



Australian
Human Rights
Commission

DA v

Commonwealth
of Australia

[2012] AusHRC 59

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**DA v Commonwealth of Australia
(Australian Federal Police)**

Report into discrimination in
employment on the basis of
criminal record

[2012] AusHRC 59

Australian Human Rights Commission 2012



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**Australian
Human Rights
Commission**

January 2013

The Hon. Nicola Roxon MP
Attorney-General
Parliament House
Canberra ACT 2600

Dear Attorney

Pursuant to s 31(b)(ii) of the *Australian Human Rights Commission Act 1986* (Cth), I attach my report of an inquiry into the complaint made by DA of discrimination in employment on the basis of criminal record by the Australian Federal Police.

I have found that the act complained of constitutes discrimination in employment on the basis of the complainant's criminal record.

By letter dated 5 October 2012, the Australian Federal Police provided the following response to my recommendations:

Over the past two years, the AFP has reviewed the gateway processes for recruits joining the AFP. During this time, the information on the AFP website about the gateway requirements has improved and now includes specific information about the security and criminal history gateways.

The AFP acknowledge the issues raised by President Triggs and will ensure that gateway processes are reviewed again in light of her recommendations. However, our instructions are that the AFP does not intend to compensate DA.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Gillian Triggs', with a long horizontal flourish underneath.

Gillian Triggs
President
Australian Human Rights Commission

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1 Introduction

1. This is a report of my inquiry into a complaint of discrimination in employment on the basis of criminal record made to the Australian Human Rights Commission by DA. The complaint is made against the Commonwealth of Australia (Australian Federal Police).
2. As a result of my inquiry, I have found that DA was discriminated against on the basis of his criminal record.
3. This inquiry has been undertaken pursuant to s 31(b) of the *Australian Human Rights Commission Act 1986* (Cth) (AHRC Act).
4. I have directed that the complainant's identity be suppressed in accordance with s 14(2) of the AHRC Act. For the purposes of this report the complainant's name has been suppressed and replaced with the pseudonym DA.

2 Summary

5. DA submitted an online application for the position of Base Police Recruit with the AFP. On 14 February 2011, the AFP informed DA that his application for this position would not proceed through to the next step in the recruitment process because of his criminal and traffic offences. Accordingly, the AFP excluded DA from the selection process without any separate consideration of the merits of his application.
6. The AFP denies that its decision to exclude DA from the selection process constitutes discrimination in employment. The AFP submits that its decision was based on the inherent requirements of the particular job of Base Police Recruit. I accept that integrity, good judgment and a demonstrated respect and adherence to the law are inherent requirements of the position of Base Police Recruit.
7. However, I am not satisfied that the AFP's exclusion of DA from the selection process was based on the inherent requirements of the job. In reaching this conclusion, I found the following factors persuasive:
 - most of DA's offences were incurred while he was a juvenile;
 - DA's most recent offence of driving on a road while licence suspended and disobeying a 'no right turn' sign occurred eight years ago;
 - DA has not committed any offences in approximately eight years; and
 - DA's conduct since his last offence, including founding the Hornsby Youth Crime Prevention Committee, demonstrates a commitment to the law and a respect for law enforcement processes.
8. I recommend that the AFP pay DA \$1 000 for hurt, humiliation and distress.
9. I also recommend that the AFP:
 - Adopt guidelines to assist its officers assess whether an applicant with a criminal record can perform the inherent requirements of the job.
 - Publish these guidelines on its website.
 - Provide training on these guidelines to recruitment staff tasked with assessing an applicant with a criminal record's suitability to perform the inherent requirements of the job.

- Amend the on-line application form for Base Police Recruits to enable applicants with a criminal record to make submissions in relation to their criminal history, the circumstances surrounding their offence or offences, as well as how they can perform the inherent requirements of the job.

3 Outline of complaint

10. DA applied on-line for the position of Base Police Recruit with the AFP. The AFP received the application on 17 November 2010.
11. In DA's on-line application form, he disclosed the following criminal record in response to the item 'LEGAL HISTORY':

Year	Age	Charge	Penalty
1996	13	Larceny	Dismissed with Caution
1997	14	Use offensive language in/near public place/school Carry cutting weapon upon apprehension Possess prohibited drug	Dismissed with Caution Fine of \$100/ 12 months in default Fine of \$100/ 12 months in default
1998	15	Under 18 consume liquor in public place Common assault Custody of an offensive implement in a public place	Fine of \$100/ 12 months in default Probation without conditions 15 months
2003	20	Driving on a road while licence suspended Disobeying a "no right turn" sign	Fine of \$700 + costs Disqualification for 12 months Fine of \$100 + costs

12. He also provided the following traffic history:

Year	Age	Charge	Penalty
2000	17	Exceed speed limit by more than 15km/h but not more than 30km/h	Fine \$184/ 3 demerit points
2002	19	Drive contrary to stop sign	Fine \$221/ 4 demerit points

13. The AFP informed the Commission that it 'received over 1300 applications' and that 'a relatively significant proportion of applications advised of criminal convictions and/or traffic offences'.
14. The AFP states that its electronic recruitment system allows its staff to validate applications against the minimum mandatory requirements of the role. If an applicant has a driving or criminal history, the application is referred to a delegate for consideration.
15. The AFP states that DA's application was referred to a delegate for consideration. The delegate was given DA's resume that included information about his education and employment experience as well as DA's on-line application, which included a 500 word summary about 'why he wanted to apply to the AFP'.
16. On 14 February 2011, an officer of the AFP sent DA an email advising that his application would not proceed through to the next step in the recruitment process because of his legal and traffic history.
17. DA's application form included the fact that he had previously applied to the AFP in 2008. At that time, the AFP considered that his criminal record precluded him from being able to perform the inherent requirements of the job. However, the AFP agreed to consider DA's application if he re-applied after two years of no further offending.

4 Conciliation

18. The Commission endeavoured without success to conciliate a settlement of the complaint.

5 Relevant legal framework

19. Part II, Division 4 of the AHRC Act, which contains s 30 – s 35, is concerned with the Commission's functions relating to equal opportunity in employment.
20. Section 31(b) confers on the Commission a function of inquiring into any act or practice that may constitute discrimination. Section 32(1)(b) requires the Commission to exercise this function when a complaint is made to it in writing alleging that an act or practice constitutes discrimination. Section 8(6) of the AHRC Act requires that the function of the Commission under s 31(b) be performed by the President.

21. Section 3(1) of the AHRC Act defines discrimination for the purposes of s 31(b) as:
- (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 AHRC 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; or
 - (d) in connection with employment as a member of the staff of an institution that is conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or creed, being a distinction, exclusion or preference made in good faith in order to avoid injury to the religious susceptibilities of adherents of that religion or that creed.
22. Australia has declared criminal record as a ground of discrimination for the purposes of the AHRC Act.¹

6 Relevant questions to be considered

23. In deciding whether there has been discrimination within the terms of s 31(b) of the AHRC Act, I am required to consider the following questions:
- whether there was an act or practice within the meaning of s 30(1) of the AHRC Act;
 - whether that act or practice involved a distinction, exclusion or preference that was made on the basis of the complainant's criminal record;
 - whether that distinction, exclusion or preference had the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation; and
 - whether that distinction, exclusion, or preference was based on the inherent requirements of the job.
24. I will deal with the first three issues briefly below.
25. In my view, the AFP's exclusion of DA from the selection process without any separate consideration of the merits of his application is an 'act' within the meaning of s 30(1) of the AHRC Act.
26. The AFP submits that the reason for its exclusion of DA from the selection process was his legal history as outlined above as well as his traffic history. I therefore conclude that the AFP made an exclusion on the basis of DA's criminal record.
27. The AFP's exclusion of DA on the basis of his criminal record had the effect of impairing his equality of opportunity in employment. DA was removed from the pool of potential candidates. Other candidates who did not have a criminal record were not eliminated from the selection process at this stage and went on to have their relative merits for the position more fully considered.
28. Therefore, the central issue in dispute is whether the AFP's exclusion of DA from the selection process was 'based on' the inherent requirements of the job of Base Police Recruit. That is, whether DA's criminal record prevents him from being able to perform the inherent requirements of the job.

7 Was the AFP's exclusion of DA based on the inherent requirements of the job?

29. Section 3(1)(c) of the AHRC Act provides that discrimination 'does not include any distinction, exclusion or preference in respect of a particular job that is based on the inherent requirements of the job'.
30. Section 3(1)(c) is an 'exception' to the prohibition against discrimination. It should therefore be interpreted strictly, so as not to result in undue limitation of the protection conferred by the legislation.²
31. The AHRC Act was 'introduced to be the vehicle by which Australia's obligations under the [ILO 111 Convention] are implemented.'³ For this reason, it is appropriate to construe s 3(1) of the AHRC Act in accordance with the construction given in international law to Article 1 of the ILO 111 Convention.⁴
32. Further, the Governing Body of the International Labour Organisation has created a committee known as the Committee of Experts on the Application of Conventions and Recommendations. It is orthodox to rely upon the expressions of opinion of the Committee for the purposes of interpreting the ILO 111 Convention.⁵

7.1 Identifying the 'inherent requirements'

33. Appropriate identification of the inherent requirements of the job is a pre-condition to proving that the complainant is unable to perform those inherent requirements.
34. An 'inherent requirement' is something that is 'essential to the position'⁶ and not 'peripheral'.⁷ It is an 'essential feature' or 'defining characteristic'.⁸
35. Further, the inherent requirements must be in respect of 'a particular job'. The term 'a particular job' in Article 1(2) of the ILO 111 Convention has been construed by reference to the preparatory work and the text of the Convention to mean 'a specific and definable job, function or task' and its 'inherent requirements' are those required by the characteristics of the particular job.⁹
36. As the Commission's guidelines for the prevention of discrimination in employment on the basis of criminal record state:

Broad general statements about a job's requirements are not clear enough to allow for an assessment of inherent requirements.¹⁰
37. The AFP submits that 'an applicant's character is an inherent requirement for any position as an AFP employee, particularly including the position of sworn police officer'. It submits that the inherent character element required for a sworn police officer is of a high level given that the role involves wide ranging responsibilities including:
 - driving police vehicles and carrying out urgent duty driving;
 - traffic management; and
 - making decisions regarding arrests of members of the public including in relation to driving offences and issuing infringement notices, including traffic infringement notices.

38. The AFP states that integrity is a core requirement of the AFP. The AFP states that on an individual level, integrity is displayed through soundness of moral principle, honesty and sincerity. Further, the AFP states that the 'exercise of police powers requires a level of tact, judgment and maturity of decision-making, as well as a demonstrated respect and adherence to the law.'
39. The AFP has provided the Commission with its position description for 'Team Member Police Officer, Community Policing'. The position description states that the work may include 'assessing available information or evidence and determining appropriate law enforcement responses'. The 'Work Level Standards' for this role include 'shows personal drive and integrity'.
40. The AFP also submits that the inherent requirement of a high level of character and integrity is reflected in the AFP Code of Conduct which applies to all AFP employees. The AFP Code of Conduct relevantly provides:
 - a) an AFP appointee must at all times behave in a way that upholds the good order and discipline of the AFP; and
 - b) an AFP appointee must at all times behave in a way that upholds the AFP Core values, and the integrity and good reputation of the AFP.
41. I accept that an inherent requirement of the position of a Base Police Recruit with the AFP is to be a person of good character. I also accept that integrity, good judgment and a demonstrated respect and adherence to the law are inherent requirements of the position of Base Police Recruit.

7.2 Was the AFP's exclusion of DA based on the identified inherent requirements of the job?

42. The phrase 'based on' requires more than a 'logical link' between the inherent requirements of the job and the distinction, exclusion or preference.¹¹ Instead, I must be satisfied that there is a 'tight' or 'close' connection between the AFP's exclusion of DA from the selection process and the inherent requirements of the job.
43. As Black CJ observed in *Commonwealth v Bradley*¹² to interpret the expression 'based on' as requiring only a logical link would defeat the Act's object of promoting equality of opportunity in employment by, in effect, permitting the assessment of a person's suitability for a particular job on grounds other than their individual merit.¹³
44. The decision of the Anti-Discrimination Tribunal in *Wall v Northern Territory Police*,¹⁴ considering the application of legislation prohibiting discrimination on the basis of 'irrelevant criminal record' is instructive in this regard. In that case, the Tribunal found that the respondent had not demonstrated a 'tight correlation' between the purported inherent integrity requirement and the complainant's spent criminal record for an offence of theft. The Tribunal commented that it was 'not possible to adequately assess the integrity and honesty, or lack thereof, of a candidate without considering a whole range of factors and characteristics, [such as merit, experience, personal circumstances, references etc.]... – not just criminal history (spent or otherwise)'.

(a) **The factors relevant to an inherent requirements assessment**

45. The following factors are relevant to an assessment of whether DA could perform the inherent requirements of the job.¹⁴

(i) **Nature of criminal record including custodial sentence**

46. DA's criminal record includes a number of offences during the period 1996 to 1998. DA was aged 13-15 years at the time. The offences include:

- 1996: Larceny, dismissed with a caution.
- 1997: Using offensive language in/near public place/school, Carry cutting weapon upon apprehension and possess prohibited drug. The offensive language charge was dismissed with a caution and he was given two fines of \$100 each for the other offences.
- 1998: DA was charged with four more offences, including under 18 consuming liquor in public place and common assault. He was fined \$100 for both of these offences. He was also charged with two incidents of custody of an offensive implement in a public place for which he was placed on probation with conditions for 15 months.

47. DA's most recent offence took place in 2003 when he was 20 years old. He was convicted of driving on a road while licence suspended and disobeying a no right turn sign. He was fined \$700 and \$100 respectively and had his licence disqualified for 12 months.

48. I note that DA did not serve a custodial sentence for any of these offences.

(ii) **Circumstances surrounding offending**

49. Most of DA's convictions occurred when he was a juvenile during a two year period whilst he was 13-15 years of age. DA explains that his juvenile offences occurred during a time where he had 'fallen in with a bad crowd'.

50. DA's summary about why he wants to join the AFP includes the following statement:

My turbulent adolescence was one whereby I had negative involvement with Police services, however this has not only been part of my life that I have long since outgrown, but has in many aspects, strengthened my skills when working with offenders. This period was turned from a negative life event into a positive one as it has greatly enabled personal and professional insight into the wide ranging impact offending behaviour can cause.

51. He explains that his driving and traffic offences in 2003 occurred when he decided, in foolishness, to take his vehicle to drop off his young son to his grandparent's house.

(iii) **Time since convictions**

52. DA has not committed any offences since 2003. Approximately 8 years has passed between the time of his last offence and the AFP's decision to exclude him from the selection process.

(iv) Conduct since period of offending

53. DA maintains that his current level of integrity is in 'clear juxtaposition' to the events of his childhood. He states 'that from age 16, he set about turning his life around' by not associating with friends who engage in law-breaking behavior, marrying his current wife, completing a Bachelor of Social Science (Psychology) and gaining employment in hospitality and later as a Youth Worker.
54. He has worked for Ronald McDonald House Charities, the Ambulance Service of NSW and is now a coordinator of Mission Australia's Hornsby Children's Court Support Program. DA is a member of the Hornsby Community Drug Action team.
55. DA claims that his integrity and respect for the law is demonstrated by founding the Hornsby Crime Prevention Committee. He states that he is engaged in regular contact and collaboration with senior members of Police in this role. He also states that the NSW Police often request that he act as a support person for young people who are unable to have a parent/guardian present during the interview process.

(b) AFP's submissions

56. The AFP submits that its high character requirements may preclude individuals with a pattern of serious driving infringements from becoming sworn Police Officers or Police recruits.
57. The AFP states that it appreciates DA has acted with personal and professional integrity in recent times. However, in its view, DA's traffic history displays a pattern of disregard for the law within the past ten years. It states that DA's most recent offence, driving whilst suspended, is a serious traffic offence. The AFP's delegate determined that despite some positive changes made by DA, it could not ignore the nature and occurrence dates of all incidents in light of the position he was applying for.

(c) Conclusion

58. This is a delicately balanced matter. I acknowledge that the character requirements of a Base Police Recruit are at the higher end of the scale. However, after carefully considering all of the material before me, I have concluded that the AFP has not demonstrated a sufficiently tight or close connection between its exclusion of DA from the selection process and the high standard character requirements of a Base Police Recruit, including integrity, good judgment and a demonstrated respect and adherence to the law.
59. I accept that DA's driving offence in 2003 is relevant to an assessment of whether he has a high regard for the law. However, I do not accept that this offence will forever render DA incapable of having the requisite judgment, integrity and regard for the law required of AFP Base Level Recruits. It is necessary to consider all of DA's individual circumstances to make an assessment about whether he can perform the inherent requirements of the job.
60. Most of DA's offences occurred while he was a juvenile. DA states that his juvenile offences occurred during a 'turbulent adolescence' which he has 'long since outgrown'. It is relevant that DA states that he has turned this 'negative life experience into a positive one' by gaining an 'insight into the impact offending behaviour can cause'.

61. Approximately eight years has passed since DA's driving offence and other traffic infringements. I recognise that DA's driving offence in 2003 would not be 'spent' under the relevant spent convictions regime until 2013.¹⁵ However, in 2008 the AFP agreed to consider DA's application after a further two years of non-offending. This would appear to indicate that the AFP did not at this time consider that DA would after two years be incapable of satisfying the inherent requirements of the job. DA did not offend during these further two years. More importantly, he has not offended in the eight years since his last offence.
62. Further, in these eight years, DA has taken a number of steps to become an effective member of the community. In 2010, he completed a Bachelor of Social Science (Psychology). He is currently completing a Masters in criminology and criminal justice. He has been employed in various professional roles since 2000, including working for Ronald McDonald House Charities, the Ambulance Service of NSW and as a coordinator of Mission Australia's Hornsby Children's Court Support Program. He has worked casually for the NSW National Parks and Wildlife Service, which involves basic law enforcement duties. He has also volunteered for the Australian Red Cross since 2007. The AFP has submitted that the level of integrity required in these positions is different to that required of a Base Police Recruit. I accept that these roles are different and require different skills. However, in my view, DA's educational, employment and voluntary experience is evidence of his rehabilitation, his commitment to making a contribution to society and his regard for the law.
63. It is also relevant that DA states that he has been acknowledged by various agencies, including NSW Police and the NSW Sheriff's office for his ongoing coordination of the Hornsby Children's Court Support Program, which seeks to engage with young offenders in order to prevent future recidivism. He states that he engages in regular contact and collaboration with senior members of Police as part of his ongoing membership of the Hornsby Community Drug Action team and in his role as the founder of the Hornsby Youth Crime Prevention Committee.
64. In light of the period of time since DA's last offence and his conduct during this period, which demonstrates a commitment to the law and a respect for law enforcement processes, I am not satisfied that DA is incapable of fulfilling the inherent requirements of the job.
65. For the reasons set out above, I find that the AFP's exclusion of DA constitutes discrimination on the basis of criminal record.

8 Recommendations

66. Where, after conducting an inquiry, the Commission finds that an act or practice engaged in by a respondent constitutes discrimination; the Commission is required to serve notice on the respondent setting out its findings and reasons for those findings.¹⁶ The Commission may include in the notice any recommendation for preventing a repetition of the act or a continuation of the practice.¹⁷
67. The Commission may also recommend:
- the payment of compensation to, or in respect of, a person who has suffered loss or damage; and
 - the taking of other action to remedy or reduce the loss or damage suffered by a person.¹⁸
68. On 7 September 2012, DA provided the Commission with submissions regarding possible recommendations.

8.1 Compensation

69. I am of the view that compensation should be paid to DA for loss and damage suffered. I consider that compensation in the sum of \$1 000 is appropriate. In assessing the sum recommended, I have taken into account the matters discussed below.
70. The Federal Court has indicated that tort principles for the assessment of damages in cases of this type should be applied.¹⁹ I am of the view that this is the appropriate approach to take in the present matter. For this reason, so far as is possible by a payment of compensation, the object should be to place the injured party in the same position as if the wrong had not occurred.²⁰

(a) Economic loss

71. DA has not provided the Commission with any particulars of economic loss, such as loss of earnings, that he has suffered because of the AFP's conduct.
72. He states that he has expended a significantly large number of hours participating in the AFP's recruitment processes and participating in the Commission's inquiry processes. He states that he has 'also had to take unpaid leave, miss out on wages and expend funds to obtain relevant criminal history and driving record documents'.
73. In the absence of any particulars of the above economic loss, I am not inclined to recommend that the AFP provide DA compensation for this stated economic loss.

(b) Hurt, humiliation and distress

74. Compensation for DA's hurt, humiliation and distress would, in tort law, be characterised as 'non-economic loss'. There is no obvious monetary equivalent for such loss and courts therefore strive to achieve fair rather than full or perfect compensation.²¹
75. I note that this is the second time the AFP has excluded DA from its selection process without any separate consideration of the merits of his application. In my view, the experience of being excluded a second time would have caused DA humiliation and distress.
76. I therefore consider a modest award of monetary compensation for humiliation and distress in the amount of \$1 000 is appropriate.

8.2 Policy

77. The AFP has indicated that it is developing guidelines to assist its officers assess whether applicants with a criminal record can perform the inherent requirements of the job. I recommend that the AFP adopt these guidelines. I also recommend that the AFP publish these guidelines on its website so that all members of the public can access them.
78. I recommend that the AFP provide training on these guidelines to recruitment staff tasked with assessing an applicant with a criminal record's suitability to perform the inherent requirements of the job.
79. Finally, I recommend that the AFP amend its on-line application form for Base Police Recruits to enable applicants with a criminal record to make submissions in relation to their criminal history, the circumstances surrounding their offence or offences, as well as how they can perform the inherent requirements of the job.

- Response to Recommendations

80. By letter dated 20 September 2012, the Commission requested the AFP advise whether it had taken or is taking any action as a result of my findings and recommendations and, if so, the nature of that action.

81. By letter dated 5 October 2012, the AFP provided the following response to my recommendations:

Over the past two years, the AFP has reviewed the gateway processes for recruits joining the AFP. During this time, the information on the AFP website about the gateway requirements has improved and now includes specific information about the security and criminal history gateways.

The AFP acknowledge the issues raised by President Triggs and will ensure that gateway processes are reviewed again in light of her recommendations. However, our instructions are that the AFP does not intend to compensate DA.

82. I report accordingly to the Attorney General.



Gillian Triggs

President

Australian Human Rights Commission

January 2013

- 1 *Australian Human Rights Commission Regulations 1989* (Cth), reg 4(a)(iii).
- 2 *X v Commonwealth* (1999) 200 CLR 177, 222-223, [146] (Kirby J); *Qantas Airways Ltd v Christie* (1998) 193 CLR 280, 333, [152.4] and footnotes 168-169 (Kirby J). This approach has been applied to Part II, Division 4 of the SDA in *Gardner v All Australian Netball Association Limited* (2003) 197 ALR 28, [19], [23]-[24] (Raphael FM); *Ferneley v Boxing Authority of New South Wales* (2001) 191 ALR 739, [89] (Wilcox J).
- 3 *Commonwealth v Bradley* (1999) 95 FCR 218, 235 [35] (Black CJ).
- 4 *Commonwealth v Hamilton* (2000) 108 FCR 378, 385 [31] and following.
- 5 *Commonwealth v Hamilton* (2000) 108 FCR 378, 387 [36].
- 6 *Qantas Airways v Christie* (1998) 193 CLR 280, 294 [34] (Gaudron J).
- 7 *X v The Commonwealth* (1999) 200 CLR 177, 208 [102] (Gummow and Hayne JJ).
- 8 *X v Commonwealth* (1999) 200 CLR 177, [42] (McHugh J).
- 9 International Labour Organisation, *General Survey: Equality in Employment and Occupation*, (1988), [126]. See also: *Qantas Airways Ltd v Christie* (1998) 193 CLR 280, [72] (McHugh J).
- 10 The Australian Human Rights Commission, 'On the Record: Guidelines for the prevention of discrimination in employment on the basis of criminal record (2012)', 16.
- 11 See: *Mr KL v State of NSW (Department of Education)* [2010] AusHRC 42. See further: *Commonwealth v Bradley (Bradley)* (1999) 95 FCR 218, *Commonwealth v Human Rights and Equal Opportunity Commission and Others* (1998) 158 ALR 468, 482.
- 12 (1999) 95 FCR 218, 235 [36].
- 13 *Ibid* [36].
- 14 The Chief Executive is obliged to consider similar matters under s 336 of the *Corrective Services Act 2006* and the Department's Guidelines for Assessing Suitability – Relevant Persons, dated 28 August 2006.
- 15 The *Crimes Act 1914* (Cth), s 85ZM. I also note that Section 85ZZH of the *Crimes Act 1914* (Cth) excludes law enforcement agencies from the spent convictions scheme for the purposes of making decisions in relation to assessing prospective employees.
- 16 *Australian Human Rights Commission Act 1986* (Cth), s 35(2)(a).
- 17 *Australian Human Rights Commission Act 1986* (Cth), s 35(2)(b).
- 18 *Australian Human Rights Commission Act 1986* (Cth), s 35(2)(c).
- 19 *Peacock v Commonwealth* (2000) 104 FCR 464, 483 [55] (Wilcox J).
- 20 See: *Hall v A & A Sheiban Pty Limited* (1989) 20 FCR 217, 239 (Lockhart J).
- 21 *Sharman v Evans* (1977) 138 CLR 563, 589 (Gibbs and Stephen JJ).

Further Information

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