



irrelevant Criminal Record



Under the Tasmanian *Anti Discrimination Act 1998* ("the Act"), one of the attributes covered is 'irrelevant criminal record.'

Discrimination on the basis of an Irrelevant Criminal Record is unlawful.

What is an irrelevant criminal record?

In relation to a person, this means a record relating to arrest, interrogation or criminal proceedings where:

- further action was not taken in relation to the arrest, interrogation or charge of the person; or
- a charge has not been laid; or
- the charge was dismissed; or
- the prosecution was withdrawn; or
- the person was discharged, whether or not on conviction; or
- the person was found not guilty; or
- the person's conviction was quashed or set aside; or
- the person was granted a pardon; or
- the circumstances relating to the offence for which the person was convicted are not directly relevant to the situation in which the discrimination arises.

Examples of direct discrimination
Jeremy is refused employment as an administration officer because he has a conviction for exceeding 0.05% (drink driving).

Malita was refused employment as a shop assistant because she was charged with stealing and found not guilty.

Direct discrimination

Direct irrelevant criminal record discrimination takes place if a person treats another person on the basis of an irrelevant criminal record less favourably than a person without that attribute or characteristic.

For direct discrimination to take place it is not necessary:

- that irrelevant criminal record be the sole or dominant ground for the unfavourable treatment; or
- that the person who discriminates regards the treatment as unfavourable; or
- that the person who discriminates has any particular motive in discriminating.

Indirect discrimination

Indirect irrelevant criminal record discrimination takes place if a person imposes a condition, requirement or practice, which is unreasonable in the circumstances and has the effect of disadvantaging a member of a group of people who share a particular attribute (irrelevant criminal record) more than a person who is not a member of that group.

When is a record irrelevant?

When determining whether a record is irrelevant, or otherwise, it is helpful to have regard to the following:

- the nature of the charge or offence committed
- the number of offences
- the age of the person at the time of the offence/s
- the gap in time since the offence/s was committed
- evidence of rehabilitation
- in employment, the inherent duties of the position and whether the record is relevant / irrelevant to those duties

Example of association discrimination
Larry is charged and convicted of burglary and assault. Larry lives in a small community and news quickly spreads about the offences. The information travels to Larry's relative's workplace and Larry's relative's boss finds out about it. Larry's relative is then treated less favourably because of his/her association with Larry.

If you are unsure whether your complaint involves discrimination on the ground of irrelevant criminal record, you can contact the Office of the Anti-Discrimination Commissioner and/or arrange to speak with an Investigation Officer.

Contact Us

To lodge a complaint or seek further information, contact the office or visit the website. Please note the office is unable to provide legal advice to parties of a complaint.

Office of the Anti-Discrimination Commissioner
Level 1, 54 Victoria Street, Hobart, Tasmania 7000
GPO Box 197, Hobart, Tasmania 7001

Telephone **1300 305 062 (local call)**
(03) 6233 4841
Facsimile **(03) 6233 5333**
TTY **(03) 6233 3122**
Email **antidiscrimination@justice.tas.gov.au**

www.antidiscrimination.tas.gov.au

Disclaimer: This information is intended to provide a general understanding of the Anti-Discrimination Act 1998. To maintain confidentiality case examples are not based on actual complaints lodged with this office.

Association

The Act provides that you cannot discriminate against a person associated with a person who has an irrelevant criminal record.

Where is it unlawful to discriminate?

The Act prohibits irrelevant criminal record discrimination in the following areas:

Employment – this includes paid or unpaid, casual, permanent or temporary employment.

Education and Training – at schools, colleges, universities or other educational institutions where education and training is provided.

Provision of facilities, goods and services – this includes access and use of public places, transportation and travel and private or government service providers.

Accommodation – this includes residential housing and business accommodation ie. rental property, hotel, motel, boarding house or caravan.

Membership and activities of clubs – being a member of a club and participating in activities associated with the club.

When is it lawful to discriminate?

In certain circumstances, irrelevant criminal record discrimination is permitted. The following exception applies:

Dealing with children

Section 50 states that a person may discriminate against another person on the ground of irrelevant criminal record in relation to the education, training or care of children if it is reasonably necessary to do so in order to protect the physical, psychological or emotional wellbeing of children having regard to the relevant circumstances.

Where a person/organisation argues that it is exempted from the requirements of the Act because an exception applies, it is up to the person/organisation to prove the exception applies.

Spent criminal record

The *Annulled Convictions Act 2003* (Tas) states a conviction becomes “spent” - in that a person is not required to disclose a conviction if he or she is sentenced to imprisonment for a period of 6 months or less, and he or she has been of good behaviour for 10 years since the date of the conviction (5 years for a youth).

Good behaviour is evidenced by not being convicted of an offence punishable by a term of imprisonment.

The person does not generally have to disclose an annulled conviction if it is taken not to be part of their official criminal record.

Who can lodge a complaint?

The following persons may complain about discrimination on the basis of irrelevant criminal record:

- a person who has been discriminated against because of an irrelevant criminal record;
- an advocate, representative or agent on behalf of another person;
- an associate of a person who has an irrelevant criminal record;
- an organisation on behalf of the person discriminated against, so long as a majority of the members of the organisation consent; and
- a trade union that represents -
 - (i) a member of that union against whom the discrimination was directed; or
 - (ii) a class of members of that union against whom the discrimination was directed, so long as a majority of those members are likely to consent.

Please advise the office prior to an appointment if you require special assistance or the services of an Interpreter/Auslan.