



Australian Capital Territory

# **Spent Convictions Act 2000**

**A2000-48**

**Republication No 20**

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Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Spent Convictions Act 2000* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 9 December 2015. It also includes any commencement, amendment, repeal or expiry affecting this republished law to 9 December 2015.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

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- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

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### Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication does not include amendments made under part 11.3 (see endnote 1).

### Uncommenced provisions and amendments

If a provision of the republished law has not commenced, the symbol **U** appears immediately before the provision heading. Any uncommenced amendments that affect this republished law are accessible on the ACT legislation register ([www.legislation.act.gov.au](http://www.legislation.act.gov.au)). For more information, see the home page for this law on the register.

### Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see the *Legislation Act 2001*, section 95.

### Penalties

At the republication date, the value of a penalty unit for an offence against this law is \$150 for an individual and \$750 for a corporation (see *Legislation Act 2001*, s 133).



Australian Capital Territory

# Spent Convictions Act 2000

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Australian Capital Territory

## Spent Convictions Act 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 extinguished convictions, quashed convictions and pardons, and for other purposes

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## Part 1 Preliminary

### 1 Name of Act

This Act is the *Spent Convictions Act 2000*.

### 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 the [Discrimination Act 1991](#), s 7 (1) (o) for discrimination on the ground of spent conviction.

- (3) This Act also deals with—
  - (a) the effect of the quashing of a conviction and the pardoning of an offence; and
  - (b) the extinguishment of convictions for historical homosexual offences.



## 4 Dictionary

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

*Note 1* The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere.

For example, the signpost definition '*conviction*—see section 6.' means that the term 'conviction' is defined in that section and the definition applies to 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 [Legislation Act](#), s 155 and s 156 (1)).

## 5 Notes

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

*Note* See [Legislation Act 2001](#), s 127 (1), (4) and (5) for the legal status of notes.

## 5A Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

*Note 1* *Criminal Code*

The [Criminal Code](#), ch 2 applies to the following offences against this Act (see Code, pt 2.1):

- s 19I (Unlawful disclosure of extinguished conviction)
- s 19J (Improperly obtaining information about extinguished convictions).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

*Note 2* *Penalty units*

The [Legislation Act](#), s 133 deals with the meaning of offence penalties that are expressed in penalty units.

## 6 Meaning of *convicted*

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 finds the person guilty of the offence.

### Examples for par (b)

- 1 the court makes an order under the [Crimes \(Sentencing\) Act 2005](#), s 17 (Non-conviction orders—general)
- 2 the court makes an order under the [Children and Young People Act 1999](#), s 98 (Disposition without proceeding to conviction)

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

## 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 the charge to which the spent conviction related.

## 7A Meaning of *extinguished conviction*

- (1) For this Act, the conviction of a person for an offence is *extinguished* if the conviction is extinguished by the director-general under section 19D (Decision on application to have conviction extinguished).

- (2) In this Act, a reference to a conviction that is *extinguished* includes a reference to the charge to which the extinguished conviction related.

## 8 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* The *Crimes Act 1914* (Cwlth), pt VIIC deals with spent convictions. In particular, s 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 the *Australian Capital Territory (Self-Government) Act 1988* (Cwlth), s 28 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 sentence of imprisonment 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.
- (3) In this section:

*sentence of imprisonment*—

  - (a) includes a sentence of imprisonment to be served by periodic detention under the *Crimes (Sentence Administration) Act 2005*; but
  - (b) does not include the detention 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 this section.
- (2) If a charge for an offence is dismissed under either of the following provisions, the finding of guilt for the offence (however described) is spent on the dismissal of the charge:
  - (a) the *Crimes (Sentencing) Act 2005*, section 17 (Non-conviction orders—general);

- (b) the *Children and Young People Act 1999*, section 98 (Disposition without proceeding to conviction).

*Note* An order under the *Crimes Act 1900*, s 402 (Conditional release of offenders without proceeding to conviction) (repealed) is taken to be a non-conviction order that is a good behaviour order under the *Crimes (Sentencing) Act 2005* (see *Crimes (Sentence Administration) Act 2005*, s 336).

- (3) If an order under the *Crimes (Sentencing) Act 2005*, section 17 (Non-conviction orders—general) is a good behaviour order subject to a condition, the order is spent only when the condition is completely satisfied.
- (4) An order reprimanding a person under the *Children and Young People Act 1999*, section 96 (1) (or 98 (2) (b)) or the *Children's Services Act 1986*, section 47 (1) (or 48 (k)) is spent on the making of the order.
- (5) A conditional discharge order, order for the payment of reparation or compensation, or attendance centre order, under the *Children and Young People Act 1999*, section 96 (1) (or 98 (2) (b)) or the *Children's Services Act 1986*, section 47 (1) (or 48 (k)) is spent on satisfactory compliance with the order.
- (6) A probation order under the *Children and Young People Act 1999*, section 96 (1) (or 98 (2) (b)) or the *Children's Services Act 1986*, section 47 (1) (or 48 (k)) is spent at the end of the period for which the order is in force.
- (7) 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 s 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 the *Road Transport (Safety and Traffic Management) Act 1999*, dictionary.

*driver trainer*—see the *Road Transport (Alcohol and Drugs) Act 1977*, dictionary.

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

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

*road transport legislation*—see the *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 the *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 against the *Crimes Act 1900*, section 29 (Culpable driving);
- (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 the *Road Transport (Alcohol and Drugs) Act 1977*, part 3 (which is about drivers and driver trainers having the prescribed concentration of alcohol in blood or breath, driving or driver training with a prescribed drug in oral fluid or blood, refusing to provide a breath sample, oral fluid, blood test for analysis, failing to stay for a drug screening test and driving or driver training under the influence of intoxicating liquor);
- (d) an offence against the *Road Transport (Safety and Traffic Management) Act 1999*, section 6 (1) (which is about negligent driving) that occasions death or grievous bodily harm (within the meaning of that subsection);
- (e) an offence against the *Road Transport (Safety and Traffic Management) Act 1999*, section 7 (1) (which is about furious, reckless and dangerous driving);
- (f) an offence against the *Road Transport (Safety and Traffic Management) Act 1999*, section 8 (1) or (2) (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 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 to the person's character (however expressed) does not allow or require anyone to take the spent conviction into account.

*Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations (see [Legislation Act 2001](#), s 104).

### 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 2006*; 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; or
  - (e) for registration under the *Working with Vulnerable People (Background Checking) Act 2011*.
- (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 the making of a decision under the *Firearms Act 1996* about a person's suitability.

- (6) Section 16 does not apply in relation to the making of a decision under the *Casino Control Act 2006* about whether a person is an eligible person for that Act.
- (7) Section 16 does not apply in relation to the making of an application for, or for the renewal of, a licence or approval under the *Race and Sports Bookmaking Act 2001*.
- (8) Section 16 does not apply to a notice or police report under the *Prostitution Act 1992*, part 2 (Registration).
- (9) Section 16 does not apply to a conviction that is spent under section 12 (When is a conviction spent?) in relation to—
  - (a) the making of an application for a licence under the *Security Industry Act 2003*; and
  - (b) the giving of a police certificate under that Act;
  - (c) the making of a decision about issuing a licence under that Act.
- (10) Section 16 does not apply in relation to an application for, or the renewal of, a registration or permit to teach under the *ACT Teacher Quality Institute Act 2010*.
- (11) This Act does not affect any of the following provisions:
  - (a) the *Crimes Act 1900*, section 291 (Evidence of previous conviction charged in indictment);
  - (b) the *Evidence Act 2011*, part 3.5 (Evidence of judgments and convictions) and part 3.8 (Character).

## Part 3A Extinguishing historical homosexual offence convictions

### 19A Definitions—pt 3A

In this part:

*historical homosexual offence* means—

- (a) an offence under the following sections of the *Crimes Act 1900*, before the offence was repealed by the *Crimes (Amendment) Ordinance (No 5) 1985*, section 7:
  - (i) section 79 (Buggery and bestiality) to the extent that the offence relates to buggery;
  - (ii) section 80 (Attempt, &c., to commit buggery);
  - (iii) section 81 (Indecent assault on male); or
- (b) an offence under another law prescribed by regulation to the extent that the offence was—
  - (i) constituted by a person engaging in any form of sexual activity with another person of the same sex; or
  - (ii) a public morality offence; or
- (c) an offence of attempting, or of conspiracy or incitement, to commit an offence mentioned in paragraph (a) or (b).

*public morality offence* means an offence—

- (a) the essence of which is the maintenance of public decency or morality; and
- (b) by which homosexual behaviour could be punished.

**19B Application to have conviction extinguished**

- (1) A person convicted of a historical homosexual offence may apply to the director-general for the conviction to be extinguished.
  - (2) An application—
    - (a) must be made—
      - (i) in writing; or
      - (ii) in any other way the director-general is satisfied on reasonable grounds is appropriate; and
    - (b) must state the following:
      - (i) the applicant's name, address and date of birth;
      - (ii) the applicant's name and address at the time of the conviction;
      - (iii) to the extent known to the applicant, the date when and the court where the applicant was convicted; and
    - (c) may include any other information that may assist the director-general to decide the application.
- Note 1* It is an offence to make a false or misleading statement, give false or misleading information or produce a false or misleading document (see [Criminal Code](#), pt 3.4).
- Note 2* If a form is approved under s 22A for an application, the form must be used.
- (3) If the person has died, an application may be made on behalf of the person by—
    - (a) the person's legal personal representative; or
    - (b) a domestic partner, parent, child or sibling of the person; or
    - (c) a person who was in a close personal relationship with the person immediately before the person's death; or



- (d) if another person was involved in the activity that constituted the offence—the other person.

### **19C Request for additional information**

- (1) The director-general may, in writing, request the applicant to give the director-general additional information or documents that the director-general reasonably needs to decide the application.

*Note* For how documents may be given, see the [Legislation Act](#), pt 19.5.

- (2) If the applicant does not comply with the request, the director-general may refuse to consider the application further.
- (3) The applicant is taken to have complied with the request if the applicant satisfies the director-general that the applicant is unable to comply with the request.

### **19D Decision on application to have conviction extinguished**

- (1) On application by a person under section 19B (Application to have conviction extinguished), the director-general must—
  - (a) extinguish a conviction; or
  - (b) refuse to extinguish a conviction.
- (2) The director-general must not extinguish the conviction unless satisfied—
  - (a) if the conviction was for an offence that involved sexual activity—that the convicted person is eligible to have the conviction extinguished under section 19E; and
  - (b) of any other matters prescribed by regulation.
- (3) The director-general must not refuse to extinguish a conviction unless—
  - (a) the director-general has given the applicant written notice of the proposed refusal; and

- (b) the notice—
- (i) states the reasons for the proposed refusal; and
  - (ii) includes a copy of any records relating to the conviction held by or accessible to the director-general; and
  - (iii) states that further information may be given to the director-general in relation to the application not later than 14 days after the day the notice is given to the applicant; and

*Note* For how documents may be given, see the [Legislation Act](#), pt 19.5.

- (c) the director-general has considered any further information given by the applicant to the director-general under paragraph (b) (iii).
- (4) The director-general must tell the applicant, in writing, of the decision under subsection (1) and, if the decision is to refuse to extinguish the conviction, the reasons for it.
- (5) If the director-general extinguishes the conviction the director-general must tell the chief police officer about the decision.

*Note* The director-general must also give the person a reviewable decision notice in relation to a decision to refuse to extinguish the conviction (see s 19L).

## **19E Eligibility**

A person is eligible to have a conviction for a historical homosexual offence that involved sexual activity extinguished if the director-general is satisfied on reasonable grounds that any other person involved in the sexual activity consented to the sexual activity and—

- (a) was 16 years old or older; or
- (b) was 10 years old or older and not more than 2 years younger than the person; or

- (c) for a person who was under the special care of the person within the meaning of the *Crimes Act 1900*, section 55A (Sexual intercourse with young person under special care)—
- (i) was 18 years old or older; or
  - (ii) was under 18 years old and not more than 2 years younger than the person.

### **19F Director-general may obtain information**

The director-general may, by written notice, require 1 or more of the following entities to provide the director-general with the information requested in the notice to enable a decision to be made under section 19D (Decision on application to have conviction extinguished):

- (a) a public employee;
- (b) a police officer;
- (c) a court;
- (d) the director of public prosecutions;
- (e) an entity prescribed by regulation.

### **19G Restriction on right to re-apply**

- (1) This section applies to a person whose application to have a conviction extinguished (the *earlier application*) has been refused by the director-general under section 19D (Decision on application to have conviction extinguished).
- (2) The person may have a further application in relation to that conviction considered by the director-general only if the director-general is satisfied on reasonable grounds that other necessary supporting information became available after the earlier application was decided.

## Part 3B Consequences of extinguished convictions

### 19H Consequences of conviction becoming extinguished

- (1) The following applies to a person whose conviction has been extinguished:
  - (a) the person is not required to disclose information about the extinguished conviction to anyone;
  - (b) a question about the person's criminal history is taken not to refer to the extinguished conviction;
  - (c) in applying an Act to the person—
    - (i) a reference to a conviction (however expressed) is taken not to refer to the extinguished conviction; and
    - (ii) a reference to the person's character (however expressed) does not allow or require anyone to take the extinguished conviction into account.

*Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations (see [Legislation Act](#), s 104).

- (2) This section has effect despite the [Health Practitioner Regulation National Law \(ACT\)](#), section 77 (4), section 79 (3) and section 135 (3).

### 19I Unlawful disclosure of extinguished conviction

- (1) A person commits an offence if the person—
  - (a) has access to records of convictions kept by or on behalf of a public authority; and

- (b) discloses any information about an extinguished conviction to someone else.

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

- (2) Subsection (1) does not apply to—
- (a) an archive or library, or an authorised officer of an archive or library, that makes available to a member of the public, or to another archive or library, under the normal procedures of the archive or library, material that is normally available for public use and that contains information about an extinguished conviction; or
  - (b) a public authority that has a record of an extinguished conviction, or an authorised officer of the authority, that makes information about the conviction available to the convicted person; or
  - (c) the director-general, or any person acting under the direction of the director-general, in informing a public authority that holds information about convictions that a particular conviction is an extinguished conviction.
- (3) This section has effect despite the *Health Practitioner Regulation National Law (ACT)*, section 77 (4), section 79 (3) and section 135 (3).

## **19J Improperly obtaining information about extinguished convictions**

A person must not fraudulently or dishonestly obtain information about an extinguished 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.

## Part 3C Notification and review of decisions

### 19K Meaning of *reviewable decision*—pt 3C

In this part:

*reviewable decision* means a decision mentioned in schedule 1, column 3 under a provision of this Act mentioned in column 2 in relation to the decision.

### 19L Reviewable decision notices

If the director-general makes a reviewable decision, the director-general must give a reviewable decision notice to each entity mentioned in schedule 1, column 4 in relation to the decision.

*Note 1* The director-general must also take reasonable steps to give a reviewable decision notice to any other person whose interests are affected by the decision (see [ACT Civil and Administrative Tribunal Act 2008](#), s 67A).

*Note 2* The requirements for a reviewable decision notice are prescribed under the [ACT Civil and Administrative Tribunal Act 2008](#).

### 19M Applications for review

The following may apply to the ACAT for review of a reviewable decision:

- (a) an entity mentioned in schedule 1, column 4 in relation to the decision;
- (b) any other person whose interests are affected by the decision.

*Note* If a form is approved under the [ACT Civil and Administrative Tribunal Act 2008](#) for the application, the form must be used.

## 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, extinguished 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, an extinguished conviction, quashed conviction or pardon.

### 22A                      **Approved forms**

- (1) The director-general may approve forms for this Act.
- (2) If the director-general approves a form for a particular purpose, the approved form must be used for the purpose.

*Note*                      For other provisions about forms, see the [Legislation Act](#), s 255.

- (3) An approved form is a notifiable instrument.

*Note*                      A notifiable instrument must be notified under the [Legislation Act](#).

## 23 Regulation-making power

- (1) The Executive may make regulations for this Act.

*Note* Regulations must be notified, and presented to the Legislative Assembly, under the [Legislation Act 2001](#).

- (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 section 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.



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## Schedule 1      Reviewable decisions

(see pt 3C)

<b>column 1 item</b>	<b>column 2 section</b>	<b>column 3 decision</b>	<b>column 4 entity</b>
1	19D (1)	refuse to extinguish conviction	applicant

## Dictionary

(see s 4)

*Note 1* The [Legislation Act](#) contains definitions and other provisions relevant to this Act.

*Note 2* For example, the [Legislation Act](#), dict, pt 1, defines the following terms:

- Act
- administrative unit
- chief police officer
- CrimTrac
- director-general (see s 163)
- director of public prosecutions
- domestic partner (see s 169 (1))
- entity
- exercise
- function
- law, of the Territory
- penalty unit (see s 133)
- police officer
- public employee
- State
- Territory authority
- territory law
- the Territory.

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

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

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

**conviction**—see section 6.

**court** includes a tribunal.

**crime-free period**—see section 13.

**extinguished**, for a conviction—see section 7A.

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

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

**historical homosexual offence**, for part 3A (Extinguishing historical homosexual offence convictions)—see section 19A.

**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 Department of Immigration and Border Protection (Cwlth);
- (d) the Australian Crime Commission;
- (e) CrimTrac;
- (f) the New South Wales Independent Commission Against Corruption or a similar entity established under the law of another State;
- (g) the New South Wales Crime Commission or a similar entity established under the law of another State;
- (h) the Attorney-General for the Territory, the Commonwealth, a State or another Territory;
- (i) people employed in a government department of the Commonwealth, a State or another Territory and whose primary functions are the beginning or conduct of proceedings for offences;
- (j) the Office of the Director of Public Prosecutions or a similar entity established under a Commonwealth or State law;
- (k) the director of public prosecutions, or a person performing a similar function under a Commonwealth or State law;
- (l) a lawyer to the extent that the lawyer is engaged under a Commonwealth or State law to prosecute offences;
- (m) prison officers;
- (n) an entity prescribed under the regulations.

***prison officer*** includes a person employed in an entity responsible under the law of the Territory, or of the Commonwealth, a State or a foreign country, for providing correctional services for offenders.

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

**public morality offence**, for part 3A (Extinguishing historical homosexual offence convictions)—see section 19A.

**quash**—see section 8.

**reviewable decision**, for part 3C (Notification and review of decisions)—see section 19K.

**sexual offence** means the following offences:

- (a) an offence against the [Crimes Act 1900](#), part 3 (Sexual Offences) or part 4 (Female Genital Mutilation);
- (b) an offence (for example, an offence against the [Crimes Act 1900](#), section 27 (Acts endangering life etc) or the [Criminal Code](#), section 311 (Burglary)) that includes the commission of, or an intention to commit, an offence mentioned in paragraph (a) or (d);

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (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 [Legislation Act 2001](#), dict, pt 1).

## Endnotes

### 1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws are not included in the republished law. The details of these laws are underlined in the legislation history. Uncommenced expiries are underlined in the legislation history and amendment history.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

### 2 Abbreviation key

A = Act	NI = Notifiable instrument
AF = Approved form	o = order
am = amended	om = omitted/repealed
amdt = amendment	ord = ordinance
AR = Assembly resolution	orig = original
ch = chapter	par = paragraph/subparagraph
CN = Commencement notice	pres = present
def = definition	prev = previous
DI = Disallowable instrument	(prev...) = previously
dict = dictionary	pt = part
disallowed = disallowed by the Legislative Assembly	r = rule/subrule
div = division	reloc = relocated
exp = expires/expired	renum = renumbered
Gaz = gazette	R[X] = Republication No
hdg = heading	RI = reissue
IA = Interpretation Act 1967	s = section/subsection
ins = inserted/added	sch = schedule
LA = Legislation Act 2001	sdiv = subdivision
LR = legislation register	SL = Subordinate law
LRA = Legislation (Republication) Act 1996	sub = substituted
mod = modified/modification	<u>underlining</u> = whole or part not commenced or to be expired

## Endnotes

3 Legislation history

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### 3 Legislation history

#### **Spent Convictions Act 2000 A2000-48**

notified 28 September 2000 ([Gaz 2000 No 39](#))  
s 1, s 2 commenced 28 September 2000 (IA s 10B)  
remainder commenced 28 March 2001 (IA s 10E)

as amended by

#### **[Legislation \(Consequential Amendments\) Act 2001 A2001-44 pt 366](#)**

notified 26 July 2001 ([Gaz 2001 No 30](#))  
s 1, s 2 commenced 26 July 2001 (IA s 10B)  
pt 366 commenced 12 September 2001 (s 2 and see [Gaz 2001 No S65](#))

#### **[Race and Sports Bookmaking Act 2001 A2001-49 sch 2 pt 4](#)**

notified 12 July 2001 ([Gaz 2001 No 28](#))  
s 1, s 2 commenced 12 July 2001 (IA s 10B)  
sch 2 pt 4 commenced 7 September 2001 ([Gaz 2001 No S68](#))

#### **[Prostitution Amendment Act 2002 A2002-35 s 26, s 27](#)**

notified LR 8 October 2002  
s 1, s 2 commenced 8 October 2002 (LA s 75 (1))  
s 26, s 27 commenced 16 December 2002 (s 2 and [CN2002-15](#))

#### **[Statute Law Amendment Act 2003 \(No 2\) A2003-56 sch 3 pt 3.25](#)**

notified LR 5 December 2003  
s 1, s 2 commenced 5 December 2003 (LA s 75 (1))  
sch 3 pt 3.25 commenced 19 December 2003 (s 2)

#### **[Australian Crime Commission \(ACT\) Act 2003 A2003-58 sch 1 pt 1.3](#)**

notified LR 17 December 2003  
s 1, s 2 commenced 17 December 2003 (LA s 75 (1))  
sch 1 pt 1.3 commenced 17 June 2004 (s 2 and LA s 79)

#### **[Criminal Code \(Administration of Justice Offences\) Amendment Act 2005 A2005-53 sch 2 pt 2.5](#)**

notified LR 26 October 2005  
s 1, s 2 commenced 26 October 2005 (LA s 75 (1))  
sch 2 pt 2.5 commenced 23 November 2005 (s 2)



**Casino Control Act 2006 A2006-2 sch 1 pt 1.5**

notified LR 22 February 2006  
s 1, s 2 commenced 22 February 2006 (LA s 75 (1))  
sch 1 pt 1.5 commenced 1 May 2006 (s 2 and [CN2006-6](#))

**Sentencing Legislation Amendment Act 2006 A2006-23 sch 1 pt 1.33**

notified LR 18 May 2006  
s 1, s 2 commenced 18 May 2006 (LA s 75 (1))  
sch 1 pt 1.33 commenced 2 June 2006 (s 2 (1) and see [Crimes \(Sentence Administration\) Act 2005 A2005-59 s 2](#), [Crimes \(Sentencing\) Act 2005 A2005-58, s 2](#) and LA s 79)

**Firearms Amendment Act 2008 A2008-25 sch 2 pt 2.5**

notified LR 15 July 2008  
s 1, s 2 commenced 15 July 2008 (LA s 75 (1))  
sch 2 pt 2.5 commenced 15 January 2009 (s 2 (1) and LA s 79)

**Statute Law Amendment Act 2008 A2008-28 sch 3 pt 3.53**

notified LR 12 August 2008  
s 1, s 2 commenced 12 August 2008 (LA s 75 (1))  
sch 3 pt 3.53 commenced 26 August 2008 (s 2)

**Road Transport (Alcohol and Drugs) Legislation Amendment Act 2010 A2010-47 pt 1.3**

notified LR 25 November 2010  
s 1, s 2 commenced 25 November 2010 (LA s 75 (1))  
pt 1.3 commenced 1 December 2010 (s 2 (2) and see [Road Transport \(Alcohol and Drugs\) \(Random Drug Testing\) Amendment Act 2010 A2010-27, s 2](#) and [CN2010-15](#))

**Road Transport (Alcohol and Drugs) Legislation Amendment Act 2011 A2011-15 pt 7**

notified LR 12 May 2011  
s 1, s 2 commenced 12 May 2011 (LA s 75 (1))  
pt 7 commenced 13 May 2011 (s 2)

**ACT Teacher Quality Institute Amendment Act 2011 A2011-34 s 21**

notified LR 5 September 2011  
s 1, s 2 commenced 5 September 2011 (LA s 75 (1))  
s 21 commenced 4 October 2011 (s 2 and [CN2011-10](#))

## Endnotes

3 Legislation history

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### **Security Industry Amendment Act 2011 A2011-37 pt 4**

notified LR 27 September 2011

s 1, s 2 commenced 27 September 2011 (LA s 75 (1))

pt 4 commenced 27 September 2012 (s 2 (2))

### **Working with Vulnerable People (Consequential Amendments)**

#### **Act 2011 A2011-45 sch 1 pt 1.4**

notified LR 8 November 2011

s 1, s 2 commenced 8 November 2011 (LA s 75 (1))

sch 1 pt 1.4 commenced 8 November 2012 (s 2 and see [Working with Vulnerable People \(Background Checking\) Act 2011 A2011-44 s 2 \(2\)](#))

### **Evidence (Consequential Amendments) Act 2011 A2011-48 sch 1 pt 1.35**

notified LR 22 November 2011

s 1, s 2 commenced 22 November 2011 (LA s 75 (1))

sch 1 pt 1.35 commenced 1 March 2012 (s 2 (1) and see [Evidence Act 2011 A2011-12, s 2 and CN2012-4](#))

### **Statute Law Amendment Act 2011 (No 3) A2011-52 sch 3 pt 3.50**

notified LR 28 November 2011

s 1, s 2 commenced 28 November 2011 (LA s 75 (1))

sch 3 pt 3.50 commenced 12 December 2011 (s 2)

### **Crimes (Sentencing) Amendment Act 2014 A2014-58 sch 1 pt 1.4**

notified LR 4 December 2014

s 1, s 2 commenced 4 December 2014 (LA s 75 (1))

sch 1 pt 1.4 commenced 5 December 2014 (s 2)

### **Spent Convictions (Historical Homosexual Convictions Extinguishment) Amendment Act 2015 A2015-45**

notified LR 6 November 2015

s 1, s 2 commenced 6 November 2015 (LA s 75 (1))

remainder commenced 7 November 2015 (s 2)

### **Statute Law Amendment Act 2015 (No 2) A2015-50 sch 3 pt 3.32**

notified LR 25 November 2015

s 1, s 2 commenced 25 November 2015 (LA s 75 (1))

sch 3 pt 3.32 commenced 9 December 2015 (s 2)

## 4 Amendment history

### Long title

long title am [A2015-45](#) s 4

### Commencement

s 2 om [A2001-44](#) amdt 1.3907

### Overview of Act

s 3 am [A2003-56](#) amdt 3.230; [A2015-45](#) s 5

### Dictionary

s 4 sub [A2003-56](#) amdt 3.231

### Offences against Act—application of Criminal Code etc

s 5A ins [A2015-45](#) s 6

### Meaning of *conviction*

s 6 am [A2003-56](#) amdt 3.232; [A2006-23](#) amdt 1.282, amdt 1.283

### Meaning of *spent conviction*

s 7 am [A2006-23](#) amdt 1.284

### Meaning of *extinguished conviction*

s 7A ins [A2015-45](#) s 7

### Which convictions can become spent?

s 11 am [A2006-23](#) amdt 1.285, amdt 1.286; [A2014-58](#) amdt 1.6

### When is a conviction spent?

s 12 am [A2003-56](#) amdt 3.233, amdt 3.234; [A2006-23](#) amdt 1.287, amdt 1.288; ss renum R8 LA (see [A2006-23](#) amdt 1.289)

### What is a crime-free period?

s 13 am [A2003-56](#) amdt 3.230

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

s 14 am [A2010-47](#) amdt 1.6; [A2011-15](#) ss 88-91

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

s 16 am [A2001-44](#) amdt 1.3908, amdt 1.3909

### Exclusions

s 19 am [A2001-49](#) amdt 2.28, amdt 2.29; [A2002-35](#) s 26; ss renum R3 LA (see [A2002-35](#) s 27); [A2006-2](#) amdt 1.18, amdt 1.19; [A2008-28](#) amdt 3.162; [A2008-25](#) amdt 2.10; [A2011-34](#) s 21; ss renum R13 LA; [A2011-48](#) amdt 1.52; [A2011-37](#) s 34; pars renum R16 LA; [A2011-45](#) amdt 1.26

### Extinguishing historical homosexual offence convictions

pt 3A hdg ins [A2015-45](#) s 8

### Definitions—pt 3A

s 19A ins [A2015-45](#) s 8

## Endnotes

4 Amendment history

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def *historical homosexual offence* ins [A2015-45 s 8](#)

def *public morality offence* ins [A2015-45 s 8](#)

### **Application to have conviction extinguished**

s 19B ins [A2015-45 s 8](#)

### **Request for additional information**

s 19C ins [A2015-45 s 8](#)

### **Decision on application to have conviction extinguished**

s 19D ins [A2015-45 s 8](#)

### **Eligibility**

s 19E ins [A2015-45 s 8](#)

### **Director-general may obtain information**

s 19F ins [A2015-45 s 8](#)

### **Restriction on right to re-apply**

s 19G ins [A2015-45 s 8](#)

### **Consequences of extinguished convictions**

pt 3B hdg ins [A2015-45 s 8](#)

### **Consequences of conviction becoming extinguished**

s 19H ins [A2015-45 s 8](#)

### **Unlawful disclosure of extinguished conviction**

s 19I ins [A2015-45 s 8](#)

### **Improperly obtaining information about extinguished convictions**

s 19J ins [A2015-45 s 8](#)

### **Notification and review of decisions**

pt 3C hdg ins [A2015-45 s 8](#)

### **Meaning of *reviewable decision*—pt 3C**

s 19K ins [A2015-45 s 8](#)

### **Reviewable decision notices**

s 19L ins [A2015-45 s 8](#)

### **Applications for review**

s 19M ins [A2015-45 s 8](#)

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

s 21 am [A2015-45 s 9](#)

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

s 22 am [A2015-45 s 10](#)

### **Approved forms**

s 22A ins [A2015-45 s 11](#)

**Regulation-making power**s 23 am [A2001-44](#) amdt 1.3910**Amendment of Discrimination Act**

pt 5 hdg om R1 LRA

**Grounds**

s 24 om R1 LRA

**Reviewable decisions**sch 1 ins [A2015-45](#) s 12**Dictionary**

dict am [A2003-56](#) amdt 3.236; [A2011-52](#) amdt 3.188; [A2015-45](#) s 13

def **ACT offence** am [A2003-56](#) amdt 3.237

def **casino** om [A2003-56](#) amdt 3.238

def **correctional agency** om [A2003-56](#) amdt 3.239

def **extinguished** ins [A2015-45](#) s 14

def **function** om [A2003-56](#) amdt 3.240

def **historical homosexual offence** ins [A2015-45](#) s 14

def **law enforcement agency** am [A2003-56](#) amdt 3.241, amdt 3.242; [A2003-58](#) amdt 1.3; pars renum R5 LA (see [A2003-58](#) amdt 1.4); [A2011-52](#) amdt 3.189; [A2015-50](#) amdt 3.152

def **prison officer** sub [A2003-56](#) amdt 3.243

def **public authority** am [A2003-56](#) amdt 3.244

def **public morality offence** ins [A2015-45](#) s 14

def **reviewable decision** ins [A2015-45](#) s 14

def **sexual offence** am [A2005-53](#) amdt 2.26; [A2015-50](#) amdts 3.153-3.155

## Endnotes

### 5 Earlier republications

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#### 5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (\*) in column 1. Electronic and printed versions of an authorised republication are identical.

Republication No	Amendments to	Republication date
1	not amended	1 July 2001
2	<a href="#">A2001-49</a>	12 September 2001
3	<a href="#">A2002-35</a>	16 December 2002
4	<a href="#">A2003-58</a>	19 December 2003
5	<a href="#">A2003-58</a>	17 June 2004
6	<a href="#">A2005-53</a>	23 November 2005
7	<a href="#">A2006-2</a>	1 May 2006
8	<a href="#">A2006-23</a>	2 June 2006
9	<a href="#">A2008-28</a>	26 August 2008
10	<a href="#">A2008-28</a>	15 January 2009
11	<a href="#">A2010-47</a>	1 December 2010
12	<a href="#">A2011-15</a>	13 May 2011
13	<a href="#">A2011-34</a>	4 October 2011
14	<a href="#">A2011-52</a>	12 December 2011
15	<a href="#">A2011-52</a>	1 March 2012
16	<a href="#">A2011-52</a>	27 September 2012
17	<a href="#">A2011-52</a>	8 November 2012
18	<a href="#">A2014-58</a>	5 December 2014
19	<a href="#">A2015-45</a>	7 November 2015

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