

# Getting Past Your Past

## Moving on from a police record in Victoria



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First Edition: October 2005. Second Edition: November 2009. Third Revised Edition: January 2013.

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**Do you have a police record?**

**Do you know what is on it?**

**Who can find out about it?**

**What impact will a police record have on your future?**

**How should you go about applying for a job if you have a police record?**

**Can you register as a tradesperson or professional if you have a police record?**

**Can you still volunteer if you have a police record?**

**Could a police record stop you from going overseas?**

**Can you avoid getting a record?**

**What if you are found guilty 'without conviction'? Does this affect your record?**

**If you want the answers to questions  
like these, read on...**



## What this booklet is about

Victoria Police and other Australian police forces keep records of crime related information, including cases that go through the courts.

If you are job hunting, offering to work as a volunteer, wanting to go overseas, going on placement during your studies or trying to get registered for a trade or profession, you may be asked to disclose your police record.

We will look at how to obtain the record, what's on it, what your obligations are and what you can do to avoid problems.

We will also touch briefly on how your police record may impact on other areas such as insurance and migration.

Remember, this is a general guide only. Always seek individual legal advice about any specific legal issue you face.

You can go to community legal centres and Victoria Legal Aid to seek free legal advice. Private law firms can also help you, but they usually charge a fee.



# **p**olice records: Overview

## **What is your police record?**

Your official police record is a document produced by police when you ask for it. If you've never had any trouble with the police, you should get a clear record. If you've had trouble with police, it may show on your police record. We will explain exactly what may show on a police record and what should not.

Your police record may not be the same thing as your criminal record. It's also not the same as your conviction history. We'll consider how these things all fit together.

## **Where is your record?**

Victorian information is stored by Victoria Police on a computer system called the Law Enforcement Assistance Program (the LEAP system).

## **When do police produce your record?**

Police will generally produce your police record as a document only when you ask or consent. Police will usually check both Victorian and interstate records.

Police, court authorities or other law enforcement authorities can also check the LEAP system at any time to find out if you are under investigation, have been charged, or have been to court for an offence. They routinely do this during the investigation of a crime. Privacy laws limit the way your information can be used.

## **How long do police keep information?**

Victoria Police keep information on the LEAP database indefinitely.



This does not mean that the information will always appear on your police record. Many offences will not be included after 10 years and we will look at this in detail later.

### **What is the police record for?**

If you are caught breaking the law, the police will usually either give you a fine or charge you with an offence (take you to court and prosecute you).

However, there is a difference between being found guilty of an offence and having a conviction recorded against you with regard to that offence. In Victoria, a court, upon being satisfied that a person is guilty of an offence, may dismiss the charge without recording a conviction.

One part of the punishment for law-breaking can be the stigma of publicity. Most court cases are heard in public, so anyone can watch, listen and publicise your case.

Of course, your case may not get media attention and people quickly forget. But part of the punishment is getting a record. The law justifies this on the basis that employers and others may need to assess your character.

This may come to light when you seek work or other opportunities in life.

This booklet aims to help you to achieve the best possible outcomes and avoid being unfairly judged for your past.

### **How can you get your record?**

If you've had a criminal case, the court that handled the case should have records of it. If you're not sure what the exact outcome of the case was, you can check with the court. To obtain your official police record, referred to as a 'National Police Certificate', you will need to request it from Victoria Police.

You will need to complete Victoria Police's Consent to Check and Release National Police Record form and pay a fee. The form can be obtained by visiting the Victoria Police website ([www.police.vic.gov.au](http://www.police.vic.gov.au)) or by ringing the police Public Enquiry Service (1300 881 596). You can complete the form on-line, as well as by post. A useful guide to help you fill out the form, called the 'Procedure for obtaining a National Police Certificate', is also available on the website.

The application fee is \$34.00 as at July 2012. If you are undertaking a Police Check for a volunteer placement or student placement, or if you qualify under the Family Day Care Scheme as an adult residing with a Family Day Care provider, the application fee is reduced to \$15.50. These fees are updated in July every year, so make sure you check the Victoria Police website for the latest fees.

As at July 2012, name and fingerprint searches cost \$141.00 and can be done by appointment. Call 1300 881 596 to book.

You can request your record to be 'for personal use only' or 'for use by others', such as employers. You mark this on the form. The difference is that police do not disclose some items when it's for others to read.

Once the certificate is printed by Victoria Police they will send it to you at the address you nominate on your application form. You can then supply it to anyone you need to (e.g. prospective employers).

If you request that your record be available to others, Victoria Police applies its Information Release Policy (which is also available on Victoria Police's website).

It usually takes at least ten working days to obtain the record, because of the need to make interstate enquiries.

You can also obtain a National Police Record Check from the Australian Federal Police, but only if it is required by Commonwealth Government agencies, such as the Department of Immigration and Citizenship, or for things like adoption and overseas employment.

## Your police record – for personal use only

Let us look in detail at what is likely to be on the record supplied to you for your own private information.

Your copy of the record will probably include:

- basic personal details about you (full name, address and date of birth)
- a short description of any charge found proven in a court
- details of the court which heard the charge, the date and any penalty or sentence
- findings of guilt by a court, even if no conviction was recorded
- court convictions, even if no other sentence or penalty was given
- good behaviour bonds or similar court orders, such as adjournment on conditions
- charges laid by police, but not yet proven in court
- current police investigations in which you are the suspect
- Children's Court convictions and guilty findings
- driving (traffic) convictions and guilty findings
- interstate convictions and guilty findings
- on the spot fines (or infringement notices) issued by police that ended up in court

Your copy of the police record should not include:

- 'not guilty' outcomes
- charges 'dropped' by police
- any arrests which did not result in charges



- the facts and circumstances of any offence on your record, on the spot fines and infringement notices that never go to court (whether or not you have paid them)
- Infringements Court/Perin Court orders
- police cautions
- details of any case dealt with under the Magistrates' Court diversion program
- intervention orders (but breaches of such orders will appear)
- Children's Court child protection orders
- mental health involuntary detention orders (assuming no criminal charge)
- details of detention under migration laws
- an order that you pay a civil debt
- cases prosecuted by agencies or individuals other than police for example local council
- trade or professional disciplinary action (assuming there was no criminal charge)
- overseas court cases

## Your police record – for use by others

If you ask for your record to be provided for use by others, police may not include some parts of your record. The information released to others is determined by Victoria Police's Information Release Policy.

The policy can be obtained from the police's Public Enquiry Service or from the police website ([www.police.vic.gov.au](http://www.police.vic.gov.au)). It is summarised on the back of the form used to obtain your record. Under the policy, some old offences and traffic offences will not appear when your record is provided to others. However, if you are currently under investigation or if you have been charged with an offence and are waiting for the outcome of the case, these may appear when your record is provided to others.



## Old offences

Offences that are more than 10 years old (from the court date) and occurred when you were 18 years or older are not disclosed. These will not usually be disclosed to anyone except you.

If you were under 18 years of age when you were last found guilty and five years have passed, the finding/s of guilt will not appear on your record.

## Exceptions to the 10 year rule

There are several exceptions to this rule. In any of these situations old offences will appear:

- if you were sentenced to imprisonment for more than 30 months
- if you also have later offences on your record that are within 10 years
- if the record check is for the purpose of registration with a child screening unit or the Victorian Institute of Teaching
- if the record is for the purposes of the *Assisted Reproductive Treatment Act 2008*
- if you are seeking employment in prisons, the police or gaming industry
- if you are seeking registration or accreditation as a health professional
- if you are seeking a Prostitution Service Provider's License or operator accreditation under the *Bus Safety Act 2009*
- if the check is required for the attainment of a Private Security License or Victorian Taxi Accreditation
- if you are seeking a Firearms License
- if the record includes a serious offence of violence or a sex offence and the record check is for the purposes of employment or voluntary work with children or vulnerable people

- if traffic offences resulted in a sentence of imprisonment or detention
- if you committed a serious offence where the result was 'acquitted/not guilty by reason of insanity/mental impairment'
- if other exceptional circumstances justify release of the information

It is not known what police will regard as exceptional circumstances. The information release policy states that details will be released if the interests of crime prevention, administration of justice or public safety require it.

## Traffic offences

Under the Information Release Policy, traffic offences are not listed on your record unless a term of imprisonment or detention was imposed. VicRoads has toughened its stance on traffic offences.

For updates, visit [www.vicroads.vic.gov.au](http://www.vicroads.vic.gov.au).

## Fines

Most traffic offences are dealt with by on the spot fines or infringement notices which are never shown on your police record.

Fines imposed without a court hearing are not listed on your police record (for your own personal use, or for use by others). When police provide your record, it is a record of cases that have been through the courts or are heading there. This applies to traffic fines and other types of fines.

Records of fines are kept by police and other agencies, such as local councils. Those agencies may sometimes make use of the information about your fines. For example, if you ask police to drop a speeding fine because of a good driving record, they may look at your history of traffic fines.

If you do not pay a fine, the details will be provided to the Infringements Court (formerly Perin Court) for recovery. The Infringements Court is part of the Magistrates' Court, but has its own rules and procedures.

## Guilty without conviction

Courts have power to find a person guilty of an offence without recording a conviction. This is a common way of showing leniency. If a court made an order against you 'without conviction', this still appears on your police record. It appears on your record for others to see.

## Interstate and commonwealth offences

If your record includes an offence against interstate or Commonwealth laws, the rules may be a little different. Police will apply the Commonwealth or interstate laws when deciding what to include on your police record.

## What if you have a record from the Children's Court?

Your police record usually includes any finding of guilt or conviction in the Children's Court. However, under Victoria Police's Information Release Policy, Children's Court cases have a shorter life than adult cases. A Children's Court criminal record that is more than five years old will not be released to employers and others.

There are exceptions to this, similar to those that apply to the release of 10 year old adult court records:

- if you have a record which is to be disclosed, any old related records will also be disclosed
- if you were sentenced to imprisonment for more than 30 months
- if the record is for the purpose of registration with a child screening unit or the Victorian Institute of Teaching, or for assisted reproductive treatment
- if you are seeking employment in prisons, health, the police or gaming industry
- if you are seeking a Prostitution Service Provider's License or accreditation under the *Bus Safety Act 2009*



- if the check is required for the attainment of a Private Security License or Victorian Taxi Accreditation
- if you are seeking a Firearms License
- if the record includes a serious offence of violence or a sex offence and the record check is for the purposes of employment or voluntary work with children or vulnerable people.
- if traffic offences resulted in a sentence of imprisonment or detention
- if you committed a serious offence where the result was 'acquitted/not guilty by reason of insanity/mental impairment'
- if other exceptional circumstances justify the release of the information

It is not known what police will regard as exceptional circumstances. The information release policy states that details will be released if the interests of crime prevention, administration of justice or public safety require it.

However, Court Orders related to child protection applications will not be released regardless of the age of the order.

## Who has access to your police record?

Your police record will generally only be provided to others if you authorise that to happen. If you request a copy of your National Police Certificate, it will be posted directly to you; it is then up to you to pass it on to anyone you wish to give it to. Unauthorised disclosure is a breach of privacy law. If a police officer discloses your record without your consent it is a criminal offence.

Although court hearings and decisions are held in public, your police record is personal information subject to Victorian and Commonwealth privacy laws. Police are required to keep the record private and confidential.

The duties of police in law enforcement and in the administration of justice sometimes override this duty of privacy. This enables police to make internal use of information about you and to pass it on to other law enforcement agencies.



Victorian police officers are permitted to check your police record on the police LEAP database only for legitimate operational purposes. It is unethical for police to access your file for personal reasons.

Under privacy law, your police record is in a special category of personal information called 'sensitive information'. Unauthorised collection of sensitive information is not allowed.

State and Federal Commissioners have helpful website about information privacy. Check out their websites at: [www.privacy.vic.gov.au](http://www.privacy.vic.gov.au) and [www.privacy.gov.au](http://www.privacy.gov.au).

### **What about use of your police record in court?**

Privacy laws and Victoria Police's Information Release Policy don't restrict the use of your criminal history if you are again charged and found guilty by a court. In this situation you can expect that your full criminal history will be mentioned. Criminal history does not include fines imposed without going to court (except fines for drink driving or high speed readings).

VicRoads keeps a separate record of any traffic offences that have gone to court and this record will be produced if you are again found guilty of a traffic offence.

### **What can you do if your police record is misused?**

If your police record is misused in some way, you can make a complaint of breach of privacy to State or Federal privacy authorities.

If your complaint is against a Victorian public sector body, you should approach the Victorian Privacy Commissioner or the State Ombudsman. Complaints about Commonwealth public sector bodies should be directed to the Federal Privacy Commissioner or the Commonwealth Ombudsman. Complaints about private sector employers should be directed to the Federal Privacy Commissioner, although not all employers are covered by privacy laws.

Unfortunately Commonwealth privacy laws only cover job applications and don't cover records about employees.

If you make a complaint of breach of privacy to the Victorian Privacy Commissioner, the Commissioner can try to resolve the complaint by agreement, however orders of the Commissioner are not binding.

If this is not successful, complaints can be referred to the Victorian Civil and Administrative Tribunal (VCAT). VCAT has a range of powers including the power to award compensation.

There is limited legal protection available under the *Australian Human Rights Commission Act 1986* (Cth) for people who hold a criminal record and have been treated unfairly as a result. However, these protections may be removed as part of the current Commonwealth consolidation of anti-discrimination laws.

The Australian Human Rights Commission's website has current information on criminal records and discrimination in employment.

Check out their website for further details: [www.humanrights.gov.au](http://www.humanrights.gov.au) and the section on criminal records and employment later in this publication.

## How can you correct your record?

If you believe that your police record has wrong information in it, you may be able to correct it. Police or the court may have made a mistake. If you did go to court but the outcome is wrongly stated, check any court documents you have recording the outcome. Contact the court that heard your case and request a certified copy of the order.

If you can prove that the outcome has been wrongly recorded, it may be easy to persuade police to fix it up. If you claim that an entire entry on your police record is incorrect it is harder to fix. You may think someone has used your name and details and may have to ask police to go back to the original records of the case to see if this can be proven. Fingerprints or DNA testing may be able to prove a mistake.

Your request will only be considered if you put it in writing.

Requests for amendment of a police record should be made to:

The Manager  
Public Enquiry Service  
PO Box 919  
Melbourne VIC 3001

If you are in this situation, you can contact your local community legal centre or Victorian Legal Aid who may be able to help you. You can find your local community legal centre by visiting the Federation of Community Legal Centres (Victoria) website: [www.communitylaw.org.au](http://www.communitylaw.org.au).

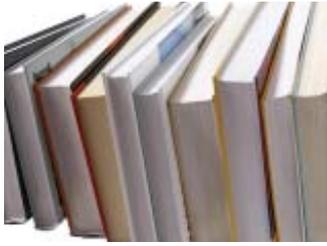
If you cannot persuade police to correct your record and you still believe it is wrong, consider making a complaint to the Victorian Privacy Commissioner. Privacy laws require that personal information held by government be accurate, although police are exempt from this requirement if there is good reason connected to their law enforcement functions. Making a complaint is something that your community legal centre may be able to help you with.

### **Is a conviction the same as a police record?**

A conviction and a police record are not the same thing. This confuses many people.

If the court is considering whether or not to record a conviction against you, all of the circumstances of the case must be considered. This includes the nature of the offence, your character and past history, and the impact of recording a conviction on your economic or social well-being and employment prospects.

Your police record will still show an offence even where a decision was made not to record a conviction, if a finding of guilt is made.



Fines that have not been to court are usually not regarded as a conviction or a finding of guilt and do not appear on your police record.

Fines for drink driving and high speeding infringements (25 kph over the limit or 130 kph or more) are in a special category. They are considered convictions. Under the Information Release Policy traffic offences are not listed on your police record for others to see. However, Victoria Police will release traffic offences where the court outcome was a sentence of imprisonment or detention.

### **How should you answer questions about your past?**

Sometimes you may be asked whether or not you have any convictions, but not be required to undergo a police check. If you were found guilty without conviction the correct answer to this question is 'no'.

If you are asked about convictions and findings of guilt (for example, when applying to organisations such as the Business Licensing Authority) you are required to disclose information about findings of guilt without conviction.

If you were convicted of an offence more than 10 years ago and it will not appear on your police record, if you are asked about convictions it may help to show your police record.

Seek advice if you are unsure about how to correctly answer questions about your situation.



# p olice records: Employment

## How does your police record affect future employment?

This depends a lot on the employer and the job. Employers may ask if you have any convictions and can insist on obtaining your police record as a condition of offering employment. This also applies to other placements such as voluntary work, work experience and training placements.

Employers can refuse to employ candidates with a police record as long as the police record is relevant to the job.

Some government departments (for example, the Department of Human Services and the Australian Defence Force) give information on their websites about their approach to employing candidates with a police record.

Victoria Police has a page on its website ([www.police.vic.gov.au](http://www.police.vic.gov.au)) addressing the topic 'procedures for obtaining a national police certificate'. Police encourage employers to consider any offence history within the overall assessment of your character and reputation.

## How can you persuade employers not to reject your application because of a police record?

If you have a police record that will come to light during a job application, you should bring this up early in the process and explain why it should not be held against you.

You may need to draw attention to any positive factors in your case such as:

- the circumstances of any offences including any which count in your favour
- any indications that the court viewed the offences as relatively minor
- a decision of the court not to record a conviction
- your youth or immaturity at the time of committing the offence
- the length of time since offending
- any constructive developments in your life since offending, including steps you have taken to address the reasons for past offences
- any favourable references from people aware of the past offence(s)
- the relevance or lack of relevance of the offence to the nature of the job
- your commitment to the job or career you wish to embark on

A good employer will generally take into account not just the police record, but other factors which weigh in your favour. Be honest. It will not help you to downplay your responsibility for past actions.

If you feel like you have been unfairly judged on the basis of your criminal history when applying for a job, there may be something you can do about it. The Australian Human Rights Commission has information on discrimination in employment on the basis of a criminal record, including factsheets and how to make a complaint. Your local community legal centre may also be able to assist you with submitting a complaint.

However, make sure you check the current information. The limited protection against discrimination on the basis of a criminal record which is currently available may be removed as part of the Commonwealth consolidation of anti-discrimination laws. If you are unsure, seek legal advice.

## Does a police record affect business or professional accreditation?

Working in your chosen field or starting up a business may involve obtaining a licence or other approval from a government authority.

This applies to taxi drivers, teachers, security guards, estate agents, child care centres, physiotherapists, dating agencies, lawyers and many other occupations, professions and business operators. In addition to any skill or educational requirements, the authorisation process usually involves an assessment of whether you are of 'good character' or a suitable person to work in that area.

If you have a police record, this will be a factor in assessing your character. In some cases you may be disqualified by law, without any room to argue. Sometimes the government authority will have to make a judgment about the significance of your record and you can put forward arguments in your favour.

Suitability of people working with children is closely regulated. Some people will be unable to register as teachers because a conviction or finding of guilt makes registration contrary to the public interest. If you are to work unsupervised with children under 18, you will require a police check (see 'Working with Children Check' for details).

For some occupations, scrutiny of your character may require consideration of past behaviour that does not show up on your police record. For example, becoming a lawyer may require you to disclose traffic offences which police do not generally include on your record (except for personal use). Likewise, a criminal charge that was dropped by police should be disclosed, as would other relevant information that may have nothing to do with police.

A conviction may disqualify you from acting as a company director.



To understand the legal framework for any particular occupation or business activity, you will need to consider the relevant legislation. You may need to consult the government authority in charge of your area and obtain legal advice.

Some vocational courses include work placements as a requirement for qualification. It is common for organisations hosting student placements to require police checks.

### **What effect does a finding of guilt have on your existing registration or licence?**

Occupations and businesses which require police checks as a condition of entry often have ongoing accountability requirements. You may be required to notify them of any new police matter affecting you. You are also likely to be asked about this when renewing your authorisation. You should familiarise yourself with the specific obligations relevant to your occupation.

### **What if your existing employer asks you to do a police check?**

In general employers do not have the right to insist that a current employee undergo a police check. If it was not required to start the job, it cannot usually be required once you are on the job. The same goes for psychological testing and similar forms of on-the-job evaluation. However, there are exceptions.

Some jobs or employment contracts, especially for senior employees, may require you to consent to a police check upon request. This may be a condition of employment, or otherwise required by law.

If your employer wants you to undergo a police check, you should seek legal advice about your particular situation from a solicitor.



## Can employers discriminate against you because of your police record?

Some employers are required by law to conduct criminal record checks for their employees and job applicants. For example, if you apply to work in a casino, as a security officer, taxi driver, nurse or police officer, you may be required to undergo a police check and you may be refused employment based on your police record.

However, there are laws which prevent discrimination based on criminal record in certain situations. Victoria's anti-discrimination laws do not deal with this issue, but Australia's Federal anti-discrimination laws do currently deal with criminal record discrimination, in a limited way.

At the time of publishing this guide, an employer should only take your criminal record into account if it is relevant to the genuine requirements of your job or the job which you have applied for.

For example, if a person is applying to a company for a job as an accountant and they have a criminal record for offences involving financial fraud, the company may refuse to employ them based on their criminal record, because it is relevant to the requirements of the job. In contrast, if a sales assistant has a drink-driving conviction, their criminal record is unlikely to be relevant to their job and their employer should not discriminate against them based on it.

If your employer or prospective employer discriminates against you based on an irrelevant criminal record, you can currently make a complaint to the Australian Human Rights Commission ([www.humanrights.gov.au](http://www.humanrights.gov.au)).

The Australian Human Rights Commission has the power to investigate your complaint. If the Commission thinks your complaint is justified, it may decide to conduct a conciliation to try and resolve it. If the Commission cannot resolve your complaint through conciliation, it can report your complaint to the Attorney General and table a report in Parliament about it. However the Commission does not have power to make orders or force your employer or prospective employer to comply with any of its recommendations.

Make sure that the information you are relying on is current. The limited protection against discrimination on the basis of a criminal record which is currently available may be removed as part of the Commonwealth consolidation of anti-discrimination laws. If you are unsure, seek legal advice.

If your employer uses irrelevant criminal record information to unfairly dismiss you, you may be able to lodge an unfair dismissal claim in Fair Work Australia.

To find out if you are eligible to make an unfair dismissal claim you can contact Fair Work Australia ([www.fwa.gov.au](http://www.fwa.gov.au)), your union, community legal service or lawyer.

If you have been unfairly refused employment (or an opportunity to volunteer) in the public sector because of your police record, you can complain to the Ombudsman. There is an Ombudsman at the State and Commonwealth level ([www.ombudsman.vic.gov.au](http://www.ombudsman.vic.gov.au) and [www.comb.gov.au](http://www.comb.gov.au)).

There may be other work related situations where your police record is taken into account. For example, you may be refused permission to operate a business because of your police record. There may be legal action you can take, or appeals you can make, in such situations.

This will depend on the laws and regulations which apply to your particular type of business.

### **What if you were found guilty without conviction?**

Lawyers will often tell a court that their client should have a 'guilty without conviction' record, so that it does not adversely affect their client's employment prospects.

You could explain to a prospective employer that although 'guilty without conviction' is recorded on your police record, it was done so on the condition of good behavior, or where a fine or community work order was given in place of a conviction. This shows that the court thought your economic or social wellbeing would be unfairly impacted in comparison to the severity of the crime committed.

You could explain what the court took into account when it decided your case. However, you should consider discussing this with a lawyer first.

### **Working with Children Check**

In 2006 a checking scheme was introduced in Victoria for people who have direct and unsupervised contact with children and young people aged under 18. The scheme aims to prevent people with inappropriate records from working with children, or volunteering in children's clubs and activities.

The scheme applies in a variety of situations, including workplaces, clubs and churches. It applies to paid and unpaid workers and vocational training and placements. The scheme involves a police check, but has other features as well.

The 'Working with Children Check' includes a search for:

- convictions or findings of guilt
- pending charges
- relevant professional disciplinary findings



- listing on the Sex Offenders Register
- orders under the Serious Sex Offender Monitoring Act

You will not need a 'Working with Children Check' if:

- you are aged under 18
- you are volunteering in an activity in which your own child ordinarily participates
- all the children you are working with are close family relations
- you are a student aged under 20 performing volunteer work arranged through the school where you are studying
- you are a member of Victoria Police or a teacher. Police and teachers have a different system and this scheme does not apply to them
- you usually live and work in another state or territory and are visiting Victoria to engage in child-related work
- you engage in child-related work that requires a current driver accreditation under the *Transport (Compliance and Miscellaneous) Act 1983*.  
However some exceptions apply.

The outcome of a check will be the issue of either an 'assessment notice' which allows you to work with children or a 'negative notice' which prevents you from working with children. The scheme will involve continual screening for new charges rather than a one-off check. A person initially found suitable but later charged with a relevant offence will have their assessment reconsidered.

New workers will be required to have a current assessment notice or to apply for a check before starting work. Detailed information about the scheme is available on the Department of Justice website ([www.justice.vic.gov.au](http://www.justice.vic.gov.au)).



# **p**olice records: Immigration, Travel, Insurance

## **What else is affected by having a police record?**

A police record can affect many situations other than employment.

### **Voting**

If you are serving a jail term of at least three years you will be disqualified from voting while you are in prison.

### **Election to public office**

A police record may disqualify you from election to Parliament, although rules for the Commonwealth Parliament seem less restrictive in this respect than those at State level.

### **What if you are a migrant?**

Migration and citizenship laws state that permanent residence and citizenship of Australia can only be given to people of good character. When you apply for an Australian visa, you will be asked detailed questions about your character.

You can find information about the character test for immigration to Australia in fact-sheets published by the Department of Immigration and Citizenship (DIAC). See [www.immi.gov.au](http://www.immi.gov.au) for more information.

If you are not an Australian citizen, anything which may reflect badly on your character, such as being guilty of a criminal offence or having a police record, may jeopardise your right to remain in Australia. It may harm your prospects of getting Australian citizenship and put you at risk of cancellation of your visa and deportation.

It is not necessary that an offence be proven in court or that you have a conviction or police record. For example, an offence dealt with by the Magistrates' Court criminal justice Diversion Scheme might be considered relevant to your character by Australian immigration authorities.

DIAC requires that all offences be disclosed. Giving full information will avoid any suggestion that you might be misleading DIAC.

DIAC will decide whether any offence should affect your migration case. If you've been in trouble with police, you should make a submission explaining why you still have good character, after seeking legal advice.

If you require advice concerning the impact of any conduct on your part which might affect your migration status you should consult Victoria Legal Aid or a specialist immigration lawyer. Only a few community legal centres such as the Refugee and Immigration Legal Centre ([www.rilc.org.au](http://www.rilc.org.au)) handle migration matters. You could also consult a registered migration agent. You can contact the Migration Agents Registration Authority for a list of registered migration agents ([www.mara.com.au](http://www.mara.com.au)).

## What about overseas travel?

Like Australia, foreign countries have character checks on visitors and migrants. Having a police record may not automatically disqualify you, but it is relevant.

Each foreign country is likely to have its own laws and policies governing entry from overseas. You should consult your travel agent or the diplomatic post representing the foreign country in Australia about the rules that apply for entry to a particular country.

Visa application forms and travel entry forms may ask questions about criminal convictions and other aspects of your past. Sometimes these questions can be very confusing. Seek advice about these forms if you are in doubt about what information you need to give.

If you are disclosing information, it may help to explain why you believe you should still be permitted to travel to your destination.

### **What about getting insurance?**

A police record may be relevant to insurance.

Anyone seeking insurance must disclose all relevant information. This may include a conviction or a police record. It could include offences which have not resulted in any conviction or police record and even offences that have never been through the courts. It may include a criminal charge dealt with through the Diversion Scheme (see 'Can your case go through the Diversion Scheme?' in the next section).

The obligation to disclose a past offence may be affected by the wording of questions on the application form or proposal for insurance.

If you claim on an insurance policy, the insurers may ask about your police record and may require you to provide the record or other information, such as your VicRoads demerit points record. If you did not give the insurance company all the information at the outset, the company may refuse your claim.



## **p**olice records: Avoiding them

### How can you avoid getting a police record?

The best way to avoid a record is by staying out of trouble!

Consider other options:

- can you do the right thing by the victim and avoid it becoming a police case?
- will police consider giving you a caution?
- will police consider dropping the charge?
- can you successfully defend the case in court?
- can the case be dealt with in the Magistrates' Court Diversion Scheme?
- obtain legal advice about your options

### Can your case go through the Diversion Scheme?

The Diversion Scheme is a program in the Victorian Magistrates' Court designed to 'divert' some people charged with breaking the law away from the formal court system. Diversion cases are dealt with by the Court in a more positive and informal way. The program aims to benefit offenders, victims and the community as a whole by reducing the likelihood of re-offending, utilising rehabilitation techniques and importantly by helping the offender avoid an accessible criminal record.

The Court's Diversion Coordinator and a Magistrate will try to tailor orders that address the real issues of the case in a constructive way (e.g. by compensating a victim or requiring the offender to attend counseling).



Cases which go through the Diversion Scheme are not meant to be disclosed on your police record. The diversion order will, however, still be recorded on the police LEAP database.

Diversion will only proceed if you, the police and the Magistrate all agree on diversion. The views of the victim may be sought. You must admit responsibility for the offence and must comply with any diversion program set up by the court.

If you have prior convictions this does not automatically disqualify you from the program but the court will take this into account in deciding whether the Diversion Program is appropriate.

Most criminal offences which can be heard in the Magistrates' Court can, in theory, go into the Diversion Scheme. There are two exceptions:

- offences of drink driving or driving while drug affected including offences relating to the refusal to submit to drug or alcohol tests or refusal to stop a motor vehicle when required by police
- offences which carry a minimum or fixed sentence or penalty, such as the cancellation or suspension of a driver's licence

If you are facing court you should see if your case can go through the Diversion Scheme as this offers many benefits, including avoiding a police record.

## **C**ase studies

### **Case study – Kim, Volunteer Paramedic**

On his 18th birthday, Kim got very drunk and, finding himself miles from home in the middle of the night, stole a car to get home. At court he pleaded guilty to several offences including theft of a motor vehicle. His barrister was able to persuade the Magistrate to place him on a bond without conviction. At the time he thought that was the end of it all.

When Kim was 23 years old and a recent university graduate, he applied for voluntary paramedical work with an ambulance service. The service asked Kim to provide them with his police record from Victoria Police.

Kim decided to be up front about his court appearance and discussed the issues with the organisation fully before the result of the police check came in.

They took the issues seriously and gave him the opportunity to explain the incident and how he had grown in maturity since he was 18. Kim was approved to be a volunteer paramedic.

## **Case study – Fred and his intervention order**

After many happy years together, Fred and Annie separated. Fred is desperate to get Annie back, but she doesn't want to see him at all. When Fred goes to Annie's new house to try to speak to her, she tells him to go away and becomes very upset.

Annie has now applied to the court for an Intervention Order against Fred. Fred is really upset about this but, if it makes Annie feel safe, he will not do anything to stop her from obtaining the order she seeks. Fred's only concern is that he doesn't want to have a police record.

Fred approaches a community legal centre, and is relieved to discover that the Intervention Order itself will not appear on his police record. It is only if he is charged and found guilty of breaches of the Intervention Order, which is a criminal offence, that a police record will be created.

## **f**urther information

For further information about police records and your rights in Victoria, contact:

### **Australian Federal Police**

[www.afp.gov.au](http://www.afp.gov.au)  
Criminal Records – National Police Check  
AFP Criminal Records  
Locked Bag 8550  
Canberra, ACT 2601  
(02) 6140 6502

### **Australian Human Rights Commission**

[www.humanrights.gov.au](http://www.humanrights.gov.au)  
GPO Box 5218  
Sydney NSW 2000  
(02) 9284 9600  
Complaints Info Line: 1300 656 419  
[complaintsinfo@humanrights.gov.au](mailto:complaintsinfo@humanrights.gov.au)

### **Commonwealth Ombudsman**

[www.ombudsman.gov.au](http://www.ombudsman.gov.au)  
GPO Box 442  
Canberra, ACT 2601  
1300 362 072  
[ombudsman@ombudsman.gov.au](mailto:ombudsman@ombudsman.gov.au)

### **Department of Immigration and Citizenship**

[www.immi.gov.au](http://www.immi.gov.au)  
GPO Box 241  
Melbourne VIC 3001  
133 177

### **Federal Privacy Commissioner**

[www.privacy.gov.au](http://www.privacy.gov.au)  
GPO Box 5218  
Sydney NSW 2001  
1300 363 992  
[enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)

### **Federation of Community Legal Centres**

[www.communitylaw.org.au](http://www.communitylaw.org.au)  
Level 3  
225 Bourke Street  
Melbourne, VIC, 3000  
(03) 9652 1500  
[administration@fclc.org.au](mailto:administration@fclc.org.au)

### **JobWatch**

[www.jobwatch.org.au](http://www.jobwatch.org.au)  
5/21 Victoria St  
Melbourne, VIC 3000  
(03) 9662 1933  
Regional Victoria: 1800 33 1617  
[jobwatch@jobwatch.org.au](mailto:jobwatch@jobwatch.org.au)

### **Law Institute of Victoria's Legal Referral Service**

[www.legalreferrals.liv.asn.au](http://www.legalreferrals.liv.asn.au)  
(03) 9607 9550  
[referrals@liv.asn.au](mailto:referrals@liv.asn.au)

**Melbourne Magistrate's Court of Victoria**

[www.magistratescourt.vic.gov.au](http://www.magistratescourt.vic.gov.au)  
GPO Box 882G  
Melbourne VIC 3001  
(03) 9628 7777

**North Melbourne Legal Service**

[www.nmls.org.au](http://www.nmls.org.au)  
504 Victoria St  
North Melbourne, VIC 3051  
(03) 9328 1885

**Victoria Legal Aid**

[www.legalaid.vic.gov.au](http://www.legalaid.vic.gov.au)  
GPO Box 4380  
Melbourne VIC 3001  
(03) 9269 0120  
1800 677 402

**Victoria Police**

[www.police.vic.gov.au](http://www.police.vic.gov.au)  
Public Enquiry Service: PO Box 913  
Melbourne VIC 3001

**Victorian Civil and Administrative Tribunal**

[www.vcat.vic.gov.au](http://www.vcat.vic.gov.au)  
GPO Box 5408 CC  
Melbourne VIC 3001  
(03) 9628 9911  
[vcat-hrd@justice.vic.gov.au](mailto:vcat-hrd@justice.vic.gov.au)

**Victorian Equal Opportunity and Human Rights Commission**

[www.humanrightscommission.vic.gov.au](http://www.humanrightscommission.vic.gov.au)  
Level 3, 204 Lygon Street  
Carlton, VIC, 3053  
1300 891 848  
[information@veohrc.vic.gov.au](mailto:information@veohrc.vic.gov.au)

**Victorian Ombudsman**

[www.ombudsman.vic.gov.au](http://www.ombudsman.vic.gov.au)  
Level 9, 459 Collins Street (North Tower)  
Melbourne VIC 3000  
(03) 9613 6222  
[ombudvic@ombudsman.vic.gov.au](mailto:ombudvic@ombudsman.vic.gov.au)  
(03) 9247 6666

**Victorian Privacy Commissioner**

[www.privacy.vic.gov.au](http://www.privacy.vic.gov.au)  
Level 11, 10-16 Queen Street  
Melbourne VIC 3000  
1300 666 444  
[enquiries@privacy.vic.gov.au](mailto:enquiries@privacy.vic.gov.au)

# glossary

**Breach:** occurs when a law or court order is disobeyed.

**Charge:** a description of the offence you are accused of committing.

**Children's Court:** the Children's Court of Victoria is a specialist court with two divisions (Family and Criminal) dealing with matters relating to children and young people.

**Conviction:** an order recorded against you by a court, sometimes made after the court finds you guilty of an offence.

**Court Order:** a decision or direction given by a court.

**Criminal Offence:** see 'Offence'.

**Diversion Scheme:** diverts offenders from the formal court system in the case of some less serious offences. It does not lead to a police record.

**Guilty Without Conviction:** after finding you guilty of an offence the judge/magistrate decides not to record a conviction against you.

**Infringement Notices:** a fine or notification to you of an alleged offence.

**Intervention Order:** a court order which stops a person from acting harmfully or in an annoying manner, usually made against a family member.

**LEAP:** the Law Enforcement Assistance Program (LEAP) is a database of information relating to crime used by Victoria Police.

**Legislation:** laws passed by Parliament, either at a state or federal level. Also known as 'statutes' or 'Acts'.

**Magistrates' Court:** deals with most criminal charges and offences and runs the Diversion Scheme.

**Not Guilty:** means you are acquitted of an offence and no court order is made against you.

**Offence:** an act prohibited by the law and subject to a fine or other penalty.

**Infringements Court (formerly Perin Court):** the Victorian court which deals with unpaid fines.

**Police Caution:** an informal warning given by police that you have committed an offence, and must not do so again. Mostly used for children and young people.

**Police Check:** enquiry into whether you have a record of committing any offences.

**Police Record:** the record produced by Victoria Police at your request or with your consent showing whether you have committed any offences.

**Sentence:** punishment given by a Court for committing an offence.

**Victoria Police Information Release Policy:** guidelines followed by Victoria Police in relation to the release of criminal history for the purposes of employment, occupation related licensing or registration and for voluntary work.



# Notes

# Notes



