

# Rugby League Players Avoid Criminal Convictions for Obscene Exposure

As [previously reported](#), Canterbury-Bankstown Rugby League players Adam Elliot and Asipeli Fine were [charged with obscene exposure](#) after allegedly being filmed engaging in simulated sex acts while naked and intoxicated in view of the public at the Harbour View Hotel in The Rocks during 'Mad Monday' celebrations on 3 September 2018.

## **Pleas of guilty**

Each of the players pleaded guilty to the charge and came before her Honour, Deputy Chief Magistrate Mottley in [Downing Centre](#) Local Court earlier this week.

It [has been reported](#) that agreed facts handed-up to the court outlined that the pair were seen on CCTV footage removing their shirts, after which 'Fine can be seen tensing and slapping himself on the back of his shoulder with friends cheering him on'.

'About 5.25pm, Fine removes his pants and underwear and walks around the terrace area fully naked. At one point Fine picks up a stool and places it over his right shoulder before moving it over his left shoulder whilst at the same time placing his hand on and off his penis.'

Mr Elliott is said to have then removed his pants before climbing onto a table and dancing, before he is helped back down.

"At the same time, Fine can be seen raising a bench stool above his head whilst thrusting his pelvis backwards and forwards, moving his penis up and down,"

“At 5.27pm Elliott removes his underwear and begins to climb up onto a stool in the nude.”

The pair are said to have then dressed themselves, before Mr Fine gets back on the table.

“Fine lowers his underwear and a club member begins to pour liquid, believed to be water, onto his penis, which pours down into a schooner glass, placed on a table underneath his penis,” the facts say.

“Fine does not discourage this action but continues chanting and cheering with the crowd.”

### **The judgment**

Her Honour noted the pair had already received substantial fines and incurred damage to their reputations.

She described the conduct as “fuelled by alcohol, stoked along by the crowd” but nevertheless “disgraceful by any standard of decency.”

“The conduct that brings you before the court was clearly reckless,” her Honour remarked.

She ultimately placed each of the men on conditional release orders for a period of two years without recording criminal convictions against their names.

### **What is a conditional release order?**

On 24 September 2018, conditional release orders replaced good behaviour bonds under section 10(1)(b) of the Crimes (Sentencing Procedure) Act 1999 (now conditional release order without conviction).

Conditional release orders are a way for a person who pleads guilty or is found guilty of a criminal or major traffic offence to avoid a harsh penalty, or even a criminal

conviction altogether, provided they comply with the conditions of the order.

### **How can I get a conditional release order?**

The new law is contained in section 9 of the Act which states:

“9(1) Instead of imposing a sentence of imprisonment or a fine (or both) on an offender, a court that finds a person guilty of an offence may make a conditional release order discharging the offender, if:

(a) the court proceeds to conviction, or

(b) the court does not proceed to conviction but makes an order under Section 10 bond (now [conditional release order](#) without conviction).

(2) In deciding whether to make a conditional release order with a conviction, the sentencing court is to have regard to the following factors:

(a) the person’s character, antecedents, age, health and mental condition,

(b) whether the offence is of a trivial nature,

(c) the extenuating circumstances in which the offence was committed,

(d) any other matter that the court thinks proper to consider.”

This means a conditional release order is more likely where an offence less serious, there were reasons behind its commission and the defendant is otherwise a person of good character.

That said, conditional release orders are not restricted to specific categories of offences – rather, a court can order a CRO for any offence.

CROs cannot be made in the absence of the defendant.

### **What conditions can be placed on a conditional release order?**

A CRO must contain the following conditions:

- That the defendant not commit any further offences,
- That the defendant must attend court if called upon to do so.

A person will only normally be called upon to attend court if he or she breaches the order.

Additional conditions that can be placed on a CRO are:

- To participate in rehabilitation programs or receive treatments,
- Abstain from alcohol, drugs or both,
- Not associate with particular persons,
- Not frequent or visit particular places,
- Come under the supervision of community corrections officers or, in the case of young persons, juvenile justice officers.

A CRO cannot include:

- A fine,
- Home detention,
- Electronic monitoring,
- A curfew, or
- Community service work.

### **Can conditions be changed?**

The defendant or a community corrections officer can apply to a court to revoke, amend or add conditions to a CRO at any time after it is ordered.

However, the mandatory conditions must remain in place.

### **How long can a conditional release order last?**

A CRO can last for up to two years.

**What happens if I breach my conditional release order?**

If it is suspected that a CRO condition has been breached, the defendant may be ordered to attend court to determine whether a breach has in fact occurred.

If a breach is established, the court may:

- take no action
- add, change or revoke conditions, or
- revoke the CRO in its entirety.

If the CRO is revoked, the defendant will be resentenced for the original offence.