

Applying for a job when you've got a criminal record

What is a criminal record?

Victoria Police keeps a record of any crimes you have been found guilty of, and any ongoing investigations against you by the police. They can also check police records kept by other states and territories.

What is a police check?

This is when an employer asks the police about your criminal record. Victoria Police will release some information about your criminal record to an employer, but only if you give them your permission.

What does a police check show?

In Victoria, a police check will show:

- if you have been **found guilty** of a crime, **even if no conviction was recorded**. This includes if you are given a good behaviour bond. For more information on non-convictions see our separate fact sheet on the topic.
- any **ongoing investigations** by the police, including charges against you that have not been heard in court yet.

If a magistrate has put you on a **diversion program**, this is a way of dealing with your case **outside of the court system**. As long as you stick to the rules of this program, you will not get a criminal record and that crime will **not show up** on a police check.


If you broke the law while you were driving, generally this will only show up if you had to **go to court and were sent to prison or detention**.

Crimes will show up on a police check for at least **10 years** if you were 18 or older at the time you were sentenced, and at least **5 years** if you were under 18 at the time. For more information on how long crimes stay on your record, see our fact sheet 'What is a criminal record?'

When will my criminal record be checked?

For some jobs, the law says your employer must ask for a police check and consider the results. These include:



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- working with children (including as a foster or home carer)
 - prison jobs
 - fundraising
 - working in a residential care home.

This doesn't mean you can't work in these areas if you have a criminal record. But if you have committed some crimes it might be against the law for you to do some of these jobs. For example, the law says you can't work in a residential care home if you have been found guilty of murder or a sexual offence. Or, if you have been found guilty of crimes that might put children at risk, or serious sexual, violent or drug offences, you are unlikely to pass a 'Working with Children Check'.

What about other jobs?

Any employer can ask about your criminal record, even if the law doesn't say they have to. Some employers do this, some don't.

Can an employer choose not to give me a job because of my criminal record?

It depends on the crimes you have been found guilty of and the job you are applying for.

If your criminal history means that you cannot perform what's called the '**inherent requirements**' of the job, then an employer can refuse to give you that job.

This means that if your past crimes **stop you from being able to do very important parts** of the job, or stop you from **meeting essential requirements** of the job, then the employer can reject you because of your criminal record.

- For example, if you need a **security clearance** to visit a prison as part of a job and your criminal record means you can't get that security clearance.

But if you have been refused a job because of your criminal record, and you **do not** think your past convictions **affect your ability to do the job**, then you may have been discriminated against.

Contact one of the organisations listed at the end of this fact sheet to find out about making a discrimination complaint to the **Australian Human Rights Commission (AHRC)**. You have 12 months to make a complaint.



Can an employer dismiss me because of my criminal record?

If you can perform the '**inherent requirements**' of the job, but you are dismissed because of your criminal record, this may count as discrimination and you can complain to the **AHRC**.

Alternatively, you may be able to make an unfair dismissal complaint but this will depend on how long you were employed for at the time of dismissal. You have **21 days** to make this complaint, so you need to act quickly. Contact JobWatch for more information.

Do some government service agreements stop organisations from hiring people with criminal records?

Some government departments include rules in their funding agreements saying that organisations must check the criminal record of potential employees.


But this **does not mean the organisation can't hire you** if you have a criminal record.

- For example, if you apply for a job with an organisation funded by the Department of Health and Human Services, they should take into consideration the **relevance** of the past crime, how **long ago** it was and **evidence of how you have behaved** since then.
- If they decide **not** to offer you a job because of your criminal record they must **tell you why**, let you **discuss the decision**, and let you have the decision **reviewed** if you think it is unfair.

If I am asked about my criminal record on an application form, what do I have to tell them?

You **do not** have to **volunteer** information about your criminal record unless you are asked.

If you are asked about your criminal record, you must **answer accurately and honestly**. It is important to understand exactly what you are being asked. For example, if you are asked whether you have a criminal record that is *relevant* to your job, and you don't think your criminal record is relevant to the job you are applying for, you can simply say 'no'.



However, if you are asked the much broader question of whether you've ever been found guilty of an offence, and you know that some criminal history information will show up on your police check, then you need to say 'yes'. If you don't think your criminal record is **relevant to the work, you can say this**. You can also explain why you don't think your criminal record should affect your application if, for example, the finding of guilt was a long time ago, or you've already done a similar role and you have a positive reference.

Please note that if you lie to your employer about not having a criminal record when you do in fact have one, it will be very difficult to argue discrimination or unfair dismissal if you later lose your job.

For more information, contact:

JobWatch

www.jobwatch.org.au
1800 331 617 (toll free)

Peninsula Community Legal Centre

www.pclc.org.au
(03) 9783 3600

Victoria Legal Aid

www.legalaid.vic.gov.au
1300 792 387

Australian Human Rights Commission

www.humanrights.gov.au
1300 656 419

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