

## REHABILITATION OF OFFENDERS BILL

### EXPLANATORY NOTE

THE purpose of this Bill is to both aid in and recognise the fact of rehabilitation of offenders who have served their sentences and, for a specified rehabilitation period ranging from 2 to 8 years, have not again been convicted of a further serious offence.

This purpose is achieved in two ways. Once the rehabilitation period specified for a particular offence has expired the conviction is deemed to be "spent", and from that time—

- (a) Sanctions are provided against the disclosure of the spent conviction (*clause 5 (b) to (d), and clauses 11 to 14*); and
- (b) Discrimination on the grounds of a person's spent conviction is prohibited under the Human Rights Commission Act (*clauses 5 (a) and 16*).

These general protections are subject to a number of exceptions set out in the Bill.

The length of the rehabilitation period for each conviction is determined under *clauses 6 to 10* of the Bill, and depends on whether the sentence imposed is a custodial sentence (8 years), a semi-custodial sentence (6 years), or a non-custodial sentence (4 years). These periods are halved where the offender has not attained the age of 18 years at the date of his conviction.

The basic rehabilitation period will be lengthened where the offender has not substantially complied with the terms of his sentence before the date at which his conviction would otherwise become spent (*clause 7*), or where he re-offends before his existing conviction becomes spent (*clause 8*).

The Bill does not protect persons who have been sentenced to a term of imprisonment exceeding 2 years.

Finally, the Bill draws on some (but by no means all) of the recommendations of the Penal Policy Review Committee (Report, 1981). Account has been taken of the provisions of the United Kingdom Rehabilitation of Offenders Act 1974, and the June 1982 report of the Human Rights Commission to the Prime Minister concerning the recommendations of the Penal Policy Review Committee.

*Clause 1* relates to the Short Title, commencement, and application of the Bill. The Bill will apply to past as well as future convictions.

*Clause 2* defines terms used in the Bill.

*Clause 3* provides that the Crown is to be bound.

*Clause 4* states that a conviction will be deemed spent once the appropriate rehabilitation period has expired, with the exclusion of sentences of more than 2 years imprisonment. It also provides for the issue of certificates to convicted persons setting out the actual or prospective date on which their convictions have or will become spent.

*Clause 5* in effect summarises the consequences of a conviction becoming spent, being—

- (a) Protection from discrimination under the Human Rights Commission Act 1977;
- (b) Inadmissibility of evidence relating to spent convictions before courts and tribunals;
- (c) Questions about a person's past are deemed not to relate to any spent conviction, and both the offender and other persons are protected from the consequences of a failure to disclose the existence of a spent conviction;
- (d) Civil proceedings can be brought in respect of any unauthorised disclosure of a spent conviction.

These protections are subject to a number of exceptions set out in later clauses of the Bill.

*Clause 6* sets out the basic rehabilitation periods, being 4 years for a non-custodial sentence, 6 years for a semi-custodial sentence, and 8 years for a custodial sentence. These periods are halved for offenders who have not attained the age of 18 years at the date of their conviction.

*Clause 7* covers the position where a person is dealt with by a court in relation to any failure to comply with his sentence or where he has not paid the full amount of any fine or otherwise has not served or complied with his sentence in all substantial respects. In such cases the rehabilitation period will be extended by 1 year or until the sentence has been completed, whichever is the longer.

*Clause 8* provides that where a person re-offends and receives a custodial or semi-custodial sentence before an earlier conviction has become spent, none of these convictions shall become spent until the expiry of the longest rehabilitation period applicable to any of them.

*Clause 9* refers to disqualifications, disabilities or prohibitions which may attach to a person as a consequence of his conviction. To cover the occasions where such disqualifications, disabilities or prohibitions may last beyond the expiry of the relevant rehabilitation period (for example, where a person is prohibited from obtaining a particular type of licence for, say, 10 years), it is made clear that their existence will not operate to extend a rehabilitation period under *clause 8* of the Bill. Once the conviction has become spent, however, the person will not be able to deny the existence of any such disqualification, disability or prohibition to any person with a proper and material interest in its existence.

*Clause 10* defines the terms "custodial sentence", "semi-custodial sentence" and "non-custodial sentence", and sets out a number of rules relating to the length and definition of sentences.

*Clause 11* sets out the circumstances in which evidence of a spent conviction may, notwithstanding *clause 5 (b)*, be admitted in proceedings before a court or tribunal.

*Clause 12* provides that the Governor-General may make regulations defining circumstances in which, notwithstanding *clause 5 (c)*, a person is not entitled to conceal the existence of his spent conviction. Such circumstances are limited to those where the fact that a person has committed or been convicted of a particular offence or type of offence would render him "peculiarly unsuited" to a particular employment, occupation, membership, or position, even although his conviction has become spent. Any regulations made under the clause will cease to have effect if Parliament disallows them within 28 sitting days of their being laid before the House.

*Clause 13* provides that a civil action may be pursued in respect of any unauthorised disclosure of a spent conviction. Damages obtainable are limited to \$5,000 unless in the opinion of the court the conduct or motives of the person disclosing the conviction are such as to justify punitive damages beyond that amount. A number of defences to the action are specified.

*Clause 14* creates a summary offence of disclosing official records relating to spent convictions. The maximum fine is \$1,000.

*Clause 15* confers a regulation-making power.

*Clause 16* contains amendments to the Human Rights Commission Act 1977.

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*Mr Prebble*

## REHABILITATION OF OFFENDERS

### ANALYSIS

Title	
1. Short Title, commencement, and application	9. Disqualification, disability or prohibition extending beyond expiry of rehabilitation period
2. Interpretation	10. Definition of custodial, semi-custodial and non-custodial sentences, and rules for determining length of sentence
3. Act to bind the Crown	11. Admissibility of evidence relating to spent convictions in proceedings before court or tribunal
4. Spent convictions	12. Exception to obligation not to inquire into or reveal existence of spent conviction
5. Effect of spent conviction	13. Civil action in respect of disclosure of spent conviction
6. Basic rehabilitation period	14. Offence of disclosing records
7. Rehabilitation period where default in performing sentence	15. Regulations
8. Rehabilitation period where further conviction	16. Amendments to Human Rights Commission Act 1977

### A BILL INTITULED

**An Act to aid in and recognise the rehabilitation of offenders by—**

5 **(a) Providing that their convictions shall become spent at the expiry of an appropriate rehabilitation period; and**

10 **(b) Thereafter providing them with some protection against the disclosure of their spent conviction, or against discrimination on the ground of such conviction,— and for purposes ancillary thereto**

**BE IT ENACTED** by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

No. 113—1

Inset

**1. Short Title, commencement, and application**—(1) This Act may be cited as the Rehabilitation of Offenders Act **1983**.

(2) This Act shall come into force on the 1st day of January 1984.

(3) In respect of any conviction entered before the commencement of this Act—

(a) Where the conviction would have become spent before such commencement date had this Act been in force at the time of conviction, the conviction shall be deemed to have become spent on the **1st day of January 1984**;

(b) In all other cases, the conviction shall become spent in accordance with **section 4** of this Act as if this Act had been in force from the date of conviction.

**2. Interpretation**—(1) In this Act, unless the context otherwise requires,—

“Conviction” includes—

(a) A finding in any criminal proceedings or in proceedings for an offence (including disciplinary proceedings before a Court Martial), or in proceedings under sections 34 to 36 of the Children and Young Persons Act 1974, that the person charged—

(i) Committed the offence or did the act or made the omission charged; or

(ii) Did the act or made the omission charged, but was insane at the time, or was not guilty by reason of insanity;

(b) A conviction by a court having jurisdiction outside New Zealand;

but excludes a discharge without conviction under section 42 of the Criminal Justice Act 1954:

“Custodial sentence” has the meaning assigned to it in **section 10** of this Act:

“Non-custodial sentence” has the meaning assigned to it in **section 10** of this Act: 35

“Rehabilitation period”, in relation to a conviction, means the period specified in **sections 6 to 8** of this Act in respect of that conviction:

“Semi-custodial sentence” has the meaning assigned to it in **section 10** of this Act: 40

“Sentence” includes—

(a) Any order made by a court in dealing with a person consequent upon his conviction of an offence;

(b) Any admonition or discharge without sentence, whether conditional or unconditional;—

and in respect of any conviction where the sentence is varied on appeal, means the sentence as so varied:

5 “Spent conviction” means a conviction which is deemed to be spent under **section 4** of this Act:

“Tribunal” means any tribunal, body or person having power—

10 (a) By virtue of any enactment;

(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,—

15 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.

20 (2) For the purposes of **section 5** and **sections 11 to 14** of this Act, references to the committal or conviction of an offence shall be deemed to include references to the conduct constituting the offence, or to the fact that the person has been charged with or prosecuted or sentenced for the offence, or in some other way dealt with in relation to the offence.

25 **3. Act to bind the Crown**—This Act shall bind the Crown.

**4. Spent convictions**—(1) Where a person has been convicted of an offence and the rehabilitation period specified in respect of that conviction has expired, his conviction shall be deemed to be spent.

30 (2) No conviction shall become spent where the sentence imposed upon conviction was a custodial sentence for a term exceeding 2 years.

35 (3) Where any person has been convicted of an offence by any New Zealand court, there shall be delivered to that person if he at any time so requests a certificate signed by the Registrar of the Court or his deputy specifying the date after which, subject to the fulfilment of the conditions set out in the certificate, the conviction will become a spent conviction, or, where the conviction has already become spent, the date at  
40 which it became spent.

(4) Any such certificate shall—

(a) Be in the prescribed form:

(b) Be admissible as evidence of the facts therein stated until the contrary is proved, without proof of the signature or official character of the person appearing to have signed it.

(5) A copy of or extract from any certificate given to or obtainable by a convicted person under **subsection (3)** of this section may be given to any person who satisfies the Registrar that he has a genuine and proper interest in obtaining the copy or extract.

**5. Effect of spent conviction**—Subject to the provisions of this Act, where a person's conviction for an offence is deemed to be spent under **section 4** of this Act—

(a) He shall not be subject to any form of discrimination rendered unlawful by the provisions of Part II of the Human Rights Commission Act 1977 on the ground that he has committed or been convicted of that offence:

(b) No evidence tending to show that that person committed or was convicted of that offence shall be admissible in any proceedings before any court or tribunal:

(c) Any question put to that person or to any other person about him relating to his past, or any obligation imposed upon such person by any rule of law or the provisions of any agreement to disclose certain matters to any other person, shall be deemed not to relate to the spent conviction, and—

(i) He, and any other person, shall be entitled not to reveal the fact that he has committed or been convicted of the offence when responding to any such question or fulfilling such obligation; and

(ii) Any person so questioned or under such obligation shall not be subject to any liability or otherwise prejudiced in law by reason of any failure to acknowledge or disclose such offence or conviction:

(d) He may bring civil proceedings in accordance with **section 13** of this Act against any person who without lawful excuse discloses that he committed or was convicted of the offence in question.

**6. Basic rehabilitation period**—(1) Subject to **sections 7 and 8** of this Act, and to **subsection (2)** of this section, the rehabilitation period in respect of a conviction shall be—

(a) Where the sentence imposed was a non-custodial sentence, the period of 4 years from the date of conviction:

(b) Where the sentence imposed was a semi-custodial sentence, the period of 6 years from the date of conviction:

5 (c) Where the sentence imposed was a custodial sentence for a term not exceeding 2 years, the period of 8 years from the date of conviction.

(2) Where a person convicted of an offence has not attained the age of 18 years at the date of his conviction, **subsection (1)** of this section shall apply as if the periods of 4 years, 6 years, 10 and 8 years specified in **paragraphs (a), (b) and (c)** were, respectively, 2 years, 3 years, and 4 years.

**7. Rehabilitation period where default in performing sentence**—Where a person convicted of an offence—

15 (a) Is dealt with by a court in relation to any failure to comply with the terms of the sentence imposed; or

(b) Has not paid the full amount of any fine or other payment, or otherwise has not served or complied with the terms of his sentence in all substantial respects, before the date on which his conviction is due to become spent under **section 6 or section 8** of this Act,—

the rehabilitation period in respect of that conviction shall not expire until—

25 (c) One year after the end of the rehabilitation period that would otherwise apply in respect of his conviction; or

(d) One year after the date on which there has been compliance in all substantial respects with the terms of—

30 (i) The original sentence, plus any further penalty (if any) imposed by the court in respect of a failure to comply with the terms of that sentence;

(ii) Where the terms of the original sentence have been varied by the court, the sentence as so varied,—  
35 whichever is the later.

**8. Rehabilitation period where further conviction**—

(1) Subject to **subsection (2)** of this section, where a person—

(a) Is convicted of more than one offence on the same occasion or in the same proceedings; or

40 (b) Before a previous conviction becomes spent, is convicted of a further offence in respect of which he receives a custodial or semi-custodial sentence,—

the rehabilitation period in respect of each conviction shall not expire until the date of expiry of the longest rehabilitation period applicable to any of those convictions.



(2) Where the sentence imposed in respect of any of the convictions mentioned in **subsection (1)** of this section is a custodial sentence for a term exceeding 2 years, none of those convictions shall ever become spent.

**9. Disqualification, disability or prohibition extending beyond expiry of rehabilitation period—** (1) Where— 5

(a) In the course of sentencing a convicted person a court makes an order imposing some disqualification, disability or other prohibition which is expressed to or will last beyond the date at which the rehabilitation 10 period for that conviction would expire; or

(b) The operation of any Act of Parliament imposes any such disqualification, disability or prohibition upon a person by reason of their conviction of an offence,— 15 such disqualification, disability or prohibition shall continue notwithstanding the expiry of the relevant rehabilitation period, but, shall not of itself operate to extend a rehabilitation period under **section 7** of this Act on the ground that the terms of the sentence have not been complied with in all substantial 20 respects.

(2) The provisions of **section 5** of this Act shall not entitle a person to deny or conceal the existence of any disqualification, disability or prohibition imposed upon him by any court or under any Act of Parliament, when responding to a question 25 put by a person with a proper and material interest in the existence of any such disqualification, disability or prohibition.

**10. Definition of custodial, semi-custodial and non-custodial sentences, and rules for determining length of sentence—** (1) For the purposes of this Act—

“Custodial sentence” means— 30

(a) A sentence of death;

(b) Life imprisonment;

(c) Preventive detention;

(d) Imprisonment for a specified term;

(e) An order for the detention of a convicted person 35 in a mental institution or in some other institution for psychiatric treatment or treatment as an alcoholic or drug addict;

(f) A sentence where a custodial sentence is imposed as an alternative to some other sentence, where the 40 custodial sentence takes effect;

(g) Any other sentence or order involving the continuous legal detention of a person convicted of an offence:

“Semi-custodial sentence” means—

- 5 (a) Periodic detention;
- (b) Probation;
- (c) Community service;
- (d) A sentence where a semi-custodial sentence is imposed as an alternative to some other sentence, where the semi-custodial sentence takes effect:

10 “Non-custodial sentence” means—

- (a) A fine, or other order for the payment of money to any person, whether as costs, compensation or otherwise;
- 15 (b) A discharge without sentence, whether conditional or unconditional;
- (c) An admonition;
- (d) An order to come up for sentence if called upon;
- (e) An order to enter into a bond to keep the peace;
- 20 (f) A supervision order or a guardianship order made under the Children and Young Persons Act 1974;
- (g) Any other penalty that is not a custodial or semi-custodial sentence.

25 (2) Where a sentence imposed on conviction is a combination of the types of sentence specified in **subsection (1)** of this section, the rehabilitation period for that conviction shall be the longest period applicable to any one of those types contained within the sentence.

30 (3) For the purpose of determining the term of a custodial sentence—

- (a) A sentence of death, life imprisonment, or preventive detention shall be treated as a custodial sentence for a term exceeding 2 years:
- 35 (b) Consecutive custodial sentences for specified terms imposed on the same occasion or in the same proceedings shall be treated in respect of each conviction as one custodial sentence for a term equal to their sum:
- 40 (c) Where an order is made for the detention of a person in an institution, whether for treatment or otherwise, and no set term for the detention is imposed, the term of the sentence shall be deemed to be the period from the date of conviction until the date the person is unconditionally released from detention.

(4) For the purpose of determining the rehabilitation period in respect of a conviction entered by a court having jurisdiction outside New Zealand, any sentence imposed by such court shall be treated as if it were the sentence most nearly corresponding to a sentence able to be imposed by courts 5 within New Zealand.

**11. Admissibility of evidence relating to spent convictions in proceedings before court or tribunal—** Notwithstanding the provisions of **section 5 (b)** of this Act, evidence of the fact that a person has committed or been 10 convicted of an offence the subject of a spent conviction shall be admissible in any proceedings before a court or tribunal, if otherwise admissible,—

- (a) To the extent to which such evidence is relevant upon his conviction for an offence where any Act of Par- 15 liament makes him liable to greater penalties on a second or subsequent conviction:
- (b) Where by the provisions of any Act of Parliament the production of such evidence to any court or tribunal is required: 20
- (c) In any proceedings relating to the guardianship, ward- ship, marriage, custody, care or control of, or access to, any minor, where such evidence has a direct bear- ing on the fitness of that person to have the care, control of, or other responsibility for the minor: 25
- (d) In any proceedings before the Equal Opportunities Tri- bunal, where the proceedings relate to a complaint of discrimination in respect of the spent conviction:
- (e) In proceedings under **section 13 or section 14** of this Act:
- (f) Where the person whose conviction is spent consents to 30 the production of such evidence in any proceedings:
- (g) Where in any civil action or proceeding before any court, the court is satisfied that justice cannot be done except by the admission of such evidence.

**12. Exception to obligation not to inquire into or reveal 35 existence of spent conviction—**(1) **Section 5 (c)** of this Act shall be read subject to the provisions of any regulation made under this section.

(2) The Governor-General may from time to time, by Order in Council, make regulations for the purpose of defining 40 situations in which the provisions of **section 5 (c)** of this Act shall not apply in respect of any person or class of persons

seeking or having obtained employment, occupation, membership, or a position in a field where the fact that a person has committed or been convicted of a particular offence or type of offence would render him peculiarly unsuited to  
5 that employment, occupation, membership or position, even although his conviction has become spent.

(3) Any regulations made under this section shall cease to have effect if, within 28 sitting days after which they are laid before Parliament pursuant to section 8 of the Regulations Act  
10 1936, Parliament passes a resolution disallowing them.

(4) Where any regulations are disallowed under **subsection (3)** of this section, the disallowance of the regulations shall have the same effect as a repeal of the regulations.

**13. Civil action in respect of disclosure of spent conviction**—(1) Subject to the provisions of this Act, no person  
15 shall without lawful excuse disclose any matter imputing that a person has committed or been convicted of an offence in respect of which that person's conviction is spent, and civil proceedings may be brought against any person in breach of  
20 this subsection at the suit of the person whose conviction is spent.

(2) Subject to **subsection (3)** of this section, in any proceedings under this section a court may award damages against the defendant in respect of any one or more of the following—

- 25 (a) Loss of any benefit, whether or not of a monetary kind, which the plaintiff might reasonably have been expected to obtain but for the disclosure:  
(b) Humiliation, loss of dignity, and injury to the feelings of the plaintiff:  
30 (c) Injury to the reputation and standing of the plaintiff.

(3) No award of damages under this section shall exceed \$5000 in total, unless in the opinion of the court the conduct or motive of the defendant in disclosing or publishing the matter relating to the spent conviction was such as to justify  
35 the imposition of punitive damages which would take the total award beyond that amount.

(4) Subject to **subsection (5)** of this section, it shall not be a defence to proceedings under this section that the disclosure was unintentional or without negligence on the part of the  
40 defendant, but the court may take the conduct of the defendant into account in deciding what, if any, remedy to grant.

(5) In any proceedings under this section it shall be a defence to prove that the defendant, in good faith, disclosed the matter complained of—

- (a) With the express or implied consent of the plaintiff:
  - (b) At a time before the conviction became spent: 5
  - (c) In circumstances in which, had the action been an action for defamation, the defendant would have been able to rely on a defence of absolute or qualified privilege:
    - Provided that for the purposes of this paragraph a defence that matter published constituted a fair and 10 accurate report of judicial proceedings shall not be treated as a defence unless the publication was contemporaneous with the proceedings:
  - (d) In the ordinary course of the publication or proper use of a bona fide textbook, article, or collection of materials published for educational, scientific or professional purposes, or in the course of any lecture, class or discussion given or held for any such purpose: 15
  - (e) In the course of republishing innocently a document published before the conviction became spent: 20
  - (f) To a person having a material and proper interest in the existence of a disqualification, disability or prohibition imposed by a court or by Act of Parliament as a consequence of the conviction:
  - (g) To a person having a proper and material interest in the 25 existence of the spent conviction, in circumstances prescribed by regulations made under **section 12** of this Act:
  - (h) In the course of his official duty in the circumstances specified as providing a defence to a charge brought 30 under **section 14** of this Act.
- (6) For the purposes of **subsection (5) (e)** of this section, a person shall be treated as having republished a document innocently if, and only if—
- (a) Neither he nor any of his servants or agents who were 35 concerned with the republication knew that the document referred to a spent conviction; and
  - (b) He and such servants or agents exercised all reasonable care in relation to such republication.

**14. Offence of disclosing records**—(1) In this section— 40

“Official record” means a record kept by any court or government department or public authority in New Zealand that contains information about persons convicted of offences:

“Specified information” means information tending to show that a named or identifiable person has committed or been convicted of any offence the subject of a spent conviction.

5 (2) No person who has, or at any time has had, custody of or direct or indirect access to any official record or the information contained therein, shall knowingly disclose any specified information to any other person.

10 (3) In any proceedings under this section, it shall be a defence to prove that the accused disclosed the specified information in the course of his official duty—

(a) To a court having jurisdiction in New Zealand for purposes relating to the administration of justice:

15 (b) To a senior officer of police or a person duly authorised by him who requested the information in the course of his official duties:

(c) To the Minister of Justice or a person authorised by him in writing for purposes relating to the security of New Zealand or the maintenance of law and order:

20 (d) To a member of a class prescribed as a class of persons to whom specified information may be disclosed for a prescribed purpose:

(e) To the person to whom the spent conviction relates, or his agent, or in the course of issuing a certificate under **section 4 (3)** of this Act:

25 (f) To the Chief Archivist by virtue of the transfer of the official record concerned.

(4) Any person who contravenes **subsection (2)** of this section shall be liable on summary conviction to a fine not exceeding 30 \$1000.

**15. Regulations**—The Governor-General may from time to time, by Order in Council, make regulations for the purposes for which regulations are contemplated by this Act.

**16. Amendments to Human Rights Commission Act 35 1977**—(1) The Human Rights Commission Act 1977 is hereby amended—

40 (a) By inserting in sections 15 (1) and (2), 19 (1) and (2), 20 (1), 21 (1), 22 (1), 23 (1), 24 (1), 25 (1) and (2), and 26 (1), after the words “by reason of the sex, marital status, or religious or ethical belief of that person”, the words “, or by reason of the fact that that person has committed or been convicted of an offence in respect of which his conviction has become spent under the Rehabilitation of Offenders Act 1983”:

- (b) By adding to sections 19 (1) and (2), 20 (1), 21 (1), 22 (1), and 26 (1), the words “, or by reason of the fact that that relative or associate has committed or been convicted of an offence in respect of which his conviction has become spent under the Rehabilitation of Offenders Act 1983”.
- (2) The said Act is hereby further amended—
- (a) By inserting in section 24 (3), after the words “or ethical belief of those members”, the words “or by reason of the fact that that member has committed or been convicted of an offence in respect of which his conviction has become spent under the Rehabilitation of Offenders Act 1983,”:
- (b) By inserting in section 25 (2), after the words “or ethical belief,”, the words “or to a person’s criminal record (excluding convictions which have not become spent under the Rehabilitation of Offenders Act 1983),”:
- (c) By inserting in section 27, after the words “or ethical belief”, the words “or to a person with no criminal history,”:
- (3) The said Act is hereby further amended by inserting after section 22 the following section:

**“22A. Exemptions in certain cases relating to employment of persons with spent convictions—**Nothing in sections 15, 19, 20, and 21 of this Act shall apply to protect a person whose conviction has become spent where that person is seeking or has obtained employment, occupation, membership, or a position in a field where—

“(a) The fact that he has committed or been convicted of a particular offence or type of offence would render him peculiarly unsuited in any material respect to that employment, occupation, membership, or position; or

“(b) The existence of any disqualification, disability or prohibition extending beyond the time at which his conviction became spent would materially and adversely affect his qualifications for entering into or remaining in that employment, occupation, membership, or position.”