Report of inquiry into a complaint of discrimination in employment and occupation

Age discrimination in trade union membership rules

Contents

Introduction

This is the fourth report to the Attorney-General on inquiries by the Human Rights and Equal Opportunity Commission (the Commission) into complaints of discrimination and violations of human rights under the *Human Rights and Equal Opportunity Commission Act 1986* (the Act).

The subject of this complaint returns to the theme of my first two reports – age discrimination. The first report concerned complaints against a large employer about age based compulsory retirement practices. The second report concerned complaints against two state government instrumentalities about the offer and payment of less favourable redundancy entitlements to older workers. This complaint concerns an age restriction in trade union membership rules.

The complaint is made by a member of the Australian Institute of Marine and Power Engineers (AIMPE) against the AIMPE. Under the rules of the AIMPE, members are required to retire from full membership at age sixty five unless exempted by the Federal Executive of the union. The complainant had been working in a relief capacity well past the age of sixty five and wished to continue to do so. He would have been offered further work but only if he retained full membership of the AIMPE. The complainant sought an exemption to the age restriction from the AIMPE. The Federal Executive denied his request and he was transferred to the honorary member category. I found that the AIMPE denied the complainant the opportunity to continue in employment on the ground of his age.

In this complaint I concluded that the scope of the discrimination in employment and occupation provisions in the Act and the *International Labour Organisation Discrimination (Employment and Occupation) Convention* 1958 (ILO 111) includes discrimination by trade unions against their

membership where the discrimination has the effect of denying or restricting opportunities for employment and occupation.[1] The rules of the AIMPE had this effect.

The facts of this complaint did not require that I decide whether the scope of the provisions of the Act and ILO 111 also includes discriminatory rules or practices of trade unions that do not adversely affect employment opportunities. I am inclined to think that it does not but I have no final view on this issue.[2] It may arise for full consideration in another complaint.

Discrimination against members by trade unions is clearly inconsistent with the policy and intent of the ILO 111 Convention, however. The ILO *Recommendation concerning Discrimination in Respect of Employment and Occupation* 1958 (Recommendation No.111) provides that "employers' and workers' organizations should not practise or countenance discrimination in respect of admission, retention of membership or participation in their affairs".[3]

Discriminatory restrictions on access to trade union membership would also be contrary to the *International Covenant on Civil and Political Rights* (ICCPR) and the *International Covenant on Economic, Social and Cultural Rights* (ICESCR). Article 2.1 of the ICCPR and Article 2.2 of ICESCR require that the rights provided for in the Covenants – such as rights to freedom of association and to form and join trade unions – be guaranteed without discrimination of any kind.[4]

The *Workplace Relations Act 1996* prohibits discrimination on the ground of membership or non-membership of a trade union in a decision to employ.[5] While necessary, this is not sufficient protection of the right to non discrimination in the exercise of the human rights to freedom of association and to join trade unions. This complaint demonstrates that these rights were not and are not adequately protected. Following my decision in this case the union advised me that an application had been made to the Australian Industrial Registry to remove the age limitation in the rule. The application was contingent on changes being made to another rule.[6] Because of the way this second rule change was worded, the Registrar was unable to amend the rules.[7] The result is that the age restriction in the membership rules remains unless and until an amended application is made and a rule change approved. This is clearly unacceptable. There needs to be a more effective means of ensuring non-discrimination in this area. It would of course be preferable for unions themselves to do

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1 The definitions refer to discrimination "which has the effect of nullifying or impairing equality of opportunity or treatment in employment…".

2 This view is influenced by the comment in relation to access to workers organisations contained in Report of the Committee of Experts on the Application of Conventions and Recommendations *Equality in Employment and Occupation International Labour Conference 83rd Session 1996* International Labour Office, Geneva, at p.33.

> It is for these organisations to take the necessary measures to eliminate practices that may lead to direct or indirect discrimination based on any of the grounds mentioned in the Convention, both in respect of admission to and retention of membership, and in respect of participation in the activities of trade unions or employers' organisations.

3 Paragraph 2(f).

4 See Article 22 ICCPR and Article 8 ICESCR.

5 Section 298K.

6 The second rule concerned honorary membership and the ability to revert to full membership.

7 Section 205 of the *Workplace Relations Act 1996* applied. Under that section an alteration of the rules of an organisation does not take effect unless a Registrar of the Industrial Registry "has certified that, in his or her opinion, the alteration complies with, and is not contrary to the Act…" and "is not otherwise contrary to law". In this case it was held that the second amendment sought did not satisfy these criteria. The Deputy Industrial Registrar referred to the need for the union to lodge a further application for amendment of the rule containing the age based restriction in view of s.205 and the fact that compulsory retirement and age discrimination are now unlawful in most Australian States and Territories. See decision of 27 May 1997, Margaret Buchanan, Deputy Industrial Registrar, re: Alternation of Rules (R No 20084 of 1995). The objects of the *Workplace Relations Action 1996* include respecting and valuing the diversity of the work force by helping to prevent and eliminate discrimination on the basis of…, age, …"(s.3(j)).

this. However because they may be unable or unwilling to do so an alternative approach is needed to protect the basic rights of workers to join trade unions without discrimination, having regard to the rights of unions to function freely and determine their own affairs.[8]

I recommend that the *Workplace Relations Act 1996* be amended to provide that any discriminatory rule of a registered organisation of employees is invalid to the extent to which it is discriminatory on any of the grounds specified in s.3(j) of that Act.[9] Transitionary provisions could provide unions with time to review the rules themselves and submit applications for amendment where required. Laws and rules governing employer organisations should be similarly amended.

The complaint: O'Rourke v Australian Institute of Marine and Power Engineers

Summary

Outline of complaint

The Commission received a complaint under s.31(b) of the *Human Rights and Equal Opportunity Commission Act 1986* from Mr Maurice O'Rourke on 28 May 1990.[10]

The complainant alleged discrimination by the Australian Institute of Marine and Power Engineers (AIMPE) on the ground of age.

Attempts to conciliate the complaint were unsuccessful. The Commission invited each of the parties to make written or oral submissions or both.

The complainant submitted, in summary, that a union membership rule that precluded people over the age of 65 from full membership of the AIMPE, and the denial of an exemption from application of the rule, restricted his ability to continue to work as an engineer on the tugs in Fremantle and constituted discrimination on the ground of age as defined in the Act.

The respondent made no submissions.

Findings and recommendations

On 4 August 1997 I issued notice of my findings and recommendations in relation to the complaint under s.35(2) of the Act.

I found that the acts and practices complained of by the complainant, namely the rules of the AIMPE and the union's actions which had the effect of denying the complainant access to employment because of his age, constituted discrimination in employment based on age. The reasons for the decision were that

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8 See for example Article 8(1)(c) of ICESCR that provides "the right of unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others". See also Article 3(1) of ILO *Convention (No.87) Concerning Freedom of Association and Protection of the Right to Organise* 1948.

9 The grounds are race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin.

10 The Commission's functions to inquire into acts and practices that may be inconsistent with or contrary to any human right or that may constitute discrimination are described in Appendix A.

- Rule 30 of the AIMPE's registered rules operates to exclude workers over 65 years of age from remaining full members of the Institute
- the application of this rule constituted discrimination on the ground of age
- the AIMPE denied the complainant an exemption for this rule
- the discrimination had the effect of nullifying and impairing equality of opportunity or treatment in the complainant's employment as actual and potential employers would not employ a non-union member and
- it was not an inherent requirement of union membership or of the particular job that Mr O'Rourke be under 65 years of age.

I made three recommendations to the respondent

- that the AIMPE make an apology to Mr O'Rourke
- that Rule 30 which operates to prevent or restrict opportunity to employment on the ground of age should be repealed and
- that the respondent should pay Mr O'Rourke compensation for financial loss suffered by reason of the discriminatory conduct.

The respondent's reply

Under section 35(e) of the Act I am required to state in my report to the Attorney-General whether the respondent has taken or is taking any action as a result of the findings and recommendations.

In response to the recommendations the AIMPE advised that an application was filed in the Australian Industrial Relations Commission by the AIMPE for leave to alter the Rules on 10 August 1995 "which sought to, inter alia, delete any reference to age vis resignation of union membership. This was allocated R No 200084 of 1995 and has not been finalized."

The rule change has been rejected by the AIRC. The respondent has not pursued the change to date.

The respondent has not commented in its intentions in relation to my recommendations for an apology to Mr O'Rourke and for the payment of compensation.

Reasons for the decision

The complaint

Mr Maurice O'Rourke lodged a complaint with the Commission on 28 May 1990 pursuant to s.31(b) of the Act. Mr O'Rourke's complaint concerns discrimination on the ground of age. He stated in his complaint that he was 71 years of age and had been employed in a relief capacity as an engineer with Fremantle Tug Operators for the previous ten years. He stated that he was fit and that he wanted to continue in his employment.

He alleged that the application of the Rules of the Australian Institute of Marine and Power Engineers (AIMPE) discriminated against him, in that the rules operated to prevent him continuing his employment as a relief engineer with Fremantle Tug Operators.

The relevant AIMPE rule is Rule 30 introduced in May 1986. It states

> Members shall retire at or before age sixty five years unless exempt by decision of the Federal Executive. Members requesting such exemption must apply in writing no less than three months prior to their sixty fifth birthday.

On 15 February 1988 Mr O'Rourke requested that the AIMPE waive Rule 30 in his case so that he could continue his employment as a relief engineer on the tugs at the Port of Fremantle. Between 1988 and 1993 there were a number of exchanges of correspondence between Mr O'Rourke and the AIMPE concerning his membership of the Institute.

It appears that full membership of the AIMPE was a prerequisite to Mr O'Rourke being able to work in a relief capacity as an engineer. I note that in May 1990 the Fremantle Tug Operators were willing to continue to employ Mr O'Rourke if he retained his full membership.

On 17 June 1992 Mr Baird, Federal Treasurer of the AIMPE, advised Mr O'Rourke that he had been formally transferred from full membership to the honorary membership list. Mr O'Rourke alleged that this action effectively denied him the capacity to work in the industry. On 14 April 1993 Mr O'Rourke notified the AIMPE that he wished to discontinue his membership.

Mr O'Rourke considered taking action under s.208 of the *Industrial Relations Act 1988* (Cth) to seek a declaration that the rules were oppressive, unreasonable or unjust but was not able financially to do so.

The response

The AIMPE indicated that it was obliged to enforce its rules and advised that failure to do so could lead to action for non compliance under the *Industrial Relations Act 1988* (now the *Workplace Relations Act 1996*). Further, the AIMPE indicated that it was not convinced that this Commission could investigate the complaint.

Conciliation

In correspondence with the Commission the AIMPE indicated that it was not willing to resolve this matter through conciliation. In the circumstances, the Commission formed the view that the complaint was unconciliable.

Submissions and evidence

As a result of inquiries into and investigation of this complaint I notified the parties that I had formed the preliminary opinion that the application of AIMPE Rule 30 to Mr O'Rourke constituted discrimination on the basis of age.

Pursuant to ss.33 and 27(a) of the Act I invited the parties to make oral submissions or written submissions or both. Written submissions were received from Mr O'Rourke on 30 August 1996 and 24 February 1997. In his submissions he advised that he had continued to seek work as an engineer. His most recent job had been in late 1993. Mr O'Rourke sought the following remedies

- repeal of Rule 30 of the AIMPE Rules
- compensation for loss of employment
- an apology from the Federal Secretary of AIMPE.

The Commission did not receive any submission, oral or written, from the AIMPE.

The basis of the findings

In deciding whether the act or practice complained of falls within the definition of discrimination in s.3(1) of the Act, I must consider three elements:

- whether the act or practice arises in employment or occupation
- whether there was a distinction based on age
- whether the distinction nullified or impaired equality of opportunity.

Whether the act or practice arises in employment or occupation

Mr O'Rourke's complaint is not against his employer but his union, the AIMPE. It concerns not his actual employment but his eligibility for employment or his ability to practise his occupation. The question then is whether this situation comes within the scope of the International Labour Organisation Discrimination (Employment and Occupation) Convention 1958 (ILO 111). In my view, it does.

(1) Article 1(1)(b) of ILO 111 uses the expression "such other distinction, exclusion or preference *which has the effect* of nullifying or impairing equality of opportunity or treatment in employment...". The action complained of need not be directly discriminatory. The provision encompasses indirect action as well. In this matter, the AIMPE rules and the action of the AIMPE under the rules have resulted in Mr O'Rourke not being able to procure employment.
(2) Article 1(3) of ILO 111 provides that "employment" and "occupation" include access to employment. The requirement to be a member of the union before being eligible for employment is clearly an issue concerning access to employment.
(3) Clause 2(f) of the ILO Recommendation on Discrimination in Employment and Occupation, which guides interpretation of ILO 111, provides

> Employers' and workers' organisations should not practise or countenance discrimination in respect of admission, retention of membership or participation in their affairs.

Whether there was a distinction based on age

The complainant must establish that the treatment he experienced was a consequence of a distinction based on age. The conduct complained of may only be considered from the date on which the Regulations came into effect, namely 1 January 1990. There is no dispute that Rule 30 makes a distinction based on age by specifying that members must retire or transfer to the honorary membership list on reaching 65 years of age, unless an exemption is granted by the AIMPE. I find that the application of the Rule, the failure to provide an exemption to Mr O'Rourke and the decision to transfer him to the honorary membership list on 17 June 1992 constituted discrimination.

Whether the distinction nullified or impaired equality of opportunity

The Act requires that for discrimination to be found a complainant must show that the distinction, exclusion or preference has had the effect of "nullifying or impairing equality of opportunity or treatment".

Mr O'Rourke was denied full membership of AIMPE because of his age. This denial was instigated by the application of Rule 30 and the failure of the AIMPE to grant an exemption to Mr O'Rourke. As a direct result Mr O'Rourke was unable to obtain employment.

I find that the application of Rule 30 and the AIMPE's subsequent actions impaired the complainant's equality of opportunity or treatment in employment on the ground of age by denying him membership and thereby access to employment.

Inherent requirements of the job

There was no argument raised by the AIMPE that age was an inherent requirement of union membership or even of the job in which Mr O'Rourke was engaged.

Further, there is no issue that Mr O'Rourke was otherwise qualified and able to be a member of the AIMPE and to perform the job of a relief engineer.

Discussion of recommendations

Having found that Rule 30 of the AIMPE rules is discriminatory under the Act, I am required to consider what recommendations I should make.

The Act does not make it unlawful to discriminate on the ground of age. However, the Division of the Act under which I am conducting this inquiry is directed to the elimination of discrimination in employment and occupation. Section 35(2) expressly provides that, where an act or practice engaged in by a person or body constitutes discrimination, I may recommend compensation for a person who has suffered loss as a result of the discrimination.

I am aware of the AIMPE's obligations under the *Industrial Relations Act 1988*, now the *Workplace Relations Act 1996* (Cth), with respect to the enforcement of union rules. However the AIMPE took no step to change Rule 30 and refused Mr O'Rourke an exemption for it, as it is permitted to do.

The AIMPE's actions have impaired Mr O'Rourke's opportunity to continue in gainful employment. Mr O'Rourke seeks a revocation of the rule, an apology and compensation but he did not indicate what level of compensation he considered himself entitled to.

In the circumstances, I consider it appropriate to recommend that the AIMPE make an apology to Mr O'Rourke and that it repeal Rule 30 to ensure compliance with the Act.

Finally, I consider it appropriate that Mr O'Rourke be compensated for lost opportunity for work as a result of the discrimination he has suffered. I have taken into account that Mr O'Rourke's employment as a relief engineer was not permanent and subject to the needs of the tug operators and that there was no certainty as to how long he would be fit to continue to work. Certainly he was fit and well late in 1993 to be able to undertake a long voyage from Fremantle to China. In the circumstances it is difficult to quantify his loss with any precision.

The complainant must normally show that he has sought to mitigate his loss. Mr O'Rourke has provided information that he continued to seek employment after the transfer with his last job being in September – October 1993 in a voyage between Fremantle and China.

Because of uncertainties about the likely future earnings of a person compulsorily retired I have recommended in other similar complaints compensation equal to one year's income. In the year before the cancellation of Mr O'Rourke's full membership of the union he earned $23,398.80. I therefore recommend Mr O'Rourke be compensated by a payment of $23,398.80.

Notice of findings of the Commission

The Commission finds that the acts and practices complained of by the complainant, namely the rules of the AIMPE and the union's actions which had the effect of denying the complainant access to employment because of his age, constitute discrimination in employment based on age.

Reasons for findings

1. Rule 30 of the AIMPE's registered rules operates to exclude workers over 65 years of age remaining full members of the Institute.
2. The application of this rule constitutes discrimination on the ground of age.
3. The AIMPE denied the complainant an exemption for this rule.
4. The discrimination had the effect of nullifying and impairing equality of opportunity or treatment in the complainant's employment as actual and potential employers would not employ a non-union member.
5. It is not an inherent requirement of union membership or of the particular job that Mr O'Rourke be under 65 years of age.

Recommendations

1. AIMPE should make an apology to Mr O'Rourke.
2. Rule 30, which operates to prevent or restrict opportunity to employment on the ground of age, should be repealed.

Recommendation for compensation

The respondent should pay to the complainant the sum of $23,398.80 for financial loss suffered by reason of the discriminatory conduct.

Appendix A: Functions of the Human Rights and Equal Opportunity Commission

The Commission's functions

The Commission has specific legislative functions and responsibilities for the promotion of human rights and the elimination of discrimination under the Act. In particular the Commission is conferred with functions to inquire into acts or practices that may be inconsistent with or contrary to any human right or that may constitute discrimination - s.11(1)(f) and s.31(b).

The Commission is also conferred with functions

- to promote an understanding, acceptance and public discussion of human rights and equality of opportunity and treatment in employment and occupation in Australia - s.11(1)(g) and s.31(c)

- to advise on laws that should be made by the Parliament or action that should be taken by the Commonwealth on matters relating to human rights and equality of opportunity and treatment in employment and occupation - s.11(1)(j) and s.31(e)

- to advise on what action, in the opinion of the Commission, needs to be taken by Australia to comply with the provisions of the *International Covenant on Civil and Political Rights (*ICCPR) or any relevant international instrument and on matters relating to equality of opportunity and treatment in employment and occupation - s.11(1)(k) and s.31 (e).

The Act implements in part Australia's obligations under the ICCPR and the International Labour Organisation *Discrimination (Employment and Occupation) Convention 1958* (ILO 111). Each of these instruments is scheduled to the Act. The full text of ILO 111 is at Appendix B.

The Commission's jurisdiction and complaint handling functions

Part II Division 4 of the Act confers functions on the Commission in relation to equal opportunity in employment in pursuance of Australia's international obligations under ILO 111.[11]

The Commission can inquire into complaints of discrimination in employment and occupation against any employer and attempt to effect a settlement – s.31(b) and s.32(b).

Where conciliation is unsuccessful or is deemed inappropriate, and the Commission is of the opinion that an act or practice appears to constitute discrimination, the Commission is required to provide an opportunity to the parties to make written and/or oral submissions in relation to the complaint – s.27 and s.33.

Where, after the inquiry, the Commission finds discrimination the Commission is required to service notice setting out the findings and the reasons for those findings – s.35(2)(a). The Commission may include recommendations for preventing a repetition of the act or practice and for the payment of compensation or the taking of any other action to remedy or reduce the loss or damage suffered as a result – s.35(2)(b) and (c).

However, it is not unlawful to breach the principles of non-discrimination protected under the Act and the Commission does not have power to enforce its recommendations. If the Commission makes a finding of discrimination it must report on the matter to the federal Attorney-General under s.31(b)(ii) who subsequently tables the report in Parliament in accordance with s.46 of the Act. This is effectively the only power which the Commission can exercise if a complaint proves to be non-conciliable.

The Human Rights Commissioner (the Commissioner) performs the Commission's function of inquiring into any act or practice that may constitute discrimination as defined by the Act – s.8(6).

Discrimination in employment and occupation

Under the Act discrimination means

(a) any distinction exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin that has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation; and
(b) any other distinction, exclusion or preference that:
    (i) has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation; and
    (ii) has been declared by the regulations to constitute discrimination for the purposes of this Act;
    but does not include any distinction, exclusion or preference:
(c) in respect of a particular job based on the inherent requirements of the job; …[12]

ILO 111 prohibits discrimination on certain specific grounds.[13] Those grounds are contained in the Act in subparagraph (a) of the definition of discrimination. ILO 111 also provides that ratifying States may address discrimination on additional grounds.[14] The Act provides in subparagraph (b)(ii)

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11 Ratified by Australia in 1973.

12 s.3(1).

13 Art 1(1)(a).

14 Art 1(1)(b).

of the definition of discrimination for the adoption of regulations to declare additional grounds in accordance with this provision in ILO 111. Under this power the *Human Rights and Equal Opportunity Commission Regulations* in 1989 declared age as a ground of discrimination for the purposes of the Act with effect from 1 January 1990.[15] (The full text of the Regulations is set out in Appendix C.)

It is an accepted principle in domestic law that where a statute contains language that derives directly from an international instrument, such as the Act does, it should be interpreted in accordance with the interpretation the language has been given at the international level.[16] The comments of the International Labour Conference Committee of Experts on the Application of Conventions and Recommendations (the Committee of Experts) are relevant to the interpretation of the Act's definition of discrimination.

According to the Committee of Experts there are essentially three elements to the definition of discrimination in ILO 111.

1. an objective factual element, being the existence of a distinction, exclusion or preference which effects a difference in treatment in comparison with another in the same situation
2. a ground on which the difference of treatment is based that is declared or prescribed
3. the objective result of this treatment, that is, a nullification or impairment of equality of opportunity or treatment in employment or occupation.

Further the Committee of Experts has expressed the view that "the adoption of impersonal standards based on forbidden grounds" and "apparently neutral regulations and practices [that] result in inequalities in respect of persons with certain characteristics" also constitute discrimination.[17] The Committee of Experts has commented on the ILO 111 provision of "any distinction, exclusion or preference in respect of a particular job based on inherent requirements of the job". To be an inherent requirement the condition imposed must be proportionate to the aim being pursued and must be necessary because of the very nature of the job in question. The Committee stated for example that the exception "refers to a specific and definable job, function or task. Any limitation within the context of this exception must be required by characteristics of the particular job, and be in proportion to its inherent requirements."[18]

The Committee of Experts has agreed that an intention to discriminate is not necessary for a finding of discrimination under ILO 111.[19]

Appendix B: International Labour Organisation Discrimination (Employment and Occupation) Convention (1958)

The General Conference of the International Labour Organisation,
Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Forty-second Session on 4 June 1958, and
Having decided upon the adoption of certain proposals with regard to discrimination in the field of employment and occupation, which is the fourth item on the agenda of the session, and

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15 SR 1989 407, notified in the Commonwealth of Australia Gazette on 21 December 1989.

16 *Koowarta v Bjelke-Petersen & Others* (1981) 153 CLR 168 at 265 (Brennan J); *Minister for Foreign Affairs and Trade & Ors v Magno and Another* (1992) 112 ALR 529 at 535-6 (Gummow J).

17 International Labour Conference, *Equality in Employment and Occupation: General Survey by the Committee of Experts on the Application of Conventions and Recommendations* ILO, Geneva, 1988, at 23.

18 Ibid, at 138.

19 Ibid, at 22.

Having determined that these proposals shall take the form of an international Convention, and
Considering that the Declaration of Philadelphia affirms that all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity, and
Considering further that discrimination constitutes a violation of rights enunciated by the Universal Declaration of Human Rights,
adopts this twenty-fifth day of June of the year one thousand nine hundred and fifty-eight the following Convention, which may be cited as the Discrimination (Employment and Occupation) Convention, 1958:

Article 1

1. For the purpose of this Convention the term "discrimination" includes:
   (a) any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation;
   (b) such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the Member concerned after consultation with representative employer's and worker's organisations, where such exist, and with other appropriate bodies.
2. Any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof shall not be deemed to be discrimination.
3. For the purpose of this Convention the terms "employment" and "occupation" include access to vocational training, access to employment and to particular occupations, and terms and conditions of employment.

Article 2

Each Member for which this Convention is in force undertakes to declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof.

Article 3

Each Member for which this Convention is in force undertakes, by methods appropriate to national conditions and practice:

(a) to seek the co-operation of employers' and workers' organisations and other appropriate bodies in promoting the acceptance and observance of this policy;
(b) to enact such legislation and to promote such educational programmes as may be calculated to secure the acceptance and observance of the policy;
(c) to repeal any statutory provisions and modify any administrative instructions or practices which are inconsistent with the policy;
(d) to pursue the policy in respect of employment under the direct control of a national authority;
(e) to ensure observance of the policy in the activities of vocational guidance, vocational training and placement services under the direction of a national authority;
(f) to indicate in its annual reports on the application of the Convention the action taken in pursuance of the policy and the results secured by such action.

Article 4

Any measures affecting an individual who is justifiably suspected of, or engaged in, activities prejudicial to the security of the State shall not be deemed to be discrimination, provided that the individual concerned shall have the right to appeal to a competent body established in accordance with national practice.

Article 5

1. Special measures of protection or assistance provided for in other Conventions or Recommendations adopted by the International Labour Conference shall not be deemed to be discrimination.
2. Any Member may, after consultation with representative employers' and workers' organisations, where such exist, determine that other special measures designed to meet the particular requirements of persons who, for reasons such as sex, age, disablement, family responsibilities or social or cultural status, are generally recognised to require special protection or assistance, shall not be deemed to be discrimination.

Article 6

Each Member which ratifies this Convention undertakes to apply it to non-metropolitan territories in accordance with the provisions of the Constitution of the International Labour Organisation.

Article 7

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 8

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.
2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.
3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

Article 9

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.
2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 10

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications and denunciations communicated to him by the Members of the Organisation.
2. When notifying the members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 11

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

Article 12
At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 13
1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides:
   (a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 9 above, if and when the new revising Convention shall have come into force;
   (b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.
2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 14
The English and French versions of the text of this Convention are equally authoritative.

Appendix C: Human Rights and Equal Opportunity Commission Regulations

Statutory Rules 1989 No. 407

Human Rights and Equal Opportunity Commission Regulations

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Regulations under the *Human Rights and Equal Opportunity Commission Act 1986*.

Dated 21 December 1989.

BILL HAYDEN
Governor-General

By His Excellency's Command,

LIONEL BOWEN
Attorney-General

Citation
1. These Regulations may be cited as the Human Rights and Equal Opportunity Commission Regulations.

Commencement
2. The Regulations commence on 1 January 1990.

Interpretation
3. In these Regulations, unless the contrary intention appears:
   "**Impairment**" means:
   (a) total or partial loss of a bodily function; or

(b) the presence in the body of organisms causing disease; or
(c) total or partial loss of a part of the body; or
(d) malfunction of a part of the body; or
(e) malformation or disfigurement of a part of the body;

"**marital status**" has the same meaning as in the *Sex Discrimination Act 1984*;
"**the Act**" means the *Human Rights and Equal Opportunity Commission Act 1986.*

Other distinctions, exclusions or preferences that constitute discrimination

4. For the purposes of subparagraph (b)(ii) of the definition of "discrimination" in subsection 3 (1) of the Act, any distinction, exclusion or preference made:
(a) on the ground of:
(i) age; or
(ii) medical record; or
(iii) criminal record; or
(iv) impairment; or
(v) marital status; or
(vi) mental, intellectual or psychiatric disability; or
(vii) nationality; or
(viii) physical disability; or
(ix) sexual preference; or
(x) trade union activity; or
(xi) one or more of the grounds specified in subparagraphs (iii) to (x) (inclusive) which existed but which has ceased to exist; or
(b) on the basis of the imputation to a person of any ground specified in paragraph (a);
is declared to constitute discrimination for the purposes of the Act.

Note
1. Notified in the *Commonwealth of Australia Gazette* on 21 December 1989.