

Criminal Records Act 1991 No 8

[1991-8]



New South Wales

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Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Does not include amendments by**
Criminal Records Amendment (Historical Homosexual Offences) Act 2014 No 69 (not commenced)

Authorisation

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Criminal Records Act 1991 No 8



New South Wales

An Act to limit the effect of a person's conviction for a relatively minor offence if the person completes a period of crime-free behaviour, and to make provision with respect to quashed convictions and pardons.

Part 1 Preliminary

1 Name of Act

This Act may be cited as the *Criminal Records Act 1991*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Objects of this Act

- (1) The primary object of this Act is to implement a scheme to limit the effect of a person's conviction for a relatively minor offence if the person completes a period of crime-free behaviour. On completion of the period, the conviction is to be regarded as spent and, subject to some exceptions, is not to form part of the person's criminal history.
- (2) The Act also provides for the effect of the quashing of a conviction and the pardoning of an offence.

4 Definitions

- (1) In this Act:

control order means an order made under section 33 (1) (g) of the *Children (Criminal Proceedings) Act 1987*.

conviction means a conviction, whether summary or on indictment, for an offence and includes a finding or order which, under section 5, is treated as a conviction for the purposes of this Act.

court includes a tribunal.

intervention program has the same meaning as in the *Criminal Procedure Act 1986*.

public authority means a public or local authority constituted by or under any Act, a government department or a statutory body representing the Crown, and includes a person exercising functions on behalf of the authority, department or body.

(2) In this Act, a reference to a spent conviction includes a reference to:

- (a) the charge to which the spent conviction relates, and
- (b) any action taken in respect of a breach of prison discipline committed during a period of imprisonment imposed in relation to the conviction.

(3) In this Act:

- (a) a reference to a function includes a reference to a power, authority and duty, and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

5 Findings and orders treated as convictions for the purposes of this Act

The following findings or orders of a court are treated as convictions for the purposes of this Act:

- (a) a finding that an offence has been proved, or that a person is guilty of an offence, without proceeding to a conviction,
- (b) a finding that an offence has been proved, or that a person is guilty of an offence, and the discharging of, or the making of an order releasing, the offender conditionally on entering into a recognizance to be of good behaviour for a specified period or on other conditions determined by the court,
- (c) in the case of the Children's Court, an order under section 33 of the *Children (Criminal Proceedings) Act 1987*, other than an order dismissing a charge.

6 Construction of certain provisions of this Act

- (1) In order that the provisions of this Act may apply to convictions for offences against laws other than New South Wales laws, references in this Act to offences, convictions and courts are taken to include references to offences, convictions and courts of places other than those of New South Wales which correspond (or which correspond as closely as possible) to the relevant New South Wales offences, convictions and courts.
- (2) In order that the provisions of this Act may apply to convictions imposed before the date of commencement of section 7, references in this Act to convictions are taken to include references to convictions so imposed.

Part 2 Spent convictions

7 Which convictions are capable of becoming spent?

- (1) All convictions are capable of becoming spent in accordance with this Act, except the following:
 - (a) convictions for which a prison sentence of more than 6 months has been imposed,
 - (b) convictions for sexual offences,
 - (c) convictions imposed against bodies corporate,
 - (d) convictions prescribed by the regulations.
- (2) A conviction may become spent in accordance with this Act whether it is a conviction for an offence against a law of New South Wales or a conviction for an offence against any other law.
- (3) A conviction may become spent in accordance with this Act whether it is a conviction imposed before, on or after the date of commencement of this section.
- (4) In this section:

prison sentence does not include a sentence the subject of an intensive correction order or the detaining of a person under a control order.

sexual offences means the following offences:

- (a) the offences under sections 61B–61F, 65A–66D, 66F, 73, 74, 78A, 78B, 78H, 78I, 78K, 78L, 78N, 78O, 78Q, 79, 80, 91A, 91B and 91D–91G of the *Crimes Act 1900*,
- (b) from the date of commencement of Schedule 1 (3) to the *Crimes (Amendment) Act 1989*, the offences under sections 61I–61P of the *Crimes Act 1900*,
- (c) from the date of commencement of Schedule 1 (6) to the *Crimes (Amendment) Act 1989*, the offence under section 80A of the *Crimes Act 1900*,
- (d) the offence under section 5 of the *Summary Offences Act 1988*,
- (e) an offence (such as an offence under section 37 (2) or 112 of the *Crimes Act 1900*) which includes the commission of, or an intention to commit, an offence referred to in paragraph (a), (b), (c) or (d),
- (f) an offence of attempting, or of conspiracy or incitement, to commit an offence referred to in paragraph (a), (b), (c), (d) or (e),
- (g) an offence committed:
 - (i) before the date of commencement of this section against a law of New South

Wales or a law of a place outside New South Wales, or

(ii) after the date of commencement of this section against a law of a place outside New South Wales,

which constituted or constitutes an offence of a similar nature to an offence referred to in paragraph (a), (b), (c), (d), (e) or (f),

(h) an offence prescribed by the regulations as a sexual offence for the purposes of this section.

8 When is a conviction spent?

(1) A conviction is spent on completion of the relevant crime-free period, except as provided by this section.

(2) A finding that an offence has been proved, or that a person is guilty of an offence, without proceeding to a conviction is spent immediately after the finding is made.

(3) An order of the Children's Court dismissing a charge and administering a caution is spent immediately after the caution is administered.

(4) A finding that an offence has been proved, or that a person is guilty of an offence, and:

(a) the discharging of, or the making of an order releasing, the offender conditionally on entering into a good behaviour bond for a specified period, on participating in an intervention program or on other conditions determined by the court, or

(b) the releasing of the offender on probation on such conditions as the court may determine, for such period of time as it thinks fit,

is spent on satisfactory completion of the period or satisfactory compliance with the program (including any intervention plan arising out of the program) or conditions, as the case may require.

(5) A conviction in respect of an offence of a kind which has ceased, by operation of law, to be an offence is spent immediately the offence ceased to be an offence, if the offence is prescribed by the regulations to be an offence to which this subsection applies.

(6) A conviction which is spent is not revived by a subsequent conviction.

(7) A reference in subsection (4) (a) (as substituted by the *Crimes Legislation Amendment (Criminal Justice Interventions) Act 2002*) to a good behaviour bond includes a reference to a recognizance to be of good behaviour made before the commencement of the *Crimes (Sentencing Procedure) Act 1999*.

9 What is the crime-free period for convictions of courts (other than the Children's Court)?

- (1) The crime-free period in the case of a conviction of a court (other than the Children's Court) is any period of not less than 10 consecutive years after the date of the person's conviction during which:
 - (a) the person has not been convicted of an offence punishable by imprisonment, and
 - (b) the person has not been in prison because of a conviction for any offence and has not been unlawfully at large.
- (2) The crime-free period may commence before the date of commencement of section 7.

10 What is the crime-free period for orders of the Children's Court?

- (1) The crime-free period in the case of an order of the Children's Court under section 33 of the *Children (Criminal Proceedings) Act 1987* (other than a finding or order referred to in section 8 (2) or (3) of this Act) in respect of a person is any period of not less than 3 consecutive years after the date of the order during which:
 - (a) the person has not been subject to a control order, and
 - (b) the person has not been convicted of an offence punishable by imprisonment, and
 - (c) the person has not been in prison because of a conviction for any offence and has not been unlawfully at large.
- (2) The crime-free period may commence before the date of commencement of section 7.

11 How are traffic offences to be dealt with?

- (1) In this section, **traffic offence** means an offence arising out of the use of a motor vehicle or trailer (within the meaning of the road transport legislation referred to in section 6 of the *Road Transport Act 2013*) and **non-traffic offence** means any other offence.
- (2) A conviction for a traffic offence and any period of imprisonment imposed as a consequence of such a conviction are to be disregarded in calculating the crime-free period for a conviction for a non-traffic offence. A conviction for a traffic offence is of relevance only in calculating the crime-free period for a conviction for an earlier traffic offence.
- (3) A conviction for a non-traffic offence and any period of imprisonment imposed as a consequence of such a conviction are to be disregarded in calculating the crime-free period for a conviction for a traffic offence. A conviction for a non-traffic offence is of relevance only in calculating the crime-free period for an earlier non-traffic offence.
- (4) Despite subsections (2) and (3), regard is to be had to a conviction for any of the following offences in calculating the crime-free period for any conviction (whether for

a traffic offence or a non-traffic offence). A conviction for any of the following offences is of relevance in determining the crime-free period for any earlier offence. The offences are:

- (a) culpable driving (section 52A of the *Crimes Act 1900* as in force immediately before the commencement of Schedule 1 to the *Crimes (Dangerous Driving Offences) Amendment Act 1994*),
 - (a1) dangerous driving occasioning death (section 52A (1) of the *Crimes Act 1900*),
 - (a2) aggravated dangerous driving occasioning death (section 52A (2) of the *Crimes Act 1900*),
 - (a3) dangerous driving occasioning grievous bodily harm (section 52A (3) of the *Crimes Act 1900*),
 - (a4) aggravated dangerous driving occasioning grievous bodily harm (section 52A (4) of the *Crimes Act 1900*),
- (b) injury by furious driving (section 53 of the *Crimes Act 1900*),
- (c) manslaughter (section 24 of the *Crimes Act 1900*) or causing grievous bodily harm (section 54 of the *Crimes Act 1900*) where, in either case, the offence arises out of the use of a motor vehicle or trailer (within the meaning of the road transport legislation referred to in section 6 of the *Road Transport Act 2013*).

Part 3 Consequences of a conviction becoming spent

Division 1 General

12 What are the consequences of a conviction becoming spent?

If a conviction of a person is spent:

- (a) the person is not required to disclose to any other person for any purpose information concerning the spent conviction, and
- (b) a question concerning the person's criminal history is taken to refer only to any convictions of the person which are not spent, and
- (c) in the application to the person of a provision of an Act or statutory instrument:
 - (i) a reference in the provision to a conviction is taken to be a reference only to any convictions of the person which are not spent, and
 - (ii) a reference in the provision to the person's character or fitness is not to be interpreted as permitting or requiring account to be taken of spent convictions.

13 Unlawful disclosure of information concerning spent convictions

- (1) A person who has access to records of convictions kept by or on behalf of a public authority and who, without lawful authority, discloses to any other person any information concerning a spent conviction is guilty of an offence.

Maximum penalty: 50 penalty units or imprisonment for 6 months, or both.

- (2) It is not an offence for the officer in charge of the Criminal Records Section of the NSW Police Force to make information relating to a spent conviction available to a law enforcement agency or to the holder of an office prescribed by the regulations.
- (3) It is not an offence for an archive or library (or an authorised officer of an archive or library) to make available to a member of the public, or to another archive or library, in accordance with the normal procedures of the archive or library, material that is normally available for public use and that contains information relating to a spent conviction.
- (4) It is not an offence for a law enforcement agency (or an authorised officer of a law enforcement agency) in the discharge of its duties (or of the authorised officer's duties) to make information relating to a spent conviction available to another law enforcement agency or to a court in compliance with an order of the court.
- (4A) It is not an offence for a person to make information relating to a spent conviction available in accordance with section 33, 34 or 40A of the *Child Protection (Working with Children) Act 2012*.
- (4B) It is not an offence for a public authority or other government agency that has a record of a spent conviction (or an authorised officer of the authority or agency) to make information about the conviction available to the person who was convicted.
- (5) In this section:

law enforcement agency means any of the following:

- (a) the NSW Police Force,
- (b) the Australian Federal Police,
- (c) the police force of another State or a Territory,
- (d) the Australian Crime Commission,
- (e) the Australian Bureau of Criminal Intelligence,
- (f) the National Exchange of Police Information,
- (g) the Independent Commission Against Corruption or a similar body established under the law of another legislature in Australia,

- (h) the New South Wales Crime Commission or a similar body established under the law of another legislature in Australia,
- (i) the Attorney General for the Commonwealth or for a State or Territory,
- (j) persons employed in the Attorney General's Department or a similar Department of the Commonwealth, another State or a Territory, or employed in a body administered by such a Department, being persons whose primary function is the institution or conduct of proceedings for offences,
- (k) the Office of the Director of Public Prosecutions or a similar body established under a law of another legislature in Australia,
- (l) the Director of Public Prosecutions, or a person performing a similar function, appointed under a law of another legislature in Australia,
- (m) a Crown Prosecutor,
- (n) an Australian legal practitioner to the extent to which the Australian legal practitioner is engaged by or on behalf of the Crown to prosecute an offence,
- (o) a person or body prescribed for the purpose of this definition by the regulations.

14 Improper obtaining of information concerning spent convictions

A person who, fraudulently or dishonestly, obtains or attempts to obtain information concerning a spent conviction from records of convictions kept by or on behalf of a public authority is guilty of an offence.

Maximum penalty: 50 penalty units or imprisonment for 6 months, or both.

Division 2 Exclusions

15 Employment in certain occupations

- (1) Section 12 does not apply in relation to an application by a person for appointment or employment as a judge, magistrate, justice of the peace, police officer, member of staff of Corrective Services NSW (within the meaning of the *Crimes (Administration of Sentences) Act 1999*), teacher or teachers aide.
- (1A) Section 12 does not apply in relation to an application by a person for a working with children check clearance under the *Child Protection (Working with Children) Act 2012*, or to the assessment of the holder of a clearance under that Act.
- (2) Section 12 does not apply in relation to a conviction of a person for arson or attempted arson if the person seeks to be appointed or employed in fire fighting or fire prevention.

16 Proceedings before courts

- (1) Section 12 does not apply to proceedings before a court (including the giving of evidence) or the making of a decision by a court (including a decision concerning sentencing).
- (2) However, a court before which evidence of a spent conviction is admitted must, in appropriate circumstances, take such steps as are reasonably available to it to prevent or minimise publication of that evidence.
- (3) This Act does not affect any of the following provisions:
 - section 15 of the *Children (Criminal Proceedings) Act 1987*
 - section 152 of the *Criminal Procedure Act 1986*
 - Part 3.8 (Character) of Chapter 3 and section 178 (Convictions, acquittals and other judicial proceedings) of the *Evidence Act 1995*.

17 Civic office

This Act does not affect section 274 or 275 of the *Local Government Act 1993*.

Part 4 Quashed convictions and pardons

18 When is a conviction taken to be quashed?

For the purposes of this Part:

- (a) a conviction is taken to be quashed if the conviction is quashed or set aside,
- (b) a finding that an offence has been proved, or that a person is guilty of an offence, without proceeding to a conviction is taken to be quashed if the finding is quashed or set aside (except where it is set aside in order to impose a penalty),
- (c) a finding that an offence has been proved, or that a person is guilty of an offence, and the discharging of, or the making of an order releasing, the offender conditionally on entering into a recognizance to be of good behaviour for a specified period or on other conditions determined by the court is taken to be quashed if the finding is quashed or set aside,
- (d) an order under section 33 of the *Children (Criminal Proceedings) Act 1987*, other than an order dismissing a charge, is taken to be quashed if the order is quashed or set aside.

19 What are the consequences of a conviction being quashed or of a pardon?

Division 1 of Part 3 applies to and in respect of a quashed conviction and a pardon (and the charge to which the quashed conviction or pardon relates) in the same way as it

applies to and in respect of a spent conviction.

Part 5 Miscellaneous

20 Act binds the Crown

This Act binds the Crown not only in right of New South Wales but also, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.

21 Act does not authorise contravention of other laws

Nothing in this Act authorises a person to disclose a conviction or to take a conviction into account if to do so would contravene any other law.

22 Act does not affect certain other lawful acts

Nothing in this Act affects anything lawfully done before a conviction is spent or quashed or a pardon is granted.

23 Destruction of records

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

24 Proceedings for offences

Proceedings for an offence against this Act or the regulations are to be dealt with summarily before the Local Court.

25 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) The regulations may provide that this Act or a specified provision of this Act does not affect another specified Act or a specified provision of another Act.
- (3) The regulations may provide that a provision of this Act does not apply in relation to:
 - (a) a specified conviction, finding or order, or a charge relating to the conviction, finding or order, or
 - (b) a specified person or class of persons, or
 - (c) specified circumstances,or any combination of them.
- (4) A regulation made for the purposes of section 7 (1) (d), paragraph (h) of the definition

of **sexual offences** in section 7 (4) or this section may provide that, despite this Act, a conviction is taken never to have been spent or never to be capable of becoming spent.