



Criminal Records Regulation 2004

under the

Criminal Records Act 1991

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Criminal Records Act 1991*.

BOB DEBUS, M.P.,
Attorney General

Explanatory note

The object of this Regulation is to remake (with only minor changes in substance) the provisions of the *Criminal Records Regulation 1999* which is due to be repealed on 1 September 2004 by section 10 (2) of the *Subordinate Legislation Act 1989*. (The changes in substance concern the prescribing of the Australian Customs Service, the CrimTrac Agency and New Zealand Police as law enforcement agencies for the purposes of the *Criminal Records Act 1991* (*the Act*) and providing for the exclusion from section 12 of the Act of persons who apply for appointment as Crown Prosecutors.)

This Regulation:

- (a) prescribes the former offence of a self-excluded person entering or remaining in a casino to which an exclusion order in respect of the person relates as an offence to which section 8 (5) of the Act applies, with the result that the former offence became spent immediately the offence ceased to be an offence, and
- (b) excludes persons who apply for appointment or employment in the Office of the Director of Public Prosecutions, the Independent Commission Against Corruption, the Police Integrity Commission or the New South Wales Crime Commission, or who apply for engagement as a consultant by the Inspector of the Police Integrity Commission or for appointment as a Crown Prosecutor, from section 12 of the Act (which relates to the consequences of convictions becoming spent), with the result that such persons may be required to disclose their spent convictions in their job applications or interview with the agency concerned, and

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- (c) excludes applications for admission as a legal practitioner from section 12 of the Act, with the result that the Legal Practitioners Admission Board may require such applications to disclose spent convictions of applicants, and
- (d) excludes convictions for serious personal violence offences from the operation of section 12 of the Act for the purposes of applying section 9D of the *Bail Act 1978* (which provides that an authorised officer or court is not to grant bail to a person who is charged with a serious personal violence offence, and who has a previous conviction for a serious personal violence offence other than the offence in connection with which bail is being sought, unless the authorised officer or court is satisfied that exceptional circumstances justify the granting of bail), with the result that authorised officers or courts may take into account a person's spent convictions for serious personal violence offences in applying that section, and
- (e) permits the disclosure of information concerning spent convictions by the officer in charge of the Criminal Records Section of NSW Police to the Casino Control Authority or the Director of Liquor and Gaming or, in certain circumstances, to persons employed in the Department of Corrective Services, the Bureau of Crime Statistics and Research, the Office of the Sheriff or the Office of Fair Trading, Department of Commerce, and
- (f) prescribes certain offences under the *Crimes Act 1900* and the *Summary Offences Act 1988* to be sexual offences for the purposes of the definition of ***sexual offences*** in section 7 (4) of the Act, and
- (g) prescribes the Ministry for Police, the Inspector of the Police Integrity Commission and members of the Inspector's staff, the Australian Customs Service, the CrimTrac Agency and New Zealand Police to be law enforcement agencies for the purposes of the definition of ***law enforcement agency*** in section 13 (5) of the Act.

This Regulation is made under sections 7, 8, 13 and 25 (the general regulation-making power) of the *Criminal Records Act 1991*.

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1 Name of Regulation

This Regulation is the *Criminal Records Regulation 2004*.

2 Commencement

This Regulation commences on 1 September 2004.

Note. This Regulation replaces the *Criminal Records Regulation 1999* which is repealed on 1 September 2004 by section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definition

In this Regulation:

the Act means the *Criminal Records Act 1991*.

4 Notes

Notes in the text of this Regulation do not form part of this Regulation.

5 Spent convictions

- (1) The former offence of a self-excluded person entering or remaining in a casino to which an exclusion order in respect of the person relates is prescribed as an offence to which section 8 (5) of the Act applies.
- (2) In this clause, *self-excluded person* has the same meaning as it has in section 84 of the *Casino Control Act 1992*.

6 Exclusion of applicants for employment in Office of DPP from consequences of conviction being spent

Section 12 of the Act does not apply in relation to an application by a person for appointment or employment as an Officer within the meaning of the *Director of Public Prosecutions Act 1986*.

7 Exclusion of applicants for employment with ICAC from consequences of conviction being spent

Section 12 of the Act does not apply in relation to an application by a person for appointment or employment as an officer of the Commission within the meaning of the *Independent Commission Against Corruption Act 1988*.

8 Exclusion of applicants for employment with Police Integrity Commission from consequences of conviction being spent

- (1) Section 12 of the Act does not apply in relation to an application by a person for appointment as the Commissioner for the Police Integrity Commission under the *Police Integrity Commission Act 1996*.
- (2) Section 12 of the Act does not apply in relation to an application by a person for appointment as an Assistant Commissioner for the Police Integrity Commission under the *Police Integrity Commission Act 1996*.
- (3) Section 12 of the Act does not apply in relation to an application by a person for employment as a member of staff of the Police Integrity Commission for the purposes of the *Police Integrity Commission Act 1996*.
- (4) Section 12 of the Act does not apply in relation to an application by a person for employment as a member of staff of the Inspector of the Police Integrity Commission for the purposes of the *Police Integrity Commission Act 1996*.
- (5) Section 12 of the Act does not apply in relation to an application by a person for engagement as a consultant by the Inspector of the Police Integrity Commission under section 92 (3) of the *Police Integrity Commission Act 1996*.
- (6) Section 12 of the Act does not apply in relation to an application by a person for appointment as the Inspector of the Police Integrity Commission under the *Police Integrity Commission Act 1996*.

9 Exclusion of applicants for employment with New South Wales Crime Commission from consequences of conviction being spent

- (1) Section 12 of the Act does not apply in relation to an application by a person for appointment as the Commissioner for the New South Wales Crime Commission under the *New South Wales Crime Commission Act 1985*.

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- (2) Section 12 of the Act does not apply in relation to an application by a person for appointment as an Assistant Commissioner for the New South Wales Crime Commission under the *New South Wales Crime Commission Act 1985*.
- (3) Section 12 of the Act does not apply in relation to an application by a person for employment as a member of staff of the New South Wales Crime Commission for the purposes of the *New South Wales Crime Commission Act 1985*.

10 Exclusion of applicants for appointment as Crown Prosecutors from consequences of conviction being spent

Section 12 of the Act does not apply in relation to an application by a person for appointment as a Crown Prosecutor under the *Crown Prosecutors Act 1986*.

11 Exclusion of applicants for admission as legal practitioners from consequences of conviction being spent

Section 12 of the Act does not apply in relation to an application for admission as a legal practitioner under the *Legal Profession Act 1987*.

12 Exclusion of consequences of certain convictions being spent for purposes of applying section 9D of Bail Act

- (1) Section 12 of the Act does not apply in relation to a conviction of a person for a serious personal violence offence for the purposes of applying section 9D of the *Bail Act 1978*.
- (2) In this clause, *serious personal violence offence* has the same meaning as in section 9D of the *Bail Act 1978*.

13 Disclosure to Corrective Services

- (1) Section 13 of the Act does not apply to the disclosure of information concerning a spent conviction by the officer in charge of the Criminal Records Section of NSW Police to a person employed in the Department of Corrective Services.
- (2) However, subclause (1) has effect only if:
 - (a) at the time the officer in charge discloses the information, the officer is satisfied that within that Department there are policies and procedures in place that will ensure that the

information will not be disclosed, or used or taken into account in any decision taken or other thing done, by any person employed in that Department, and

- (b) the information is made available only together with information relating to all the other convictions of the relevant person.

14 Disclosure to Bureau of Crime Statistics and Research

- (1) Section 13 of the Act does not apply to the disclosure of information concerning a spent conviction by the officer in charge of the Criminal Records Section of NSW Police to a person employed in the Bureau of Crime Statistics and Research.
- (2) However, subclause (1) has effect only if, at the time the officer in charge discloses the information, the officer is satisfied that within the Bureau of Crime Statistics and Research there are policies and procedures in place that will ensure that:
 - (a) the information concerning the conviction will only be used in research by that Bureau, the production of statistics by that Bureau and the publication of those statistics and of reports relating to that research, and
 - (b) any such publication does not name or otherwise identify the person who was the subject of the conviction.

15 Disclosure to Office of Sheriff or Office of Fair Trading

- (1) Section 13 of the Act does not apply to the disclosure of information concerning a spent conviction by the officer in charge of the Criminal Records Section of NSW Police to a person employed in the Office of the Sheriff or in the Office of Fair Trading, Department of Commerce.
 - (2) However, subclause (1) has effect only if:
 - (a) at the time the officer in charge discloses the information, the officer is satisfied that within the Office concerned there are policies and procedures in place that will ensure that the information will not be disclosed, or used or taken into account in any decision taken, or other thing done, by any person employed in the Office concerned, and
 - (b) the information is made available only together with information relating to all the other convictions of the relevant person.
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16 Disclosure to Casino Control Authority or Director of Liquor and Gaming

Section 13 of the Act does not apply to the disclosure of information concerning a spent conviction by the officer in charge of the Criminal Records Section of NSW Police to any of the following persons:

- (a) the Casino Control Authority,
- (b) the Director of Liquor and Gaming, or a person authorised in writing by the Director.

17 Offences prescribed as sexual offences for the purposes of section 7

For the purposes of paragraph (h) of the definition of *sexual offences* in section 7 (4) of the Act, the following offences are prescribed as sexual offences:

- (a) an offence under section 61JA, 66EA, 578B or 578C (2A) of the *Crimes Act 1900*,
- (b) an offence under section 11G of the *Summary Offences Act 1988*.

18 Persons or bodies prescribed as law enforcement agencies for the purposes of section 13

For the purposes of paragraph (o) of the definition of *law enforcement agency* in section 13 (5) of the Act, the following persons and bodies are prescribed:

- (a) the Ministry for Police,
- (b) the Inspector of the Police Integrity Commission appointed under the *Police Integrity Commission Act 1996* or any person who is a member of the Inspector's staff for the purposes of that Act,
- (c) the Australian Customs Service,
- (d) the CrimTrac Agency,
- (e) New Zealand Police.