



New South Wales

Criminal Records Regulation 2019

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*.

MARK SPEAKMAN, MP
Attorney General, and Minister for the Prevention of Domestic Violence

Explanatory note

The object of this Regulation is to remake, with minor amendments, the *Criminal Records Regulation 2014*, which is repealed on 1 September 2019 by section 10 (2) of the *Subordinate Legislation Act 1989*.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*, and
- (g) prescribes various former obscene or indecent exposure offences as eligible homosexual offences to enable certain persons convicted of those offences to apply to have the conviction extinguished.

This Regulation is made under the *Criminal Records Act 1991*, including the following provisions:

- (a) 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 paragraph (d) of the definition of **eligible homosexual offence** in section 19A,
- (b) 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 that are 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 2019*.

2 Commencement

This Regulation commences on 1 September 2019 and is required to be published on the NSW legislation website.

Note. This Regulation replaces the *Criminal Records Regulation 2014*, which is repealed on 1 September 2019 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*.

Note. The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

(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, 61KC, 61KD, 61KE, 61KF, 66DA, 66DB, 66DC, 66DD, 66DE, 66DF, 66EA, 66EB, 66EC, 73A, 80D, 80E, 80G, 91H, 91J, 91K, 91L, 91M, 91P, 91Q or 91R 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 Uniform Law (NSW)*,
- (b) an application for engagement as a consultant to the Commission or Inspector under the *Law Enforcement Conduct Commission Act 2016*,
- (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>Law Enforcement Conduct Commission Act 2016</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 Supreme Court for the purposes of an application under Part 2 of the *Crimes (Criminal Organisations Control) Act 2012*,
- (b) the Chairperson of the Independent Liquor and Gaming Authority, or a person authorised in writing by the Chairperson,
- (c) a person employed in the Bureau of Crime Statistics and Research, Department of Communities and Justice if:
 - (i) the information is to be used only by the Bureau for research, reports relating to that research and the production of statistics, and
 - (ii) any publication of the Bureau does not name or otherwise identify the person who was the subject of the spent conviction,
- (d) a person employed in Corrective Services NSW, NSW Fair Trading or the Office of the Sheriff, Department of Communities and Justice (a **prescribed agency**) if:
 - (i) the information is only made available together with information relating to all other convictions of the relevant person, and
 - (ii) 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 Office of the Inspector of the Law Enforcement Conduct Commission,
- (b) the Australian Border Force,
- (c) New Zealand Police,
- (d) the Australian Commission for Law Enforcement Integrity.

10 Prescribed eligible homosexual offences

(1) For the purposes of paragraph (d) of the definition of *eligible homosexual offence* in section 19A of the Act, the following offences are prescribed:

- (a) the former offence under section 483 (b) of the *Crimes Act 1900* committed by a boy, youth or adult (as referred to in that section and sections 484, 485 and 486 of that Act),
- (b) the former offence under section 6 of the *Offences in Public Places Act 1979*,
- (c) the former offence under section 78 of the *Police Offences Act 1901*,
- (d) the former offences under sections 11 and 12 of the *Summary Offences Act 1970*,
- (e) the former offence under section 4 (2) (d) of the *Vagrancy Act 1902*.

(2) However, a former offence referred to in subclause (1) is an eligible homosexual offence only if:

- (a) the offence was committed by a person (the *offender*) while engaging in a form of sexual activity with another person of the same sex, and
- (b) the offence was not witnessed by a person except:
 - (i) any person engaged in the sexual activity, or
 - (ii) a police officer, and
- (c) the offender had not previously been convicted of the former offence.

11 Savings

Any act, matter or thing that, immediately before the repeal of the *Criminal Records Regulation 2014*, had effect under that Regulation continues to have effect under this Regulation.