



New South Wales

Criminal Records Regulation 2014

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*.

BRAD HAZZARD, MP
Attorney General

Explanatory note

The object of this Regulation is to remake, with minor amendments, the *Criminal Records Regulation 2004*, which is repealed on 1 September 2014 by section 10 (2) of the *Subordinate Legislation Act 1989*.

This Regulation:

- (a) 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 *Criminal Records Act 1991*, and
- (b) 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 *Criminal Records Act 1991* applies, and
- (c) provides that a person may be required to disclose spent convictions when making certain job applications or during job interviews with certain agencies, and
- (d) provides that spent convictions may be used by the Commissioner of Police when making an application for a declaration that an organisation is a criminal organisation under the *Crimes (Criminal Organisations Control) Act 2012* and by the Supreme Court when deciding whether to grant the declaration, and
- (e) provides that it is not an offence for the officer in charge of the Criminal Records Section of the NSW Police Force to disclose information concerning spent convictions in particular circumstances, and
- (f) prescribes certain persons and bodies as law enforcement agencies for the purposes of the definition of **law enforcement agency** in section 13 (5) of the *Criminal Records Act 1991*.

This Regulation is made under the *Criminal Records Act 1991*, including paragraph (h) of the definition of **sexual offences** in section 7 (4), paragraph (o) of the definition of **law enforcement agency** in section 13 (5), and sections 8 (5), 13 (2) and 25 (the general regulation-making power).

This Regulation comprises or relates to matters set out in Schedule 3 to the *Subordinate Legislation Act 1989*, namely matters of a machinery nature and matters not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

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1 Name of Regulation

This Regulation is the *Criminal Records Regulation 2014*.

2 Commencement

This Regulation commences on 1 September 2014 and is required to be published on the NSW legislation website.

Note. This Regulation replaces the *Criminal Records Regulation 2004* which is repealed on 1 September 2014 by section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definitions

(1) In this Regulation:

Corrective Services NSW has the same meaning as in the *Crimes (Administration of Sentences) Act 1999*.

the Act means the *Criminal Records Act 1991*.

(2) Notes included in this Regulation do not form part of this Regulation.

4 Prescribed sexual offences

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

- (a) an offence under section 61JA, 66EA, 66EB, 80D, 80E, 91H, 91J, 91K, 91L or 91M of the *Crimes Act 1900*,
- (b) an offence under section 11G of the *Summary Offences Act 1988*,
- (c) an offence that, at the time it was committed, was prescribed as a sexual offence for the purposes of that paragraph.

(2) A conviction for an offence referred to in subclause (1) is taken never to have been spent or never to be capable of becoming spent.

5 Spent convictions

For the purposes of section 8 (5) of the Act, the former offence of a self-excluded person (within the meaning of section 84 of the *Casino Control Act 1992*) entering or remaining in a casino to which an exclusion order in respect of the person relates is prescribed.

6 Exclusion of applicants from consequences of conviction being spent

Section 12 of the Act does not apply in relation to the following:

- (a) an application for admission as a lawyer under the *Legal Profession Act 2004*,

- (b) an application for engagement as a consultant to the Inspector under section 92 (3) of the *Police Integrity Commission Act 1996*,
- (c) an application for appointment to, or employment in, a role specified in Column 2 of the following table under the corresponding Act specified in Column 1:

Column 1	Column 2
Act	Role
<i>Crime Commission Act 2012</i>	an officer of the Commission
<i>Crown Prosecutors Act 1986</i>	a Crown Prosecutor
<i>Director of Public Prosecutions Act 1986</i>	an Officer
<i>Independent Commission Against Corruption Act 1988</i>	an officer of the Commission an officer of the Inspector
<i>Police Integrity Commission Act 1996</i>	an officer of the Commission an officer of the Inspector

7 Criminal organisation declarations

Section 12 of the Act does not apply in relation to an application under Part 2 of the *Crimes (Criminal Organisations Control) Act 2012* or the making of a decision by the Supreme Court under that Part.

8 Disclosure of spent convictions by NSW Police Force

It is not an offence for the officer in charge of the Criminal Records Section of the NSW Police Force to make information relating to a spent conviction available to the following:

- (a) a judicial officer of the Court for the purposes of an application under Part 2 of the *Crimes (Criminal Organisations Control) Act 2012*,
- (b) the Chief Executive of the Independent Liquor and Gaming Authority, or a person authorised in writing by the Chief Executive,
- (c) a person employed in the Bureau of Crime Statistics and Research, Department of Justice (the **Bureau**) if:
- the information is to be used only by the Bureau for research, reports relating to that research and the production of statistics, and
 - any publication of the Bureau does not name or otherwise identify the person who was the subject of the conviction,
- (d) a person employed in Corrective Services NSW, the Office of Fair Trading or the Office of the Sheriff, Department of Justice (a **prescribed agency**) if:
- the information is only made available together with information relating to all other convictions of the relevant person, and
 - at the time of making the information available the officer in charge is satisfied the prescribed agency has policies and procedures that will ensure the information will not be disclosed, or used or taken into account in any decision made or other thing done, by any person employed in the prescribed agency.

9 Prescribed law enforcement agencies

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

- (a) the Ministry for Police and Emergency Services,
- (b) an officer of the Inspector under the *Police Integrity Commission Act 1996*,
- (c) the Australian Customs and Border Protection Service,
- (d) the CrimTrac Agency,
- (e) New Zealand Police,
- (f) the Australian Commission for Law Enforcement Integrity.

10 Saving

Any act, matter or thing that, immediately before the repeal of the *Criminal Records Regulation 2004*, had effect under that Regulation continues to have effect under this Regulation.