

Criminal Records and Criminal History

What is a criminal record?

A criminal record is a formal record, kept by the police, of offences for which you have been convicted (see below for the definition of "conviction"). This means that your criminal record will only show offences where you have either pleaded guilty, or have been found guilty of following a trial. If you have been found not guilty, or if you were charged with an offence but the matter was dismissed it will not show up on your criminal record.

What is a criminal history?

A criminal history is broader than a criminal record. It includes everything on your criminal record, but also includes details of all court matters where you have been found not guilty, matters which have been dismissed, and matters which have not yet been finalised. A criminal history is often considered in sentencing or if you are making a bail application.

What is a conviction?

Being "convicted" of an offence means that the court has found you guilty or the court has accepted your plea of guilty. Convictions appear on your criminal record and may be disclosed in certain circumstances to other people and organisations, including employers. Usually, if you are found guilty of an offence committed as an adult (i.e., when you are over 18 years old) a conviction will automatically be recorded. However, in some limited circumstances, the court has the discretion to not record a conviction, but instead deal with you under a conditional release order (CRO) (see below). You must remember that for certain employment applications, even if you don't have a conviction recorded against you, you still have to tell your potential employer about being found guilty/pleading guilty in a court.

What is a spent conviction? What are the consequences of a conviction becoming spent?

A spent conviction refers to a criminal conviction that effectively "expires" after a period of time. Generally:

- Eligible adult convictions (i.e., most convictions for minor offences) will be spent after 10 crime free years; and
- Eligible convictions as a minor will be spent after 3 crime free years.

Convictions for minor traffic offences are disregarded in calculating the crime free period for a conviction of a non-traffic offence.

A spent conviction is not removed from your criminal record. Rather, the effect of a conviction being "spent" means that you do not have to disclose it, and any questions concerning your criminal history are taken to refer only to any convictions which are not spent. There are some exceptions, e.g., you may need to disclose *all* convictions, including spent convictions, if you are applying for certain types of employment, such as a teacher or police officer, or to work in child-related jobs.

Certain convictions are not capable of becoming spent and will always need to be disclosed. Most notably, these include sexual offences and sentences imposed which are longer than 6 months.

What is a conditional release order (CRO)?

The term "conditional release order" refers to section 9 of the *Crimes (Sentencing Procedure) Act 1999* (NSW). This section states that even if a court finds you guilty of an offence, they

nevertheless have the discretion to decide against a conviction and to grant a CRO instead. It can be in place for up to two years, and must include conditions that the offender not commit an offence, and that they must appear before the Court if ordered to do so. Additional conditions may also be imposed and a condition can be recorded if the Court thinks it is appropriate. Usually, CROs are for trivial offences, where a person has pleaded guilty and does not have a prior criminal record.

Will a CRO appear on my criminal record?

It depends.

Under a CRO, the court may make one of two orders:

- Non-conviction, with conditions for you to comply with; or
- A criminal conviction, with conditions for you to comply with.

When imposing either one of these two types of CROs, the magistrate or judge must impose the "standard conditions" and any one or more of the "additional conditions" which include:

- Treatment condition,
- Abstinence condition,
- Non-association,
- Local restriction, and
- Supervision

As discussed above in the section "What is a criminal record", if the court dismisses the charge, it will not appear on your criminal record.

If the court enters you into a CRO or intervention programme, then after the order or programme is complete, the offence will be treated as dealt with. This means that it will form part of your criminal history. However, it does not have to be disclosed if you are asked if you have a criminal conviction. However, there are still some limited circumstances where an offence in which you received a CRO will still need to be disclosed, e.g., if you are applying to be a police officer, or

applying for child-related employment.

Is an Apprehended Violence Order (AVO) on my criminal record?

No. An AVO made against you is not listed on your criminal record. However, if you breach a condition of the AVO, you may be convicted of a criminal offence, and this will appear on your criminal record.

An AVO *does* form part of your criminal history.

What is the effect of having a criminal record?

Having a criminal conviction, and therefore a criminal record, may affect you in the following ways:

Employment:

- A criminal record may automatically disqualify you for some occupations, particularly government jobs requiring security clearances, working in the police force, or child-related employment. It may also prevent you from holding certain licences, such as a security licence.
- Even where there is no legal obligation on an employer to enquire about your criminal record, employers may still ask questions about your criminal history, or request that you consent to a criminal record check. In these circumstances, it is your decision whether or not you choose to disclose your criminal history or consent to a criminal record check.
- Generally, if you have a criminal record for an offence not connected to the job, then your employer or prospective employer cannot fire you, refuse to hire you, or generally discriminate against you on this basis. However, where there is a connection between the inherent requirements of a particular job and your criminal record, this may affect your current or future employment.

Travel

- A criminal conviction may affect your visa status or ability to apply for, or renew, a passport. In particular, the Australian Passport Office may reject your application for a passport if there is a warrant for your arrest or if you are prevented from travelling because of a condition of parole, bail, or bond.
- You will need to check what rules and restrictions apply to visas in the country you are planning to visit. There are a number of countries that may not allow you to enter if you have a criminal record, or others may only let you apply for a certain type of visa. You can contact the relevant consulate in Australia for further information about visa restrictions.

Other

- A criminal record can be relied on by police in subsequent criminal proceedings against you. It will also be considered in bail applications and sentencing.
- Your criminal record may be taken into account when you are applying for insurance.

How long will a criminal record affect me?

Once an offence is on your criminal record, it is permanent (this includes convictions as a minor), unless the conviction is considered spent. As set out above, some convictions never become spent.

Who has access to my criminal record?

The police and courts will have access to your criminal record. In all other circumstances, details of your criminal record can only be requested by you, or released with your consent, e.g., if you are required to undergo a criminal records check as part of an employment application, your employer will need your consent to access information from your criminal record.

How can I get a copy of my criminal record?

You can get a copy of your criminal record by completing the forms on the NSW Police Force website for:

- general employment (excluding child-related employment),
- licencing,
- visa,
- adoption, and
- aged care volunteering purposes,

or the Australian Federal Police website for:

- Australian citizenship,
- residency, or
- visa purposes.

If you are seeking a Working with Children Check, you should refer to the NSW Office of the Children’s Guardian at www.ocg.nsw.gov.au/child-safe-organisations/working-with-children-check

You will have to pay a fee for a check that relates to paid employment. If your check relates to volunteer work, you will not have to pay a fee.

If I have been charged and fingerprinted, will this stay on my police record?

Yes. Your fingerprints will remain on official record. However, you can apply to the Police Commissioner to destroy your finger or palm prints if you were subsequently found not guilty, or if the charges against you were dismissed.

Will traffic convictions appear on my criminal record?

Only some traffic offences will appear on your criminal record. Minor traffic offences and parking offences do not appear on your criminal record, although minor traffic offences will appear on your

driving record.

Serious driving offences, such as drink driving, negligent driving, or driving without a suspended or disqualified licence, will appear on your criminal record.

If I pay a Criminal Infringement Notice (CIN) will it appear on my criminal record?

The police may issue an on-the-spot fine, known as a CIN, for certain minor criminal offences such as:

- stealing;
- offensive language;
- offensive behaviour
- obstructing traffic.

Like other penalty notices, it must be paid within 21 days. If it is paid during this period, the offence will not be on your criminal record. However, if you dispute the offence and elect to have the matter heard before a court, and you plead guilty or are convicted, it will be on your criminal record.

However, a CIN does form part of your criminal history, and it can be taken into account during sentencing if you are subsequently convicted of another offence.

This information is current to 22 September 2021 and reflects the law as it applies in the State of New South Wales, Australia. It is general information, and is no substitute for legal advice tailored to your particular circumstances. For assistance, contact the ICLC on 9332 1966.