

South Australia

Spent Convictions Regulations 2011

under the *Spent Convictions Act 2009*

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Legislative history

1—Short title

These regulations may be cited as the *Spent Convictions Regulations 2011*.

3—Interpretation

In these regulations—

Act means the *Spent Convictions Act 2009*.

4—Declaration of corresponding laws (section 3 of Act)

For the purposes of the definition of *corresponding law* in section 3(1) of the Act, the following laws are declared to be corresponding laws:

Annulled Convictions Act 2003 of Tasmania

Crimes Act 1914 of the Commonwealth

Criminal Law (Historical Homosexual Convictions Expungement) Act 2017 of Queensland

Criminal Law (Rehabilitation of Offenders) Act 1986 of Queensland

Criminal Records Act 1991 of New South Wales

Criminal Records (Spent Convictions) Act 1992 of the Northern Territory

Expungement of Historical Homosexual Offence Records Act 2018 of the Northern Territory

Expungement of Historical Offences Act 2017 of Tasmania

Historical Homosexual Convictions Expungement Act 2018 of Western Australia

Sentencing Act 1991 of Victoria (Part 8)

Spent Convictions Act 1988 of Western Australia

Spent Convictions Act 2000 of the Australian Capital Territory.

4AA—Definition of designated sex-related offence (section 3 of Act)

For the purposes of paragraph (c)(iii) of the definition of *designated sex-related offence* in section 3(1) of the Act, an offence against section 23(2) (gross indecency) of the *Summary Offences Act 1953* is prescribed.

4A—Definition of justice agency (section 3 of Act)

For the purposes of the definition of *justice agency* in section 3(1) of the Act, the following persons and bodies are brought within the ambit of that definition:

- (a) the Registrar of Firearms;
- (b) the Licensing Court of South Australia;
- (c) the Liquor and Gambling Commissioner;
- (d) the Commissioner for Consumer Affairs.

5—Definition of sex offence (section 3 of Act)

For the purposes of the definition of *sex offence* in section 3(1) of the Act, the following are prescribed as sex offences:

- (a) an offence against—
 - (i) Part 3 Division 11 (rape and other sexual offences); or
 - (ii) Part 3 Division 11A (child pornography and related offences); or
 - (iii) Part 3 Division 12 (commercial sexual offences and related offences); or
 - (iv) Part 3 Division 13 (miscellaneous sexual offences),of the *Criminal Law Consolidation Act 1935*;
- (b) an offence against section 23(2) (gross indecency) of the *Summary Offences Act 1953*;
- (c) an offence that is substantially similar to an offence referred to in paragraph (a) or (b), being an offence against a corresponding previous enactment;
- (d) an offence constituted of aiding, abetting, counselling or procuring an offence referred to in a preceding paragraph.

5A—Applications to qualified magistrates

- (1) This regulation applies in relation to—
 - (a) an application under section 8A of the Act; and
 - (ab) an application under section 8B of the Act; and
 - (ac) an application under section 8C of the Act; and
 - (b) an application under section 13A of the Act.

- (2) An application under section 8A of the Act must set out or include—
- (a) the applicant's full name, date of birth, address and contact details; and
 - (b) details about the eligible sex offence to which the application relates, including—
 - (i) the statutory provision that constitutes the offence; and
 - (ii) the name of the court where the conviction for the offence was recorded; and
 - (iii) the date on which the conviction was recorded; and
 - (c) a copy of any transcript or sentencing remarks made in connection with the conviction that are in the possession of the applicant; and
 - (d) any information that the applicant would like to submit in support of the application with respect to—
 - (i) the circumstances and seriousness of the offence; and
 - (ii) the circumstances of the applicant; and
 - (iii) any other matter that the applicant considers relevant under section 8A(5) of the Act; and
 - (e) where an application under section 8A of the Act in respect of the conviction has been previously refused—
 - (i) the date on which the application was made; and
 - (ii) the date on which the application was refused; and
 - (iii) any information that the applicant considers is relevant in the circumstances.
- (2a) An application under section 8B of the Act must set out or include—
- (a) the applicant's full name, date of birth, address and contact details; and
 - (b) if the applicant is not the convicted person—
 - (i) the convicted person's full name, date of birth and address (if applicable); and
 - (ii) the applicant's entitlement under section 8B(2)(b) of the Act to make the application; and
 - (c) details about the designated sex-related offence to which the application relates, including—
 - (i) identification of the offence (such as the statutory provision, the common law offence or other description); and
 - (ii) the name of the court where the conviction for the offence was recorded; and
 - (iii) the date on which the conviction was recorded; and
 - (d) a copy of any transcript or sentencing remarks made in connection with the conviction that are in the possession of the applicant; and

- (e) any information that the applicant would like to submit in support of the application with respect to—
 - (i) the conduct engaged in by the convicted person; and
 - (ii) any grounds on which the applicant contends that the conduct engaged in by the convicted person or constituting the offence would not, at the time the application is considered, constitute an offence under the law of the State; and
 - (iii) any other matter that the applicant considers relevant under section 8B(5) of the Act.
- (2b) An application under section 8C of the Act must set out or include—
 - (a) the applicant's full name, date of birth, address and contact details; and
 - (b) if the applicant is not the convicted person—
 - (i) the convicted person's full name, date of birth and address (if applicable); and
 - (ii) the applicant's entitlement under section 8C(2)(b) of the Act to make the application; and
 - (c) details about the prescribed public decency offence to which the application relates, including—
 - (i) identification of the offence (such as the statutory provision, the common law offence or other description); and
 - (ii) the name of the court where the conviction for the offence was recorded; and
 - (iii) the date on which the conviction was recorded; and
 - (d) a copy of any transcript or sentencing remarks made in connection with the conviction that are in the possession of the applicant; and
 - (e) any information that the applicant would like to submit in support of the application with respect to—
 - (i) the conduct engaged in by the convicted person; and
 - (ii) whether the convicted person would not have been charged with the offence but for the fact that the conduct engaged in, or constituting the offence, was suspected of being, or being connected to, homosexual activity; and
 - (iii) whether the conduct of the convicted person or constituting the offence would not, at the time the application is considered, constitute an offence under the law of the State; and
 - (iv) any other matter that the applicant considers relevant under section 8C(6) of the Act.
- (3) An application under section 13A of the Act must set out or include—
 - (a) the applicant's full name, date of birth, address and contact details; and
 - (b) details about the offence to which the application relates, including—

- (i) the statutory provision that constitutes the offence; and
 - (ii) the name of the court where the conviction for the offence was recorded; and
 - (iii) the date on which the conviction was recorded; and
 - (iv) the date on which the conviction for the offence became spent; and
 - (c) a copy of any transcript or sentencing remarks made in connection with the conviction that are in the possession of the applicant; and
 - (d) any information that the applicant would like to submit in support of the application with respect to—
 - (i) the circumstances and seriousness of the offence; and
 - (ii) the circumstances of the applicant; and
 - (iii) any other matter that the applicant considers relevant under section 13A(6) of the Act; and
 - (e) where an application under section 13A of the Act in respect of the offence has been previously refused—
 - (i) the date on which the application was made; and
 - (ii) the date on which the application was refused; and
 - (iii) any information that the applicant considers is relevant in the circumstances.
- (4) An application to which this regulation relates must comply with any other requirement as to the form of the application specified by the Chief Magistrate.

5AA—Prescribed exclusions (Schedule 1 clause a1 of Act)

For the purposes of Schedule 1 clause a1(4) of the Act, the exclusions set out in the following clauses of Schedule 1 of the Act do not apply in relation to a finding (as constituting a conviction for the purposes of the Act) that is taken to be immediately spent under section 4(1a) of the Act:

- (a) clauses 2, 5 and 9;
- (b) clauses 10 to 13 (inclusive).

5B—Prescribed exclusions (Schedule 1 clause 9A of Act)

- (1) For the purposes of Schedule 1 clause 9A(1)(a) of the Act, the following circumstances are prescribed:
- (a) in relation to the performance of a function or the exercise of a power by the central assessment unit—
 - (i) conducting a working with children check under the *Child Safety (Prohibited Persons) Act 2016*; or
 - (ii) conducting a screening check, or an NDIS worker check clearance or exclusion, under the *Disability Inclusion Act 2018*; or

- (iii) undertaking an assessment of a person's relevant history within the meaning of the *Disability Services Act 1993* (whether under section 5B or 5C of that Act or otherwise);
 - (b) in relation to the performance of a function or the exercise of a power by a prescribed screening unit that is an interstate screening unit—undertaking an assessment of information (as authorised or required under a law of another State or Territory, or of the Commonwealth) about a person for the purpose of determining whether the person may, if appointed to, or engaged to act in, a position, pose a risk to the safety of children or persons with disability;
 - (c) in relation to the assessment of a person's criminal record check conducted by the Teachers Registration Board under Part 5 of the *Teachers Registration and Standards Act 2004* for the purpose of determining whether the person is eligible for registration as a teacher under that Part;
 - (d) in relation to the assessment of a person's criminal record check conducted by the Teachers Registration Board under Part 6 of the *Teachers Registration and Standards Act 2004* for the purpose of determining whether the person is to be granted a special authority under that Part;
 - (e) in relation to investigations or inquiries conducted by the Teachers Registration Board under Part 7 of the *Teachers Registration and Standards Act 2004* into a teacher's conduct or capacity to teach for the purpose of determining whether action should be taken in relation to the teacher under that Part.
- (2) For the purposes of Schedule 1 clause 9A(1)(b) of the Act, the following circumstances are prescribed:
- (a) circumstances related to a working with children check of a person under the *Child Safety (Prohibited Persons) Act 2016*;
 - (b) circumstances related to a screening check, or NDIS worker check clearance or exclusion, of a person under the *Disability Inclusion Act 2018*;
 - (c) circumstances related to an assessment of a person's relevant history within the meaning of the *Disability Services Act 1993* (whether under section 5B or 5C of that Act or otherwise);
- (3) For the purposes of the definition of **prescribed screening unit** in Schedule 1 clause 9A(4) of the Act, the following entities are prescribed:
- (a) the central assessment unit;
 - (b) an interstate screening unit;
 - (c) the Teachers Registration Board established under the *Teachers Registration and Standards Act 2004*.
- (4) In this regulation—
- central assessment unit** means the central assessment unit established under the *Child Safety (Prohibited Persons) Act 2016*;
- interstate screening unit** means a person or body performing functions under a law of the Commonwealth, or another State or Territory, corresponding to the functions of the central assessment unit under the *Child Safety (Prohibited Persons) Act 2016*, the *Disability Inclusion Act 2018* or the *Disability Services Act 1993*.

6—Prescribed exclusions (Schedule 1 clause 14 of Act)

- (1) Sections 10, 11 and 12 of the Act do not apply in relation to a person employed, or seeking employment, as a protective security officer under the *Protective Security Act 2007* (except in relation to a person in respect of whom a finding or conviction has been taken to be an immediately spent conviction).
- (2) If conduct that was the subject of a person's immediately spent conviction constituted a breach of the person's employment conditions, section 10 of the Act does not, for the prescribed period, operate to prevent—
 - (a) where the employer with whom the person was employed at the time the conduct occurred is still the employer of the person—the employer from having regard to the immediately spent conviction—
 - (i) for the purposes described in section 10(c); or
 - (ii) as a proper ground for the taking of an action described in section 10(d); or
 - (b) the employer with whom the person was employed at the time the conduct occurred (whether still the employer of the person or not) from disclosing the immediately spent conviction to a prospective employer of the person in the context of providing a reference (however described); or
 - (c) a prospective employer of the person from regarding the immediately spent conviction as a proper ground for the taking of an action described in section 10(d).
- (3) A reference in subregulation (2) to a person being ***employed*** will be taken to include a reference to a person who—
 - (a) carries out work under a contract for services; and
 - (b) undertakes practical training as part of an educational or vocational course,and a reference to ***employer*** and ***employment*** is to be construed accordingly.
- (4) In this regulation—

employment condition includes any condition or requirement breach of which would constitute grounds for the taking of an action described in section 10(d) of the Act (including, to avoid doubt, a requirement to observe a code of conduct);

immediately spent conviction means—
 - (a) a finding (constituting a conviction for the purposes of the Act) that is taken to be immediately spent under section 4(1a) of the Act; or
 - (b) a conviction for an offence that is taken to be immediately spent under section 6(4) of the Act;

prescribed period, in relation to an immediately spent conviction referred to in this regulation, means—
 - (a) if the relevant finding or conviction is in relation to an eligible juvenile offence other than where the person was dealt with as an adult—5 consecutive years; or
 - (b) in any other case—10 consecutive years,

from the day on which the finding or conviction is taken to be immediately spent.

Legislative history

Notes

- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of these regulations (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Principal regulations and variations

New entries appear in bold.

Year	No	Reference	Commencement
2011	14	<i>Gazette 10.2.2011 p463</i>	13.2.2011: r 2
2011	30	<i>Gazette 29.4.2011 p1290</i>	29.4.2011: r 2
2013	32	<i>Gazette 2.5.2013 p1395</i>	5.5.2013: r 2
2014	59	<i>Gazette 13.2.2014 p958</i>	16.2.2014: r 2
2015	249	<i>Gazette 17.12.2015 p5272</i>	17.12.2015: r 2
2018	204	<i>Gazette 23.8.2018 p3177</i>	23.8.2018: r 2
2019	205	<i>Gazette 29.8.2019 p3156</i>	29.8.2019: r 2
2019	227	<i>Gazette 31.10.2019 p3624</i>	9.12.2019: r 2
2021	38	<i>Gazette 8.4.2021 p1133</i>	12.4.2021: r 2

Provisions varied

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
<i>r 2</i>	<i>omitted under Legislation Revision and Publication Act 2002</i>	<i>29.4.2011</i>
r 4	varied by 38/2021 r 4(1), (2)	12.4.2021
r 4AA	inserted by 38/2021 r 5	12.4.2021
r 4A	inserted by 30/2011 r 4	29.4.2011
	substituted by 249/2015 r 4	17.12.2015
r 5A	inserted by 32/2013 r 4	5.5.2013
r 5A(1)	varied by 38/2021 r 6(1)	12.4.2021
r 5A(2a) and (2b)	inserted by 38/2021 r 6(2)	12.4.2021
r 5AA	inserted by 227/2019 r 4	9.12.2019
r 5B	inserted by 59/2014 r 4	16.2.2014
r 5B(1)	varied by 204/2018 r 4(1)	23.8.2018
	varied by 205/2019 r 4(1), (2)	29.8.2019

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r 5B(2)	varied by 205/2019 r 4(3)	29.8.2019
r 5B(3)	varied by 204/2018 r 4(2)	23.8.2018
	varied by 205/2019 r 4(4)	29.8.2019
r 5B(4)	inserted by 205/2019 r 4(5)	29.8.2019
r 6	substituted by 227/2019 r 5	9.12.2019

Historical versions

29.4.2011

5.5.2013

16.2.2014

17.12.2015

23.8.2018

29.8.2019

9.12.2019