

South Australia

# Spent Convictions (Decriminalised Offences) Variation Regulations 2021

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 (Decriminalised Offences) Variation Regulations 2021*.

### 2—Commencement

These regulations come into operation on the day on which the *Spent Convictions (Decriminalised Offences) Amendment Act 2020* 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—Variation of regulation 4—Declaration of corresponding laws (section 3 of Act)

- (1) Regulation 4—after "*Crimes Act 1914* of the Commonwealth" insert:

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

- (2) Regulation 4—after "*Criminal Records (Spent Convictions) Act 1992* of the Northern Territory" insert:

*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)

## **5—Insertion of regulation 4AA**

After regulation 4 insert:

### **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.

## **6—Variation of regulation 5A—Applications to qualified magistrates**

- (1) Regulation 5A(1)—after paragraph (a) insert:

- (ab) an application under section 8B of the Act; and
- (ac) an application under section 8C of the Act; and

- (2) Regulation 5A—after subregulation (2) insert:

- (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

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- (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.

**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 8 April 2021

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