

South Australia

Spent Convictions (Decriminalised Offences) Amendment Act 2013

An Act to amend the *Spent Convictions Act 2009*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Spent Convictions (Decriminalised Offences) Amendment Act 2013*.

2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Spent Convictions Act 2009*

4—Amendment of section 3—Preliminary

- (1) Section 3(1)—after the definition *designated judicial authority* insert:

designated sex-related offence means—

- (a) a sex offence—
 - (i) that is constituted by consenting adults engaging in sexual intercourse, or another form of sexual activity; or
 - (ii) that is constituted by an adult procuring another adult to engage in consensual sexual intercourse, or another form of consensual sexual activity; or
- (b) an offence where—
 - (i) the offence is constituted by consenting persons of the same sex engaging in sexual intercourse, or another form of sexual activity; and
 - (ii) at least 1 of them is 16 or 17 years of age (and none of them is younger); and
 - (iii) their actions would not have constituted an offence if they were not of the same sex; and
 - (iv) no person engaged in the activity was in a position of authority in relation to another person engaged in the activity;

- (2) Section 3(1), definition of *eligible sex offence*—delete the definition and substitute:

eligible sex offence means—

- (a) a sex offence (being either an eligible adult offence or an eligible juvenile offence) for which a sentence of imprisonment is not imposed; or
- (b) a designated sex-related offence;

- (3) Section 3—after subsection (7) insert:

- (8) For the purposes of the definition of *designated sex-related offence*—
 - (a) a person will not be taken to have engaged in an activity with his or her consent if the person would not be taken to have freely and voluntarily agreed to the activity under section 46 of the *Criminal Law Consolidation Act 1935*; and
 - (b) a person is in *a position of authority* in relation to another person if they would be in a position of authority in relation to the person under section 49(5a) of the *Criminal Law Consolidation Act 1935*.

5—Amendment of section 5—Scope of Act

Section 5(1)—after paragraph (b) insert:

- (c) a conviction for a designated sex-related offence.

6—Amendment of section 8A—Spent conviction for an eligible sex offence

- (1) Section 8A(5)—after "at the discretion of the qualified magistrate and" insert:

(subject to subsection (6))

- (2) Section 8A—after subsection (5) insert:

- (6) In the case of a designated sex-related offence, the qualified magistrate may make an order under this section without reference to any matters set out in subsection (5) if the qualified magistrate is satisfied—

- (a) that the offence is a designated sex-related offence; and
- (b) that the conduct constituting the offence has ceased, by operation of law, to be an offence.

7—Amendment of section 13—Exclusions

Section 13—after subsection (4) insert:

- (5) The exclusions do not apply in relation to a designated sex-related offence in relation to which an order has been made under section 8A.