



Tuvalu

REHABILITATION OF OFFENDERS ACT

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Tuvalu

REHABILITATION OF OFFENDERS ACT

AN ACT TO REHABILITATE OFFENDERS WHO HAVE NOT BEEN RECONVICTED OF ANY SERIOUS OFFENCE FOR PERIODS OF YEARS, TO PENALISE THE UNAUTHORISED DISCLOSURE OF THEIR PREVIOUS CONVICTIONS, TO AMEND THE LAWS OF DEFAMATION, AND FOR PURPOSES CONNECTED THEREWITH¹

Commencement [1 January 1992]

1 Citation

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

2 Rehabilitated persons and spent convictions

- (1) Subject to subsection (2), where an individual has been convicted, whether before or after the commencement of this Act, of any offence or offences, and if:
 - (a) the sentence imposed on him for that conviction was not one excluded from rehabilitation under this Act (“an excluded sentence”); and
 - (b) during the rehabilitation period relating to that first conviction he has not had imposed on him an excluded sentence for a subsequent conviction,

then, after the end of the rehabilitation period applicable (including, where appropriate, any extension under section 5(1) of the period) or, where that rehabilitation period ended before the commencement of this Act, after the commencement of this Act, that individual shall for the purposes of this Act be treated as a rehabilitated person in respect of the first conviction and that conviction shall for those purposes be treated as spent.

- (2) A person shall not become a rehabilitated person for the purposes of this Act in respect of a conviction unless he has served or otherwise undergone or complied with any sentence imposed on him in respect of that conviction; but a person shall not be prevented from becoming a rehabilitated person due to:
- (a) failure to pay a fine or other sum adjudged to be paid by or imposed on a conviction, or breach of a condition of a recognizance or security to keep the peace or be of good behaviour;
 - (b) breach of any condition or requirement applicable in relation to a sentence which renders the person to whom it applies liable to be dealt with for the offence for which the sentence was imposed, or, where the sentence was a suspended sentence of imprisonment, liable to be dealt with in respect of that sentence (whether or not, in any case, he is in fact so dealt with);
 - (c) failure to comply with any requirement of a suspended sentence order.

3 Effect of rehabilitation

- (1) Subject to sections 6 and 7 below, a person who has become a rehabilitated person for the purposes of this Act in respect of a conviction shall be treated for all purposes in law as a person who has not committed, or been charged with, or prosecuted for, or convicted of, or sentenced for the offence or offences which were the subject of that conviction; and, notwithstanding the provisions of any other enactment or rule of law to the contrary, but subject as aforesaid —
- (a) no evidence shall be admissible in any proceedings before a judicial authority exercising its jurisdiction or functions in Tuvalu to prove that any such person has committed, or been charged with, or prosecuted for, or convicted of, or sentenced for any offence which was the subject of a spent conviction; and
 - (b) a person shall not, in any such proceedings, be asked, and, asked, shall not be required to answer, any question relating to his past which cannot be answered without acknowledging or referring to a spent conviction or spent convictions or any circumstances ancillary thereto.
- (2) Subject to the provisions of any order made under subsection (4) below, where a question seeking information with respect to a person's previous convictions, offences, conduct or circumstances is put to him or to any other person otherwise than in proceedings before a judicial authority —
- (a) the question shall be treated as not relating to special convictions or to any circumstances ancillary to spent convictions, and the answer thereto may be framed accordingly; and
 - (b) the person questioned shall not be subjected to any liability or otherwise prejudiced in law by reason of any failure to acknowledge or

disclose a spent conviction or any circumstances ancillary to a spent conviction in his answer to the question.

- (3) Subject to the provisions of any order made under subsection (4) below —
 - (a) any obligation imposed on any person by any rule of law or by the provisions of any agreement or arrangement to disclose any matters to any other person shall not extend to requiring him to disclose a spent conviction or any circumstances ancillary to a spent conviction (whether the conviction is his own or another's); and
 - (b) a conviction which has become spent or any circumstances ancillary thereto, or any failure to disclose a spent conviction or any such circumstances, shall not be a proper ground for dismissing or excluding a person from any office, profession, occupation or employment, or for prejudicing him in any way in any occupation or employment in Tuvalu or elsewhere.
- (4) The Minister may by order —
 - (a) make such provision as seems to him appropriate for excluding or modifying the application of either or both of paragraphs (a) and (b) of subsection (2) above in relation to questions put in such circumstances as may be specified in the order;
 - (b) provide for such exceptions from the provisions of subsection (3) above as seem to him appropriate, in such cases or classes of case, and in relation to convictions of such a description, as may be specified in the order.

4 Rehabilitation periods for particular sentences

- (1) The sentences excluded from rehabilitation under this Act are —
 - (a) a sentence of imprisonment for life; and
 - (b) a sentence of imprisonment for a term exceeding thirty months,and any other sentence is a sentence subject to rehabilitation under this Act.
- (2) For the purposes of this Act —
 - (a) the rehabilitation period applicable to a sentence specified in the first column of Schedule 1 is the period specified in the second column of that Schedule in relation to that sentence;
 - (b) the rehabilitation period applicable to a sentence (with the exception of a care order) imposed on a person who was under 17 years of age at the date of his conviction is half the period specified in Schedule 1.
- (3) For the purposes of this section —
 - (a) consecutive terms of imprisonment and terms which are wholly or partly concurrent (being terms of imprisonment imposed in respect of

- offences of which a person was convicted in the same proceedings) shall be treated as a single term;
- (b) no account shall be taken of any subsequent variation, made by a court in dealing with a person in respect of a suspended sentence of imprisonment, of the term originally imposed; and
 - (c) a sentence imposed by a court outside Tuvalu shall be treated as a sentence of that one of the descriptions mentioned in this section or Schedule 1 which most nearly corresponds to the sentence imposed.
- (4) Where more than one sentence is imposed in respect of a conviction (whether or not in the same proceedings) and none of the sentences imposed is an excluded sentence then, if the periods applicable to those sentences in accordance with section 4 differ, the rehabilitation period applicable to the conviction shall be the longer or the longest (as the case may be) of those periods.

5 Extension of the rehabilitation period

- (1) Subject to subsection (3) below, where during the rehabilitation period applicable to a conviction —
- (a) the person convicted is convicted of a further offence; and
 - (b) a sentence which is not excluded from rehabilitation under this Act is imposed on him in respect of the later conviction,
- if one rehabilitation period would end earlier than the other, the rehabilitation period which would end earlier shall be extended so that it ends at the same time as the other.
- (2) For the purposes of this section, no extension of a rehabilitation period shall be occasioned by a rehabilitation period applicable to an order imposing any disqualification, disability, prohibition or other like penalty.
- (3) For the purposes of subsection (1) (a) above there shall be disregarded —
- (a) any conviction in Tuvalu of a bye-law offence; or
 - (b) any conviction by or before a court outside Tuvalu of an offence in respect of conduct which, if it had taken place in Tuvalu would not have constituted an offence under the law in force in Tuvalu.

6 Limitations on rehabilitation under this Act

- (1) Nothing in section 3(1) above shall affect —
- (a) any right of the Head of State to exercise mercy in accordance with section 80 of the Constitution;
 - (b) the enforcement by any process or proceedings of any fine or other sum adjudged to be paid by or imposed on a spent conviction;

- (c) the issue of any process for the purpose of proceedings in respect of any breach of a condition or requirement applicable to a sentence imposed in respect of a spent conviction; or
 - (d) the operation of any enactment by virtue of which, in consequence of any conviction, a person is subject, otherwise than by way of sentence, to any disqualification, disability, prohibition or other penalty the period of which extends beyond the rehabilitation period applicable in accordance with section 4 above to the conviction.
- (2) Nothing in section 3(1) above shall affect the determination of any issue, or prevent the admission or requirement of any evidence, relating to a person's previous convictions or to circumstances ancillary thereto —
 - (a) in any criminal proceedings before a court in Tuvalu (including any appeal or reference in a criminal matter);
 - (b) in any proceedings relating to adoption to the guardianship, wardship, marriage, custody, care or control of, or access to, any young person, or to the provision by any person of accommodation, care or schooling for young persons;
 - (c) in any proceedings in which he is a party or a witness, provided that, on the occasion when the issue or the admission or requirement of the evidence falls to be determined, he consents to the determination of the issue or, as the case may be, the admission or requirement of the evidence notwithstanding the provisions of section 3(1).
- (3) If at any stage in any proceedings before a judicial authority in Tuvalu (not being proceedings to which, by virtue of any of paragraphs (a) or (b) of subsection (2) above or of any order for the time being in force under subsection (4) below, section 3(1) above had no application, or proceedings to which section 7 below applies), the authority is satisfied, in the light of any considerations which appear to it to be relevant (including any evidence which has been or may thereafter be put before it), that justice cannot be done in the case except by admitting or requiring evidence relating to a person's spent convictions or to circumstances ancillary thereto, that authority may admit or, as the case may be; require the evidence in question notwithstanding the provisions of subsection (1) of section 3 above, and may determine any issue to which the evidence relates in disregard, so far as necessary, of those provisions.
- (4) The Minister may by order exclude the application of section 3(1) above in relation to any proceedings specified in the order, (other than proceedings to which section 7 below applies) to such extent and for such purposes as may be so specified.
- (5) No order made by a court with respect to any person otherwise than on a conviction shall be included in any list or statement of that person's previous convictions given or made to any court which is considering how to deal with him in respect of any offence.

7 Defamation actions

- (1) This section applies to any action for libel or slander begun after the commencement of this Act by a rehabilitated person and founded upon the publication of any matter imputing that the plaintiff has committed, or been charged with, or prosecuted for, or convicted of, or sentenced for an offence which was the subject of a spent conviction.
- (2) Nothing in section 3(1) above shall affect an action to which this section applies where the publication complained of took place before the conviction in question became spent, and the following provisions of this section shall not apply in any such case.
- (3) Subject to subsection (5) and (6) below, nothing in section, 3(1) above shall prevent the defendant in an action to which this section applies from relying on any defence of justification or fair comment or of absolute or qualified privilege which is available to him, or restrict the matters he may establish in support of any such defence.
- (4) Without prejudice to the generality of subsection (3) above, where in any such action malice is alleged against a defendant who is relying on a defence of qualified privilege, nothing in section 3(1) above shall restrict the matters he may establish in rebuttal of the allegation.
- (5) A defendant in any such action shall not by virtue of subsection (3) above be entitled to rely upon the defence of justification if the publication is proved to have been made with malice.
- (6) Subject to subsection (7) below a defendant in any such action shall not, by virtue of subsection (3) above, be entitled to rely on any matter or adduce or require any evidence for the purpose of establishing the defence that the matter published constituted a fair and accurate report of judicial proceedings if it is proved that the publication contained a reference to evidence which was ruled to be inadmissible in the proceedings by virtue of section 3(1) above.
- (7) Subsection (3) above shall apply without the qualifications imposed by subsection (6) above in relation to —
 - (a) any report of judicial proceedings contained in any bona fide series of law reports which does not form part of any other publication and consists solely of reports of proceedings in courts of law; and
 - (b) any report or account of judicial proceedings published for bona fide educational, scientific or professional purposes, or given in the course of any lecture, class or discussion given or held for any of those purposes.

8 Unauthorized disclosure of spent convictions

- (1) In this section —

“**official record**” means a record kept for the purposes of its functions by any court, police force, Government department, local or other public authority in Tuvalu, or a record kept, in Tuvalu or elsewhere, being in either case a record containing information about persons convicted of offences; and

“**specified information**” means information imputing that a named or otherwise identifiable rehabilitated living person has committed or been charged with or prosecuted for or convicted of or sentenced for any offence which is the subject of a spent conviction.

- (2) Subject to the provisions of any order made under subsection (5) below, any person who, in the course of his official duties, has or at any time has had custody of or access to any official record or the information contained therein, shall be guilty of an offence if, knowing or having reasonable cause to suspect that any specified information he has obtained in the course of those duties is specified information, he discloses it, otherwise than in the course of those duties, to another person.
- (3) In any proceedings for an offence under subsection (2) above it shall be a defence for the defendant to show that the disclosure was made —
 - (a) to the rehabilitated person or to another person at the express request of the rehabilitated person; or
 - (b) to a person whom he reasonably believed to be the rehabilitated person or to another person at the express request of a person whom he reasonably believed to be the rehabilitated person.
- (4) Any person who obtains any specified information from any official record by means of any fraud, dishonesty or bribe shall be guilty of an offence.
- (5) The Minister may by order make such provision as appears to him to be appropriate for excepting the disclosure of specified information derived from an official record from the provisions of subsection (2) above in such cases or classes of case as may be specified in the order.
- (6) Any person guilty of an offence under subsection (2) above shall be liable on summary conviction to a fine not exceeding \$500.
- (7) Any person guilty of an offence under subsection (4) above shall be liable on summary conviction to a fine not exceeding \$1,000 or to imprisonment, for a term not exceeding six months, or to both.
- (8) Proceedings for an offence under subsection (2) above shall not be instituted except by or on behalf of the Attorney-General.

9 Definitions

- (1) In this Act “**sentence**” includes any order made by a court in dealing with a person in respect of his conviction of any offence or offences, other than —

- (a) an order for committal or any other order made in default of payment of any fine or other sum adjudged to be paid by or imposed on a conviction or for want of sufficient distress to satisfy any such fine or other sum;
 - (b) an order dealing with a person in respect of a suspended sentence of imprisonment.
- (2) In this Act, references to a conviction, however expressed, include references —
- (a) to a conviction by or before a court outside Tuvalu; and
 - (b) to any finding (other than a finding linked with a finding of insanity) in any criminal proceedings that a person has committed an offence or done the act or made the omission charged,

and notwithstanding anything in sections 38 and 39 of the Penal Code a finding in respect of which an order is made committing him to the care of any fit person or discharging him absolutely or conditionally shall be treated as a conviction for the purposes of this Act and the person in question may become a rehabilitated person in respect of that conviction and the conviction a spent conviction for those purposes accordingly.

- (3) For the purposes of section 3 and section 6 any of the following are circumstances ancillary to a conviction, that is to say —
- (a) the offence or offences which were the subject of that conviction;
 - (b) the conduct constituting that offence or those offences; and
 - (c) any process or proceedings preliminary to that conviction, any sentence imposed in respect of that conviction, any proceedings (whether by way of appeal or otherwise) for reviewing that conviction or any such sentence, and anything done in pursuance of or undergone in compliance with any such sentence.
- (4) For the purposes of section 3 and section 6 “proceedings before a judicial authority” includes, in addition to proceeding before any of the ordinary courts of law proceedings before any tribunal, body or person having power —
- (a) by virtue of any enactment, law, custom or practice;
 - (b) under the rules governing any association, institution, profession, occupation or employment; or
 - (c) under any provision of an agreement providing for arbitration with respect to questions arising thereunder,

to determine any question affecting the rights, privileges, obligations or liabilities of any person, or to receive evidence affecting the determination of any such question.

SCHEDULE 1

Sentence or order	Rehabilitation Period
Penal Code s.38 absolute discharge	6 months from conviction
s.38 conditional discharge; s.35 recognisance to keep the peace and be of good behaviour; s.36 security for coming up for judgment [probation]; s.39 care order.	1 year from conviction or a period commencing and ending when the order ceases to have effect, whichever is the longer.
s.37 residence order	A period commencing with conviction and ending 1 year after the order ceases to have effect
An order imposing any disqualification, disability, prohibition or other like penalty	A period commencing with conviction and ending on the date when the order ceases to have effect
Imprisonment for a term more than 6 months but not more than 30 months.	7 years from conviction
Imprisonment for a term not more than 6 months	5 years from conviction
A fine or other sentence subject to rehabilitation under this Act.	2 years from conviction

ENDNOTES

¹ Act 9 of 1991