



Australian Capital Territory

# Spent Convictions (Historical Homosexual Convictions Extinguishment) Amendment Act 2015

A2015-45

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J2015-182

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Australian Capital Territory

# Spent Convictions (Historical Homosexual Convictions Extinguishment) Amendment Act 2015

A2015-45

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An Act to amend the *Spent Convictions Act 2000* to extinguish convictions for certain homosexual offences, and for other purposes

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

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J2015-182

Authorised by the ACT Parliamentary Counsel—also accessible at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)

**1 Name of Act**

This Act is the *Spent Convictions (Historical Homosexual Convictions Extinguishment) Amendment Act 2015*.

**2 Commencement**

This Act commences on the day after its notification day.

*Note* The naming and commencement provisions automatically commence on the notification day (see [Legislation Act](#), s 75 (1)).

**3 Legislation amended**

This Act amends the *Spent Convictions Act 2000*.

*Note* This Act also amends other legislation (see sch 1).

**4 Long title**

*before*  
quashed  
*insert*  
extinguished convictions,

**5 Overview of Act  
Section 3 (3)**

*substitute*

- (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.

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**6 New section 5A**

*insert*

**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.

**7 New section 7A**

*insert*

**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 New parts 3A to 3C**

*insert*

**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).

**191 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.

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

*after*

spent

*insert*

, extinguished

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

*after*

spent conviction,

*insert*

an extinguished conviction,

**11 New section 22A***insert***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](#).

**12 New schedule 1***insert***Schedule 1 Reviewable decisions**

(see pt 3C)

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

### 13 Dictionary, note 2

*insert*

- Act
- chief police officer
- director-general (see s 163)
- director of public prosecutions
- domestic partner (see s 169 (1))
- police officer
- public employee
- territory law

### 14 Dictionary, new definitions

*insert*

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

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

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

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



## **Schedule 1      Consequential amendments**

(see s 3)

### **Part 1.1              Agents Act 2003**

#### **[1.1]      Dictionary, definition of *police certificate*, note**

*substitute*

*Note*      A conviction does not include a spent conviction or an extinguished conviction (see *Spent Convictions Act 2000*, s 16 (c) (i) and s 19H (1) (c) (i)).

### **Part 1.2              Construction Occupations (Licensing) Regulation 2004**

#### **[1.2]      Section 5, note**

*substitute*

*Note*      Under the *Spent Convictions Act 2000*, an applicant need not include in an application certain spent convictions or extinguished convictions (see that Act, s 16 (c) (i) and s 19H (1) (c) (i)).

### **Part 1.3              Discrimination Act 1991**

#### **[1.3]      Section 7 (1) (o)**

*after*

spent conviction

*insert*

or extinguished conviction

## Part 1.4 Fair Trading (Motor Vehicle Repair Industry) Act 2010

### [1.4] Dictionary, definition of *police certificate*, note

*substitute*

*Note* A conviction does not include a spent conviction or an extinguished conviction (see [Spent Convictions Act 2000](#), s 16 (c) (i) and s 19H (1) (c) (i)).

## Part 1.5 Firearms Act 1996

### [1.5] Section 18 (1) (b) (iv), note

*substitute*

*Note* A conviction does not include a spent conviction or an extinguished conviction (see [Spent Convictions Act 2000](#), s 16 (c) (i) and s 19H (1) (c) (i)).

## Part 1.6 Firearms Regulation 2008

### [1.6] Section 11 (3) (b) (iv), note

*substitute*

*Note* A conviction does not include a spent conviction or an extinguished conviction (see [Spent Convictions Act 2000](#), s 16 (c) (i) and s 19H (1) (c) (i)).

## **Part 1.7                      Liquor Act 2010**

### **[1.7]            Dictionary, definition of *police certificate*, note**

*substitute*

*Note*        A conviction does not include a spent conviction or an extinguished conviction (see [Spent Convictions Act 2000](#), s 16 (c) (i) and s 19H (1) (c) (i)).

## **Part 1.8                      Sale of Motor Vehicles Act 1977**

### **[1.8]            Dictionary, definition of *police certificate*, note**

*substitute*

*Note*        A conviction does not include a spent conviction or an extinguished conviction (see [Spent Convictions Act 2000](#), s 16 (c) (i) and s 19H (1) (c) (i)).

## **Part 1.9                      Working with Vulnerable People (Background Checking) Act 2011**

### **[1.9]            Section 24, note**

*substitute*

*Note*        A conviction does not include a spent conviction or an extinguished conviction (see [Spent Convictions Act 2000](#), s 16 (c) (i) and s 19H (1) (c) (i)).

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## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 17 September 2015.

**2 Notification**

Notified under the [Legislation Act](#) on 6 November 2015.

**3 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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I certify that the above is a true copy of the Spent Convictions (Historical Homosexual Convictions Extinguishment) Amendment Bill 2015, which was passed by the Legislative Assembly on 29 October 2015.

Clerk of the Legislative Assembly

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