

South Australia

Spent Convictions Act 2009

An Act to limit the effect of a person's conviction for certain offences if the person completes a period of crime-free behaviour; and for other purposes.

Contents

Part 1—Preliminary

- 1 Short title
- 3 Preliminary
- 4 Meaning of spent conviction
- 5 Scope of Act
- 6 Application of Act
- 6A Qualified magistrates

Part 2—Requirements for a conviction to become spent

- 7 Determination of qualification period
- 8 Spent conviction—general provision
- 8A Spent conviction for an eligible sex offence
- 9 Subsequent conviction after conviction becomes spent

Part 3—Effect of a conviction becoming spent

Division 1—General provisions

- 10 Ability to disregard spent convictions
- 11 Unlawful disclosures—public records
- 12 Unlawful disclosures—business activities

Division 2—Exclusions

- 13 Exclusions
- 13A Exclusions may not apply

Part 4—Miscellaneous

- 14 Improperly obtaining information about spent convictions
- 15 Prerogative of mercy not affected
- 16 Act does not authorise destruction of records
- 17 Regulations

Schedule 1—Exclusions

- 1 Justice agencies
- 2 Commonwealth agencies
- 3 Designated judicial authorities

4	Parole Board
5	Judicial and associated officers
6	Care of children
7	Care of vulnerable people
8	Activities associated with a character test
9	Firefighting, police and correctional services
9A	Screening units
10	Official records
11	Archives and libraries
12	Reports and authorised publications
13	Non-identifying information
14	Prescribed exclusions

Schedule 2—Provisions relating to proceedings before a qualified magistrate

1	Interpretation
2	Extent of application
3	Notice of application
4	Conduct of proceedings
5	Principles governing hearings

Legislative history

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Spent Convictions Act 2009*.

3—Preliminary

- (1) In this Act, unless the contrary intention appears—

adult means a person of or above the age of 18 years;

AUSTRAC means the Australian Transaction Reports and Analysis Centre continued in existence by the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* of the Commonwealth;

child means a person under the age of 18 years;

Commonwealth authority means—

- (a) a Commonwealth Minister; or
- (b) a Commonwealth Department; or
- (c) the Defence Force; or
- (d) a body (whether incorporated or not) established or appointed for a public purpose by or under a Commonwealth law, not being—
 - (i) an incorporated company, society or association; or

- (ii) an organisation registered, or an association recognised, under the *Fair Work (Registered Organisations) Act 2009* of the Commonwealth, or a branch of such an organisation or association; or
- (e) a body established or appointed by the Governor-General, or by a Commonwealth Minister, otherwise than by or under a Commonwealth law; or
- (f) a person holding or performing the duties of an office established by or under, or an appointment made under, a Commonwealth law other than the office of Secretary of a Commonwealth Department; or
- (g) a person holding or performing the duties of an appointment made by the Governor-General, or by a Commonwealth Minister, otherwise than under a Commonwealth law; or
- (h) a federal court; or
- (i) a tribunal established under a Commonwealth law; or
- (j) the Australian Federal Police;

Commonwealth Department means an Agency within the meaning of the *Public Service Act 1999* of the Commonwealth;

conviction means a conviction, whether summary or on indictment, for an offence and includes a finding which, under subsection (5), is treated as a conviction for the purposes of this Act or a case which falls within the ambit of subsection (6);

corresponding law means a law of another State or of the Commonwealth that is declared by the regulations to be a corresponding law for the purposes of this Act;

designated Commonwealth position means a position in a Commonwealth authority which the head of the authority has determined to be a designated security assessment position whose duties are likely to involve access to national security information classified as secret or top secret;

designated judicial authority means—

- (a) a court or tribunal (including a military tribunal established under a law of the Commonwealth); or
- (b) a judicial or quasi-judicial body brought within the ambit of this definition by the regulations;

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;

eligible adult offence means an offence committed by an adult for which—

- (a) a sentence of imprisonment is not imposed; or
- (b) a sentence of imprisonment is imposed but the sentence is 12 months or less;

eligible juvenile offence means an offence committed while the defendant was a child where, on conviction of the defendant—

- (a) a sentence of imprisonment is not imposed; or
- (b) a sentence of imprisonment is imposed but the sentence is 24 months or less;

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;

intelligence or security agency means—

- (a) the Australian Security Intelligence Organisation; or
- (b) the Australian Secret Intelligence Service; or
- (c) the Office of National Assessments; or
- (d) that part of the Department of Defence known as the Defence Signals Directorate; or
- (e) that part of the Department of Defence known as the Defence Intelligence Organisation; or
- (f) that part of the Department of Defence known as the Defence Imagery and Geospatial Organisation; or
- (g) any other similar agency, office or part of a Commonwealth Department that has a direct involvement in national intelligence or security activities;

justice agency means any of the following:

- (a) the Australian Federal Police;
- (b) the police force or service of a State;
- (c) the Australian Customs and Border Protection Service;
- (d) the Australian Commission for Law Enforcement Integrity, the Australian Crime Commission, or any other similar crime or integrity commission, body, office or agency established under a law of the Commonwealth or a State;

-
- (e) the CrimTrac Agency (established on 1 July 2000 as an Executive Agency of the Governor-General of the Commonwealth under section 65 of the *Public Service Act 1999* of the Commonwealth);
 - (f) AusCheck (established by the Commonwealth on 5 December 2005);
 - (g) the Australian Securities and Investments Commission;
 - (h) the Attorney-General for the Commonwealth or a State;
 - (i) the Director of Public Prosecutions for the Commonwealth or a State, or a person or body performing a similar function under a law of a State;
 - (j) staff appointed to assist a person or body referred to in paragraph (i);
 - (k) a government department or agency of the Commonwealth or the State which is concerned, as 1 of its principal or primary duties, with the prosecution of offences or assisting with the prosecution of offences;
 - (l) the Australian Taxation Office or the Australian Electoral Commission, in connection with any function associated with the prosecution of offences or assisting with the prosecution of offences;
 - (m) the Department for Correctional Services or an equivalent entity in another State;
 - (n) the Department responsible for a training centre under the *Young Offenders Act 1993* or an equivalent entity in another State;
 - (o) the Registrar or administrator of a Commonwealth or State court;
 - (p) a person or body brought within the ambit of this definition or a corresponding definition by regulations made under this Act or under a corresponding law for the purposes of a corresponding definition;

minor offence means an offence where, on conviction—

- (a) the defendant is discharged without penalty; or
- (b) the only penalty imposed on the defendant (disregarding any demerit points that may apply) is a fine not exceeding—
 - (i) unless an amount applies under subparagraph (ii)—\$500; or
 - (ii) an amount, greater than \$500, prescribed by the regulations for the purposes of this definition;

mutual recognition principle—see subsection (7);

national security information means information affecting the defence, security or international relations of Australia;

official record means a record kept by a court, tribunal, police force or public authority;

overseas jurisdiction means a jurisdiction outside Australia and the external territories;

public authority means—

- (a) a public or local authority constituted by or under an Act of this State, another State or the Commonwealth; or

- (b) a government department of this State, another State or the Commonwealth;
or
- (c) a statutory body representing the Crown in right of this State, another State or the Commonwealth,

and includes a person performing a function on behalf of the authority, department or body;

qualification period means the qualification period that applies under section 7;

qualified magistrate—see section 6A;

quashed—a conviction is quashed if—

- (a) the conviction is quashed or set aside; or
- (b) a finding of guilt, or a finding that a charge has been proved, is quashed or set aside;

recognised jurisdiction—if a law of another State or of the Commonwealth has been declared by the regulations to be a corresponding law, then that State or the Commonwealth (as the case requires) is a recognised jurisdiction;

security has the same meaning as in the *Australian Security Intelligence Organisation Act 1979* of the Commonwealth;

sex offence means an offence prescribed as a sex offence for the purposes of this definition;

spent, for a conviction—see section 4;

State includes Territory;

this jurisdiction means South Australia;

tribunal means a tribunal constituted by law;

work includes the following:

- (a) work—
 - (i) under a contract of employment or contract for services; or
 - (ii) in a leadership role in a religious institution or as part of the duties of a religious vocation; or
 - (iii) as an officer of a body corporate, member of the committee of management of an unincorporated body or association or member of a partnership; or
 - (iv) as a volunteer, other than unpaid work engaged in for a private or domestic purpose; or
 - (v) as a self-employed person;
- (b) practical training as part of a course of education or vocational training;
- (c) acting in a prescribed capacity or engaging in a prescribed activity.

(2) If—

- (a) a person is convicted by a court of a number of offences; and
- (b) the sentencing court imposes 1 penalty for some or all of the offences,

the penalty so imposed will be taken to apply in relation to each offence for the purpose of determining whether a particular offence is an eligible adult offence or an eligible juvenile offence under subsection (1).

- (3) In this Act, a reference to a sentence of imprisonment extends to—
 - (a) a period of detention under the *Young Offenders Act 1993*;
 - (b) a sentence of imprisonment or a period of detention that has been suspended (in whole or in part);
 - (c) a period of detention under section 23 of the *Criminal Law (Sentencing) Act 1988*.
- (4) In this Act, a reference to a conviction that is spent includes a reference to the charge to which the spent conviction related and any investigation or legal process associated with the offence or the conviction.
- (5) The following findings are treated as convictions for the purposes of this Act:
 - (a) a formal finding of guilt by a court;
 - (b) a finding by a court that an offence has been proved.
- (6) For the purposes of this Act, if an offence is taken into account for the purposes of sentencing for another offence or offences, it will be taken that there is a conviction for that offence (and that the conviction is capable of being spent).
- (7) The *mutual recognition principle* is as follows:
 - (a) a conviction for an offence against a law of a recognised jurisdiction that is spent under the corresponding law of that jurisdiction will be taken to be spent for the purposes of Part 3 and Part 4; and
 - (b) a conviction for an offence against a law of a recognised jurisdiction that is not spent (or has ceased to be spent) under the corresponding law of that jurisdiction will be taken not to be spent for the purposes of Part 3 and Part 4.
- (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*.

4—Meaning of spent conviction

- (1) For the purposes of this Act, the conviction of a person for an offence is *spent* if—
 - (a) the conviction is spent under Part 2; or
 - (b) the conviction is quashed; or
 - (c) the person is granted a pardon for the offence.
- (1a) In addition, if—
 - (a) a finding is treated as a conviction under section 3(5); but

(b) no conviction is recorded against the person,
then the finding, as constituting a conviction for the purposes of this Act, will be taken to be immediately spent.

(2) This section applies subject to the operation of section 6.

5—Scope of Act

(1) The following convictions (and no other convictions) are capable of becoming spent under this Act:

- (a) a conviction for an eligible adult offence;
- (b) a conviction for an eligible juvenile offence;
- (c) a conviction for a designated sex-related offence.

(2) However, the following convictions cannot become spent under this Act:

- (a) a conviction of a body corporate;
- (b) a conviction for a sex offence unless the offence is an eligible sex offence;
- (c) a conviction of a class prescribed by the regulations.

(3) A regulation made under subsection (2)(c) does not affect a conviction that has already become spent under this Act.

(4) 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) any process or 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 or on account of a spent conviction; or
- (d) the imposition or accumulation of demerit points; or
- (e) the exercise of any other enforcement power or the institution or undertaking of any other processes or proceedings by a justice agency.

(5) Nothing in this Act affects a claim (or any proceedings arising from a claim) for compensation (including statutory compensation) for injury, loss or damage caused by an offence.

(6) This section applies subject to the operation of section 6.

6—Application of Act

(1) This Act applies to convictions for offences against the laws of this State and convictions for offences against any other law.

(2) In the case of convictions for offences against the laws of a recognised jurisdiction, the mutual recognition principle applies.

-
- (3) In the case of convictions for offences against the laws of any other jurisdiction (including the laws of an overseas jurisdiction), this Act applies with the changes necessary to enable its provisions to apply to those convictions in a way that corresponds as closely as possible to the way in which it applies to convictions for offences against the laws of this jurisdiction.
 - (4) However, if an offence against the laws of another jurisdiction (including the laws of an overseas jurisdiction), other than a recognised jurisdiction, has no correspondence to an offence against a law of this jurisdiction, then the conviction of the person for the offence is immediately spent for the purposes of this Act.
 - (5) This Act applies to convictions for offences whether such convictions occurred before or after the commencement of this Act.

6A—Qualified magistrates

- (1) For the purposes of this Act, a *qualified magistrate* is a magistrate in relation to whom a consent is in force under subsection (2) and who has been approved by the Chief Magistrate to act as a qualified magistrate in accordance with subsection (3).
- (2) A magistrate may, by instrument in writing, consent to acting as a qualified magistrate under this Act.
- (3) The Chief Magistrate may, by instrument in writing, approve a magistrate in relation to whom a consent is in force under subsection (2) to act as a qualified magistrate under this Act.
- (4) A qualified magistrate has, in relation to the exercise of a function conferred on a qualified magistrate by this Act, the same protection, privileges and immunities as a magistrate has in relation to proceedings in the Magistrates Court of South Australia.
- (5) A magistrate who has given consent under subsection (2) may, by instrument in writing, revoke the consent.
- (6) An approval of a magistrate to act as a qualified magistrate under subsection (3) is revoked if—
 - (a) the qualified magistrate revokes his or her consent in accordance with subsection (5) or ceases to be a magistrate; or
 - (b) the Chief Magistrate determines that the magistrate should not continue to be a qualified magistrate.

Part 2—Requirements for a conviction to become spent

7—Determination of qualification period

- (1) Subject to this Act, the *qualification period* for the conviction of a person for an offence is—
 - (a) in the case of 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 relevant day for the conviction for the offence.

- (2) If during the qualification period for a conviction (the *first conviction*) the person is convicted of another offence (the *second conviction*), the time that has run as part of the qualification period for the first conviction is cancelled and the relevant day for the second conviction becomes a new relevant day for the first conviction (and a conviction for a third offence within the period that then applies will have a corresponding effect on the first and second convictions, and so on for any subsequent conviction or convictions).
- (3) In addition—
- (a) if at the end of a period that applies under subsection (1) or (2) the person is a registrable offender under the *Child Sex Offenders Registration Act 2006* who is subject to reporting obligations imposed by Part 3 of that Act, the qualification period is extended so as to expire when or if those reporting obligations cease or are suspended under that Part; and
 - (b) if during the period of extension that applies under paragraph (a) the person is convicted of another offence, the conviction has the same effect on any previous conviction that is subject to the period of extension that a second or subsequent conviction has on a previous conviction or convictions under subsection (2).
- (4) For the purposes of subsections (2) and (3)(b), a conviction for a second or subsequent offence will be disregarded if—
- (a) the offence is a minor offence (including in a case where the conviction with respect to the minor offence is constituted by a finding under section 3(5)); or
 - (b) the conviction is quashed; or
 - (c) the convicted person is granted a pardon.
- (5) A period under a preceding subsection may commence before the commencement of this Act and, in such a case, the qualification period will be completed—
- (a) on the commencement of this Act; or
 - (b) on the day on which the qualification period would have been completed if this Act had been in force continuously since the day of the relevant conviction,
- whichever is the later.
- (6) For the purposes of this section—
- (a) the *relevant day* for the conviction for an offence is the day on which the person is convicted; and
 - (b) a reference to a conviction for an offence does not extend to a conviction for an offence against a law of another jurisdiction (including the laws of an overseas jurisdiction), other than a recognised jurisdiction, that has no correspondence to an offence against a law of this jurisdiction.

8—Spent conviction—general provision

- (1) A conviction for an offence, other than a sex offence, is spent on completion of the qualification period for the conviction.
- (2) Subsection (1) operates subject to section 4(1a).

8A—Spent conviction for an eligible sex offence

- (1) A conviction for an eligible sex offence is spent if, on application by the convicted person in accordance with the regulations, a qualified magistrate makes an order that the conviction is spent.
- (2) An application for an order under this section in respect of a conviction—
 - (a) may not be made until the completion of the qualification period for the conviction; and
 - (b) may not be made if a qualified magistrate has refused to make an order under this section in respect of the same conviction within the preceding 2 years.
- (3) An application under this section may not be made in respect of a conviction for an offence against the laws of another jurisdiction.
- (4) Schedule 2 applies to an application under this section and to proceedings on an application.
- (5) The making of an order under this section is at the discretion of the qualified magistrate and (subject to subsection (6)) that discretion will be exercised having regard to—
 - (a) the nature, circumstances and seriousness of the offence; and
 - (b) if a victim impact statement was furnished to the sentencing court in connection with the sentencing of the applicant for the offence (and that statement is available to the qualified magistrate)—anything referred to in that statement; and
 - (c) any penalty imposed, and any other order or requirement made or imposed by a court, in relation to the offence; and
 - (d) the length of time since the conviction; and
 - (e) 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 and whether the applicant appears to have rehabilitated and to be of good character; and
 - (f) whether the spending of the conviction and the non-disclosure of the offence to other persons by operation of an order under this section might present a risk to the public (and, if so, the extent of that risk); and
 - (g) whether there is any other public interest served in not making the order; and
 - (h) any other matter considered relevant by the qualified magistrate.
- (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.

9—Subsequent conviction after conviction becomes spent

- (1) A conviction of a person for an offence (the *first offence*) that is spent is not revived by the subsequent conviction of the person for another offence (the *later offence*).
- (2) However, if—
 - (a) the later offence was committed during the qualification period for the first offence; and
 - (b) the later offence is an offence for which a conviction during the qualification period for the first offence would have resulted in the cancellation of the time that had already run as part of the qualification period under section 7(2) or (3)(b),

the first offence will cease to be treated as a spent conviction under this Act while the qualification period for the later offence is running.

Part 3—Effect of a conviction becoming spent

Division 1—General provisions

10—Ability to disregard spent convictions

If a conviction of a person is spent—

- (a) a question about the person's criminal history is taken not to refer to the spent conviction, but to refer only to any of the person's convictions that are not spent; and
- (b) the person is not required to disclose to any other person for any purpose information concerning the spent conviction; and
- (c) in the application to the person of an Act, statutory instrument, agreement or arrangement—
 - (i) a reference to a conviction, however expressed, is taken not to refer to the spent conviction; and
 - (ii) a reference to the person's character or fitness, however expressed, is not to be taken as allowing or requiring account to be taken of the spent conviction; and
- (d) the spent conviction, or the non-disclosure of the spent conviction, is not a proper ground for—
 - (i) refusing the person any appointment, post, status or privilege; or
 - (ii) revoking any appointment, status or privilege held by the person, or dismissing the person from any post.

11—Unlawful disclosures—public records

- (1) A person is guilty of an offence if—
 - (a) the person has access to records of convictions kept by or on behalf of a public authority; and

- (b) the person discloses information about a spent conviction that the person has gained on account of that access; and
- (c) the person knew, or ought reasonably have known, at the time of the disclosure, that the information was about a spent conviction.

Maximum penalty: \$10 000.

- (2) It is a defence to a charge for an offence against subsection (1) to prove—
 - (a) that the disclosure was made with the consent of the person whose conviction is spent; or
 - (b) that—
 - (i) the person who made the disclosure believed in good faith that the disclosure was within the ambit of an exclusion from the operation of this section under Schedule 1; and
 - (ii) the disclosure occurred in circumstances where steps had been taken to avoid any breach of subsection (1) by putting in place any systems or safeguards that might reasonably be expected to be provided.

12—Unlawful disclosures—business activities

- (1) A person is guilty of an offence if—
 - (a) the person, in the course of carrying on a business that includes or involves the provision of information about convictions for offences, discloses information about a spent conviction; and
 - (b) the person knew, or ought reasonably have known, at the time of the disclosure, that the information was about a spent conviction.

Maximum penalty: \$10 000.

- (2) It is a defence to a charge for an offence against subsection (1) to prove—
 - (a) that the disclosure forms part of the ongoing disclosure of the information in materials or in a manner that cannot be reasonably altered to remove information about the spent conviction; and
 - (b) that the disclosure of the information commenced before the conviction became a spent conviction.

Division 2—Exclusions

13—Exclusions

- (1) Schedule 1 sets out exclusions from the operation of Division 1.
- (2) The exclusions do not apply in relation to an offence if—
 - (a) the conviction has been quashed; or
 - (b) the person has been granted a pardon for the offence.
- (2a) Subsection (2) does not apply in relation to the operation of clause 9A of Schedule 1.
- (3) Subject to subsection (3a), the exclusions do not apply in relation to a conviction that is constituted by a finding that is to be treated as a conviction under section 3(5) and that is taken to be spent under section 4(1a).

- (3a) Subsection (3) does not apply in relation to the operation of clauses 1, 3, 4 and 9A of Schedule 1.
- (4) An exclusion under clause 6, 7 or 8 of Schedule 1 does not apply in relation to an offence committed by a particular person if a qualified magistrate has made an order to that effect under section 13A.
- (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.

13A—Exclusions may not apply

- (1) A person in relation to whom a conviction for an offence is spent may apply to a qualified magistrate for an order that 1 or more of clauses 6, 7 and 8 of Schedule 1 do not apply in relation to the offence.
- (2) An application under this section must be made in accordance with the regulations.
- (3) An application for an order under this section in relation to an offence may not be made if a qualified magistrate has refused to make an order under this section in relation to the same offence within the preceding 2 years.
- (4) An application under this section may not be made in respect of a conviction for an offence against the laws of another jurisdiction.
- (5) Schedule 2 applies to an application under this section and to proceedings on an application.
- (6) The making of an order under this section is at the discretion of the qualified magistrate and that discretion will be exercised having regard to—
 - (a) the nature, circumstances and seriousness of the offence; and
 - (b) in the case of an application that relates to clause 6 of Schedule 1—if the offence involved a child or children; and
 - (c) in the case of an application that relates to clause 7 of Schedule 1—if the offence involved a vulnerable person or persons; and
 - (d) if a victim impact statement was furnished to the sentencing court in connection with the sentencing of the applicant for the offence (and that statement is available to the qualified magistrate)—anything referred to in that statement; and
 - (e) any penalty imposed, and any other order or requirement made or imposed by a court, in relation to the offence; and
 - (f) 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 and whether the applicant appears to have rehabilitated and to be of good character; and
 - (g) whether the removal of the exclusion by operation of an order under this section might present a risk to children, vulnerable persons or the public more generally (and, if so, the extent of that risk); and
 - (h) whether there is any public interest served in not making the order; and
 - (i) any other matter considered relevant by the qualified magistrate.

- (7) An order under this section will have effect according to its terms.
- (8) An order under this section does not limit the operation of clause 9A of Schedule 1 in any respect.

Part 4—Miscellaneous

14—Improperly obtaining information about spent convictions

A person must not fraudulently or dishonestly obtain information about a spent conviction from records of convictions kept by or on behalf of a public authority.

Maximum penalty: \$10 000.

15—Prerogative of mercy not affected

This Act does not affect the exercise of the Royal prerogative of mercy.

16—Act does not authorise destruction of records

This Act does not authorise or require the destruction by or on behalf of a public authority of a record relating to a spent conviction, a quashed conviction or a pardon.

17—Regulations

- (1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.
- (2) The regulations may—
 - (a) be of general or limited application;
 - (b) vary according to the persons, times, places or circumstances to which they are expressed to apply.

Schedule 1—Exclusions

1—Justice agencies

- (1) Part 3 Division 1 does not apply to the performance of a function or the exercise of a power by—
 - (a) a justice agency; or
 - (b) a person who is acting as a member, officer, employee, agent or contractor of a justice agency.
- (2) Part 3 Division 1 does not apply if the disclosure is made, or to be made, to or is made by—
 - (a) a justice agency; or
 - (b) a person who is acting as a member, officer, employee, agent or contractor of a justice agency.
- (3) Part 3 Division 1 does not apply if a disclosure is made, or to be made, to or is made by a justice agency for the purposes of assessing—
 - (a) prospective employees or prospective members of the agency; or

- (b) persons proposed to be engaged as consultants to, or to perform services for, the agency or a member of the agency.

2—Commonwealth agencies

Part 3 Division 1 does not apply if a disclosure is made, or to be made, to or is made by—

- (a) an intelligence or security agency, for the purpose of assessing—
 - (i) prospective employees or prospective members of the agency; or
 - (ii) persons proposed to be engaged as consultants to, or to perform services for, the agency or a member of the agency; or
- (b) a Commonwealth authority, for the purpose of assessing appointees or prospective appointees to a designated Commonwealth position; or
- (c) a person who makes a decision under the *Migration Act 1958* of the Commonwealth, the *Australian Citizenship Act 2007* of the Commonwealth or the *Immigration Act 1980* of the Territory of Norfolk Island, for the purpose of making that decision; or
- (d) AUSTRAC, for the purpose of assessing—
 - (i) prospective members of the staff of AUSTRAC; or
 - (ii) persons proposed to be engaged as consultants under subsection 225(1) of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* of the Commonwealth; or
 - (iii) persons whose services are proposed to be made available to AUSTRAC under subsection 225(3) of that Act; or
- (e) a person or body, for the purpose of instituting or conducting proceedings for any offence.

3—Designated judicial authorities

- (1) Part 3 Division 1 does not apply in connection with proceedings before, or the making of any decision by, a designated judicial authority (including any proceedings associated with jury selection or service or otherwise with respect to the operation of a jury, a decision concerning sentencing, or a decision concerning the granting of bail).
- (2) However, a designated judicial authority before which evidence of a spent conviction is admitted must take such steps as are, in the opinion of the designated judicial entity, appropriate to avoid or minimise publication of the evidence.

4—Parole Board

Part 3 Division 1 does not apply in connection with proceedings before, or the making of any decision by, the Parole Board.

5—Judicial and associated officers

Part 3 Division 1 does not apply in relation to an assessment of the suitability of a person appointed, or being considered for appointment—

- (a) as a judge, magistrate or justice of the peace; or

-
- (b) as a member of a court or tribunal prescribed by the regulations for the purposes of this paragraph.

6—Care of children

- (1) Part 3 Division 1 does not apply in relation to—
- (a) any administrative, judicial or other inquiry into, or assessment of, the fitness of a person to have the guardianship or custody of a child, or access to a child; or
 - (b) any assessment of the fitness of a person undertaking, or seeking to undertake, (including without any fee or reward) work or any other activity that directly involves—
 - (i) the care, control, supervision or instruction of children; or
 - (ii) otherwise working in close proximity with children on a regular basis; or
 - (c) any assessment of the fitness of a person undertaking, or seeking to undertake, (including without any fee or reward) work or any other activity that directly involves acting as an advocate for children in legal proceedings; or
 - (d) without limiting a preceding paragraph, a disclosure required or permitted by or under another law (including a law of another jurisdiction (including a law of an overseas jurisdiction)) in relation to a person who works, or who is seeking to work, with children; or
 - (e) any—
 - (i) disciplinary or fitness inquiry or investigation; or
 - (ii) enforcement action or proceedings (including for the suspension or cancellation of a registration, licence, accreditation or other authorisation or authority),associated with a person within a preceding paragraph.
- (2) This clause extends to cases involving circumstances arising outside this jurisdiction.

7—Care of vulnerable people

- (1) Part 3 Division 1 does not apply in relation to—
- (a) any administrative, judicial or other inquiry into, or assessment of, the fitness of a person to have the guardianship of an aged person or persons with a disability (including an intellectual disability), illness or impairment; or
 - (b) any assessment of the fitness of a person undertaking, or seeking to undertake, (including without any fee or reward) work or any other activity that directly involves—
 - (i) the care of aged persons or persons with a disability (including an intellectual disability), illness or impairment in legal proceedings; or
 - (ii) otherwise working in close proximity with aged persons or persons with a disability (including an intellectual disability), illness or impairment; or

- (c) any assessment of the fitness of a person undertaking, or seeking to undertake, (including without any fee or reward) work or any other activity that directly involves acting as an advocate for aged persons or persons with a disability (including an intellectual disability), illness or impairment in legal proceedings; or
- (d) any—
 - (i) disciplinary or fitness inquiry or investigation; or
 - (ii) enforcement action or proceedings (including for the suspension or cancellation of a registration, licence, accreditation or other authorisation or authority),

associated with a person within a preceding paragraph.

- (2) This clause extends to cases involving circumstances arising outside this jurisdiction.

8—Activities associated with a character test

- (1) Part 3 Division 1 does not apply in relation to—

- (a) any assessment of whether a person who, pursuant to statute, has obtained, or is seeking, registration or enrolment, or a licence, accreditation or other authorisation or authority, in or in relation to an occupation, profession, position or activity, is a fit and proper person or a person of good character; or
- (b) any—
 - (i) disciplinary or fitness inquiry or investigation; or
 - (ii) enforcement action or proceedings (including for the suspension or cancellation of a registration, licence, accreditation or other authorisation or authority),

associated with a person within the preceding paragraph.

- (2) This clause extends to cases involving circumstances arising outside this jurisdiction.

9—Firefighting, police and correctional services

- (1) Part 3 Division 1 does not apply in relation to a disclosure to an authority concerned with the prevention or fighting of fires about a conviction that relates to the setting or lighting of a fire.
- (2) Part 3 Division 1 does not apply in relation to a person employed, or seeking employment, as a police officer.
- (3) Part 3 Division 1 does not apply in relation to a person employed in, or seeking employment in, an office or position involving duties connected with the punishment, probation or paroling of offenders.

9A—Screening units

- (1) Part 3 Division 1 does not apply—
 - (a) to the performance of a function or the exercise of a power by a prescribed screening unit in prescribed circumstances; or

- (b) in relation to an entity acting in prescribed circumstances on the basis of information furnished by a prescribed screening unit.
- (2) However, if a prescribed screening unit is in possession of information relating to—
- (a) a conviction that has been quashed, or in relation to which the person has been granted a pardon for the offence; or
 - (b) a conviction that is constituted by a finding that is to be treated as a conviction under section 3(5) and that is taken to be spent under section 4(1a); or
 - (c) a conviction for an offence in relation to which an order has been made under section 13A,

the exclusion constituted under subclause (1) will not apply unless the prescribed screening unit is satisfied that there are good reasons for the exclusion to have effect under this Act.

- (3) In acting under subclause (2)—
- (a) the prescribed screening unit must, when considering whether good reasons exist for the purposes of that subclause, give strong weight to the fact that the conviction or circumstances relate to—
 - (i) a conviction that no longer applies in relation to the person (in the case of a quashed conviction or pardon); or
 - (ii) circumstances that did not lead to an actual conviction (in the case of circumstances to which section 3(5) applies); or
 - (iii) circumstances where a qualified magistrate has been willing to make an order under section 13A,
 as the case may be; and
 - (b) if the prescribed screening unit decides that there are good reasons for the exclusion to have effect, the prescribed screening unit must provide reasons in accordance with the regulations.

- (4) In this clause—

prescribed screening unit means an entity (including an entity constituted under, or for the purposes of, a law of another jurisdiction) prescribed by the regulations for the purposes of this definition.

10—Official records

Part 3 Division 1 does not apply in relation to a disclosure or a disclosure of information where the disclosure is made, in the course of official duties, by a person who has custody of or access to an official record.

11—Archives and libraries

Part 3 Division 1 does not apply to an archive or library (or a person acting in the performance of a function of an archive or library) in accordance with the normal procedures of the archive or library.

12—Reports and authorised publications

Part 3 Division 1 does not apply in relation to a disclosure—

- (a) made in the ordinary course of the preparation, publication or use of a textbook, report, article or collection of material published for historical, educational, scientific or professional purposes, or in the ordinary course of any lecture, class or discussion given or held for any such purpose; or
- (b) made in connection with the preparation, publication or use of a genuine series of law reports on proceedings in courts or tribunals; or
- (c) made in connection with the preparation, publication or use of the official records of a court or tribunal.

13—Non-identifying information

Part 3 Division 1 does not apply if a disclosure does not contain any information that would tend to identify the convicted person.

14—Prescribed exclusions

The regulations may prescribe other exclusions from the operation of section 10, 11 or 12.

Schedule 2—Provisions relating to proceedings before a qualified magistrate

1—Interpretation

In this Schedule—

exemption order means an order under section 13A;

prescribed order means an exemption order or a spent convictions order;

spent conviction order means an order under section 8A.

2—Extent of application

- (1) An application for an exemption order may relate to more than 1 relevant clause under Schedule 1 and be made in relation to more than 1 offence.
- (2) An application for a spent conviction order may be made in relation to more than 1 conviction.
- (3) An application for an exemption order and an application for a spent conviction order made by the same person may be heard jointly.

3—Notice of application

- (1) The Attorney-General and the Commissioner of Police—
 - (a) must each be served with a copy of an application for a prescribed order; and
 - (b) may each intervene in the proceedings relating to an application for a prescribed order and, in so doing, be represented at a hearing of the application.

- (2) In addition, in the case of an application for an exemption order that relates to clause 6 or 7 of Schedule 1, the designated Minister—
- (a) must be served with a copy of the application; and
 - (b) may intervene in the proceedings relating to the application and, in so doing, be represented at a hearing of the application.

- (3) In this clause—

designated Minister means—

- (a) in relation to an application for an exemption order that relates to clause 6 of Schedule 1—the Minister for Children's Protection; and
- (b) in relation to an application for an exemption order that relates to clause 7 of Schedule 1—the Minister for Disabilities;

Minister for Children's Protection means the Minister who has portfolio responsibility for the office within the public service that is primarily concerned with the provision of criminal history assessments for the purposes of Part 2 Division 3 of the *Children's Protection Act 1993*;

Minister for Disabilities means the Minister who has portfolio responsibility for matters associated with the interests of persons with a disability.

4—Conduct of proceedings

- (1) An application for a prescribed order must be heard in private unless the applicant consents to the hearing being in public or the qualified magistrate considers that, in the circumstances of the case, the hearing should be in public.
- (2) If a hearing is held in private, the qualified magistrate may give directions as to who may be present.
- (3) If a hearing is held in public, the qualified magistrate may order that there must not be published by any means any particulars likely to lead to the identification of the applicant.

5—Principles governing hearings

- (1) In any proceedings for a prescribed order—
 - (a) the qualified magistrate is not bound by the rules of evidence but may inform himself or herself as the qualified magistrate thinks fit; and
 - (b) the qualified magistrate must act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms.
- (2) Without limiting subclause (1) and despite any other clause, but subject to subclause (3), a qualified magistrate may, if he or she thinks it appropriate, conduct all or part of any proceedings entirely on the basis of documents without the applicant or any representative attending or participating in a hearing.
- (3) Subclause (2) does not apply if the Attorney-General or another Minister, or the Commissioner of Police, has intervened in the proceedings.

- (4) A qualified magistrate may, if satisfied that an application for a prescribed order is vexatious, misconceived or lacking in substance, dismiss the application without holding a hearing.

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 this Act (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 Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
2009	72	<i>Spent Convictions Act 2009</i>	10.12.2009	13.2.2011 (<i>Gazette 10.2.2011 p459</i>)
2013	2	<i>Spent Convictions (Miscellaneous) Amendment Act 2013</i>	14.2.2013	5.5.2013 (<i>Gazette 2.5.2013 p1391</i>)
2013	11	<i>Statutes Amendment (Attorney-General's Portfolio) Act 2013</i>	18.4.2013	Pt 10 (s 23)—5.5.2013 immediately after 2/2013 (<i>Gazette 2.5.2013 p1391</i>)
2013	87	<i>Statutes Amendment (Assessment of Relevant History) Act 2013</i>	5.12.2013	Pt 4 (ss 10—12)—16.2.2014 (<i>Gazette 13.2.2014 p887</i>)
2013	88	<i>Spent Convictions (Decriminalised Offences) Amendment Act 2013</i>	5.12.2013	22.12.2013 (<i>Gazette 19.12.2013 p4927</i>)

Provisions amended

New entries appear in bold.

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

Provision	How varied	Commencement
Pt 1		
s 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	5.5.2013
s 3		
s 3(1)		
designated sex-related offence	inserted by 88/2013 s 4(1)	22.12.2013
eligible sex offence	inserted by 2/2013 s 4(1)	5.5.2013
	substituted by 88/2013 s 4(2)	22.12.2013
qualified magistrate	inserted by 2/2013 s 4(2)	5.5.2013
s 3(3)	amended by 2/2013 s 4(3)	5.5.2013
s 3(8)	inserted by 88/2013 s 4(3)	22.12.2013
s 4		

Spent Convictions Act 2009—16.2.2014 to 21.8.2017
Legislative history

s 4(1a)	inserted by 2/2013 s 5	5.5.2013
s 5		
s 5(1)	amended by 2/2013 s 6(1)	5.5.2013
	amended by 88/2013 s 5	22.12.2013
s 5(2)	amended by 2/2013 s 6(2)	5.5.2013
s 6A	inserted by 2/2013 s 7	5.5.2013
Pt 2		
s 7		
s 7(1)	amended by 2/2013 s 8	5.5.2013
s 8		
s 8(1)	s 8 amended and redesignated as s 8(1) by 2/2013 s 9(1), (2)	5.5.2013
s 8(2)	inserted by 2/2013 s 9(2)	5.5.2013
s 8A	inserted by 2/2013 s 10	5.5.2013
s 8A(5)	amended by 88/2013 s 6(1)	22.12.2013
s 8A(6)	inserted by 88/2013 s 6(2)	22.12.2013
Pt 3		
s 13		
s 13(2)	amended by 2/2013 s 11(1)	5.5.2013
s 13(2a)	inserted by 87/2013 s 10(1)	16.2.2014
s 13(3)	substituted by 2/2013 s 11(2)	5.5.2013
	amended by 11/2013 s 23(1)	5.5.2013
s 13(3a)	inserted by 11/2013 s 23(2)	5.5.2013
	amended by 87/2013 s 10(2)	16.2.2014
s 13(4)	inserted by 2/2013 s 11(2)	5.5.2013
s 13(5)	inserted by 88/2013 s 7	22.12.2013
s 13A	inserted by 2/2013 s 12	5.5.2013
s 13A(8)	inserted by 87/2013 s 11	16.2.2014
Sch 1		
cl 9A	inserted by 87/2013 s 12	16.2.2014
Sch 2	inserted by 2/2013 s 13	5.5.2013

Historical versions

5.5.2013

22.12.2013