

PARLIAMENT OF WESTERN AUSTRALIA

**JOINT STANDING COMMITTEE  
ON  
DELEGATED LEGISLATION**

**THIRTY-FOURTH REPORT:**

*Spent Convictions (Act Amendment) Regulations 1998*

Presented by the Hon Robert Laurence Wiese MLA (Chairman)

**34  
June 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 Barbara Scott MLC  
Hon Jim Scott MLC  
Mr Ted Cunningham MLA  
Mr Norm Marlborough MLA  
Mr Iain MacLean MLA

### **Advisory/Research Officer**

Michael Smyth

### **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.*

**ISBN No: 0 7309 8896 1**

## Report of the Joint Standing Committee on Delegated Legislation

in relation to

### Spent Convictions (Act Amendment) Regulations 1998

#### 1 Executive Summary

- 1.1 The Committee accepts the requirement for the Offender Management Division of the Ministry of Justice to have access to criminal records information, including information regarding spent convictions, in order to discharge its statutory functions under the *Sentencing Act 1995* and the *Sentence Administration Act 1995* (refer to paragraph 4 of the report).
- 1.2 The Committee accepts that the *Spent Convictions (Act Amendment) Regulations 1998* are regulations validly made pursuant to section 16 of the *Spent Convictions Act 1988* (refer to paragraph 5 of the report).
- 1.3 The Committee expresses its concern over the apparent lack of any statutory basis for the sharing of criminal records information relating to spent convictions between 1 July 1992, being the date the *Spent Convictions Act 1988* came into operation, and 27 February 1998 being the date of *gazettal* of the *Spent Convictions (Act Amendment) Regulations 1998* (refer to paragraph 6 of the report).
- 1.4 For the reasons set out in the report the Committee has resolved to withdraw the disallowance motion.

#### 2 Introduction

- 2.1 In the exercise of its scrutiny function the Committee reviewed the *Spent Convictions (Act Amendment) Regulations 1998* (“**Amendment Regulation**”) made under the *Spent Convictions Act 1988* (“**Act**”). A copy of the Amendment Regulation 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. The broad object of the Amendment Regulation is to grant the Offender Management Division of the Ministry of Justice an exception from the operation of Division 4 of Part 3 of the *Spent Convictions Act 1988*. Division 4 of Part 3 of the *Spent Convictions Act*

1988 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. The Offender Management Division of the Ministry of Justice uses information on spent convictions in the performance of its functions.

- 2.2 The Committee notes that the Parole Board and the Supervised Release Review Board have already been granted exceptions from the operation of Division 4 of Part 3 of the *Spent Convictions Act 1988*. The Committee initially queried the need for the Offender Management Division of the Ministry of Justice to obtain access to information on spent convictions given that the Parole Board and Supervised Release Review Board are already included in the exceptions from the operation of Division 4 of Part 3 of the *Spent Convictions Act 1988*. The Committee also expressed concerns at the manner in which further exceptions to the *Spent Convictions Act 1988* are made by way of regulation.
- 2.3 On 28 May 1998 the Committee heard evidence from Mr Allan Thompson, Director, Legislation, Mrs Jacqueline Tang, Acting Assistant Director, Prison Management and Mr Malcolm Penn, Acting Manager, Operational Standards Directorate, all from the Ministry of Justice. During the course of the hearing, evidence was given as to the procedure by which spent conviction records have been provided to the Ministry of Justice. This raised a serious concern as to the manner in which spent convictions had been supplied to the Offender Management Division of the Ministry of Justice prior to the Amendment Regulation coming into effect.

### 3 **The Committee's Concerns**

- 3.1 The Amendment Regulation was published in the *Government Gazette* on 27 February 1998 and came into operation on that date. The Amendment Regulation was tabled in the Parliament on 10 March 1998. Under the provisions of section 42 of the *Interpretation Act 1984* there are 14 sitting days from the date of tabling in which there is power for the Parliament to move for the disallowance for such subordinate legislation. This period ended on 30 April 1998. In the circumstances, the Committee resolved for the Deputy Chairman to table a Notice of Motion of Disallowance over the Amendment Regulation in order to protect the initial position of the Committee and to enable sufficient time for the Committee to handle the inquiry. Accordingly, a Notice of Motion was tabled in the Legislative Council on 30 April 1998 which, by virtue of the Legislative Council Standing Orders, moved *pro forma* on 20 May 1998.

### 4 **Access to Spent Convictions Information**

- 4.1 The Committee initially queried why it was necessary to add the Offender Management Division of the Ministry of Justice to the schedule of exceptions from the operation of Division 4 of Part 3 of the *Spent Convictions Act 1988*. Mrs Tang and Mr Penn from the Ministry of Justice referred the Committee to the functions imposed on the Ministry

of Justice under the *Sentencing Act 1995* and the *Sentences Administration Act 1995*. Part 3 of the *Sentencing Act 1995* deals with matters preliminary to sentencing and Division 3 of this Part relates to information about the offender. Section 20(1) of Division 3 of the *Sentencing Act 1995* provides as follows:

**“Pre-sentence report: court may order**

- 20.(1) If a court considers that it would be assisted in sentencing an offender by a pre-sentence report about the offender, it may order one.”

Section 21 of Division 3 of the *Sentencing Act 1995* states the issues to be addressed by the pre-sentence report where such a report is ordered by the court in the following terms:

**“Pre-sentence report: content**

- 21.(1) When ordering a pre-sentence report a court may give instructions as to the issues to be addressed by the report.
- (2) In the absence of specific instructions from the court that ordered it, a pre-sentence report is to set out matters about the offender that are, by reason of this Act or sentencing practice, relevant to sentencing the offender or to the making of a reparation order under Part 16.
- (3) A pre-sentence report may include reports as to the physical or mental condition of the offender, whether or not the court has asked for them.”

Section 22 of Division 3 of the *Sentencing Act* sets out who is responsible for the preparation of pre-sentence reports as follows:

**“Pre-sentence report: preparation**

- 22.(1) The CEO is to ensure that pre-sentence reports are made -
- (a) by appropriately qualified people; and
- (b) as soon as practicable and in any event within 21 days after being ordered.
- (2) A pre-sentence report may be made by more than one person.
- (3) A pre-sentence report may be made in writing or orally.
- (4) A written pre-sentence report must not be given to anyone other than

the court by or for which it was ordered and the CEO.

- (5) A court may make a pre-sentence report available to the prosecutor and to the offender, on such conditions as it thinks fit.”

The abbreviation “CEO” is defined in section 4 of the *Sentencing Act 1995* to mean chief executive officer. By virtue of section 5 of Part II of the *Interpretation Act 1984*, the term chief executive officer has the following meaning:

## “PART II - GENERAL INTERPRETATION PROVISIONS

### Definitions applicable to written laws

5. In this Act and every other written law -

“**chief executive officer**” has the meaning given by the *Public Sector Management Act 1994* and -

(a) when used in relation to -

(i) an agency within the meaning of that Act; or

(ii) an office or employee in, or anything else connected with, an agency within the meaning of that Act,

means the chief executive officer of the agency; and

(b) when used in an enactment otherwise than in the circumstances referred to in paragraph (a), means the chief executive officer of the agency principally assisting the Minister administering the enactment in its administration.”

As the Attorney General is the Minister with responsibility for administering the *Sentencing Act 1995* the chief executive officer means the chief executive officer of the Ministry of Justice.

The chief executive officer of the Ministry of Justice is accordingly responsible for all pre-sentence reports. The Offender Management Division within the Ministry of Justice is the division responsible for their preparation. The pre-sentence report assists the judge in sentencing an offender under section 39 of the *Sentencing Act 1995*.

Section 14 of the *Spent Convictions Act 1988* contemplates a judge having regard to spent convictions before determining the appropriate punishment for an offence and provides that:

“A court, tribunal or judge that receives evidence of a spent conviction shall take such steps as are reasonably available to avoid or minimize publication of that evidence.”

Accordingly, for the chief executive officer to discharge his responsibilities under section 22 of the *Sentencing Act 1995*, the division of the Ministry of Justice charged with the preparation of pre-sentence reports, the Offender Management Division, must have access to information relating to spent convictions.

- 4.2 Another function of the Offender Management Division of the Ministry of Justice is to make assessments for the placement of prisoners (including an assessment of security ratings) within the Ministry of Justice Corrective Services Division and to prepare reports on prisoners for consideration by the Parole Board. These functions are set out in section 94 of the *Sentence Administration Act 1995* provides in part:

**“Functions**

**94.** (1) Subject to the control of the Minister, the CEO’s functions include -

(a) the proper administration of community orders, early release orders and WDOs; and

(b) the control and management of community corrections centres.”

The Offender Management Division has responsibility within the Ministry of Justice for fulfilling the above functions. The Ministry of Justice provided to the Committee an internal document marked for distribution to Officers and Prisoners entitled, “Procedures for the Assessment and Placement of Prisoners within the Ministry of Justice, Corrective Services Division.” This document sets out the procedures to be followed for the assessment, security rating, placement and sentence plan drawn up in relation to each prisoner. The Committee accepts that, in complying with the procedures set out in this document, access to spent convictions information would be required.

The Offender Management Division is also responsible for the preparation of reports for the consideration of the Parole Board when the Parole Board is considering suitability of a prisoner for release on Parole. The Committee had reservations about the need for the Offender Management Division to have access to spent convictions information in relation to the preparation of reports for the Parole Board given that the Parole Board already has an exception from the operation of Division 4 of Part 3 of the *Spent Convictions Act 1988*. The Committee was advised that the Parole Board relies on the recommendations of the report prepared by the Offender Management Division on the basis that the recommendations are made after consideration of all relevant information relating to the prisoner, including spent convictions, if any. The Committee understands that the Parole Board does not make its own independent inquiries in relation to spent convictions. If the Parole Board did not have an exception from the

operation of Division 4 of Part 3 of the *Spent Convictions Act 1988*, the Parole Board would not be in a position to make an assessment of a prisoner by having regard to any spent convictions which that prisoner may have.

4.3 For the reasons set out above, the Committee accepts that the Offender Management Division requires access to spent convictions records in addition to the Parole Board having access.

## 5 **Is the Amendment Regulation within power?**

5.1 The second concern of the Committee was the manner in which a regulation altered the *Spent Convictions Act 1988*. The Amendment Regulation was made pursuant to section 16 of the *Spent Convictions Act 1988* which provides as follows:

### **“Further exceptions**

16. (1) Regulations may be made under section 33 -

(a) amending this Act by inserting a Schedule or Schedules making provision for exceptions to this Part; or

(b) amending any such Schedule.

(2) An exception created under the power in subsection (1) may be expressed -

(a) by reference to -

(i) an employer, principal, organization, authority, agency or other person who would otherwise be bound by this Part, or any class thereof;

(ii) an employee, contract worker, or other person who would otherwise have the benefit of this Part, or any class thereof;

(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 of the *Spent Convictions Act 1988* is drafted in standard terms being the power of the Governor to make regulations prescribing all matters that are required or permitted by the Act which are necessary or convenient to give effect to the purposes of the Act.

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.

## 6 Access to spent convictions prior to the Amendment Regulation

- 6.1 In the course of taking evidence in relation to this inquiry, the Committee became aware of the procedures in place prior to the *gazettal* of the Amendment Regulation on 27 February 1998 by which the Ministry of Justice obtained access to spent convictions information. The Committee is concerned that such access appears to have been provided in breach of the *Spent Convictions Act 1988*. Section 28 of the Act provides as follows:

### “Unlawful access to criminal records

28. (1) A person shall not, without lawful reason, obtain information about a spent conviction, or the charge to which the conviction relates, from an official criminal record.

Penalty: \$1,000.

- (2) In subsection (1) “**official criminal record**” means a record containing information about the results of criminal proceedings kept for the purposes of its functions by any police force, court, government department, local or other public authority in Western Australia.”

Prior to the *gazettal* of the Amendment Regulation, the Ministry of Justice obtained

access criminal record information (including spent conviction criminal records) under a signed Memorandum of Understanding between the WA Police Department and the Ministry of Justice dated 19 October 1994. Attached and marked “Annexure B” is a copy of the signed Memorandum of Understanding. The Committee can find no basis at law under which such information could be shared between the Ministry of Justice and the WA Police Department. Until the *gazettal* of the Amendment Regulation on 27 February 1998, the Ministry of Justice was subject to Division 4 of Part 3 of the *Spent Convictions Act 1988*, which includes section 28 above. The Committee doubts whether the Ministry of Justice had “lawful reason” to obtain information about spent convictions from the date of signing the Memorandum of Understanding to the date of *gazettal* of the Amendment Regulation.

- 6.2 Prior to the signing of the Memorandum of Understanding, the WA Police Department provided a hard copy of criminal records information, including information relating to spent convictions. Attached and marked “Annexure C” is a copy of a letter dated 27 June 1994 from the Acting Commissioner of Police to the Director General, Ministry of Justice which sets out the proposal for information sharing under the Memorandum of Understanding and which also details the pre-existing arrangements for sharing information.
- 6.3 The *Spent Convictions Act 1988* came into operation on 1 July 1992. The Committee has grave doubts as to whether the Ministry of Justice has ever complied with the Act since its enactment regarding the obtaining spent convictions information. The WA Police Department identified a “problem” in a meeting held between the Director General of the Ministry of Justice, and Deputy Commissioner Brennan and Assistant Commissioner Mott of the WA Police Department on 3 July 1997. The chronology of events is set out in correspondence between the WA Police Department, the Ministry of Justice and the Attorney General. Attached and marked “Annexure D” is a copy of a letter dated 1 August 1997 from the Executive Director, Policy and Legislation to the Director General of the Ministry of Justice recommending a solution to the problem raised by the WA Police Department. Attached and marked “Annexure E” is a copy of a letter dated 1 August from the Director General of the Ministry of Justice to the Attorney General seeking agreement for the drafting of what became the Amendment Regulation. The Attorney General has indicated his approval on 6 August 1997. Attached and marked "Annexure F" is a copy of a letter dated 14 August 1997 from the Director General of the Ministry of Justice to Deputy Commissioner Brennan advising that Attorney General's approval for the drafting of the Amendment Regulation. Attached and marked "Annexure G" are copies of two letters from the Executive Director, Policy and Legislation to Parliamentary Counsel dated August 1997 and 6 October 1997 respectively instructing the preparation of regulations being the Amendment Regulation. Attached and marked "Annexure H" is a copy of a letter dated 22 January 1998 from the Director General of the Ministry of Justice to the Attorney General attaching the draft Amendment Regulation for consideration and referral to the Governor in Executive Council for ratification.

- 6.4 The Committee is concerned that the Offender Management Division of the Ministry of Justice has, by its own admission, carried out thousands of assessments of offenders over a period spanning 1 July 1992 to 27 February 1998. The Committee accepts that from 27 February 1998, the Amendment Regulation now allows access to spent conviction information, but expresses grave doubts as to the legality of such access between 1 July 1992 and 27 February 1998.

7 **Recommendation of the Committee**

- 7.1 For the reasons given above, the Committee recognises the need for the Offender Management Division of the Ministry of Justice to have access to spent convictions information. The Committee accepts that the Amendment Regulation is within power. For these reasons the Committee has resolved to withdraw the disallowance motion.
- 7.2 The Committee wishes to express its concern at the lack of formal procedures in place for the sharing of criminal records information prior to the *gazettal* of the Amendment Regulation. The Committee believes that information may have been provided to the Ministry of Justice in breach of the *Spent Convictions Act 1988*. The Committee does not propose to pursue this matter further as it is outside the Committee's terms of reference. **However, the Committee believes that this matter warrants further investigation.**

"Annexure A"

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**JUSTICE**

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JM301\*

## SPENT CONVICTIONS ACT 1988

## SPENT CONVICTIONS (ACT AMENDMENT) REGULATIONS 1998

Made by the Governor in Executive Council.

**Citation**

1. These regulations may be cited as the *Spent Convictions (Act Amendment) Regulations 1998*.

**Schedule 3 to the Act amended**

2. Schedule 3 to the *Spent Convictions Act 1988*\* is amended by inserting after item 9 in the table to clause 1 the following item —

“

10. A person employed in the Offender Management Division of the Division 4  
Ministry of Justice when (in the course of the person's duties)  
assessing, reporting about or classifying persons charged with  
or convicted of offences

”

[\* Reprinted as at 19 November 1996.

*For amendments to 20 January 1998 see 1996 Index to Legislation of Western Australia, Table 1, p. 213 and Act No. 27 of 1996.]*

By Command of the Governor,

M. C. WAUCHOPE, Clerk of the Executive Council.

**"Annexure B"**

## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding between the W.A. Police Department and the Ministry of Justice, undertakes to define the establishment of access for staff within the Ministry of Justice to the W.A. Police Department Computer System. Though it is a formalisation of relationship, it is intended to support and foster a closer working relationship between our departments in pursuit of common goals.

## Clause 1.

The W.A. Police Department agree to allow access to the Department's computer data to the Ministry of Justice in accordance with Clause three(3).

## Clause 2.

The Ministry of Justice agrees that the services provided by the W.A. Police Department will be used in the manner and for the purpose as agreed at the establishment of the service.

## Clause 3.

The Ministry of Justice will nominate a representative to be responsible for the application in writing on behalf of staff wishing to gain access to the W.A. Police Department's computer system. Applications will stipulate the name and birth date of the applicant, the particular service required, the purpose for which the service will be used and the location from which the access will be available.

## Clause 4.

The Ministry of Justice will take reasonable steps to ensure that logons and passwords issued to Ministry staff by the W.A. Police Department will be kept confidential.

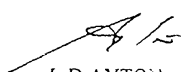
## Clause 5.

The Ministry of Justice nominee under Clause three(3) shall notify the Security Section of the Computing and Information Management Branch of the W.A. Police Department:

1. Immediately, in the event of misuse of information or non-conformance to this agreement;
2. Within a reasonable time, when it is no longer appropriate for a Ministry staff member to have access.

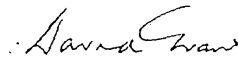
## Clause 6.

The Ministry of Justice take all reasonable steps to ensure the physical security of the network connections and to manage the network in such a way as to minimise any unauthorized access to the W.A. Police Department's computer system.



L D AYTON  
DEPUTY COMMISSIONER  
W.A. POLICE DEPARTMENT

19.10.94



DAVID GRANT  
DIRECTOR GENERAL  
MINISTRY OF JUSTICE

"Annexure C"



01850A

g. sel. 149

Mr Les Ayton  
Acting Commissioner of Police  
Police Department of WA  
Police Headquarters  
2 Adelaide Terrace  
PERTH WA 6000

Dear Les

Further to our meeting of 22 June, I am writing to confirm that the arrangements as discussed are as follows. In order to ensure that Corrective Services personnel in the Courts, in Community Corrections Centres and in Prisons have got ready and speedy access to criminal records, direct on-line access from the Ministry of Justice to the Police Department's database will be put in place. I am proposing using the Ministry's Sentence Information Unit as the central access point for criminal records information. This would ensure that the point of access was restricted to one specialised unit that is currently involved in sentence calculation. This unit would then distribute to the appropriate Corrective Services personnel the criminal record information required.

In practice this would not radically change the existing arrangements whereby following a request a hard copy is obtained. In other words, there is no difference in the nature of the information being obtained, rather it is the means, ie hard copy and the work involved in obtaining a hard copy on the part of your officers will be replaced by direct electronic retrieval. Subject to your agreement I will arrange for an appropriate Ministry of Justice officer to make contact with an officer nominated by yourself.

I am confident that the arrangements proposed will result in significant efficiencies for both organisations and attest to the desirability and usefulness of interagency cooperation.

Yours sincerely

DAVID GRANT  
David Grant  
DIRECTOR GENERAL

27 June 1994

27/6/94

**"Annexure D"**

Author: Malcolm Penn 264 1828  
Title: A/Director Legislation  
Origin: Policy and Legislation Division

MOJ 92/05562

DIRECTOR GENERAL

**ACCESS TO CRIMINAL RECORDS:**  
**Exemption from operations of *Spent Convictions Act***

I refer to your advice dated 8 July 1997 concerning a recent meeting you had with Deputy Commissioner Brennan and Assistant Commissioner Mott at which the issue of the Ministry access to criminal records was discussed. I also understand that Malcolm Penn of this Division discussed this matter with you on 30 July 1997.

The solution to the problem raised by the Police is relatively simple. The Offender Management of the Ministry of Justice needs to be granted an exempt status under Clause 1 of Schedule 3 of the *Spent Convictions Act*. Such an amendment can be done by way of Regulations. In order to achieve this the Attorney General would have to give his consent to the drafting of the necessary amending Regulations.

I understand that you are keen to resolve this matter quickly and therefore the attached correspondence to the Attorney General is recommended for your signature. Once you have signed this correspondence I will arrange for it to be faxed to the Attorney General overseas in order that he can endorse this course of action. This will enable Parliamentary Counsel to draft the necessary Regulations so that hopefully the Regulations will be finalised upon the return of the Attorney General from overseas. It is then simply a matter of the Regulations being endorsed by the Governor in Executive Council and subsequent publishing of the Regulations in the Government Gazette.

Submitted for your consideration.



Robert E Fitzgerald  
EXECUTIVE DIRECTOR  
POLICY AND LEGISLATION

/ August 1997

*Attach:*

MOJ-Penn-Worked-attaching-Advice-General-Legislation-DG-Access-to-criminal-records

**"Annexure E"**

07/08 '97 THU 15:19 FAX 61 9 322 5149 PETER FOSS MLC 002  
 JG-06-97 19:20 From:LE WES 61 9 322 5149 +1-514-845-3025 T-337 P.02/05 Job-251

A: Malcolm Penn 264 1828  
 Title: A/Director Legislation  
 Origin: Policy and Legislation Division

MOJ 92/05562

HON ATTORNEY GENERAL

**ACCESS TO CRIMINAL RECORDS:  
 Exemption from operations of Spent Convictions Act**

In 1994 the Ministry of Justice and the Police Department entered into a Memorandum of Understanding which enabled certain Ministry staff to have on-line access to criminal record information. This information is utilised on a day-to-day basis in the assessment and classification of offenders. A copy of the Memorandum of Understanding is attached for your information.

At a recent meeting I had with Deputy Commissioner Bruce Brennan and Assistant Commissioner Bill Mott, they raised some concerns regarding the ability of the Ministry to have access to criminal records containing spent convictions. Their concerns centred around the issue that the Ministry does not have exempt status under the *Spent Convictions Act* to allow it (the Ministry) to access details of a person's spent convictions. It is critical to the management of offenders that the Ministry, in particular the Offender Management Division, continue to have access to criminal record information, including details of spent convictions. This is particularly the case as courts can now issue spent convictions orders under the *Sentencing Act* which effectively immediately expunge a person's conviction from their criminal record.

I am advised that the problems raised by the Police Department can be overcome easily by granting an exempt status to the Offender Management Division of the Ministry of Justice under Clause 1, Schedule 3 of the *Spent Convictions Act*. Such an amendment can be achieved by way of Regulations.

I am keen to resolve this matter quickly and therefore recommend that you agree to the drafting of Regulations to grant an exemption to the Offender Management Division of the Ministry of Justice from the effects of Division 4 of Part 3 of the *Spent Convictions Act*.

Should you agree with the course of action I will arrange for Parliamentary Counsel to commence drafting the necessary Regulations as a matter of priority in order that the Regulations can be ready for your consideration and referral to the Governor in Executive Council following your return from overseas.

Submitted for your urgent consideration.

Agreed.  
 Pfs  
 6/8/97



Gary Byron  
 DIRECTOR GENERAL

August 1997

Attach:

**"Annexure F"**



## Ministry Of Justice

Westralia Square, 141 St George's Terrace, Perth Western Australia, 6000  
Box F317, GPO Perth, 6001. Tel: (09) 264 1711

MOJ 92/05562

Deputy Commissioner Brennan  
Western Australian Police Service  
Police Headquarters  
2 Adelaide Terrace  
PERTH WA 6000

Dear Deputy Commissioner Brennan

**ACCESS TO CRIMINAL RECORDS:**  
**Exemption from operations of *Spent Convictions Act***

I refer to our recent meeting held on 3 July 1997 at which a number of matters were discussed, in particular the issue of access to criminal records containing spent convictions.

I have raised this matter with the Attorney General who has approved the drafting of Regulations to amend Clause 1 of Schedule 3 of the *Spent Convictions Act*. These amendments will enable the Offender Management Division of the Ministry of Justice to access details of spent convictions from your Criminal Records database.

Parliamentary Counsel have been instructed to prepare the necessary Regulations and I am hopeful that the Regulations can be proclaimed and Gazetted shortly after the Attorney General's return from overseas.

If you require further details regarding this matter, please contact Dr Robert Fitzgerald, Executive Director Policy and Legislation, on (08) 9264 1704.

Yours sincerely

Gary Byron  
DIRECTOR GENERAL

14 August 1997

**"Annexure G"**



MOJ 92/05562

PARLIAMENTARY COUNSEL

**ACCESS TO CRIMINAL RECORDS:**  
*Exemption from operations of Spent Convictions Act*

In 1994 the Ministry of Justice and the Police Department entered into a Memorandum of Understanding which enabled certain Ministry staff to have on-line access to criminal record information. This information is utilised on a day-to-day basis in the assessment and classification of offenders. A copy of the Memorandum of Understanding is attached for your information.

At a recent meeting the Director General had with Deputy Commissioner Bruce Brennan and Assistant Commissioner Bill Mott, some concerns were raised regarding the ability of the Ministry to have access to criminal records containing spent convictions. The concerns centred around the issue that the Ministry does not have exempt status under the *Spent Convictions Act* to allow it (the Ministry) to access details of a person's spent convictions. It is critical to the management of offenders that the Ministry, in particular the Offender Management Division, continue to have access to criminal record information, including details of spent convictions. This is particularly the case as courts can now issue spent convictions orders under the *Sentencing Act* which effectively immediately expunge a person's conviction from their criminal record.

The solution to the problem raised by the Police is relatively simple. The Offender Management of the Ministry of Justice needs to be granted an exempt status under Clause 1 of Schedule 3 of the *Spent Convictions Act*. Such an amendment can be done by way of Regulations.

On 1 August 1997, the Director General raised this matter with the Attorney General. A copy of this correspondence is attached. As a result the Attorney General has approved the drafting of Regulations to amend Clause 1 of Schedule 3 of the *Spent Convictions Act*.

Could you please prepare the necessary Regulations to give effect to the Attorney General's decision. The Director General is keen to have this matter resolved as soon as possible in order that the Ministry can continue to access the criminal records from the WA Police Service.

Robert E Fitzgerald  
EXECUTIVE DIRECTOR  
POLICY AND LEGISLATION

August 1997

*Attach:*

NEW:Penn Work:Legislation Advice:General legislation:PCO access to criminal record

J 92/05562

**COPY**

PARLIAMENTARY COUNSEL  
Attn: Patrick Tremlett

**ACCESS TO CRIMINAL RECORDS:  
Exemption from operations of *Spent Convictions Act***

I refer to my previous advice on this matter. I also understand that discussions have taken place between Mr Panetta of your Office and Mr Penn of this Division.

Division 4 of Part 3 of the *Spent Convictions Act 1988* 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. I note that both the Parole Board and the Supervised Release Review Board have been granted exceptions from the operation of Division 4 of Part 3 of the *Spent Convictions Act 1988*.

It is critical to the operation of the Offender Management Division of the Ministry of Justice, that an appropriate exception is granted under the *Spent Convictions Act 1988*. The Offender Management carries out thousands of assessments on offenders for the purposes of determining the offender's security rating and placement. In addition, the Community Corrections Directorate of the Offender Management Division provides numerous pre-sentence reports to courts. I therefore believe that, given the nature of the assessments that are undertaken by the Offender Management Division, an exception along identical lines to that of the Parole Board and Supervised Release Review Board is needed. For these reasons an exception from the operation of Division 4 of Part 3 is warranted.

I should point out though, that it is preferable to couch the exception to reflect the specific nature of the work undertaken by the Offender Management Division which gives rise to the need for the exception. The exception should be granted to the Offender Management Division in relation to "the assessment and/or classification of offenders and defendants". I will of course leave it to your discretion as to the appropriate form of words.

I trust that the above information is sufficient for your needs.

Should you require further information please contact Malcolm Penn, Senior Policy Officer (Legislation) on extension 1130.

Thank you for your assistance in this matter.

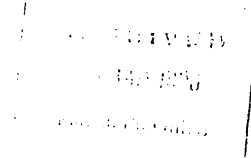


Robert E Fitzgerald  
EXECUTIVE DIRECTOR  
POLICY AND LEGISLATION

6 October 1997

**"Annexure H"**

Author: Allan Thompson 92641840  
Source: Policy and Legislation



MOJ: 92/05562/02

**HON ATTORNEY GENERAL**

Attn: Nick Wood

**SPENT CONVICTIONS ACT 1988**

**Spent Convictions (Act Amendment) Regulations 1998**

In August 1997 you agreed to the drafting of regulations to grant an exception to the Offender Management Division of the Ministry of Justice from the effects of Division 4 of Part 3 of the *Spent Convictions Act 1988*.

This issue was earlier raised by the Police Service which was concerned with the Ministry's ability to access criminal records containing spent convictions. Granting the Ministry an exception status under the Act would solve the problem. It has previously been advised that it is critical to the management of offenders that the Ministry, in particular the Offender Management Division, continues to have access to criminal record information. This is particularly the case as courts can now issue spent conviction orders under the *Sentencing Act* which effectively immediately expunge a person's conviction from their record.

Parliamentary Counsel has drafted the necessary subsidiary legislation in the form of the *Spent Convictions (Act Amendment) Regulations 1997*. The necessary Executive Council papers and draft regulations are attached for your consideration and referral to the Governor in Executive Council for ratification. The Explanatory Memorandum for the Governor is also enclosed with the Executive Council papers

Submitted for your consideration.

Gary Byron  
DIRECTOR GENERAL

January 1998

Attach's