



## National Criminal History Record Checking General Information Sheet

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### AUTHORITY TO RELEASE RECORD OF CONVICTIONS AND OTHER MATTERS PENDING

#### GENERAL INFORMATION

Application forms are used by the NSW Rural Fire Service as part of the assessment process to determine whether a person is suitable for membership, appointment, employment, other engagement or work (whether as a volunteer or for financial reward) with the NSW Rural Fire Service.

Unless statutory obligations require otherwise, the information provided on these forms and any information received by the NSW Rural Fire Service in the assessment process will not be used without your prior consent for any purpose other than in relation to the assessment of your suitability.

#### CRIMINAL HISTORY RECORD CHECK

Criminal history record checks are an integral part of the assessment of your suitability.

The NSW Rural Fire Service will forward information extracted from your application to the CrimTrac Agency, other Australian Police Services or other law enforcement agencies, and you are asked to consent to these agencies:

- a) disclosing criminal history information from their own records to the NSW Rural Fire Service; and
- b) accessing the records of other law enforcement agencies, and obtaining criminal or traffic violation history information that in turn will be disclosed to the NSW Rural Fire Service.

#### SPENT CONVICTIONS SCHEMES

##### A. Commonwealth

Part VIIC of the *Crimes Act 1914 (Cth)* deals with aspects of the collection, use and disclosure of old conviction information. The law is commonly known as the Spent Convictions Scheme. The aim of the Scheme is to prevent discrimination on the basis of old minor convictions, once a waiting period has passed (usually 10 years) and provided the individual has not re-offended during this period. The law also covers convictions that have been “quashed” or “pardoned”.

A “quashed” conviction is a Commonwealth, Territory, State or foreign conviction that has been set aside by the Court.

A “pardon” means a free and absolute pardon that has been granted to a person because he or she was wrongly convicted of a Commonwealth, Territory, State or foreign offence.

A “spent” conviction is a conviction for a Commonwealth offence that satisfies all of the following conditions:

- it is 10 years or more since the date of the conviction (or 5 years for juvenile offenders);
- the individual was not sentenced to imprisonment or was not sentenced to imprisonment for more than 30 months;

- the individual has not re-offended during the 10 year (5 years for juvenile offenders) waiting period; and
  - a statutory or regulatory exclusion does not apply.
- The law affects Commonwealth authorities in the following ways:
- A person with a conviction protected by Part VIIC does not have to disclose that conviction to a Commonwealth authority, unless an exclusion applies; and
  - Commonwealth authorities are prohibited from disclosing or taking into account protected old conviction information without the consent of the person concerned.

Part VIIC of the *Crimes Act 1914* and Statutory Rules No 227 of 1990 provide for "statutory" or "regulatory" exclusions from the disclosure and use standards for spent convictions only.

There ARE exclusions in relation to your application to work for or with the NSW Rural Fire Service. Sub-sections 85ZZH (e)&(f) of the *Crimes Act 1914* authorise the NSW Rural Fire Service to access "spent convictions" of a sexual offence or any other offence against the person if the victim of the offence was under 18 at the time the offence was committed relating to:

(e) a person or body who employs or otherwise engages other persons in relation to the care, instruction or supervision of minors, for the purpose of finding out whether a person who is being assessed by the person or body for that employment or engagement has been convicted of any such offence;

(f) a person or body who otherwise makes available care, instruction or supervision services for minors, for the purpose of finding out whether a person who is being assessed by the person or body in connection with those services has been convicted of any such offence.

There are exclusions in relation to your application to work for or with the NSW Rural Fire Service.

### **A conviction or finding of guilt in relation to any of these offences must be disclosed.**

#### **B. New South Wales**

The New South Wales Spent Convictions Scheme operates in much the same way as the Commonwealth Scheme. The *Criminal Records Act 1991 (NSW)* ("the CRA") and the *Criminal Records Regulation 1999 (NSW)* contain the relevant law on "spent" convictions, "quashed" convictions and "pardons" for offences committed under NSW law.

When the CrimTrac Agency conducts a criminal history record check, the results of that search will indicate whether a person potentially has a criminal record because he or she has committed a criminal offence under the law of an Australian state or territory or the Commonwealth of Australia. If, under the law of NSW, you are found to have a criminal record, the details of any offences committed, except those protected by the CRA will be forwarded to the CrimTrac Agency and to the NSW Rural Fire Service. The details of offences protected by the CRA will not be disclosed without your prior consent.

What constitutes a "quashed" conviction or a "pardon" under NSW law is essentially the same as the description provided above under the heading Commonwealth law. However, the definition of a "spent conviction" under NSW law is different to the Commonwealth definition.

Under the CRA, a "spent conviction" is a conviction for an offence under NSW law that satisfies all of the following conditions:

- the relevant crime-free period must have expired. The crime-free period is a period of at least 10 years from the date of conviction (or 3 years for juvenile offenders);
- the conviction must not have resulted in a period of imprisonment of 6 months or more being imposed on the individual. Periodic or home detention is not considered a prison sentence;
- the individual has not re-offended during the 10 year crime-free period (or 3 year period for juvenile offenders), and
- a statutory or regulatory exclusion does not apply.

Convictions for some offences are excluded and can not be treated as 'spent' convictions. These include a large number of offences defined by the CRA as "sexual offences". Examples include the *Crimes Act 1900 (NSW)* offences of sexual assault, indecent assault, various offences against children and minors, child pornography offences and the offence of obscene exposure under the *Summary Offences Act 1988 (NSW)*. Convictions for attempting, conspiring or inciting the commission of these offences are also included. Where a person is applying to join or work with the NSW Rural Fire Service offences convictions for arson or attempted arson are also excluded from the scheme. A conviction or finding of guilt in relation to any of these offences must be disclosed.

For more information on spent convictions in NSW contact NSW Privacy on telephone (02) 9268 5588.

### **C. Other Australian police services**

Where a criminal history record with another Australian Police Service has been obtained, any relevant legislation (and/or release policy) affecting that police service will be applied before that record is released. Under various pieces of Commonwealth, State and Territory legislation a person has the right, in particular circumstances or for a particular purpose, to not disclose certain convictions/findings of guilt over a certain age. Such convictions (widely referred to as "spent" or "rehabilitated" convictions) will not be released unless the records check is for the applicant's personal information only and provided that this is in accordance with relevant legislation (and/or release policy). Please contact individual police services directly for further information about their release policies and any legislation that affects those agencies.

You are not required to provide any personal information. However, if you do not provide the personal information required to assess your application, your application will not be processed. For further information, contact the Service Membership Unit on 02 8741 5236 or at:

**Service Membership Unit  
NSW Rural Fire Service  
Reply Paid 67059  
GRANVILLE NSW 2142**