

Crimes Amendment Regulations 2000 (No. 3) 2000 No. 219

EXPLANATORY STATEMENT

STATUTORY RULES 2000 No. 219

Issued by the authority of the Minister for Justice and Customs

Crimes Act 1914

Crimes Amendment Regulations 2000 (No. 3)

Section 91 of the Crimes Act 1914 (the Act) provides that the Governor-General may make regulations for carrying out or giving effect to the Act.

The purpose of the Crimes Amendment Regulations is to exempt prison administrations in New South Wales, Queensland and Tasmania 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 Act. This scheme provides a mechanism whereby certain convictions that are over 10 years old can be 'Q spent'. If a person was convicted of an offence 10 years ago or more (5 years if convicted as a minor) and was sentenced to less than 30 months imprisonment and has not re-offended since that conviction, then the conviction is 'spent'. The person may then lawfully state, on oath or otherwise, that he or she was 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.

The Spent Convictions Scheme provides for exclusions under regulation, pursuant to which a person may be required to disclose an offence to which the Scheme would otherwise apply. Existing exclusions are listed in schedule 4 of the Crimes Regulations. Under paragraph 85ZZH(k) of the Crimes Act an exclusion may be granted to:

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

Schedule 1 to the amending regulations exempts prison administrations in New South Wales, Queensland and Tasmania from the provisions of the Spent Convictions Scheme for the purpose of assessing the suitability of a person to have responsibility for the care or control of prisoners. The exclusion operates in respect of offences involving violence.

The rationale for the exclusion is that prisoners are in a vulnerable position and need to be protected from persons with a history of violence. Exclusions have previously been prescribed in relation to prison administrations in Victoria, South-Australia, Western Australia and the Northern Territory and Corrective Services in the Australian Capital Territory. The exclusions are in accordance with the recommendation of the Privacy Commissioner.

The Regulations commence on gazettal.