

# Expungement and non-disclosure obligations under the Criminal Code Amendment (Age of Criminal Responsibility) Act 2022

## What does the Criminal Code Amendment (Age of Criminal Responsibility) Act 2022 (the Act) do?

The Act raises the age that a person can be found criminal responsible for activities that are against the law from 10 to 12 years of age.

When the Act commences the following will also occur:

1. a person's criminal history from when they were under the age of 12 years will be automatically expunged; and
2. it will be an offence to disclose information of a criminal record for offences committed when a person was under the age of 12 years.

## What does expungement mean?

The Act states that a person's criminal record related to offences committed when they were under 12 years of age will be automatically expunged.

Expunged means 'to be treated in law as if the person had never committed or been charged with, prosecuted for, convicted of or sentenced for the offence'.

In summary the expungement provision does the following:

- imposes a legal obligation on Courts, NT Police and the DPP to ensure that all criminal records related to an offence committed when a person was under the age of 12 years of age are expunged;
- ensures that a court cannot take into account prior criminal histories for a person who is under the age of 12 years old at the time of the offending behaviour; and
- a person is not legally required to disclose information when applying for jobs, making loan applications, applying for a visa about their criminal history, time in custody, suspicion of, and offence to anyone if it occurred when the person was under the age of 12 years of age.

## What does non-disclosure mean?

Only Courts, DPP, and NT Police have a duty to expunge criminal records. All other entities must adhere to the non-disclosure provisions and must ensure they do not disclose information about a charge or conviction that is expunged under the Act.

The duty of non-disclosure also applies to non-government organisations, including private companies, community legal centres, media outlets, and sole legal practitioners.

The non-disclosure provisions mean that it is an offence for anyone to disclose information about a criminal record expunged under the Act.

## What is a criminal record?

Expungement and non-disclosure requirements relate to the criminal history or antecedents of a person. This includes primary materials relating to an offence such as, a criminal history, summons documents, police diversion records, sentencing orders and other indictments.

Secondary records related to the charge such as custody records, statement of police facts, forensic mental health reports prepared for an offence against a court, are not required to be expunged, however, will be subject to non-disclosure requirements.

Whether a record is subject to non-disclosure obligations will depend on the purpose and content of the document. For example, where the primary purpose of the existence of the document is in relation to a criminal charge or proceeding but pertains to other matters such as a person's health or education, then consideration should be given as to whether the document should be disclosed or not.

The intention of the legislation is to allow for free disclosure of health information, education documents and information related to the welfare of a child. It will be for each individual agency to determine policies and procedures to ensure compliance with the non-disclosure obligations under the Act.

## What are the obligations for government and non-government organisations?

Agencies are internally responsible for developing information and training materials to educate staff on the new legislative changes and compliance requirements. Policies and training will need to be developed before commencement of the legislation in August 2023 to ensure compliance with the provisions.

All agencies will need to:

- Ensure that guidelines and policies are developed to educate employees and service providers of their obligations under the legislation;
- Identify any records that might be subject to the non-disclosure requirements and mark these records to identify that they are subject to non-disclosure requirements, and that it is an offence to disclose this material;
- Provide regular training and reminders to staff about non-disclosure obligations; and
- Update ICT systems and logins to provide reminders or warnings about non-disclosure requirements upon login for users.

## Why are these changes being made?

The changes recognise that a person is not criminally responsible for offending behaviour committed before the age of 12 years and should not be affected by a criminal record of this type later in life; for example, when applying for jobs, making loan applications, or applying for a visa.

The amendments to the Act were informed by recommendations from the Royal Commission into the Protection and Detention of Children in the Northern Territory, and research that shows that the earlier a child comes into contact with the justice system, the more prolonged their involvement is likely to be.

The provisions are part of the new laws, which come into effect in the second half of 2023, are part of the Territory Labor Government's plan to break the cycle of youth crime through prevention, intervention, and diversion. This means children aged 11-years-old or younger will not be criminally responsible for their behaviour, and will instead be referred to intervention and family support programs.

## Where can I go if I need further information?

If you have further questions about the expungement or non-disclosure provisions please contact:

### **Legal Policy**

Location: Level 7, Old Admiralty Towers, 68 The Esplanade, Darwin NT 0800

Postal Address: GPO Box 1722, Darwin NT 0801

Ph: (08) 8935 7668

Fax: (08) 8935 7662

Email: [Policy.AGD@nt.gov.au](mailto:Policy.AGD@nt.gov.au)