

Applying the Criminal Records (Clean Slate) Act 2004

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Policy statement and principles

What

The purpose of this guide is to describe the application of the clean slate scheme and the obligations it imposes on Police.

Why

Persons who are eligible under the clean slate scheme are entitled to have their criminal record and information about it concealed - i.e. they are deemed to have no criminal record for the purposes of any question asked, or request for disclosure made, about their criminal record.

Police holds criminal records and information about criminal records. Police must therefore understand its obligations to conceal criminal records, and the circumstances where an exception might apply.

How

The Ministry of Justice administers the clean slate scheme and employs a 'clean slate tool' to ascertain whether a person is eligible.

Overview

Purpose

This part of the '[Privacy and official information](#)' chapter:

- describes the "clean slate scheme" provided for in the [Criminal Records \(Clean Slate\) Act 2004](#) (Clean Slate Act)
- outlines who is eligible to have the clean slate scheme applied and what policing work is subject to the scheme.

See other parts of the '[Privacy and official information](#)' chapter for information about disclosure under the [Privacy Act 2020](#) and the [Official Information Act 1982](#).

About the clean slate scheme

The clean slate scheme, governed by the [Criminal Records \(Clean Slate\) Act 2004](#) (Clean Slate Act), offers individuals who satisfy the [eligibility criteria](#) (eligible individuals) the right to have their criminal record and information about it concealed by government departments and law enforcement agencies. The person is deemed to have no criminal record for the purposes of any question asked, or request for disclosure made, about their criminal record.

The clean slate scheme does not apply to a person subject to a safety check as a core worker under the [Children's Act 2014](#).

There are some [exceptions](#) in the Clean Slate Act allowing Police to use or disclose full criminal records in many areas of Police work regardless of whether the person qualifies to have their criminal record concealed.

([s 19](#))

Even if the use or disclosure of a person's criminal record is permitted under the Clean Slate Act, there may be other limitations on the use or disclosure of that information under the [Privacy Act 2020](#) or the [Official Information Act 1982](#).

Note that non-compliance with the Clean Slate Act could result in a [severe penalty](#).

For further information, see '[Policing work subject to the Clean Slate Scheme](#)' and '[Exceptions to the clean slate scheme](#)'.

Criminal record not limited to criminal convictions

The clean slate scheme prohibiting disclosure of criminal records is not limited to criminal convictions but includes charges, sentences and orders, and applies also to any associated information, for example, notings, prisoner photographs, fingerprint records or family violence records relating to a conviction.

Eligibility for the clean slate scheme

This section contains these topics:

- Ministry of Justice administers the clean slate scheme
- Eligibility criteria
- Applications to reduce time or disregard a specified offence
- Checking clean slate eligibility

Ministry of Justice administers the clean slate scheme

The Ministry of Justice (MOJ) administers the clean slate scheme. If you receive a request from an individual asking if they are "eligible", refer the requester to MOJ (see Checking clean slate eligibility below).

Eligibility criteria

To be eligible under section [7](#) for the clean slate scheme, a person must meet **all** these eligibility criteria:

- No convictions within the last 7 years
- Never been sentenced to a custodial sentence (this includes corrective training, preventive detention, imprisonment served by home detention, and any other sentence requiring the individual's full-time detention)
- Never been ordered by a court following a criminal case to be detained in a hospital, due to a mental condition, rather than being sentenced
- Never been convicted of a "specified offence". These offences are listed in section [4](#) and include rape, indecent assault and sexual offending against vulnerable people such as children and young people or mentally impaired persons
- Has paid in full any fine, reparation or costs ordered by the court in a criminal case
- Never been indefinitely disqualified from driving under section 65 of the Land Transport Act 1998 or section 30A of the Transport Act 1962.

Once an individual meets **all** of the criteria, they are automatically an "eligible individual" and entitled to the benefits under the Clean Slate Act. They do not need to make a specific application. In the same way, however, if they are subsequently convicted of an offence, the individual is no longer an "eligible individual" until they once again meet all of the eligibility criteria.

Applications to reduce time or disregard a specified offence

It is possible for a person to apply to a court to have the seven-year eligibility period reduced in limited circumstances. An individual can also apply to the court to have a "specified offence" disregarded for the purposes of determining whether that individual meets the clean slate eligibility criteria (ss [9](#) & [10](#)).

Therefore the only way to know for sure whether a person is eligible is by carrying out a clean slate query.

Checking clean slate eligibility

Some areas of policing work are subject to the clean slate scheme, and Police may need to check a person's eligibility. The 'clean slate query' is the IT query that is sent from Police systems to the Ministry of Justice to

check whether a specified person meets the eligibility criteria. The response verifies that a person is "eligible" or "ineligible".

The clean slate query by Police can only be carried out by Vetting Services and nominated district representatives.

Prohibition on disclosing records of eligible individuals

Under section [16](#) of the Clean Slate Act, a law enforcement agency (such as Police) or an employee of a law enforcement agency that holds or has access to criminal records:

- must not disclose an eligible individual's criminal record or information about it when responding to a request for disclosure (unless the request is from the individual to whom the request relates or the exceptions in section [19](#) apply)
- may only use those criminal records for a purpose authorised under the Clean Slate Act.

Offences

Offence	It is an offence to...	Penalty - Liable on conviction to..
Unlawful disclosure (s17)	disclose to any person, body or agency the criminal record, or information about the criminal record, of an eligible individual that is required to be concealed knowing they do not have lawful authority under this Act, or reckless as to whether they have lawful authority. So, for example, Police cannot disclose to a rest home any NIA occurrence information about a common assault on an elderly person which resulted in conviction if the convicted individual is eligible under the clean slate scheme.	a fine not exceeding \$20,000.
Unlawful request to disregard clean slate scheme (s18)	require or request, without lawful authority under this Act, an individual to: <ul style="list-style-type: none"> - disregard the clean slate scheme when answering a question about their criminal record, or - disregard the clean slate scheme and disclose, or consent to the disclosure of, their criminal record. <p>So, for example, a third party such as a private sector company cannot require all prospective employees to authorise disclosure of their full criminal record in an attempt to get around the Clean Slate Act.</p>	a fine not exceeding \$10,000.

Exceptions to the clean slate scheme

When an exception applies (listed in s19), even if the person meets [eligibility criteria](#), Police may use or disclose that record or information about it. However, at that point you must still take into account the provisions of the [Privacy Act 2020](#) and [Official Information Act 1982](#) (if applicable) before proceeding.

The exceptions to clean slate relevant to Police include when:

- the criminal record or information about it is necessary for the exercise of the prevention, detection, investigation or prosecution functions of Police or other law enforcement agency in NZ or abroad - e.g. Police can:
 - use a person's criminal history during criminal investigations and prosecutions, or
 - disclose criminal histories for jury vetting
- the criminal record or information about it is relevant to any criminal or civil proceedings before a court or tribunal (including sentencing) or proceedings before the Parole Board
- the eligible individual has made an application of any kind under the Arms Act 1983 and Police are considering whether they are a fit and proper person for the purposes of that application
- the eligible individual is being Police vetted because he or she has applied:
 - for employment as a Police employee, or
 - for employment in a position involving national security; or as a judge, JP or community magistrate; or prison officer, probation officer or security officer, or
 - to act in a role predominantly involving the care and protection of, but not predominantly involving the delivery of education to, a child or young person (e.g. foster parent or caregiver)
- the eligible person's criminal record or information about it is relevant to an investigation under section 17 of the Oranga Tamariki Act 1989 (report of ill-treatment or neglect of a child or young person) or in relation to any subsequent Part 2 procedures (e.g. family group conference, section 66 request, care or protection application).

Policing work subject to the clean slate scheme

This section contains these topics:

- Licensing applications
- Joint-agency investigations
 - Investigations with law enforcement agencies
 - Law enforcement agencies
 - Investigations with non-law enforcement agencies
 - Sharing criminal record information with a non-law enforcement agency in joint investigations
 - Further information

Licensing applications

The clean slate scheme applies to many licensing applications, including those under the [Sale and Supply of Alcohol Act 2012](#) and the [Private Security Personnel and Private Investigators Act 2010](#). A clean slate [eligibility check](#) must therefore be conducted before any criminal record or information about it is used or disclosed in this context.

The clean slate scheme does not apply to firearms licence applicants (see ['Exceptions to the clean slate scheme'](#)).

For further information about the impact of the clean slate scheme on particular vetting or licensing applications refer to these chapters in the Police Manual:

- [Police Vetting Services](#)
- [Dealers and traders - Secondhand dealers and pawnbrokers vetting and inquiries](#)
- [Child Protection Policy \(overarching policy\)](#) - see 'Safety checking of Police children's workers' for how the Clean Slate Act applies to safety checks for children's workers under the [Children's Act 2014](#).

Joint-agency investigations

Investigations with law enforcement agencies

An exception to the general effect of the clean slate scheme applies in the case of joint agency investigations with law enforcement agencies if it is necessary for the exercise of that agency's prevention, detection, investigation, or prosecution functions. See ['Exceptions to the clean slate scheme'](#).
s19(3)(a)(i)

Law enforcement agencies

Currently, under section [4](#) of the Criminal Records (Clean Slate) Act, the law enforcement agencies are:

- an agency that holds or has access to information described in Schedule [4](#) of the Privacy Act 2020 (e.g. Ministry of Justice, Department of Corrections, Serious Fraud Office, New Zealand Transport Agency, Ministry of Transport, Ministry of Business, Innovation and Employment, Worksafe NZ, and Ministry of Fisheries)

- Department of Labour (MBIE)
- Inland Revenue Department
- New Zealand Customs Service.

Investigations with non-law enforcement agencies

Exceptions to clean slate do not apply to joint-agency investigations with non-law enforcement agencies.

When working with an agency that is not a law enforcement agency, you must comply with the Clean Slate Act when considering sharing criminal records and information about criminal records. Generally, disclosure of such information is not allowed to agencies that are not law enforcement agencies.

From time to time Police carry out joint investigations with agencies which are not "law enforcement agencies" as that term is defined in section 4 of the Clean Slate Act. Examples of non-law enforcement agencies Police may work with include:

- the Department of Internal Affairs
- Accident Compensation Corporation (ACC)
- Department of Conversation
- Civil Aviation Authority ([CAA](#))
- Maritime New Zealand
- Ministry of Agriculture and Forestry
- Environmental Protection Agency (EPA), and
- NZ Fire Service.

Sharing criminal record information with a non-law enforcement agency in joint investigations

If you believe a joint-agency investigation involving a non-law enforcement agency would be significantly enhanced by including a criminal record and information about it in joint briefings, you must first find out whether the suspect is an [eligible individual](#) under the Clean Slate Act.

After [checking the suspect's eligibility](#), follow this table.

If the check shows ...	then ...
The suspect is not an eligible individual	You may disclose the criminal record and information about it to the agency (but only if it has been requested under the Official Information Act 1982 or disclosure is permitted by an exception to principle 11 of the Privacy Act 2020).
The suspect is an eligible individual	The person is deemed to have no criminal record and you must not disclose their criminal record or any information about it to the agency. Your response to the agency will be: "This individual has no criminal record".

Further information

For further information about the impact of the clean slate scheme on particular joint-agency investigations, see:

- "Disclosing criminal records to the Fire Service in respect of fires not involving explosives" in the [Arson \(fire and explosion investigations\)](#) chapter
 - "Investigations" in the [Objectionable publications](#)
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