



Tonga

REHABILITATION OF OFFENDERS ACT 2013

Act 27 of 2013



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REHABILITATION OF OFFENDERS ACT 2013

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AN ACT TO ESTABLISH A SCHEME WHEREBY CERTAIN ELIGIBLE PERSONS MAY IN PRESCRIBED CIRCUMSTANCES BE ENTITLED TO TREAT PREVIOUS CONVICTIONS AS SPENT AND WHEREBY GOVERNMENT ORGANISATIONS SHALL LIKEWISE TREAT SUCH CONVICTIONS AS NON-DISCLOSABLE, AND FOR RELATED PURPOSES

I assent,

TUPOU VI,

26th February 2014.

BE IT ENACTED by the King and Legislative Assembly of Tonga in the Legislature of the Kingdom as follows:

1 Short title

This Act may be cited as the Rehabilitation of Offenders Act 2013.

2 Purpose of the Act

This Act establishes a scheme to allow eligible people who have been convicted of an offence to obtain a certificate that the conviction has expired and that for most purposes they officially have a police record clear of that conviction:

Provided that this scheme only applies –

- (a) with respect to convictions that receive a non-custodial sentence or a penalty of no more than 2 years imprisonment, as set out in section 5; and
- (b) after the person has served a rehabilitation period of 4 or 7 years without any more convictions, as set out in section 6.

3 Rehabilitation of offenders

- (1) An eligible person may after the rehabilitation period apply for a spent conviction certificate.
- (2) The effect of a spent conviction certificate is specified in sections 4 and 9.
- (3) An eligible person is defined in section 5.
- (4) The rehabilitation period is defined in section 6.

4 Effect of spent conviction certificate

- (1) The effect of a spent conviction certificate for the relevant person in respect of the offence specified in the certificate is, subject to section 10 –
 - (a) the person is deemed to have no criminal record for the purposes of any question asked about his criminal record;
 - (b) the person may answer a question asked about his criminal record by stating that he has no criminal record; and
 - (c) the person has the right to have his criminal record withheld by government departments and law enforcement agencies that hold or have access to his criminal record.
- (2) This section applies to –
 - (a) every question asked about, and every request made for the disclosure of, an eligible person's criminal record or information about an eligible person's criminal record; and
 - (b) all sentences whether imposed before or after the commencement of this Act.

5 Eligible persons

A person is eligible to apply for and receive a spent conviction certificate if —

- (a) he has completed the prescribed rehabilitation period since the date on which a sentence was last imposed, as a result of a conviction for the relevant offence;

- (b) he has not been convicted of any offence, in Tonga or elsewhere, during the prescribed rehabilitation period;
- (c) he has not been convicted of any offence of indecency in relation to a child;
- (d) no custodial sentence for any period in excess of two years has ever been imposed on him, in Tonga or elsewhere;
- (e) in the case of a court having imposed a sentence of a fine or reparation on the person, the amount owing has been paid in full or has been deemed to have been remitted; and
- (f) in the case of a court having ordered the person to pay costs or compensation, the amount owing has been paid in full or has been deemed to have been remitted.

6 Rehabilitation period

- (1) The rehabilitation period is –
 - (a) in respect of a conviction for which the penalty was a non-custodial sentence, any period of not less than 4 consecutive years after the date on which the person was last sentenced, during which period he has not been convicted of an offence; and
 - (b) in respect of a conviction for which the penalty was a custodial sentence, any period of not less than 7 consecutive years after the date on which the person was last sentenced, during which period he has not been convicted of an offence.
- (2) A negligible offence specified in section 8 shall not count as a conviction during the rehabilitation period.

7 Convictions

- (1) In this Act the following are to be regarded as sentences of 2 years or more –
 - (a) a sentence of 2 years or more imprisonment even if the sentence is suspended in whole or in part and whether or not conditional on certain events happening;
 - (b) a sentence of 2 years or more imprisonment regardless of whether the offender actually spends 2 years, or any, time in prison.
- (2) Sentences for terms which are wholly or partly concurrent (being terms of imprisonment or detention imposed in respect of offences of which a person was convicted in the same proceedings) shall be treated as a single term.
- (3) A person who is sentenced to payment of a fine or compensation, and goes to prison for non-payment of the fine or compensation remains eligible and the sentence remains a non-custodial sentence, for the purposes of this Act.
- (4) A probation order is not a custodial sentence for the purposes of this Act.

- (5) A discharge without conviction is not a conviction for the purposes of this Act.

8 Negligible offences

A conviction for an offence specified in Schedule 1, and in respect of which the penalty has been paid in full or has been deemed to have been remitted shall for the purposes of this Act alone –

- (a) be treated as a spent conviction in all respects as if a spent conviction certificate has been issued for it;
- (b) not be considered a conviction for the purposes of sections 5(b) and 6(1).

9 Effect of rehabilitation of offenders scheme on government departments and law enforcement agencies

A government department or law enforcement agency, or an employee or contractor of a government department or law enforcement agency, that holds or has access to criminal records and that is responding to a request for the disclosure of a person's criminal record or any information about a person's criminal record shall not disclose any criminal record in respect of which a spent conviction certificate has been issued.

10 Exceptions to general effect of rehabilitation of offenders scheme

- (1) A person shall state that he has a criminal conviction if subsection (3) applies.
- (2) A government department or law enforcement agency, or an employee or contractor of a government department or law enforcement agency, that holds or has access to criminal records shall disclose the criminal conviction or information about the criminal conviction of a person if subsection (3) applies.
- (3) This subsection applies if —
- (a) the person's criminal record or information about his criminal record is necessary for any of the following purposes –
- (i) the exercise of the prevention, detection, investigation, or prosecution functions of a law enforcement agency or an overseas agency or body whose functions correspond to those of a law enforcement agency;
- (ii) the administration of sentences or the management of remand inmates by a law enforcement agency; or
- (iii) the exercise of security-related functions of the police or defence authorities;

- (b) the person's criminal record or information about his criminal record is relevant to any criminal or civil proceedings before a court or tribunal (including sentencing) or a decision for the early release of a prisoner;
- (c) the person has made an application of any kind under the Arms and Ammunition Act and Tonga Police or the Minister of Police is considering whether the individual is a fit and proper person for the purposes of that application;
- (d) the person has made an application for employment —
 - (i) in a position that involves His Majesty's Armed Forces or the national security of Tonga;
 - (ii) as a Judge, Magistrate or Justice of the Peace;
 - (iii) as a Police employee, prison officer or probation officer; or
 - (iv) for such other position as may be specified in regulations made under section 11(5);
- (e) the person has made an application to act in a role predominantly involving the care and protection of, but not predominantly involving the delivery of education to, a child or young person (for example, a foster parent or a caregiver of children or young persons); or
- (f) the person's criminal record or information about his criminal record is relevant to an investigation relating to ill-treatment or neglect of a child or the custody, access to or care of a child.

11 Procedure relating to spent conviction certificate

- (1) A person who claims to be entitled to receive a spent conviction certificate shall apply therefor to the Ministry of Police in Form 1 of Schedule 2 to this Act.
- (2) The Ministry of Police shall establish procedures to receive such applications, investigate them and make a recommendation to the Minister of Police.
- (3) If the Minister of Police is satisfied that a spent conviction certificate should be issued under this Act, he shall, with the consent of Cabinet, sign and issue a certificate in Form 2 of Schedule 2.
- (4) If the Minister of Police is not satisfied that a spent conviction certificate should be issued under this Act, he shall, with the consent of Cabinet, advise the applicant in writing and give reasons for his decision.
- (5) The Minister of Police may, with the consent of Cabinet, make regulations specifying the information and fees required to accompany an application for a spent conviction certificate and for such other matters as may be necessary or convenient, and such regulations may amend the Forms in Schedule 2.

- (6) The Minister of Police shall cause a copy of every spent conviction certificate to be forwarded to the Commissioner of Police and every other agency in Tonga that may have responsibility for maintaining records of convictions.

Passed by the Legislative Assembly this 16th day of October 2013.

SCHEDULE 1
NEGLIGIBLE OFFENCES

(Section 8)

All offences under any Act or subordinate legislation for which –

- (a) the maximum penalty is a fine not exceeding \$500 and there is no provision for a term of imprisonment; and
- (b) the fine has been paid in full or has been deemed to have been remitted.

SCHEDULE 2

FORM 1 – APPLICATION FOR SPENT CONVICTION CERTIFICATE



This is an application under section 11 of the Rehabilitation of Offenders Act 2013 for a spent conviction certificate.

Table with 10 rows for applicant information: Full name, other names, date and place of birth, National Identity Card number, current address, other addresses, offence, date of conviction, court, and sentence.

I, (here insert full name)the applicant for a spent conviction certificate make oath and swear as follows –

- 1. I have not since the date of the conviction specified above been convicted in any court, in Tonga or elsewhere, of an offence;
2. I have not made an application for employment for a position that involves His Majesty's Armed Forces, Police, National Security, prison officer, probation officer, care and protection of a child or young person or judicial officer.
3. The information in this application is true and correct, so help me God.

Applicant's Signature

Sworn before me (name and title of Judge, Magistrate, Commissioner for Oaths or Justice of the Peace)..... at on the...day of..... 20...

Witness signature

1 Negligible offences defined in section 8 of the Act (maximum penalty a fine of \$500) may be ignored

FORM 2 – SPENT CONVICTION CERTIFICATE



This is a Spent Conviction Certificate under section 11 of the Rehabilitation of Offenders Act 2013.

This certificate is issued to(the offender)

And relates to his conviction for the offence of.....(*the specified offence*)
on..... when the sentence was

WHEREAS the offender named above has satisfied me that –

- the specified offence is one that may be treated as spent under the Act;
- the offender has not since then been convicted of any relevant offence (in Tonga or elsewhere),

NOW THEREFORE take note that from the date this certificate is issued, the Rehabilitation of Offenders Act 2013 applies to the specified conviction so that, subject to the exceptions set out in section 10 of the Act –

In accordance with section 4 of the Rehabilitation of Offenders Act 2013, with respect to the specified offence –

- (a) the offender is deemed to have no criminal record for the purposes of any question asked about his criminal record;
- (b) the offender may answer a question asked about his criminal record by stating that he has no criminal record; and
- (c) the offender has the right, subject to section 10, to have his criminal record withheld by government departments and law enforcement agencies that hold or have access to his criminal record.

AND in accordance with section 9 of the Rehabilitation of Offenders Act 2013 –

A government department or law enforcement agency, or an employee or contractor of a government department or law enforcement agency, that holds or has access to criminal records and that is responding to a request for the disclosure of the offender’s criminal record or any information about the person’s criminal record shall not disclose any criminal record in respect of which this spent conviction certificate has been issued.

.....
Minister of Police
(date).....