

Criminal Records (Clean Slate) Bill

Government Bill

As reported from the committee of the whole House

Key to symbols used in reprinted bill

As reported from a select committee

Struck out (majority)

Subject to this Act,

Text struck out by a majority

New (majority)

Subject to this Act,

Text inserted by a majority

~~Subject to this Act,~~

Words struck out by a majority

Subject to this Act,

Words inserted by a majority

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New

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Words inserted

Hon Phil Goff

Criminal Records (Clean Slate) Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Criminal Records (Clean Slate) Act **2001**.

Part 1

Preliminary provisions

2 Commencement

This Act comes into force on a date to be appointed by the Governor-General by Order in Council.

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3 Overview

- (1) This Act establishes a clean slate scheme to limit the effect of an individual's convictions *<for relatively minor offences>* *<in most circumstances (subject to certain exceptions set out in **section 15**)>* if the individual *<completes a rehabilitation period>* *<satisfies the relevant eligibility criteria>*.

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Struck out (majority)

- (2) Under the clean slate scheme, after completion of the rehabilitation period, the individual is deemed for most purposes to have no convictions. A limited number of exemptions are set out in **section 15**.

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New (majority)

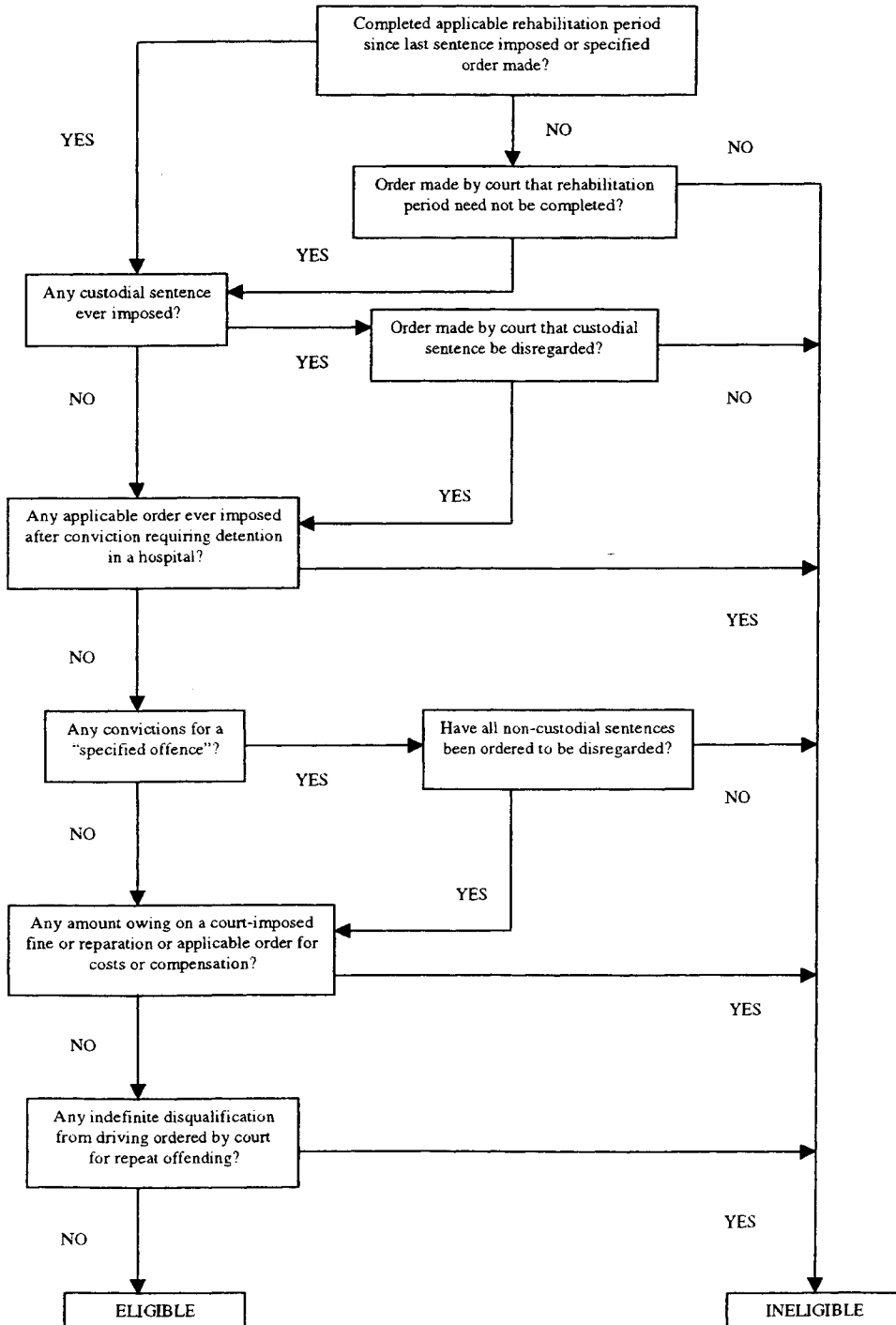
- (2) If an individual satisfies the relevant eligibility criteria,—
- (a) he or she is deemed to have no criminal record for the purposes of any question asked of him or her about his or her criminal record; and
 - (b) he or she has the right to have his or her criminal record concealed by government departments and law enforcement agencies that hold or have access to his or her criminal record.
- (3) A general overview of eligibility under the clean slate scheme is set out in diagrammatic form as follows:

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New (majority)

General overview of eligibility under the clean slate scheme



Note: This general overview of eligibility under the clean slate scheme is by way of indication only. Detailed rules set out in the Act determine an individual's eligibility.

4 Interpretation

In this Act, unless the context otherwise requires,—

clean slate scheme means the scheme established by **Part 2** under which *⟨, either as a consequence of the operation of the provisions of that Part or a court order made under that Part,⟩* an *⟨eligible⟩* individual *⟨has the right to have his or her criminal record concealed⟩*—

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New (majority)

- (a) is deemed to have no criminal record for the purposes of any question asked of him or her about his or her criminal record; and
- (b) has the right to have his or her criminal record concealed by government departments and law enforcement agencies that hold or have access to his or her criminal record

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Struck out (majority)

community-based sentence has the same meaning as in section 2(1) of the Criminal Justice Act 1985

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New (majority)

community-based sentence means—

- (a) a community-based sentence as defined in section 4(1) of the Sentencing Act 2002; and
- (b) a community-based sentence as defined in section 2(1) of the Criminal Justice Act 1985; and
- (c) a sentence of a similar kind to those referred to in **paragraphs (a) and (b)** (including, without limitation, a sentence of community care, a sentence of probation, or a sentence of residential periodic detention) imposed under an earlier corresponding enactment

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New (majority)

conceal means to protect the criminal record or information about the criminal record of an eligible individual from disclosure to a person, body, or agency (including, without limitation, a government department or law enforcement agency) for which there is no lawful authority under this Act to disclose the criminal record or any information about the criminal record

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Struck out (majority)

conviction means a conviction entered by a court in New Zealand for an offence against the law of New Zealand; and includes a conviction for a traffic offence

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New (majority)**conviction—**

- (a) means a conviction entered by a court in New Zealand for an offence, including a conviction for a traffic offence; and
- (b) does not include a conviction entered by a court or court-martial under the Armed Forces Discipline Act 1971 or resulting from an appeal from a decision under that Act

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Struck out (majority)

criminal record, in relation to an individual, means any official written record of convictions or sentences or both that is kept by, or on behalf of, the Crown; and includes any item on a list of previous convictions and sentences

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New (majority)**criminal record** means,—

- (a) in relation to a question asked of an individual, any—

New (majority)

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| (i) | charges laid against him or her that have resulted in conviction; and | |
| (ii) | convictions entered against him or her; and | |
| (iii) | sentences imposed on him or her; and | |
| (iv) | orders imposed on him or her as a result of a conviction; and | 5 |
| (b) | in relation to a request for disclosure or an obligation to conceal,— | |
| (i) | any official record (including, without limitation, an electronic record) that is kept by, or on behalf of, the Crown of— | 10 |
| (A) | charges that result in conviction; and | |
| (B) | convictions entered (including, without limitation, any item on a list of previous convictions); and | 15 |
| (C) | sentences imposed (including, without limitation, any item on a list of previous sentences); and | |
| (D) | orders imposed on an offender as a result of a conviction; but | 20 |
| (ii) | does not include details in a marriage certificate of a conviction for bigamy recorded under section 60 of the Births, Deaths, and Marriages Registration Act 1995 (or any corresponding provision of an earlier enactment) and included in the certificate under regulations made under section 88(1)(b) of that Act | 25 |

- custodial sentence** means a sentence of imprisonment <imposed under the Sentencing Act 2002 or under any earlier corresponding enactment>; and includes— 30
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| (a) | a sentence of corrective training; and | |
| (b) | a sentence of preventive detention; and | |

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| (c) | a suspended sentence of imprisonment; and | |
| (d) | a sentence of imprisonment <i><that is being></i> served by way of home detention; and | 35 |

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- (e) a custodial sentence that has been abolished (such as borstal training, residential periodic detention, or detention centre training)

New (majority)

- (e) a sentence of borstal training; and
 (f) a sentence of detention centre training; and
 (g) any other sentence that requires the full-time detention of an individual

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eligible individual means an individual who is eligible to have the clean slate scheme apply to him or her under **section 7(1)** or as a consequence of an order made by a court under **section 8, section 8A, or section 10**

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individual means a natural person, other than a deceased natural person

law enforcement agency means—

- (a) an agency that holds or has access to information described in the Fifth Schedule of the Privacy Act 1993; and
 (b) the Department of Labour, the Inland Revenue Department, and the New Zealand Customs Service

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non-custodial sentence includes, but is not limited to, a community-based sentence, a sentence of a fine or reparation, <a suspended sentence of imprisonment,> and a specified order <of the court>

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New (majority)

offence means any act or omission for which a person may be punished under the Crimes Act 1961 or any other enactment, whether on conviction on indictment or on summary conviction

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prison officer means a person who is an officer as defined in section 2<(1)> of the Penal Institutions Act 1954

probation officer has the same meaning as in *<section 2(1) of the Criminal Justice Act 1985>* *<section 4(1) of the Sentencing Act 2002>*

rehabilitation period, in relation to an individual, means any period of not less than *<10>* *<7>* consecutive years after the date on which the individual was last sentenced, or a specified order *<of the court>* was last made, in which the individual has not been convicted of an offence

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New (majority)

registrar means a registrar of a District Court; and includes a deputy registrar of a District Court

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security officer has the same meaning as in section 2(1) of the Penal Institutions Act 1954

sentence means a sentence imposed by a court in New Zealand for a conviction for an offence *<against the law of New Zealand>*

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Struck out (majority)

sentencing court, in relation to a conviction, means the court that imposed or is to impose the sentence for that conviction; and includes any court that has jurisdiction to impose such a sentence

specified order *<of the court>* means—

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- (a) a direction made by a court in New Zealand, as a result of a conviction for an offence against the law of New Zealand, that an offender be discharged under section 20 of the Criminal Justice Act 1985; or

New (majority)

- (a) a direction made by a court in New Zealand, as a result of a conviction for an offence, that an offender be convicted and discharged under—
- (i) section 108 of the Sentencing Act 2002; or
 - (ii) section 20 of the Criminal Justice Act 1985; or 5
 - (iii) section 347 of the Crimes Act 1961; or
 - (iv) section 42(3) of the Criminal Justice Act 1954; or
 - (v) section 18(1)(b) of the Offenders Probation Act 1920; or
 - (vi) a corresponding provision in any other enactment; or 10

Struck out (majority)

- (b) an order made by a court in New Zealand, as a result of a conviction for an offence against the law of New Zealand, that an offender appear for sentence if called upon to do so under section 21 of the Criminal Justice Act 1985; or 15

New (majority)

- (b) an order made by a court in New Zealand, as a result of a conviction for an offence, that an offender appear for sentence if called on to do so under—
- (i) section 110 of the Sentencing Act 2002; or 20
 - (ii) section 21 of the Criminal Justice Act 1985; or
 - (iii) section 41 of the Criminal Justice Act 1954; or
 - (iv) section 92(1)(b) of the Justices of the Peace Act 1927; or
 - (v) a corresponding provision in any other enactment; or 25

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- (c) an order made by a court in New Zealand, as a result of a conviction for an offence against the law of New

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Zealand, that an offender must not associate with a person or class of persons under section 28A of the Criminal Justice Act 1985

New (majority)

- (c) an order made by a court in New Zealand under section 112 of the Sentencing Act 2002 or section 28A of the Criminal Justice Act 1985, as a result of a conviction for an offence and instead of passing sentence, that an offender must not associate with a person or class of persons; or 5
- (d) an order made by a court in New Zealand under section 124 of the Sentencing Act 2002 or section 83 of the Criminal Justice Act 1985, as a result of a conviction for an offence referred to in those sections and instead of passing sentence, that an offender be disqualified from holding or obtaining a driver licence; or 10 15
- (e) an order made by a court in New Zealand under section 128 of the Sentencing Act 2002 or section 84 of the Criminal Justice Act 1985, as a result of a conviction for an offence referred to in those sections and instead of passing sentence, that an offender's motor vehicle be confiscated; or 20
- (f) an order made by a court in New Zealand under any other enactment as a result of a conviction for an offence and instead of imposing a sentence

specified <sexual> offence (means)— 25

- (a) means an offence against any of the following provisions of the Crimes Act 1961:
- (i) section 130 (incest):
- (ii) section 131 (sexual intercourse with a girl under care and protection): 30
- (iii) section 132 (sexual intercourse with a girl under 12):
- (iv) section 133 (indecenty with a girl under 12):
- (v) section 134 (sexual intercourse or indecenty with a girl between 12 and 16): 35

- (vi) section 138 (sexual intercourse with a severely subnormal woman or girl):
- (vii) section 139 (indecent act between a woman and a girl):
- (viii) section 140 (indecenty with a boy under 12): 5
- (ix) section 140A (indecenty with a boy between 12 and 16):
- (x) section 142 (anal intercourse):
- (xi) section 144A (sexual conduct with children outside New Zealand): 10
- (xii) section 144C (organising or promoting child sex tours):

New (majority)

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| <ul style="list-style-type: none"> (xiii) section 204A (female genital mutilation): (xiv) section 204B (further offences relating to female genital mutilation); and | 15 |
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- (b) means an offence against any of the following provisions in the Crimes Act 1908:
- (i) section 153 (unnatural offence) *<if committed in relation to a male or female under 16 years>*:
 - (ii) section 154 (attempt to commit unnatural act) *<if committed in relation to a male or female under 16 years>*: 20
 - (iii) section 155 (incest):
 - (iv) section 208 (indecent assault) *<if committed in relation to a female under 16 years>*: 25
 - (v) section 211 (rape) *<if committed in relation to a female under 16 years>*:
 - (vi) section 213 (attempt to commit rape) *<if committed in relation to a female under 16 years>*:
 - (vii) section 214 (defiling children under 12): 30
 - (viii) section 215 (attempting to defile child under 12):

New (majority)

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| <ul style="list-style-type: none"> (viiiia) section 216 (defiling a girl between 12 and 16): |
| <ul style="list-style-type: none"> (ix) section 217 (defiling idiot or imbecile woman or girl): |

- (x) section 218 (procuring defilement of girls) *<if committed in relation to a female under 16 years>*; and

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| (c) includes— | |
| (i) an attempt to commit an offence against any of the provisions listed in paragraph (a) or paragraph (b) , if— | 5 |
| (A) the offence is not itself specified as an attempt; and | |
| (B) the provision does not provide that the offence may be completed on an attempt; and | 10 |
| (ii) a conspiracy to commit an offence against any of the provisions listed in paragraph (a) or paragraph (b) ; and | 15 |
| (iii) being an accessory after the fact in relation to an offence against any of the provisions listed in paragraph (a) or paragraph (b) | |

traffic offence includes—

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| (a) any offence against <i><the Transport Act 1949, the Transport Act 1962, or></i> the Land Transport Act 1998 <i><, the Transport Act 1962, the Transport Act 1949, the Motor Vehicles Act 1924, the Motor Regulation Act 1908></i> , or against any regulation, rule, or bylaw made under any of those Acts; and | 20 |
| (b) any offence against any regulation, rule, or bylaw made under any other Act if the offence relates to the use of vehicles or parking places or transport stations | 25 |

New (majority)

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| use in relation to a criminal record, means to make a decision in relation to the record, or take any action in reliance on the record. | 30 |
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5 Act binds the Crown
This Act binds the Crown.

Part 2 Clean slate scheme

6 Application of clean slate scheme

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- (1) Every request for, and every question about, information on an individual's criminal record, whether made or asked on or after the commencement of this Act, is subject to the clean slate scheme. 5

New (majority)

- (1) The clean slate scheme applies to every question asked about, and every request made for the disclosure of, an eligible individual's criminal record or information about an eligible individual's criminal record whether asked or made on or after the commencement of this Act. 10
- (2) The clean slate scheme applies—
- (a) to all sentences, whether imposed before or on or after the commencement of this Act; and 15
 - (b) to all specified orders *<of the court>*, whether made before or on or after the commencement of this Act.

7 Who is eligible under clean slate scheme

- (1) An individual *<(but not a body corporate)>* is eligible *<to have his or her criminal record concealed>* under the clean slate scheme if— 20
- (a) he or she has completed a rehabilitation period since the date on which a sentence was last imposed, or a specified order *<of the court>* was last made, as a result of a conviction for an offence, *<and there are no criminal proceedings pending against him or her that could result in a conviction>*, or he or she is an individual in relation to whom an order has been made under **section 8 or section 8A(2)**; and 25
 - (b) no custodial sentence has ever been imposed on him or her; and 30

New (majority)

- (ba) no order has ever been made in relation to him or her under ~~((section 118 of the Criminal Justice Act 1985))~~ section 34(1)(b) of the Criminal Procedure (Mentally Impaired Persons) Act 2003, section 118 of the Criminal Justice Act 1985, or section 39J of the Criminal Justice Act 1954 ~~((being an order that due to the individual's mental condition it is in his or her interests, or in the interests of the safety of the public, that he or she be detained in a hospital))~~ (being an order imposed, instead of passing sentence, that the offender be treated or cared for in a manner that the offender's mental impairment requires, either in the offender's interest, or for the safety of the public, or for the safety of a person or class of person); and 5
- (c) he or she has not been convicted of a specified ~~<sexual>~~ offence; and 10 15

Struck out (majority)

- (d) a court has sentenced him or her to a fine or reparation, and the amount owing has been paid in full; and

New (majority)

- (d) in the case of a court having imposed a sentence of a fine or reparation on the individual, the amount owing has been paid in full or has been deemed to have been remitted; and 20
- (da) in the case of a court having ordered the individual to pay costs or compensation under section 106, section 108, or section 110 of the Sentencing Act 2002 (or a corresponding provision of an earlier enactment), the amount owing has been paid in full or has been deemed to have been remitted; and 25

Struck out (majority)

- (e) a court has imposed a non-custodial sentence and made an order disqualifying him or her from driving (whether indefinitely or not), and he or she has met the relicensing requirements and is no longer disqualified by virtue of that order.

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New (majority)

- (e) no order has ever been made disqualifying him or her from holding or obtaining a driver licence under section 65 of the Land Transport Act 1998 or a driver's licence under section 30A of the Transport Act 1962.
- (2) An individual in relation to whom a disqualification order has been made under either of the sections referred to in **subsection (1)(e)** does not become eligible to have the clean slate scheme apply to him or her as a consequence of the Director removing, or having removed, the disqualification under section 100 of the Land Transport Act 1998 or section 30C of the Transport Act 1962.

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7A Effect of further conviction on eligibility

- (1) If, at any time after becoming an eligible individual (either under **section 7(1)** or as a consequence of an order made by the court under **section 8, section 8A, or section 10**), an eligible individual is convicted of an offence, he or she is no longer an eligible individual.
- (2) An individual referred to in **subsection (1)** again becomes an eligible individual if he or she—
- (a) completes a rehabilitation period beginning on the day after the date on which he or she was sentenced for, or the specified order was made in relation to, that conviction or is an individual in relation to whom an order has been made under **section 8 or section 8A(2)**; and
- (b) is otherwise eligible under **section 7(1)** to have the clean slate scheme apply to him or her.

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Struck out (majority)

- 8 Individual may apply to court for order requiring that sentence or conviction be disregarded for purposes of section 7**
- (1) An individual who is otherwise eligible under section 7 may apply to the sentencing court for an order under **subsection (2)** if— 5
- (a) the court imposed a custodial sentence on the individual and the offence has been subsequently abolished, but only if the act that constituted the abolished offence no longer constitutes an offence; or 10
- (b) the court imposed a non-custodial sentence on the offender for a conviction for a specified sexual offence.
- (2) The court may order that—
- (a) the custodial sentence for the offence that has been subsequently abolished must be disregarded for the purposes of **section 7(b)**, but only if the sentencing court is satisfied that the act that constituted the abolished offence no longer constitutes an offence; or 15
- (b) the conviction for the specified sexual offence must be disregarded for the purposes of **section 7(c)**. 20
- (3) In considering an application under **subsection (1)**, the sentencing court must balance the interests of individuals in concealing their criminal records against the wider public interest in the safety of the community (recognising that an awareness of an individual's previous convictions is appropriate in certain cases). 25
- (4) Subject to any rules of court, applications under this section must be made to a Judge in Chambers. The Judge may call for and receive as evidence any statement, document, information, matter, or thing that, in the Judge's opinion, may assist him or her to deal effectually with the application. 30
- (5) On an application under **subsection (1)**, the sentencing court must either make an order under **subsection (2)** or decline to do so.

New (majority)

- 8 Individual may apply to District Court for order that rehabilitation period need not be completed**
- (1) An individual who is otherwise eligible under **section 7(1)** may make an application to a District Court for an order under **subsection (2)** if—
- (a) the last sentence imposed on the individual was a non-custodial sentence as a result of a conviction for an offence; and
- (b) that offence has subsequently been abolished and the act that constituted the abolished offence no longer constitutes an offence; and
- (c) he or she is no longer subject to the non-custodial sentence.
- (2) If an application is made to a District Court under **subsection (1)**, a registrar must make an order that an individual need not complete a rehabilitation period for the purposes of **section 7(1)(a)** if the applicant provides evidence of the matters in **subsection (1)(a) to (c)**.
- 8A Individual may apply to District Court for order (requiring) that rehabilitation period need not be completed or conviction be disregarded**
- (1) An individual who is otherwise eligible under **section 7(1)** may apply to a District Court for an order under **subsection (2)** if—
- (a) the last sentence imposed on the individual was a custodial sentence as a result of a conviction for an offence; and
- (b) that offence has subsequently been abolished and the act that constituted the abolished offence no longer constitutes an offence; and
- (c) he or she is no longer subject to the custodial sentence.
- (2) The court may, if satisfied of the matters in **subsection (1)(a) to (c)**, make an order—
- (a) that the individual need not complete a rehabilitation period for the purposes of **section 7(1)(a)**; and
- (b) that the custodial sentence for the offence must be disregarded for the purposes of **section 7(1)(b)**.

New (majority)

- (3) An individual who is otherwise eligible under **section 7(1)** may make an application to a District Court for an order under **subsection (4)** if a court imposed a non-custodial sentence on the offender for a conviction for a specified offence.
- (4) The court may order that the conviction for the specified offence must be disregarded for the purposes of **section 7(1)(c)**. 5
- (5) In considering an application under this section, a court must balance the interests of individuals in concealing their criminal records against the wider public interest in the safety of the community (recognising that an awareness of an individual's previous convictions is appropriate in certain cases). 10
- (6) Subject to any rules of court, a court may call for and receive as evidence any statement, document, information, matter, or thing that, in the court's opinion, may assist it to deal effectually with the application. 15
- (7) On an application under **subsection (1) or subsection (3)**, the court must either make the relevant order under **subsection (2) or subsection (4)** or decline to do so.
- (8) A District Court may transfer an application under this section to the High Court if it considers that it is appropriate to do so. 20

8B Further application

- (1) Subject to any rules of the court, an individual may make a further application under **section 8 or section 8A** despite—
- (a) having previously made an application under either of those sections; or 25
- (b) having appealed under **section 10**.
- (2) Despite **subsection (1)**, the court may dismiss any further application that it thinks is frivolous, vexatious, or an abuse of the procedure of the court.

Struck out (majority)**9 Power of sentencing court to order that individual is not eligible under clean slate scheme**

- (1) Despite **sections 7 and 8**, on sentencing an individual or making a specified order of the court on or after the date of commencement of this Act (whether the relevant conviction was entered before or on or after that date), the sentencing court may order that the individual is not eligible to have his or her criminal record concealed under the clean slate scheme. 5
- (2) The sentencing court may make an order under **subsection (1)** if satisfied, on reasonable grounds, that there would be a significant risk of harm if the individual's criminal record were concealed under the clean slate scheme. 10
- (3) In exercising its discretion under this section, the sentencing court must balance the interests of individuals in concealing their criminal records against the wider public interest in the safety of the community (recognising that an awareness of an individual's previous convictions is appropriate in certain cases). 15

10 Right of appeal**Struck out (majority)**

- (1) An individual may appeal to the High Court against the decision of a District Court if— 20
- (a) a District Court declines to make an order under **section 8**; or
- (b) a District Court makes the individual subject to an order under **section 9**. 25

New (majority)

- (1) An individual may appeal to the High Court against the decision of a District Court if the District Court declines to make an order under **section 8A**.

Struck out (majority)

- (2) An individual may appeal to the Court of Appeal against the decision of the High Court if—
- (a) the High Court declines to make an order under **section 8**; or
 - (b) the High Court makes the individual subject to an order under **section 9**.

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New (majority)

- (2) An individual may appeal to the Court of Appeal against the decision of the High Court if the High Court declines to make an order under **section 8A**.

- (3) An appeal under this section must be brought in accordance with the appropriate rules of court within 28 days *<after notice>* of the decision *<was communicated to the appellant>*, or within such further time as the High Court or the Court of Appeal (as the case may be) may allow on application made before or after the expiration of that period.
- (4) An appeal under this section is by way of rehearing.

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New (majority)

- (5) On the hearing of an appeal under this section, a court may confirm, reverse, or modify the decision appealed against.

10A Prohibition against publication of applicant's or appellant's name

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- (1) If an application is made under **section 8 or section 8A**, or an appeal is lodged under **section 10**, the following particulars must not be published in any report or account unless **subsection (2)** applies:

- (a) the name of the applicant or appellant;
- (b) any particulars leading to the identification of the applicant or appellant.

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- (2) The particulars referred to in **subsection (1)** may be published in a report or account if the court orders that they may be published.

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New (majority)

- (3) In deciding whether to permit the particulars referred to in **subsection (1)** to be published in a report or account, the court must have regard to—
- (a) the interests of any individual (including, without limitation, the applicant or appellant); and
 - (b) the public interest.

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New

- (4) Every person commits an offence if the person contravenes **subsection (1)** and is liable on summary conviction,—
- (a) in the case of an individual, to a term of imprisonment not exceeding 3 months or a fine not exceeding \$1,000, or both; or
 - (b) in the case of a body corporate, to a fine not exceeding \$5,000.

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Struck out (majority)**11 Effect of clean slate scheme**

- (1) The following provisions of this section apply if an individual is eligible to have his or her criminal record concealed under the clean slate scheme. 15
- (2) A question asked of the individual or any other person or body about the individual's criminal record must be treated as being asked subject to the clean slate scheme and, if the individual is eligible under the scheme, the question must be answered, subject to **subsection (3)**, in a way that is consistent with the scheme. 20
- (3) The individual is not required to disclose to any other person any information about his or her criminal record, but nothing in this Act prevents an individual disclosing or consenting to the disclosure of information about himself or herself that is subject to the clean slate scheme. 25
- (4) In the application to the individual of a provision of any enactment or rule of law or the provisions contained in any contract or agreement, instrument, or document,— 30

Struck out (majority)

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| (a) | a reference in the provision to an individual's criminal record must be treated as being subject to the clean slate scheme and, if the individual is eligible under the scheme, must be interpreted in a way that is consistent with the scheme; and | 5 |
| (b) | a reference in the provision to the individual's character or fitness must also be treated as being subject to the clean slate scheme and, if the individual is eligible under the scheme, must be interpreted in a way that is consistent with the scheme. | 10 |
| (5) | This section is subject to section 15 . | |

New (majority)*Effect of clean slate scheme on eligible individual***11 Effect of clean slate scheme on eligible individual**

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| (1) | If an individual is an eligible individual, he or she is deemed to have no criminal record for the purposes of any question asked of him or her about his or her criminal record. | 15 |
| (2) | An eligible individual may answer a question asked of him or her about his or her criminal record by stating that he or she has no criminal record. | |
| (3) | Nothing in subsection (1) or subsection (2) — | 20 |
| (a) | prevents an eligible individual stating that he or she has a criminal record, disclosing his or her criminal record, or consenting to the disclosure of his or her criminal record; or | |
| (b) | authorises an individual to answer a question asked of him or her about his or her criminal record by stating that he or she has no criminal record if the question is asked— | 25 |
| (i) | under the jurisdiction of the law of a foreign country while an eligible individual is outside New Zealand; or | 30 |
| (ii) | while he or she is in New Zealand but relates to a matter dealt with by the law of a foreign country (for example, a question asked on an application | |

New (majority)

form by the immigration or customs agency of a foreign country).

- (4) **Subsections (1) and (2)** are subject to the exceptions in **section 15**.

Struck out (majority)

12 Responsibility of chief executives

- (1) **Subsection (2)** applies when an individual becomes eligible to have his or her criminal record concealed under the clean slate scheme. 5
- (2) If this subsection applies, the chief executive of the Department for Courts and every other chief executive of a government department or law enforcement agency must ensure that every copy of the individual's criminal record held in the government department or law enforcement agency for which the chief executive is responsible, or held by an employee or contractor of that government department or law enforcement agency, is concealed from persons who do not have lawful access to those records. 10
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New (majority)

Effect of clean slate scheme on government departments and law enforcement agencies that hold or have access to criminal records

- 12 Responsibility of chief executives** 20
- (1) **Subsection (2)** applies to the ~~((chief executive of the Department for Courts))~~ Secretary for Justice and every other chief executive of a government department or law enforcement agency that holds, or has access to, criminal records.
- (2) A chief executive to whom this subsection applies must take all reasonable steps (including, without limitation, the development of policies and procedures) to ensure the government department or law enforcement agency for which he or she is chief executive, and any employee or contractor of that government department or law enforcement agency— 25
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New (majority)

- (a) conceals the criminal records of eligible individuals when requests are made for their disclosure other than by the eligible individuals to whom the criminal records relate; and
- (b) does not use the criminal records of eligible individuals other than for a purpose authorised under this Act. 5
- (3) **Subsection (2)(a)** is subject to the exceptions in **section 15**.
- 12A Effect of clean slate scheme on government departments, law enforcement agencies, employees, and contractors**
- (1) A government department or law enforcement agency, or an employee or contractor of a government department or law enforcement agency, that holds or has access to criminal records and that is responding to a request for the disclosure of an eligible individual's criminal record or any information about an eligible individual's criminal record (other than from the eligible individual to whom the request relates) must not disclose the criminal record of the eligible individual. 10 15
- (2) A government department or law enforcement agency, or an employee or contractor of a government department or law enforcement agency, that holds or has access to the criminal records of eligible individuals may not use those criminal records other than for a purpose authorised under this Act. 20
- (3) **Subsection (1)** is subject to the exceptions in **section 15**.

*Offences***Struck out (majority)**

- 13 Offence to compel or coerce individual to provide information concerning criminal record** 25
- (1) A person commits an offence if, without lawful authority, the person compels or coerces an individual to provide information about that individual's criminal record that is required to be concealed under the clean slate scheme. 30
- (2) A person who commits an offence against **subsection (1)** is liable on summary conviction to a fine not exceeding \$10,000.

14 Offence to unlawfully disclose information required to be concealed

- (1) A person commits an offence if the person has access to criminal records, and knowing that he or she does not have lawful authority <under this Act, or being reckless as to whether or not he or she has lawful authority under this Act>, discloses to any <other person any> <person, body, or agency the criminal record or> information <that is required to be concealed under the clean slate scheme> <about the criminal record of an eligible individual that is required to be concealed>. 5 10
- (2) A person who commits an offence against **subsection (1)** is liable on summary conviction to a fine not exceeding <\$5,000> <\$20,000>.

New (majority)**14A Offence to require or request that individual disregard scheme** 15

- (1) A person commits an offence if, without lawful authority under this Act, the person requires or requests that an individual—
- (a) disregard the effect of the clean slate scheme when answering a question about his or her criminal record; 20
or
- (b) disregard the effect of the clean slate scheme and disclose, or give consent to the disclosure of, his or her criminal record. 25
- (2) A person who commits an offence against **subsection (1)** is liable on summary conviction to a fine not exceeding \$10,000.

*Exceptions***Struck out (majority)****15 Exemptions from requirement to conceal criminal record** 30

- (1) This Act does not prevent the disclosure of any information contained in an individual's criminal record if the disclosure is for the purposes of, or is made in relation to,—

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| (a) | the exercise of the investigation or prosecution functions of a law enforcement agency or the administration of sentences by a law enforcement agency; or | |
| (b) | the exercise of security-related functions of the New Zealand Security Intelligence Service; or | 5 |
| (c) | criminal or civil proceedings before a court or tribunal (including sentencing) or proceedings before a Parole Board or District Prisons Board; or | |
| (d) | an application for employment— | |
| | (i) in a position that involves the national security of New Zealand; or | 10 |
| | (ii) as a Judge, a Justice of the Peace, a Community Magistrate, a member of the police, a prison officer, a probation officer, or a position for which a police vetting under the Education Act 1989 is required to be carried out through the New Zealand Teachers Council; or | 15 |
| (e) | an application to a government department, or a person acting on behalf of a government department, for approval to act in a role recognised by any enactment as involving the care and protection of a child or young person (however that role is described); or | 20 |
| (f) | the undertaking of research that requires access to criminal history information to be given to any employee or person contracted to a government department or law enforcement agency or to any person undertaking research approved by a government department or law enforcement agency; or | 25 |
| (g) | the provisions of the Archives Act 1957 if the individual has been deceased for a period of 25 years or more. | 30 |

New (majority)**15 Exceptions to general effect of clean slate scheme**

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| (1) | An eligible individual must state that he or she has a criminal record if subsection (3) applies. | |
| (2) | A government department or law enforcement agency, or an employee or contractor of a government department or law | 35 |

New (majority)

enforcement agency, that holds or has access to criminal records may disclose the criminal record or information about the criminal record of an eligible individual if **subsection (3)** applies.

- (3) This subsection applies if— 5
- (a) the eligible individual’s criminal record or information about the eligible individual’s criminal record is necessary for any of the following purposes:
- (i) the exercise of the prevention, detection, investigation, or prosecution functions of a law enforcement agency or an overseas agency or body whose functions correspond to those of a law enforcement agency; or 10
- (ii) the administration of sentences or the management of remand inmates by a law enforcement agency; or 15
- (iii) the exercise of security-related functions of the New Zealand Security Intelligence Service; or
- (b) the eligible individual’s criminal record or information about the eligible individual’s criminal record is relevant to any criminal or civil proceedings before a court or tribunal (including sentencing) or proceedings before ~~(a Parole Board or District Prisons Board)~~ the New Zealand Parole Board; or 20

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- (ba) the eligible individual has made an application of any kind under the Arms Act 1983 and a member of the police is considering whether the individual is a fit and proper person for the purposes of that application; or 25

- (c) the eligible individual has made an application for employment— 30
- (i) in a position that involves the national security of New Zealand; or
- (ii) as a Judge, Justice of the Peace, or Community Magistrate; or

New (majority)

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| (iii) | as a member of the police, prison officer, probation officer, or security officer; or | |
| (d) | the eligible individual has made an application to act in a role ((predominately)) <u>predominantly</u> involving the care and protection of, <u>but not predominantly involving the delivery of education to,</u> a child or young person (for example, a foster parent or a caregiver of children or young persons); or | 5 |
| (e) | the eligible individual's criminal record or information about an eligible individual's criminal record is relevant to an investigation under section 17 of the Children, Young Persons, and their Families Act 1989 of a report of ill-treatment or neglect of a child or young person or in relation to any procedure under Part II of that Act arising from an investigation of that kind (including, without limitation, holding a family group conference or a Family Court's consideration of an application for a declaration that a child or young person is in need of care or protection); or | 10 15 |
| (f) | the eligible individual's criminal record or information about an eligible individual's criminal record is relevant to the undertaking of research that requires access to criminal history information to be given to any employee or person contracted to a government department or law enforcement agency or to any person undertaking research approved by a government department or law enforcement agency. | 20 25 |

*Limits on use of criminal records***15A Limits on use of eligible individuals' criminal records**

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| (1) | A person, body, or agency (including, without limitation, a government department or law enforcement agency) to whom the criminal record of an eligible individual, or information about the criminal record of an eligible individual, has been disclosed under section 15 must not use that criminal record or information about the criminal record for any purpose other than the purpose in relation to which it was disclosed to the person, body, or agency. | 30 35 |
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New (majority)

- (2) Any government department or law enforcement agency, or an employee or contractor of a government department or law enforcement agency, that holds or has access to the criminal records of eligible individuals (other than those that have been disclosed to it under **section 15**) must not use those records or any information about those records for any purpose other than for a purpose for which those records or that information may also be disclosed under **section 15**. 5

Relationship to other provisions

- 15B Relationship to other provisions** 10
- (1) In this section, **provision** means a provision—
- (a) of any enactment (including, without limitation, section 71(4) of the Summary Proceedings Act 1957 and any rules made under section 409 of the Crimes Act 1961); or 15
 - (b) of a rule of law; or
 - (c) contained in any contract, agreement, instrument, or document.
- (2) If a reference in a provision to—
- (a) an individual's criminal record or to an individual's character or fitness is applied to an eligible individual, it must be interpreted in a way that is consistent with the eligible individual's rights under the clean slate scheme; and 20
 - (b) an ability to request the disclosure of information about an individual is applied to an eligible individual's criminal record, it must be interpreted in a way that is consistent with the eligible individual's right to have his or her criminal record concealed. 25
- (3) Nothing in this Act affects an eligible individual's right under any provision to request information about, or a copy of, his or her own criminal record. 30

Miscellaneous

Struck out (majority)**16 Rules**

The Governor General may, by Order in Council, make rules—

- (a) regulating the manner in which an application may be made under **section 8(1)** or an appeal may be brought under **section 10(1) or (2)**; and
- (b) regulating the practice and procedure of any court under this Act.

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New (majority)**16 Rules**

- (1) In addition to the powers conferred by the District Courts Act 1947, the Governor-General may, by Order in Council, with the concurrence of the Chief District Court Judge and any 2 or more members of the Rules Committee (established under section 51B of the Judicature Act 1908) of whom at least 1 is a District Court Judge,—

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- (a) make rules regulating the practice and procedure of District Courts under this Act; and
- (b) without limiting **paragraph (a)**, make rules regulating the manner in which applications may be made to District Courts under **section 8 and section 8A**.

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- (2) In addition to powers conferred by the Judicature Act 1908, the Governor-General may, by Order in Council, with the concurrence of the Chief Justice and any 2 or more ~~(of the)~~ members of the Rules Committee (established under section 51B of the Judicature Act 1908) of whom at least 1 is a High Court Judge,—

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- (a) make rules regulating the practice and procedure of the High Court and the Court of Appeal under this Act; and
- (b) without limiting **paragraph (a)**, make rules regulating the manner in which appeals may be brought to the High Court and Court of Appeal under **section 10(1) or (2)**.

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- (3) In the absence of any rules under this section, or in any situation not covered by any of those rules, the rules in relation to civil proceedings for the time being in force under the

New (majority)

District Courts Act 1947 or the Judicature Act 1908 (whichever is applicable) apply, with all necessary modifications, to the practice and procedure of courts under this Act.

- 17 Application of Legal Services Act 2000** 5
All proceedings under this Act are civil proceedings for the purposes of the Legal Services Act 2000.

Transitional provision

- 18 Transitional provision relating to answers and responses to questions and requests asked or made before commencement** 10
The clean slate scheme applies—
- (a) to an answer given on or after the commencement of this Act by an eligible individual to a question asked about his or her criminal record before the commencement of this Act; and 15
 - (b) to a response given on or after the commencement of this Act to a request made before the commencement of this Act for the disclosure of an individual's criminal record or information about an individual's criminal record if, on the commencement of this Act, the individual to whom the request relates has become an eligible individual. 20

Legislative history

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| 11 December 2001 | Introduction (Bill 183-1) |
| 2 May 2002 | First reading and referral to Justice and Electoral Committee |
| 25 July 2003 | Reported from Justice and Electoral Committee (Bill 183-2) |
| 2 December 2003 | Second reading |
| 4 May 2004 | Committee of the whole House (Bill 183-3) |