

EXPLANATORY STATEMENT

Select Legislative Instrument 2012 No. 20

Issued by the authority of the Minister for Justice

Crimes Amendment Regulation 2012 (No. 1)

Statement of Compatibility with Human Rights

This legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

This legislative instrument supports the right to privacy and reputation by ensuring that the *Crimes Regulations 1990* accurately list the persons and bodies to which personal information about pardoned, quashed or spent convictions may be disclosed for the purposes of assessing a person's suitability to work with children.

Purpose

The purpose of the Regulation is to update the list of persons or bodies able to receive information about certain types of Commonwealth criminal records under the *Crimes Act 1914* (Crimes Act).

In most Australian jurisdictions, people are required to undergo a working with children check before they can engage in child-related work. These checks are generally undertaken by screening agencies that specialise in assessing whether or not people are suitable to work with children. A key component of working with children checks is a review of the applicant's criminal record to determine whether the applicant has any convictions that might render them unsuitable to work with children.

The Commonwealth makes a broad range of criminal history information available to screening agencies for the purposes of working with children checks, including information about pardoned, quashed and spent convictions.

A pardoned conviction is a conviction which has been set aside by a court because a person was wrongly convicted of the offence. A quashed conviction is also a conviction which has been set aside by a court, but convictions can be quashed for a range of different reasons and in circumstances where a person may have been discharged without conviction, or not found guilty of an offence. A spent conviction is a conviction which is generally over 10 years old and which relates to an offence punishable by no more than 30 months imprisonment.

A person whose conviction is pardoned, quashed or spent is generally no longer required to disclose the fact that they were convicted, and information about these types of convictions is prohibited from being disclosed in most circumstances. As a safeguard, information about pardoned, quashed and spent convictions may only be disclosed for the purposes of working with children checks to persons or bodies (including screening agencies) that have been prescribed in the

Crimes Regulations 1990 (Crimes Regulations). The Minister for Justice's approval is required before persons or bodies can be prescribed.

The Minister for Justice may only approve the prescription of a person or body if her or she is satisfied that it: (a) is required or permitted under a Commonwealth, State or Territory law to deal with information about people working with children; (b) complies with applicable privacy, human rights and records management laws; (c) complies with principles of natural justice; and (d) has risk assessment frameworks in place and appropriately qualified staff.

In 2011, the Attorney-General's Department reviewed the provisions in the Crimes Act that enable information about pardoned, quashed and spent convictions to be disclosed for the purposes of working with children checks.

In conducting its review, the Attorney-General's Department became aware that some prescribed screening agencies in New South Wales have changed names, or been subsumed within other prescribed screening agencies, following the change of government in that State in 2011.

The following screening agencies are currently prescribed in New South Wales by regulation 7A of the Crimes Regulations:

- Commission for Children and Young People
- Department of Education and Training
- Department of Health
- Communities NSW, and
- Catholic Commission for Employment Relations.

To reflect the new names and arrangements of these agencies, schedule 1 amends regulation 7A to prescribe the following persons or bodies in New South Wales:

- Commission for Children and Young People
- Department of Education and Communities
- Department of Health, and
- Catholic Commission for Employment Relations.

This Regulation was prepared in consultation with the New South Wales Commission for Children and Young People, which is the leading agency in conducting working with children checks in New South Wales.

The Regulation commences the day after it is registered on the Federal Register of Legislative Instruments.

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.