



*Disclaimer: the material in this fact sheet is intended as a general guide only. You should not act on the basis of the information in this fact sheet without first getting legal advice about your own particular reason. The information is based on the laws in Victoria as of June 2023.*

# CRIMINAL RECORDS AND POLICE CHECKS

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## CRIMINAL RECORDS

If you have been in trouble with the police or the courts, you may end up with a criminal record.

Whether or not your past interactions with police or the courts will lead to a criminal record, and whether that criminal record will be disclosed to other people such as future employers, depends on a number of things.

You should understand the effect that having a criminal record can have on your life and whether your criminal record is likely to affect you in the future.

### What is a criminal record?

A criminal record is a formal record that shows all of your findings of guilt (which is when you have pled guilty to or have been found guilty of a charge by a court) and any criminal matters that are currently under investigation or waiting for a court outcome. The information contained about each finding of guilt in your criminal record includes the:

- date of the finding;
- court and court's location where the finding took place;
- offence committed; and
- sentence imposed and whether a conviction was recorded.

If you have any infringement convictions (ie infringement notices that specify that they are convictions, for example drink-driving, drug-driving and excessive speed infringements), your criminal record will include information about the:

- date that the infringement notice became a conviction;
- offence as specified in the infringement notice;
- penalty amount; and
- other penalties (if any) resulting from the infringement notice (eg if your drivers permit was cancelled or suspended because of the infringement).

Depending on factors including the seriousness of the charge, your circumstances and whether you have been in trouble before, a Judge or Magistrate may record a finding of guilt with conviction, or without conviction. Whether or not the finding of guilt is recorded with or without conviction, it will remain on your criminal record and be released by Victoria Police in accordance with their policy (described below).

### What is Victoria Police's policy about releasing your criminal record?

Victoria Police will only release your criminal record if they have your consent, which they obtain when you complete and submit a Consent to Check and Release National Police Record application form and pay a fee. However, they can release your criminal record without your consent to other police forces and organisations that have responsibility for law enforcement or the administration of justice.

If you were an adult (18 years or older) when you received a finding of guilt from a Court and you do not re-offend over the next 10 years, then after that time the offence will not be released. However, if you re-offend again, all findings of guilt will be released.

The policy is the same if you were under 18 at the time you were found guilty, except that the period that you must not re-offend within is 5 years instead of 10.

An exception to this is if the finding of guilt resulted in a sentence of imprisonment of longer than 30 months. Another exception is if the police record check is for certain purposes, including for crime prevention purposes, or to become registered as a teacher, a doctor, a prison or police officer, a lawyer or some other professions. In these cases, Victoria Police will always release findings of guilt, even if you never re-offend in the future.

If you successfully completed a youth diversion program for your offence, you may have the charge dismissed. If that is the case, that criminal charge will not be released on your criminal record.

### What is a spent conviction?

A spent conviction is a finding of guilt by a Court that has been entirely wiped from a person's record.

On 1 December 2021, a spent convictions scheme began in Victoria. Once a conviction becomes spent, it no longer forms part of your criminal record and, in most cases, you do not have to tell anyone about it.

Eligible convictions can be spent automatically, immediately or by application to court.

If a conviction is spent, it cannot be disclosed or taken into consideration for any purpose except for law enforcement and/or administration of justice and for a regulatory purpose such as a working with children screening.

In certain circumstances a conviction will be spent immediately, including when a person was under the age of 15 when they committed the offence.

Criminal charges where a court has not yet made a decision (pending charges), information relating to an ongoing investigation by police, and/or findings of not guilty by reason of mental impairment will in most circumstances not be disclosed.

Full criminal histories continue to be disclosed to police, courts and other law enforcement agencies for the administration of justice and all current data sharing agreements remain in place.

## WHAT EFFECT CAN A CRIMINAL RECORD HAVE?

### Employment

Having a criminal record can affect many different areas of a person's life, however the most common is in finding employment.

Employers may want to do a national police record check with police or they may ask you on your job application form whether you have a criminal record.

Employers must get your consent to do a national police record check with police. You can refuse to consent, however you might find that if you refuse then you will not get the job. If you consent to the national police record check, your criminal history will be released by Victoria Police in accordance with their policy (described above).

A spent conviction will not show up on a police record check for employment, except where an employer or agency has a specific legislative exemption. Most employers do not have an exemption and so will only gain access to convictions that are not spent.

### Discrimination

There is no protected attribute in Victoria of 'Discrimination on the basis of an irrelevant criminal record', which means that once an employer sees your criminal history, they are entitled to refuse to give you the job, even if the offence you committed is very old or not relevant to your ability to do the job.

It is against the law to discriminate against a person on the basis of a spent conviction, unless an exception applies.

### Working With Children Checks

Having a criminal record can also affect your ability to obtain a Working With Children Check, which can prohibit you from working or volunteering in a range of areas.

### Travel

A criminal record can also affect your ability to travel overseas, as many countries require you to disclose any criminal convictions before granting you a Visa. You may want to call the embassy or relevant consulate before traveling.

### Future sentences

If you are later found guilty of another offence, your full criminal history may be provided to the court, who may take it into account when deciding on a sentence to give you.

## MORE INFORMATION

For more information about criminal records, see:

- The Law Handbook: [https://www.lawhandbook.org.au/2020\\_03\\_09\\_00\\_understanding\\_criminal\\_records/](https://www.lawhandbook.org.au/2020_03_09_00_understanding_criminal_records/)
- Victoria Legal Aid: <https://www.legalaid.vic.gov.au/find-legal-answers/going-to-court-for-criminal-charge/possible-outcomes-for-criminal-offences/criminal-records>
- To find out more about the information Victoria Police release on a National Police Certificate, head to the Victoria Police Information Release Policy at: [https://www.police.vic.gov.au/sites/default/files/2019-05/Info\\_Sheet\\_Info\\_Release\\_Policy%20May19\\_1.pdf](https://www.police.vic.gov.au/sites/default/files/2019-05/Info_Sheet_Info_Release_Policy%20May19_1.pdf)
- To apply for a National Police Certificate check in Victoria, go to Victoria Police – National Police Record Check Applications: <https://www.police.vic.gov.au/national-police-records-checks>

If you are under 25 and you have been treated unfairly because of your criminal record or you think your record might be wrong, you should contact Youthlaw for more information and advice.

## GETTING LEGAL HELP

### Youthlaw

Phone: (03) 9113 9500 (9am-5pm Monday-Friday)

Email: [legal@youthlaw.asn.au](mailto:legal@youthlaw.asn.au)

Web: [www.youthlaw.asn.au](http://www.youthlaw.asn.au)

### Victoria Legal Aid

Victoria Legal Aid gives free information about the law and can also provide legal help.

Phone: 1300 792 387

Web: [www.legalaid.vic.gov.au](http://www.legalaid.vic.gov.au)

Visit our website: [www.youthlaw.asn.au](http://www.youthlaw.asn.au)

Chat to us: 03 9113 9500

Email your questions: [legal@youthlaw.asn.au](mailto:legal@youthlaw.asn.au)

# YOUTHLAW

Young Peoples Legal Rights Centre

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