

**2000**

**THE LEGISLATIVE ASSEMBLY FOR  
THE AUSTRALIAN CAPITAL TERRITORY**

**SPENT CONVICTIONS BILL 2000**

**EXPLANATORY MEMORANDUM**

**Circulated by the authority of**

**Gary Humphries MLA  
Attorney General**

## **Spent Convictions Bill 2000**

### **Explanatory Memorandum**

#### **Outline**

The Spent Convictions Bill (the bill) creates a spent convictions scheme for the ACT. A spent convictions scheme allows certain convictions to be disregarded in appropriate circumstances after a period of time has elapsed. A spent conviction is disregarded by:

- excusing the person convicted from disclosure of the spent conviction; and/or
- allowing the person convicted to claim he or she has never been charged or convicted of the offence leading to the conviction.

Similar schemes are in place in a number of other Australian jurisdictions. The purpose of such schemes is to enable a person who has been convicted of, generally, a less serious offence and who has subsequently not re-offended for a specified period of time, to avoid the stigma which attaches to having been convicted of a criminal offence. It also prevents such persons from being discriminated against, for example in employment or obtaining accommodation, because of an old conviction for an offence.

The ACT scheme will, like schemes in other jurisdictions, for the protection of the community, prevent convictions for some types of convictions, including convictions for sexual offences, from being able to ever become spent.

The Commonwealth spent convictions scheme under Part VIIC of the *Crimes Act 1914* (Cth) applies to convictions imposed by ACT courts before

1 July 1990. Given the typical 10 year period before a conviction as an adult is spent, the earliest that convictions imposed by ACT courts on or after 1 July 1990 could become spent is 1 July 2000.

The bill sets out:

- the convictions which may be part of the scheme and become spent;
- the circumstances in which an eligible offence becomes spent; and
- the mechanism for dealing with non-compliance with the requirements of the scheme to disregard spent convictions.

#### **Financial implications**

There are no financial implications arising from this bill.

## **Details of clauses**

### **Clauses 1, 2, 3, 4 and 5 – Formal and technical provisions**

**Clauses 1, 2 and 3**, respectively, set out the name of the bill once enacted, the commencement arrangements and provide a brief description of the purpose of the Act and how it will work.

**Clause 4** provides that the dictionary that is included at the end of the bill will be part of the Act.

However, pursuant to **clause 5**, notes included in the Act are explanatory and will not form part of the Act.

### **Clauses 6, 7 and 8 – Definitional provisions**

**Clauses 6, 7 and 8** are definitional provisions which, respectively, explain what is meant by the terms “convicted”, “spent” and “quashed” for the purpose of the bill.

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

**Clause 9** is included to make it clear that the ACT spent convictions legislation is to apply to convictions for offences other than ACT offences.

### **Clause 10 – Act applies to existing convictions**

**Clause 10** makes clear that the new legislation applies to convictions that occur before the commencement of the legislation as well as convictions occurring after the legislation becomes operative.

**Clause 11 – Which convictions can become spent?**

**Clause 11** is to the effect that any conviction, other than the following, can become spent:

- a conviction for which a sentence of imprisonment longer than 6 months has been imposed;
- a conviction for a sexual offence;
- a conviction of a corporation;
- a conviction prescribed under the regulations.

The reason for not allowing convictions for sexual offences (which are defined in the dictionary) and offences attracting an imprisonment penalty of longer than 6 months to become spent, is that the protection of the community requires that convictions for such serious offences continue to be disclosed and able to be taken into account by, for example, employers.

Convictions of corporations are unable to become spent because the rehabilitative purpose of a spent convictions scheme is not relevant to corporations in the way it is to individuals.

**Clauses 12 and 13 – When is a conviction spent and what is the crime-free period?**

**Subclause 12 (1)** provides that a conviction becomes spent after the completion of the relevant crime-free period, unless it is sooner spent under **subclauses 12(2) to (8)**.

**Subclauses 12(2) to (8)** explain when a conviction becomes spent in the following circumstances:

- an order is made under subsection 556A(1) of the *Crimes Act 1900*, paragraph 98(i) of the *Children and Young People Act 1999* or paragraph 48(j) of the *Children's Services Act 1986*, dismissing charges for an offence found proved;
- an order is made under subsection 556A(1) of the *Crimes Act 1900* directing a person discharged on giving of security to be of good behaviour for a specified period;
- an order reprimanding a person is made under subsection 96(1) or paragraph 98(j) of the *Children and Young People Act 1999* or subsection 47(1) or paragraph 48(k) of the *Children's Services Act 1986*;
- a conditional discharge order, order for the payment of reparation or compensation, or attendance centre order is made under subsection 96(1) or paragraph 98(j) of the *Children and Young People Act 1999* or subsection 47(1) or paragraph 48(k) of the *Children's Services Act 1986*;
- a probation order is made under subsection 96(1) paragraph 98(j) of the *Children and Young People Act 1999* or subsection 47(1) or paragraph 48(k) of the *Children's Services Act 1986*; or
- an offence has ceased, by operation of law, to be an offence.

The relevant crime-free period is explained in **clause 13**. The relevant period is 5 consecutive years for a person who was not dealt with as an adult in relation to the conviction, and 10 consecutive years for a person dealt with as an adult. For a person to have been crime-free for the relevant period he or she must not, during the period, have been convicted of an offence punishable by imprisonment, subject to a control order, in prison because of a conviction for an offence or unlawfully at large.

#### **Clause 14 – How are traffic offences to be dealt with?**

Traffic offences, as a class of offences, are treated separately from other offences under the scheme. **Subclause 14(2)** provides that neither a conviction

nor period of imprisonment for a traffic offence, are to be taken into account when calculating the crime-free period for a conviction for a non-traffic offence. Conversely, **subclause 14(3)** provides that a conviction or period of imprisonment for a non-traffic offence is not to be taken into account when calculating the crime-free period for a conviction for a traffic offence.

However, certain more serious offences, involving the use of a motor vehicle, such as culpable driving, are to be taken into account when calculating the crime-free period for either a traffic offence or a non-traffic offence. **Subclause 14(4)** sets out the offences which come within this category.

#### **Clause 15 – Spent conviction generally not revived**

**Clause 15** is to the effect that once a conviction is spent it can only be revived by a subsequent conviction for an offence which was committed during the crime-free period.

Where the conviction for the offence committed during the crime-free period is a summary conviction, the court before which a person is convicted has a discretion to order that the provisions of Part 2 of the bill do not apply to the convicted person until the crime-free period for the later offence has ended.

Where the conviction for the offence committed during the crime-free period is a conviction on indictment or a conviction in a court other than an ACT court, the provisions of Part 2 of the bill automatically cease to the convicted person until the crime-free period for the later offence has ended.

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

The effect of *clause 16* is that where a conviction of a person becomes spent:

- the person is not required to disclose information about the conviction to anyone;
- questions about the person's criminal history are taken not to refer to the spent conviction; and
- the conviction can't be taken into account where an Act or statutory instrument is applied to the person eg., if an Act requires or enables the person's character to be considered for some purpose, the spent conviction of the person cannot be considered for the purpose of assessing character.

The provisions of this clause are subject to a number of exclusions set out in *clause 19*.

**Clause 17 – Unlawful disclosure of a conviction becoming spent**

In order to achieve the policy objectives of the spent convictions scheme *clause 17* makes it an offence for a person who has access to records of convictions to disclose any information about a spent convict, without lawful authority. A penalty of 50 penalty units or imprisonment or six months, or both, applies.

This provision does not prevent archival or library material which contains information about a spent conviction being made available. Nor does it prevent a law enforcement agency or its employees or agents, from making information about a spent conviction available to another law enforcement agency or a court.



**Clause 18 – Improperly obtaining information about a spent conviction**

**Clause 18**, which makes it an offence to fraudulently or dishonestly obtain information about a spent conviction from records kept by or on behalf of a public authority, is also intended to assist in the achievement of the scheme's policy objective.

**Clause 19 – Exclusions**

**Clause 19** sets out a number of exclusions to the provisions of **clause 16** with the result that certain spent convictions must be disclosed or may be able to be taken into account in certain circumstances where the public interest or the need to ensure the protection of the community, particularly children, is paramount.

The effect of **subclause 19(1)** is that **clause 16** does not apply to an application by a person:

- for appointment or employment as a judge, magistrate, justice of the peace, police officer, prison officer, teacher or teacher's aide, childcare provider or childcare worker; or
- to be appointed, employed or otherwise engaged (whether on a paid basis or not) in any other capacity which will, or is likely to, bring the person into contact with children;
- to be appointed, employed or otherwise engaged as a casino employee under the *Casino Control Act 1988*;
- or for an interactive gambling licence under the *Interactive Gambling Act 1998*.

By virtue of **subclause 19(2)**, nor does the scheme apply in relation to an application by a person with a conviction for arson or attempted arson to be appointed or employed in fire fighting or fire prevention.

**Subclauses 19(3), (4) and (6)** are intended to ensure that the scheme does not interfere with court proceedings by, for example preventing a court from being able to be informed about prior convictions for the purpose of sentencing an offender.

**Subclause 19(5)** disapplies **clause 16** to applications for firearms licences and permits. This is intended to ensure that convictions which might qualify as 'spent' under the scheme, but can presently be taken into account under the *Firearms Act 1996*, for the purpose of determining whether a person should be issued a licence or permit, can continue to be taken into account for that purpose.

**Subsection 19(7)** ensures that convictions which might qualify as 'spent' under the scheme, but are presently relevant under the *Casino Control Act 1988*, to determining whether a person is suitable to operate a casino, can continue to be considered for that purpose.

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

**Clause 20** acknowledges that there may be other laws which prevent the disclosure or taking into account of a conviction for some purpose. The fact that a conviction may not be spent under this scheme does not authorise the disclosure of such a conviction or its being taken into account if that would contravene another law.

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

**Clause 21** is to the effect that anything lawfully done before a conviction is spent or quashed or a pardon is granted, is not affected by this scheme.

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

**Clause 22** makes it clear that the spent convictions scheme does not authorise the destruction of records concerning convictions.

**Clause 23 – Regulation making power**

A regulation making power is included by the operation of **clause 23**.

**Subclauses 23(3) and (4)** are included so that the scheme can be quickly adapted to ensure the protection of the community where it is not appropriate for the scheme to apply to certain sorts of convictions or in particular circumstances.

**Clause 24 – Amendment of Discrimination Act**

To provide a means of seeking redress to a person who considers that he or she has been discriminated against, on the basis of a spent conviction, **clause 24** amends section 7 of the *Discrimination Act 1991*. This section will now include discrimination on the basis of a spent conviction as a ground for a complaint to the Discrimination Commissioner.