



Australian Capital Territory

Spent Convictions Act 2000

A2000-48

Republication No 1 (RI)

Effective: 1 July 2001 – 6 September 2001

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Act not amended

About this republication

The republished law

This is a republication of the *Spent Convictions Act 2000* as in force on 1 July 2001. The Act was not amended up to this date.

Kinds of republications

The Parliamentary Counsel's Office currently prepares 2 kinds of republications of ACT laws:

- authorised printed republications to which the *Legislation (Republication) Act 1996* applies—these republications are numbered without a letter (eg 1, 2, 3 etc)
- unauthorised electronic republications—these republications are numbered with a letter (eg 1A, 1B, 1C etc).

Editorial changes

The *Legislation (Republication) Act 1996*, section 13 authorises the Parliamentary Counsel to make textual amendments to a republished law when preparing an authorised republication. The amendments do not effect a substantive change in the law. The changes are editorial in nature and are made if the Parliamentary Counsel considers they are desirable in accordance with current legislative drafting practice.

This republication includes amendments made under section 13 (see endnote 1).

Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

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 *Interpretation Act 1967*, section 48.

Penalties

If necessary, the penalties in this republication have been revised in accordance with the *Interpretation Act 1967*, section 63.

The value of a penalty unit for an offence against this Act at the date of publication is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.

See *Interpretation Act 1967*, s 33AA for additional information.

As in force on
1 July 2001



AUSTRALIAN CAPITAL TERRITORY

Spent Convictions Act 2000

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As in force on
1 July 2001



AUSTRALIAN CAPITAL TERRITORY

Spent Convictions Act 2000

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

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 the *Discrimination Act 1991*, s 7 (k) 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 that section.

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) and (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*, section 556A (1).
- 2 The court directs the discharge of the person under the *Crimes Act 1900*, section 556A (1).
- 3 The court dismisses the charge under the *Children and Young People Act 1999*, section 98 (i).
- 4 The court makes an order under the *Children and Young People Act 1999*, section 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.

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 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.
- (3) 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 the *Crimes Act 1900*, section 556A (1), the *Children and Young People Act 1999*, section 98 (i) or the *Children's Services Act 1986*, section 48 (j) dismissing a charge for an offence that has been found proved is spent on the making of the order.
- (3) An order under the *Crimes Act 1900*, section 556A (1) 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 the *Children and Young People Act 1999*, section 96 (1) (or 98 (j)) or the *Children's Services Act 1986*, section 47 (1) (or 48 (k)) 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 the *Children and Young People Act 1999*, section 96 (1) (or 98 (j)) or the *Children's Services Act 1986*, section 47 (1) (or 48 (k)) is spent on satisfactory compliance with the order.
- (7) A probation order under the *Children and Young People Act 1999*, section 96 (1) (or 98 (j)) 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.
- (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

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- (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.

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 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 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 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

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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 the *Firearms Act 1996*, part 3.
- (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;

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

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 section 11 (2) (d), the definition of *sexual offence* in the dictionary, or this section, may provide that, despite

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this Act, a conviction is taken never to have been spent or never to be capable of becoming spent.

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*, dict.

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

casino—see the *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 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.

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;

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- (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*, dict.

quash—see section 8.

sexual offence means the following offences:

- (a) an offence against the *Crimes Act 1900*, part 3A (Sexual Offences) or part 3B (Female Genital Mutilation);
- (b) an offence (such as an offence against the *Crimes Act 1900*, section 27 (Acts endangering life etc) or section 102 (Burglary)) 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).

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 (Republication) Act 1996*, section 13 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnotes.

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.

If the republished law includes penalties, current information about penalty unit values appears on the republication inside front cover.

2 Abbreviation key

am = amended	p = page
amdt = amendment	par = paragraph
ch = chapter	pres = present
cl = clause	prev = previous
def = definition	(prev...) = previously
dict = dictionary	prov = provision
div = division	pt = part
exp = expires/expired	r = rule/subrule
Gaz = Gazette	reg = regulation/subregulation
hdg = heading	renum = renumbered
ins = inserted/added	reloc = relocated
lap = lapsed	R[X] = Republication No
LRA = Legislation (Republication) Act 1996	s = section/subsection
mod = modified	sch = schedule
No = number	sdiv = subdivision
notfd = notified	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	sp = spent
orig = original	<u>underlining</u> = whole or part not commenced

Endnotes

3 Legislation history

3 Legislation history

Spent Convictions Act 2000 No 48

notified 28 September 2000 (Gaz 2000 No 39)

s 1, s 2 commenced 28 September 2000 (IA s 10B)

remainder (ss 3-24) commenced 28 March 2001 (IA s 10E)

4 Amendment history

Amendment of Discrimination Act

pt 5 hdg om R1 (LRA)

Grounds

s 24 om R1 (LRA)

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