



No conviction recorded – options for keeping your criminal record clean

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One of the most common enquiries that we receive from clients who have been charged with a criminal offence is whether they will have a criminal record at the conclusion of the proceeding. The recording of a conviction (a criminal record) can create difficulties and barriers in areas of employment, international travel, rental applications, and even the ability to purchase insurance policies. In some instances, it doesn't matter what type of offence you are convicted of; a criminal record of any kind may hinder or deny significant opportunities.

Once a conviction is recorded, it is permanent, [unless the conviction is "spent" or "expunged"](#).

Considerations for determining whether to have no conviction recorded

A court has the discretion to not record a conviction when sentencing a person who has pleaded guilty (or is found guilty) of a criminal offence. Section 12 of the *Penalties and Sentences Act 1992* (Qld) details the matters that must be considered.

Matters that must be considered, amongst other things, include:

1. the nature of the offence;
2. the age and character of the offender;
3. the impact that recording a conviction will have on the offender's

1. economic or social wellbeing; or
2. chances of finding employment.

Nature of the offence

The general rule is that the chances of a conviction being recorded are higher if the offence is serious. Minor offences, or offences lower in scale (determined by the maximum term of imprisonment or penalty), are more likely to result in the court exercising discretion to not record a conviction.

In examining the nature of the offence, the court needs to consider:

- whether violence was used, and to what extent;
- whether there was an abuse of trust or exploitation of another;
- the likelihood of the offender re-offending; and
- the type of offence (for example, sexual offences are more likely to result in a conviction being recorded).

Age and character

Those who can show a history of obedience of the law and can demonstrate continued contribution to society or their community through employment, volunteering or other means, are viewed more favorably by the court when determining whether a conviction should not be recorded. So too, young offenders or senior offenders with limited or no criminal history.

An offender with a dated or limited criminal history is more likely to persuade a court to not record a conviction than an offender with an extensive and recent criminal history.

Employment and economic and social wellbeing

The existence of a criminal record is, as a general rule, likely to impair a person's employment prospects. As a result, courts generally give great weight to the impact that the recording of a conviction will have on an offender's employment and wellbeing. For the court, it is a balance of public interest (the potential public harm that might result from the courts permitting concealment of a person's history of wrongdoing) and rehabilitation (enabling a person to continue being a productive member of society).

Simply pointing to a possible detrimental impact on future employment prospects usually won't be enough to persuade a court not to record a conviction. You would generally need to be able to explain why and how the recording of a conviction would impact your employment and economic wellbeing.

If you are required to complete criminal record checks to work in your industry, or you work in a regulated profession (such as nursing, law or medicine) the recording of a conviction may impact your ability to either gain employment or remain employed or registered.

Do I have to disclose an offence for which no conviction was recorded?

If a conviction was not recorded, that does not mean that you may not be required to disclose it.

For example, nurses, lawyers and doctors are generally required to notify the relevant professional body of any offence for which a plea of guilty was entered, regardless of whether a conviction was recorded. You should always read the question asked of you very carefully and if you have any doubts at all about how to answer it you should [seek legal advice as soon as possible](#).

Can I appeal the recording of a conviction?

A decision by a court to record a conviction can itself be the subject of an appeal, in addition to any penalty ordered against you. There are very short and strict time limits to commence an appeal, and you should seek legal advice immediately if you have concerns about a conviction being recorded against you.

Get help from a criminal lawyer

The factors to be considered by a court in determining whether to record a conviction are wide and varied. If you've been charged with or convicted of a criminal offence and you need advice or assistance, you should contact the criminal law team at Hall Payne Lawyers. All of our criminal lawyers are well equipped to give you the necessary advice.

You can contact us by phone or email to arrange your consultation; either face-to-face at one of our offices, by telephone or by videoconference consultation.

Phone: [1800 659 114](tel:1800659114)

Email: general@hallpayne.com.au

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