the Act permits regulations to be made making provision for exceptions to Part 3 of the Act. The exceptions can be by reference to an employer. Schedule 3 includes a number of organisations which are excepted from parts of Part 3 of the Act".

Schedule 3 of the Act is in three parts:

Exceptions as to all spent convictions

This part of the schedule cites a range of persons being considered for appointment (eg constable, aboriginal aide, prison officer, Justice of the Peace etc) and it also cites the Parole Board and the Supervised Release Review Board. In the case of these Boards it would appear that the exception relates to members of the Board. It is therefore arguable that to include the Anti-Corruption Commission on this part of the schedule would do no more than provide an exception relating to the members rather than the officers and employees of the Anti-Corruption Commission. However the inclusion of a particular category of officer or employee, such as ACC investigators, would be consistent with the nature of the exceptions reflected in this part of the schedule.

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-2-

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

Under this part of the schedule various categories of persons (such as persons being considered for appointment as teachers and prospective adoptive parents etc) are excepted in relation to particular types of offences. The inclusion of the Anti-Corruption Commission on this part of the schedule would clearly not satisfy its needs, and would not be consistent with the nature of the exceptions reflected in this part of the schedule.

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

This part of the schedule cites a range of organisations, principally dealing with vulnerable persons, which are excepted in relation to particular types of offences. Again, the inclusion of the Anti-Corruption Commission on this part of the schedule would clearly not satisfy its needs, and would not be consistent with the nature of the exceptions reflected in this part of the schedule.

Discussion with ACC

On 30 April 1998 the application was discussed by Mr Wayne Mann of the Anti-corruption Commission and Mr Thompson of this Division. Mr Mann indicated that the clear preference on the part of the ACC is that all categories of its 'officers and employees' are included within the scope of an exception. On this basis the exception sought would relate to:

- Members of the Commission (section 5);
- Staff of the Commission (section 6);
- Government staff used by the Commission (section 7);
- Special Investigators (section 8);
- Contract staff (section 9); and
- Service providers (section 10).

Discussion with Crown Solicitors Office

The granting of such an exception would, on advice from the Crown Solicitors Office, be consistent with section 16 of the *Spent Convictions Act 1988* notwithstanding that a similarly broad exception has not been effected to date. The Crown Solicitors Office has also advised that the question of whether a new schedule would be required, or whether the ACC could be included as part of the existing schedule 3 (*Exceptions as to all spent convictions*) is a question for Parliamentary Counsel.

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-3-

Conclusion

On the assumption that you agree to the ACC being granted an exception under the *Spent Convictions Act 1988* as above, please find attached a suggested interim response to the Hon Premier.

Upon receipt of your advice I will prepare instructions for Parliamentary Counsel, in consultation with the Anti-Corruption Commission, and provide further advice to you.

Submitted for your consideration.



APPROVED
20/6/98
RFm

Robert E Fitzgerald
EXECUTIVE DIRECTOR
POLICY AND LEGISLATION

5. May 1998

D:\WORK\ALLAN\legislation\Spent Convicts\ACC Spent Convictions.doc

ANNEXURE C

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002

ANTI CORRUPTION COMMISSION

CONSENT AND AUTHORITY TO UNDERTAKE BACKGROUND ENQUIRIES AND RELEASE INFORMATION TO THE ANTI CORRUPTION COMMISSION

AUTHORITY: Anti Corruption Commission Act 1988

I, _____ acknowledge that I have applied for appointment to
the Anti Corruption Commission as a _____

To that end, I hereby consent and authorise the Anti Corruption Commission to undertake
background enquiries with other agencies, both State and Federal, in connection with the
determination of my merit for appointment as a _____ for the Anti Corruption
Commission, including my integrity and good conduct, and further consent to authorise the Anti
Corruption Commission and other agencies as required, to uplift all relevant information that may
directly or indirectly relate to me, and release and deliver such information to the Anti Corruption
Commission.

I further consent and authorise the Anti Corruption Commission to undertake community
background enquiries from referees, police referees, previous employers, secondary schools,
colleges and tertiary institutions in connection with the determination of my merit for appointment
as a _____ with the Anti Corruption Commission including my integrity and
good conduct, and further consent and authorise the release and delivery of such information to
the Anti Corruption Commission.

Further, I hereby release and waive all rights, actions, suits or claims which may prevent, or arise
from (whether directly or indirectly) the release, delivery and use of such information as aforesaid.
And this release and waiver may be pleaded in bar to any action, claim, suit or proceedings,
commenced or now taken or which hereinafter may be taken by me in any jurisdiction with respect
to the release, delivery and use of such information to the Anti Corruption Commission.

SIGNED: _____ DATE: _____

PLACE OF BIRTH: _____ DOB: _____

WITNESS (print name): _____

SIGNATURE (of witness): _____ DATE: _____

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TWD AWP D N V E S T I G A T I O N S

003

AUSTRALIAN SECURITY VETTING SERVICE (ASVS)

The Attorney-General's Department

A U S T R A L I A N
SECURITY **V**ETTING **S**ERVICE

HIGHLY PROTECTED

(ANTI-CORRUPTION COMMISSION)

SECURITY PACKAGE

ACC-HP
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004

AUSTRALIAN SECURITY VETTING SERVICE (ASVS) INFORMATION SHEET

In order to avoid delays in the security clearance process, it is essential that each of the forms in the package attached are completed correctly. This information has been provided to assist you in doing so. Please read it carefully prior to filling out your package. Should you have any questions in relation to the completion of these forms, please contact your case officer as listed on the covering letter you received with this package.

All security clearance action, including the requirement for the information and documentation requested in these forms, is conducted to the minimum standards as prescribed in Part V of the Commonwealth Government's 'Protective Security Manual (PSM)', unless higher requirements have been stipulated by your department.

All information and documentation requested will be held in strict confidence and used only for the purpose of the current security clearance action.

Please note: Forms may be witnessed by any other person. The witness must actually watch you sign the form, therefore dates of signing should be the same for both parties.

Page 5 - List of Documents to be Attached

Please ensure that all documents attached are complete in all pages and are either originals or certified copies. This is especially important for multiple page documents such as passports. Where copies are supplied, all pages are to be copied and certified as true copies. A second person is to sight both the original and the copy and is to ensure that both documents are identical. When satisfied, this person is to ensure that **all pages** have been certified true copies by writing or stamping 'This is a true copy of the original as supplied to me', print their surname, designation, date and sign all pages. **Note: All pages are to be certified.** Where it is not desired to copy blank pages, the disclaimer 'I certify that pages x to x are blank and were not copied' is to be used in combination with the above certification.

- I. Full Name – Place your full name, in block letters, in the top box.
 - II. Forms – Indicate which forms you have completed and are returning by placing a tick in the box. If you believe you are missing any forms, or require additional forms, please contact the (ASVS) on (02) 6250 5417 immediately.
 - III. Personal Details – Indicate which documentation requested is attached and which is not applicable by putting a tick in the corresponding box. Originals or certified copies of all applicable documentation must be provided. **If, for some reason, it is not possible to provide any, or all, of the requested documentation or information, a statutory declaration may suffice. Please contact the your case officer should this problem arise.**
- **A full birth certificate must be provided.** Extracts are not acceptable. Should your Birth Certificate have been misplaced, you can apply for one at the office of Births, Deaths and Marriages in your birth state. **The titles 'Birth Certificate' and 'Birth Extract' are often interchanged between countries and indeed states. The document required should bear the details of your parents as well as yourself.**
 - **Please supply all personal passports.** These passports are used to verify both your identity and countries visited. The countries you have visited are of interest from a security point of view.

Page 6– Referees

Referees – As noted on the form, referees should not be relatives. The most valuable referees are friends and colleagues whom you feel know you well. The referees you nominate must have known you for five years collectively. For example, if one referee knew you from 1990 to 1991 and another from 1991 to 1994 and another from 1993 to 1995, collectively, their knowledge of you would span five years.

Please ensure that telephone numbers are complete, include area codes, are up-to-date and are suitable for contact between 9am and 5pm. If circumstances do not allow for contact during those hours please provide an alternate number with preferred hours of contact.

Please note: You must provide at least five referees.

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Pages 7 to 11 – Personal Particulars

Note – People close to you are likely to be influential in the development of your attitudes. Your spouse/partner, parents, relatives and people living with you are likely to have a significant impact on your life. Basic information such as their full name, overseas travel and family location is important for the completeness of the vetting process.

Sections 1-6 – Please fill all spaces. Indicate with "n/a" if information requested is not applicable to you. This lets us know that you have not left information out in error. Please ensure that all previous addresses, for the period requested, are supplied.

Section 7 – It is important that you complete this section fully and provide dates of service for each entry. If, for any reason, there is a gap in your employment history, eg. unemployment or studies etc, please give an explanation on page 11.

Section 8 – When answering this question, be careful that you don't confuse the completion of public service entry forms, which include a Police Records Check, with that of a security clearance package. If you are in doubt, contact your case officer for assistance.

Section 9 – When completing this section, you need only provide the names of those relatives with whom you have frequent contact as well as any immediate family.

Section 10 – In this section, please provide the names of any and all clubs/associations in which you have been involved. This includes social clubs, university clubs/groups, unions and political associations. Take care to provide the full name of the clubs and associations you belong(ed) to, abbreviations can be misinterpreted. You should include the aims or goals for each club/association e.g. social or religious etc.

Section 11 – This question refers only to social/personal contact with foreign officials outside of your work environs. Do not include contact of an official nature unless you believe it to be of security significance.

Section 12 – Despite the fact that you will have provided your passport, it is important that you indicate in this section details of any time you have spent visiting, or residing in, a foreign country. If you were overseas on a touring holiday and did not spend longer than a few days in one place, addresses are not necessary. You should indicate the nature of the accommodation eg. various backpacker hostels etc so that we know you have not forgotten to complete this section. Approximate dates for all entries are essential. A check of the stamps in your passport will refresh your memory of dates and countries visited.

Section 13 – Please provide your spouse/partner's full name and occupation as requested.

Section 14 & 15 – Please complete these two sections as to the instructions given above in section 9 & 12.

Sections 16, 17, 18 & 19 – Should you have any questions regarding these sections please don't hesitate to contact your case officer for assistance.

Please remember to sign and date the form and ensure that your signature is properly witnessed

Note: Forms may be witnessed by any other person. The witness must actually watch you sign the form, therefore dates of signing should be the same for both parties.

Page 11 gives you the opportunity to continue any answers which you could not complete in the space provided on the form. Please use as necessary.

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**Pages 12 to 15 –
Assessment of Suitability to Occupy a Designated Security Assessment Position or Position of Trust
(Police Checks) / Consent to Obtain Personal Information**

Please read the information sheet carefully before completing the Consent to Obtain Personal Information form. It explains what the Spent Convictions Scheme is, how it is applied and what, if any, exclusions may exist from the scheme for your level of clearance.

- As shown in the example on the form, you are only required to indicate the type of position you require the clearance for eg: ASO or SES. It is not necessary for you to provide the level of that position, i.e.; ASO2 or SES Band 1.
- Your consent, if you choose to give it, will allow the Australian Federal Police to transfer the results of the police records check to the (ASVS).

Please ensure that you sign and date the form and complete both pages.

Pages 16 to 23 – Financial Questionnaire/Declaration

Please complete all the questions as accurately and completely as possible as financial vulnerability is one of the more important areas to be assessed during the vetting process.

Pages 24, 25, 26 & 27 – General Consent, Official Secrecy and Statutory Declaration

Before completing these forms, please read them carefully in order to gain a full understanding of your responsibilities. There are repercussions should you breach any of these undertakings and it is important that you understand what they are.

When completing these forms, ensure that you and your witness print clearly in block letters also check that the correct dates have been entered by both parties. The witness must actually watch you sign the form, therefore dates of signing should be the same for both parties.

At the top of the General Consent form there is a blank space provided for the insertion of an address. Please leave this blank when completing the form as its purpose is to enable the (ASVS) to send your general consent form to different agencies for organisations to obtain information under the conditions stated in the covering package letter.

When completing the Statutory Declaration, please ensure that, as requested on the form, you place your full name, address and occupation in the space provided. A list of people authorised to witness a statutory declaration has been provided on the form.

Please remember to sign and date the forms and ensure that your signature is properly witnessed where required.

Note: Forms may be witnessed by any other person. The witness must actually watch you sign the form, therefore dates of signing should be the same for both parties.

Please ensure that all areas are complete and are signed/witnessed as required, prior to returning the forms to your case officer. Should you have any questions regarding the completion of these forms, please contact your case officer on the phone number listed on the covering letter you received with these forms.

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007

AUSTRALIAN SECURITY VETTING SERVICE (ASVS)

LIST OF DOCUMENTS TO BE ATTACHED

| | |
|--|--|
| Full Name (to be completed by vettee) | |
|--|--|

(BLOCK LETTERS)

FORMS

To be completed by the person whose name appears above.

| | | |
|--|----------|--|
| Completed Referees Form Page 6. | Attached | |
| Completed Personal Particulars Form Pages 7-14. | Att | |
| Completed Consent to Obtain Information/Police Check Form Pages 14-15. | Attached | |
| Completed Financial Declaration Form (for Top Secret, Secret and Highly Protected clearances only) Pages 18-23. | Attached | |
| Completed General Consent Form Page 24. | Attached | |
| Completed Official Secrecy Form Page 25. | Attached | |
| Completed Statutory Declaration Form Page 26. | Attached | |

PERSONAL DETAILS

Please ensure that all documents are originals or certified copies.

To be completed by the person whose name appears above.

| | | | |
|--|----------|--|------------------|
| Full Birth Certificate A Birth Extract is not acceptable. | Attached | | Must be supplied |
| Change of Name Certificate (eg. Deed Poll) | Attached | | Not Applicable |
| Naturalisation/Citizenship Certificate | Attached | | Not Applicable |
| Marriage Certificate | Attached | | Not Applicable |
| Decree Nisi (Divorce documents) | Attached | | Not Applicable |
| Passports (i.e. all current and expired personal passports held, whether issued by Australia or any other country, or identity documents issued by an Australian immigration official) | Attached | | Not Applicable |
| Educational Documents (i.e. any documentation which verifies your most significant educational qualifications eg Higher School Certificate or Tertiary qualifications etc.) | Attached | | Not Applicable |
| Evidence of Employment (eg: employer references, personnel statements, pay slips or Group Certificates etc which show evidence of your employment during the last 5 years, you should also provide proof if you have been on Social Security or a pension) | Attached | | Not Applicable |
| Armed Service Discharge Certificate (pertaining to service in the Defence forces of Australia or of any other country) | Attached | | Not Applicable |
| One Recent Photograph (passport size) | Attached | | REQUIRED |

NOTE : Items marked with "*" have been supplied previously and are not required unless circumstances have changed in any way, eg. new visa stamp(s) on a passport, divorce etc.

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STAFF-IN-CONFIDENCE
(when completed)

REFEREES

(NOTE: Referees should not be relatives)

Please complete the details of five personal referees who either individually or collectively have known you over a period of at least five years. **YOU MUST PROVIDE AT LEAST FIVE REFEREES.**

| | | | | | |
|------------------------------|-----|-----------------------|------------|------------|--|
| Name | | | Occupation | | |
| Address | | | | | |
| Telephone (9.00am-5.00pm) | () | How do you know them? | | Time Known | |

| | | | | | |
|------------------------------|-----|-----------------------|------------|------------|--|
| Name | | | Occupation | | |
| Address | | | | | |
| Telephone (9.00am-5.00pm) | () | How do you know them? | | Time Known | |

| | | | | | |
|------------------------------|-----|-----------------------|------------|------------|--|
| Name | | | Occupation | | |
| Address | | | | | |
| Telephone (9.00am-5.00pm) | () | How do you know them? | | Time Known | |

| | | | | | |
|------------------------------|-----|-----------------------|------------|------------|--|
| Name | | | Occupation | | |
| Address | | | | | |
| Telephone (9.00am-5.00pm) | () | How do you know them? | | Time Known | |

| | | | | | |
|------------------------------|-----|-----------------------|------------|------------|--|
| Name | | | Occupation | | |
| Address | | | | | |
| Telephone (9.00am-5.00pm) | () | How do you know them? | | Time Known | |

| | | | | | |
|------------------------------|-----|-----------------------|------------|------------|--|
| Name | | | Occupation | | |
| Address | | | | | |
| Telephone (9.00am-5.00pm) | () | How do you know them? | | Time Known | |

STAFF-IN-CONFIDENCE (when completed)

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STAFF-IN-CONFIDENCE
(when completed)

PERSONAL PARTICULARS FORM 4

The information you provide in this form will be used for checking action in connection with your security clearance for access to HIGHLY PROTECTED material. (See Information Sheet and General Consent Form for information regarding the nature of checks/enquiries to be made)
All questions are to be answered (if not applicable, answer n/a) All spaces are to be filled
Note: If there is insufficient space to answer, all answers may be continued on page 11.

| | Subject | Spouse/Defacto/Partner/ Fiance(e) | Father | Mother |
|--|---------|--------------------------------------|--------------|--------------|
| 1 Surname Current | | | | |
| At Birth | | | | |
| Other Surname(s) | | | | |
| 2 Given Names | | | | |
| 3 Birth Date | | | | |
| Place (city, state & country) | | | | |
| 4 Marriage Date | | NOT REQUIRED | NOT REQUIRED | NOT REQUIRED |
| Place | | NOT REQUIRED | NOT REQUIRED | NOT REQUIRED |
| 5 Nationality Current | | | | |
| Other | | | NOT REQUIRED | NOT REQUIRED |
| If Naturalised Date | | | | |
| Place | | | | |
| Date of First Arrival in Australia and Place of Arrival | | | | |
| 6 Addresses Current | | | | |
| Permanent if Different | | | NOT REQUIRED | NOT REQUIRED |
| All other addresses for last 5 years If overseas, include country Use page 11 if required | | | NOT REQUIRED | NOT REQUIRED |
| If deceased, please provide year of death | | | | |

EMPLOYMENT

Full particulars of current (and other) employment in last 5 years, including attending school or university and service with specific Commonwealth/State Government or Armed Forces (if latter give number and rank)

| 7 | Name of Employer | Address of Employer | Occupation | Length of Service | |
|-------------------------------|------------------|---------------------|------------|-------------------|----|
| | | | | From | To |
| Current | | | | | |
| Previous (most recent first.) | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |

STAFF-IN-CONFIDENCE (when completed)

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(when completed)

| | | | |
|--|--|---|------------|
| 8. Have you previously completed security checking forms? (If yes, the forms would have been similar to these forms). | | Yes | No |
| If Yes, please state the circumstances and complete the 'Consent to Release Personal Security File' form. | | Full details including department's name. | Level Year |

| 9. Do you have any relatives, including children, living overseas? Only include direct relatives and those with whom you maintain frequent contact. If Yes, please provide the following details on each: | | Yes | No |
|---|--------------|----------------------|-------------------------------|
| Name in Full | Relationship | Country of Residence | Dates of Residence From To |
| | | | |
| | | | |
| | | | |
| | | | |

| 10. Are you now or have you ever been, a member of any clubs, associations or interest groups? Please include ALL clubs, associations and their goals. Answer may be continued on page 11. If Yes, please provide the following details: Please include the aim/goal of each on page 11. | | Yes | No |
|--|--------------------------------|-------------|-------------------------------|
| Name of Club/Association/Group | Dates of Membership From To | Office Held | Reason for Ceasing Membership |
| | | | |
| | | | |
| | | | |
| | | | |

| | | | |
|--|--|-----|----|
| 11. a. Have you ever had personal contact with an official of a foreign country? | | Yes | No |
| b. If Yes, was this as a result of other than official duties with the Commonwealth/State? This is contact outside of the normal work requirement, eg social etc. | | Yes | No |
| If Yes to b, please give details: | | | |
| | | | |
| | | | |
| | | | |

| 12. a. Have you visited overseas? | | Yes | No |
|---|---------|-------------------------------|----|
| b. Have you resided overseas? | | Yes | No |
| If Yes to a or b, please give the following details, if not provided in question 6c: A check of your passport stamps will refresh your memory. | | | |
| Country | Address | Dates of Residence From To | |
| | | | |
| | | | |
| | | | |

STAFF-IN-CONFIDENCE (when completed)

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**STAFF-IN-CONFIDENCE
(when completed)**

| | | |
|--|-----|----|
| 13. Do you have a Spouse/De Facto/Fiance(e)/Partner? | Yes | No |
|--|-----|----|

If No, please go to question 16

If Yes, please provide the following details on Spouse/De Facto/Fiance(e)/ Partner.

| | |
|--------------|------------|
| Name in Full | Occupation |
|--------------|------------|

| | | |
|--|-----|----|
| 14. Has this person visited or resided overseas? | Yes | No |
|--|-----|----|

If Yes, please provide the following details:

| Country | Address | Dates of Residence | |
|---------|---------|--------------------|----|
| | | From | To |
| | | | |
| | | | |
| | | | |
| | | | |

| | | |
|--|-----|----|
| 15. Does your Spouse/De Facto/Fiance(e)/ Partner have relatives residing overseas? | Yes | No |
|--|-----|----|

Only include direct relatives and those with whom they maintain frequent contact.

If Yes, please provide the following details:

| Name in Full | Relationship | Country of Residence | Dates of Residence | |
|--------------|--------------|----------------------|--------------------|----|
| | | | From | To |
| | | | | |
| | | | | |
| | | | | |
| | | | | |

| | | |
|---|-----|----|
| 16. Are there persons over 18 years residing with you, other than those named above in Q13? | Yes | No |
|---|-----|----|

If Yes, please provide the following details:

| Name in Full | M/F | Date of Birth | Place of Birth | Relationship | Occupation |
|--------------|-----|---------------|----------------|--------------|------------|
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |

| | | |
|--|-----|----|
| 17. Have any of these persons over 18 years, currently residing with you, visited or resided overseas in the last 5 years? | Yes | No |
|--|-----|----|

If Yes, and their particulars do not already appear on this form, please provide the following details:

| Name in Full | Country of Residence | Dates of Residence | |
|--------------|----------------------|--------------------|----|
| | | From | To |
| | | | |
| | | | |
| | | | |
| | | | |

STAFF-IN-CONFIDENCE (when completed)

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STAFF-IN-CONFIDENCE
(when completed)

| | | | | | |
|--|--|-----|--|----|--|
| 18. Is there any information which could be relevant to your suitability for work involving access to HIGHLY PROTECTED material? | | Yes | | No | |
| If Yes, please give details: | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |

| | | | | | |
|---|--|-----|--|----|--|
| 19. Do you wish to discuss any of the information you have provided with this agency? | | Yes | | No | |
|---|--|-----|--|----|--|

| | | |
|---|-----------|------|
| I certify that to the best of my knowledge and belief the information given in this form is correct and complete and that I will notify the Agency of any material changes. | | |
| | | |
| Name in Block Letters | Signature | Date |

| | | |
|-----------------------|-----------|------|
| Witnessed by: | | |
| | | |
| Name in Block Letters | Signature | Date |

PLEASE ENSURE THAT THE FORM HAS BEEN SIGNED AND WITNESSED CORRECTLY

STAFF-IN-CONFIDENCE (when completed)

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**STAFF-IN-CONFIDENCE
(when completed)**

| Question No. | Continuation of Answer |
|-----------------|------------------------|
| | |

STAFF-IN-CONFIDENCE (when completed)

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014

AUSTRALIAN SECURITY VETTING SERVICE (ASVS) CONSENT TO OBTAIN PERSONAL INFORMATION/POLICE CHECK INFORMATION SHEET

GENERAL INFORMATION

The Consent to Obtain Personal Information Form is used by Commonwealth/State agencies as part of the assessment process to determine whether a person is suitable to occupy a Designated Security Assessment Position (DSAP) or Position of Trust (POT) and is part of the security clearance process which has been adopted by the ACC.

Unless statutory obligations require otherwise, the information provided on the form will not be used without your prior consent for any purpose other than in relation to the assessment of your suitability to occupy a POT. You may be required to complete another consent form in the future in relation to employment in other positions.

POLICE RECORDS CHECK

Police record checks are an integral part of the assessment of your suitability to occupy a POT. On this Form you are asked to disclose whether you are the subject of any criminal charge(s) still pending before a Court, or whether you have been the subject of a conviction(s) or finding(s) of guilt before a Court. You are not required to reveal any conviction(s) which may be protected by an order of certificate issued pursuant to the Western Australian Spent Convictions Act 1988 (see explanation note under heading Spent Convictions Act 1988) as currently the Commission is not an exempt agency under this legislation.

The Consent Form will be forwarded by the (ASVS) to the Australian Federal Police (AFP), and you are asked to consent to:

- the AFP disclosing criminal history information from its own records to the Australian Security Vetting Service; and
- for the AFP to access the records of any State police force or authority where you have lived permanently, as nominated by you in the Personal Particulars section of the form, to obtain any criminal history information which in turn would be disclosed to the Australian Security Vetting Service.

As an alternative to completing the Consent Form you may elect to produce a certificate from the Police Force in each State or Territory in which you have lived that provides details, including a nil return, of any convictions recorded, or that are pending, against you.

SPENT CONVICTIONS ACT 1988

The Spent Convictions Act 1988 is legislation relating to the collection, use and disclosure of old conviction information for the state of Western Australia. The aim of this legislation is to prevent discrimination on the basis of old convictions once a suitable time period has passed and an appropriate order or certificate has been granted. Should a certificate or order have been issued pursuant to the Act, then the applicant is under no obligation to disclose the spent conviction to (ASVS) officers or ACC staff at the present time.

Part VIIC of the Crimes Act 1914 provides for similar legislation in respect of Commonwealth and Territory offences. An individual whose conviction is protected by this section of the Act does not have to disclose that conviction to any person unless an exclusion under Division 6 of Part VIIC of the Act applies.

A spent conviction for a Commonwealth or Territory offence is one which satisfies all of the following conditions:

- it is 10 years since the date of the conviction (or 5 years for child offenders);
- the individual was not sentenced to imprisonment or was not sentenced to imprisonment for more than 30 months;
- the individual has not re-offended during the 10 year (5 year for child offenders) waiting period; and
- a statutory or regulatory exclusion does not apply.

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The Attorney-General, on the recommendation of the Privacy Commissioner, has granted exclusions, both partial and full, from the operation of the Scheme for several categories of employment. There are also statutory exclusions contained within the Act. This means that applicants for those positions must declare all convictions where a full exclusion exists, or convictions for specific offences where a partial exclusion exists. Details of exclusions should be provided to you by the employing organisation before your consent is sought to conduct a criminal history check.

Those exclusions relevant to the security clearance process are for applicants or occupations to which a SECRET or TOP SECRET level of assessment has been designated or those that are required for a law enforcement agency, as stated in Division 6, Part VIIC of the Crimes Act 1914 and Statutory Rule No 227 of 1990. A full exclusion from the scheme has been granted for positions in this category.

An individual who believes the standards dealing with disclosure and use of old conviction information have been breached may apply to the Privacy Commissioner for an investigation of the matter. The address is GPO Box 5218, SYDNEY, NSW 2001.

PROVISIONS OF FALSE OR MISLEADING INFORMATION

You are asked to certify that the personal information you have provided on the form is correct. If it is subsequently discovered, for example as a result of a check of police records, that you have provided false or misleading information, you may be assessed as unsuitable to occupy the position for which you are being assessed.

You should note that the existence of a criminal record does not mean you are automatically assessed as unsuitable to occupy a POT. Each case will be assessed on its merit, hence it is in your interests to provide full and frank details on the Form.

Please ensure that you sign and date the form. Both pages are to be complete.

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(when completed)

AUSTRALIAN SECURITY VETTING SERVICE (ASVS)

CONSENT TO OBTAIN PERSONAL INFORMATION

NO EXCLUSION

(for categories where No Exclusion has been granted from spent convictions legislation)

| |
|----------------------------|
| Full name in block letters |
|----------------------------|

| | |
|--|--------|
| applying for a position at the level of (eg. SES, ASO etc) | hereby |
|--|--------|

I. acknowledge that I have read the General Information document provided with this Form and understand that I do not have to disclose old protected convictions information, which is described under the heading Spent Convictions Scheme in the General Information document.

II. certify that the personal information I have provided on both the front and back of this form relates to me and is correct;

| | |
|---|---|
| III. I consent to (Name of Organisation Seeking Information) | The Australian Security Vetting Service |
| requesting for a Police Records Check to be undertaken by the Australian Federal Police | |

IV. consent to the AFP or to other relevant Australian police force(s) extracting from their records details of traffic violations, and criminal and/or traffic records relating to me pending before a Court, and/or details of convictions or findings of guilt which have been recorded against me and which are not covered by Part VIIC of the Crimes Act 1914 dealing with spent convictions;

V. consent to the AFP and/or other police force(s) providing the relevant information to the organisation listed in (III) above; and

VI. acknowledge that any information provided by me on this Form or by the police as a result of the records check may be taken into account by the organisation mentioned in (III) above in assessing my suitability to receive the entitlement.

| | |
|-----------|------|
| Signature | Date |
|-----------|------|

NOTE

The information you provide on this form and which the police provide to this organisation on receipt of the form, will be used only for the purpose stated above unless statutory obligations require otherwise.

Please ensure that you sign and date the form and complete both pages.

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STAFF-IN-CONFIDENCE
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PERSONAL PARTICULARS
NO EXCLUSION (CONTINUED)

| | | | | | |
|----------------------------------|----------------------|-------------------------------------|--|--------|--|
| Surname (present) | | | | | |
| All other surnames used | | | | | |
| Given names | | Male | | Female | |
| Date of Birth | Town/City of Birth | State/Country of Birth | | | |
| Contact phone No. () 9am-5pm | Driver's Licence No. | State/Territory of Driver's Licence | | | |

PERMANENT RESIDENTIAL ADDRESS OVER LAST FIVE YEARS

| | | | |
|--|--|---|--|
| If full details of previous addresses are unavailable details of town(s) and state(s) will suffice | | If actual dates are unavailable, details of year of residence will suffice. Attach list if insufficient room. | |
| Address | | Period of Residence | |
| Current | | to | |
| Previous (Most recent first) | | to | |
| | | to | |
| | | to | |
| | | to | |
| | | to | |

CRIMINAL CHARGE, CONVICTION OR PECUNIARY PENALTIES

| | | |
|---|------------------------------|-----------------------------|
| Are you the subject of any criminal charge(s) still pending before a court? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| Do you have any conviction(s) or finding(s) of guilt which are less than ten (10) years old or any juvenile conviction(s) or finding(s) of guilt which are less than five (5) years old? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| Do you have any conviction(s) or finding(s) of guilt which are over ten (10) years old (or five (5) years for juvenile conviction(s) or finding(s) of guilt) where the sentence imposed was greater than thirty (30) months imprisonment? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| If you answered Yes to any of the above questions, please attach details. | | |

AFP USE ONLY

| | | | |
|--|-----|--|-----------------------------------|
| Address of Initiating Department: | | AUSTRALIAN FEDERAL POLICE | |
| Australian Security Vetting Service PSCC Attorney-General's Department Robert Garran Offices National Circuit BARTON ACT 2600 | | NOT RECORDED <input type="checkbox"/> | RECORDED <input type="checkbox"/> |
| User Code (to be inserted by Department) | 387 | NOTE: As fingerprints do not accompany your request, the Australian Federal Police cannot guarantee in any manner that the information supplied herewith concerns the individual in whom you are interested. | |
| | | Signature | |
| | | Date | |
| For Commissioner Australian Federal Police | | | |

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018

AUSTRALIAN SECURITY VETTING SERVICE (ASVS)

FINANCIAL QUESTIONNAIRE/DECLARATION INFORMATION SHEET

Instructions for completion

The prerequisites for employment in a Position Of Trust (POT) include verification as to trustworthiness, reliability, loyalty, maturity, (financial) probity and character suitability. In particular, experience has shown that an adverse state of indebtedness, financial obligation or other pecuniary difficulty can increase a person's vulnerability to coercion or temptation. A favourable assessment of your financial status is therefore essential to your prospective (or continued) access to sensitive information, valuable assets, or to a specified secure area. To enable this agency to undertake an assessment of your financial status you are required to complete the attached Financial Questionnaire/Declaration.

It is not our wish or practice to acquire more detail about your financial affairs except where doubts or questions arise in the course of the examination of your Financial Questionnaire/Declaration. Should this occur, you may be asked to:

- (a) provide further details (eg. statements of income and expenditure, assets and liabilities); and/or
- (b) in addition to the General Consent form, sign a release form authorising this agency to conduct enquiries with banks, building societies, credit unions and others with whom you have financial dealings

An alternative to (a) and (b) is for you to nominate an independent financial referee (eg. a Bank Manager or professional Financial Adviser) who can attest to your financial position provided we can be satisfied that the referee has the necessary information and expertise to enable an informed and objective judgement to be made about your financial status.

Please provide amounts for all loans, mortgages or credit cards etc including instalments etc. The provision of complete details will minimise the need for follow up inquiries

Before completing this form, please read the following instructions carefully:

- Print in BLOCK LETTERS and answer every question;
- If questions do not apply to you, state "N/A" in response to that question;
- If there is nothing to disclose in reply to a particular question, state "NIL" in response to that question;
- Do not leave blanks; do not use white out, instead overstrike errors & initial each correction;
- If the space is insufficient, please supply the required information on an attachment page;
- When using an attachment page, precede each answer with the number of the question;
- Please sign each page;
- All dates are to be completed in the form - DD/MM/YY;

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AUSTRALIAN SECURITY VETTING SERVICE (ASVS)

FINANCIAL QUESTIONNAIRE/DECLARATION

DEFINITIONS

For the purpose of this declaration, the following definitions apply:

"dependent child", in relation to a person, means any person-

- a) who is a child of the person or of the person's spouse; and
- b) who is under the age of 18 years.

"spouse" includes-

- a) in relation to a man- any woman who is living with the man, as the man's wife, in a bona fide domestic relationship; and
- b) in relation to a woman- any man who is living with the woman, as the woman's husband, in a bona fide domestic relationship.

"de facto" means a person who lives with a member of staff in a spouse equivalent relationship, regardless of gender.

"immediate family" includes-

- a) the individual's spouse; or
- b) the individual's dependant children; or
- c) the individual's de facto

"partner" A partner may be a spouse, other relative, friend or business associate with whom you share financial arrangements and/or responsibilities which affect your income, expenditure, investments etc.

Your attention is drawn to Section 50 of the Anti-Corruption Commission Act 1988:

Disclosure of interests.

50. (1) A member who has a material personal interest in a matter in respect of which the Commission is performing its functions shall, as soon as possible after the relevant facts have come to the knowledge of the member, disclose the nature of the interest at a meeting of the Commission.

Penalty: \$8000 or imprisonment for 2 years

- (3) A person who is an officer of the Commission or a seconded officer and who has a material interest in a matter in respect of which the Commission is performing its functions shall, as soon as possible after the relevant facts have come to the knowledge of the person, disclose the nature of the interest to the Commission.

Penalty: \$8000 or imprisonment for 2 years

PLEASE NOTE
This document is to be held for safe keeping by the Chief Executive Officer Anti-Corruption Commission and is to be updated at least yearly or when there is a major change in your financial standing.

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STAFF-IN-CONFIDENCE
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AUSTRALIAN SECURITY VETTING SERVICE (ASVS)

FINANCIAL QUESTIONNAIRE/DECLARATION

1. SOURCES OF INCOME (including secondary employment)

I, and my immediate family, have the following sources of income:

| Recipient | Nature of income | Actual gross income for last financial year | Estimated gross income for current financial year |
|-----------|------------------|---|---|
| | | | |
| | | | |
| | | | |
| | | | |

2. REAL ESTATE

I, and my immediate family, own interests in the following real estate:

| Owner | Location | Purpose held (eg investment) | Initial cost | Estimated current value |
|-------|----------|------------------------------|--------------|-------------------------|
| | | | | |
| | | | | |
| | | | | |
| | | | | |

3. SHARE HOLDINGS

I, and my immediate family, own the following SHARE HOLDINGS (does NOT include nominal SHARE HOLDINGS required for qualification for membership of a credit union, building society or other co-operative society) :

| Owner | Company | Nature of shares held | Initial cost | Current value |
|-------|---------|-----------------------|--------------|---------------|
| | | | | |
| | | | | |
| | | | | |
| | | | | |

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4. TRUSTS/NOMINEE COMPANIES

(a) I, and my immediate family, are beneficiaries of the following family or business trusts and nominee companies :

| Beneficiary | Trust or nominee company | Nature of interest | Nature of operations | Current value |
|-------------|--------------------------|--------------------|----------------------|---------------|
| | | | | |
| | | | | |
| | | | | |
| | | | | |

(b) I, and my immediate family, are trustees of the following family or business trusts:

| Trustee | Trust | Beneficiaries | Nature of operations | Current value |
|---------|-------|---------------|----------------------|---------------|
| | | | | |
| | | | | |
| | | | | |
| | | | | |

5. DIRECTORSHIPS OR OFFICE BEARER IN COMPANIES

I, and my immediate family, are Directors of the following companies:

| Director/Office bearer | Company | Public or private | Activities of company | Year incorporated |
|------------------------|---------|-------------------|-----------------------|-------------------|
| | | | | |
| | | | | |
| | | | | |
| | | | | |

6. PARTNERSHIPS ETC.

I, and my immediate family, are members of the following partnerships:

| Partner | Nature of operations | Year formed | Nature of business interest | Value of interest when formed | Current value |
|---------|----------------------|-------------|-----------------------------|-------------------------------|---------------|
| | | | | | |
| | | | | | |
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| | | | | | |

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7. ACCOUNTS/INVESTMENTS

I, and my immediate family, have the following accounts/investments in bonds, debentures, savings and investment accounts with banks, credit unions or other financial institutions:

| Person holding investment | Type of investment | Institution with whom investment is held | Current value |
|---------------------------|--------------------|--|---------------|
| | | | |
| | | | |
| | | | |
| | | | |

(to be completed only if the cumulative value of investments exceeds \$2000)

8. OTHER ASSETS.

I, and my immediate family, have assets (other than those mentioned in items 1-7) as follows:

| Owner of assets | Nature of asset | Year acquired | Initial cost | Current value |
|-----------------|-----------------|---------------|--------------|---------------|
| | | | | |
| | | | | |
| | | | | |
| | | | | |

(the estimate for household and personal effects may be combined)

9. GIFTS, SPONSORED TRAVEL, OR HOSPITALITY

I, and my immediate family, have received the following gifts and other financial benefits during the last 3 years):

| Recipient | Nature of gift etc. | Year received | Value when received | Current value |
|-----------|---------------------|---------------|---------------------|---------------|
| | | | | |
| | | | | |
| | | | | |
| | | | | |

(Gifts and other financial benefits received in a purely personal capacity, such as from family and friends, need not be mentioned)

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10. CONTROL OVER OTHER ASSETS ETC.

I, and my immediate family, have effective control over the following assets (other than those referred elsewhere in this declaration):

| Person having control | Nature of assets etc | Year control acquired | Value when control acquired | Current value |
|-----------------------|----------------------|-----------------------|-----------------------------|---------------|
| | | | | |
| | | | | |
| | | | | |
| | | | | |

11. EXPENDITURE

I, and my immediate family, have the following expenditure (including day-to-day living expenses):

| Person concerned | Nature of expenditure | Current expenditure (per fn) |
|------------------|-----------------------|------------------------------|
| | | |
| | | |
| | | |
| | | |

12. LIABILITIES

I, and my immediate family, have the following liabilities:

| Person concerned | Nature of liability | Creditor | Year of incurring liability | Current liability |
|------------------|---------------------|----------|-----------------------------|-------------------|
| | | | | |
| | | | | |
| | | | | |
| | | | | |

13. ANY OTHER PRIVATE INTEREST

I, and my immediate family, have the following interests, financial or otherwise, the nature of which gives rise to, or may appear to give rise to, a conflict with my public duty:

| |
|--|
| |
| |
| |
| |

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(when completed)

14. GENERAL FINANCIAL QUESTIONS

| | | |
|---|------------------------------|-----------------------------|
| (a) Have you or your immediate family ever been insolvent or been declared bankrupt? If yes, please provide details: | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| | | |
| (b) Has any business or commercial enterprise in which you or your immediate family have been involved ever gone into receivership or a similar scheme or arrangement? If yes, please provide details: | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| | | |
| (c) Have you ever defaulted on a loan, been refused credit or had banking (including building society or credit union) facilities withdrawn or restricted? If yes, please provide details: | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| | | |
| (d) During the last ten years, have you or your immediate family been the subject of a court order in connection with monies owing to another party? If yes, please provide details: | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| | | |
| (e) Are there any factors which have affected your financial status? (Examples of this might include, a significant bequest or lottery win, redundancy package or, conversely, financial responsibility for the care of an invalid relative or maintenance payments) If yes, please provide details: | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| | | |
| (f) Do you wish to discuss any aspect of this form with a representative of the security vetting agency? If yes, please provide details: | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| | | |

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AND I MAKE THIS SOLEMN DECLARATION by virtue of the *Statutory Declarations Act 1959* as amended and subject to the penalties provided by that Act for the making of false statements in a statutory declaration, conscientiously believing the statements contained in this declaration to be true in every particular.

| | | | |
|--|--|------|-----|
| Signature of person making the declaration | | Date | / / |
| Print name | | | |

Declared at _____

this _____ day of _____, 19____

before me _____ (Print full name)

Commissioner for Declarations/JP

Signature

NOTES

The agency may wish to discuss with you aspects of the details provided in this form and any attachments, and make inquiries to corroborate information, or to resolve doubts or anomalies. However, inquiries will be made only with your permission.

Please ensure that the witness watches you sign and date the form .

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TWD AWP D N V E S T I G A T I O N S

026

AUSTRALIAN SECURITY VETTING SERVICE (ASVS)

GENERAL CONSENT INFORMATION SHEET

1. The nature of security clearance action (vetting) is such that it cannot be determined from the outset how many, and to what extent, checks/enquiries will need to be made in order to be able to make an informed and reasoned assessment about a person's suitability for the access proposed. For that reason the General Consent Form cannot specify exactly what checks/enquiries will be made for each security clearance.
2. However, you are advised that in all cases the following checks will be made:
 - corroboration of any previous Commonwealth employment, including with the Defence Force, and a check of any existing security records;
 - corroboration of places and periods of residence for 5 years for HIGHLY PROTECTED and PROTECTED clearances;
3. Any or all of the following checks/enquiries may be made on a needs basis:
 - checks with Registrars of Births, Deaths and marriages for authenticity of personal documents such as birth, marriage and change of name documentation;
 - check of naturalisation/citizenship documentation with the Department of Immigration and Multicultural Affairs and passports with the Australian Passport Office;
 - check education documentation with relevant school, college, university and the like;
 - corroboration of overseas travel with Immigration records;
 - enquiries with banks, building societies, credit unions and others with whom you have financial dealings;
 - enquiries with previous employers, friends, relatives and associates about your general character, reliability, trustworthiness etc; and
 - checks/enquiries with any other person, agency or organisation which may be able to contribute information relevant to the assessment of your suitability for the access proposed.

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AUSTRALIAN SECURITY VETTING SERVICE (ASVS)

GENERAL CONSENT

(FOR HIGHLY PROTECTED AND PROTECTED CLEARANCES)

| | |
|--------------------------------|--|
| Addressee (office use only) | |
|--------------------------------|--|

| |
|--|
| Name in Block Letters of Address in Block Letters. |
|--|

I have read the covering Information Letter/Leaflet which explains the need for me to undergo the security clearance process in accordance with Australian Government policy. I acknowledge that this process requires the agency to make various enquiries/checks about me. I consent to the agency having access to relevant information* about me which will assist the agency in making a decision about my suitability for a security clearance. For that purpose, I hereby authorise the communication of such information to the agency.

| | | | |
|------------|--|-------|--|
| Signature: | | Date: | |
|------------|--|-------|--|

WITNESS

| | | | | | |
|--------------|--|-----------|--|------|--|
| Printed Name | | Signature | | Date | |
|--------------|--|-----------|--|------|--|

NOTES

- The nature of security clearance action (vetting) is such that it cannot be determined from the outset how many, and to what extent, checks/enquiries will need to be made in order to be able to make an informed and reasoned assessment about a person's suitability for the access proposed. For that reason the General Consent Form cannot specify exactly what checks/enquiries will be made for each security clearance.
- However, you are advised that in all cases the following checks will be made:
 - * corroboration of any previous Commonwealth/state employment, including with the Defence Force, and a check of any existing security records;
 - * corroboration of places and periods of residence for 5 years for HIGHLY PROTECTED and PROTECTED clearances;
- Any or all of the following checks/enquiries may be made on a needs basis:
 - * checks with Registrars of Births, Deaths and Marriages for authenticity of personal documents such as birth, marriage and change of name documentation;
 - * check of naturalisation/citizenship documentation with the Department of Immigration and Multicultural Affairs and passports with the Australian Passport Office;
 - * check education documentation with relevant school, college, university and the like;
 - * corroboration of overseas travel with International Movement records.
 - * enquiries with banks, building societies, credit unions and others with whom you have financial dealings;
 - * enquiries with previous employers, friends, relatives, and associates about your general character, reliability, trustworthiness etc; and
 - * checks/enquiries with any other person, agency or organisation which may be able to contribute information relevant to the assessment of your suitability for the access proposed.

* REFER TO INFORMATION SHEET ON PREVIOUS PAGE

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TWD AWP D N V E S T I G A T I O N S

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AUSTRALIAN SECURITY VETTING SERVICE (ASVS)

OFFICIAL SECRET

| |
|--------------------------------------|
| I, <input type="text"/> |
| (Name in BLOCK letters) |
| of <input type="text"/> |
| (Address in BLOCK letters) |
| In the State of <input type="text"/> |

Understand that all official information that will or has been acquired by me in the course of my employment with the Anti-Corruption Commission which it is my duty not to disclose is not to be published or communicated to any unauthorised person in any form either during or after my service in or with the Anti-Corruption Commission. I understand that to do so is a criminal offence and is subject to the provisions within the *Anti-Corruption Commission Act 1988* as listed below.

| | | |
|---------------------------------|-----------------------------|-------------------------|
| Dated this <input type="text"/> | Day of <input type="text"/> | 19 <input type="text"/> |
| Signature <input type="text"/> | | |

WITNESS DETAILS

| | |
|---|-------------------------------|
| Signature of Witness <input type="text"/> | <input type="text"/> |
| Designation <input type="text"/> | <input type="text"/> |
| Name <input type="text"/> | <input type="text"/> |
| Address <input type="text"/> | <input type="text"/> |
| <input type="text"/> | Postcode <input type="text"/> |

Anti-Corruption Commission Act 1988

Non-disclosure of information

52. (1) A person who is, or has at any time been, a member, an officer of the Commission, a seconded officer, a special investigator, a service provider or a member or employee of a service provider shall not, either directly or indirectly, except in or in connection with the performance of a function under this Act-
- a) makes a record of, or divulges or communicates to any person any information received in his or her capacity as member, officer of the Commission, seconded officer, special investigator, service provider or member or employee of a service provider;
 - b) make use of any information as is mentioned in paragraph (a); or
 - c) produce to any person a document furnished for the purposes of this Act

Penalty: \$8000 or imprisonment for 2 years

PLEASE ENSURE THAT THE FORM HAS BEEN SIGNED AND WITNESSED CORRECTLY

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AUSTRALIA

STATUTORY DECLARATION

| | |
|--|---|
| (1) Here insert name, address and occupation of person making the declaration. | I, _____ do solemnly and sincerely declare |
|--|---|

1. That I have correctly completed the attached 'List of Documents to be Attached' form and attached all the information, correctly completed forms, and personal documents specified therein;
2. that all information and documents provided for the security clearance process relate to me and are complete and correct;
3. that every effort has been made to provide original documents required; and
4. that where original documents cannot be provided the attached copy is a certified true copy of that document.

I make this solemn declaration by virtue of the Statutory Declarations Act 1959 as amended and subject to the penalties provided by that Act for the making of false statements in statutory declarations, conscientiously believing the statements contained in this declaration to be true in every particular.

| | |
|---|-----------------------|
| (2) Signature of person making the declaration. | I, _____ |
| Declared at (place) | On (day, month, year) |

| | | | |
|--|------------------|------------------------|-------|
| (3) Signature of person before whom the declaration is made. | before me, _____ | Printed Name (in full) | _____ |
|--|------------------|------------------------|-------|

| | |
|--|-------|
| (4) Here insert title of person before whom the declaration is made. | _____ |
|--|-------|

NOTE 1

A person who wilfully makes a false statement in a statutory declaration under the Statutory Declarations Act 1959 as amended is guilty of an offence against that Act, the punishment for which is a fine not exceeding \$200 or imprisonment for a term not exceeding six months or both if the offence is prosecuted summarily, or imprisonment for a term not exceeding four years if the offence is prosecuted upon indictment.

NOTE 2

A statutory declaration under the Statutory Declarations Act 1959 as amended may be made only before a Member of the Commonwealth Parliament, Member of a State Parliament, Member of the Legislative Assembly of the Australian Capital Territory, Member of the Legislative Assembly of the Northern Territory, Member of the Legislative Assembly of Norfolk Island, Judge Magistrate, Master of a Court, Chief Executive Officer of a Federal Court, Registrar or Deputy of a Court, Clerk of a Court, Clerk of Petty Sessions, Sheriff, Sheriff's Officer, Bailiff, Barrister, Solicitor, Registered Patent Attorney within the meaning of the Patents Act 1990, Justice of the Peace, Commissioner for Affidavits, Notary Public, Commissioner for Declarations, Police Officer, Registered Medical Practitioner Dentist, Pharmacist, Veterinary Surgeon, Minister of Religion designated as an authorised marriage celebrant, Civil Marriage Celebrant, Holder of a Statutory Office, Alderman or Councillor of a Municipal or Shire Council, Senior Executive Service Officer of the Commonwealth Public Service, Permanent Employee of the Commonwealth Government with 5 years service, Senior Executive Service Officer of a State Public Service, Permanent Employee of a State Government with 5 years service, Senior Executive Service Officer of a Territory Public Service, Permanent Employee of a Territory Government with 5 years service, Permanent Employee of a Local Government with 5 years service, Officer of the Australian Navy, the Australia Army, or the Australian Air Force, within the meaning of the Defence Force Discipline Act 1982, Non-Commissioned Officer within the meaning of the Defence Force Discipline Act 1982 with 5 years service, Warrant Officer within the meaning of the Defence Force Discipline Act 1982 with 5 years service, Full-time Teacher at a school, or tertiary education institution, with 5 years service, Registered Nurse, or Enrolled Nurse, with 5 years service, Bank Manager, Bank Officer with 5 years service, Building Society Officer with 5 years service, Credit Union Officer with 5 years service, Registered Member of the Institute of Chartered Accountants in Australia, the Australian Society of Certified Practising Accountants or the National Institute of Accountants, Postal Manager, Australian Postal Corporation Officer with 5 years service, Person before whom a statutory declaration may be made under the law of the State, Territory, in which the declaration is made, Australian Consular Officer, or Australian Diplomatic Officer, within the meaning of the Consular Fees Act 1985.

PLEASE ENSURE THAT THE FORM HAS BEEN SIGNED AND WITNESSED CORRECTLY

ANNEXURE D

MEMORANDUM

CSO 6102/98

TO : ALLAN THOMPSON
DIRECTOR LEGISLATION
FROM : LINDY JENKINS
SENIOR ASSISTANT CROWN COUNSEL
RE : SPENT CONVICTIONS ACT 1988 ("THE ACT")

I refer to your minute dated 2 December 1998.

You request advice as to whether it would be an offence for spent conviction information, gained by the Anti Corruption Commission ("the ACC") in relation to an applicant for employment with the ACC, being used for some other purpose.

The question arose during an appearance by you before the Joint Standing Committee on Delegated Legislation.

Section 16(1) of the Act provides that Regulations may be made, under the general regulation making power in the Act, exempting persons from the provisions of the Act. Section 16(3) says that that such exemptions may be expressed by reference to:

1. employers or others who would be bound by the provisions,
2. employees or others who would have the benefit of the provisions,
3. a type of employment or legal relationship to which the provisions would relate.

It further says that the exemption may apply to:

1. the whole or any specified provision of Part 3 of the Act; or
2. all spent convictions or spent convictions for specified offences or classes of offences.

The Regulations relating to the ACC are contained within the *Spent Convictions (Act Amendment) Regulations (No. 3) 1998*. They conform with the above requirements of section 16 of the Act.

They exempt the ACC from the provisions of Division 4 of Part 3 and section 18 of the Act.

Consequently, in respect to section 18 of the Act, the ACC is permitted to discriminate against a prospective or current employee on the ground of a spent conviction of that person.

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In respect to Division 4 it means that the ACC may ask questions about and take into account a spent conviction of a person who is a current or prospective employee, member of the ACC, secondee, or appointee under sections 8 - 10 of the Anti - Corruption Commission Act 1988.

Neither the Act nor the Regulations permit the ACC to obtain or take into account spent conviction information for any other purpose.

If the ACC obtained information about a spent conviction for other reasons it would commit an offence under section 28 of the Act and would be liable for a fine of \$1,000.

If the ACC had lawfully obtained the information about a spent conviction and then took account of that information in an investigation of the good character etc of that person, section 26 of the Act may apply. That section states:

- "(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."

By virtue of this section, the ACC actions would not constitute a criminal offence. However, the section leaves untouched the ability of the person to apply to the Supreme Court for an order quashing the relevant part of the investigator's report or for another remedy.



LINDY JENKINS
SENIOR ASSISTANT CROWN COUNSEL

14 December 1998