

# FLIP

The Association of

# SIDE

Participating Service Users



## Criminal Records

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## Paper Round

I learned not to like the law early. I was riding to town on my bike to do my paper round, 12 years-old, when a divisional van pulled me up and asked where I was off to so early in the morning. I told them I was off to do my paper round. To which they replied, 'it's a little early son, so what are you really up to?'

They didn't take kindly to my belligerence and suggested I was lying. So I was placed in the van and taken to lock up. My parents were called and they came to pick me up. Simply, I set my alarm three hours earlier than the time I was usually up.

So it was 1.30am not 4.30am. My dad was furious that they had not believed me and in doing that had got him out of bed. I learned two things that day, the police suck and don't wake my dad up.

I had a reasonably difficult criminal history in my early years from 14 to 25. I spent time in F and D divisions of Pentridge, Geelong Jail and Wron Wron Prison. Eight years after my last sentence, I entered recovery treatment for issues related to dependant drug and alcohol use.

Detox was followed by residential rehab. What could I do? I had no profession other than my self seeking and rebellious ways. I began to give back by helping out in a rehab. This gave me a sense of purpose, a process of forgiveness for me and my community.

Education was difficult, I was not a good student the first time round and this time it seemed even harder.

Soon enough my experience and my education reached a balance and my respect and confidence grew. Currently, I am working in the AOD sector and have been since 1994. My record showed crimes such as theft, car-theft, burglary, arson, assault and non-compliance to fines and orders.

I have been able to build a career in spite of my history and I'm aware that's not always the case. In the early years I faced many barriers and restrictions.

The value in society is often seen by having those who have suffered a condition, able to work effectively with those affected by the same issue. Criminality has a stronger moral position, in my experience, and it's one that can be overcome with congruence and committed action towards a valued meaningful direction. It has led me to a position of training and private practice in my community.

I am not a criminal but I did do some crime, the sentence was my punishment. That's where it needs to end.

**Anon**



# A Bumpy Road

My experience of having a criminal record check has turned out to be a bumpy road in the last ten years.

At the time of the offence, when I was eighteen, I really didn't understand the consequences of having a criminal record, or having a black mark against my name. I was lucky, in a sense, that I was not convicted and only received a good behaviour bond and a fine.

Most people would think that I would not have any difficulty with my career opportunities because I received a non-conviction. This has not been the case.

My struggle began when I wanted to do volunteer work with a few organisations within the Welfare Sector. The first organisation told me I was dishonest, as I didn't tell them about the offence – we were told in the training that if anyone had a conviction to just let them know and it would be discussed. Even though the offence was in the back of my mind, I didn't divulge any personal information as I didn't hold a conviction or fit the criteria they were talking about. Once the police check came through I was called dishonest and was declined the opportunity to work with young people.

The second time I applied for volunteer work, I told them about my offence from the very beginning to avoid the emotional rollercoaster that I might be dragged through again. I was told everything

would be fine, so I proceeded with the application. After six weeks of training and completing a questionnaire that was highly personal, I was given an interview. The interview lasted four hours! The main area of interest was the offence I committed nine years ago. I felt interrogated, victimised and judged. I couldn't believe that after nine years I still had to prove myself and justify why the offence had happened and my motives behind it. At this point, I was highly emotional, lost faith in ever working in the welfare sector and felt all my studies and hard work were never going to pay off because of this non-conviction. I withdrew from the interview process.

Good things can happen though – I truly believed that I would never find employment in the area I wanted from my negative experiences seeking volunteer work. I was lucky enough to find an organisation that forgives, is free from judgment and move past police checks like mine. Everybody deserves a chance.

I can only imagine the hurdles that one might face when they have a conviction and want to gain employment. Let's hope more organisations start being 'non-judgmental' rather than just promoting that they are.

**Anon**

## Poetry

### From my verandah

His is the song which heralds the dawning,  
Welcomes the sun and makes ready the day,  
Yet often the notes of the early rise blackbird  
Are lost to the screech of the parrots at play

While silent now, owls and creatures nocturnal,  
The sound of the jackass lifts spirit and heart  
As humans so mimic his deep throaty laughter,  
They, to the new day, their greeting impart

While still young the morning, the caroling magpie  
Is combing the garden in search of a meal,  
And high in the tree-tops the sparrows are restive,  
Yet foliage their very existence conceals

And off to the east, an eagle, majestic,  
From his high-rise apartment, a grey life-less tree,  
Stands watchful, his silhouette stark in the sunrise,  
Defending his right to forever be free

The day, in its passing, through noon to sunset  
Is blessed in its time by the songs of a bird  
As afternoon folds in the remnants of daylight,  
Their evensong 'amen' distinctively is heard.

**George Hall**



# Impact of Criminal Records on the employment & educational opportunities of drug service users (past & present)

In late 2010, APSU began a project on, *the Impact of Criminal Records on the employment and educational opportunities of alcohol and other drug service users (past and present)*.

This was in response to an increasing amount of individual advocacy we were doing around criminal record checks in employment and broader trends across Australia. The project involved interviewing nine consumers with a criminal record, on their experiences of applying for and gaining employment and accessing educational programs.

It was designed to consult with consumers and provide an important outlet for individuals to share their stories and perspectives on this important issue.

While participants reported a broad range of experiences, some key themes emerged from our interviews.

## Self-exclusion

In acknowledgement of the barriers posed by criminal record checks in employment over two-thirds of participants disclosed having avoided particular job positions to protect themselves from rejection.

*'Every job advertisement I look for, I am looking for the sentence that says, subject to checks.'*

## Rejection

All participants reported having experienced job rejection and negative reactions to their criminal records when applying for and gaining employment.

*'I was actually employed somewhere, I began, and worked for four days then they told me I had to leave because of my police check.'*

## Barriers to educational opportunities

One-third of participants were required to disclose their criminal record to their educational facility and faced obstacles to applying for student placements (a core component of their educational course).

*'There were certain areas because of my criminal record I couldn't go into.'*

## Personal and financial stress

Over half of the participants disclosed feeling significant stress and financial hardship due to negativity around their criminal records when applying for work.

*'I'd given up a well respected job position and it took me another three months to get another job...I dropped twenty thousand a year plus lucrative benefits.'*

## The positive impact of being able to discuss their criminal records with potential employers

This was considered by two-thirds of participants as essential in overcoming the stigma associated with criminal records.

*'I've been really lucky in that there have been particular opportunities where certain people have been in management who are open-minded and willing to talk things through.'*

While experiences varied for participants, what became apparent were the barriers created by individual's criminal records when trying to gain employment and access to education. Fair access to employment and education for all individuals needs to be enshrined in our legislation and human

rights frameworks to ensure that all individuals are able to fully participate and contribute to our society. The right to not be punished multiple times for an offence, to start again, to change one's life and to participate in employment and education is significantly hampered by the indiscriminate use of criminal records for employment and educational purposes. This has ramifications on individual's lives, their families and loved ones and the broader society.

## Criminal Record Checks in Employment: the Facts

### Who do they affect?

Requests by employers for criminal record checks have increased significantly over the last few decades. Australia wide, between 2009-2010, CrimTrac (the leading government agency which provides criminal record checks), processed 2.7 million criminal record checks (CrimTrac 2010), this is a six-fold increase from the 425,000 checks that were processed in 2001 (CrimTrac 2001).

Approximately 100,000 people are sentenced in the Victorian Magistrates Court alone each year (Sentencing Advisory Council 2011).

In consideration of the length of time that a criminal record is recorded on individual's checks and the number of sentences made in Victorian courts, it is estimated that a large proportion of the Australian population may experience unfair treatment due to their criminal record.

### What is released?

In Victoria, the release of National Criminal Records checks is currently governed by the Victorian Police's internal 'Information Release Policy'. When applying for a criminal record check for employment, voluntary work, or registration purposes, individuals must sign a 'Consent to Check' form and pay a fee.

### Criminal Records Check will contain:

All findings of guilt (including non-convictions and good behaviour bonds) - with offences being removed ten years after the last conviction recorded (if over 18), or five years after the last conviction recorded (if under 18 at the time of the offence). If another offence is recorded, all findings of guilt will reappear again until 5-10 years (depending on age) has elapsed.

Pending charges or current investigations, this comes with a note that the charges have not been determined by a court.

### Exceptions where information is released regardless of the time elapsed are:

All convictions that resulted in a custodial sentence of 30 months or longer. Serious violent or sex offences where the check is required for the purposes of working with children or vulnerable people. When applying for employment in prisons and correctional centres. For the purpose of Gaming and Casino licenses Traffic offences that led to imprisonment or detention. Any serious offences acquitted "by reason of insanity/mental impairment"

Other forms of criminal record checking systems include - Working With Children's Checks and licensing registrars for particular occupations

and professions.

These require statutory bodies and review boards to decide the outcome for individuals with criminal records and are different to the more generalised request for National Criminal Record Checks.

#### What protections are there?

In Victoria there is currently no state legislation to protect individuals from being discriminated against in employment for criminal records that are irrelevant to the job position (State legislation exists in TAS and NT).

In 2008, The Equal Opportunity Review into the Victorian Human Rights Charter, recommended “that the Act be amended to include ‘irrelevant criminal record’ as a protected attribute” (Recommendation 48) and “that discrimination on the basis of criminal record should be lawful in the area of employment where a person is unable to satisfy the ‘inherent requirements’ of the position” (Recommendation 50). Unfortunately, these recommendations were not implemented by the Victorian Government.

Nationally, the Australian Human Rights Commission (AHRC) has interpreted the *AHRC Act (1986)* to include protections against discrimination on the basis of ‘irrelevant criminal record’.

All Australians can apply to the Commission to investigate their claims of discrimination. The Commission has the right to investigate whether the employer’s actions were discriminatory and seek conciliation with participating employers.

The AHRC, however does not have

the powers to enforce their findings, and in cases where employers refuse to co-operate the AHRC brings it to the attention of the Federal Attorney General.

#### What is considered discrimination?

Discrimination, in employment, includes being:

**Refused a job**

**Dismissed from employment**

**Denied training opportunities**

**Denied promotions**

**Subjected to less favourable working conditions**

**Denied workplace registration or licenses**

The *AHRC Act (1986)* includes discrimination in employment on the basis of ‘irrelevant criminal record’. This means that the above is only discriminatory if your criminal record does not prevent you from meeting the *inherent requirements* of the job position.

Relevant criminal records may include: fraud when applying for financial positions, serious violent or sex offences when applying for work with children or vulnerable people. An irrelevant criminal record may include possession when applying for a position in hospitality, or shoplifting when applying for position as a truck driver.

The AHRC stresses the need for all employers to treat each individual on a case-by-case basis and to consider, length of time since offence, employment and personal histories, personal references and whether the offence prevents the individual from meeting *essential* requirements of the position.

#### Further Information

**For overviews of the topic of criminals records and your rights can be found at:**

[www.youthlaw.asn.au/upload/nmis\\_getting\\_past\\_you\\_past.pdf](http://www.youthlaw.asn.au/upload/nmis_getting_past_you_past.pdf)  
[apsuonline.org.au/uploads/file/CRD%20FLYER%20FINAL1.pdf](http://apsuonline.org.au/uploads/file/CRD%20FLYER%20FINAL1.pdf)  
**To learn more about the Australian Human Rights Commission, your rights or make a complaint go to the AHRC’s website:** [www.hreoc.gov.au/HumanRights/criminalrecord/index.html](http://www.hreoc.gov.au/HumanRights/criminalrecord/index.html)

**For Victoria Police’s, Information Release Policy and how to apply for a criminal record check:** [www.police.vic.gov.au/content.asp?Document\\_ID=274](http://www.police.vic.gov.au/content.asp?Document_ID=274)

**To read more about APSU’s project on, The Impact of Criminal Records on Employment and Educational Opportunities or order a hardcopy:** [www.apsuonline.org.au](http://www.apsuonline.org.au)  
**Community Legal Services, Legal Advice and campaigns:** [www.fitzroy-legal.org.au](http://www.fitzroy-legal.org.au)  
**Job Watch -** [www.jobwatch.org.au](http://www.jobwatch.org.au)  
**Megan Cook**

check revealing a criminal record is/was in breach of anti-discrimination legislation. The impact would fall on the employer - These are my wonderings.

Best wishes,  
**Deb Homburg**  
**Buoyancy Foundation**

Police records are one of the main reasons convicted consumers do not apply for jobs. When they ask if you have any convictions we think employers will not employ staff with convictions, but that is not always the case.

You can apply to the court to have your convictions squashed, if there have been no convictions for ten years. You can also make an appointment to speak to the local police sergeant and explain the situation.

A lot of the time they listen and can sort the police check out for you, if you have no violent convictions. Both the working with children check and police check look for violent convictions.

Some employers will give you an opportunity to explain the situation and if they feel enough time has gone by since your last conviction, give you a go.

So don’t be afraid to apply for positions in the drug and alcohol/mental health field - have no fear they can only say no.

**Anon**



## Letters

I am writing on the impact of criminal records on employment opportunities. The thing I always wondered about police checks is that if a criminal record was discovered, then, so what?

Under anti-discrimination law (unless unbeknownst to me it has been amended in the last ten years), it is illegal to discriminate against a person based on prior criminal record.

An employer who acts on a police



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## Eastern Metropolitan Region Alcohol & Drugs Dual Diagnosis (EMR), Consumer & Carer Advisory Council (CCAC)

The Eastern Region Alcohol and Drug Strategy Group's Dual Diagnosis Consumer and Carer Advisory Council is in part a realisation of the dual diagnosis working action plan. It is based on five service delivery outcomes set out in the Victorian Government's dual diagnosis key directions and priorities for service development (2007). This consumer advisory council is the realisation of the fifth service treatment objective: to strengthen consumer and carer participation and feedback in training, service development and evaluation.

The first meeting was held with a small committee of four. Right from the start, consumers felt this had been a long time coming and it felt good to have a say without anyone listening or criticising. As a consumer group, we started with small committee meetings but have now grown in numbers and have seven members. The committee members talked about having carers on the

CCAC committee, and after talks with the working group, support for this was gained. The Chair of the EMR DD working group and the chair of the CCAC wrote a new Terms of Reference so we could combine consumers & carers. The outcome of this is that in 2011 we now have the consumers and carer council and the EMR working group running in tandem with the CCAC. This means we run the same agenda and the groups work in conjunction with one another; the success of the CCAC is a reflection of the professional working group.

The road has been paved for consumers and carers. The opportunity now exists to grow and for everyone to have a say in how we get treated and how we treat each other, uniting professionals, consumers and carers.

**Grahame**

**Tamara Burt** joined the Eastern Metropolitan Region Alcohol and Drug Dual Diagnosis Consumer and Carer Advisory Council as one of the first committee members and showed how committed she was to dual diagnosis by joining the committee and getting involved with all things dual diagnosis. She was at every meeting and her valuable input will be sadly missed, but not forgotten.

We will keep this in mind every time we get a victory. We thank you for your contribution to the committee. We did not spend a lot of time with you but the time we spent with you will be in our hearts forever. Rest In Peace.

With love we say goodbye,

**Jonathan & Grahame**

# Changes at APSU



## Regina Brindle

SHARC and APSU said a fond farewell to Regina recently. When I talk about consumer participation I think of Regina, who has been working with consumers at APSU for the past six years.

She is a leader in her field and very dedicated. The Peer Helper Training held at APSU has been so important to consumers, who after peer training go onto higher education and then into the workforce. It means so much to all of us to have her watching our backs and supporting us.

The Eastern Metropolitan Dual Diagnosis Consumer and Carer Advisory Council (CCAC) showed off her talents as the queen of consumer participation. It's sad to have to say goodbye and we wish her good luck at Hanover.

**Grahame**

You may have noticed that APSU has a new-look logo. An interactive and fresh website has also recently been launched - [www.apsuonline.org.au](http://www.apsuonline.org.au) Please go online and take a look, it's easy to access all the latest news and events and you can sign up to become a member. You can now like us on Facebook and follow us on Twitter. Links to both of these sites can be found on the home page of [www.apsuonline.org.au](http://www.apsuonline.org.au)

It's been a big month for APSU with Regina leaving and the arrival of a new Project worker. We would like to welcome, Edita Kennedy, who comes to us from VAADA with a wealth of experience.

Two students have completed placements at APSU, Grahame Marston, who is studying Dual Diagnosis at Chisolm Tafe and Brooke Upton, who is studying Dual Diagnosis at Swinburne Tafe. We wish them all the best in their futures in the field.





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