

The Shopfront

YOUTH LEGAL CENTRE

Convictions, criminal records and
their consequences for young people

9 December 2024



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Law for Community Workers

The image shows a Zoom meeting toolbar with several icons: Audio Settings, Chat, Raise Hand, Q&A, Live Transcript, and a red Leave button. Two callout boxes are shown below the toolbar:

- The first callout box, titled "Question and Answer", contains the text: "Welcome to Q&A", "Questions you ask the host and panelists will show up here.", a text input field with the placeholder "Type your question here...", a "Send anonymously" checkbox, and "Cancel" and "Send" buttons. A link at the bottom says "Who can see your questions?".
- The second callout box, titled "Live Transcript", contains the text: "Show Subtitle", "View Full Transcript", "Subtitle Settings...", a "CC" icon, and "Live Transcript".

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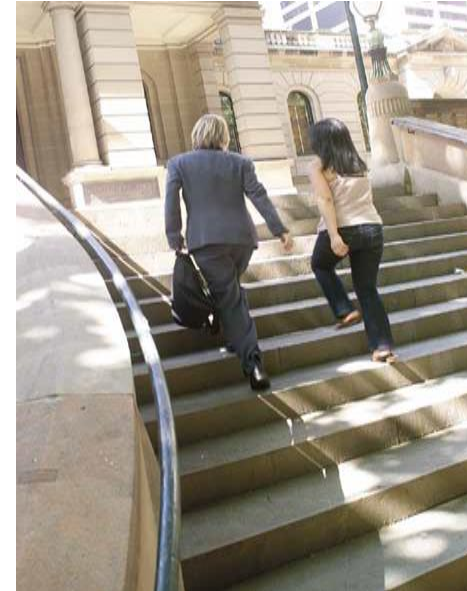
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Who we are

- A **free** legal service for homeless and disadvantaged young people aged 25 and under
- Based in Darlinghurst, Sydney



Our clients:

- Aged 25 and under
- Mainly from Sydney metro area
- Diverse cultural backgrounds, including First Nations
- Most are homeless or at risk of homelessness
- Most have complex needs, backgrounds of trauma, mental health issues or cognitive impairment

What we do



- **Court representation**, mostly for criminal offences
- **Legal advice and assistance** with criminal matters, AVOs, fines, debts, housing, police misconduct
- **Help for victims of crime**, including compensation claims
- **Social work support**
- **Referrals** to other legal and social services

Topics covered

- What is (and is not) a conviction?
- What is a criminal record (and other terminology)?
- When can a court record (or not record) a conviction?
- When is a non-conviction deemed to be a conviction?
- When is a conviction spent?
- What are the impacts of a conviction?
- What about AVOs and other outcomes?

What is a conviction?

A “conviction” usually means one of two things:

- a) you have been found guilty of (or pleaded guilty to) an offence; or
- b) a court has formally recorded a conviction against you.

What is *not* a conviction?

- Penalty notice (on-the-spot fine)
- Warning, caution or youth justice conference under the *Young Offenders Act*
- Diversion under section 14 or 19 of the *Mental Health and Cognitive Impairment Forensic Provisions Act*
- Finding of not guilty
- Pending charges which haven't been proven
- Apprehended Violence Order (AVO)

What is a criminal record, criminal history, police check, etc?

- **Criminal record** – generally a record of formal convictions which have not been spent
- **Criminal history** - a history showing all charges you have faced in court, whether found guilty or not
- **Court alternatives history** – a record of *Young Offenders Act* cautions and conferences
- **Traffic record** – a separate record of traffic convictions and infringements recorded by Transport for NSW
- **Police check** – can have different meanings depending on context
- **National Police Certificate** – generally contains (unspent) convictions plus pending charges

Does your criminal record get wiped or
“sealed” when you turn 18?

No.

When does a court record a conviction?

Adults

Conviction always recorded after finding of guilt, unless:

- Section 10 *Crimes (Sentencing Procedure) Act* (either a dismissal or a conditional release order); or
- Section 19B *Commonwealth Crimes Act* (similar to section 10, but for Commonwealth offences); or
- *Mental Health and Cognitive Impairment Forensic Provisions Act* (MHCIFPA) section 14 or 19 (or section 20BQ of the *Commonwealth Crimes Act*)

When does a court record a conviction?

Children's Court

- Under 16 – never
- 16 or over – court has discretion

Children in Local Court (traffic matters)

- Court has discretion

Children in District and Supreme Courts

- It's complicated!
- Generally court has discretion, regardless of child's age

When is a non-conviction deemed to be a conviction?

Criminal Records Act (NSW)

- Essentially any finding of guilt (except Children's Court dismissal under section 33(1)(a)(i)) is *deemed* to be a conviction.
- However, most convictions can be *spent*, meaning wiped off a person's criminal record.

Commonwealth Crimes Act

- Essentially any finding of guilt is deemed to be a conviction.
- However, as with NSW, most convictions can be spent.

What convictions can and can't be spent (NSW)?

- Most convictions can be *spent* either immediately or after a crime-free period
- Some can never be spent, e.g.:
 - Offences which result in a full-time prison sentence of more than six months (does not include children's control orders)
 - Sex offences

When is a conviction spent (NSW)?

- **Section 10 dismissal or Children's Court caution:** immediately.
- **Non-conviction CRO or Children's Court non-conviction bond:** on completion of bond.
- **Other convictions:** on completion of relevant crime-free period:
 - Children's Court: 3 years
 - Adults (and children dealt with in adult courts): 10 years

When is a conviction spent (Commonwealth)?

- If sentenced to imprisonment for more than 30 months, cannot be spent
- Otherwise, spent at end of “waiting period”:
 - 5 years from the date of a juvenile conviction
 - 10 years from the date of an adult conviction

What are the consequences of a conviction being spent?

- Generally, you don't have to disclose it to anyone, and can honestly answer "no" when asked if you have any convictions
- There are always exceptions! e.g. some professions, jobs requiring high level of security clearance
- Courts can still look at spent convictions when sentencing you for subsequent offences

Potential impacts of convictions

- Child Protection Register
- Working with Children Check
- NDIS worker check
- Other professional/ employment consequences
- Security licence, firearms licence, etc
- Citizenship
- Visa cancellation (and deportation) if not an Australian citizen
- Overseas travel
- Insurance
- etc

Potential impacts of AVOs

- An AVO is not a criminal conviction
- Does not disqualify you from Working With Children Check clearance, but might affect risk assessment
- May affect “fit and proper” test for security licence
- Will usually prevent you getting a firearms licence

Resources

The Shopfront Youth Legal Centre – fact sheets for young people and youth workers

Including:

- Convictions and criminal records
- The Working With Children Check
- The Child Protection Register

<https://www.theshopfront.org/legal-information-for-youth-workers>



The Shopfront

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The Shopfront is open from
9.30am to 5.00pm Monday to Friday
or at other times by arrangement

Telephone
9322 4808

For urgent legal advice after hours
dial 9322 4808 and select 3



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