



## Criminal History Checks

We remind employers conducting checks to consider three important questions:

1. Is it lawful to exclude persons from employment on the basis of their criminal history?
2. Is a person's criminal history strictly relevant to the duties of the position on offer?
3. Have those subjected to the check been treated fairly and in a non-discriminatory manner?

In the NT it is unlawful to discriminate on the basis of "irrelevant criminal record" (*NT Anti-Discrimination Act* ["the Act"] section 19), except in the case of persons who will be working with vulnerable persons where discrimination is reasonably necessary to protect the vulnerable persons.

Irrelevant criminal record is defined under the Act and includes spent convictions, acquittals, withdrawn or dismissed charges, pardons, and convictions for offences where the circumstances relating to the offence are not directly relevant to the situation.

This means that the fact that a person has a criminal record of some sort may not be enough to justify refusing to employ them. You must first be confident that the criminal history is "directly relevant to the situation". In other words, you must consider what sort of criminal history (if any) would be relevant to the duties of a particular job, and take into account only this type of offence. For instance, a DUI offence is unlikely to impact on the performance of clerical duties, but a conviction for fraud may do so, if the applicant will have direct access to funds or other opportunities to commit fraud.

If it has been decided that the duties of a position create a requirement for a criminal history check, best practice is to advise applicants of this by saying something similar to these examples:

- "Because this job involves the care of vulnerable persons we require you to have a criminal history check. We will only consider any criminal history you may have that is relevant to the specific duties of this job or would cause us concern about the well-being of the vulnerable persons in your care."
- "This job requires managing the finances of the company and involves access to bank accounts, cheque books etc. Accordingly we require you to provide a criminal history check so that we can ascertain whether you have convictions for theft or fraud related offences. We will not consider any other criminal history you may have that is not relevant to the specific duties of this job."

If a criminal history is identified for a particular applicant, then care must be taken to assess whether or not the history has relevance to the duties and tasks of the position. Some factors which should be considered in assessing the relevance of criminal histories are:

- nature of offence(s);
- time since commission of offence(s);
- age of offender at commission of offence(s);
- penalty imposed;
- extent of criminal history;
- extenuating circumstances of offence(s); and
- general character since commission of offence(s).

Consider the possibility that a person with a conviction may be less likely to commit an offence since they have already 'learned their lesson'. Also further insight into a person's criminal history and their likelihood of re-offending may be obtained through (confidential) discussion with that person at, or prior to, job interview.

Information about a person's criminal history must not be used for any purpose other than recruitment for employment, confirmation of suitability to continue employment, or in making decisions about which staff are suitable for providing services to clients.

Spent convictions do not have to be disclosed and are not obtainable through a criminal history check except for particular vocations such as police and prison officers, and for employment principally involving the care, instruction or supervision of vulnerable persons (eg children, aged persons, or persons with a disability).

You can discuss any questions you may have regarding criminal history issues and other workplace discrimination or harassment issues with our staff. We can help you to effectively deal with your own workplace complaints and grievances.

Remember that unresolved workplace complaints may result in loss of time, mistakes, sickness, resignations and even legal costs.

For employers who wish to conduct criminal history checks our expert staff are available to give advice at any stage of the process. Just call our dedicated Manager and Supervisor Helpline on NT freecall 1800-501288.

**FOR FURTHER INFORMATION OR ADVICE, TO REQUEST TRAINING, OR TO BE ADDED TO THE MAILING LIST Contact:**

**Northern Territory Anti-Discrimination Commission**

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**Phone (08) 89991444 Free call 1800 813 846 Fax: (08) 8981 3812 TTY (08) 8999 1466**

**Alice Springs: Ground Floor, Centre Point Building, 54 Hartley Street, Alice Springs: (08) 8951 5818**

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