

NSW Criminal Records & Spent Convictions

This factsheet provides information on how convictions are spent (removed) from your criminal record in NSW and when criminal convictions can be disclosed.

What is a Police Check

Some employers require Police Checks before offering employment, or they may require you to disclose any convictions.

You may also need a Police Check for other purposes, including visa applications or volunteering in an aged care facility.

A Police Check will disclose a person's criminal record, a record of their criminal convictions.

What is a conviction?

A conviction is a legal finding that a guilty plea or a court's decision has proved an offence.

For the purposes of the *Criminal Records Act 1991* (NSW), some sentencing orders are considered convictions even if no formal conviction is recorded, including:

- charges dismissed under section 10 of the *Crimes (Sentencing Procedure) Act 1999* (NSW) without conviction
- cautions issued by the Children's Court
- orders releasing a person on a good behaviour bond or Conditional Release Order

What will show up on my Police Check

Your Police Check certificate will show all convictions for the purposes of the *Criminal Records Act 1991* (NSW) except those that are 'spent'.

When can a conviction be spent?

When the Children's Court issues a caution, the conviction is spent immediately, meaning the caution will not appear on a Police Check certificate.

When the court does not proceed to a conviction but makes an order releasing the person on a good behaviour bond or Conditional Release Order for a specified period (under section 10 of the *Crimes (Sentencing Procedure) Act*), the conviction is spent on satisfactory completion of the program or condition.

For example, suppose a person is charged with possessing a prohibited drug, and the court sentences the person to a 12-month Conditional Release Order without proceeding to a conviction.

In that case, the conviction may appear on a Police Check for 12 months after the sentencing.

When a finding of guilt is made but the court does not proceed to a conviction, and there is no good behaviour bond or Conditional Release Order (under section 10 of the *Crimes (Sentencing Procedure) Act*), the conviction is spent immediately.

It will not show up on a Police Check. In all other cases (other than convictions which cannot be spent), a conviction is spent after a 'crime-free' period of 10 years for adults and 3 years for children.

See more about the definition of a 'crime-free' period below.

A spent conviction will not be disclosed on a Police Check unless a legislative exception applies.

What is a 10-year crime-free period?

The 'crime-free' period is 10 years for adults and 3 years for children from the date of conviction.

A crime-free period is when you have not been convicted of an offence punishable by imprisonment.

If you are convicted of an offence punishable by imprisonment, the crime-free period restarts.

What about traffic offences?

Most traffic offences are dealt with separately from non-traffic offences.

Traffic offences arise from using a motor vehicle or trailer.

A conviction for a traffic offence does not impact the crime-free period.

There are some exceptions to traffic offences. A conviction for the following traffic offences does impact the crime-free period:

- culpable driving
- dangerous driving occasioning death
- dangerous driving occasioning grievous bodily harm
- grievous bodily harm
- manslaughter arises from vehicle
- injury by furious driving

Which convictions cannot be spent?

If you have been convicted of an offence and sentenced to more than 6 months of full-time imprisonment, that conviction cannot be spent, so it will remain on your criminal record and will appear on all future Police Checks.

Convictions for certain sexual offences cannot be spent, so they will remain on your criminal record and will appear on all future Police Checks.

Some other offences prescribed by the Regulations cannot be spent.

How do I check what convictions appear on my Police Check?

You can apply for a NSW Police Check here:

<https://portal.police.nsw.gov.au/s/policecheck-definition>.

You must be over the age of 14 and a NSW permanent resident. It costs \$55.

Are there exceptions?

Spent convictions can be disclosed on a Police Check if requested about employment in certain occupations.

For example, if you apply to be a judge, police officer, corrective services officer, teacher or security guard, your Police Check may disclose all convictions, including those that are spent.

An application for a Police Check will ask you to state the purpose of the check to determine whether certain spent convictions will be disclosed on your Police Check certificate.

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