

Crimes Amendment Regulations 2003 (No. 3) 2003 No. 265

EXPLANATORY STATEMENT

Statutory Rules 2003 No. 265

Issued by the authority of the Minister for Justice and Customs

Subject: *Crimes Act 1914*

Crimes Amendment Regulations 2003 (No. 3)

Section 91 of the *Crimes Act 1914* (the Act) provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the Act.

The purpose of the proposed Regulations is to amend the *Crimes Regulations 1990* (the Principal Regulations) to ensure consistency with proposed amendments to the security identification card scheme contained in the *Air Navigation Regulations 1947*. The proposed Regulations also narrow the range of offence which would not be subject to the spent convictions scheme in the Act, for the purposes of assessing whether to issue a person with such a security identification card.

The proposed Air Navigation Amendment Regulations (recommended under a separate Minute) apply more stringent arrangements for the issue of a security identification card by an issuing body to a person for all or part of one or more security restricted areas at an airport or airports.

Part VIIC of the Act establishes the Commonwealth spent convictions scheme. Subsection 85ZM(2) of the Act provides that a person's conviction of an offence is spent if the person has been granted a pardon for a reason other than that the person was wrongly convicted of the offence, or the person was not sentenced to imprisonment for the offence, or was not sentenced to imprisonment for the offence for more than 30 months, and the waiting period for the offence has ended. Broadly, the spent convictions scheme provides that persons charged with, or convicted of, a Commonwealth or Territory offence which is spent are not required to disclose this fact to any person for any purpose. Paragraph 85ZZH(k) of the Act provides that the regulations may prescribe persons, bodies and purposes to which the general principle of non-disclosure does not apply. Schedule 4 of the Principal Regulations prescribes such exclusions to the spent convictions scheme.

Under the proposed Air Navigation Amendment Regulations, a security identification card cannot be issued to a person who has an adverse criminal record unless approved by the Secretary of the Department of Transport and Regional Services. However, a security identification card may be issued to a person if a person's conviction has become spent under the Act.

The proposed Regulations amend items 1(2), 14 and 15 in Schedule 4 of the Principal Regulations to clarify that the exclusions to the spent convictions scheme in items 1(2), 14 and 15 apply where a Commonwealth authority, an airline or an operator of an airport is determining whether to issue a security identification card to a person in accordance with the *Air Navigation Regulations 1947*.

The proposed Regulations also amend items 1(2), 14 and 15 in Schedule 4 of the Principal Regulations to restrict the exclusions from the spent convictions scheme to offences under Part 2 of the *Crimes (Aviation) Act 1991* (which sets out offences under that Act) and Part 5.3 (terrorism offences) of the Criminal Code.

If a person is convicted of an offence under the *Crimes (Aviation) Act 1991* or Part 5.3 of the Criminal Code, then an exclusion from the spent convictions scheme applies to the conviction for the purpose of a Commonwealth authority, airline or operator of an airport assessing whether to issue a security identification card to the person. This reference to offences under the *Crimes (Aviation) Act 1991* and Part 5.3 of the Criminal Code replaces the existing non-specific reference in the Principal Regulations to offences of violence and offences of threatened or actual damage to property.

Details of the proposed Regulations are set out in the [Attachment](#).

The proposed Regulations commence on 1 November 2003, to coincide with the commencement of the proposed Air Navigation Amendment Regulations.

ATTACHMENT

Crimes Amendment Regulations 2003 (No. 3)

Regulation 1 describes how the regulations are to be cited.

Regulation 2 provides that the regulations commence on 1 November 2003.

Regulation 3 provides that the *Crimes Regulations 1990* (the Principal Regulations) are amended in accordance with Schedule 1 of the regulations.

The regulations amend the existing descriptions of prescribed purposes and prescribed offences in items 1(2), 14 and 15 of Schedule 4 of the Principal Regulations.

Schedule 1, Item 1 replaces the existing description of prescribed purposes and prescribed offences in item 1(2) of the Principal Regulations. This item specifies that offences under Part 2 of the *Crimes (Aviation) Act 1991* or Part 5.3 of the Criminal Code are excluded from the spent convictions scheme for the prescribed purpose of a Commonwealth authority (the prescribed body) assessing whether to issue a security identification card to a person in accordance with Division 7 of Part 7 of the *Air Navigation Regulations 1947*.

Schedule 1, Item 2 replaces the existing description of prescribed purposes and prescribed offences in items 14 and 15 of the Principal Regulations. This item specifies that offences under Part 2 of the *Crimes (Aviation) Act 1991* or Part 5.3 of the Criminal Code are excluded from the spent convictions scheme for the prescribed purpose of an airline or operator of an airport (the prescribed bodies) assessing whether to issue a security identification card to a person in accordance with Division 7 of Part 7 of the *Air Navigation Regulations 1947*.