



IRRELEVANT CRIMINAL RECORD DISCRIMINATION

If they've done the time,
forget the crime.

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Celebrating Difference
Embracing Equality

IRRELEVANT CRIMINAL RECORD DISCRIMINATION

It is discrimination on the basis of an irrelevant criminal record when a person is treated unfairly, or is denied the same opportunities as others, because they have, or are thought to have, a criminal record that is irrelevant.

Criminal records that are irrelevant include the record of an arrest or police questioning where no charges were laid or the charges were withdrawn, or criminal proceedings where the person was found not guilty.

Where a person was convicted, the record is 'irrelevant' if the conviction has since been annulled, quashed or set aside.

A conviction will also be 'irrelevant' if the circumstances of the offence are not directly relevant to the circumstances of the possible discrimination (such as the type of job they are applying for).

To work out if a criminal record is relevant it is helpful to consider factors such as:

- the specific nature of the charge or offence
- the person's age at the time of the charge or offence
- how long ago since the last conviction
- evidence of rehabilitation
- in employment, the requirements of the job and how the record is relevant

It is also unlawful to discriminate against a person who has, or is believed to have, an association with a person with a criminal record.

In what situations is irrelevant criminal record discrimination against the law?

To be against the law, discrimination on the basis of an irrelevant criminal record must be related to one of these places or activities:

- Work – whether the work is paid or voluntary
- Training or studying – for example at school,

TAFE or university, or workplace training

- Providing or accessing facilities or services
- Buying or selling goods
- Club membership or club-related activities
- Hotels and pubs
- Housing and accommodation – including short-term accommodation such as a hotel or hostel
- Office and other business premises
- The design or implementation of state laws or programs
- Making or implementing industrial awards, enterprise agreements or industrial agreements

Exceptions to the law

In certain circumstances discrimination on the basis of irrelevant criminal record is allowed. For example, an organisation that works with children may in some cases discriminate on the basis of a person's irrelevant criminal record if it is considered reasonably necessary in order to protect the wellbeing of the children.

Exemptions

If you think there is a valid reason for doing something that might be discriminatory on the basis of an irrelevant criminal record, you may apply to the Anti-Discrimination Commissioner for an exemption for that activity (see separate brochure: *Discrimination law – should you be exempt?*).

Do you feel you have been discriminated against on the basis of an irrelevant criminal record?

If you want to find out more or make a complaint, contact our office. This service is free. We cannot give legal advice, but we can explain how the law works and what it covers. We can also help with writing down a complaint.

The law in action

Jeremy is refused employment as an administration officer because he has a conviction for drink driving. Since the offence is not directly related to the job he applied for and he would not be required to drive for work, Jeremy may make a complaint of discrimination on the basis of irrelevant criminal record.

Malita was refused a job as a shop assistant because she was once charged with stealing. When the charge was dealt with by the Court, she was found not guilty. Because of this, Malita can make a complaint about the refusal to employ her.

Larry is convicted of burglary and assault. He lives in a small community and news quickly spreads to the place Larry's cousin Sarah works. Sarah's boss finds out and Sarah is excluded from handling money because of her association with Larry. Sarah may make a complaint of discrimination on the basis of being associated with a person who has an irrelevant criminal record.