

Crimes Amendment Regulations 2004 (No. 2) 2004 No. 287

EXPLANATORY STATEMENT

Statutory Rules 2004 No. 287

Issued by the authority of the Minister for Justice and Customs

Subject: *Crimes Act 1914*

Crimes Amendment Regulations 2004 (No. 2)

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 create a new exclusion from the federal spent convictions scheme. The proposed Regulations would resolve minor technical discrepancies between the Principal Regulations and the *Air Navigation Regulations 1947* (the Air Navigation Regulations).

Exclusion from the federal spent convictions scheme

The federal spent convictions scheme is contained in Part VIIC of the Act. The scheme provides that certain types of offences become spent after a waiting period has elapsed in which no further convictions are recorded against the offender. The waiting period is 10 years from the date of conviction as an adult and 5 years in the case of conviction recorded against a child. Where a person's conviction for an offence is spent, the offender is not obliged to disclose that prior conviction in certain circumstances.

The right of non-disclosure is subject to the exclusions listed in section 85ZZH of Division 6, Part VIIC of the Act, and in Schedule 4 of the Principal Regulations. These exclusions provide that spent convictions information must be disclosed by and to certain persons and bodies for certain purposes.

It is unclear whether current exclusions enable disclosure of prior convictions information about ancillary staff employed at a school or other place where the work would involve contact with children. Such staff would include caretakers, gardeners, cleaners and occasional instructors.

The proposed new exclusion would resolve this by requiring the disclosure of a person's prior conviction for designated offences:

- to persons or bodies who employ or engage other persons to provide services or undertake work at a place where care, instruction or supervision services for minors are provided;
- for the purpose of assessing the suitability of the person to be employed or otherwise engaged by them for financial reward; and
- where that work is likely to involve direct contact with children.

Designated offences would be defined by reference to existing section 85ZL of the Act, where it is defined to mean a sexual offence or any other offence involving victims under 18 years of age.

The Federal Privacy Commissioner was consulted on the exclusion in accordance with subsection 85ZZ(1)(b) of the Act. The Commissioner advised that the scope of the exclusion was appropriate.

Inconsistency with *Air Navigation Regulations 1947*

In November 2003, the Department of Transport and Regional Services launched the Aviation Security Identification Card (ASIC) scheme. The scheme is contained in the Air Navigation Regulations and provides for the issue of security identification cards in order to regulate access to restricted areas of an airport. Consequential amendments were made to the Principal Regulations so that persons or bodies authorised to issue security identification cards could obtain disclosure of prior convictions for certain offences when assessing a person for a security identification card.

The Principal Regulations and the Air Navigation Regulations use slightly different terms when referring to the bodies who may issue security identification cards. The Principal Regulations refer to "Commonwealth authorities, airlines and operators of airports" in describing those bodies assessing whether to issue a security identification card to a person. The Air Navigation Regulations provide that "an airport operator, aircraft operator, an agency of the Commonwealth or other person" may apply for authorisation to issue a security identification card.

Consequently, it is possible that persons or bodies who have been authorised to issue security identification cards, will not be able to obtain disclosure of prior convictions information when making an assessment in relation to the issue of a security identification card, because they have not been specifically identified in the Principal Regulations.

To resolve this discrepancy, the proposed Regulations provide that the Principal Regulations simply refer to "issuing bodies" within the meaning of the Air Navigation Regulations, so that all persons and bodies authorised under the Air Navigation Regulations to issue security identification cards are covered.

Prescribed Offences

An individual must disclose prior convictions for offences against Part 2 of the *Crimes (Aviation) Act 1991* (the Crimes (Aviation) Act) when being assessed in relation to the issue of a security identification card. Most of the offences contained in Part 2 of the Crimes (Aviation) Act relate to aviation security.

However, section 15 of Part 2 makes it an offence to commit an act or omit to do something on board an aircraft where that act or omission would constitute an offence under ACT or Commonwealth laws as they apply in the Jervis Bay Territory. This is a very broad offence that essentially applies all offences in the *Crimes Act 1900* (ACT), and not just those relating to aviation security. The proposed Regulations would clarify this position by specifically excluding section 15 of the Crimes (Aviation) Act from the list of prescribed offences relevant to the issue of a security identification card.

The Act specifies no conditions that need to be met before the power to make regulations may be exercised.

The Regulations commence on the date of their notification in the *Gazette*.