

Crimes Regulations (Amendment) 1995 No. 23

EXPLANATORY STATEMENT

STATUTORY RULES 1995 No. 23

Issued by the authority of the Minister for Justice

Crimes Act 1914

Crimes Regulations (Amendment)

Section 91 of the Crimes Act 1914 (the Crimes Act) provides that the Governor-General may make regulations for the purposes of the Act.

The purpose of the Crimes Regulations (Amendment) is to exempt Respite Care ACT Incorporated (Respite Care), airlines and operators of airports from the provisions of the Spent Convictions Scheme for certain purposes.

The Spent Convictions Scheme is contained in Division 3 of Part VIIC of the Crimes Act. This scheme provides a mechanism whereby certain convictions that are over 10 years old can be 'spent'. If a person was convicted of an offence 10 years ago or more, was sentenced to less than 30 months imprisonment and has not reoffended since that conviction then the conviction is spent and the person is legally able to claim, on oath or otherwise, that they were never convicted of the offence. In most circumstances, another person who knows of the offence is not allowed to disclose it without the consent of the person convicted, or to take it into account in any decision making process.

There are some exceptions to the scheme which affect this right of non-disclosure. All these exceptions are listed in section 85ZZH of the Crimes Act 1914.

Under subsection 85ZW(k) of the Crimes Act exclusions can be given to:

- a prescribed person or body, for a prescribed purpose, in relation to a conviction for a prescribed offence.

These exclusions are listed in schedule 4 of the Crimes Regulations.

Regulation 2 of the amending regulations exempts Respite Care from the Spent Convictions Scheme in regard to offences against the person for the purposes of assessing the suitability of a person to have responsibility for the care of a disabled or aged person in that person's home.

Respite Care is an organisation that provides home-based respite care in Canberra. Employees of Respite Care work in the homes of people who have severe disabilities or who are frail and aged. These people are in a vulnerable position and Respite Care believes that it has a duty to carefully assess the suitability of potential carers. The Privacy Commissioner has recommended that Respite Care be able to require applicants to disclose any convictions for offences against the person, even if these convictions are spent.

Regulation 2 also exempts airlines and airport operators, as defined in the Air Navigation Regulations, from the scheme in regard to offences of violence and offences of threatened or actual damage to property for the purpose of assessing the suitability of a person to have right of access to security restricted areas of an aerodrome.

Access to security restricted areas at airports is only available to holders of an Aviation Security Identification Card (an ASIC). Under an existing regulation in schedule 4 of the Crimes Regulations, Commonwealth authorities are exempted from the spent convictions scheme for the purpose of assessing people who apply for ASICs. It is intended that international and domestic airlines and airport operators will also have responsibility for assessing applicants for ASICs. The Privacy Commissioner has recommended that the exemption granted to Commonwealth authorities be extended to these other organisations.