

Spent Convictions

Seminar to Legal Aid Criminal law Solicitors

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Spent convictions legislation applies only to those convictions where a bond was given or a sentence of less than six months. It does not apply to serious offenders or anyone who has been sentenced to imprisonment for more than 6 months. For a conviction to be spent they must be crime free and not in prison for 10 years as an adult or 3 years as a child.

New South Wales spent convictions are covered by the *Criminal Records Act 1991*, *Crimes Act 1900* s579, and specific provisions within some legislation.

Criminal Records Act 1991

A **conviction** under the Act includes offences where the matter did not proceed to a conviction but there was a finding that an offence had been proved or that the person was guilty of an offence (s5).

All convictions are capable of being spent, after the specified time of ten years for adults and three years for children, under s7(1) but there are **exceptions** including:

- (a) Where a **prison sentence of more than 6 months** (this does not include ICOs or a control order, s7(4)) and
- (b) **Sexual offences** (defined s7(4) to include indecent exposure s5 Summary offences Act and other offences).

A prison sentence is not defined in the Act except to exclude ICOs and control orders. It is not defined in the Crimes (Sentencing Procedure) Act or the Crimes Act.

A conviction is spent:

- (1) on the completion of the relevant crime free period, s8(1). The crime free period is:
 - (a) for **adults 10 years** after the date of conviction, s9, and
 - (b) for **children 3 years** after conviction under s33 and not been subject to a control order (also see restrictions in this section applicable to s8 *Children (Criminal Proceedings) Act 1987* and if the child sentenced in the District or Supreme Court after 10 years), s10,

where they have not been convicted of an offence punishable by imprisonment and not been to prison or been unlawfully at large.

- (2) If no conviction recorded, immediately, s8(2)
- (3) A Children's Court caution, immediately, s8(3)
- (4) On satisfactory completion of a condition if discharged without conviction on condition, s8(4)
- (5) Offence has ceased to be an offence, immediately, s8(5).

A conviction which is spent is **not revived** by a subsequent conviction, s8(6).

Weirdly, **Traffic offences** are dealt with separately and run parallel from other convictions, s11, and are defined within the section. The only point where there the traffic conviction counts against a non-traffic conviction being spent are those listed in s11(4), e.g. culpable driving.

The **consequences** of the conviction being spent is that it does not have to be disclosed, s12. However there are exclusions to the non-disclosure for:

- Certain occupations, s15, and
- Proceedings before the court, s16.

Quashed convictions are to be regarded as in the same way as spent convictions, in that they need not be disclosed, but the exceptions to the disclosure do not apply to quashed convictions, s19.

Current Law for old Recognizance

A recognizance was replaced by a bond in April 2000. Section 579 Crimes Act deals with spent convictions from a recognizance and slightly differently from the Criminal Records Act.

Where a person is sentenced to a recognizance and, after 15 years, they have not breach a condition of the recognizance and not been convicted of an indictable or any offence punishable by imprisonment the conviction is to be disregarded for all purposes whatsoever including criminal proceedings, s579(1) Crimes Act.

The person does not have to disclose the conviction in the course of legal proceedings BUT if asked in the proceedings about the conviction and denies it than the conviction can be admitted as evidence of character, credit or reputation or for perjury prosecution, s579(2).

Waiver of the Spent Conviction Provisions

By Regulation

The *Criminal Records Regulation 2004* waive the application of some of the sections in the *Criminal Records Act 1991*. For example:

- Regulation 12 waives convictions for a serious personal violence offences being excluded from bail proceedings under **s9D Bail Act 1978** (repeat offenders of serious personal violence).

- There is a waiver under the Regulation 12A in relation to *Crimes (Criminal Organisations Control) Act 2012*.
- The regulations waive the exclusion of spent convictions when applying for certain jobs such as the DPP, the ICAC and legal practitioner, Regulation 11.

By Other Legislation

Other legislation requires disclosure. A non-exhaustive list of some of that legislation is the following.

Waiver of the provisions apply to applications for licences for:

- security guards, casinos and TABs under the *Security Industry Act 1997*, s16 (convictions of prescribed offences in the last ten years and children's Court convictions see *Pearce v Commissioner of Police* [2000] NSWADT 99),
- the *Casino Control Act 1992*, s158, and
- the *Totalizator Act 1997*, s109.
- And in relation to weapons under the *Firearms Act 1996*, s11(5) and 29(3) for convictions of prescribed offences in the last ten years and
- *Weapons Prohibition Act 1998*, s9 applications for permits.
- The provisions are waived for drivers' certificates for tow truck drivers under the *Tow Truck Industry Act 1998*, s96.

Crimes Act 1914 (Cth)

The Commonwealth *Crimes Act 1914* s85ZV confirms the State provisions for spent convictions but waives the non-disclosure provisions for people who work with children to protect those children, s85ZZGA – s85ZZGG.

Children

Refer to the paper: *Children's Criminal Records and Convictions*, A Tang & L Brown, Children's Legal Service, Conference paper 2012

References

Crimes Act 1900, s579
Crimes Act 1914
Criminal Records Act 1991 & Criminal Records Regulation 2004
Children (Criminal Proceedings) Act 1987
Evidence Act 1995
Bail Act 1978
Casino Control Act 1992
Security Industry Act 1997
Firearms Act 1996
Totalizator Act 1997
Weapons Prohibition Act 1998
Crimes (Criminal Organisations Control) Act 2012