



Fact Sheet 23: Discrimination due to a criminal record

Employment

An employer can seek information about your criminal record where it is relevant to the job in question. Some jobs (for example, those where you work with vulnerable people: children, older people, and people with disabilities) have very strict rules about the criminal record and criminal background of job applicants.

Some employers may even be legally obliged to refuse employment to someone with a particular type of criminal record.

This means that being rejected from a job, or being prevented from obtaining certification required for a job, because of a criminal record will not always mean that you have been discriminated against.

The ACT does have laws dealing with employment discrimination on the basis of spent convictions (see the Street Law 'Spent Convictions' factsheet).

Other areas

Laws also prohibit discrimination against you on the basis of a spent conviction by educational facilities, hotels, other accommodation facilities, clubs or people providing goods, services or facilities.

1. Employment

The Australian Human Rights Commission has developed a set of guidelines for the prevention of discrimination in employment on the basis of a criminal record. Here are some key points from those guidelines:

- Employers should only ask job applicants and employees to disclose specific criminal record information if they have identified that certain criminal convictions or offences are relevant to the inherent requirements of the job
- Oral and written questions during the recruitment process should *not* require an applicant or employee to disclose spent convictions unless exceptions to spent conviction laws apply
- Criminal record checks should only be conducted with the written consent of the individual
- Information about a person's criminal record should always be kept private and only used for the purpose for which it is intended

- The relevance of a person's criminal record should be assessed on a case-by-case basis against the inherent requirements of the job he or she would be required to do. **A criminal record should not generally be an absolute bar to employment of a person.**
- If an employer does take a criminal record into account in making an employment decision, they should only ask questions about a person's criminal record that relate specifically to the inherent job requirements.

The guidelines can be found in full at <https://www.humanrights.gov.au/publications/human-rights-record>.

2. Other Areas

Is it also unlawful for a person to discriminate against you because of your spent conviction or otherwise an irrelevant criminal record by:

- stopping you from studying at a University or other institution (e.g. Canberra Institute of Technology)
- stopping you from accessing public premises

- refusing to give you goods and services, or only giving you goods and services in a particular way
- refusing you accommodation or only offering you accommodation in a particular way
- refusing to accept your membership application for a club, or limiting your access to the benefits of being a member of the club.

3. What are my options if I think I have been discriminated against?

3.1. Australian Human Rights Commission

You can make a complaint to the Australian Human Rights Commission (AHRC). The Commission will investigate the complaint and try, where appropriate, to resolve it by helping to facilitate discussion between yourself and the employer. This is a free service. If the matter is not conciliated, the AHRC will, in limited cases, report to the Minister if they consider you have been discriminated against.

3.2. ACT Human Rights Commission

Instead of going to the AHRC, you may make a complaint in writing to the ACT Human Rights Commission (ACT HRC) that you have been discriminated against on the basis of an irrelevant criminal record. The ACT HRC may attempt to conciliate the matter. However, you cannot make a complaint to the ACT HRC against the Commonwealth government.

If conciliation is unsuccessful, you may then take your matter to the ACT Civil and Administrative Tribunal (ACAT). Unlike the ACT HRC, ACAT are able to award you compensation and make other orders, even if you and the person you are complaining about do not agree.

4. Where can I find more information?

- Call Street Law on 6218 7900 or drop in. We are a free legal service for people who are homeless or at risk of becoming homeless.
- Visit www.humanrights.gov.au