

1994—No. 566

CRIMINAL RECORDS ACT 1991—REGULATION

(Relating to the release of spent convictions records to Customs and
Corrective Services)

NEW SOUTH WALES



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HIS Excellency the Governor, with the advice of the Executive Council,
and in pursuance of the Criminal Records Act 1991, has been pleased to
make the Regulation set forth hereunder.

J P HANNAFORD, MLC
Attorney General.

Commencement

1. This Regulation commences on 1 November 1994.

Amendment

2. The Criminal Records Regulation 1994 is amended by inserting after clause 3 the following clause:

Disclosure to Customs and Corrective Services

4. (1) Section 13 (Unlawful disclosure of information concerning spent convictions) of the Criminal Records Act 1991 does not apply to the disclosure of information concerning a spent conviction by the officer in charge of the Criminal Records Unit of the Police Service to a person employed in the Department of Corrective Services or the Australian Customs Service.

- (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 Department or Service concerned, there are policies and procedures in place which 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 Department or Service concerned; and

- (b) the information is made available only together with information relating to all the other convictions of the relevant person.
- (3) This clause ceases to have effect on 1 November 1995.

EXPLANATORY NOTE

This Regulation deals with the problem that the computer records of convictions of a person that are treated as spent by the Criminal Records Act 1991 cannot at the moment be separated from the computer records relating to the other convictions of that person. The result is that if the Department of Corrective Services or the Australian Customs Service accessed criminal records by on-line computer facilities, it would automatically receive data relating to all the convictions (including spent convictions) of a person.

This would mean that the officer in charge of the Criminal Records Unit of the Police Service would be committing an offence against section 13 of the Criminal Records Act 1991 whenever those bodies accessed the Unit's convictions database.

This Regulation (made under the general power in section 25 to make regulations disapplying sections of the Act) ensures that the officer in charge of that Unit does not commit such an offence as long as he or she takes certain precautions to ensure that those bodies' access to the database is for legitimate reasons (i.e. not just for chasing up spent convictions or for acting on the basis of spent convictions). The clause inserted by this Regulation (clause 4 of the Criminal Records Regulation 1994) will apply only to disclosures made on and from the commencement of this Regulation but before 1 November 1995.
