



GUIDANCE NOTICE

Spent Convictions

Spent Convictions and the National System for Domestic Commercial Vessels

In a number of circumstances when applying for a National System certificate the applicant is required to disclose previous Commonwealth, State and Territory convictions that are relevant for the purposes of deciding whether the applicant is suitable to hold the certificate that is being applied for.

The aim of spent convictions legislation is to prevent discrimination on the basis of certain previous convictions. Spent convictions legislation limits the use and disclosure of older, less serious convictions and findings of guilt.

What are spent convictions?

Part VIIC of the *Crimes Act 1914* (Cth) deals with aspects of the collection, use and disclosure of old conviction information. An element of this law is a “Spent Convictions Scheme”.

The aim of the Scheme is to prevent discrimination on the basis of certain previous convictions, once a waiting period (usually 10 years) has passed and provided the individual has not re-offended during this period. The Scheme also covers situations where an individual has had a conviction “quashed” or has been “pardoned”.

A “spent conviction” is a conviction of a Commonwealth, Territory, State or foreign offence that satisfies all of the following conditions:

- it is 10 years since the date of the conviction (or 5 years for juvenile offenders); AND
- the individual was not sentenced to imprisonment or was not sentenced to imprisonment for more than 30 months; AND
- the individual has not re-offended during the 10 years (5 years for juvenile offenders) waiting period; AND
- a statutory or prescribed exclusion does not apply.

The law affects Commonwealth authorities and therefore the National Regulator in the following ways:

- a person with a conviction protected by Part VIIC does not have to disclose that conviction to any person, including a Commonwealth authority, unless an exclusion applies;
- Commonwealth authorities are prohibited from accessing, disclosing or taking into account spent convictions of Commonwealth offences.

Statutory or prescribed exclusions

Part VIIC of the *Crimes Act 1914* and *Crimes Regulations 1990* provide for “statutory” or “regulatory” exclusions that will prevent certain Commonwealth convictions from being spent in certain circumstances. This Commonwealth legislation may be access at www.comlaw.gov.au.

Exclusions may also be provided for under State and Territory legislation in relation to State and Territory convictions.

Further information

Further information relating to the Commonwealth Spent Conviction Scheme and disclosure rights and obligations is available from the Office of the Australian Information Commissioner at www.oaic.gov.au.