



Fact Sheet 24: Disclosing your criminal history to your employer

1. Can an employer ask me about my criminal history?

Yes and no, it depends on the job.

An employer can ask for your criminal history, when you are applying for certain jobs or licences, or working (including volunteering) in certain jobs/roles if it is relevant to the application. However, unless you are required by law (e.g. working with children or people with a disability), you have no obligation to answer a question about your criminal record.

2. When can an employer ask for my criminal history?

It is important to understand that there will be different requirements depending on the kind of job or licence you are applying for. Generally, an employer cannot ask about irrelevant criminal record as that would be discriminatory.

Employers can only ask you to disclose specific criminal record information if there are certain criminal convictions or offences that are relevant to the inherent requirements of the job. That is, will having a criminal record, or certain convictions or offences, mean that you cannot do all of the essential tasks that the job requires.

For example, does the job require you to work with children or other vulnerable people? A child sexual assault conviction will almost certainly stop you from performing such work. An assault conviction will probably be relevant but depending on its seriousness may not stop you from working in that area. Does the job involve direct responsibility for finance or items of significant value? A fraud conviction may be relevant here. Is a criminal record a barrier to obtaining a licence or registration that is essential to the job?

3. Does my employer need my permission to do a criminal record check?

Yes, if an employer requires a criminal record check, they will need your written consent.

4. Are there any exceptions to the information I need to disclose?

In general, you don't need to disclose a spent conviction, although there are times when you will need to disclose it. A 'spent conviction' is where you:

- were convicted of less than 6 months imprisonment; and
- have had 10 years being 'crime free' (or if you were dealt with as a child when you were convicted, 5 years). This period starts when a sentence of imprisonment is completed, or if no imprisonment is imposed, from the date of the conviction.

5. When do I need to disclose a spent conviction?

You will need to disclose a spent conviction if you are:

- employed as a justice of the peace, police officer, prison officer, teacher, teacher's aide, childcare provider or worker, aged care provider or worker, a carer for people with a disability; or
- employed or work as a volunteer:
 - in relation to the care, instruction or supervision of children, older people or people with a disability
 - at a place that provides care, instructions, supervision, or any other services to these vulnerable people; or
 - by an organisation that provides those services; or
- applying for a Working With Vulnerable People Card, firearms licence or to be a security guard or casino employee.

It is important that you disclose your criminal history (including spent convictions) where you are legally required to do so.