

Criminal Records

A criminal record is a formal record of offences you have been convicted of because you either pleaded guilty or were found guilty by a court of law. Criminal records can affect many things, such as future employment, positions you would like to volunteer in and the ability to travel overseas. It is important to remember that

whilst the basic principles remain the same, states and territories across Australia may have slightly different processes and penalties. This information is designed to help you understand what a criminal record is and how having one can affect your life.

What is a criminal record?

If you find yourself in trouble with the police or the courts, you can end up with a criminal record. A criminal record is a formal record of offences that you've been convicted of, either because you pleaded guilty or were found guilty. If you were found not guilty, it will not show up on your record.

Criminal records can be for all sorts of things but this information is focused on criminal records for alcohol and other drug related offences.

What effect can a criminal record have?

A criminal record can affect many areas of your life, including the following:

- **employment:** many jobs require a police check, which will disclose your criminal record. You can refuse this check, however this may result in you not getting the job. It is not illegal for an employer to refuse to hire you if you have a criminal record even if the offence is very old or not related to your job
- **volunteering:** having a criminal record can also affect your ability to get a Working with Children Check. This may result in you not being allowed to work or even volunteer in some areas, such as sporting clubs, lifesaving and schools
- **travel:** a criminal record can also affect your ability to travel overseas as some countries, such as the US, require you to disclose any convictions prior to applying for a visa. Any convictions for drug possession can result in denial of entry

How old do you have to be to be charged by police?

In Australia you cannot be charged with an offence until you are 10-years-old. As far as the law is concerned children under that age are not believed to be mature enough to understand what they are doing is wrong.

Between the ages of 10 and 14 you may be responsible for any offences you commit. If you are charged with a crime it must be proven in court that you knew what you did was wrong at the time of the offence and, as a result, there will be consequences.

Once you turn 14 you are responsible for any offences you commit but will still be considered a child by law.

Once you are 18-years-old you will be charged as an adult and be subject to adult penalties.

What happens if I am charged by police?

A police officer can charge you if they see you committing a crime or have reason to suspect you have committed or are about to commit a crime.

A 'charge' means the police believe you have broken the law. They must outline what they think you did and where and when it occurred. If you have been charged you will either be held in police custody or given a 'summons'. A summons is a legal written document that lets you know when you have to go to court.

Legal Disclaimer

The information provided on this fact sheet is provided for information purposes only. As such it **cannot substitute for the advice of a medical professional**

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What court do I go to?

Most crimes committed by people under the age of 18 will be dealt with by the Children's Court (Youth Court in SA, Youth Justice Court in NT). These courts deal with young people and have a responsibility to ensure you understand what is happening.

Will I get a criminal conviction?

If you are convicted of a crime you will have a criminal record. Convicted means you have pleaded guilty or been found guilty of a crime and the court has recorded an entry on your criminal record (a conviction).

What is a caution?

A caution is a formal warning and you can only receive a caution if you admit that you did commit the crime. Police can decide to issue a caution rather than charging you and they will take several factors into account when deciding whether to give you a caution, including:

- how serious was the crime?
- your circumstances and the circumstances of the victim or victims
- did damage or injury occur as a result and, if so, to how many people?
- whether they believe a caution will deter you from committing the crime again
- if you have a history of receiving cautions

If the caution relates to drugs you must consent for the caution to be given. For children aged between 10 and 18 years a parent or guardian must consent to and be present when the caution is issued.

A caution is a written document that is recorded by police and entered on file, meaning the details are available to be accessed by any police officer. Only police can see this and generally it will only be revealed if you get into trouble again. There is a limit however on how many times you can receive a caution and you may end up having to go to court.

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What is a cannabis caution?

If you are caught with a small quantity of cannabis for personal use, rather than being charged with an offence, you can be issued with a type of warning, known as a 'cannabis caution'. If you receive a caution you will not get a criminal record or fine but you may be required to attend drug counselling or treatment. The terms of a caution will vary slightly from state to state but essentially it allows police to avoid charging someone who is found with a small amount of drugs. Cautions are always at the discretion of the police officer and there is a limit to how many cautions you can receive (e.g., maximum of 2 in NSW).

Can you get a caution for underage drinking?

If you are under 18 it is illegal for you to drink or have alcohol on you in a public place. If you are caught police will confiscate the alcohol and they may give you a warning or a formal caution, or you may be fined.

Do cautions show up on a criminal record?

As a caution remains in the police files, it does not get removed from your record when you turn 18. Even though it is kept on file, however, it will not result in you having a criminal record. You do not need to disclose that you have received a caution to anyone. Only police can see if you have been given a caution and it does not show up on criminal background checks. As a result, it should not have any significant effect on future employment or travel opportunities. It is important to note, however, that if you are caught breaking the law again by the police they will be aware you have been cautioned before and are less likely to be lenient.

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What is a drug diversion program?

A diversion program is a way to deal with a criminal matter outside of the court system which gives you a chance to avoid a criminal record. You may be eligible for a diversion if:

- the police officer who charged you gives you a diversion recommendation and a magistrate agrees you are eligible
- you agree you are responsible for the offence
- this is your first offence
- the offence is not too serious (i.e., minor shop theft or minor drug possession). You will not get a diversion for driving offences including speeding, drink or drug driving or refusing alcohol or drug testing

Drug diversion programs are in place to protect young people from getting a criminal record for a minor or first-time offence and to assist them to engage with drug support services, but you are not guaranteed to get one.

If a magistrate agrees you are eligible, you will be put on a diversion plan, which means you must follow certain conditions (e.g., getting counselling, education, community work). Diversion plans usually last one year and if you follow the conditions, the charges will be dropped and there is no finding of guilt. This means it will not go on your criminal record.

Will a conviction always remain on my record?

Once you have a conviction it will remain on your record forever. However, the Commonwealth Spent Convictions Scheme allows an individual not to disclose certain criminal convictions in some circumstances, which include:

- a waiting period of 10 years has passed and the person has been of 'good behaviour' for that time (i.e., they have not reoffended)
- the conviction was from the Children's Court, the waiting period of 3 years has passed and the person has not reoffended
- the person was not imprisoned for more than 6 months for the offence

Not having to disclose a conviction in these circumstances is known as a 'spent conviction'. The aim of spent convictions legislation is to prevent discrimination on the basis of certain previous convictions when a person has not reoffended. Some convictions are never spent and you will always be required to declare them. These convictions are the more serious types, including sexual crimes or crimes where you were imprisoned for more than six months.

In addition, there are three exclusions to receiving a spent conviction:

- when you are seeking to work with children
- for certain agencies who seek disclosure (e.g., law enforcement, security agency, courts or tribunals, government agency).
- when the Federal Court of Australia requires disclosure

It is important to note that Victoria does not have a spent convictions scheme, which means you have no right to prevent the disclosure of a conviction, regardless of how much time has passed. They have a similar arrangement called the Public Information Release Policy which is informal and discretionary. It means that in most cases, if the offence was committed more than 10 years ago (5 years if you were under 18 years) Victoria Police will not release the details. Similar exceptions apply however, for the following:

- working with children
- applying for a firearms notice
- sexual or serious offences
- applying to teach