

South Australia

Spent Convictions (Prescribed Exclusions) Variation Regulations 2019

under the *Spent Convictions Act 2009*

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Part 1—Preliminary

1—Short title

These regulations may be cited as the *Spent Convictions (Prescribed Exclusions) Variation Regulations 2019*.

2—Commencement

These regulations come into operation on the day on which Part 14 of the *Statutes Amendment (Attorney-General's Portfolio) (No 2) Act 2019* comes into operation.

3—Variation provisions

In these regulations, a provision under a heading referring to the variation of specified regulations varies the regulations so specified.

Part 2—Variation of *Spent Convictions Regulations 2011*

4—Insertion of regulation 5AA

After regulation 5A insert:

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).

5—Substitution of regulation 6

Regulation 6—delete the regulation and substitute:

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.

Note—

As required by section 10AA(2) of the *Subordinate Legislation Act 1978*, the Minister has certified that, in the Minister's opinion, it is necessary or appropriate that these regulations come into operation as set out in these regulations.

Made by the Governor

with the advice and consent of the Executive Council
on 31 October 2019

No 227 of 2019