

Criminal Records (Clean Slate) Bill

Government Bill

As reported from the Justice and Electoral Committee

Commentary

Recommendation

The Justice and Electoral Committee has examined the Criminal Records (Clean Slate) Bill and recommends by majority that it be passed with the amendments shown. We considered the bill in conjunction with the Clean Slate Bill, a Member's bill in the name of Nandor Tanczos. A number of provisions in the Member's bill were incorporated into the Government bill. We recommend that the Clean Slate Bill not be passed in a separate report to the House. In this report, 'We' refers to Labour and Green members unless otherwise indicated.

Introduction

The Criminal Records (Clean Slate) Bill creates a 'clean slate scheme' to limit the effect of an individual's convictions if the individual satisfies the relevant eligibility criteria. An eligible person:

- is deemed to have no criminal record for the purposes of any question asked of him or her about his or her criminal record
- has the right to have his or her criminal record concealed by persons who hold or have access to that criminal record.

In general, our recommendations concern adding greater detail to propositions already contained in the bill. The bill now takes a more descriptive, step-by-step approach. We recommend a range of explanatory amendments to clarify that the clean slate scheme:

- enables criminal convictions to be concealed, rather than wiped (or ‘expunged’)—a criminal record that is eligible for concealment must be protected from unlawful disclosure
- is automatic, in the sense that it does not require individuals to make an application to have their convictions ‘clean-slated’
- is an ‘all or nothing’ regime, which means that an individual must meet all of the criteria in order to become eligible, and that a record can become unconcealed in the event of a subsequent conviction
- is ‘question-based’, requiring those with access to criminal records to treat questions about an eligible individual’s records in a manner that is consistent with the scheme
- takes ‘criminal record’ to mean official criminal record only (which includes all material held about criminal records by government agencies).

It is important to note that the bill is not an attempt to rewrite history. Some conviction information will remain in the public domain—for example, in books, in newspaper articles and on the Internet—and the bill creates no obligations for this to be concealed. Further, as the bill does not propose to affect the law of foreign States, it will not remove any existing barriers to overseas travel.

We urge that the Act be implemented as soon as possible. We are concerned that it is to come into force on a date to be appointed by the Governor-General by Order in Council. Although we are advised this was considered the most prudent step, taking into account operational feasibility, we consider the high level of public interest demands the shortest possible delay between enactment and commencement.

Public information campaign

We stress the need for a thorough public information campaign prior to the commencement of the clean slate legislation and on an ongoing basis. We note that such a campaign should form a central part of the bill’s implementation. We strongly recommend that this campaign communicate to the public that the bill does not allow them to lie about their past. It remains an offence to make fraudulent declarations of any kind. We recommend that employees who are unsure about their status under the clean slate scheme obtain a copy of their criminal record from the Department for Courts. We recommend

also that employers be encouraged to make these matters clear on employment vetting forms.

Criminal records legislation of this kind has a high potential for misunderstandings.¹ A submission from the New Zealand Law Society noted the practical difficulty of 'knowing when one's slate is clean' and raised the issue of the potential for abuse of the system by opportunists claiming that they thought they were covered by the clean slate scheme. National supports this submission.

An effective public information campaign will not just need to target those individuals who are eligible to conceal previous convictions. It will also be necessary to target the private sector, including employers, insurance companies, and professional organisations. It will be crucial for people in both the public and private sectors to understand that an individual eligible under the scheme is not obliged to reveal convictions, and that it will be an offence to require or request such an individual to disregard the effect of the clean slate scheme.

We are advised that the public information campaign will be led by the Ministry of Justice.

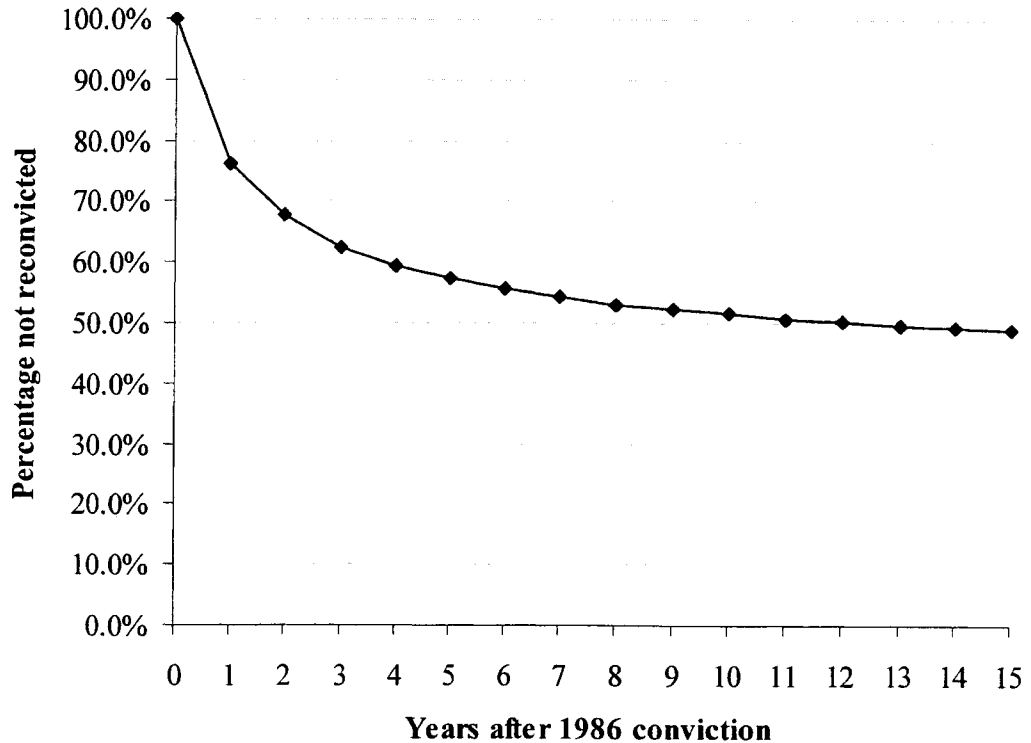
Rehabilitation period

We recommend an amendment to reduce the rehabilitation period from 10 years to 7 years. The Member's bill, the Clean Slate Bill, proposed a 7-year period and was supported in this by 16 submissions. We were also persuaded by Ministry of Justice research into the reconviction of offenders who had a non-custodial sentence imposed in 1986 and no previous custodial sentences or convictions for sexual offences. The Green member was also persuaded by the 7-year Biblical cycles of renewal and forgiveness. While National and United Future do not support the bill, National and United Future members support the concept of the Biblical cycles of renewal and forgiveness.²

¹ A report on a similar item of legislation, the UK's Rehabilitation of Offenders Act 1974, noted: 'We are concerned at the lack of awareness among employers and ex-offenders of the provisions of the Act. It is known that nine out of 10 ex-offenders have little or no knowledge of the Act while, in general, employers understand little of the requirements upon them to disregard spent convictions for the purposes of recruitment.' See: Penal Affairs Consortium, *Once a Criminal? The Use and Abuse of Criminal Records*, April 1993, p. 3.

² This concept is explored and discussed in Leviticus chapter 25, verses one to seven.

Figure 1: Percentage of people given a non-custodial sentence in 1986 who were not re-convicted in each of the next 15 years



A table illustrating reconvictions in the subsequent 15 years for people who had a non-custodial sentence imposed in 1986 is attached as Appendix B to this report.

A comparison of some overseas jurisdictions with clean slate-type schemes also encouraged our support of the 7-year period. A table with information on the length of rehabilitation periods in several such systems is attached as Appendix C to this report.

A submission from Youth Law proposed the term 'reintegration period', arguing that 'rehabilitation' period 'imputes the connotation of an individual who has committed graver offences and on a frequent basis'. We do not agree with this proposal, as we consider the clean slate scheme is precisely intended to cover those minor offenders whose subsequent period without reconviction demonstrates their successful rehabilitation.

Tiered system of rehabilitation periods

We do not recommend a tiered system of rehabilitation periods. Eleven submissions supported the concept of having shorter rehabilitation periods for younger offenders, in recognition of the fact that minor offending may be a one-off matter of youthful indiscretion. However, the statistics for young offenders who were convicted in 1986 and sentenced in the District or High Court indicate that:

- younger offenders are reconvicted faster and more often than older offenders
- most of the differences in the reconviction rate occurred within the first 5 years after the 1986 conviction
- after 5 years, the reconviction rate is similar for all age groups.

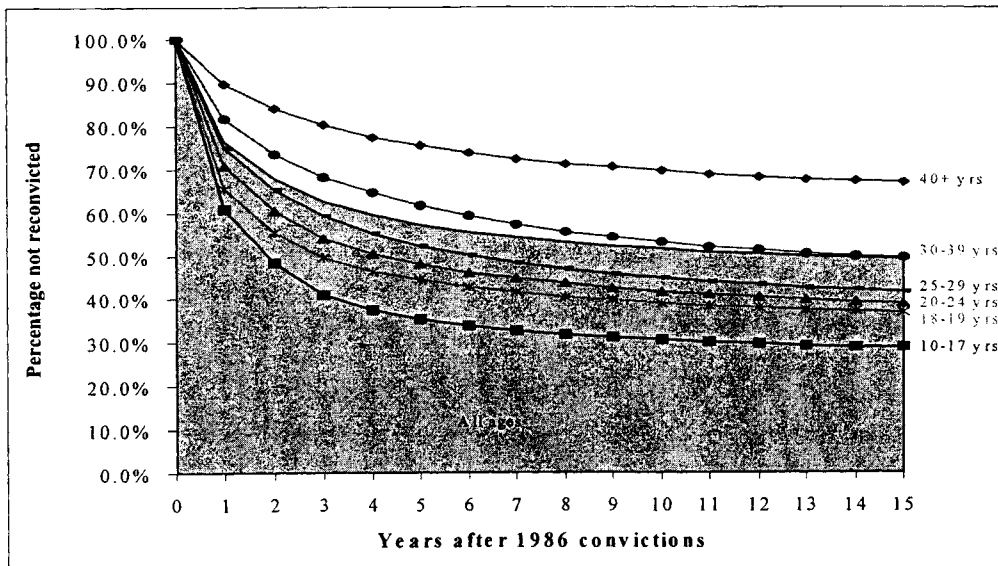


Figure 2: Percentage of people given a non-custodial sentence in 1986 who were not reconvicted in each of the next 15 years, by age

A table illustrating the reconvictions in the subsequent 15 years for people who had a non-custodial sentence imposed in 1986, by age, is attached as Appendix D to this report. It is important to note that findings of guilt in the Youth Court do not amount to convictions and are not covered by the clean slate scheme.

Non-custodial sentence threshold

Most of us do not recommend any amendments to the non-custodial threshold for eligibility proposed by the bill. We do recommend that the definition of 'custodial sentence' be amended to include 'any other sentence that requires the full-time detention of an individual'. We further recommend an amendment to the definition of 'custodial sentence', to remove suspended sentences of imprisonment and residential periodic detention and to include those in the 'non-custodial sentence' definition.

Six submissions supported the proposed non-custodial threshold, mainly because they considered that custodial sentences were only imposed for more serious offending. Eight submissions supported a threshold of up to 6 months' imprisonment, while 20 submissions proposed a wider range of custodial sentences be included in the clean slate scheme. Some submitters considered that the clean slate scheme should include all custodial sentences. One reason given for this approach was that Judges in the past have imposed short periods of imprisonment for comparatively minor offending on the 'short sharp shock principle'.

Most of us do not think it appropriate to enable convictions which attracted a custodial sentence to be concealed, on the basis that custodial sentences are generally used as a sentence of last resort for serious or recidivist offenders. We received advice that first-time inmates released from prison in the period 1995 to 1998 had, on average, been convicted 9 times before receiving their first custodial sentence.³ We were also advised it is unlikely that there are any instances where an individual has been convicted and imprisoned for an offence under current law which would no longer attract a custodial sentence.⁴

We recommend the inclusion of new clause 7(1)(ba), which creates an exception where an order has been made under section 118 of the Criminal Justice Act 1985 for an individual to be detained in a hospital due to his or her mental condition. We are advised that while section 118 orders are not 'custodial sentences' within the ordinary definition of the term, such an order tends to be imposed

³ This figure was skewed by individuals with numerous convictions, as the median number of prior convictions was 7.

⁴ Officials were unable to find any instance where the maximum penalty for an offence created under any current statute has been changed from being imprisonment to being a non-custodial punishment.

when a short or medium term of imprisonment would be the alternative.

The Green member recommends the inclusion of custodial sentences of up to 6 months in the clean slate scheme. This member is concerned that a non-custodial threshold will arbitrarily exclude many people who deserve to benefit from the clean slate scheme. Information from ministerial correspondence indicates that in past decades, custodial sentences have been imposed for a number of relatively minor offences such as disorderly behaviour, the cultivation of cannabis and failing to report to a work centre. Furthermore, all the Australian jurisdictions in the table in Appendix C to this report include some custodial sentences in their clean slate schemes, as does the UK Rehabilitation of Offenders Act 1974.

Application of the clean slate scheme

We recommend a number of amendments to clarify the application of the clean slate scheme. Most of these proposals concern how the scheme affects eligible individuals. We also recommend an amendment to include new clause 15A, which sets out the limits on the use of clean-slated criminal records by those with lawful access.

We recommend clause 3 include a flow chart providing a general overview of eligibility under the clean slate scheme. National and United Future members consider that this far-reaching legislation (which they oppose) could well profit from the inclusion of the flow chart as a schedule to the legislation. Most members consider that where legislation is complex and is likely to be widely read, there is a clear case to provide a simplified explanation in flow chart or similar form.

We recommend removing pending criminal proceedings from the bill. We also recommend a range of amendments relating to the clean slate scheme's application to eligible individuals, to clarify that:

- the bill enables criminal convictions to be concealed, rather than wiped (or 'expunged')
- the scheme is an 'all or nothing' regime, which means that an individual needs to meet all of the criteria before being entitled to conceal any convictions (while an ineligible individual is not entitled to conceal any convictions), and that an eligible individual becomes ineligible if he or she receives a further conviction

- the scheme applies to every question about an eligible individual's criminal record and to how these questions can be answered.

As the bill does not make this explicit, we note that eligibility for the scheme is automatic; eligible individuals are not required to make an application to have their convictions 'clean-slated'.

Clean slate scheme does not include charges pending

We recommend amending clause 7(1)(a) to effectively remove pending criminal proceedings from the scope of the bill. This means that where charges are pending against an individual who is eligible for the clean slate scheme, that person remains entitled to conceal his or her criminal record. It would be contrary to the principle of being presumed innocent until proven guilty if an outstanding prosecution were to make an individual ineligible to obtain the benefits of the scheme. As charges pending are no longer part of the bill, they may not be concealed under the clean slate scheme.

We are advised that some employment vetting forms (which are sent to police for processing) specifically require disclosure of any pending criminal proceedings. Police advise that, if an individual has any active criminal charges, the incomplete disclosure form is returned to the appropriate organisation, along with a suggestion that the application be re-submitted after a particular date. This enables the case to be finalised before the vetting is completed.

We recommend that the public information campaign provide advice that eligibility to conceal criminal convictions under the clean slate scheme is unaffected by charges pending, and that the bill does not enable the concealment of those charges.

Bill conceals criminal records rather than expunging them

While we do not recommend any amendment to the title of the bill, we note that the words 'clean slate' may be seen to imply criminal records will be wiped (or 'expunged') rather than concealed. For the avoidance of doubt, we recommend an amendment to clause 4 to include a definition of 'conceal'. The potential for confusion was reflected in the fact that many submitters used the terms 'expunge' and 'conceal' interchangeably.

A concealment regime means that, where all criteria are met, all convictions must be concealed from those who do not have lawful

authority to obtain them. An individual's complete list of convictions remains available where specified exceptions apply. A concealment regime enables conviction information to continue to be available for the purposes of determining an appropriate sentence in the event that an individual re-offends, or seeks employment in a role where it has been determined that full information about an individual's criminal convictions is required.

A full expungement regime would be inconsistent with the 'all or nothing' approach taken in this bill, as it would need to work on a conviction by conviction basis. It would also encounter practical difficulties. It would require all evidence of a conviction to be removed from the individual's criminal record, including all case files, computer records, and other files held by government agencies which contain criminal records. This would be a time and cost intensive process. It would not enable the records to be provided in any circumstances, even when there is a justifiable need. As noted earlier, the bill does not attempt to rewrite history.

Several submissions argued the term 'clean slate' is inappropriate, as the bill does not wipe previous convictions. Although the point made by these submitters is valid, we consider the popularity of the term 'clean slate' will mean that the Act will be referred to as the 'Clean Slate Act' irrespective of its effect.

The United Future member considers that the title ought to be changed to properly reflect the intention of the scheme and that retention of the words 'Clean Slate' will simply lead to confusion as to the effect of the scheme and further encourage its abuse.

The Green and Labour members consider 'Clean Slate' to be appropriate in the title, because the scheme provides for information to be wiped from the public view and then reinstated if the person becomes ineligible.

Clean slate scheme is implemented automatically

The clean slate scheme is implemented automatically, in the sense that individuals are generally not required to make an application to have their convictions 'clean-slated'.

We recommend an amendment to the wording of clause 12 so that chief executives and persons who hold or have access to criminal records 'must take all reasonable steps' to conceal those records from persons who do not have lawful access to them. Given the high

level of responsibility that a mandatory requirement would have carried, we did not consider it appropriate to oblige chief executives to ensure the concealment of records.

Under the Privacy Act 1993, an individual can apply to the Department for Courts to request his or her conviction list. Under the new legislation, an eligible individual will receive a document showing no convictions. This will confirm that the individual is entitled to conceal his or her convictions at that time.

Some submissions raised concerns about the automatic process by which an individual obtains a clean slate. A submission from the Maxim Institute stated that the legislation would be open to abuse, in that devious people would knowingly 'give misleading answers to questions about their past'. The New Zealand Law Society submission agreed with this, and suggested provision be made for an application to be made to the court in all circumstances. This would avoid misuse of the scheme and leave no doubt whatsoever as to whether an individual was eligible.

The United Future member is concerned about the process for receiving a clean slate. The member has expressed concerns to do with timing of when a chief executive is required to take action towards ensuring that records are concealed. The member recommends the clean slate scheme involve compulsory applications to the court registrar, on the basis that the benefits that the bill has to offer should be seen as a privilege. The member proposes also that the police be given an opportunity to object to the granting of a clean slate where they have concerns about a particular individual.

'All or nothing' regime

We recommend amendments to create new clause 7A, which clarifies that an individual who has met the criteria to have his or her criminal record concealed can subsequently cease to be eligible if convicted of an offence.

The bill proposes an 'all or nothing' regime. If a request for an individual's criminal record is made, and the individual meets all the eligibility criteria in clause 7, all convictions can be concealed. If the individual does not meet one or more of the criteria at the time of the request, nothing will be concealed. Therefore, a further conviction will 'revive' convictions which were previously entitled to be concealed.

Every request for, or question about, criminal record information is subject to the clean slate scheme. Each time a query is made, eligibility for concealment will be determined. If the individual no longer meets the eligibility criteria the record will not be concealed.

The public information campaign about the clean slate scheme will need to set out not only that an individual's initial eligibility is time-specific, but also that a new rehabilitation period will begin if that individual is convicted of a further offence.

Clean slate scheme is 'question-based'

Labour and Green members recommend amendments to clarify that questions must be treated as being asked subject to the clean slate scheme and answered accordingly. These members draw particular attention to proposed new clause 18. This is a transitional provision to cover situations where an individual is asked a question about his or her criminal record prior to the scheme coming into force but will answer it after the scheme is in place. Clause 18 clarifies that the clean slate scheme applies to an eligible individual's answer even if the question was asked before the commencement of the Act.

For the avoidance of doubt, clause 11(3)(b) provides that the clean slate scheme does not apply to questions asked:

- under the jurisdiction of the law of a foreign country while an eligible individual is outside New Zealand
- of an eligible individual while he or she is in New Zealand that relate to a matter dealt with by the law of a foreign country (for example, a question asked on an application form by the immigration or customs agency of a foreign country).

If an individual is entitled to the benefits of the clean slate scheme, and the context of a given question is not covered by an exception, he or she is deemed to have no criminal record. There is no obligation to conceal one's own criminal record; the bill simply makes it lawful to choose to do so. There is no limit on what questions can be asked by an employer, but an eligible person may answer by stating that he or she has no criminal record.

Offences

We recommend amendments to remove clause 13 and create new clause 14A, which creates the offence of requesting or requiring an individual to disregard the effect of the clean slate scheme. This

clause applies when an individual is answering a question, disclosing his or her criminal record or giving consent for it to be disclosed. Our amendments address concerns that the bill did not cover questions that were specifically targeted at requiring an eligible individual to reveal convictions. We had difficulty with the use of the words 'compel or coerce' in clause 13, due to the high threshold involved.

We recommend amendments to add a further 'mental element' to the offence of unlawfully disclosing information in clause 14(1). This incorporates the concept of the disclosure of information by a person who is 'reckless' as to whether or not he or she has lawful authority to do so.

We recommend further amendments to the offence provisions, to set the maximum penalty for unlawful disclosure of information at \$20,000 and the maximum penalty for requiring or requesting an individual to disregard the effect of the clean slate scheme on his or her criminal record at \$10,000. We consider it a more serious offence to have access to criminal records and to knowingly disclose information that is required to be concealed under the clean slate scheme than it is to require or request an individual to disregard the effect of the clean slate scheme on his or her criminal record.

Were National, ACT and United Future to support this bill, they would strongly recommend the inclusion of a further offence provision, to capture those who conceal information when they are not legally entitled to do so. These members agree with the New Zealand Law Society and Maxim Institute submissions that the bill as it stands is open to substantial abuse.

The United Future member recommends that people asking about criminal histories be restricted to enquiring whether an individual has any convictions that are not covered by the clean slate scheme.

Criminal history information

We recommend amendments to the definition of 'criminal record', to include reference to charges which result in convictions, and to remove the word 'written' so as to cover all official records kept by, or on behalf of, the Crown.

We recommend amendments to clarify that, for the purposes of the clean slate scheme, the definition of 'conviction' does not apply to military convictions, overseas convictions or records of bigamous marriages on marriage certificates.

It is not possible to remove all references to convictions from information within the public domain. Even if it were, the intention of the bill is not to rewrite history but rather to limit the potential for relatively minor convictions to have a disproportionate effect on the lives of citizens who are otherwise law-abiding. Therefore, the legislation is limited to enabling concealment of official conviction information held on justice sector electronic databases and paper-based records of convictions held by an agency or deposited by Crown agencies with National Archives.

Requesting criminal history information

It is important to note the distinction between the concept of a ‘criminal record’ as defined in the bill, and a ‘full criminal history’—which is not a statutory concept, is not clean-slated and is not referred to in the bill. When individuals request their criminal convictions, a list of convictions is provided (their ‘criminal record’) and these may be concealed under the clean slate scheme if the individuals meet the criteria. However, where individuals request their ‘full criminal history’, youth court outcomes and other non-conviction information will appear.

Exceptions

We recommend a number of amendments to clause 15 to clarify the operation and nature of exceptions to the clean slate scheme. Some of our amendments set out the different circumstances in which exceptions are to apply. For the exceptions in clause 15(3)(a) relating to the functions of law enforcement agencies and the New Zealand Security Intelligence Service, we recommend the test be that disclosure ‘is necessary for’. We recommend the wording ‘is relevant to’ be applied for the purposes of the other exceptions in clause 15.

We discussed exceptions extensively, focusing on the need for clear, justifiable criteria. We note the overwhelming importance of having a clean slate regime that can be readily understood.

We have generally resisted expanding the scope of exceptions. If a large number of organisations were able to access full criminal histories, the benefits of the clean slate scheme would be significantly reduced. The bill’s proposed ‘exemptions’, later redrafted as ‘exceptions’, were discussed in a large number of submissions. Many submitters argued for exceptions to do with professional

groups. Four submissions opposed the law enforcement-related exception, and expressed concerns about the lack of limits on the exercise of police functions. Five submissions opposed and four supported the exception for Judges, Justices of the Peace and Magistrates. Four supported and three opposed the exception for prison and probation officers. Three submissions supported and four disagreed with a proposed exception for individuals seeking employment as a teacher. New Zealand Educational Institute raised concerns that the exception related to police vetting was too wide in the bill as drafted because it could include contractors and non-teaching employees.

Exceptions involving children and young people

We recommend amendments to the exception in clause 15 to do with children and young people. Our proposed amendments cover:

- applications to act in a role predominantly involving the care or protection of a child or young person (for example a foster parent or a caregiver of children or young persons)
- investigations under the Children, Young Persons, and Their Families Act 1989 of reports of ill-treatment or neglect of a child or young person, and any related procedures arising from an investigation of that kind.

These exceptions are based on the premise that the vulnerability of children and young persons in the care and protection environment is such that, even where there is a low risk of reoffending, any risk should be able to be taken into account. Previous criminal conviction information should be accessible, for the consideration of roles involving the care and protection of children and young people and for investigating reports of ill-treatment or neglect.

Removal of the exceptions for teachers and teacher trainees

We recommend an amendment to remove the exception to do with applications for positions involving police vetting under the Education Act 1989 through the New Zealand Teachers Council. We considered this provision would have unjustifiably prevented a large section of society from accessing the benefits of the clean slate scheme. We believe that there are already mechanisms in place to monitor any current or recent offending by people either training to be or working as teachers and do not believe that any convictions from a time longer than the rehabilitation period should make a

person seeking appointment to a teaching position or a teacher training place ineligible for the clean slate scheme. We note that in NZEI's submission they state that 'employees in the early childhood and compulsory schooling sectors are already under intensive scrutiny and a wide range of controls'.

No clean slate for specified offences

We recommend amendments to the list of specified offences, to include female genital mutilation in the list of offences which will not be covered by the bill. The rest of the list relates to a range of sexual offences.

We are advised that in some instances a period without convictions is not necessarily a good indicator that offending is not continuing. Sexual offending against the young or mentally subnormal is one type of offending which the literature supports as being latent. In addition, individuals are not always successfully prosecuted for further offending due to the victim's age or mental capabilities. The lack of convictions during a rehabilitation period does not necessarily mean the individual has been rehabilitated, or has ceased to offend or pose a risk to the community at large.

A review of all sexual offences set out in the Crimes Act 1961 is currently under way. The 'specified offences' which negate eligibility may need to be amended as a result of this review, to ensure consistency with statutory provisions.

No clean slate for certain disqualified drivers

We recommend an amendment to create new clause 7(2), which relates to individuals who have been disqualified from holding or obtaining a driver licence for repeat offences involving the use of alcohol or drugs. The proposed new clause provides that such individuals do not become eligible for the clean slate scheme in the event that their disqualification is removed. It would not be in the interests of the safety of the community for an individual who has demonstrated a pattern of driving 'under the influence' to become eligible for the clean slate scheme.

Prison visitor vetting by the Department of Corrections

We recommend an amendment to provide an exception to provide that the Department of Corrections cannot take the criminal records of eligible individuals into account when deciding whether or not to

approve them as a visitor. We note that Corrections will still be able to access full conviction information when approving visitors.

We were advised that the Department of Corrections is unable to screen conviction information without significant resource implications. The remainder of Corrections business does not require a clean slate IT interface, which means that if an exception were not made for prison visitor vetting, a screening system would need to be built solely for that purpose.

We recommend that written information available to prospective prison visitors should make it clear that the Department of Corrections cannot use clean-slated information to refuse right of entry.

Court orders for exclusion from clean slate scheme

We recommend the deletion of clause 9, which empowers the sentencing court to order that an individual is not eligible under the clean slate scheme.

We agree with a submission from the Howard League for Penal Reform, whose submission questioned the rationale behind clause 9. We agree that such a permanent bar imposed at sentencing would provide an unreasonable disincentive for the offender's attempts to rehabilitate.

As initially drafted, clause 9 referred to the sentencing court being satisfied that 'there would be a significant risk of harm if the individual's criminal record were concealed under the clean slate scheme'. We note that an offender considered by the court to pose a threat to the safety of the community is likely to receive a custodial sentence and would therefore be ineligible for the clean slate scheme.

Exemptions from the rehabilitation period for decriminalised offences

We recommend amendments to provide in new clauses 8 and 8A that individuals convicted for offences that have since been decriminalised, for example convictions for homosexual activity prior to 1986 and prostitution-related convictions before 2003, may apply for exemption from the requirement to complete a rehabilitation period. Such individuals will still need to meet the other criteria for eligibility (such as the repayment of fines) before becoming entitled to conceal their convictions under the clean slate scheme.

Overseas jurisdictions

We recommend amendments to clause 11 to clarify, for the avoidance of doubt, that the bill does not propose to affect overseas jurisdictions.

The explanatory note to the bill states that the clean slate scheme is not intended to change the law of foreign States, meaning that all convictions must continue to be disclosed by individuals for border control and immigration procedures that take place outside New Zealand. However, as 2 submissions pointed out, this note will not exist once the bill is enacted.

Thirteen submissions mistakenly identified the removal of barriers to overseas travel as one of the benefits of the legislation. Once the bill comes into force, the fact that it has no bearing on overseas jurisdictions will need to be emphasised in the public information campaign.

Applications for inclusion in the clean slate scheme

We recommend a number of amendments in relation to applications to a court to have an ineligible individual's convictions clean-slated. To ensure access to justice, we recommend that applicants are entitled to apply for legal aid. We also recommend an amendment to create new clause 8B, which enables an individual to make further applications under clause 8, while providing for the court to dismiss any further application that it considers frivolous, vexatious, or an abuse of the procedure of the court.

We recommend an amendment to remove the requirement in clause 8(4) for applications to be made to a Judge in Chambers. We consider that these matters should be heard in open court. We recommend amendments to create new clause 10A, which provides for the suppression of information that could identify the individual making an appeal for inclusion in the scheme, subject to court orders to the contrary.

We also recommend amendments to clause 8 to clarify that all applications for inclusion in the clean slate scheme go in the first instance to the District Court, with the power for the District Court to refer applications to the High Court when appropriate.

For the avoidance of doubt, we reiterate that, if one meets the criteria, it is not necessary to apply to a court for confirmation of inclusion in the clean slate scheme. Clause 8 deals with applications from individuals who would not normally be included in the

scheme. Such applications may be made by otherwise-eligible individuals if the court imposed either a custodial or a non-custodial sentence for an offence that has been subsequently abolished (but only if the act that constituted the abolished offence no longer constitutes an offence) or if the court imposed a non-custodial sentence for a specified offence.

Police information sharing

Most of us recommend an amendment to create an exception for New Zealand Police and other agencies to share information with overseas law enforcement agencies. We have several concerns with the New Zealand Police submission on this topic and refer to these below.

New Zealand Police noted that apart from some arrangements with Interpol, the exchange of criminal conviction or intelligence-based information with overseas law enforcement agencies is informal and based solely on reciprocity.⁵ The police expressed a concern that it needs to be made explicit in the bill that the police can disclose 'clean-slatted' information to overseas law enforcement agencies. We agree that an inconsistency would be created if individuals were advised that the legislation had no effect in other jurisdictions, yet New Zealand law enforcement agencies were not able to release all convictions when requested to do so by another country.

We note that the police could not say whether the information provided to them from overseas sources is fully disclosed or subject to clean slate schemes. This seems to indicate that the various forms of clean slate legislation do not affect police confidence in reciprocal information exchange. We consider the police were not adequately prepared to answer questions of a basic nature on the bill, and we found this to be unsatisfactory. The Green member does not support the recommendation. The member considers that police have failed to make a case that reciprocity would be affected, and that the committee's repeated requests for clarification have not been met.

Police Adult Diversion Scheme

The New Zealand Police are currently reviewing the Police Adult Diversion Scheme. One submission raised a concern that the clean

⁵ Letter from Acting Deputy Commissioner Gavin McFadyen, dated 14 April 2003, p. 1.

slate scheme may reduce the likelihood of an individual being considered for the diversion scheme. We are advised by officials that this is unlikely to happen.

Some of us recommend that police diversion be expanded and provided with a statutory base and clear criteria. This issue is further referred to by National members in their minority view.

Access to criminal records for research purposes

Several submissions, from the media and others, expressed concerns that the bill is in some way inconsistent with section 14 of the New Zealand Bill of Rights Act 1990 (BORA). A submission from Lynley Hood stated that ‘the proposed legislation does require our nation’s biographers and historians to rewrite history (or not write it at all)—an unacceptable, indeed unthinkable, requirement in a free and democratic society’. The bill does propose some exceptions for the undertaking of research by or approved by a government department or law enforcement agency. The new definition of ‘individual’ as ‘a natural person, other than a deceased natural person’ goes some of the way to addressing the concerns of biographers and historians, in clarifying that the clean slate scheme cannot apply to a deceased person. We were concerned that a system allowing access to concealed information concerning a living person would be cumbersome and open to abuse.

We were provided with the legal advice supplied to the Attorney-General on the bill’s compliance with BORA. The legal advice from the Crown Law Office does consider the need for a provision to allow applications for access to criminal records in exceptional circumstances, but resolves the issue by stating the limit on section 14 of BORA is justified in light of the purpose of the bill. This advice concludes that the bill as drafted is consistent with BORA.

We note that the bill will not prevent newspapers from reporting on open court proceedings, and reiterate that it does not propose to conceal all sources of criminal history information.

The ACT member agrees with those submitters who consider the bill conflicts with the right to freedom of speech and the right to receive information guaranteed under section 14 of BORA.

Discrimination based on convictions

We note that the creation of a new ground of discrimination would require consequential changes to this bill’s current approach. Ten

submissions on the bill considered the issue of prohibiting discrimination on the basis of convictions that fall within the scope of the clean slate scheme. The Human Rights Commission suggested any detailed proposal for prohibiting discrimination on such a ground would be better suited for consideration during the development of New Zealand's National Plan of Action on Human Rights.

Labour and Green members encourage the Human Rights Commission to consider including discrimination on the basis of unrelated or irrelevant criminal convictions in its review of the grounds for discrimination in the Human Rights Act 1993. These members further recommend the Government incorporate the recommendations of the National Plan of Action on Human Rights into the Human Rights Act.

National and United Future members consider that criminal convictions are relevant public information and that there may be cases where discrimination by dint of their existence is not only appropriate but also may be necessary in the public interest. The United Future member believes that providing a ground of discrimination against a person who has wilfully breached the law is taking the principle of non-discrimination to the absurd.

National minority view

National opposes the bill.

The legislation is based on mistaken political correctness and is not in fact a 'clean slating' but rather a concealment of convictions in limited cases. Such convictions may become disclosed:

- by records maintained in private and media archives
- by inadvertent disclosure or consent of the offender
- by questions involving the laws of foreign countries—in particular Customs and Immigration questions
- where an offender seeks particular types of employment.

There is a relevant public interest in knowing the criminal history of any person particularly in the context of employment—eg multiple convictions of dishonesty and theft falling short of a custodial sentence.

The bill involves sanctioning a lie because an 'eligible individual' may under clause 11(2) say he or she has no criminal record. So the bill legitimises perjury and breaches of the Oaths and Declarations Act 1957.

Greater use should be made of the diversion scheme for minor offences and the scheme should be formalised in legislation to ensure consistency of application whilst preserving the necessary element of flexibility.

There is a case for legislation to contain provision for true 'clean slate' applications to be made to the Court in individual cases and not on the blanket basis of concealment of convictions which is the essence of the present bill.

United Future minority view

United Future is sympathetic to the intended aims of the bill. However it considers this to be a 'Clayton's bill' which doesn't deliver what people think it will deliver, will be significantly misunderstood as a result, and will be substantially abused without any criminal sanction for doing so. It does not support the bill for the following reasons:

United Future considers that a person's convictions are not 'expunged' (i.e. wiped) by this bill. They remain convictions on the person's criminal record for the rest of their life. All the bill does is to 'conceal' the record of the convictions. The convictions remain but the record is hidden from view from most people (principally employers).

United Future entirely agrees with the views expressed by the New Zealand Law Society and Maxim Institute to this effect. Eligibility for the scheme is not straightforward. There are a number of criteria that a person has to meet before he or she is eligible. United Future considers that the general public is going to simply believe that the bill, particularly with its title, means that 'people with old convictions no longer have to reveal them when asked about them and are entitled to lie about it' and innocently or deliberately misapply it.

United Future considers that, in principle, where a statute grants strictly limited rights, in order to express society's condemnation of the abuse of those rights there ought to be criminal penalties for deliberately or recklessly abusing them. United Future believes that there needs to be a provision in the bill making it an offence to abuse the privileges given by the bill so that people clearly know that if they lie about their conviction history they could suffer a fine in addition to any consequences to their employment. As it stands United Future believes that the bill puts devious people in a stronger position than is currently the case by allowing them to claim that

they honestly believed that they were entitled to lie about their criminal past because they misunderstood the provisions of the bill. Because convictions are simply 'concealed' and not 'expunged', if a person at any time re-offends in any way, all their past convictions are then 'unconcealed'. While this does provide a strong incentive for people not to re-offend, United Future considers that it is too harsh.

United Future considers that there may be some occasions where it is inapplicable for an eligible person's convictions to be concealed. For example, the police may be aware that an eligible person is a recidivist offender but has simply avoided getting convicted for 7 years. Or a person may have been imprisoned in Australia for 7 years and therefore have a 'clean' New Zealand record over that time. Or the police may be aware that, although a person is eligible, the convictions they have are such that it is contrary to the public interest that they be concealed. All such persons will be automatically eligible to benefit from the scheme.

An alternative model

United Future proposes an alternative model that it believes would provide a far better scheme. Under the United Future proposal: -

- (1) A person would apply to have their conviction(s) expunged and, if approved, receive a confirmation certificate reinforcing that the expungement was a privilege granted to them in recognition of their good citizenship since they were last convicted.
- (2) People who did not want their convictions expunged would therefore have control over whether that occurred or not.
- (3) The police would have an opportunity to oppose the application.
- (4) The exemptions contained in the bill would still be provided for by creating an 'historical record of convictions' accessible by the exempted authorities.
- (5) It would be inexpensive and easy to administer because it would simply require the Department for Courts, when applications were received and approved, to manually transfer all convictions shown on a person's record into a 'history file'.

ACT minority view

The ACT member considers that this bill was bad in principle, in drafting and purpose when introduced, and that it has been made

worse by the select committee. He believes that it attacks freedom of speech, and association, notwithstanding the Attorney General's New Zealand Bill of Rights opinion that the loss of freedom is justified by the bill's good intentions.

The evidence to the committee did not establish that the bill would achieve its claimed intentions. There was only assertion, not evidence, that rehabilitation is more likely when past wrongdoing is concealed instead of being openly acknowledged.

Serious crime levels are determined by patterns established in entry level crime, and the bill's message going to young people, and others flirting with entry level crime, is that it will not matter. When natural social (reputational) sanctions for wrongdoing are blocked, society is forced into harsher formal or official punishments.

ACT agrees with United Future that popular understanding will convert the bill to distorted folklore—'You can lie to any one who needs or wants to know your character—the past never happened'. In reality it only applies if you have not been caught for enough thefts, assaults, conversions, etc to be imprisoned (7 is the median threshold for first imprisonment), and you can go 7 years without being caught.

The committee saw no evidence that the existing blanket suppression of criminal records under our youth justice system works. Increases in police reports of youth offending suggest the opposite, yet the effect of this bill is to extend the same philosophy to adult offending.

There was no evidence on the overall effect after people with good records can't distinguish themselves from the others, so all suffer alike. When people can't get to the bottom of suspicions there will be more covert discrimination against whole categories like young Maori males, who are already susceptible to stereotyping.

The logical outcome of this bill is bizarre. Submitters (including the Police Association, Business New Zealand, the National Council of Women, and the Human Rights Commission) suggested what became a majority recommendation—that the ACT member believes will in effect make it illegal for any New Zealander to treat someone with a proven history of crime less favourably than another who has never offended.

The bill will harm many who might expect help from it. People with enough resources and contacts who want to know about previous offences will find ways around it.

Though the bill applies only to official records the thrust of submissions and argument in committee would next make it illegal to keep private records of the truth, or to report on or speak of matters suppressed under the bill.

The law purports to show community compassion, but only by depriving everyone of the chance to forgive genuinely with knowledge. Legislatively 'deeming' the record not to exist, does not cure the law's collusion in lying.

New Zealand First minority view

New Zealand First opposes the bill.

Appendix A

Committee process

The Criminal Records (Clean Slate) bill was referred to the committee on 2 May 2002. It was considered in conjunction with the Clean Slate bill, a Member's bill in the name of Nandor Tanczos that was referred to the committee on 28 March 2001. The closing date for submissions on both bills was 8 July 2002. We received and considered 99 submissions from interested groups and individuals. We heard 20 of these submissions, on 27 November, 4 December, and 11 December 2002, and on 12 February 2003. Hearing of evidence took 8 hours and 30 minutes and consideration took 22 hours and 53 minutes.

We received advice from the Ministry of Justice and the Department for Courts. Copies of this advice are now freely available from the Parliamentary Library.

Committee membership

Tim Barnett, Chairperson (Labour)

Stephen Franks, Deputy Chairperson (ACT)

Russell Fairbrother (Labour)

Darren Hughes (Labour)

Dail Jones (New Zealand First)

Lynne Pillay (Labour)

Mita Ririnui (Labour)

Murray Smith (United Future)

Nandor Tanczos (Green)

Lindsay Tisch (National)

Richard Worth (National)

Appendix B

Table 1: Reconvictions in the subsequent 15 years for people who had a non-custodial sentence imposed in 1986

	Number recon- victed	% reconvicted	Number not reconvicted	% not recon- victed
1st year	19,660	23.7%	63,341	76.3%
2nd year	7,072	8.5%	56,269	67.8%
3rd year	4,329	5.2%	51,940	62.6%
4th year	2,588	3.1%	49,352	59.5%
5th year	1,783	2.1%	47,569	57.3%
6th year	1,432	1.7%	46,137	55.6%
7th year	1,062	1.3%	45,075	54.3%
8th year	938	1.1%	44,137	53.2%
9th year	707	0.9%	43,430	52.3%
10th year	665	0.8%	42,765	51.5%
11th year	575	0.7%	42,190	50.8%
12th year	439	0.5%	41,751	50.3%
13th year	403	0.5%	41,348	49.8%
14th year	314	0.4%	41,034	49.4%
15th year	266	0.3%	40,768	49.1%
Total	42233	50.9%	40,768	49.1%

Appendix C
Criminal Records (Clean Slate) Bill - Length of rehabilitation period in overseas jurisdictions

Crime free time	Canada Criminal Records Act 1970	UK Rehabilitation of Offenders Act 1974	Queensland Criminal Law (Rehabilitation of Offenders) Act 1986	Western Australia Spent Convictions Act 1988	Commonwealth Crimes Act 1914	New South Wales Criminal Records Act 1991	Northern Territory Criminal Records (Spent Convictions) Act 1992	Australian Capital Territory (ACT) Spent Convictions Act 2000
10 years	Imprisonment 6-30 months	Non-custodial or custodial under 30 months for cases by indictment	All sentences up to one year imprisonment Indeterminate sentence/\$15,000 fine	Non custodial or under 30 months imprisonment	Convictions with a sentence of up to 6 months imprisonment, non-custodial sentences	Sentences up to 6 months imprisonment	Sentences up to 6 months imprisonment	
7 years	Imprisonment of less than 6 months	Non-custodial or custodial under 30 months for other cases	Non-custodial or under 30 months imprisonment	Non-custodial or under 30 months imprisonment				
5 years	Conviction on indictment and some service offences	Non custodial sentences, Imprisonment 6-30 months	Non-custodial or custodial under 30 months for other cases					
3½ years	Imprisonment of less than 6 months	Imprisonment of less than 6 months						
3 years	Summary conviction or other service offences	Non-custodial sentences						
2½ years								

Any orders of the Children's Court

Sentences up to 6 months imprisonment

Non-custodial or under 30 months imprisonment

Non-custodial or custodial under 30 months for other cases

Imprisonment of less than 6 months

Conviction on indictment and some service offences

Sentences up to 6 months imprisonment

Crime free time	Canada Criminal Records Act 1970	UK Rehabilitation of Offenders Act 1974	Queensland Criminal Law (Rehabilitation of Offenders) Act 1986	Western Australia Spent Convictions Act 1988	Commonwealth Crimes Act 1914	New South Wales Criminal Records Act 1991	Northern Territory Criminal Records (Spent Convictions) Act 1992	Australian Capital Territory (ACT) Spent Convictions Act 2000
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6 mths*Absolute discharge*

1. Italicised items symbolise offending by those under 18, or those sentenced in the Youth/Juvenile/Children's court in relevant jurisdictions.
2. The following provide for immediately spent convictions: New South Wales (if proved or guilty without conviction; repealed provisions); Northern Territory (Conviction & discharge; finding proved but no conviction; repealed provisions) and Australian Capital Territory (Dismissal, reprimand, conditional discharge, Youth Court probationary orders, offences which have ceased to exist). New South Wales also provides for a 'spent conviction' at the sentence completion date, once conditions have been met for probation with conditions and discharge on good behaviour.

Appendix D

Table 2: Percentage of people given a non-custodial sentence in 1986 who were not reconvicted in each of the next 15 years, by age

Years	10-17	18-19	20-24	25-29	30-39	40+	Total
1st year	60.7%	65.6%	70.7%	74.9%	81.8%	89.7%	76.3%
2nd year	48.3%	55.4%	60.4%	65.1%	73.5%	84.2%	67.8%
3rd year	41.1%	49.6%	54.1%	59.2%	68.1%	80.2%	62.6%
4th year	37.4%	46.4%	50.5%	55.1%	64.5%	77.4%	59.5%
5th year	35.5%	44.4%	48.0%	52.3%	61.6%	75.4%	57.3%
6th year	33.9%	42.8%	46.1%	50.1%	59.2%	73.7%	55.6%
7th year	32.6%	41.5%	44.8%	48.5%	57.2%	72.4%	54.3%
8th year	31.9%	40.6%	43.6%	47.0%	55.6%	71.1%	53.2%
9th year	31.2%	39.8%	42.6%	45.7%	54.2%	70.5%	52.3%
10th year	30.6%	39.1%	41.7%	44.7%	53.1%	69.5%	51.5%
11th year	30.2%	38.5%	40.9%	43.9%	52.1%	68.7%	50.8%
12th year	29.6%	38.0%	40.3%	43.3%	51.3%	68.1%	50.3%
13th year	29.3%	37.5%	39.8%	42.6%	50.6%	67.6%	49.8%
14th year	29.1%	37.2%	39.4%	42.1%	50.0%	67.3%	49.4%
15th year	28.8%	36.9%	39.0%	41.6%	49.6%	67.0%	49.1%

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

Hon Phil Goff

Criminal Records (Clean Slate) Bill

Government Bill

Contents

1	Title	<i>Effect of clean slate scheme on government departments and law enforcement agencies that hold or have access to criminal records</i>
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7A	Effect of further conviction on eligibility	
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10	Right of appeal	15A Limits on use of eligible individuals' criminal records
10A	Prohibition against publication of applicant's or appellant's name	<i>Relationship to other provisions</i>
	<i>Effect of clean slate scheme on eligible individual</i>	15B Relationship to other provisions
11	Effect of clean slate scheme on eligible individual	<i>Miscellaneous</i>
		16 Rules
		17 Application of Legal Services Act 2000
		<i>Transitional provision</i>
		18 Transitional provision relating to answers and responses to questions and requests asked or made before commencement

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.

5

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)

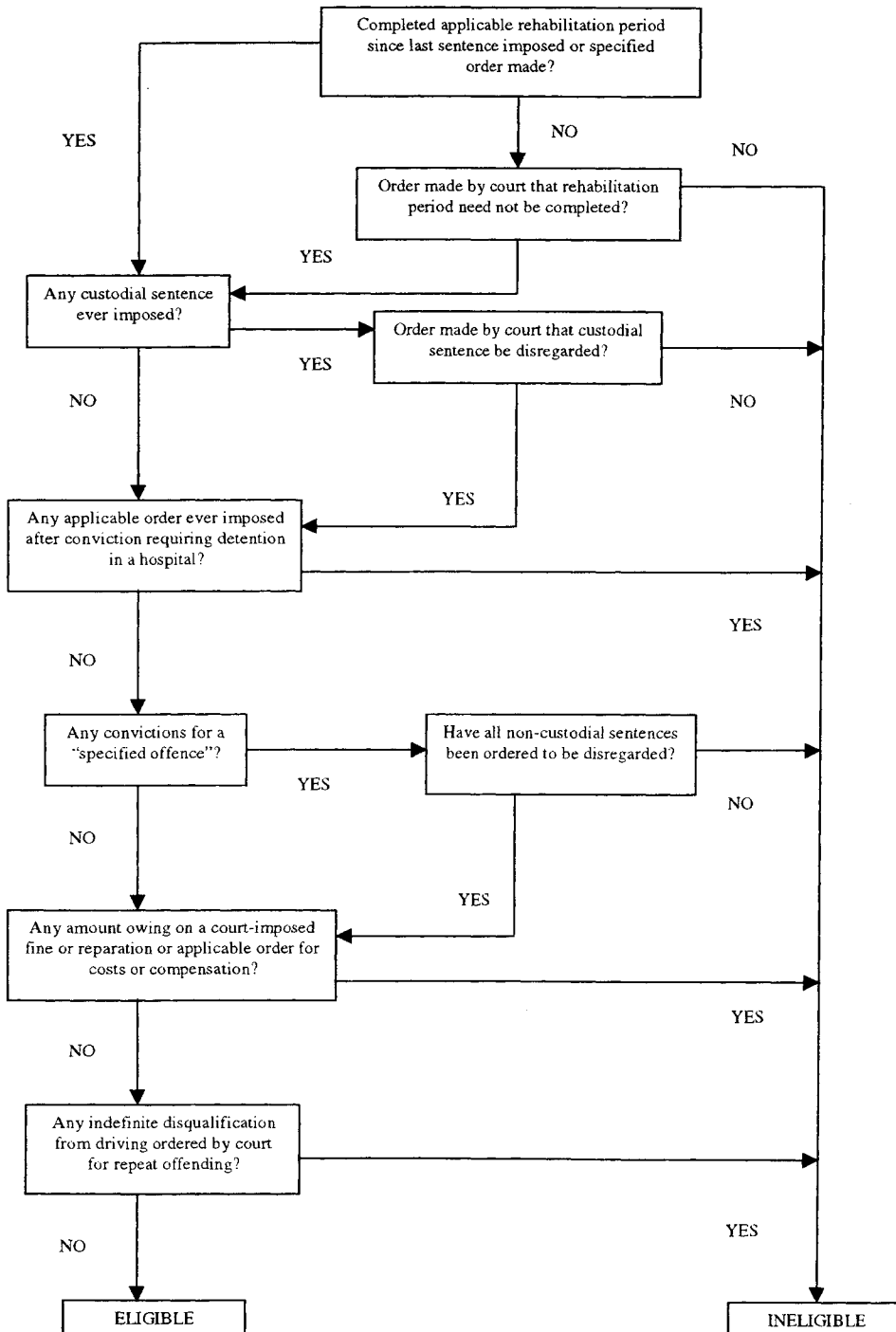
- (2) If an individual satisfies the relevant eligibility criteria,—
- (a) he or she is deemed to have no criminal record for the purposes of any question asked of him or her about his or her criminal record; and
 - (b) he or she has the right to have his or her criminal record concealed by government 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

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 |

Struck out (majority)

- (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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Struck out (majority)

- (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)

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| (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)

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| (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 |
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New (majority)

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| (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 |

Struck out (majority)

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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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Struck out (majority)

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) 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 |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|

- (b) 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)

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

- (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>*

traffic offence includes—

- (a) any offence against *<the Transport Act 1949, the Transport Act 1962, or>* the Land Transport Act 1998 *<the Transport Act 1962, the Transport Act 1949, the Motor Vehicles Act 1924, the Motor Regulation Act 1908>*, or against any regulation, rule, or bylaw made under any of those Acts; and 5
- (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 10

New (majority)

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. 15

- 5 Act binds the Crown**
This Act binds the Crown.

Part 2
Clean slate scheme 20

- 6 Application of clean slate scheme**

Struck out (majority)

- (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. 25

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. 5
- (2) The clean slate scheme applies—
- (a) to all sentences, whether imposed before or on or after the commencement of this Act; and
 - (b) to all specified orders *<of the court>*, whether made before or on or after the commencement of this Act. 10

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—
- (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 15
 - (b) no custodial sentence has ever been imposed on him or her; and 20

New (majority)

- (ba) no order has ever been made in relation to him or her under 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); and 25
- (c) he or she has not been convicted of a specified *<sexual>* offence; and 30

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 5
- (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 10

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. 15

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. 20
- (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. 25

New (majority)

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. 5
- (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 10
- (b) is otherwise eligible under **section 7(1)** to have the clean slate scheme apply to him or her. 15

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— 20
- (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 25
- (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 30
- (b) the conviction for the specified sexual offence must be disregarded for the purposes of **section 7(c)**. 35

Struck out (majority)

- (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). 5
- (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. 10
- (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** 15
- (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 20
- (b) that offence has subsequently been abolished and the act that constituted the abolished offence no longer constitutes an offence; and 25
- (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)**. 30

New (majority)

- 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)**.
- (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) 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).
- (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.
- (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.

New (majority)**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
 - (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.

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

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- (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.
- (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.
- (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).

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

- (1) An individual may appeal to the High Court against the decision of a District Court if—

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Struck out (majority)

- (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**.

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**. 5

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 10
 - (b) the High Court makes the individual subject to an order under **section 9**.

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**. 15

- (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. 20
- (4) An appeal under this section is by way of rehearing.

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

- (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: 5
- (a) the name of the applicant or appellant: 10
- (b) any particulars leading to the identification of the applicant or appellant. 10
- (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.
- (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— 15
- (a) the interests of any individual (including, without limitation, the applicant or appellant); and 20
- (b) the public interest. 20

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.
- (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. 25 30
- (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

Struck out (majority)

the disclosure of information about himself or herself that is subject to the clean slate scheme.

- (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,— 5
- (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 10
- (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. 15
- (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**

- (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. 20
- (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)**— 25
- (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— 30

New (majority)

- (i) under the jurisdiction of the law of a foreign country while an eligible individual is outside New Zealand; or
- (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 form by the immigration or customs agency of a foreign country). 5
- (4) **Subsections (1) and (2)** are subject to the exceptions in **section 15**.

Struck out (majority)

- 12 Responsibility of chief executives** 10
- (1) **Subsection (2)** applies when an individual becomes eligible to have his or her criminal record concealed under the clean slate scheme.
- (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. 15
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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* 25
- 12 Responsibility of chief executives**
- (1) **Subsection (2)** applies to the chief executive of the Department for Courts and every other chief executive of a government department or law enforcement agency that holds, or has access to, criminal records. 30

New (majority)

- (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—
- 5
- (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
- 10
- (b) does not use the criminal records of eligible individuals other than for a purpose authorised under this Act.
- (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

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- (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.
- 20
- (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.
- 25
- (3) **Subsection (1)** is subject to the exceptions in **section 15**.

Offences

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Struck out (majority)

13 Offence to compel or coerce individual to provide information concerning criminal record

- (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.
- (2) A person who commits an offence against **subsection (1)** is liable on summary conviction to a fine not exceeding \$10,000.

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14 Offence to unlawfully disclose information required to be concealed

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- (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>.
- (2) A person who commits an offence against **subsection (1)** is liable on summary conviction to a fine not exceeding <\$5,000> <\$20,000>.

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New (majority)

14A Offence to require or request that individual disregard scheme

- (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; or
 - (b) disregard the effect of the clean slate scheme and disclose, or give consent to the disclosure of, his or her criminal record.

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New (majority)

- (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** 5
- (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,—
- (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 10
 - (b) the exercise of security-related functions of the New Zealand Security Intelligence Service; or
 - (c) criminal or civil proceedings before a court or tribunal (including sentencing) or proceedings before a Parole Board or District Prisons Board; or 15
 - (d) an application for employment—
 - (i) in a position that involves the national security of New Zealand; or
 - (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 20 25
 - (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 30
 - (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

Struck out (majority)

- research approved by a government department or law enforcement agency; or
- (g) the provisions of the Archives Act 1957 if the individual has been deceased for a period of 25 years or more.

New (majority)

- 15 Exceptions to general effect of clean slate scheme** 5
- (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 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. 10
- (3) This subsection applies if— 15
- (a) the eligible individual's criminal record or information about the eligible individual's criminal record is necessary for any of the following purposes: 15
- (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 20
- (ii) the administration of sentences or the management of remand inmates by a law enforcement agency; or 25
- (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; or 30
- (c) the eligible individual has made an application for employment—

New (majority)

- (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
- (iii) as a member of the police, prison officer, probation officer, or security officer; or 5
- (d) the eligible individual has made an application to act in a role predominately involving the care and protection of a child or young person (for example, a foster parent or a caregiver of children or young persons); or 10
- (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 15 20
- (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. 25

Limits on use of criminal records 30**15A Limits on use of eligible individuals' criminal records**

- (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 35

New (majority)

than the purpose in relation to which it was disclosed to the person, body, or agency.

- (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**.

*Relationship to other provisions***15B Relationship to other provisions**

- (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
 - (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
 - (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.
- (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.

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 5
- (b) regulating the practice and procedure of any court under this Act.

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,— 10
 - (a) make rules regulating the practice and procedure of District Courts under this Act; and 15
 - (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**. 20
- (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,— 25
 - (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)**. 30
- (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

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

*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

11 December 2001

Introduction (Bill 183-1)

2 May 2002

First reading and referral to Justice and Electoral Committee