

1995—No. 636

CRIMINAL RECORDS ACT 1991—REGULATION

(Relating to the disclosure of spent convictions to the Bureau of Crime Statistics,
the Department of Fair Trading, the ICAC and the Sheriff)

NEW SOUTH WALES



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HIS Excellency the Lieutenant-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.

JW SHAW QC
Attorney General.

Commencement

1. This Regulation commences on 1 November 1995.

Amendments

2. The Criminal Records Regulation 1994 is amended:
 - (a) by inserting after clause 2 the following clause:

Definition

3. In this Regulation, “**the Act**” means the Criminal Records Act 1991.
- (b) by renumbering clauses 3 and 4 as clauses 4 and 6 respectively;
- (c) by omitting from clauses 4 (1) and 6 (1) (according to the new numbering) the words “Criminal Records Act 1991” wherever occurring and by inserting instead the word “Act”;
- (d) by inserting after clause 4 (according to the new numbering) the following clause:

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

5. (1) 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 Independent Commission Against Corruption within the meaning of the Independent Commission Against Corruption Act 1988.

- (2) This clause does not apply to any such application made before 1 November 1995.
- (e) by omitting from clause 6 (1) (according to the new numbering) the words “(Unlawful disclosure of information concerning spent convictions)”;
 - (f) by omitting from clause 6 (3) (according to the new numbering) the date “1 November 1995” and by inserting instead the date “1 November 1997”;
 - (g) by inserting after clause 6 (according to the new numbering) the following clauses:

Disclosure to Bureau of Crime Statistics and Research

7. (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 Unit of the Police Service 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.

Disclosure to Office of Sheriff or Department of Fair Trading

8. (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 Unit of the Police Service to a person employed in the Office of the Sheriff or in the Department of Fair Trading.

(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 Office or 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 Office or Department; 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 1997.

EXPLANATORY NOTE

Under the Criminal Records Act 1991, a conviction becomes spent when the person convicted completes the relevant “crime-free period” (generally not less than 10 years after the date of the conviction). Section 12 of the Act sets out the consequences of a conviction’s becoming spent (for example, the person whose conviction is spent is not required to disclose to any other person information concerning the spent conviction).

Clause 5, as inserted by this Regulation in the Criminal Records Regulation 1994, excludes persons who apply for appointment or employment with the Independent Commission Against Corruption from the provisions of section 12. In other words, they may have to disclose their spent convictions in their job applications or interviews with the ICAC.

The new clauses 7 and 8 of the Criminal Records Regulation 1994 deal with the fact 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 any of the agencies referred to in those clauses 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 agencies accessed the Unit’s convictions database.

Clauses 7 and 8 ensure 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 agencies, access to the database is for legitimate reasons (i.e. not just for chasing up the spent convictions of an individual or for taking action in relation to an individual on the basis of his or her spent convictions). The new clauses will apply only to disclosures made on or after 1 November 1995 and before 1 November 1997 to the Office of the Sheriff or the Department of Fair Trading, and to disclosures made on or after 1 November 1995 to the Bureau of Crime Statistics and Research.

For the sake of consistency, the “sunset” date in existing clause 4 (Disclosure to Customs and Corrective Services) of the Criminal Records Regulation 1994 becomes 1 November 1997 instead of 1 November 1995. That clause is renumbered 6, the order of the other existing clauses of that Regulation is also changed and a definition of “the Act” is inserted.

This Regulation is made under the Criminal Records Act 1991, and in particular section 25 (3) (regulations may provide that a provision . . . does not apply . . .).
