

Comparative table – spent convictions scheme

ISSUE	CRIMINAL RECORDS ACT 1991 (NSW)	MODEL SPENT CONVICTIONS BILL
Long title	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.	An Act to limit the effect of a person's conviction for certain offences if the person completes a period of crime-free behavior, and for other purposes.
Short title	<i>Criminal Records Act 1991</i>	<i>Spent Convictions Act 2010</i>
Commencement	Section 2- Commencement Proclamation	Section 2- Commencement Proclamation
<i>conviction that is spent</i>	Section 4 – Definitions 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.	Section 3 - Preliminary In this Act, a reference to a conviction that is spent includes a reference to the charge to which the spent conviction related and any investigation or legal process associated with the offence or the conviction.
<i>corresponding law</i>	[Not defined]	Section 3 - Preliminary A law of another State or of the Commonwealth that is declared by the regulations to be a corresponding law for the purposes of this Act.
<i>court</i>	Section 4 - Definitions (1) - includes a tribunal [Not defined]	Section 3 - Preliminary [subject to local variations]
<i>designated Commonwealth position</i>	[Not defined]	Section 3 - Preliminary A position in a Commonwealth authority which the head of the authority has determined to be a designated security assessment position whose duties are likely to involve access to national security information classified as secret or top secret.
<i>designated judicial authority</i>	[Not defined]	Section 3 - Preliminary A court or tribunal including a military tribunal established under a law of the Commonwealth; or a judicial or quasi-judicial body brought within the ambit of this definition by the regulations
<i>eligible adult offence</i>	Section 7 – Which convictions are capable of becoming spent? (1)(a) – only allows for a conviction to be spent when the sentence is 6 months or less.	Section 3 - Preliminary Means an offence committed by an adult for which - (a) a sentence of imprisonment is not imposed; or (b) a sentence of imprisonment is imposed but the sentence is 12 months or less.
<i>eligible juvenile offence</i>	Distinguished in sections 9-10	Section 3 - Preliminary Means an offence committed while the defendant was a child where, on conviction of the defendant— (a) a sentence of imprisonment is not imposed; or (b) a sentence of imprisonment is imposed but the sentence is 24 months or less;

ISSUE	CRIMINAL RECORDS ACT 1991 (NSW)	MODEL SPENT CONVICTIONS BILL
intelligence or security agency	[Not defined]	<p>Section 3 - Preliminary</p> <p>Means—</p> <ul style="list-style-type: none"> (a) the Australian Security Intelligence Organisation; or (b) the Australian Secret Intelligence Service; or (c) the Office of National Assessments; or (d) that part of the Department of Defence known as the Defence Signals Directorate; or (e) that part of the Department of Defence known as the Defence Intelligence Organisation; or (f) that part of the Department of Defence known as the Defence Imagery and Geospatial Organisation; or (g) any other similar agency, office or part of a Commonwealth department that has a direct involvement in national intelligence or security activities. <p>[subject to local variations]</p>
justice agency	<p>Section 13 – Unlawful disclosure of information concerning spent convictions</p> <p>(5) In this section: law enforcement agency means any of the following:</p> <ul style="list-style-type: none"> (a) the Police Service, (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 	

ISSUE	CRIMINAL RECORDS ACT 1991 (NSW)	MODEL SPENT CONVICTIONS BILL
	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 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.	
<i>minor offence</i>	[Not defined].	<p>Section 3 - Preliminary</p> <p>Means an offence where, on conviction—</p> <p>(a) the defendant is discharged without penalty; or</p> <p>(b) the only penalty imposed on the defendant (disregarding any demerit points that may apply) is a fine not exceeding—</p> <p>(i) unless an amount applies under subparagraph (ii)—\$500; or</p> <p>(ii) an amount, greater than \$500, prescribed by the regulations for the purposes of this definition.</p> <p>Note: some jurisdictions may consider it necessary to include a definition of ‘demerit points’.</p>
<i>mutual recognition</i>	<p>Section 7 – Which convictions are capable of becoming spent?</p> <p>(2) A conviction may become spent whether against law of NSW or any other law.</p>	<p>Section 3 – Preliminary</p> <p>The <i>mutual recognition principle</i> is as follows:</p> <p>(a) a conviction for an offence against a law of a recognized jurisdiction that is spent under the corresponding law of that jurisdiction will be taken to be spent for the purposes of Part 3 and Part 4; and</p> <p>(b) a conviction for an offence against a law of a recognized jurisdiction that is not spent (or has ceased to be spent) under the corresponding law of that jurisdiction will be taken not to be spent for the purposes of Part 3 and Part 4.</p>
<i>national security information</i>	[Not defined].	<p>Section 3 - Preliminary</p> <p>Means information affecting the defence, security or international relations of Australia</p>
<i>official record</i>	[Not defined].	<p>Section 3 - Preliminary</p> <p>Means a record kept by a court, tribunal, police force or public authority</p>
<i>prescribed eligible offence</i>	[Not defined].	<p>Section 3 - Preliminary</p> <p>Means an eligible adult offence or an eligible juvenile offence that is a sex offence and that is brought within the ambit of this definition by the regulations.</p> <p>Note: this is only one of the options outlined in the Bill, and this</p>

Comparative table – spent convictions scheme

ISSUE	CRIMINAL RECORDS ACT 1991 (NSW)	MODEL SPENT CONVICTIONS BILL
<i>public authority</i>	<p>Section 4 - Definitions</p> <p>(1) 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.</p> <p>(3) In this Act</p> <p>(a) a reference to a function includes a reference to a power, authority and duty, and</p> <p>(b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.</p>	<p>definition will not be required if it is decided that sex offences cannot become spent under this Act.</p> <p>Section 3 - Preliminary</p> <p>Means—</p> <p>(a) a public or local authority constituted by or under an Act of this State, another State or the Commonwealth; or</p> <p>(b) a government department of this State, another State or the Commonwealth; or</p> <p>(c) a statutory body representing the Crown in right of this State, another State or the Commonwealth, and includes a person performing a function on behalf of the authority, department or body.</p> <p>Note: subject to local variations</p>
<i>qualification period</i>	[Not defined].	<p>Section 3 - Preliminary</p> <p>Means the qualification period that applies under section 7</p>

ISSUE	CRIMINAL RECORDS ACT 1991 (NSW)	MODEL SPENT CONVICTIONS BILL
<p>quashed</p>	<p>Section 18 – When is a conviction taken to be quashed?</p> <p>(a) a conviction is taken to be quashed if the conviction is quashed or set aside;</p> <p>(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);</p> <p>(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;</p> <p>(d) an order under section 33 of the <i>Children (Criminal Proceedings) Act 1987</i>, other than an order dismissing a charge, is taken to be quashed if the order is quashed or set aside.</p> <p>Section 19 – What are the consequences of a conviction being quashed or of a pardon?</p> <p>Division 1 of Part 3 (non-disclosure) 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.</p>	<p>Section 3 - Preliminary</p> <p>A conviction is quashed if—</p> <p>(a) the conviction is quashed or set aside; or</p> <p>(b) a finding of guilt, or a finding that a charge has been proved, is quashed or set aside;</p>

ISSUE	CRIMINAL RECORDS ACT 1991 (NSW)	MODEL SPENT CONVICTIONS BILL
recognised jurisdiction	[Not defined].	<p>Section 3 - Preliminary If a law of another State or of the Commonwealth has been declared to be a corresponding law, then that State or the Commonwealth (as the case requires) is a recognised jurisdiction.</p> <p>Section 3 - Preliminary Has the same meaning as in the <i>Australian Security Intelligence Organisation Act 1979</i> of the Commonwealth</p>
security	[Not defined].	<p>Section 3 - Preliminary A reference to a sentence of imprisonment includes— (a) a reference to a period of detention under the <i>Young Offenders Act 1993</i>; (b) a reference to a sentence of imprisonment or a period of detention that has been suspended (in whole or in part). Subject to Local Variations. Note: Subject to local variations</p>
sentence of imprisonment	<p>Section 7 – Which convictions are capable of becoming spent? (4) prison sentence does not include a sentence by way of periodic detention or the detaining of a person under a control order.</p>	<p>Section 3 - Preliminary Means an offence prescribed as a sex offence for the purposes of this definition</p>
sex offence	<p>Section 7 – Which convictions are capable of becoming spent? (4) "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 <i>Crimes Act 1900</i>; (b) from the date of commencement of Schedule 1 (3) to the <i>Crimes (Amendment) Act 1989</i>, the offences under sections 61I-61P of the <i>Crimes Act 1900</i>; (c) from the date of commencement of Schedule 1 (6) to the <i>Crimes (Amendment) Act 1989</i>, the offence under section 80A of the <i>Crimes Act 1900</i>; (d) the offence under section 5 of the <i>Summary Offences Act 1988</i>; (e) an offence (such as an offence under section 37 or 112 of the <i>Crimes Act 1900</i>) 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</p>	

ISSUE	CRIMINAL RECORDS ACT 1991 (NSW)	MODEL SPENT CONVICTIONS BILL
	(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.	
<i>spent</i>	For a conviction—see section 8.	Section 3 - Preliminary For a conviction—see section 4
<i>spent conviction order</i>	[Not defined].	Section 3 - Preliminary Means an order under section 9 Note: this definition is not required if it is decided that sex offences cannot become spent under this Act.
<i>State</i>	s21 <i>Interpretation Act 1987 (NSW)</i> - State means a State of the Commonwealth	Section 3 - Preliminary Includes Territory Section 3 - Preliminary For a conviction—see section 4
<i>this jurisdiction</i>	[see cl.5 below] Section 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 NSW laws, references in Act to offences, convictions and courts are taken to include references to offences, convictions and courts of places other than those of NSW which correspond (or which correspond as closely as possible) to the relevant NSW 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.	Section 3 - Preliminary Means a tribunal constituted by law. Section 4 – Meaning of spent conviction (1) For the purposes of this Act, the conviction of a person for an offence is spent if— (a) the conviction is spent under Part 2; or (b) the conviction is quashed; or (c) the person is granted a pardon for the offence.
<i>tribunal</i>	Incorporated into definition of Court.	Section 3 - Preliminary Means a tribunal constituted by law.
Meaning of spent conviction	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.	Section 4 – Meaning of spent conviction (1) For the purposes of this Act, the conviction of a person for an offence is spent if— (a) the conviction is spent under Part 2; or (b) the conviction is quashed; or (c) the person is granted a pardon for the offence.

ISSUE	CRIMINAL RECORDS ACT 1991 (NSW)	MODEL SPENT CONVICTIONS BILL
	<p>(3) An order of the Children’s Court dismissing a charge and administering a caution is spent immediately after the caution is administered.</p> <p>(4) A finding that an offence has been proved, or that a person is guilty of an offence, and:</p> <p>(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</p> <p>(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,</p> <p>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.</p> <p>(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.</p> <p>(6) A conviction which is spent is not revived by a subsequent conviction.</p> <p>(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.</p>	<p>(2) This section applies subject to the operation of section 6.</p>
<p>Scope of Act</p> <p>Section 7 – Which convictions are capable of becoming spent?</p> <p>(1) all convictions are capable of becoming spent except where:</p> <p>(a) greater than 6 months prison sentence imposed,</p> <p>(b) convictions for sexual offences;</p> <p>(c) convictions against bodies corporate and</p> <p>(d) convictions as prescribed by regs (none prescribed)</p>	<p>Section 5 – Scope of Act</p> <p>(1) The following convictions are capable of becoming spent under this Act:</p> <p>(a) a conviction for an eligible adult offence;</p> <p>(b) a conviction for an eligible juvenile offence.</p> <p>(2) However, the following convictions cannot become spent under this Act:</p> <p>(a) a conviction of a body corporate;</p> <p>(b) a conviction for a sex offence;</p>	

ISSUE	CRIMINAL RECORDS ACT 1991 (NSW)	MODEL SPENT CONVICTIONS BILL
	<p>– defines prison sentence (does not include periodic detention or control orders) and sexual offences (specifies provisions under Crime Act and Summary Offences Act).</p> <p>(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.</p> <p>(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.</p>	<p>Note: this paragraph is required if it is decided that a sex offence cannot become spent under this Act.</p> <p>(c) a conviction prescribed by the regulations.</p> <p>(3) A regulation made under subsection (2)(b) does not affect a conviction that has already become spent under this Act.</p> <p>(4) Nothing in this Act affects—</p> <p>(a) the enforcement of any process or proceedings relating to any fine or other sum imposed with respect to a spent conviction; or</p> <p>(b) any process or proceedings in respect of a breach of a condition or requirement applicable to a sentence imposed in respect of a spent conviction; or</p> <p>(c) the operation of any disqualification, disability or other prohibition imposed in respect of a spent conviction; or</p> <p>(d) the imposition or accumulation of demerit points; or</p> <p>(e) the exercise of any other enforcement power or the institution or undertaking of any other processes or proceedings by a Justice Agency.</p> <p>(5) Nothing in this Act affects a claim (or any proceedings arising from a claim) for compensation (including statutory compensation) for injury, loss or damage caused by an offence.</p> <p>(6) This section applies subject to the operation of section 6.</p> <p>Section 6 – Application of Act</p> <p>1) The Act applies to convictions for offences against the laws of this State and convictions for offences against any other law.</p> <p>(2) In the case of convictions for offences against the laws of a recognised jurisdiction, the mutual recognition principle applies.</p> <p>(3) In the case of convictions for offences against the laws of any other jurisdiction (including the laws of another country), this Act applies with the changes necessary to enable its provisions to apply to those convictions in a way that corresponds as closely as possible to the way in which it applies to convictions for offences against the laws of this jurisdiction.</p> <p>(4) However, if an offence against the laws of another jurisdiction (including the laws of an overseas jurisdiction), other than a recognised jurisdiction, has</p>
Application of Act	<p>See above – section 7</p> <p>See above – definition of ‘this jurisdiction’.</p>	

ISSUE	CRIMINAL RECORDS ACT 1991 (NSW)	MODEL SPENT CONVICTIONS BILL
<p>Determination of qualification period</p>	<p>Section 9 – What is the crime-free period for convictions of courts (other than the Children’s Court)?</p> <p>(1) Called crime-free period - any period of not less than 10 consecutive years after the date of the person’s conviction during which:</p> <p>(a) the person has not been convicted of an offence punishable by imprisonment, and</p> <p>(b) the person has not been in prison because of a conviction for any offence and has not been unlawfully at large.</p> <p>Section 10 - What is the crime-free period for orders of the Children’s Court?</p> <p>(1) Crime-free period for children’s court orders – order under <i>Children (Criminal Proceedings) Act 1987</i> - any period of not less than 3 consecutive years after the date of the person’s conviction during which: person not subject to a control order the person has not been convicted of an offence punishable by imprisonment, and the person has not been in prison because of a conviction for any offence</p>	<p>no correspondence to an offence against a law of this jurisdiction, then the conviction of the person for the offence is immediately spent for the purposes of this Act.</p> <p>Note: A jurisdiction may wish to vest a court with a specific power to be able to declare, on application, whether a law of another jurisdiction corresponds to a law of the jurisdiction.</p> <p>(5) This Act applies to convictions for offences whether such convictions occurred before or after the commencement of this Act.</p> <p>Note: For jurisdictions where spent conviction legislation has been in operation, transitional provisions will be required. It is proposed that offences that have already been spent will continue to be spent (no matter whether or not they would be capable of being spent under this Act), and that offences committed before the commencement of this Act that 15 were capable of being spent under existing legislation will also be capable of becoming spent under this Act—see Schedule 3.</p> <p>Section 7 – Determination of qualification period</p> <p>(1) The qualification period for the conviction of a person for an offence is—</p> <p>(a) in the case of an eligible juvenile offence, other than where the person was dealt with as an adult—5 consecutive years; or</p> <p>(b) in any other case—10 consecutive years, from the relevant day for the conviction for the offence.</p> <p>(2) If during the qualification period for a conviction (the first conviction) the person is convicted of another offence (the second conviction), the time that person is convicted of another offence (the second conviction), the time that has run as part of the qualification period for the first conviction is cancelled and the relevant day for the second conviction becomes a new relevant day and the relevant day for the second conviction becomes a new relevant day for the first conviction (and a conviction for a third offence within the period that then applies will have a corresponding effect on the first and second convictions, and so on for any subsequent conviction or convictions).</p> <p>(3) In addition—</p> <p>(a) if at the end of a period that applies under subsection (1) or (2) the person is a registrable offender under the Child Sex Offenders Registration Act 2006 who is subject to reporting obligations imposed by Part 3 of that Act, the qualification period is extended so as to expire when or if those reporting obligations cease or are suspended under that Part; and</p>

Comparative table – spent convictions scheme

ISSUE	CRIMINAL RECORDS ACT 1991 (NSW)	MODEL SPENT CONVICTIONS BILL
	and has not been unlawfully at large.	<p>(b) if during the period of extension that applies under paragraph (a) the person is convicted of another offence, the conviction has the same effect on any previous conviction that is subject to the period of extension that a second or subsequent conviction has on a previous conviction or convictions under subsection (2).</p> <p>(4) For the purposes of subsections (2) and (3)(b), a conviction for a second or subsequent offence will be disregarded if— (a) the offence is a minor offence (including in a case where the conviction with respect to the minor offence is constituted by a finding under section 3(5)); or (b) the conviction is quashed; or (c) the convicted person is granted a pardon.</p> <p>(5) A period under a preceding subsection may commence before the commencement of this Act and, in such a case, the qualification period will be completed— (a) on the commencement of this Act; or (b) on the day on which the qualification period would have been completed if this Act had been in force continuously since the day of the relevant conviction, whichever is the later.</p> <p>(6) For the purposes of this section— (a) the relevant day for the conviction for an offence is the day on which the person is convicted; and (b) a reference to a conviction for an offence does not extend to a conviction for an offence against a law of another jurisdiction (including the laws of an overseas jurisdiction), other than a recognised jurisdiction, that has no correspondence to an offence against a law of this jurisdiction.</p>
Spent conviction general provision	Section 8 – When is a conviction spent (1) – a conviction is spent on completion of relevant crime-free period.	Section 8 – Spent conviction – general provision A conviction for an offence, other than a prescribed eligible offence, is spent on completion of the qualification period for conviction. Note: the reference to a prescribed eligible offence should be deleted if it is decided that a sex offence cannot become spent under This Act.
Spent conviction for a prescribed eligible offence	Strict exclusion of sexual offences from Spent Convictions scheme – definition in section 7 lists provisions of Crimes Act creating sexual offences. Section 17 of the <i>Criminal Records Regulation 2004</i> also lists a number of prescribed sexual offences for the purposes of section 7.	Section 9 – Spent Conviction for a prescribed eligible offence Note: This section should be deleted if it is decided that a sex offence cannot become spent under this Act. (1) A conviction for a prescribed eligible offence is spent if, on application to the Court by the convicted person, the Court makes an order that the

ISSUE	CRIMINAL RECORDS ACT 1991 (NSW)	MODEL SPENT CONVICTIONS BILL
Subsequent conviction after conviction becomes spent	<p>Section 8 – When is a conviction spent (6) – a spent conviction is not revived by a subsequent conviction.</p>	<p>conviction is spent.</p> <p>(2) An application for an order under this section in respect of a conviction— (a) may not be made until the completion of the qualification period for the conviction; and (b) may not be made if the Court has refused to make an order under this section in respect of the same conviction within the preceding 2 years.</p> <p>(3) An application under this section may not be made in respect of a conviction for an offence against the laws of another jurisdiction.</p> <p>(4) Schedule 1 applies to an application under this section and to proceedings on an application.</p> <p>(5) The making of an order under this section is at the discretion of the Court and that discretion will be exercised having regard to— (a) the nature, circumstances and seriousness of the offence; (b) the length and kind of sentence imposed in respect of the conviction; (c) the length of time since the conviction; (d) all the circumstances of the applicant, including the circumstances of the applicant at the time of the commission of the offence and at the time of the application and whether the applicant appears to have rehabilitated and to be of good character; (e) whether the conviction prevents or may prevent the applicant from engaging in a particular profession, trade or business or in a particular employment; (f) whether there is any public interest to be served in not making an order.</p> <p>Section 10 – Subsequent conviction after conviction becomes spent (1) A conviction of a person for an offence (the first offence) that is spent is not revived by the subsequent conviction of the person for another offence (the later offence).</p> <p>(2) However, if— (a) the later offence was committed during the qualification period for the first offence; and (b) the later offence is an offence for which a conviction during the qualification period for the first offence would have resulted in the cancellation of the time that had already run as part of the qualification period under section 7(2) or (3)(b), the first offence will cease to be treated as a</p>

ISSUE	CRIMINAL RECORDS ACT 1991 (NSW)	MODEL SPENT CONVICTIONS BILL
<p>Person not required to disclose spent conviction</p>	<p>Section 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.</p>	<p>spent conviction under this Act while the qualification period for the later offence is running.</p> <p>Section 11 – Ability to disregard spent convictions If a conviction of a person is spent— (a) a question about the person's criminal history is taken not to refer to the spent conviction, but to refer only to any of the person's convictions that are not spent; and (b) the person is not required to disclose to any other person for any purpose information concerning the spent conviction; and (c) in the application to the person of an Act, statutory instrument, agreement or arrangement— (i) a reference to a conviction, however expressed, is taken not to refer to the spent conviction; and (ii) a reference to the person's character or fitness, however expressed, is not to be taken as allowing or requiring account to be taken of the spent conviction; and (d) the spent conviction, or the non-disclosure of the spent conviction, is not a proper ground for— (i) refusing the person any appointment, post, status or privilege; or (ii) revoking any appointment, status or privilege held by the person, or dismissing the person from any post.</p>
<p>Unlawful disclosures –</p>	<p>Section 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. Max penalty: 50 PU, six months imprisonment or both.</p>	<p>Section 12 – Unlawful disclosures—public records (1) A person is guilty of an offence if— (a) the person has access to records of convictions kept by or on behalf of a public authority; and (b) the person discloses information about a spent conviction; and (c) the person knew, or ought reasonably have known, at the time of the disclosure, that the information was about a spent conviction. Maximum penalty: \$10 000.</p> <p>(2) It is a defence to a charge for an offence against subsection (1) to prove— (a) that the disclosure was made with the consent of the person whose conviction is spent; or (b) that— (i) the person who made the disclosure believed in good faith that the disclosure was within the ambit of an exclusion from the operation of this section under Schedule 2; and (ii) the disclosure occurred in circumstances where steps had been taken to</p>

ISSUE	CRIMINAL RECORDS ACT 1991 (NSW)	MODEL SPENT CONVICTIONS BILL
		<p>avoid any breach of subsection (1) by putting in place any systems or safeguards that might reasonably be expected to be provided.</p> <p>Note: An alternative enforcement mechanism might be adopted— for example, a complaint to a Privacy Commissioner or other authority.</p> <p>Section 13 – Unlawful disclosures – business activities</p> <p>(1) A person is guilty of an offence if—</p> <p>(a) the person, in the course of carrying on a business that includes or involves the provision of information about convictions for offences, discloses information about a spent conviction; and</p> <p>(b) the person knew, or ought reasonably have known, at the time of the disclosure, that the information was about a spent conviction.</p> <p>Maximum penalty: \$10 000.</p> <p>(2) It is a defence to a charge for an offence against subsection (1) to prove—</p> <p>(a) that the disclosure forms part of the ongoing disclosure of the information in materials or in a manner that cannot be reasonably altered to remove information about the spent conviction; and</p> <p>(b) that the disclosure of the information commenced before the conviction became a spent conviction.</p> <p>Schedule 2, Section 1 – Justice agencies</p> <p>(1) Sections 11, 12 and 13 (non-disclosure) do not apply to the performance of a function or the exercise of a power by—</p> <p>(a) a Justice Agency; or</p> <p>(b) a person who is acting as a member, officer, employee, agent or contractor of a Justice Agency.</p> <p>(2) Section 11, 12 and 13 (non-disclosure) do not apply if the disclosure is made, or to be made to—</p> <p>(a) a Justice Agency; or</p> <p>(b) a person who is acting as a member, officer, employee, agent or contractor of a Justice Agency.</p> <p>(3) Part 3 Division 1 does not apply if a disclosure is made, or to be made, to or is made by a justice agency for the purposes of assessing—</p> <p>(a) prospective employees or prospective members of the agency; or</p>
<p>Exclusions</p> <p>Justice agencies</p>	<p>Section 13 – Unlawful disclosure of information concerning spent convictions</p> <p>(2) Exception - Criminal Records Unit of the Police Service to a Law Enforcement Agency or as prescribed by regulations.</p> <p>(3) Exception – an archive or library can make available to the public or any other archive or library, in accordance with normal procedures, material that is normally available for public use and that contains information relating to a spent conviction.</p> <p>(4) Exception – A Law Enforcement Agency can make information available in the discharge of their duties to another to Law Enforcement Agency or to a court in compliance with an order of the court.</p>	

Comparative table – spent convictions scheme

ISSUE	CRIMINAL RECORDS ACT 1991 (NSW)	MODEL SPENT CONVICTIONS BILL
	<p>Law Enforcement Agency is defined in s13(5): means any of the following: Police Service, AFP, the police force of another State or a Territory, ACC, the ABCI, NEPI, ICAC or a similar body in Australia, NSW Crime Commission, Cth/state/territory AG, Cth/state/territory AGD being persons whose primary function is the institution or conduct of proceedings for offences, ODPP, DPP, Crown Prosecutor, legal practitioners to the extent to which s/he is engaged by or on behalf of the Crown to prosecute and as prescribed by regulations.</p> <p>Section 18 of the Regulation lists bodies that are prescribed as law enforcement agencies.</p> <p>Sections 6 – 12A of the <i>Criminal Records Regulation 2004</i> lists additional exemptions.</p> <p>Sections 13 – 16 go the <i>Criminal Records Regulation 2004</i> allows certain disclosures.</p>	<p>(b) persons proposed to be engaged as consultants to, or to perform services for, the agency or a member of the agency.</p> <p>Note: subclause (1) or (2) may be varied by a local jurisdiction to provide that the exclusion only applies 15 for specified purposes, or in relation to specified classes of offences.</p>
<p>Specific Commonwealth agencies</p>		<p>Schedule 2, Section 2 – Commonwealth agencies</p> <p>Sections 11, 12 and 13 (non-disclosure) do not apply if a disclosure is made, or to be made to—</p> <p>(a) an intelligence or security agency, for the purpose of assessing—</p> <p>(i) prospective employees or prospective members of the agency; or</p> <p>(ii) persons proposed to be engaged as consultants to, or to perform services for, the agency or a member of the agency;</p> <p>(b) a Commonwealth authority, for the purpose of assessing appointees or prospective appointees to a designated Commonwealth position; or</p> <p>(c) a person who makes a decision under the <i>Migration Act 1958</i> of them Commonwealth, the <i>Australian Citizenship Act 2007</i> of the Commonwealth or the <i>Immigration Act 1980</i> of the Territory of Norfolk Island, for the purpose of making that decision; or</p> <p>(d) AUSTRAC, for the purpose of assessing—</p> <p>(i) prospective members of the staff of AUSTRAC; or</p> <p>(ii) persons proposed to be engaged as consultants under subsection 225(1) of the <i>Anti-Money Laundering and Counter-Terrorism Financing Act 2006</i> of the Commonwealth; or</p> <p>(iii) persons whose services are proposed to be made available to AUSTRAC</p>

ISSUE	CRIMINAL RECORDS ACT 1991 (NSW)	MODEL SPENT CONVICTIONS BILL
<p><i>Designated judicial entities</i></p>	<p>Section 16 – Proceedings before courts</p> <p>(1) Section 12 (non-disclosure) 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).</p> <p>(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.</p> <p>(3) This Act does not affect any of the following provisions:</p> <ul style="list-style-type: none"> • section 15 of the <i>Children (Criminal Proceedings) Act 1987</i> • section 152 of the <i>Criminal Procedure Act 1986</i> • Part 3.8 (Character) of Chapter 3 and section 178 (Convictions, acquittals and other judicial proceedings) of the <i>Evidence Act 1995</i>. 	<p>Schedule 2, Section 3 – Designated judicial authorities</p> <p>Sections 11, 12 and 13 (non-disclosure) do not apply in connection with proceedings before, or the making of any decision by, a designated judicial authority (including any proceedings associated with jury selection or service or otherwise with respect to the operation of a jury, a decision concerning sentencing, or a decision concerning the granting of bail).</p> <p>(2) However, a designated judicial authority before which evidence of a spent conviction is admitted must take such steps as are, in the opinion of the designated judicial entity, appropriate to avoid or minimise publication of the evidence.</p>
<p><i>Parole Board</i></p>	<p>Schedule 2, Section 4 – Parole Board</p> <p>Sections 11, 12 and 13 (non-disclosure) do not apply in connection with proceedings before, or the making of any decision by, the Parole Board (subject to local variations).</p> <p>Note: Local variations may be necessary to include bodies that can authorise the release of juvenile offenders.</p>	<p>Schedule 2, Section 5 – Judicial and associated officers</p> <p>Sections 11, 12 and 13 (non-disclosure) do not apply in relation to an assessment of the suitability of a person appointed, or being considered for appointment—</p> <p>(a) as a judge, magistrate or justice of the peace; or</p> <p>(b) as a member of a court or tribunal prescribed by the regulations for the purposes of this paragraph.</p> <p>Schedule 2, Section 6 – Care of children</p> <p>(1) Sections 11, 12 and 13 (non-disclosure) do not apply in relation to—</p>
<p><i>Judicial and associated officers</i></p>	<p>Section 15 – Employment in certain occupations</p> <p>(1) Section 12 (non-disclosure) does not apply to an application by a person for appointment or employment as a judge, magistrate, justice of the peace, police officer, prison officer, teacher, teachers aide or a provider of child care services under Part 3 of the <i>Children (Care and Protection) Act 1987</i></p>	<p>Section 15 – Employment in certain occupations</p> <p>(1A) Section 12 (non-disclosure) does not apply in relation</p>
<p><i>Care, employment, and other activities</i></p>	<p>Section 15 – Employment in certain occupations</p> <p>(1A) Section 12 (non-disclosure) does not apply in relation</p>	<p>Section 15 – Employment in certain occupations</p> <p>(1) Sections 11, 12 and 13 (non-disclosure) do not apply in relation to—</p>

ISSUE	CRIMINAL RECORDS ACT 1991 (NSW)	MODEL SPENT CONVICTIONS BILL
	<p>to an application by a person for Employment in child-related employment within the meaning of Part 7 of the <i>Commission for Children and Young People Act 1998</i></p>	<p>(a) any administrative, judicial or other inquiry into, or assessment of, the fitness of a person to have the guardianship or custody of a child, or access to a child; or</p> <p>(b) any assessment of the fitness of a person undertaking, or seeking to undertake, (including without any fee or reward) work or any other activity that directly involves—</p> <p>(i) the care, control, supervision or instruction of children; or</p> <p>(ii) otherwise working in close proximity with children on a regular basis; or</p> <p>(c) any assessment of the fitness of a person undertaking, or seeking to undertake, (including without any fee or reward) work or any other activity that directly involves acting as an advocate for children in legal proceedings; or</p> <p>(d) without limiting a preceding paragraph, a disclosure required or permitted by or under another law (including a law of another jurisdiction (including a law of an overseas jurisdiction)) in relation to a person who works, or who is seeking to work, with children; or</p> <p>(e) any—</p> <p>(i) disciplinary or fitness inquiry or investigation; or</p> <p>(ii) enforcement action or proceedings (including for the suspension or cancellation of a registration, licence, accreditation or other authorisation or authority), associated with a person within a preceding paragraph.</p> <p>Note: This subclause may be subject to local variations. For example, a reference to the "fitness" of a person may be inconsistent with the language used in some jurisdictions. A jurisdiction may also decide that it should limit the application of the provision to specified purposes or specified classes of offences.</p> <p>(2) This clause extends to cases involving circumstances arising outside this jurisdiction.</p> <p>Schedule 2, section 7 – Care of vulnerable people</p> <p>(1) Part 3 Division 1 does not apply in relation to—</p> <p>(a) any administrative, judicial or other inquiry into, or assessment of, the fitness of a person to have the guardianship of an aged person or persons with a disability (including an intellectual disability), illness or impairment; or</p> <p>(b) any assessment of the fitness of a person undertaking, or seeking to undertake, (including without any fee or reward) work or any other activity that directly involves—</p>

ISSUE	CRIMINAL RECORDS ACT 1991 (NSW)	MODEL SPENT CONVICTIONS BILL
		<p>(i) the care of aged persons or persons with a disability (including an intellectual disability), illness or impairment in legal proceedings; or</p> <p>(ii) otherwise working in close proximity with aged persons or persons with a disability (including an intellectual disability), illness or impairment; or</p> <p>(c) any assessment of the fitness of a person undertaking, or seeking to undertake, (including without any fee or reward) work or any other activity that directly involves acting as an advocate for aged persons or persons with a disability (including an intellectual disability), illness or impairment in legal proceedings; or</p> <p>(d) any—</p> <p>(i) disciplinary or fitness inquiry or investigation; or</p> <p>(ii) enforcement action or proceedings (including for the suspension or cancellation of a registration, licence, accreditation or other authorisation or authority), associated with a person within a preceding paragraph.</p> <p>Note: This subclause may also be subject to local variations along the lines set out in clause 6.</p> <p>(2) This clause extends to cases involving circumstances arising outside this jurisdiction.</p> <p>Schedule 2, section 8—Activities associated with a character test</p> <p>(1) Part 3 Division 1 does not apply in relation to—</p> <p>(a) any assessment of whether a person who, pursuant to statute, has obtained, or is seeking, registration or enrolment, or a licence, accreditation or other authorisation or authority, in or in relation to an occupation, profession, position or activity, is a fit and proper person or a person of good character; or</p> <p>Note: A jurisdiction may limit the operation of this paragraph to specified occupations, professions etc and to specified classes of offences.</p> <p>(b) any—</p> <p>(i) disciplinary or fitness inquiry or investigation; or</p> <p>(ii) enforcement action or proceedings (including for the suspension or cancellation of a registration, licence, accreditation or other authorisation or authority), associated with a person within the preceding paragraph.</p> <p>Note: This subclause may be subject to local variations along the lines set out in clause 6.</p> <p>(2) This clause extends to cases involving circumstances arising outside this</p>

ISSUE	CRIMINAL RECORDS ACT 1991 (NSW)	MODEL SPENT CONVICTIONS BILL
<i>Firefighting, police and correctional services</i>	<p>Section 15 – Employment in certain occupations</p> <p>(2) Section 12 (non-disclosure) does not apply to an application by a person for appointment or employment in fire fighting or fire prevention where the conviction of a person is for arson or attempted arson.</p>	<p>jurisdiction.</p> <p>Schedule 2, section 9 – Firefighting, police and correctional services</p> <p>(1) Part 3 Division 1 does not apply in relation to a disclosure to an authority concerned with the prevention or fighting of fires about a conviction that relates to the setting or lighting of a fire.</p> <p>(2) Part 3 Division 1 does not apply in relation to a person employed, or seeking employment, as a police officer.</p> <p>(3) Part 3 Division 1 does not apply in relation to a person employed in, or seeking employment in, an office or position involving duties connected with the punishment, probation or paroling of offenders.</p>
<i>Official records</i>		<p>Schedule 2, section 10 – Official records</p> <p>(1) Non-disclosure does not apply relation to a disclosure or a disclosure of information where the disclosure is made, in the course of official duties, by a person who has custody of or access to an official record.</p>
<i>Archives and library</i>	<p>Section 13 – Unlawful disclosure of information concerning spent convictions</p> <p>(3) Exception - 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.</p>	<p>Schedule 2, section 11 – Archives and libraries</p> <p>(1) Non-disclosure does not apply relation to an archive or library (or a person acting in the performance of a function of an archive or library) in accordance with the normal procedures of the archive or library.</p>
<i>Reports and authorised publications</i>		<p>Schedule 2, section 12 – Reports and authorized publications</p> <p>Non-disclosure does not apply in relation to a disclosure</p> <p>(a) made in the ordinary course of the preparation, publication or use of a textbook, report, article or collection of material published for historical, educational, scientific or professional purposes, or in the ordinary course of any lecture, class or discussion given or held for any such purpose; or</p> <p>(b) made in connection with the preparation, publication or use of a genuine series of law reports on proceedings in courts or tribunals; or</p> <p>(c) made in connection with the preparation, publication or use of the official records of a court or tribunal.</p>
<i>Non-identifying information</i>		<p>Schedule 2, section 13 – Non identifying information</p> <p>Non-disclosure does not apply if a disclosure does not contain any information that would tend to identify the convicted person.</p>

Comparative table – spent convictions scheme

ISSUE	CRIMINAL RECORDS ACT 1991 (NSW)	MODEL SPENT CONVICTIONS BILL
<i>Prescribed exclusions</i>	<p>Section 25 – Regulations</p> <p>(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.</p> <p>(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.</p> <p>(3) The regulations may provide that a provision of this Act does not apply in relation to:</p> <p>(a) a specified conviction, finding or order, or a charge relating to the conviction, finding or order, or</p> <p>(b) a specified person or class of persons, or</p> <p>(c) specified circumstances, or any combination of them.</p> <p>(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.</p>	<p>Schedule 2, section 14 – Prescribed exclusions</p> <p>The regulations may prescribe other exclusions from the operation of sections 11, 12 and 13 (non-disclosure).</p>
Improperly obtaining information about spent convictions	<p>Section 14 - Improper obtaining of information concerning spent convictions</p> <p>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.</p> <p>Maximum penalty: 50 PU or 6 months imprisonment, or both.</p>	<p>Section 15 – Improperly obtaining information about spent convictions</p> <p>A person must not fraudulently or dishonestly obtain information about a spent conviction from records of convictions kept by or on behalf of a public authority.</p> <p>Maximum penalty: \$10 000.</p>
Prerogative of mercy not affected	<p>Section 23 – Destruction of records</p> <p>This Act does not authorise the destruction by or on behalf of a public authority of a record relating to a SC, a quashed conviction or a pardon.</p>	<p>Section 16 – Prerogative of mercy not affected</p> <p>The Act does not affect the Royal prerogative of mercy.</p> <p>Section 17 – Act does not authorize destruction of records</p> <p>The 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.</p>

ISSUE	CRIMINAL RECORDS ACT 1991 (NSW)	MODEL SPENT CONVICTIONS BILL
Regulations	See above – Section 25 – Regulations	<p>Section 18 - Regulations</p> <p>(1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act:</p> <p>(2) The regulations may—</p> <p>(a) be of general or limited application;</p> <p>(b) vary according to the persons, times, places or circumstances to which they are expressed to apply.</p>
Application for spent conviction order		<p>Schedule 1, section 1 – Application may relate to more than 1 conviction</p> <p>An application for a spent conviction order may be made in respect of more than 1 conviction.</p>
Notice of application		<p>Schedule 1, section 2 – Notice of Application</p> <p>(1) The Attorney-General and the Commissioner of Police must each be served with an application for a spent convictions order.</p> <p>(2) The Attorney-General or the Commissioner of Police (or both of them) may intervene in an application for a spent conviction order and, in so doing, may be represented at the hearing of the application.</p>
Conduct of proceedings		<p>Schedule 1, section 3 – Conduct of proceedings</p> <p>(1) An application for a spent conviction order must be heard in private unless the applicant consents to the hearing being in public or the Court considers that, in the circumstances of the case, the hearing should be in public.</p> <p>(2) If a hearing is held in private, the Court may give directions as to who may be present.</p> <p>(3) If a hearing is held in public, the Court may order that there must not be published any means any particulars likely to lead to the identification of the applicant.</p>
Principles governing hearings	<p>Section 24 – Proceedings for offences</p> <p>Proceedings for an offence against this Act or the regulations are to be dealt with summarily before the Local Court.</p>	<p>Schedule 1, section 4 – Principles governing hearings</p> <p>(1) In any proceedings for a spent conviction order—</p> <p>(a) the Court is not bound by the rules of evidence but may inform itself as it thinks fit; and</p> <p>(b) the Court must act according to equity, good conscience and the</p>

Comparative table – spent convictions scheme

ISSUE	CRIMINAL RECORDS ACT 1991 (NSW)	MODEL SPENT CONVICTIONS BILL
		<p>substantial merits of the case without regard to technicalities and legal forms.</p> <p>(2) The Court may, if satisfied that an application for a spent conviction order is vexatious, misconceived or lacking in substance, dismiss the application without holding a hearing.</p>