



AUSTRALIAN CAPITAL TERRITORY

# Spent Convictions Act 2000

No 48 of 2000

## CONTENTS

Section

### PART 1—PRELIMINARY

- 1 Name of Act
- 2 Commencement
- 3 Overview of Act
- 4 Definitions—the dictionary
- 5 Notes
- 6 Meaning of conviction
- 7 Meaning of spent conviction
- 8 Meaning of quash
- 9 Act applies to convictions for offences against non-ACT laws
- 10 Act applies to existing convictions

### PART 2—SPENT CONVICTIONS

- 11 Which convictions can become spent?
- 12 When is a conviction spent?
- 13 What is the crime-free period?
- 14 How are traffic offences to be dealt with?
- 15 Spent convictions generally not revived

### PART 3—CONSEQUENCES OF A CONVICTION BECOMING SPENT

- 16 What are the consequences of a conviction becoming spent?
- 17 Unlawful disclosure of a conviction becoming spent

*Spent Convictions Act No 48, 2000*

**CONTENTS—continued**

Section	
18	Improperly obtaining information about spent convictions
19	Exclusions
	<b>PART 4—MISCELLANEOUS</b>
20	Act does not authorise contravention of other laws
21	Act does not affect certain other lawful acts
22	Act does not authorise destruction of records
23	Regulation-making power
	<b>PART 5—AMENDMENT OF DISCRIMINATION ACT</b>
24	Grounds

**DICTIONARY**



AUSTRALIAN CAPITAL TERRITORY

## Spent Convictions Act 2000

No 48 of 2000

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**An Act to limit the effect of a person's conviction for certain offences if the person completes a period of crime-free behaviour, to make provision about quashed convictions and pardons, and for other purposes**

*[Notified in ACT Gazette No. 39: 28 September 2000]*

The Legislative Assembly for the Australian Capital Territory enacts as follows:

### **PART 1—PRELIMINARY**

#### **1 Name of Act**

This Act is the *Spent Convictions Act 2000*.

#### **2 Commencement**

This Act commences on a day fixed by the Minister by notice in the Gazette.

*Note 1* The provisions of an Act providing for its name and commencement automatically commence on the date of notification of the Act (see *Interpretation Act 1967*, s 10B).

*Note 2* A single day or time may be fixed, or different days or times may be fixed for different provisions (see *Interpretation Act 1967*, s 10C (1)).

*Note 3* If a provision has not commenced within 6 months beginning on the date of notification of the Act, it automatically commences on the first day after that period (see *Interpretation Act 1967*, s 10E (2)).

### **3 Overview of Act**

(1) This Act provides a scheme to limit the effect of a person's conviction for certain offences if the person completes a period of crime-free behaviour.

(2) Under the scheme, after completion of a period of crime-free behaviour, a conviction to which the scheme applies is regarded as spent and, subject to certain exceptions, does not form part of the person's criminal history and may only be used for certain purposes.

*Note* See paragraph 7 (k) of the *Discrimination Act 1991* for discrimination on the ground of spent conviction.

(3) This Act also deals with the effect of the quashing of a conviction and the pardoning of an offence.

### **4 Definitions—the dictionary**

The dictionary at the end of this Act is part of this Act.

*Note 1* The dictionary defines certain words and expressions used in this Act, and includes references (*signpost definitions*) to other words and expressions defined elsewhere in this Act.

For example, the signpost definition '*conviction*—see section 6.' means that the expression 'conviction' is defined in section 6 for this Act.

*Note 2* A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see *Interpretation Act 1967*, s 11F and s 11G).

### **5 Notes**

A note included in this Act is explanatory and is not part of this Act.

*Note* See *Interpretation Act 1967*, s 12 (1), (4)-(5) for the legal status of notes.

### **6 Meaning of conviction**

For this Act, a person is *convicted* of an offence if—

- (a) the person is convicted of the offence, whether summarily or on indictment; or
- (b) the person is charged with the offence and a court is satisfied that the charge is proved, but the charge is disposed of without the person's conviction for the offence.

*Examples for paragraph (b)*

1 The court dismisses the charge under the *Crimes Act 1900*, subsection 556A (1).

2 The court directs the discharge of the person under the *Crimes Act 1900*, subsection 556A (1).

3 The court dismisses the charge under the *Children and Young People Act 1999*, paragraph 98 (i).

4 The court makes an order under the *Children and Young People Act 1999*, paragraph 98 (j).

## **7 Meaning of spent conviction**

- (1) For this Act, the conviction of a person for an offence is *spent* if—
- (a) the conviction is spent under section 12 (When is a conviction spent?); or
  - (b) the conviction is quashed; or
  - (c) the person is granted a pardon for the offence.
- (2) In this Act, a reference to a conviction that is *spent* includes a reference to—
- (a) the charge to which the spent conviction related; and
  - (b) any action taken in relation to a breach of prison discipline committed during a period of imprisonment imposed in relation to the conviction.

## **1 Meaning of quash**

For this Act, a person's conviction for an offence is *quashed* if—

- (a) the conviction is quashed or set aside; or
- (b) the finding that the charge was proved is quashed or set aside (except to impose a penalty for the offence).

## **9 Act applies to convictions for offences against non-ACT laws**

(1) This Act applies to convictions for Commonwealth offences, State offences and foreign offences as well as convictions for ACT offences.

(2) This Act applies to convictions imposed for Commonwealth offences, State offences and foreign offences with the changes necessary to enable its provisions to apply to those offences in a way that corresponds as closely as possible to the way it applies to ACT offences.

*Note* Part VIIC of the *Crimes Act 1914* (Cwlth) deals with spent convictions. In particular, subsection 85ZV (1) of that Act provides, among other things, that a person is not required, in a State or Territory, to disclose to any person, for any purpose, the fact that the person has been charged with, or convicted of, a Commonwealth offence if the person's conviction for the offence is spent under that Act. (Division 6 of that Part provides exclusions.) The subsection is expressed to apply despite, among other things, any state or territory law. Under section 28 of the *Australian Capital Territory (Self-Government) Act 1988* (Cwlth) a provision of a Territory enactment has no effect to the extent to which it is inconsistent with a Commonwealth law in force in the Territory.

**10 Act applies to existing convictions**

This Act applies in relation to a person convicted of an offence whether the person is convicted before or after the commencement of this Act.

## **PART 2—SPENT CONVICTIONS**

### **11 Which convictions can become spent?**

(1) Any conviction (other than a conviction mentioned in subsection (2)) can become spent.

(2) The following convictions cannot become spent convictions:

- (a) a conviction for which a prison sentence of longer than 6 months has been imposed;
- (b) a conviction for a sexual offence;
- (c) a conviction of a corporation;
- (d) a conviction prescribed under the regulations.

(1) In this section:

*prison sentence* does not include a sentence by way of periodic detention or the detaining of a person under a control order.

### **12 When is a conviction spent?**

(1) A conviction is spent on completion of the relevant crime-free period, unless it is earlier spent under subsections (2) to (8).

(2) An order under subsection 556A (1) of the *Crimes Act 1900*, paragraph 98 (i) of the *Children and Young People Act 1999* or paragraph 48 (j) of the *Children's Services Act 1986*, dismissing a charge for an offence that has been found proved is spent on the making of the order.

(3) An order under subsection 556A (1) of the *Crimes Act 1900* directing that a person be discharged on giving security to be of good behaviour for a specified period is spent on satisfactory completion of the period.

(4) However, if the order also requires the person to comply with specified conditions, the order is spent only if there has been satisfactory compliance with the conditions.

(5) An order reprimanding a person under subsection 96 (1) (or paragraph 98 (j)) of the *Children and Young People Act 1999* or subsection 47 (1) (or paragraph 48 (k)) of the *Children's Services Act 1986* is spent on the making of the order.

(6) A conditional discharge order, order for the payment of reparation or compensation, or attendance centre order, under subsection 96 (1) (or paragraph 98 (j)) of the *Children and Young People Act 1999* or subsection 47 (1) (or paragraph 48 (k)) of the *Children's Services Act 1986* is spent on satisfactory compliance with the order.

(1) A probation order under subsection 96 (1) (or paragraph 98 (j)) of the *Children and Young People Act 1999* or subsection 47 (1) (or paragraph 48 (k)) of the *Children's Services Act 1986* is spent at the end of the period for which the order is in force.

(8) A conviction for an offence of a kind that has ceased, by operation of law, to be an offence is spent when the offence ceased to be an offence, if the offence is prescribed under the regulations to be an offence to which this subsection applies.

### 13 What is the crime-free period?

(1) In this section:

**relevant period**, in relation to the conviction of a person for an offence, means—

- (a) if the person was not dealt with as an adult in relation to the conviction—5 consecutive years; or
- (b) in any other case—10 consecutive years.

(2) The crime-free period for a person for an offence is the relevant period during which the person has not been—

- (a) subject to a control order; or
- (b) convicted of an offence punishable by imprisonment; or
- (c) in prison because of a conviction for an offence; or
- (d) unlawfully at large in relation to an offence.

*Note* Under section 14, convictions for **traffic offences** are considered separately from **non-traffic offences** in defining the **crime-free period**.

### 14 How are traffic offences to be dealt with?

(1) In this section:

**drive**—see *Road Transport (Safety and Traffic Management) Act 1999*, dictionary.

**motor vehicle**—see *Road Transport (Safety and Traffic Management) Act 1999*, dictionary.

**non-traffic offence** means any offence except a traffic offence.

**road transport legislation**—see *Road Transport (General) Act 1999*, section 6.

**traffic offence** means any offence arising out of the use of a motor vehicle, and includes any offence against the road transport legislation.

**trailer**—see *Road Transport (Safety and Traffic Management) Act 1999*, dictionary.

**use** a motor vehicle or trailer includes drive, stop or park the motor vehicle or trailer.

(2) A conviction for a traffic offence, and any period of imprisonment imposed because of such a conviction, are disregarded in calculating the crime-free period for a conviction for a non-traffic offence.

*Note* A conviction for a traffic offence is relevant only in calculating the crime-free period for a conviction for an earlier traffic offence.

(3) A conviction for a non-traffic offence, and any period of imprisonment imposed because of such a conviction, are disregarded in calculating the crime-free period for a conviction for a traffic offence.

*Note* A conviction for a non-traffic offence is relevant only in calculating the crime-free period for an earlier non-traffic offence.

(4) However, a conviction for any of the following offences is relevant in calculating the crime-free period for any conviction (whether for a traffic offence or a non-traffic offence):

- (a) an offence under section 29 (Culpable driving) of the *Crimes Act 1900*;
- (b) any other offence against the *Crimes Act 1900* where a necessary fact to constitute the offence is that someone dies or is injured because of, or as a result of, the way the convicted person drove a motor vehicle;
- (c) an offence against Part 3 of the *Road Transport (Alcohol and Drugs) Act 1977* (which is about drivers exceeding the prescribed blood alcohol concentration, refusing to provide a breath sample, blood test etc, or driving under the influence of an intoxicating liquor or a drug);
- (d) an offence against subsection 6 (1) of the *Road Transport (Safety and Traffic Management) Act 1999* (which is about negligent driving) that occasions death or grievous bodily harm (within the meaning of that subsection);
- (e) an offence against subsection 7 (1) of the *Road Transport (Safety and Traffic Management) Act 1999* (which is about furious, reckless and dangerous driving);
- (f) an offence against subsection 8 (1) or (2) of the *Road Transport (Safety and Traffic Management) Act 1999* (which are about menacing driving);

- (g) an offence prescribed under the regulations for this subsection.

**15 Spent convictions generally not revived**

(1) A conviction of a person for an offence (the *first offence*) that is spent is not revived by the subsequent conviction of the person for another offence (the *later offence*).

(2) However, if the later offence was committed during the crime-free period for the first offence and—

- (a) the person is convicted summarily of the later offence by an ACT court—the court may order that this Part ceases to apply to the person in relation to the first offence until the crime-free period for the later offence has ended; or
- (b) the person is convicted on indictment of the later offence by an ACT court—this Part automatically ceases to apply to the person in relation to the first offence until the crime-free period for the later offence has ended; or
- (c) the person is convicted of the later offence by a court of the Commonwealth, a State or Territory or a foreign country—this Part automatically ceases to apply to the person in relation to the first offence until the crime-free period for the later offence has ended.

(3) While this Part does not apply to the person in relation to the first offence, the conviction of the person for the first offence is not a spent conviction.

### **PART 3—CONSEQUENCES OF A CONVICTION BECOMING SPENT**

#### **16 What are the consequences of a conviction becoming spent?**

If a conviction of a person is spent—

- (a) the person is not required to disclose information about the spent conviction to anyone; and
- (b) a question about the person's criminal history is taken not to refer to the spent conviction, but to refer only to any of the person's convictions that are not spent; and
- (c) in applying an Act or statutory instrument to the person—
  - (i) a reference to a conviction (however expressed) is taken not to refer to the spent conviction, but to refer only to any of the person's convictions that are not spent; and
  - (ii) a reference the person's character (however expressed) does not allow or require anyone to take the spent conviction into account.

#### **17 Unlawful disclosure of a conviction becoming spent**

(1) A person who has access to records of convictions kept by or on behalf of a public authority must not, without lawful authority, disclose any information about a spent conviction.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

(2) It is not an offence for an archive or library (or an authorised officer or employee of an archive or library) to make available to a member of the public, or to another archive or library, in accordance with the normal procedures of the archive or library, material that is normally available for public use and that contains information about a spent conviction.

(3) It is not an offence for a law enforcement agency (or an authorised officer or employee of a law enforcement agency) in the exercise of its functions (or of the functions of the authorised officer or employee) to make information about a spent conviction available to another law enforcement agency or to a court.

#### **18 Improperly obtaining information about spent convictions**

A person must not fraudulently or dishonestly obtain information about a spent conviction from records of convictions kept by or on behalf of a public authority.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

**19 Exclusions**

- (1) Section 16 does not apply in relation to an application by a person—
- (a) for an appointment or employment as a judge, magistrate, justice of the peace, police officer, prison officer, teacher, teacher's aide, childcare provider, aged care provider or provider of care for people with a disability, or childcare worker, aged care worker or worker with people with a disability; or
  - (b) to be appointed, employed or otherwise engaged (whether or not for financial reward) in any other capacity—
    - (i) in relation to the care, instruction or supervision of children, older people or people with a disability; or
    - (ii) at a school, child-care centre, hospital, community care facility, residential care facility, or any other place where care, instruction, supervision or any other services are provided (or proposed to be provided) for children, older people or people with a disability; or
    - (iii) by an entity that provides care, instruction, supervision or any other services for children, older people or people with a disability; or
    - (iv) as a casino employee under the *Casino Control Act 1988*; or
  - (c) for an interactive gambling licence under the *Interactive Gambling Act 1998*; or
  - (d) to be permitted to provide care, instruction, supervision or any other services for children, older people or people with a disability.
- (2) Section 16 does not apply in relation to an application by a person convicted of arson or attempted arson to be appointed, employed or otherwise engaged (whether or not for financial reward) in any other capacity in fire fighting or fire prevention.
- (3) Section 16 does not apply in relation to a proceeding before a court (including the giving of evidence) or the making of a decision by a court (including a decision about sentencing).
- (4) However, a court before which evidence of a spent conviction is admitted must, in appropriate circumstances, take the steps reasonably available to it to prevent or minimise publication of the evidence.
- (5) Section 16 does not apply in relation to an application for, or the issue or grant of, a licence or permit under Part 3 of the *Firearms Act 1996*.

(6) Section 16 does not apply in relation to the making of a decision under the *Casino Control Act 1988* about whether—

- (a) a corporation is suitable to be the casino licensee; or
- (b) a person is suitable to be an owner of the casino; or
- (c) a corporation is suitable to be the lessee of the casino;

including whether a corporation or individual is respectable within the meaning of that Act.

(7) This Act does not affect any of the following provisions:

- (a) section 414 of the *Crimes Act 1900* (Evidence of previous conviction charged in an indictment);
- (b) sections 56 (Evidence as to character) and 71 (Evidence as to character of accused) and Part 11 (Admissibility of Convictions in Civil Proceedings) of the *Evidence Act 1971*.

#### **PART 4—MISCELLANEOUS**

**20 Act does not authorise contravention of other laws**

This Act does not authorise a person to disclose a conviction or to take a conviction into account if to do so would contravene any other law.

**21 Act does not affect certain other lawful acts**

This Act does not affect anything lawfully done before a conviction is spent or quashed or a pardon is granted.

**22 Act does not authorise destruction of records**

This Act does not authorise the destruction by or on behalf of a public authority of a record relating to a spent conviction, quashed conviction or pardon.

**23 Regulation-making power**

- (1) The Executive may make regulations for this Act.
- (2) The regulations may provide that this Act or a prescribed provision of this Act does not affect a prescribed Act or a prescribed provision of an Act.
- (3) The regulations may provide that a provision of this Act does not apply—
  - (a) in relation to a conviction, finding or order of a particular kind, or a charge relating to such a conviction, finding or order; or
  - (b) in relation to a class of persons; or
  - (c) in relation to particular circumstances.
- (4) A regulation made for paragraph 11 (2) (d), the definition of *sexual offence* in the dictionary, or this section, may provide that, despite this Act, a conviction is taken never to have been spent or never to be capable of becoming spent.

**PART 5—AMENDMENT OF DISCRIMINATION ACT**

**24 Grounds**

Section 7 of the *Discrimination Act 1991* is amended by adding at the end the following paragraph:

- “(k) spent conviction within the meaning of the *Spent Convictions Act 2000*.”.
-

**DICTIONARY**

(See s 4)

**ACT offence** means an offence against a Territory law.

*Note Law*, of the Territory, is defined in the *Interpretation Act 1967*, dictionary.

**another Territory** means a Territory other than this Territory or the Northern Territory.

**casino**—see *Casino Control Act 1988*, section 3.

**Commonwealth law** means—

- (a) a Commonwealth Act other than—
  - (i) the *Australian Capital Territory (Self-Government) Act 1988* (Cwlth); or
  - (ii) the *Northern Territory (Self-Government) Act 1978* (Cwlth); or
- (b) an instrument made under a Commonwealth Act (other than a Commonwealth Act mentioned in subparagraph (a) (i) or (ii)); or
- (c) any other legislation that applies as a Commonwealth law (other than legislation so far as it is applied by a Commonwealth Act mentioned in subparagraph (a) (i) or (ii)), to the extent that it operates as a Commonwealth law;

and includes a law in force in a Territory other than the Northern Territory or this Territory.

**Commonwealth offence** means an offence against a Commonwealth law.

**control order** means an order made under—

- (a) paragraphs 96 (1) (k) or (l) of the *Children and Young People Act 1999*; or
- (b) paragraphs 47 (1) (j) or (k) of the *Children's Services Act 1986*.

**conviction**—see section 6.

**correctional agency** means an agency or entity responsible under the law of the Territory, or of the Commonwealth or a State or foreign country, for providing correctional services for offenders.

**court** includes a tribunal.

**crime-free period**—see section 13.

**foreign law** means a law of a foreign country.

***foreign offence*** means an offence against a foreign law.

***function*** includes power.

***law enforcement agency*** means any of the following:

- (a) the Australian Federal Police;
- (b) the police service or force of a State, another Territory or a foreign country;
- (c) the Australian Customs Service;
- (d) the National Crime Authority;
- (e) the Australian Bureau of Criminal Intelligence;
- (f) the National Exchange of Police Information;
- (g) the New South Wales Independent Commission Against Corruption or a similar entity established under the law of another State;
- (h) the New South Wales Crime Commission or a similar entity established under the law of another State;
- (i) the Attorney-General for the Territory, the Commonwealth or for a State or another Territory;
- (j) persons who are employed in a government department of the Commonwealth, a State or another Territory and whose primary duties are the institution or conduct of proceedings for offences;
- (k) the Office of the Director of Public Prosecutions or a similar entity established under a Commonwealth or State law;
- (l) the director of public prosecutions, or a person performing a similar function under a Commonwealth or State law;
- (m) a lawyer to the extent that the lawyer is engaged under a Commonwealth or State law to prosecute offences;
- (n) prison officers;
- (o) an entity prescribed under the regulations.

***prison officer*** includes a person employed in a correctional agency.

***public authority*** means an administrative unit or Territory authority, and includes a person exercising functions for the Territory, an administrative unit or Territory authority.

*Note* ***Administrative unit*** and ***Territory authority*** are defined in the *Interpretation Act 1967*, dictionary.

**quash**—see section 8.

**sexual offence** means the following offences:

- (a) an offence under Part 3A (Sexual Offences) or 3B (Female Genital Mutilation) of the *Crimes Act 1900*;
- (b) an offence (such as an offence against section 27 (Acts endangering life etc) or 102 (Burglary) of the *Crimes Act 1900*) that includes the commission of, or an intention to commit, an offence mentioned in paragraph (a) or (d);
- (c) an offence of attempting, or of conspiracy or incitement, to commit an offence mentioned in paragraph (a), (b) or (d);
- (d) an offence (including a Commonwealth offence, State offence or foreign offence) prescribed under the regulations;
- (e) an ACT offence committed before the date of commencement of this definition of a similar nature to an offence mentioned in paragraphs (a) to (d);

and includes any Commonwealth offence, State offence or foreign offence that is similar in nature to an ACT offence mentioned in paragraph (a), (b), (c) or (e) or is prescribed under the regulations.

**spent**, for a conviction—see section 7.

**State law** means a law in force in a State (other than a Commonwealth law).

*Note* **State** includes the Northern Territory (see *Interpretation Act 1967*, dict).

*Spent Convictions Act No 48, 2000*

**Endnote**

**Penalty units**

Section 33AA of the *Interpretation Act 1967* deals with the meaning of offence penalties that are expressed in penalty units.

*[Presentation speech made in Assembly on 11 May 2000]*

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