

# Impact Case Study

## Professor Bronwyn Naylor and Stan Winford - Criminal Record Discrimination Project

Victoria is the only Australian state without spent convictions legislation. This means that even trivial offences from decades ago can still appear on police checks of a person's permanent file. There is also no prohibition under the Equal Opportunity Act 2010 (Vic) against discrimination in employment based on an irrelevant criminal record.

This is significant because employers increasingly ask routinely for criminal history information when making employment decisions and criminal record checks pose a significant hurdle for some Aboriginal job-seekers. Over 4.3 million criminal record checks are provided federally each year in Australia and at least 700,000 are conducted annually in Victoria. Aboriginal people are disproportionately represented in the criminal justice system and for reasons including historic disadvantage are more likely to have a criminal record than people in the non-Aboriginal population. For example Aboriginal people represent 27% of the Australian prisoner population and 20% of those in community-based corrections (ABS 2015), whilst representing only 2% of the Australian population.

In 2016, in its 2016 Prison to Work Report, COAG drew attention to the fact that 'Aboriginal and Torres Strait Islander ex-prisoners are doubly-disadvantaged as they try to find and hold down a job' (<https://www.coag.gov.au/sites/default/files/reports/prison-to-work-report.pdf>)

Similarly, when announcing a program to support Aboriginal people leaving prison to find work in June 2017, the federal Department of Employment pointed out: 'Indigenous Australians make up 27 per cent of the total prisoner population, with one quarter of Indigenous job seekers having spent time in prison.' (<https://www.employment.gov.au/prison-work>)

This is significant not only in relation to employment: a criminal record can prevent a person serving on a committee of management or government body; can prevent them engaging in kinship foster care; and can affect access to tenancies, insurances and in many other fields. Professor Bronwyn Naylor and Mr Stan Winford were asked to work with an Aboriginal-led organisation, Woor-Dungin, to research and advocate for legislative reform to address these deficiencies.

The Criminal Record Discrimination Project (CRDP) is an Aboriginal-led collaboration between numerous community and legal organisations, including Woor-Dungin and RMIT University. It is overseen by an Advisory Committee with over 50 members.

The project has the dual aim of introducing to Victoria a legislated spent convictions scheme and an amendment to prohibit discrimination against people with an unjustifiable criminal record. Removing prejudice on these grounds will increase financial and economic opportunities, while broadening opportunities for the civic engagement of Aboriginal people in Victoria. In April 2017, Woor-Dungin hosted a consultation with community members and legal stakeholders on what spent convictions legislation and protection from discrimination on

the basis of unrelated criminal history should look like in Victoria. To inform these discussions, Mr Winford interviewed Aboriginal legal services from other states and territories.

CRDP's contact with local individuals revealed many examples of discrimination faced by Aboriginal people. Decisions made about certain individuals decades ago have remained part of permanent records, preventing them from obtaining employment, being appointed to government positions, being eligible to provide kinship foster care, and generally impacting negatively on their quality of life.

Bronwyn Naylor worked with Woor-Dungin to prepare 11 case studies detailing cases where Aboriginal people with a criminal record have experienced discrimination.

Stan Winford worked with Woor-Dungin to produce a major submission summing up the recommendations emerging from the consultations and, with the endorsement of members from Victoria's Aboriginal communities, submitted it to the state-wide Aboriginal Justice Forum in December 2017. The Aboriginal Justice Forum is the peak forum established under the Aboriginal Justice Agreement (AJA) framework which draws its membership from local and regional aboriginal justice advisory committees (RAJACs) and the Aboriginal Justice Caucus. The AJA is intended to enable the Aboriginal community and the Victorian Government to work in partnership to improve justice outcome and family and community safety.

In December 2017, the Aboriginal Justice Forum unanimously endorsed the submission calling for reform. Burra Lotjpa Dunguludja ('Senior Leaders Talking Strong' in Yorta Yorta language) phase 4 of the Aboriginal Justice Agreement, signed by five government ministers and all Victorian RAJACs and CCOs now includes a commitment to ongoing reform of spent convictions. The Aboriginal Justice Caucus co-chairs Tony Lovett and Marion Hanson indicate in their introduction to the AJA4 that the priority for the this phase of the agreement is 'a more consistent approach to spent convictions so that offending which has long since been dealt with, ceases to impede the economic prospects of many Aboriginal people.' (Submission to Aboriginal Justice Forum 49, December 2017)

Bronwyn Naylor and Stan Winford have spoken at many events and given media interviews highlighting the discrimination faced by Aboriginal people in relation to criminal records. These have included a range of public events such as a panel for Law Week with Liberty Victoria, interviews broadcast on ABC radio, and NITV TV current affairs program The Point. The issue was subsequently taken up by the Greens Party who sought advice and feedback from the applicants and moved a motion in the Victorian Parliament calling for reform.

As part of this research, when interviewing the Aboriginal participants, we discovered that in the past, children taken into care in Victoria had the care order recorded in the form of a 'criminal record'.

For instance, a child would have an 'offence' of neglect recorded against them, which although not 'criminal' would be entered in the same form as a 'criminal' record, with ongoing consequences for that child in terms of their treatment by police and courts. This was often experienced as a criminal process by the child, and was procedurally indistinguishable from criminal matters in the Children's Court.

This applied to all children taken into care under welfare powers, but was of particular significance for Aboriginal communities, given the notoriously high rates at which children were removed from their families as part of practice known as the 'Stolen Generation'.

This method of recording care applications only ended in 1989, with the separation of the welfare and criminal jurisdictions of the Children's Court. It was a source of ongoing distress to the Aboriginal participant interviewed, who felt it had impacted his life and opportunities.

Research on this issue by the applicants led to a half hour program on NITV, promoted on the SBS website, <https://www.sbs.com.au/nitv/feature/guilty-being-aboriginal-0> . See also <https://www.youtube.com/watch?v=y0q7OHE8TYI>

The Victorian Attorney-General announced in March 2018 that the government would legislate to expunge such records for all children who left care during the relevant period. ('Correcting the Historical Records of Victorian Children': media release from Attorney-General Martin Pakula, March 2018).

The Victorian Government subsequently made a public apology in the Parliament through the Attorney-General and the Minister for Children. The work of the authors and Woor Dungin was cited in Parliament on each occasion.

Bronwyn Naylor and Stan Winford were consulted on the drafting of the legislation which ultimately made its way into the Victorian Parliament as the Victims and other Legislation Amendment Bill 2018. The Act passed the Parliament on 23 August 2018.

The CRDP work by Woor-Dungin was funded by private philanthropy for the period 2015-2018 with the applicants contributing to grant development applications.

The project was awarded the Indigenous Philanthropy Award 2018 by Philanthropy Australia, announced at the Sydney Opera House on 26 July 2018. The awards were widely reported, and resulted in ABC media including interviews with the applicants, and other media including for RMIT:

<http://thewire.org.au/story/rmit-wins-national-indigenous-philanthropy-award/>  
<https://www.rmit.edu.au/news/newsroom/media-releases-and-expert-comments/2018/aug/australian-philanthropy-award>