

PROGRESS REPORT ON ARC FUNDED RESEARCH – 2011

(All schemes except Linkage Projects - APAI)

Purpose

The ARC requests a progress report from each Project Leader to record progress and provide a means of initial assessment. This can also serve to assist the researcher in cases where progress has not been satisfactory or where difficulties have been encountered.

Instructions

Progress reports for *all schemes* are required to be submitted to the ARC by 31 January 2012.

PROGRESS REPORT ON ARC FUNDED RESEARCH FOR ARC PROJECTS ACTIVE IN THE YEAR 2011

1. PROJECT IDENTIFICATION

Please select scheme using checkboxes:

1.1

Project ID: LP0990348

1.2

Administering Organisation: Monash University

1.3

Project Title: Living Down the Past: Criminal Record Checks and Access to Employment for Ex-Offenders

1.4

Project Leader: Associate Professor Bronwyn Naylor

2. PROJECT SUMMARY

2.1 100 word Project summary (as indicated in the original proposal)

Employment is essential to the rehabilitation of offenders, yet employers routinely check criminal records in pre-employment processes and deny offenders employment. Little attention has been given to the implications of the exponential growth in criminal record checking for society's reintegration of offenders. This interdisciplinary project will be the first Australian research to elucidate the operational realities of employers' criminal record use, and the interplay of this practice with the regulatory system governing employment decision-making. It will explore the extent to which law and practice should be reformed to promote equal opportunity and rehabilitation, reduce discrimination and address Australia's labour shortage.

3. PROGRESS OF PROJECT

3.1 Have there been changes to or problems with the project?

If No, please move on to section 4. If Yes, please complete the remainder of section 3.

If Yes, provide details *(supporting documentation can be attached separately if required)*

The funding provided was \$96000 (less than half of the amount requested, which was \$182648), and as none of the requested teaching relief was funded, we have modified the project as follows:

1. Scope of empirical research: Rather than targeting specific industries through the data gathering phase, we have maintained a general view of the employment market
2. Outcomes: At least three conference papers will be presented at national and/or international conferences, such as the annual conferences of the Australian and New Zealand Society of Criminology, and the European Society for Criminology, Society of Legal Scholars (UK), the Law and Society Association, and the Australian Labour Law Association. We will also submit for publication at least three scholarly articles in refereed journals such as *Current Issues in Criminal Justice*, *Australian and New Zealand Journal of Criminology*, *Journal of Law and Society*, *Australian Journal of Labour Law*, and *Industrial Law Journal (UK)*.

4. ACHIEVEMENTS AND MILESTONES

4.1 What are your achievements and any research findings to date?

Please provide 1 to 2 paragraphs only

Achievements

We have undertaken a review of the current legislative and common law rules that govern the use of criminal record checks across Australia, including privacy laws, labour and employment law.

The project team has progressed significantly in the last year with the proposed empirical research component, receiving 100 responses to our survey of human resource managers, across a range of organisations and industries including manufacturing, building, insurance, legal, accounting and engineering, among others. We have substantially completed the analysis of survey findings.

In addition to the surveys, we have undertaken 20 interviews with human resource professionals, again from a wide range of industries, and are in the final stages of analyzing the interview data.

The findings from our surveys and interviews, along with the results of our legal research into the current regulatory regime for criminal record checks, were presented at a Roundtable, held at the Monash University Law Chambers on the 23 November 2011. The Roundtable provided an opportunity for a presentation of findings to date, and for a range of invited stakeholders to give feedback on the work to date, and the next steps. The event was attended by nineteen people from a range of organisations, including our partner organisations, VEOHRC, JobWatch, Australian Human Rights Commission, Fitzroy Legal Service, VACRO and the Department of Justice, as well as other Victorian and Commonwealth Government Departments, an employer association, and a number of not-for-profit agencies.

During the year we also established a project website, hosted by Monash University, to serve as a central resource, for our partner organisations, and the general public, to access our research findings, conference presentations and publications. The website is located at <http://www.law.monash.edu.au/research/projects/crep/index.html>.

We have published the following articles/papers:

- Paterson and Naylor, 'Australian Spent Convictions Reform: A Contextual Analysis', (2011) 34(3) *University of NSW Law Journal* 938 – 963..
- Paterson, 'Criminal Records: Spent Convictions and Privacy: A Trans-Tasman Comparison' [2011] *New Zealand Law Review* 35-66.
- Heydon, Naylor, Paterson and Pittard, Lawyers on the Record: Criminal Records Employment Decisions and Lawyers' Counsel' Accepted for publication in (2011) 32 (2) *Adelaide Law Review* 301-321.
- Naylor, B 'Criminal Records and Rehabilitation in Australia' (2011) 3/1 *European Jn Probation* 79-96.
- Pittard, M, 'Workplace misconduct, the Small Business Fair Dismissal Code and the criminal process' (2010) 16(8) *Employment Law Bulletin* 111-113.

We have presented at a number of conferences regarding this research

- Heydon and Naylor, "Walking the employment tightrope: balancing ex-offender needs and employer risk minimization in the use of pre-employment criminal records checks' 23rd Annual ANZSOC Conference, Alice Springs, September 2010
- Heydon and Naylor, "Risk and Trust: Why do employers want criminal history information? 11th Annual Conference of the European Society of Criminology, Vilnius, Lithuania, September 2011.
- Heydon, Naylor, Pittard and Paterson, "Risk and Responsibility in Employing Ex-offenders" 24th Annual ANZSOC Conference, Geelong, September 2011, , September 2011.

Research findings to date

- Ex-offenders tend to self-exclude from employment opportunities when criminal record checks are used, so their contribution is lost before it could be considered
- Many Human Resource managers prefer to engage in a dialogue process rather than an automatic exclusion
- HR managers also prefer to request a check late in the process, which raises challenges where the applicant is otherwise the preferred candidate
- There is a measure of discomfort amongst HR managers about the extent and level of information provided in checks
- There is uncertainty amongst HR managers as to how to evaluate the seriousness and relevance of information provided in a check
- Many HR managers recognise that a 'zero tolerance' policy can be unfair, and also that rehabilitation issues should not be forgotten.

4.2 What are your research milestones for the coming year?

Please provide 1 to 2 paragraphs only

(Please note that in your next report, you may be asked to report progress against these milestones)

This is expected to be the final year of the project.

This year we anticipate undertaking an additional four interviews with NGO representatives in AOD (Alcohol and Other Drug) support agencies. After consultation with stakeholders we have also decided to extend our research to include government employment agencies and non-government organisations with experience in employing people with criminal records.

We anticipate completing these interviews and undertaking a further analysis of all our survey and interview data based on a rehabilitation/reintegration model.

We are currently liaising with the Sentencing Advisory Council to develop proposals for law reform as well as presenting our findings and reform proposals in

- A possible training presentation for Human Resources and Management personnel
- At least one further conference presentation
- At least one further scholarly article.

5. PARTNER ORGANISATION CONTRIBUTIONS (LINKAGE ONLY)

5.1 Matching funding from Partner Organisations

Does the level and type of support provided by the Partner Organisation/s (PO) accord with the commitment (cash and/or in-kind) given by them at the time of entering into the agreement?

Yes.

If No, provide details

5.2 Source Documentation

Is there appropriate source documentation readily available to demonstrate to an auditor the contribution (cash and/or in-kind) of the PO/s to the Project?

Yes. Cash contributions are full documented at the University. In relation to in-kind contributions, Partner Organisations maintain a record of their in-kind contributions on a pro forma developed and provided by us.

If No, provide details

6. ATTACHMENTS

Is any supporting documentation attached?

7. CERTIFICATIONS

7.1 Certification by the Project Leader

I certify that:

All details in this report are true and complete that this is an accurate Progress Report for the period covered.

Name: Bronwyn Naylor

Date: 30 January 2012.

7.2 Certification by Administering Organisation (DVC(R), equivalent or nominee)

The electronic submission of this Progress Report to the ARC by the RO of the Administering Organisation is verification that the Administering Organisation (DVC(R), equivalent or nominee) has approved the Progress Report content.

An electronic signature is not required.

Notes:

*Thank you for submitting your Progress Report.
The ARC may contact you if clarification or further information is required to determine whether progress has been satisfactory over the period covered in the Report.*

Information on this form is collected in order to determine whether the research project funded by the ARC has reached satisfactory outcomes for the year and for post award reporting.

Researchers should note that if the ARC is not satisfied with the progress of the Project, further payment of funds will not be made until satisfactory progress has been made on the Project. If satisfactory progress is still not achieved, the Funding will be terminated and all outstanding monies recovered by the ARC. Unsatisfactory progress on the Project will be noted against any further proposals under any ARC scheme submitted by, or on behalf of, the Chief Investigator or Fellow and will be taken into account in the assessment of those proposals.