Research findings

ARC Linkage Project 'Living Down the Past'

Criminal Records and Employment

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Outline of the research

- Research with human resources (HR) managers

- Practice varies: eg
  - justice – very strict
  - child care, aged care – legislative requirements
  - financial – specific offences
  - manufacturing: limited use of checks
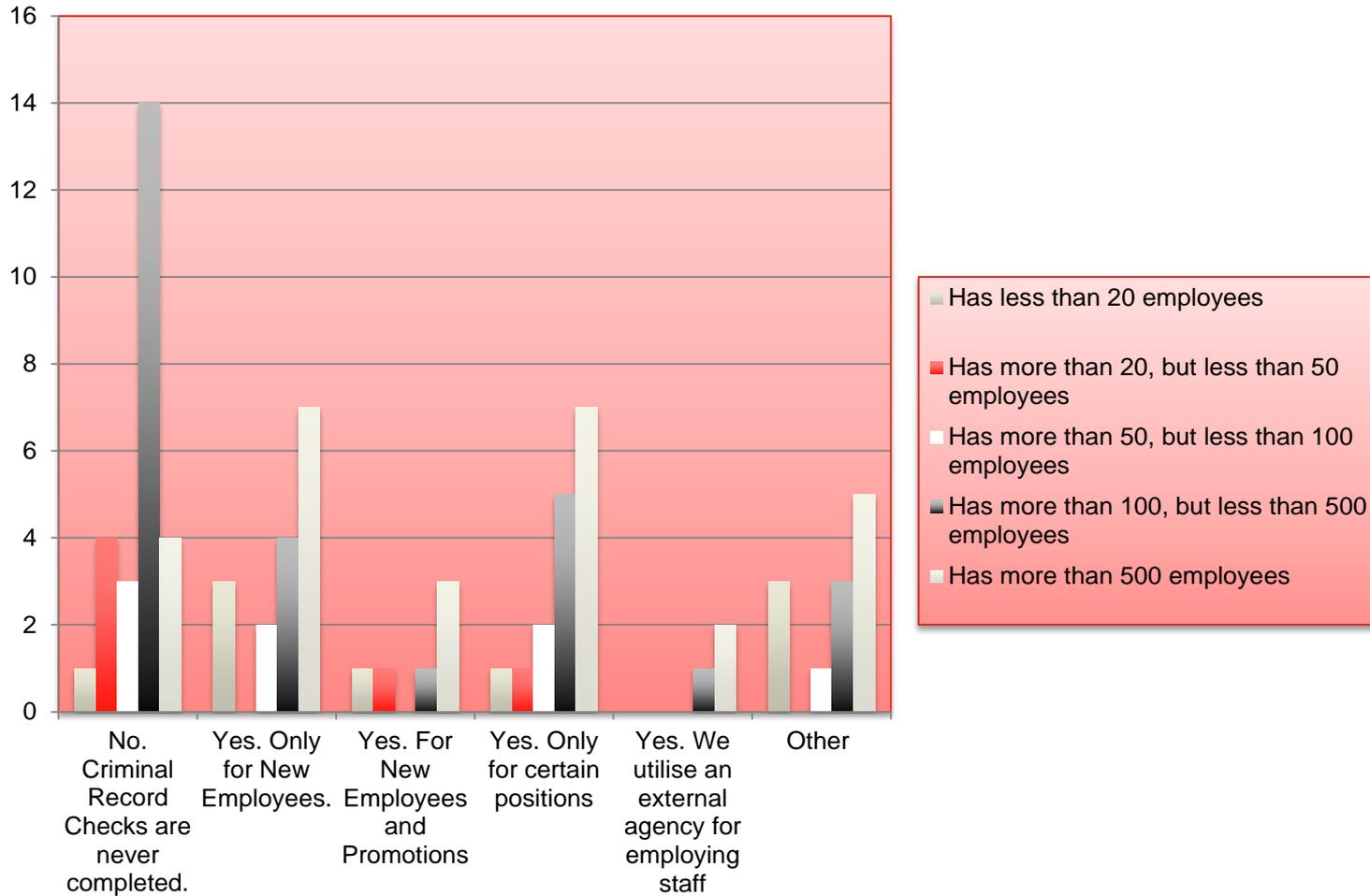   - Not wishing to unnecessarily limit labour pool

Data gathering

- Survey
  - 100 respondents
  - Primarily HR managers or similar management role
- Interviews
  - 20 Human resources managers
  - Self-selected
  - Wide range of industries

Survey results

- Sources of information
  - CrimTrac: 43% (n=35) 'usually' or 'occasionally'.
  - Regulatory-based screening (through permits or licences): 36% (n=29).
  - Pre-employment screening by an external agency: 23% (19).
  - Informal professional or social networks: 20% (16)
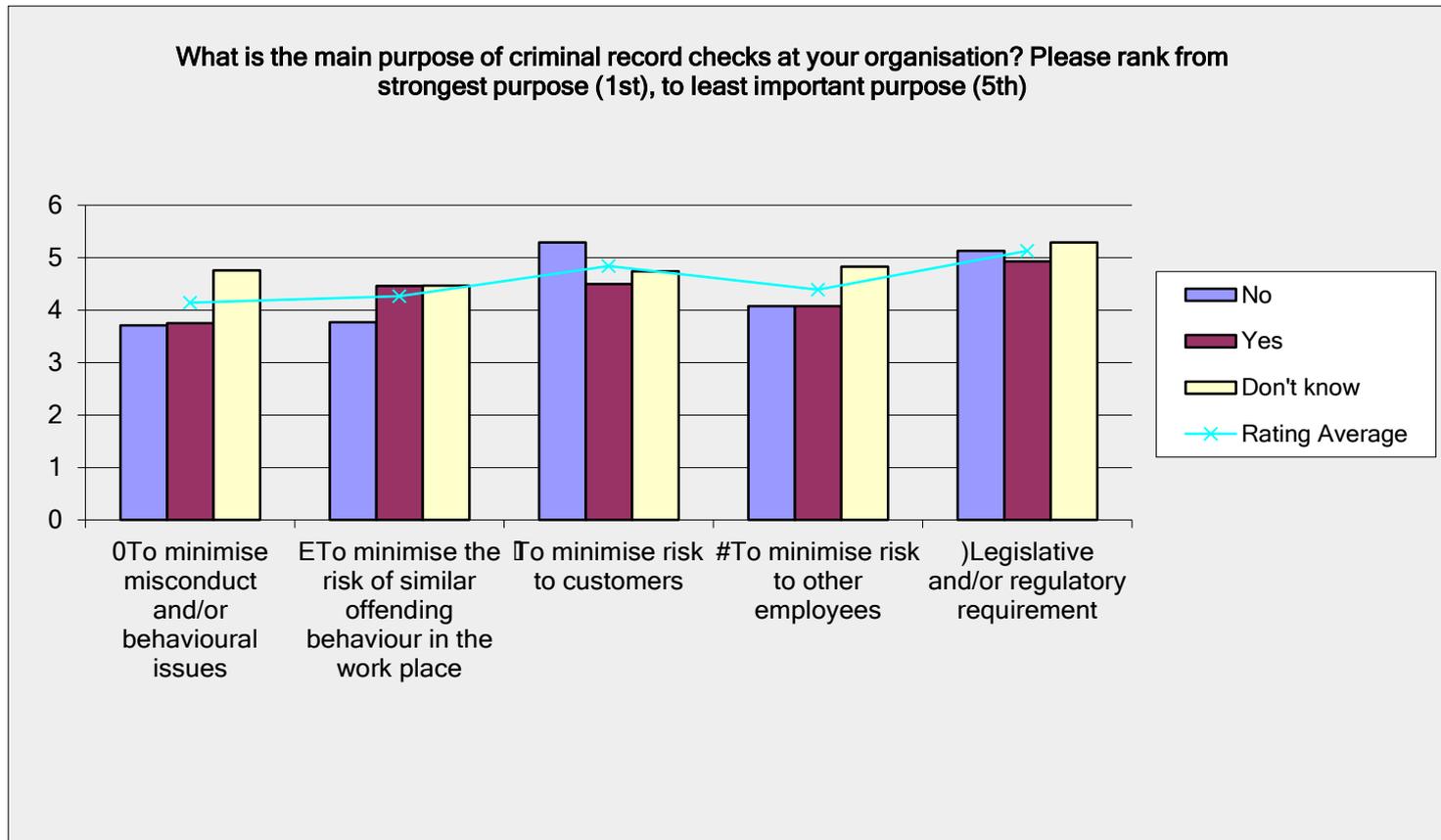 - Other subscriber web-sites: 9%

Does your organisation conduct criminal record checks?

Legend:
- Has less than 20 employees
- Has more than 20, but less than 50 employees
- Has more than 50, but less than 100 employees
- Has more than 100, but less than 500 employees
- Has more than 500 employees

Categories:
- No. Criminal Record Checks are never completed.
- Yes. Only for New Employees.
- Yes. For New Employees and Promotions
- Yes. Only for certain positions
- Yes. We utilise an external agency for employing staff
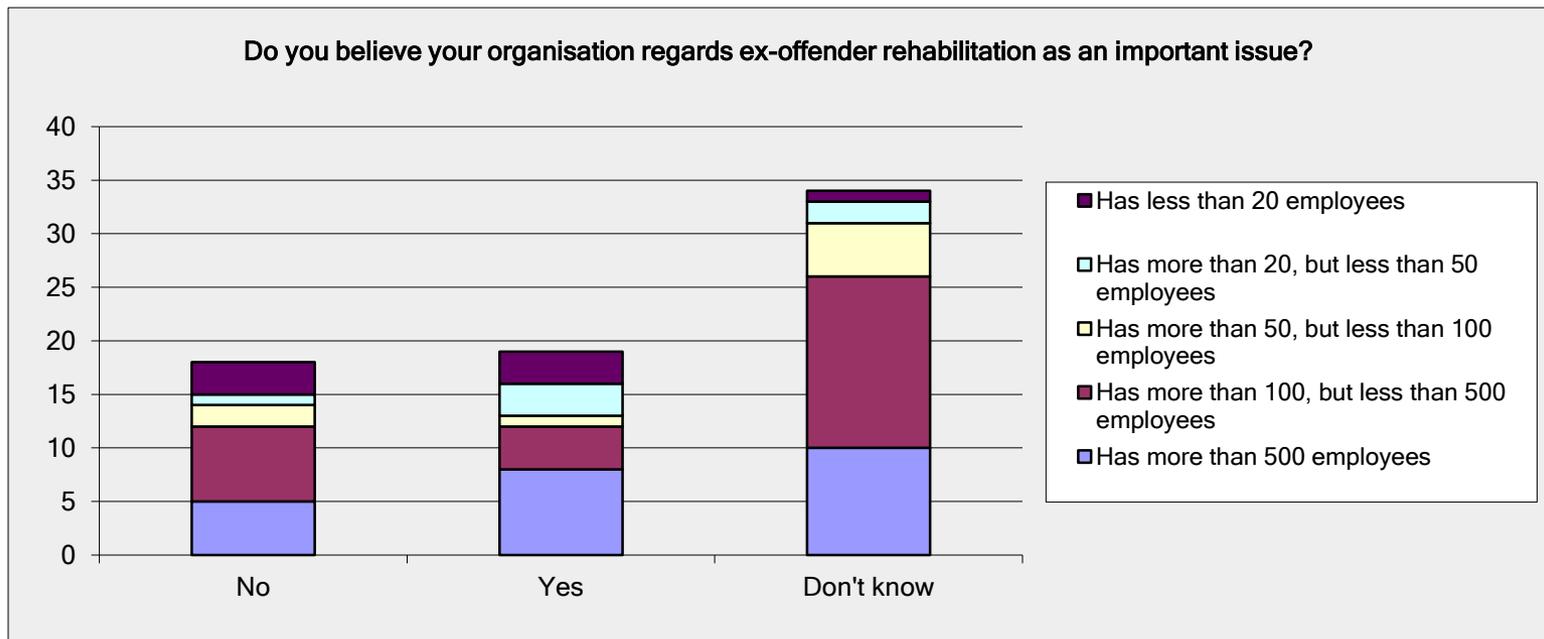- Other

Q: stated purposes of checks

- Regulatory/ licensing obligation (5.04)
- Risk to customers (4.90)
- Risk to other staff (4.35)
- Risk of similar reoffending (4.15)
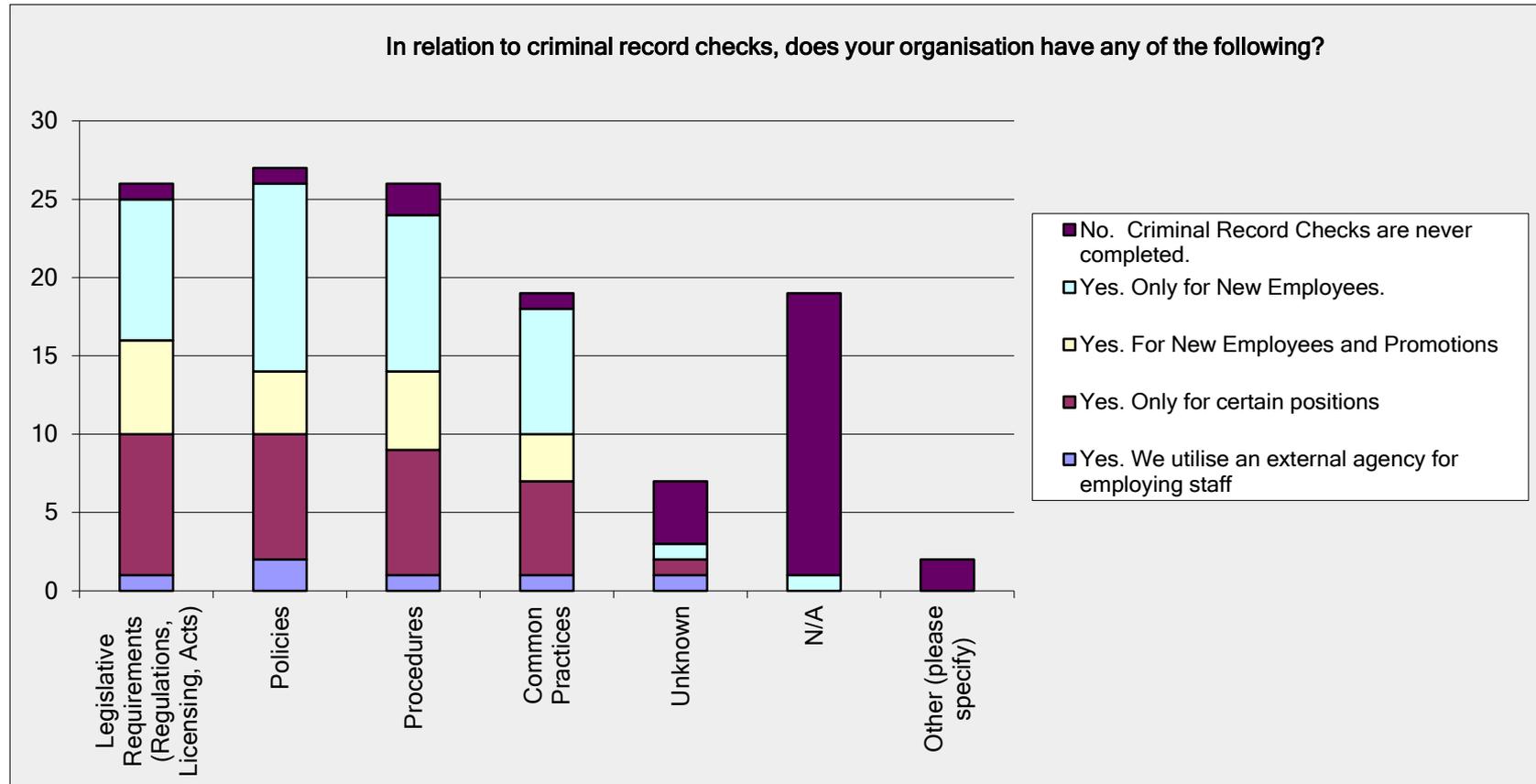- Risk of general misconduct (4.10)

Do you believe your organisation regards ex-offender rehabilitation as an important issue?

What is the main purpose of criminal record checks at your organisation? Please rank from strongest purpose (1st), to least important purpose (5th)

Do you believe your organisation regards ex-offender rehabilitation as an important issue?

Does your organisation conduct criminal record checks?

In relation to criminal record checks, does your organisation have any of the following?

Legend:
- No. Criminal Record Checks are never completed.
- Yes. Only for New Employees.
- Yes. For New Employees and Promotions
- Yes. Only for certain positions
- Yes. We utilise an external agency for employing staff

Categories: Legislative Requirements (Regulations, Licensing, Acts), Policies, Procedures, Common Practices, Unknown, N/A, Other (please specify)

Interview responses and themes

Part of a process

IE: *so for us this is a um a stream of due diligence to make sure that we've covered off um all of those elements to as best as we can assess the capabilities and the organisational fit and the um credibility of the candidate*

Issues raised by this respondent include:

- the regulatory environment and 'due diligence' of the employer;

- the candidate's capacity to do the job;

- their 'organisational fit';

- their credibility,

Clearly, this employer sees the process of record checking as part of a very complex environment of assessment of candidates and does not appear to be applying the record checking as a de facto character check.

Cultural fit as a reason for not checking

IE: um in terms of you know, obviously as I've said we we spend a lot of time on the people

INTGH: mmmm

IE: so from a recruitment point of view is trying to look for people that actually fit into our organisation
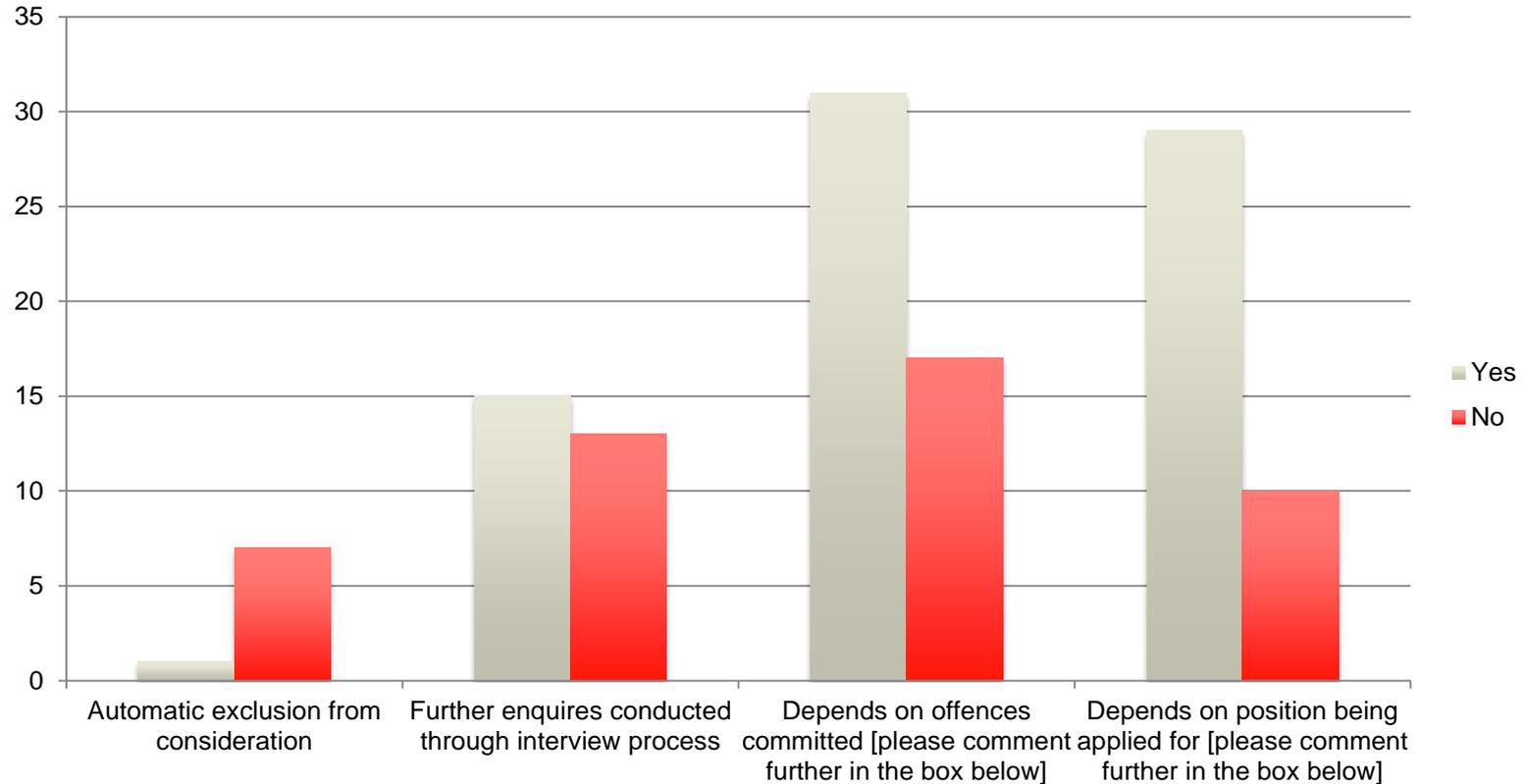
INTGH: mmmm

IE: um so we use ah sort of extensive sort of tools in terms of profiling people

Where a criminal history is revealed

- 10% (8 out of 81): applicant would be immediately rejected
- 59.3%: depends on the offence
- 48.1%: depends on the position
- 34.6%: would conduct further inquiries through the interview process.

Do you know anyone with a criminal record?

Where a record is found…

Importance of dialogue with applicant:

- *we would investigate the type of offence committed and see how relevant it was to the position we were advertising.*

- *Whether there is any potential to compromise safety of employees, professional integrity or finance*

- *a person convicted of fraud would not be hired in a finance position but they would be considered for roles where responsibilities did not include financial aspects. Candidates who had committed crimes involving violence would generally not be considered for employment.*

Entering a dialogue

IEF: *and then depending as what T__ said depending on on what it was if it was something like nine years ago and it was a DUI well ok they were young foolish a bit of a wally they've settled down now some cases we've looked at it and we've brought the people in and discussed it*

In the face of an irrelevant record (a)

IEF: *I th... it'd be the personal risk if it was something if it was someone who who would be in who had been involved in a sexual crime I think it would ah we'd have to discreetly follow up maybe with the manager on their interaction*

IES: *mmmm*

IEF: *with the other members of the team*

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

IET: [clear throat] *I don't look I don't know how we deal with it*

In the face of an irrelevant record (b)

IE: and then ultimately make a decision as to whether um you know all other things being equal um weigh up whether we um you know, continue

INTGH: yep

IE: with the employment of that individual um we look at all aspects including you know, performance and cultural fit…

Lack of enforcement powers of the AHRC

The lack of enforcement powers of the AHRC leaves employers exposed to risk:

IE: it's almost like the Australian Human Rights Commissioner [is] all care and no responsibility they don't have to stand behind their, the mediation or the conciliation process in terms of saying well actually we'll take responsibility for the decision thanks very much

Final Observations

- Ex-offenders self-exclude
  - Dialogue process preferred
  - Prefer to do check late in the process
- Discomfort about extent and level of information provided in checks
- Uncertainty as to how to evaluate seriousness/ relevance of information
- 'zero tolerance' can be unfair
- Rehabilitation issues should not be forgotten

Still to come

- Further analysis of our data based on the rehabilitation/reintegration model proposed by colleagues at Deakin (Andrews and Bartholomew)
  - Four categories of barriers to reintegration across 4 domains in the community (housing, employment, education, family):
    1. Policy
    2. Professional policy
    3. Informal professional/cultural discretion
    4. Proximity/personal
- Further interview data to be added from 4 interviews with NGO representatives in AOD agencies