

House of Assembly—No 18

As laid on the table and read a first time, 13 October 2004

South Australia

Spent Convictions Bill 2004

A BILL FOR

An Act to encourage the rehabilitation of offenders by providing that certain convictions will become spent on completion of a period of crime-free behaviour; and for other purposes.

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The Parliament of South Australia enacts as follows:

1—Short title

This Act may be cited as the *Spent Convictions Act 2004*.

2—Commencement

This Act will come into operation three months after the date of assent.

5 3—Interpretation

In this Act, unless the contrary intention appears—

conviction includes a formal finding of guilt made by a court, or a finding by a court that a charge has been proved (and **convicted** has a corresponding meaning);

10 **minor offence** means any offence other than an offence in relation to which the convicted person is sentenced to imprisonment for an indeterminate term, or for a term exceeding 3 months (whether or not the sentence is suspended), or is ordered to pay a fine exceeding \$2 500;

rehabilitated person—see section 5;

spent conviction and **spent conviction order**—see section 5.

15 4—Application of Act

(1) This Act applies in relation to convictions for minor offences whether such convictions occurred—

- (a) within or outside the State; or
- (b) before or after the commencement of this Act.

- (2) Nothing in this Act affects—
- (a) the enforcement of any process or proceedings relating to any fine or other sum imposed with respect to a spent conviction; or
 - (b) the issue of any process for the purpose of proceedings in respect of a breach of a condition or requirement applicable to a sentence imposed in respect of a spent conviction; or
 - (c) the operation of any disqualification, disability or other prohibition imposed in respect of a spent conviction.

5—Spent convictions

- (1) Subject to this section, a conviction for a minor offence is a spent conviction and the convicted person will, in respect of that conviction, be regarded as a rehabilitated person if the prescribed period has elapsed since the relevant day and the convicted person has not been convicted of a further offence committed during that period.

- (2) However—

- (a) where the minor offence was an offence against the person or an offence of a kind prescribed by regulation; and
- (b) the convicted person was, in respect of the offence, sentenced to a term of imprisonment (whether or not the sentence was suspended),

subsection (1) does not apply unless the District Court has, on application by the convicted person made in accordance with the Schedule, made an order (a *spent conviction order*) confirming that the conviction is a spent conviction.

- (3) For the purposes of subsection (1), a conviction for a further offence will be disregarded if—

- (a) the conviction is quashed or set aside (in which case the conviction will be disregarded from the date that it is quashed or set aside); or
- (b) the convicted person is pardoned (in which case the conviction will be disregarded from the date that the pardon is given).

- (4) In this section—

prescribed period, in relation to the conviction of a person for a minor offence, means—

- (a) if the person was found guilty of the offence without a conviction being recorded—2 years; or
- (b) if a conviction was recorded in relation to the offence—
 - (i) if the person was under 18 years of age at the time of the commission of the offence—5 years; or
 - (ii) in any other case—10 years;

relevant day, in relation to the conviction of a person for a minor offence, is the day of the conviction.

6—Information about spent convictions

Except as provided by this Act—

- 5 (a) a person cannot be lawfully asked for, or required to furnish, information concerning a spent conviction; and
- (b) if a person is asked for, or required to furnish, information concerning any conviction or information concerning the person's character or fitness—
- 10 (i) the request or requirement will be taken not to include a request for, or a requirement to furnish, information concerning a spent conviction; and
- (ii) the person cannot incur any civil or criminal liability, and does not commit any breach of good faith, by failing to disclose information concerning a spent conviction; and
- (c) in any provision of an Act or statutory instrument—
- 15 (i) a reference in the provision to a conviction is, in the absence of express words to the contrary, taken to be a reference only to a conviction that is not spent; and
- (ii) a reference in the provision to a person's character or fitness is, in the absence of express words to the contrary, not to be interpreted as permitting or requiring account to be taken of a spent conviction.

20 7—Proceedings before courts and tribunals

- (1) Section 6 does not apply to proceedings before a court or tribunal (including the giving of evidence) or the making of a decision by a court or tribunal (including a decision concerning sentencing or the granting of bail).
- 25 (2) However, a court or tribunal before which evidence of a spent conviction is admitted must take such steps as are, in the opinion of the court or tribunal, appropriate to avoid or minimise publication of the evidence.

8—Offence to disclose spent conviction

- (1) A person who discloses information concerning a spent conviction other than in circumstances authorised by subsection (2)—
- 30 (a) knowing that the conviction is a spent conviction; or
- (b) being recklessly indifferent as to whether the conviction is a spent conviction, is guilty of an offence.
- Maximum penalty:
- (a) for a first offence—\$10 000;
- 35 (b) for a second or subsequent offence—\$20 000 or imprisonment for 4 years.
- (2) It is not an offence to disclose information concerning a spent conviction if—
- (a) the disclosure is made by, or with the consent of, the rehabilitated person; or
- (b) the disclosure does not contain any information that would tend to identify the rehabilitated person; or

- 5 (c) the disclosure is made in the course of official duties by a person who has custody of or access to a record kept by a court, tribunal, police force, government department or public authority that contains information about persons convicted of offences and is made to another person acting in the course of official duties; or
- (d) the disclosure constitutes a fair and accurate report of proceedings before a court or tribunal in which the existence of a spent conviction was disclosed and is not in contravention of an order of the court or tribunal; or
- 10 (e) the disclosure is made in the ordinary course of the publication or use of a textbook, report, article or collection of material published for historical, educational, scientific or professional purposes, or in the course of any lecture, class or discussion given or held for any such purpose; or
- (f) the disclosure is contained in a genuine series of law reports on proceedings in courts or tribunals; or
- 15 (g) the disclosure is otherwise authorised under this Act.

9—Prosecutions

- (1) A prosecution for an offence against this Act may only be commenced with the written consent of the Attorney-General.
- 20 (2) In proceedings for an offence against this Act, a document of consent to a prosecution for an offence against this Act, apparently signed by the Attorney-General, will be accepted, in the absence of proof to the contrary, as proof of the consent.

10—Regulations

- (1) The Governor may make such regulations as are contemplated by this Act, or as are necessary or expedient for the purposes of this Act.
- 25 (2) Without limiting the generality of subsection (1), the regulations may—
- (a) exempt (conditionally or unconditionally) persons of a specified class from the provisions, or any specified provisions, of this Act; or
- (b) specify circumstances in which this Act, or specified provisions of this Act, are not to apply.

30 Schedule 1—Provisions relating to proceedings for spent conviction orders

1—Application for spent conviction order

- (1) An application for a spent conviction order in respect of a conviction—
- 35 (a) may not be made until the prescribed period referred to in section 5 for that conviction has expired; and
- (b) may not be made if the Court has refused to make a spent conviction order in respect of the same conviction within the preceding 2 years.
- (2) An application for a spent conviction order must set out the following:
- (a) all previous convictions of the applicant (including any spent convictions);

(b) the employment history of the applicant since the date of the conviction in respect of which the application is being made;

(c) such other matters as may be prescribed.

(3) The Court may, by notice in writing given to an applicant for a spent conviction order, require the applicant to provide further information in relation to the application.

(4) An application for a spent conviction order may be made in respect of more than one conviction.

2—Representation at proceedings

The Commissioner of Police is a party to an application for a spent conviction order and is entitled to be represented at the hearing of the application.

3—Conduct of proceedings

(1) An application for a spent conviction order must be heard in private unless the applicant consents to the hearing being in public or the Court considers that, in the circumstances of the case, the hearing should be in public.

(2) If a hearing is held in private, the Court may give directions as to who may be present.

4—Principles governing hearings

In any proceedings for a spent conviction order—

(a) the Court is not bound by the rules of evidence but may inform itself as it thinks fit; and

(b) the Court must act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms.

5—Powers of Court

(1) The Court may, if satisfied that an application for a spent conviction order is vexatious, misconceived or lacking in substance, refuse to make an order without holding a hearing.

(2) If, after hearing an application for a spent conviction order, the Court is satisfied that there is proper cause for doing so, the Court may make an order confirming that the conviction the subject of the application is spent.

(3) The Court must, in determining whether to grant an application for a spent conviction order, have regard to the following:

(a) the length and nature of the sentence imposed in respect of the conviction;

(b) the length of time since the conviction was incurred;

(c) whether the conviction prevents or may prevent the applicant from engaging in a particular profession, trade or business or in a particular employment;

(d) all the circumstances of the applicant, including the circumstances of the applicant at the time of the commission of the offence and at the time of the application;

(e) the nature and seriousness of the offence;

(f) whether there is any public interest to be served in not making an order.

6—Costs

Each party to proceedings for a spent conviction order is to bear his or her own costs unless the Court considers that the circumstances of the case justify the awarding of costs against a party.