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# **Criminal record checking and employment: the importance of policy and proximity**

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Keywords: criminal record; rehabilitation; employment of ex-offenders; employment policy; proximity.

## **Abstract**

*Employment is essential to the rehabilitation of offenders, yet employers routinely check criminal records and rely on them to deny offenders employment. To manage these practices many jurisdictions use spent conviction and anti discrimination schemes; there have also been recent campaigns aimed at ‘banning the box’, requiring that questions about criminal record are deferred to a later point when the person could address them in interview. This article draws on/ builds on findings from surveys and interviews with human resources personnel about their criminal record checking practices to identify some key concerns of employers and highlight areas for challenging employer practices. The study highlights the influence on employment decisions of external factors — legislation, government policy and industry regulation — and of internal considerations about proximity of the decision maker to the applicant, and potential proximity to other staff. The willingness of some employers to engage with applicants opens up the possibilities for people with a criminal record to demonstrate their readiness to desist from offending, and to counter dominant stereotypes about offenders. Where there is no scope for, or willingness to attempt, such discretionary engagement, however, it is likely that employers will prioritise a risk-averse approach to employment, pre-emptively excluding potentially productive employees, and putting such ex-offenders at risk of deeper exclusion.*

## I. Introduction

Former offenders face myriad obstacles to ‘going straight’ and succeeding in their desistance from criminal behaviour (Maruna et al refs on desistance). Fulfilling employment is clearly linked to reducing reoffending and increasing social participation of ex-offenders, and at the same time increases community safety (Pager 2007; Uggen, 1999; Sampson & Laub, 1997 ; Lockwood, Nally & Knutson, 2010; Graffam, Shinkfield & Lavelle, 2014). It provides a legitimate income (add refs<sup>1</sup>) as well a socially-valued role and structured lifestyle.

However a criminal history brings with it a level of stigma that makes it likely that an employer will refuse to employ ex-offenders (Pager 2007; Uggen 1999; Holzer, Raphael and Stoll 2006). It can give rise to general anxiety (Goffman (1963) check ref) but more specifically to fear that the person will reoffend criminally (Pager 2007, Le Bel and Maruna 2012 CHECK refs Hardcastle et al 2011).

A significant question for the ex-offender is therefore whether to disclose a criminal record when seeking employment. Many anticipate rejection, but also articulate the importance of honesty with their potential employer (C&F 2016). Disclosure can also be part of the ex-offender’s task of establishing their narrative as a person desisting from crime (Liem and Richardson 2014; Le Bel and Maruna 2012; Bushway and Apel 2012 check refs). Employers can also say that they value an applicant disclosing a criminal history (C&F 2016, 25; Lageson, Vuolo and Uggen 2015, 18-29 CHECK); certainly ex-offenders report that failure to disclose a criminal record, which is subsequently revealed, can lead employers to terminate employment citing their dishonesty (rather than their criminal record).

However employers are increasingly likely to seek criminal record checks as part of the recruitment process (Bushway and Apel 2012 CHECK; Cherney and Fitzgerald 2016?; Lurrari 2014, 52, 55<sup>2</sup>) and as will be discussed here, many consider they are required to do

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<sup>1</sup> eg see discussion in Bushway and Apel 2012, 21

<sup>2</sup> Elena Lurrari Pijoan, ‘Legal protections against criminal background checks in Europe’ (2014) 16:1 Punishment and Society 50-73.

so, under statutory obligations or industry practice, and in some cases believe they have little choice but to exclude an applicant with a relevant criminal history.<sup>3</sup>

In 2015-2016 the Australian national agency CrimTrac provided over 4.3 million record checks (CrimTrac, 2016), well over double the number sought – 1.7million – in 2005-6.<sup>4</sup> A range of occupations now require a criminal record check [refs] and there are even more extensive checking requirements where a person will be working with vulnerable populations such as children and older people, or in occupations related to justice or security (see for example Working With Children Act 2005 Vic). The mere fact of an employer stating that a record check will be required can lead ex-offenders to ‘self exclude’ or more generally disengage from the job markets (ANCD 2013; Apel and Sweeten 2010).<sup>5</sup> Cherney and Fitzgerald (2016) found that many of the people in their study avoided applying for particular professional jobs ‘due to the anticipation of a criminal record check’ (2016, 22); Even if the applicant does proceed they may find themselves excluded at the first stage with a question asking whether they have a conviction, or have even been charged with an offence. It can therefore be difficult or impossible to establish their narrative of desistance (Liem and Richardson 2014). As Cherney and Fitzgerald observe (2016: 27-8)

...it needs to be recognised that in the context of gaining employment, mandatory criminal record checks and public offender registries deny ex-offenders individual agency — or, more specifically, the ability to act independently and make their own choices [ref omitted] about self-disclosure and how they might best manage their stigma in the workplace and present themselves to others.

The problem of the early ‘flagging’ of a criminal history leading to blanket exclusion has been recognised in the US and the UK where there have been campaigns to ‘ban the box’, that is, to remove questions about criminal convictions from job applications and defer such questions until later in the process, to allow the applicant to at least address the requirements of the position first.  The ‘ban the box’ approach is obviously less radical than preventing employers obtaining the criminal record at all, or requiring access to be limited to ‘relevant’ history (proposed by Naylor, Paterson and Pittard (2008)). However, it highlights the

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<sup>3</sup> Address referee comment about finding work through friends/ family? (I have some references to the point that families and friends can provide ‘social capital’ – eg vouching for legitimacy – for the job seeker – not quite the same point though). Need to address the referee comment about employers ignoring statutory obligations when they want to?

<sup>4</sup> CrimTracs refs. From July 2016 CrimTrac and the Australian Crime Commission (ACC) merged to become the new Australian Criminal Intelligence Commission (ACIC).

<sup>5</sup> ANCD *Employment Participation Survey 2013*, 5 (full reference Australian National Council on Drugs *ANCD Employment Participation Survey Full Report* August 2013); Apel and Sweeten, 2010 also Eg ARC Roundtables; Woor-Dungin meetings; etc.

importance of having a detailed understanding of Human Resources (HR) practices – why employers ask for criminal record checks and how they use criminal history information - in order to address the issues raised by criminal record checking for the re-entry of offenders and their opportunities for desistance.

It is in fact not uncommon for people to have a criminal record. In 2015-2016 over half a million people were found guilty of an offence in Australia.<sup>6</sup> Most convictions are not for violent offences; over one-third (40%) involved traffic or vehicle regulatory offences (eg exceeding blood alcohol limits, licence offences and speeding), followed by drug offences (11%) and then acts intended to cause injury (10%).<sup>7</sup> Most people found guilty of an offence are not sentenced to imprisonment; in 2015-2016, only 12% of people found guilty (62,814) received a custodial sentence; 88% received a non-custodial sentence, most commonly a fine.

It is recognised that employers may have specific concerns about, for example, offences of dishonesty where the position will involve handling money. However as it is not statistically unlikely for a job applicant to have some form of criminal record - probably not involving violence or dishonesty - it is argued here that employers need to give careful thought to whether and why they check criminal histories, and how they evaluate any such history.

The aim of this research was therefore to better understand the drivers for employer requirements for criminal record checking, and for considering criminal record information in recruitment, including the opportunities for obtaining any explanatory narrative from the applicant, in order to identify ways to enhance opportunities for ex-offenders to obtain employment.

There is extensive research highlighting the unwillingness of employers to take on a person with a criminal record. In the US, Holzer (1996; and Holzer et al 2003) found that nearly two-thirds of employers responding to a survey said they would not hire a person with a criminal record (check best refs: HOLzer 1996; 2003; 2006?; Pager 2007; Hardcastle 2011 etc).

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<sup>6</sup> ABS Australian Bureau of Statistics, Criminal Courts, Australia, 2015–16, ABS Catalogue 4513.0 (2017). ( 526,672 people)

<sup>7</sup> Ibid.

UK research with ex-offenders reported that they found their criminal record a major barrier to employment.<sup>8</sup>

The criminal record is therefore seen as a signal to an employer not only that the person may offend in the workplace, but more generally that they may be untrustworthy, and may lack the discipline and other ‘soft skills’ needed in the workplace (Apel and Sweeten 2010, 451). A focus of the present research was to see whether alternative narratives were accessible to employers to signal that this particular applicant was different from the stereotype.<sup>9</sup>

In prior research, we have explored how HR managers decide whether a criminal history check is required of job applicants, and if so, at what stage of the recruitment process that check is undertaken (Heydon, 2012; Naylor, 2012). The present article contributes further to our understanding of HR decision-making by examining the impact of two key themes raised by respondents in our empirical project and highlighted by the literature - important factors in accessing employment for rehabilitation and acceptance into mainstream communities: *policy* and *proximity* (Hardcastle, Bartholemew & Graffam, 2011). Hardcastle et al (2011) analysed community survey data in relation to ‘proximity’ (‘preparedness to engage with the offender’) and ‘policy’ (‘views about the government providing employment and housing assistance to offenders’). (2011, 120).

We argue here that *policy* and *proximity* can be either enabling factors or obstacles when it comes to the acceptance of ex-offenders in the workplace, as illustrated by the views of respondents in the present study of recruitment processes, and in particular the employer decision whether, and how, to check a candidate’s criminal or police record.

Based on the analysis of survey and interview responses by employers, we identified two key factors that our respondents saw as driving their decision making about criminal record checking. The first we have referred to as ‘*policy*’, by which we mean externally-set laws

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<sup>8</sup> ‘...a British study by the National Association for the Care and Resettlement of Offenders, NACRO, (1998) reported that 42 per cent of 200 ex-prisoners said that their criminal record was identified by employers as the main reason for being unsuccessful at the job interview stage. Similarly, Fletcher (2001) identified that 54 per cent of a sample of 26 ex-offenders reported employer discrimination as their main barrier to employment.’ (Hardcastle et al, 2004, 12)

<sup>9</sup> Bushway and Apel 2012 employ the concept of ‘signalling’, well-established in labour economics, with reference to decision making about the employment of former offenders. These ‘signals’ are ‘behaviors ... that can flag individuals who possess characteristics that are, fundamentally, unobservable’. (2012, 30); to be useful signals of a person’s productivity/ desistance they will be behaviours that are performed voluntarily, and at some individual cost (2012, 31). In the case of ex-prisoners, they may be enrolment in and completion of pre or post-release programs, employment training, education etc.

and policies that require the use of criminal records checks, including legislation and government or industry regulations (e.g. Private Security Act 2004 (Vic), s 25(1)(b); Corporations Act 2001 (Cth), s 206B), and the professional practices that are informed by organizational policies on criminal record checking (e.g. Australian Government, Department of Social Services, Aged Care Quality and Compliance Group, 2014). ‘Policy’ was nominated by respondents as requiring criminal record checking and removing or constraining their discretion. The second was ‘proximity’, and we drew on the work of Hardcastle et al in formulating this concept. Proximity refers to that aspect of workplace practices that involve physical or interactional closeness between workers, including interactions between HR staff and potential employees, and between workers/staff and the public. Proximity encompasses the psychological and social values that Hardcastle et al. (2011, p. 120) refer to as the ‘preparedness to engage’ with the rehabilitation of ex-offenders. It includes greater willingness by some employers to engage and have a dialogue with an applicant, to put a human face to the criminal history, reflecting readiness to see the ex-offender as capable of redemption and acceptance of the eligibility of the ex-offender for (re)inclusion (refs – Reich? Maruna?). It is also the anxiety about physical presence articulated in employer concerns about the presence of an ex-offender in the workplace, reflecting the responses that Martin and Myers (2005) describe in their examination of public responses of rejection and a ‘not in my backyard’ attitude to decisions about where prisons are to be built, and Hardcastle et al 2011 found in community attitudes to living near ex-offenders.

The willingness of the employer to facilitate proximity, for example by engaging in a conversation with an applicant about their criminal history, or by supporting their inclusion in the workplace, provides the practical opportunity for the narrative-making often described in the desistance literature. It creates the space for the ex-offender to present themselves as a reformed person, as a desister from crime. (check Bushway and Apel 2012; Liem and Richardson 2014; )

For this study we conducted surveys and interviews with human resources (HR) managers across a wide range of organizations about the decision-making processes that are involved in criminal record checking (primarily during recruitment). The data gathered from these sources indicate that factors relating to both policy and proximity were prominent in the decision-making processes, influencing recruitment and HR practices in ways that impacted both



positively and negatively on ex-offenders. The findings of our analysis offer a richer understanding of the roles of policy and proximity in mediating access to employment for ex-offenders who have a criminal record. In this way, our study extends the existing research by Hardcastle et al. (2011) and others on reintegration and community attitudes (see also Fox, 2015; Cherney and Fitzgerald 2016; Liem and Richardson 2014 CHECK each), and on employer readiness to hear the desistance narratives of ex-offenders. It provides a more nuanced understanding of how employers and HR managers' decision making might be understood to improve the chances of rehabilitation of ex-offenders.

This paper will present findings from the surveys and interviews with HR managers in relation to the following questions:

- What is the reported prevalence of, and rationale for, criminal record checking by employers in our sample?
- What is the influence of policy on employer practices of criminal record checking?
- What is the effect of proximity on employer practices of criminal record checking?
- What is the effect of anticipated proximity on HR managers' perceptions of criminal record checking?

Our analysis will illustrate and elucidate the quantitative results from the surveys with extracts from the interviews. The discussion and concluding remarks in section [xx]0 will then draw on the findings of the survey and interview data analysis to offer a broader analysis and recommendations

## **II. Approach to the study**

The anonymous survey<sup>ii</sup> was distributed through a purchased list of Australian HR managers collated by List Bank, an Australian data business. List Bank collects and collates national data that are validated for currency and accuracy by List Bank. All the HR Managers on the list purchased for this research had consented to their contact details being made available for research purposes. The survey was also distributed through the newsletter of the Victorian Employers' Chamber of Commerce and Industry (VECCI). Potential participants were provided with a link to the anonymous online survey. Part 1 of the survey collected demographic data and basic information about the respondent's organization, such as its size and industry sector, as well as some data about the respondent's work experience. In Part 2,

respondents were asked about the use of criminal record checks in their organization. This included questions about the prevalence and means of checking criminal records, the organizational policies guiding that process and how the organization viewed the issue of rehabilitation (Hickox & Roehling, 2013; National Employment Screening, 2009).

There were 149 responses to the survey, of which 121 completed both Parts 1 and 2.

Although the survey was distributed to HR managers (and in some cases general managers or managing directors) from across the states and territories of Australia, there might have been a higher proportion of respondents from the state of Victoria, because of the distribution of the survey through VECCI. A wide range of industries was represented in the sample, with 19.5% in manufacturing, 11.5% in government, and eight percent in both wholesale/distribution and professional services. The remaining respondents were spread across sectors with no noticeable gaps in coverage. Respondents were asked about their involvement in the setting of policy relating to criminal record checks and almost 80% responded that they were currently, or had previously, contributed to developing and drafting such policies for the organisation.

At the end of the survey, participants could indicate if they were willing to participate in an in-depth interview. If they chose to participate in the interview, they were asked to contact the researchers by email. In this way, the anonymity of the survey data was maintained.

A total of 20 interviews were subsequently conducted by the authors with the support of research assistant. The number of interviews was based on convenience sampling, however the participants represented a wide range of industries and sectors (for example mining, finance, recruitment, health, social services, manufacturing, and government). The interviews were digitally recorded and transcribed. The interview participants represented businesses and government departments from across Australia, either being located across Victoria, NSW, Queensland, ACT or South Australia, or being representatives from national organisations with offices in all state and territories. The data were analysed using Nvivo.

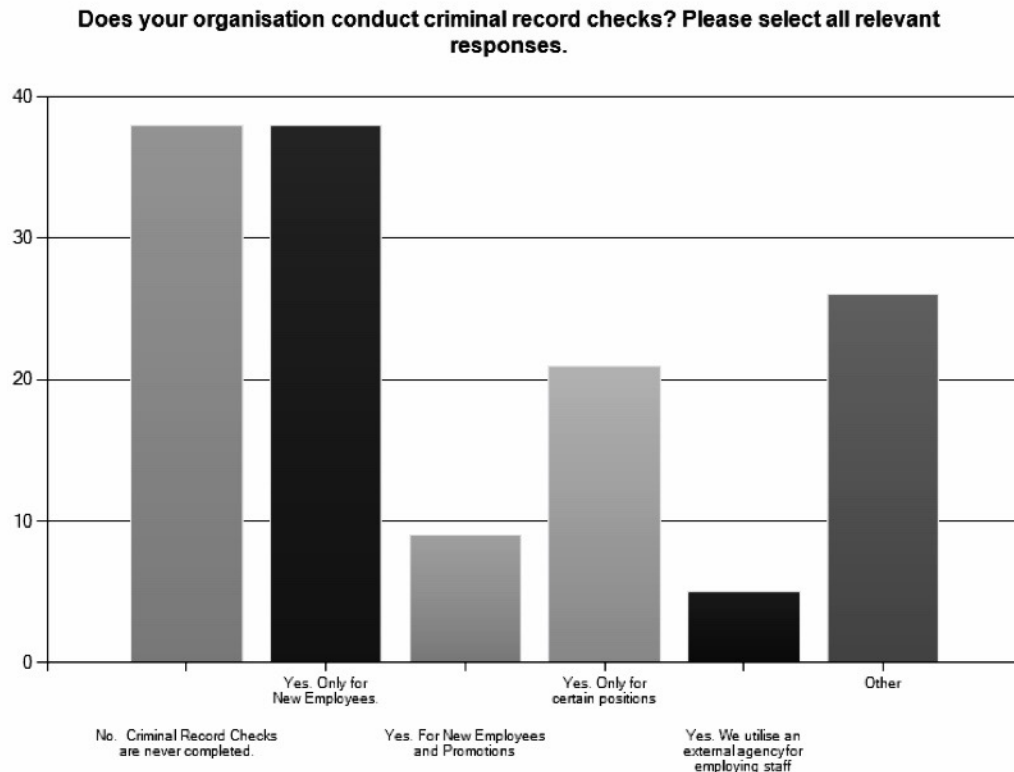
For the purposes of this research, the interview data were coded according to two categories, policy and proximity, which had been previously identified by Hardcastle et al. (2011) as specifically relevant to the rehabilitation and reintegration of ex-offenders. The data had previously been coded using nodes that responded to the research questions of the study. These nodes were ‘current practices of criminal record checking’, ‘the affect of practices on

decision-making in recruitment’ and ‘responses to human rights concerns in relation to criminal record checking’. The cross-tabulation of these two sets of nodes produced responses to the four research questions described above.

### **III. Findings**

#### *A. The prevalence of criminal record checking*

An important starting point for any research on criminal record checking in employment is the prevalence of the practice amongst the target population. Prior research has indicated increasing rates of checking compared to past practices, both in Australia and overseas (Australian National Council on Drugs (ANCD), 2013; CrimTrac, 2015-2016; Hickox and Roehling 2013; Reich – check refs used above). As noted earlier, the national criminal record provider Crim Trac provided 1.7 million criminal record requests in 2005-6; in 2015-2016 this had increased to over 4.3 million checks (Crim Trac 2016). In our study approximately two-thirds (68.6%) of employers participating in the research reported that they conduct some kind of check, and this is broken up into a number of categories (see Figure 1). Record checks were most commonly sought in recruitment (31.4 %). The next most common response to the question was ‘Other’ (21.5%), and the text responses that explained this ‘Other’ option show that in almost all cases the respondents indicated that they conducted checks on all employees, often at three-year intervals. Nonetheless, almost one-third of respondents’ organizations reported that they do not conduct any checks (31.4%).



**Figure 1.** Survey Question 9 — Prevalence of Criminal Record Checking (n=121).

#### B. *Policy influence on criminal record checking practices*

Employer behaviour in this area is influenced by government and organizational policies in two different directions. Increasing the demand for record checking, there is legislation, occupational licensing schemes, and industry policies requiring that a record check be conducted for specific types of work, and/or that an employee have *no* prior criminal history.

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Automatic disqualification for certain offences: eg Aged Care Act 1997 (Cth) ss 10A–1, 10A–2; *Corporations Act 2001* (Cth) s 206B(1); Security Industry Act 1997 (NSW) s 16; Private Security Act 2004 (Vic) ss 13, 25(2)(f).)

More generalised discretion can be seen in requirements for eg lawyers (Legal Profession Uniform Law Application Act 2014 (Vic) s 17; Legal Profession Uniform Admission Rules 2015 r 18 ); and see (for example) requirements for police and PSOs in Victoria: [http://www.policecareer.vic.gov.au/websites/victoriapolice/userdocuments/Prior%20History%20Guidelines\\_Feb2017.pdf](http://www.policecareer.vic.gov.au/websites/victoriapolice/userdocuments/Prior%20History%20Guidelines_Feb2017.pdf). (requires record check but not automatic exclusion); Victorian Public Sector

Commission guidance for police checks can be found here: <http://vpssc.vic.gov.au/html-resources/guidance-for-conducting-police-checks/>.

Such policies do not necessarily articulate the circumstances under which checking is required, or provide a clear indication of the offences that might exclude a candidate or employee from holding a given position. Some say require exclusion (refs), while others require a check but leave discretion to the employer to decide how to respond if a criminal history is revealed (ref).

This would seem to conflict directly with other forms of government policy that supports the rehabilitation of ex-offenders and their reintegration into mainstream society through employment (Pager, Western & Sugie, 2009; National Employment Screening, 2009; Naylor, 2012).

Many Australian jurisdictions have legislation aimed at supporting the employment of ex-offenders. There is anti-discrimination legislation requiring that people not be excluded from employment for ‘irrelevant’ convictions in two jurisdictions (Anti-Discrimination Act 1998 (Tas); Anti-Discrimination Act (NT); Paterson and Naylor 2011). Further, all jurisdictions other than Victoria have spent conviction schemes to ‘wipe’ old records.<sup>10</sup> There are also government-funded programs aimed at enhancing employment and employability for ex-offenders, including government subsidies for employing ex-offenders under job-seeker schemes (e.g. Wage Connect: Australian Government, Department of Employment, 2014; Northern Territory Government, 2016). In addition, there are guidelines such as those provided by the Australian Human Rights Commission (AHRC) (2012) which prioritise the reintegration of people with a criminal history (Naylor, 2012). ##

In considering the impact of government policy on recruitment practices we must therefore take into account both forms of policy. There is policy that encourages risk-averse behaviours such as mandatory record checking, and there is policy that encourages employers to engage in the process of rehabilitating ex-offenders by finding appropriate opportunities to employ them or by protecting the rights of ex-offenders to access appropriate employment.

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<sup>10</sup> Spent Convictions Act 2009 (SA); Annulled Convictions Act 2003 (Tas); ADD REST IN.

In our survey research with HR personnel, 40% (n=33) of respondents reported that their organisation was subject to formal requirements to check criminal records, and that this was the [main?] reason they conducted checks. In addition, approximately 30% (n=25) conducted checks voluntarily. The interviews provided an opportunity to explore the extent to which this kind of mandatory checking is seen as removing discretion from employers in relation to recruiting candidates with criminal records. The interviews also help to clarify the extent to which employers may be over-applying the use of criminal record checking in their recruitment or human resources management (see Heydon, Naylor, Paterson & Pittard, 2011; Hickox & Roehling, 2013; Cerda, Stenstrom & Curtis, 2014).

In the interviews with HR managers it was very clear that for some participants, government policy in the form of legislation and regulations significantly restricts the discretionary power of decision makers with regard to employing ex-offenders. Some HR managers treated this as relatively unproblematic — they simply excluded a section of the pool of potential (or actual) employees, and they did not express any clear concern that this was inhibiting their growth as an organization. For others, the government policy to require criminal record checking of all staff working in specific positions was seen as significantly restrictive of their capacity to operate effectively in their marketplace.

Two divergent examples of this ‘our hands are tied’ scenario emerged in our data. In the first case, the interviewee stated that the organisation had ‘recently included a statement in our online advertising that all final candidates will be required to consent to and undertake police and background checking prior to their employment.’ She goes on to explain that although criminal record checks are only required for employees whose work is regulated by the Australian Financial Services Licence, the organization requires all job candidates to consent to a criminal record check because the organisation needs to ‘undertake a consistent recruitment process across the entire business to enable people to then move between the businesses, both from a business continuity perspective but also a career development perspective.’ The justification for the blanket requirement for criminal record checks is given as ‘internal mobility’ — in other words, it is more convenient for the organization to ensure that all their employees are eligible to work across both the regulated and non-regulated parts of their business and so everyone is subjected to checking. There is no indication of a view that by excluding certain ex-offenders the organization might be disadvantaged in any way. (There is also no suggestion that the organization might have a moral obligation to offer ex-

offenders restricted employment terms that do not allow such internal mobility, to provide employment opportunities to ex-offenders in roles for which they are eligible.)

An interview with the HR manager of a welfare organization provides a different perspective on mandatory criminal records checks.. For this HR manager, employing ex-offenders addresses the objectives of the organization, both by using outreach workers who have direct experience of the clients' issues and challenges, engaging more effectively with their clients, and by offering ex-offending employees a chance to rehabilitate themselves. He describes the capacity to employ ex-offenders as 'absolutely essential for the quality of the work that they do and we worry about when the law actually extends into preventing us having some discretion around recognizing the capacity of the person to make a difference in the life of someone else.'

This second case brings into acute focus the complex relationship between the two different types of government policy referred to earlier. On the one hand, the government comprehensively mandates criminal record checking in the aged and youth care sectors (Australian Government, Department of Social Services, Aged Care Quality and Compliance Group, 2014; Working with Children Act 2005 (Vic)). On the other hand youth services not only require some staff with a certain level of experience and 'street cred' to best deal with the challenges of their clientele, but are likely to attract people who have themselves experienced hardship, often involving periods of offending behaviour (Australian Government Attorney-General's Department 2003, p. 42–44; Dakers, 2011; Stewart & Dennison, 2011).

Organizations funded by government are required to undertake criminal record checks on employees and volunteers as a condition of their funding agreement (see e.g. Australian Government, 2011, cl 19; DHS (Victoria) Service Agreement Information Kit s.4.6). This can be deeply frustrating to an organization, as shown in the interview above, especially as the employees or volunteers may work in roles that would not require a criminal record check in private industry.

A similar conflict arises in the indigenous services sector within the justice system. Indigenous clients (including offenders, victims and family members) can be supported by an indigenous liaison officer, who assists them in their dealings with the justice system (see e.g. the Indigenous Community Liaison Officer position: Australian Government, Department of

Education, Job Guide, 2014). However, the high rates of criminal justice involvement amongst indigenous communities, who for example constitute 27% of the Australian prison population while being only 2% of the general population (Australian Bureau of Statistics (ABS), 2013) means that many of the most valuable candidates for these liaison positions may be excluded on the basis of their own criminal record.

Government policies can therefore directly contradict each other. Criminal record checking can undermine community safety. Agencies, including not-for-profits and government departments, may provide services to citizens at high risk of offending, at least in part to prevent or minimize offending behaviour. At the same time, members of the same communities, endeavouring to engage and rehabilitate following a period of offending, are barred from the very positions where they are most likely to have most to offer, and where they might have a powerful influence on others caught in similar life circumstances (Australian Government, Attorney-General's Department, 2003, p. 42–44).

Employers in this study had little apparent awareness of external 'policies' aimed at enhancing the reintegration and resettlement of former offenders, such as the Guidelines published by the AHRC (2012), and the Employment Screening Handbook published by Standards Australia (2007) (see also South Australia Department of Communities and Social Inclusion, 2014). These documents demonstrate ways of deciding whether to conduct record checks, and ways of conducting and evaluating record checks, that balance employer concerns about risk, and the needs of former offenders. However in both the surveys and the interviews, discussion of such human rights guidelines, and government policies relating to rehabilitation and reintegration, was rare. The importance of enhancing awareness of, and reference to, these guidelines is highlighted in the concluding discussion.

With regards to the second category of external policy — government policies aimed at rehabilitation and reintegration — most of the respondents to the survey indicated a personal sense of duty to provide reasonable opportunities of employment to ex-offenders, but that at the organizational level, such policies were less well supported. The survey question about organisational attitudes towards rehabilitation of ex-offenders was relevant to our study because we were specifically interested in the policy-making process, and the extent to which organisational policies were consistent with stated claims that the organisation supported ex-



offender rehabilitation. It will be recalled that 80% of respondents reported being involved in policy development at this organisation.

Over half of the respondents, when asked whether their organization considered the rehabilitation of ex-offenders to be important, said they did not know, while 28.1% responded positively and 19.8% responded that it was not important to their organization. Respondents who believed that their organization did consider rehabilitation to be an important issue were then asked how their organization demonstrated this.

Although only 34 respondents stated their belief that their organizations considered the issue important, 83 responses were given to this question. Of these 38 stated that it was not demonstrated at all, and 26 said they were unsure how it was demonstrated, but 19 gave specific examples of how it was demonstrated by their organization, for instance:

- ‘Placing people into employment regardless if they have a criminal record, however dependent on what type of offence, when committed and role going for.’
- ‘Trying to help ex-offenders return to the work force as long as they show good indication that they want to move on to an honest future.’
- ‘Considering each applicant on their merits.’

Approximately one-half of the respondents indicated some employer concern for giving ex-offenders a ‘second chance’ and recognized the importance of employment to an offender’s rehabilitation, as indicated in the quotes above. However, human rights guidelines and equal opportunity legislation was rarely mentioned specifically. This may indicate that these were not known to the respondents, or at least that while the idea of supporting ex-offenders was appealing at a personal level, the subject was not embedded at an organizational level, which is the level at which government policy and human rights guidelines might be expected to feature prominently. As illustrated by our data, legislation and policies *requiring* or *allowing* record checking are likely to have much more salience to HR decision makers than any countervailing concerns about supporting desistance and rehabilitation by being open to employment of ex-offenders. .

*C. Proximity and engaging with ex-offenders through recruitment.*

The second frame for analysis in this study is that of ‘proximity’. We were interested in two main types of proximity. In this section, we consider proximity in the interactions that might take place between HR staff and a job candidate in the course of the recruitment process. In particular we examine the reported scope for any dialogue between the organization and a job candidate following the disclosure that the candidate had a criminal record. The second kind of proximity, which we have addressed as *anticipated proximity* in section D, is that the employer envisages between employees in the course of their work — interacting and co-existing within the confines of a physical workplace — which may form part of an employer’s risk perspective about employing a former offender.

Proximity here was therefore about the willingness to engage with the candidate, for instance by discussing their criminal history in an interview, but also about the expressed anxieties of the employer respondents about the presence of an ex-offender in the workplace. It was about balancing legal and occupational requirements, and considerations about liability for any harm that might be caused by the ex-offender, with the employer’s willingness to believe in the redeemability of offenders (Le Bel and Maruna; Le Bel; Reich – check these and /or add refs).

From the point of view of a candidate, the employer’s willingness to engage supports the candidate’s agency in being able to tell their story and present a ‘redemption script’ (see Liem and Richardson 2014; also Le Bel etc on desistance narratives; Maruna etc and Cherney and Fitzgerald 2016).

[ADD: Reich (2017, 129) also notes:

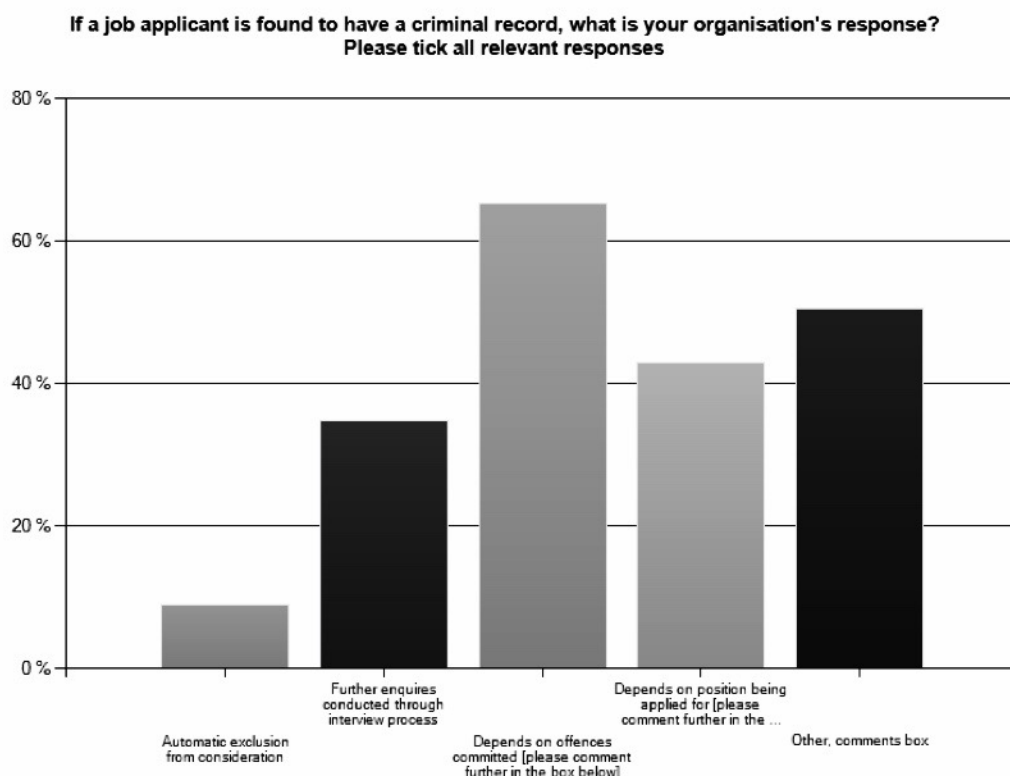
earlier research reporting employers are more willing to hire job applicants with a criminal record after engaging in a face-to-face interview (Gill, 1997; Pager & Western, 2009; Pager et al., 2009).

#### *Proximity: dialogue at the recruitment stage*

As noted earlier, while some legislative and occupational schemes require a clear record, or that the candidate have no offences of a particular type (e.g. sexual offences for child care work), others require employers to check a criminal record but leave it to the employer to decide how to respond to a record. Other employers request a criminal history check to

inform their recruiting decision making. Not all employers will therefore see a criminal record as automatically leading to exclusion of a candidate

The survey asked respondents to indicate what was likely to happen in their organization as a response to a candidate being found to have a criminal record. More than one-third of survey respondents said that a positive criminal record check will involve a face-to-face dialogue with the candidate (Figure 2). However, it is notable that many more respondents indicated that some discretionary decision was required (i.e. that their decision would depend on the offence, or on the position), but did not indicate that this discretionary decision-making process would be informed by a conversation with the candidates themselves. Overall, although approximately 90% of respondents said they would not automatically exclude candidates with a criminal record, about half the respondents said that they would rely on their own judgement as to whether the record of offending was relevant or posed a potential risk to the organization. They thus minimize their proximity to the applicant, and the applicant's opportunity to provide an explanation, by not requiring a face-to-face interaction.



**Figure 2.** Organizational responses to ex-offenders in recruitment (n=121).

Taking into account the free text comments we found that overall a total of 46 respondents out of 121 (38%) reported that they would discuss the criminal record with the candidate either in the interview process (n=44) or at some unspecified time (n=2). Of those who felt they had a discretion 43% would engage.

To some extent, this finding is explained by the perceived requirements of legislative and occupational policy. Employers may not see themselves as permitted to consider any explanation that might be offered to mitigate the impact or relevance of the offending behaviour.

Asked to rank their organization's reasons for conducting criminal record checks, government policy (expressed as 'Legislative and/or regulatory requirement') was ranked highest with 40.2% of responses identifying this as the most important driver for conducting checks at their organization. Almost equal to this, was 'to minimize risk to customers', with 35.9% of responses ranking this as the most important purpose of checks. Given both these factors are arguably beyond the control of the employer they might not see anything to be gained through a dialogue with the candidate.

In the interviews we probed the concern about risk to customers, which as noted was ranked 2<sup>nd</sup> as a driver for record checks. The interview data suggests that employers are more concerned about their reputation with customers than any risk to the customers' wellbeing per se. Employers were primarily concerned about customers being offended or challenged should they discover that an employee of the business had a criminal record.

**Participant 7:** ...and then the second one is the increasing liability of employers for actions of employees, and the employers seeking to protect their own reputation and the reputation of their businesses by using criminal record checks as part of that.

**(Business and commerce peak body)**

**Participant 2:** so we are obviously looking for a high level of integrity and making sure that the people that we employ don't have any criminal issues that could expose [organization name] to disrepute in the public eye. So that's ...that's key.

**(Insurance agency)**

A focus on risk to reputation means that the employer might fear that the mere fact of the criminal past will put the organization's reputation at risk; it will be irrelevant whether or not there might have been a reasonable explanation for the offending behaviour. That is, if the organisation was mainly concerned about how customers respond to staff with criminal records, it is unlikely to consider any dialogue with a potential employee about their record.

#### *D. Anticipated proximity and its impact on recruitment*

Minimising the risk to other employees was the third most common reason for requiring checks in the survey data, after legislative requirements and 'risk to customers' discussed above. The anticipated interactions that occur in the workplace were therefore of concern to HR managers in the survey data presented above in the excerpts from the interviews.

In the overall ranking of all survey responses, minimizing the risk to other employees scored higher than both minimizing misconduct and/or behavioural issues, and minimizing the risk of similar offending behaviour in the workplace. This is consistent with the analysis of other researchers (Hardcastle et al., 2011), that anxiety about personal interaction with ex-offenders is a key obstacle to reintegration. The concern about minimizing the risks to customers in the interview data (Part C) is also related both to an anxiety about closeness of contact with ex-offenders, and to general, non-contact risk, such as to customers' money or goods, as identified in the interview data, described earlier. [or cross-ref]

Employers in their survey comments said their responses would depend on the nature of the offence, reflecting both assessments of risk (a risk of *that* type of offence) and more broadly perhaps of the offender's redeemability. Hardcastle et al (2011) reported that the level of 'comfort living near' an ex-offender varied significantly with the nature of the offence. Respondents reported the highest levels of 'proximity acceptance' for people convicted of

corporate crime and fraud; sex offences received the lowest level of acceptance. (Hardcastle et al 2011, 125).

[However (noted earlier) the likelihood of community acceptance increased with evidence of rehabilitation and educational achievements (126, 127, 130) indicating belief in reedemability – [signalling, redemption] (Bushway and Apel).]

Similarly, in the interviews in our study, it was much clearer that physical proximity and personal risk were key factors in reported decision-making around employing ex-offenders, and that violent and sex offenders were of particular concern. The excerpt below from an interview with staff at a government department illustrates their concern about employing a person with a record of violence or sex offences, irrespective of the relevance of this type of offending to the work of the department. Sex offenders of course are widely and uniquely stigmatised (refs). This may be a product of the (erroneous – refs) perception that they pose a particularly high risk of reoffering, but also a moral evaluation of the seriousness of sex offences. It is clear from our interviews that the matter would not be allowed to remain irrelevant. Eventually, one of the interviewees admitted that they would not know what to do if this came up during recruitment.

**Participant 5a:** it'd be the personal risk if it was someone who had been involved in a sexual crime. I think it would...we'd have to discreetly follow up, maybe with the manager, on their interaction with the other members of the team.

**Participant 5b:** yeah and we'd have to ... and obviously the safety of every individual, you know, working in the building, is also is a consideration so obviously that's up to the manager's discretion as to with how to proceed.

**Participant 5c:** [clear throat] I don't ... look I don't know how we deal with it.

**(Three members of a finance-related government department)**

In an interview at a government department, the HR manager in the following excerpt appears to cast about for reasons why it would be difficult to manage an employee with an irrelevant history of sex offences. There is mention of public events held by the department, and the possibility that clients or staff might bring their children to the workplace. The key concern however, was clearly an issue of proximity, primarily the impact that this perception of proximity to an ex-offender would have on the public face of the department.

**Participant 8:** I was just thinking if like an employee had a criminal record in relation to, like I said, paedophile but yet they've been charged and convicted of paedophilia in the past but yet it's not relevant to the position that they're applying for but yet would have an impact on on reputation if it was ever to come to light. I don't know, you see I could really make that judgment call in that respect because it would have to be the where, you know, the people who were...

**INTERVIEWER:** so it's a more discretion thing

**Participant 8:** oh absolutely any type of reputation thing; you've got to take it into consideration and whether, you know, we had any major projects coming up. Because we conduct events here which is to do with where we have people of the public coming in and if it was somebody, for example, who was a known paedophile whether they could be you know

**INTERVIEWER:** identified?

**Participant 8:** well not just that but to ensure that from a safety point of view you know that they could not have any contact ever with children because then that would put ... we could be shown as having risked in a lack of duty of care for people, you know clients or something like that. I guess also staff bring their children into work here as part of ...and... then if we have a known paedophile at work and they were in contact with you know staff's children then that could be an issue. I mean so I'd be going through to see whether it was going to be causing an issue. So yes it could have an effect on the reputation if we said 'oh yes we allowed

that to happen' and then we were putting staff at risk or members of the public at risk, it could definitely.

**(Government finance department)**

The nature of the offending matters. Employer 'attitudes toward employing ex-prisoners and ex-offenders have been found to be affected by the relevance of criminal history to the position sought and by the nature of the crimes committed (there are indications of greater reluctance associated with violent and drug-related crimes). (Hardcastle et al, 2004, 15 check quote)

A background of more general violent offending, even where irrelevant to the job, was also seen as problematic in the following excerpts from interviews in the insurance and mining sectors:

**Participant 2:** and then the second thing that we look for is obviously the safety of our staff. So whether we've got people working in the company that have got serious offences in their past, whether they be assault or drug charges or whatever they might be.

**(Insurance agency)**

**Participant 17:** oh it's just a criminal history...things that [recording unclear] we're obviously concerned if there's a history of theft, fraud, um violence I suppose

**(Mining industry)**

These comments also illustrate the fact that *having* criminal history information can be seen to create responsibility to protect employees and customers; that is, concern about liability and potential duty of care. Recognition of this discomfort may in fact have been part of the



motivation for some organizations not to request criminal records of their employees. For example a large manufacturing plant in Victoria had decided that they would not check employees' criminal records, for several reasons, but an underlying concern expressed in the following excerpt seemed to be that the organization would not know what to do with that information, and that it might needlessly add to the burden of privacy protection without offering any meaningful enhancement to the recruitment process or the ongoing workplace environment.

**Participant 1:** and that's what we do but you know, we don't do any sort of criminal record checks at the moment. It's something that we looked at I think six months ago and decided it's probably a little bit early days for us to understand what impact that probably has on our organization. It's easy to do. I think the key thing that we didn't understand or couldn't have a position [on] is what does it actually mean for us, if it does identify some things? So, yes it's easy to do, but realistically what is it going to give us and what does that actually then mean in terms of value for us.

**(Automotive parts manufacturer)**

Similarly, another parts manufacturer indicated that line managers might want to avoid being told that a person has a criminal record. Their reluctance to be told of an employee's criminal record was seen as reflecting their discomfort with working with that person; by avoiding disclosure, they are able to maintain proximity:

**Participant 3:** You know, you can see line managers going, 'no, no, no I don't want to hear this.'

**(Automotive parts manufacturer)**

Research indicates that personal knowledge of 'out groups' can lead to reduced anxiety and increased empathy with the groups' interests (Dear, 1992; Pettigrew & Tropp, 2000; Hirschfield & Piquero, 2010), and this greater willingness (at least stated willingness) following contact has been identified specifically in some research on employing ex-offenders (ANCD, 2013, p. 13; Graffam et al., 2004; Giguere & Dundes, 2002). Prior successful contact with ex-offenders may reassure that redemption/ rehabilitation is possible, as well as reducing fear about stigma. (Graffam et al 2004; Reich 2017). Graffam et al, for example,

found that respondents with previous experience employing ex-offenders were more likely to say that they would employ such a person again (2004, 53, 57 CHECK). The question was asked in this study but it was not possible to show any relationship between personal knowledge and a concern to enhance rehabilitative opportunities.<sup>11</sup> This is, however, a potentially fruitful avenue for future research that would develop understanding of the nuances of the many meanings of ‘proximity’ for peoples’ decision-making about marginalized groups.

#### **IV. Discussion**

Employment is one of the most important activities through which a person who has completed their sentence [etc] can move towards/ make steps away from being an offender. Regular employment is clearly associated with a reduced risk of the person reoffending (Pager 2007; Sampson and Laub 1997; Uggen 2000 etc). At the same time, the fact of having been an offender will tend to lead to employers refusing to employ the person.

Many recent writers have examined the steps by which a person can desist from crime/ become a desister (Maruna etc). The question being considered here is whether and how an employer’s decision to obtain criminal history information gives opportunities to ex-offender job seekers to demonstrate their new ‘self’ and obtain rewarding employment.

[add note on limitations of our research here? And how it links with/ extends existing research?<sup>12</sup>]

As outlined above, there are many drivers which lead employers to ask for information about an applicant’s criminal history when making a recruitment decision.

Many respondents in this study affirmed the primacy of statutory and other obligations to seek a criminal history check and (in some cases) to reject an applicant if any criminal history is revealed. Most however considered they had some discretion in the matter, and some described how they tried

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<sup>11</sup> Could note here – or as issue requiring further research – the significance of personal relationships in the context of the ideas of ‘social capital’ and the importance of social networks such as friends and families ‘vouching for’ ex-offenders to support access to employment, housing etc (add refs – Maruna etc).

<sup>12</sup> Limitations: the focus here was on employer perceptions of requirements for criminal record checking and the degree of discretion they had: whether they were in fact so obligated was not part of the study. The findings are consistent however with our scan of local legislation, and – in relation to the approaches to the record described by our participants, also consistent with the (limited?) research with employers on their practices in relation to criminal record checking (? Lageson? Uggen 2013 CHECK; )

to find ways of understanding a criminal history and to evaluate the level of risk it poses and whether it might make the person unacceptable as an employee.<sup>13</sup>

Some articulated a belief in the offender's eligibility to be given a 'second chance' or in the capacity of people to change. Others drew on such narratives implicitly when they spoke about [add quotes] – 'anyone can make a mistake'; "Trying to help ex-offenders return to the work force as long as they show good indication that they want to move on to an honest future.'

[GH TO add other quotes]

Respondents looked at the nature of the offence, the time since offending [? Etc] as providing ad hoc guidance on making their assessment of the risk of employing the person. Evidence of desistance (or the likelihood of desistance), such as pro-social achievements such as education, completion of programs etc, operated as 'signals' for these employers that the person may be unlikely to reoffend (Bushway and Apel 2012).

Hardcastle et al 2011 found that community members were more positive towards offenders ('comfort about potential contact') where they had completed rehabilitation, or education/training programs (at 125) suggesting that these attributes functioned as signals; the authors interpreted this effect as indicating 'belief in the redemptive effects' of such programs (at 126). The authors also found increased support where the offender was remorseful, or motivated not to reoffend, proposed as evidence that the community was 'clearly making assessments of eligibility'. (2011, 127; see also Reich 2017),<sup>14</sup> and these were identified as important in our own study.

It is crucial that the ex-offender is able to proactively present his/her desistance narrative to the employer: an issue then will be how such narratives can be communicated to employers. The willingness of employers to interview the person will be very important for this reason (Bushway and Apel 2012; Maruna 2012; Pager et al 2009; Reich 2017).

This clearly also underscores the potential value of deferring any criminal record check until later in the process, when personal interaction/ proximity is more likely.

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<sup>13</sup> This is consistent with the findings of Reich (2017, 26): Voluntary self-disclosure in the workplace, for some of our interview sample, appeared to offer opportunities for them to articulate a redemption script. In other words, a desire to verbally self-disclose can present an aspiration to 'break from the past' by stating, 'Yes I was once an offender, but I am now a changed person.'

<sup>14</sup> Reich, Suzanne E. An exception to the rule: Belief in redeemability, desistance signals, and the employer's decision to hire a job applicant with a criminal record *Journal of Offender Rehabilitation*, Feb-Mar 2017, Vol.56(2), pp.110-136

The survey and interview data discussed here highlight complex relationships among both policies or external rules, and the interpersonal demands of proximity, when employers use criminal record checks to regulate their workplace and their workforce. Both ‘policy’ and ‘proximity’ offer productive ways of framing the issues identified here regarding the scope for employers to facilitate employment of ex-offenders.

We found that *policy* had contradictory influences. Conflict exists between the application of government policy that requires criminal record checking in specific industries or sectors, and government policy that supports rehabilitation efforts. For the HR managers surveyed and interviewed, this conflict seems to manifest itself as a gap between their personal beliefs in the need for rehabilitation policies, and their organizational responsibilities to protect customers and staff from the risks that ex-offenders are presumed to pose (see Hickox & Roehling, 2013; Holzer, Raphael & Stoll, 2006). This is illustrated by the survey results that demonstrate strong support amongst respondents for a ‘second-chance’ and rehabilitation of ex-offenders, but a relatively low level of priority placed on that concern by the organization.

Legislation and other forms of government policy can circumscribe the discretionary power of HR managers to employ ex-offenders, even where they may be willing to offer employment to an ex-offender, by imposing a regulatory regime that excludes ex-offenders from certain positions. This can extend to a wider range of offences than might be considered relevant by individual employers. Further, in the case of welfare agencies, ex-offenders with a history of offending that resulted from their experiences – eg living rough or having an addiction – are typically excluded from any kind of position that might involve contact with juvenile clients, when in fact the circumstances which led to the offending may provide exactly the life experience that youth justice workers or support workers can usefully draw on when assisting high risk youths.<sup>15</sup> Respondents to this study highlighted this constraint ...

The notion of *proximity* also offered valuable insights. As illustrated in our survey and interview data, there is likely to be a conflict between the need for personal interaction that would provide the opportunity for an ex-offender to explain their offending and a legislative

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<sup>15</sup> Indeed we would argue that government should be a leader in appropriate employment of ex-offenders (eg as also argued in the European context by Lurrari, 2014, 59) We should at least aim for a better balancing of ‘the employer’s interest with society’s interest in the social reintegration of ex-offenders (Uggen et al 2006...)’. (Lurrari 2014, 61). Could include Uggen et al 2006 on citizenship, democracy and civic reintegration.

or regulatory environment that does not allow such dialogue where the discretionary power is removed.

The literature also emphasises the power of anxiety about risk of any interaction between the ex-offender and other staff or customers. This was also demonstrated in our data and appears to have a strong influence over a decision to employ an ex-offender, regardless of the relevance of the offence. When all other concerns are addressed, there are some types of offending behaviour that provoke deep anxiety over any sort of proximity, either due to concern about the risk of reoffending, or a moral assessment of (ir)redeemability.

An employer's willingness to employ someone with a criminal record will reflect both his/her general beliefs about offenders (such as whether people can change) and information about the individual applying for the job which may evidence this individual's likelihood of desisting (eg their skills, their prior work history etc but also evidence of (eg) remorse, intention to desist etc (Reich, 2017, 126)).

The importance of the interview is reaffirmed here, or at least an employer providing the opportunity to look at other individuating information – about education undertaken, work skills etc. Reich highlights 'desistance signals as "individuating information," which comprises the second feature of impression formation, will be integral to employers in their hiring decisions and should not be ignored.' (2017, 115 – redo quote)

## **V. Conclusion**

It is vital to identify ways of allowing ex-offenders to demonstrate their [new status/ desistance]. As Cherney and Fitzgerald observe (2016, 28):

Supporting offender reintegration requires an understanding of how efforts to secure employment can be enhanced through strategies that help released offenders manage stigma.

Our findings suggest several areas for reform to allow ex-offender to demonstrate reform.

First, the sweeping nature of some exclusionary legislation and policies that require record checking needs to be recognized. We need to review legislative requirements to identify when it is really necessary to make a criminal record check, and to encourage employers to clarify the types of offences which are relevant to particular positions (see Naylor et al., 2008)

and to strengthen mechanisms by which employers can access rehabilitation information/ desistance narratives. Legislative requirements to exclude people on grounds of risk must be balanced by an increase to the force of policies that encourage inclusionary practices. As we found, employers appear to be well-informed about their access to criminal records checking as a means of minimizing risk, but less well informed of what those risks actually are, or about countervailing values.<sup>16</sup>

As outlined earlier, there are already legislative regimes which permit the expungement of minor offences (spent conviction regimes) and which prohibit discrimination on the basis of an irrelevant criminal record. Spent conviction schemes remove particular offences from any record, thereby (ideally) ensuring that the employer is not aware of the offending in the first place. They are however limited in terms of offences covered, and are usually overridden by specific legislative requirements eg in relation to working with children, security positions etc.

Where specific offences are identified as problematic for particular occupations the evaluation of any relevant offences could be delegated to an expert agency, which would assess an applicant against legislative requirements and provide an accreditation or licence. This would be one method of ensuring a fair assessment of competing interests and freeing employers from this task. As outlined earlier, such schemes exist in all states and territories for Working with Children licences, for example, and include provisions for the presentation of explanatory submissions and appeals.<sup>iv</sup>

Other jurisdictions provide further options. In some parts of the US ‘certificates of rehabilitation’ can be provided (Bushway and Apel 2012), to overwrite the stigmatising label of ‘offender’. ADD re-entry courts may also be able to give authority to a desistance narrative (Maruna xxx). In France xxx<sup>17</sup>

A second area for reform is in the educational campaigns that are presently used to inform employers of their responsibilities in recruitment. Our survey and interview data suggests that information encouraging risk-averse behaviour penetrates the organizational psyche more

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<sup>16</sup> Could add – see US requirements to balance CR checks with equal opportunity requirements, reinforced by litigation: Lageson 2015 (? Refs)

<sup>17</sup> See Martine Herzog-Evans ‘Judicial rehabilitation in France: Helping with the desisting process and acknowledging achieved desistance’ *European Journal of Probation*, Vol. 3, No.1, 2011,4; see also Unlocked paper on European avenues

effectively than human rights guidelines. To balance this, information is needed that explains the costs both to society and the organization of over-applying record checking, and offers practical guidance on more realistic risk assessments in employment.<sup>18</sup> Voluntary guidelines such as those provided by the AHRC need to be promoted; the effect of litigation in the US under Equal Opportunity legislation also offers possible directions for challenging the information imbalance amongst employers.

Third, it will be vital to find ways of communicating a person's readiness to work/ desistance/ motivation to employers and indeed to the wider community to inform their assessment of safety etc:– Hardcastle et al, 2011, 131.

Our respondents demonstrated a strong personal response to ex-offenders, highlighting the importance of *proximity* in designing an information campaign that takes advantage of employers' desire to understand the human story behind offending behaviour, and works to dispel irrational fears of being in proximity to an offender in the workplace (AHRC, 2012).

This third area for reform addresses the concerns reflected in the international 'ban the box' campaigns. The willingness of some employers to engage with/ seek personal explanations highlights the importance of deferring record checking to later in the appointment process, increasing the likelihood of an individual assessment of actual levels of risk.

[rehab certificates etc could go here:

Noting that another line of recommendations could be enhancing desistance signalling (Bushway and Apel 2012; C&F 2016??) with eg, rehabilitation certificates as in the US (Bushway and Apel 2012; ADD refs?); re-entry courts (check how these work: Maruna and LeBel 2003) and the 'good behaviour' (?) court orders in France. [ADD Herzog-Evans 2011]

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<sup>18</sup> Could add: More broadly, we need to challenge the use of criminal records as a not particularly reliable proxy form of risk assessment and highlight the importance of more reliable forms of integrity testing in employment (Naylor et al 2008; Lurrari 2011, 2014).

Many potentially valuable employees face exclusion as a result of an irrelevant criminal record. In light of employer perceptions/ comment in our research, and the literature [refs] we argue that what is needed is:

- Clear and targeted legislative and regulatory requirements, addressed to clearly relevant offence histories;
- Maximising the discretion of employers to allow an ex-offender to offer their individualised explanation for their offending and for their present appropriateness for employment;
- Establishing sector-based agencies to evaluate any criminal history with a personal submission from the ex-offender with authority to declare a person an appropriate employee (using the Working With Children scheme as a model)
- Raising the profile of the work of agencies such as the AHRC and Standards Australia Guidelines for employers, which support decision making which is both safe, and informed and careful.

Government and non-government agencies have a role to play in challenging prejudices about ex-offenders that, without other evidence, can lead to inappropriate exclusion. To support such campaigns, further research might investigate the relationship between knowing someone with a criminal record (*proximity*) and decision making in the recruitment of ex-offenders (*policy*). Establishing a constructive dialogue between employers and ex-offender support agencies should be a high priority in order to develop relevant government and industry policies that minimize risk to employers while maximizing opportunities for the reintegration and rehabilitation of ex-offenders through employment.

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## NOTES

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<sup>i</sup> The US National Employment Law Project (NELP) campaign led to the passing of legislation in numerous states requiring government agencies to remove questions about convictions from job applications and only asking such questions later in the process (see Rodriguez 2016). In the UK campaigns by Unlock UK (2016) have also been influential, with many employers publicly announcing their support (see Recruit, 2016) CHECK/ADD Seppings Churchill Fellowship research (2016)

<sup>ii</sup> The data gathering method used in this study was approved by the Monash University Human Research Ethics Standing Committee on Ethics in Research Involving Humans (SCERH).

<sup>iii</sup> Some schemes require that a check be made, without specifying what should be done if a criminal history is found, leaving it to the employer's discretion, whilst other schemes specify that if a criminal history is found, of a particular type, the candidate must be excluded. A small number of schemes provide for appeals from rejection: see e.g. Working with Children Act 2005 (Vic).

<sup>iv</sup> The Working With Children (WWC) check described here is a Victorian state government scheme accrediting adults working with children using data from justice agencies to ensure that card holders have not committed relevant offences (mainly sexual and other assault offences). There is provision for the applicant to make a case for accreditation where they have legislatively scheduled less serious offences. Equivalent schemes operate in all other Australian states and territories.

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