




4-14-2006

A Comparative Analysis of Human Rights Laws in the United States and Australia

Emily F. Chalifoux

Western Michigan University, emily.chalifoux@gmail.com

Follow this and additional works at: http://scholarworks.wmich.edu/honors_theses

 Part of the [Business Law, Public Responsibility, and Ethics Commons](#), [Civil Rights and Discrimination Commons](#), [Comparative and Foreign Law Commons](#), [Human Resources Management Commons](#), [Human Rights Law Commons](#), [International Business Commons](#), [International Law Commons](#), and the [Legal Ethics and Professional Responsibility Commons](#)

Recommended Citation

Chalifoux, Emily F., "A Comparative Analysis of Human Rights Laws in the United States and Australia" (2006). *Honors Theses*. Paper 675.

This Honors Thesis-Open Access is brought to you for free and open access by the Lee Honors College at ScholarWorks at WMU. It has been accepted for inclusion in Honors Theses by an authorized administrator of ScholarWorks at WMU. For more information, please contact maira.bundza@wmich.edu.





THE CARL AND WINIFRED LEE HONORS COLLEGE

CERTIFICATE OF ORAL EXAMINATION

Emily F. Chalifoux, having been admitted to the Carl and Winifred Lee Honors College in Fall 2002, successfully presented the Lee Honors College Thesis on April 14, 2006.

The title of the paper is:

"A Comparative Analysis of Human Rights Laws in the United States and Australia"

A handwritten signature in cursive script, appearing to read 'Lori Muse', written over a horizontal line.

Dr. Lori Muse, Management

A handwritten signature in cursive script, appearing to read 'Satish Deshpande', written over a horizontal line.

Dr. Satish Deshpande, Management

A handwritten signature in cursive script, appearing to read 'Jennifer Palthe', written over a horizontal line.

Dr. Jennifer Palthe, Management

**A Comparative Analysis
of Human Rights Laws
in the United States and Australia**

Emily Chalifoux

EXECUTIVE SUMMARY

Discrimination does not make good business sense; it causes tension and a decrease in productivity. Even though human rights laws vary from country to country, conforming with these laws makes business more cohesive and productive. Some of the many benefits include:

- Increase the pool of potential employees - meaning the company increases its chances of getting the best person for the job,
- Build the morale and productivity of employees,
- Minimize complaints, disruptions and legal wrangles - leaving employees to focus on their work, and
- Add to the bottom line and build the company's reputation in the community.

Australia and the United States are culturally very similar. Australia's labor laws were enacted approximately 20 years after their US counterparts; yet, Australia has fewer discrimination claims annually. This could be because of small awards, fear of filing or a significantly smaller number of occurrences of discrimination. It is interesting to note that Australia's average turnover rate is 13.3% annually, while in the US it is 20.2%. This could be due in part to Australia's focus on employees when creating laws focused around benefits like annual leave.^{1, 2}

In December of 2005, Australia replaced all of its employment laws with one, all encompassing law called WorkChoices. While the ramifications of this change are yet to be seen, there is speculation of how this law could affect business.

¹ Hewitt

² Nobscot Corp

TABLE OF CONTENTS

Act	Page
Title VII of the Civil Rights Act.....	2
The Sex Discrimination Act of 1984.....	4
The Race Discrimination Act of 1975.....	5
The Human Rights and Equal Opportunity Commission Act of 1986.....	5
The Age Discrimination in Employment Act of 1976.....	7
The Age Discrimination Act of 2004.....	7
The Americans with Disabilities Act.....	8
The Disability Discrimination Act of 1992.....	10
The Equal Pay Act of 1963.....	11
The Family and Medical Leave Act of 1993.....	12
The Australian Leave Acts.....	12
The Fair Labor Standards Act.....	13
The Workplace Relations Amendment (WorkChoices).....	14
The Occupational Safety and Health Act.....	16
The National Occupational Health and Safety Commission Act.....	18
A Comparison of the US and Australian Laws.....	20
Comparison of Employment Laws Impact on the Business World.....	24
Research Impact.....	28
 References	

It is interesting to compare the history of the United States and Australia. Both civilizations were started by outcasts fleeing or being sent away from Great Britain. People from both countries endured long voyages and great hardships as they started a society with nothing but what they could bring with them. Today, both countries host thriving economies.

Australia's convict population formed what today is an impressive industrialized nation. Some believe that Australia has built a fair government in spite of its convict history, while others believe that its just government was designed because of its criminal background.

America set up the framework for its laws in the summer of 1776, when a group of the country's finest minds came together to decide how they wanted their country ruled for the rest of time. The document they crafted would be impressive by today's standards, but is mind-boggling when viewed in the context of everyday life in the eighteenth century.

The similar histories of these two great countries inspired this comparison of their human rights laws in terms of labor and business. The two have very similar laws, but they were created many years apart and take very different shapes. One reason for the time gap between US and Australian laws could be the difference in time of when their government was initially established.

The purpose of this paper is to analyze the similarities and differences in employment laws in the United States and Australia. This analysis sets the framework to see the impact of these laws in the courts and popular press.

TITLE VII OF THE CIVIL RIGHTS ACT OF 1964 (United States)

One of the most important pieces of legislation the United States government ever passed in relation to Labor and Employment rights was the Civil Rights Act of 1964, specifically, Title VII of the Act. The original purpose of the Act was to protect black men from discrimination in the workplace. However, in a last minute attempt to kill the act, gender was included. The addendum was not successful in defeating the bill, and on July 3, 1964 President Lyndon B. Johnson signed the bill into law.

Title VII protects citizens from workplace discrimination based on race, color, religion, sex, national origin or pregnancy. The goal of Title VII is to protect protected people from discrimination and to level the playing field so all people are treated equally. Title VII was the first step in the attempt to ensure that all people have comfortable places to work with fair compensation and an appropriate level of job security. After this Act became law, the Equal Employment Opportunity Commission was created, to enforce it.³

In 1980, the Equal Employment Opportunity Commission (EEOC) issued guidelines on sexual harassment in the workplace. These guidelines define sexual harassment as unwelcome sexual advance, requests for sexual favors, and other verbal or physical conduct of a nature that constitutes harassment when:

- Submission to the conduct is either explicitly or implicitly a term or condition of an individual's employment,
- Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting that individual, or

³Deshpande, Satish

- Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.³

When the EEOC has reason to believe that one of the rules that they enforce has been violated, there is a thorough process they follow to try to resolve the issue after receiving an initial complaint. If they are not able to do this, there is a standard procedure for taking cases to court.

Title VII covers all private employees working for companies of 15 or more people who have been employed for at least 20 weeks. It covers all public and private educational institutions, all employment agencies and all labor union with at least 15 people. However, it does not cover tax exempt private clubs, national security or Indian tribes.

One key aspect of Title VII is the exceptions to the Act. Businesses may discriminate among applicants and employees when the characteristic on which they are discriminating upon is of business necessity and job related or is a bona fide occupational qualification (BFOQ). One example of this would be grooming habits. A fire department could require its employees to be clean-shaven, as facial hair allows air leaks in oxygen masks. This would be considered racial discrimination against black people as their skin dries out more easily, thus making shaving often more difficult, but as it is a safety requirement for the job, this requirement is allowed under Title VII.

The EEOC believes that the best way for a company to protect itself from a sexual harassment lawsuit is to have a policy against sexual harassment. Companies should publicize their complaint process, have an effective complaint process, take immediate

³ Deshpande, Satish

steps upon the receipt of knowledge about sexual harassment and always remedy any case of sexual harassment.³

While Australia has no law that is as all encompassing as the American Civil Rights Act of 1964, it does have many smaller laws that cover parts of Title VII when considered individually. These laws include:

- The Sex Discrimination Act of 1984,
- The Race Discrimination Act of 1975, and
- The Human Rights and Equal Opportunity Commission Act of 1986.

THE SEX DISCRIMINATION ACT OF 1984 (Australia)

The Sex Discrimination Act makes it illegal to discriminate based on gender in the workplace. Sex discrimination is defined as a distinction, exclusion or restriction based on a persons gender, marital status or their ability to become pregnant. The objective if this act is to fulfill Australia's obligations set forth in the Convention on the Elimination of All Forms of Discrimination against Women, and parts of the International Labour Organisation Convention 165. The act is designed to:

- Promote equality between men and women,
- Eliminate discrimination on the basis of sex, marital status or pregnancy, and family responsibilities, and
- Eliminate sexual harassment at work, in educational institutions, in the provision of goods and services, in the provision of accommodation and in the administration of federal programs.

³ Deshpande, Satish

The commissioner who is responsible for overseeing the enforcement of the SDA is Pru Goward. Her responsibilities include researching and educating companies to promote greater equality between men and women. Her recent projects include striving for equal pay between the sexes, the cessation of sexual harassment, and encouraging women to join the finance industry. The commissioner is elected to a 5 year term; Gowards' term is scheduled to end July 30, 2006.^{4,5}

THE RACE DISCRIMINATION ACT OF 1975 (Australia)

In Australia, racial discrimination is treating a person less favourably based on their race, colour, descent, national origin or ethnic origin. The Race Discrimination Act was instituted to ensure that all people are treated fairly. In order to make sure that companies are in compliance with the RDA, the Australian government set up the Race Discrimination Commission. Tom Calma was appointed to be the commissioner until 2009. His role is to promote equality for everyone in the economic, cultural, social and political fields.⁶

THE HUMAN RIGHTS AND EQUAL OPPORTUNITY COMMISSION (HEROC) ACT OF 1986 (Australia)

The HEROC “defines discrimination to mean any distinction, exclusion or preference that has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation on the basis of race, colour, sex (includes marital

⁴ Employment and Workplace Relations Services for Australians

⁵ Public Service Association of NSW

⁶ Equity and Diversity

status), physical, mental, intellectual or psychiatric disability, impairment (including Human Immunodeficiency Virus infection, whether real or imputed), nationality, religion, political opinion, national extraction, social origin, age, medical record, criminal record, sexual preference or trade union activity⁷.” This Act does not, however, say that all discrimination is illegal. If it is a job requirement that an applicant be able to walk, someone in a wheel chair could not be considered for that job as that would be considered to be placing undue hardship on the business. If an attribute is a bona fide occupational qualification, applicants can be turned away if they do not possess that attribute. This is part of the Act was designed to prevent companies from being punished as they try to make sound business decisions and find the right person for each job. It is similar to the US American’s with Disabilities Act, which is discussed in depth if following sections.

Employers are required to provide reasonable accommodation to employees who are able to perform the essential functions of a job. This includes anyone with physical, intellectual, psychiatric, sensory and neurological learning difficulties, physical disfigurement and the presence in the body of disease carrying organisms past, present or future disabilities. The Government of Australia defines reasonable accommodation as, “the introduction of appropriate measures to enable people with disabilities to enjoy the fundamental human rights and freedoms in the existing six international human rights treaties.”⁷

The Act also specifies that the Human Rights Commissioner retains the right to investigate any claim that may constitute discrimination. The current Human Rights Commissioner is Dr. Sev Ozdowski. His job entails educating the public and promoting awareness about human rights.

⁷ Resource Sheet: Making a Complaint to HREOC

It is interesting to note that neither Title VII nor the HERO C prohibit discrimination based on sexuality. It is perfectly legal to fire, or refuse to hire a gay or lesbian. While the morality of the issue is not being debated here, many people are fighting to get legal protection for all people so that no one can lose their job on the basis of their sexuality.⁸

THE AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1976 (United States)

The ADEA was designed to keep people over age 40 from being discriminated against in the workplace. Employees over 40 can be considered less desirable as their skills could be thought of as out of date. Also, the older one gets, the slower s/he tends to work. These issues were making it considerably more difficult for those over 40 to find and retain employment, thus the ADEA was created, being modeled after Title VII.³

THE AGE DISCRIMINATION ACT OF 2004 (Australia)

Age discrimination is the denial of an opportunity to a person based solely on their age when age is not a bona fide occupational qualification. This means that a person's ability to take advantage of an opportunity or job is not based on their age. However, if a person is inherently unable to perform the duties associated with a job, it is within an employer's right to deny that person a job. The ADEA covers all areas of employment and includes employees, commission agents and contract workers. Different areas of employment that are included are:

- Offers of employment,

⁸ Human Rights and Equal Opportunity Commission

³ Deshpande, Satish

- Terms and conditions of employment,
- Access to promotion and training, and
- Dismissal.

It is worth noting that there is no minimum requirement for the number of employees within an organization in regards to discrimination in Australia. In the United States a company has to have 15 or more employees to be under the jurisdiction of Title VII, in Australia, no such rule exists. Another unique way in which the Australian ADEA differs from the US ADEA is that it protects both old and young employees. The ADEA in the US only covers people age 40 and older.

The Australian Act also covers education, access to premises, provision of goods, services and facilities, renting or buying a house or flat, administration of Commonwealth laws and programs, and requests for information. It does not, however include: Commonwealth laws that govern taxation, social security (including pensions), migration and citizenship, superannuation, state laws, certain health programs, youth wages, direct compliance with workplace agreements and awards, charities, and religious and voluntary bodies.^{9, 4}

One interesting practice Australia has instated is the idea of a youth wage. The federal minimum wage in Australia is \$A12.75.00. Anyone under the age of 21 receives a specific percent of this wage as demonstrated in the following table:¹⁰

⁹ The Online Source for All Australians Over 50

⁴ Employment and Workplace Relations Services for Australians

¹⁰ WorkChoices

Age	Percent of Wage Received	Minimum Wage at Each Age
16	50%	\$A 6.38
17	55%	\$A 7.01
18	67.5%	\$A 8.61
19	80%	\$A 10.20
20	90%	\$A 11.48
21	100%	\$A 12.75

AMERICANS WITH DISABILITIES ACT (United States)

The Americans with Disabilities Act (ADA) was designed to protect people with a physical or mental impairment that substantially limits one or more major life activity for that individual. It also covers people with a record of impairment, a person who is regarded as having an impairment, and people who have a business, family, or social relationship with someone who has a disability. The following table shows examples of conditions that are and are not covered by the ADA:¹¹

Conditions Covered by the ADA	Conditions Not Covered by the ADA
Mobility	Sexual Disorders
Vision, hearing or speech impairments	Compulsive gambling, kleptomania, pyromania
Learning disabilities	Psychoactive substance abuse disorders
Chronic health conditions	Homosexuality and bisexuality
Emotional illnesses	Current illegal drug users
AIDS and/or HIV	Temporary disabilities

When employing a person who has a disability that qualifies for protection under the ADA, employers must make reasonable accommodations for that person. A reasonable accommodation is an adjustment to the workplace that makes the job easier

¹¹ The Americans with Disabilities Act: Questions & Answers

for the disabled person to do the job without placing undue hardship upon the business.

Undue hardship is determined by considering the following factors:³

- the nature and cost of the accommodation needed;
- the overall financial resources of the facility making the reasonable accommodation, as well as the larger entity if the facility making the reasonable accommodation is part of larger entity;
- the type of operation of the employer; and
- the impact of the accommodation on the operation of the facility.

DISABILITY DISCRIMINATION ACT OF 1992 (Australia)

The purpose of the Disability Discrimination Act is to protect people with disabilities and to make sure that they have the same right to equality in the eyes of the community as everyone else. The DDA was designed to protect all Australians from being discriminated against on the basis of:

- Physical, intellectual, psychiatric, sensory, neurological or learning disabilities,
- Physical disfigurement,
- Disorders, illness or diseases that affect thought processes, perceptions of reality, emotions or judgment, or results in disturbed behaviours, and
- Presence in the body of organisms causing disease or illness.

The result of this law is that if a person with a disability applies for a job that they are capable of doing, they must be given equal consideration when the company hires for that job.⁴

³ Deshpande, Satish

⁴ Public Service Association of NSW

EQUAL PAY ACT OF 1963 (United States)

The Equal Pay Act (EPA) makes it illegal for US companies to pay their employees different salaries based solely on sex. This act says that there can be no wage discrimination between employees on the basis of sex in an establishment when employees perform equal work on a job requiring:³

- Equal skills/knowledge,
- Efforts (physical or mental exertion needed to do a job),
- Responsibility, or
- Working conditions.

However, as with all things in the US, there are exceptions including:

- Seniority,
- Merit systems,
- Quantity and quality of work, and
- Factors other than sex (shift differentials, salary matching, and profits).

Considering the number of laws Australia has concerning human rights, it is surprising that they don't have one discussing the idea of equal pay for equal work. Throughout Australia's history, they have had many of the same struggles the United States has had concerning pay. In 1907, paying men more than women was considered legal as they were the breadwinners for the family. By 1919, women's pay had legally been set at 54% of that of men. It wasn't until the 1996 that Australia's government passed a law saying that it was illegal to pay different wages for equal work.⁵

⁵Public Service Association of NSW

FAMILY AND MEDICAL LEAVE ACT OF 1993 (United States)

On August 5, 1993, President Clinton passed the Family Medical Leave Act (FMLA) into law. This was the first law he passed as president. FMLA covers any company of 50 or more employees within 75 miles of a given workplace who have worked for 12 months and 1250 within a single company in the past year. Everyone has a total of 12 weeks of unpaid leave during a period of 12 months for the birth of a child, the placement of a child for adoption or foster care, and/or caring for a family member with a serious health condition. Someone who qualifies for FMLA can take leave intermittently or take a reduced work day or week and requires no employer approval if leave is medically necessary.

Employees must give 30 days notice if they plan to take leave, or as much as possible. By law, employers must put up posters providing information on the law. Employers can require their employees to take their leave in the following order:³

1. Paid,
2. Sick,
3. Family, then
4. Unpaid.

AUSTRALIAN LEAVE ACTS (Australia)

Up until December, 2005, Australia had three leave Acts that together are the equivalent of our FMLA. They were: the Annual Leave Act of 1973, the Long Service Leave Act of 1976, and the Parental Leave Act of 1992. As these Acts governed the

³Deshpande, Satish

country up until just months ago, they are still worthy of noting. WorkChoices, which now controls Leaves, is discussed later in this paper.

The Annual Leave Act granted four weeks of paid leave time to all employees upon the completion of one year of employment. In order to take leave, employees must give their employer at least four weeks of advanced warning, and must take their leave in one period, unless both parties agree otherwise. Employees were eligible for leave every six months once they pass the initial one year benchmark.

The Long Service Leave Act applied only to private sector employees. After seven years of employment with a company, employees were eligible for six weeks of paid leave. After an additional five years, employees became eligible for four more weeks of paid leave. Employees who fell under the LSLA receive 14 sick days per year.

The Parental Leave act granted leave to parents with young children. Parents are entitled to 12 months of unpaid leave after completing 12 months of work. The 12 months off may be divided between parents even if they work for different companies, as long as the total time off is not longer than one year.¹²

FAIR LABOR STANDARDS ACT (United States)

Any person working within an organization who engages in interstate commerce or, producing goods for interstate commerce is covered by the Fair Labor Standards Act (FLSA). This act strives to ensure that covered employees are paid fairly for work completed. The FLSA says that employees must be compensated for the time that they are on duty or at a specific place of work and for any time that they are working whether they are working at home, traveling, waiting, training or in a probationary period.

¹² ACT Work Act

The FLSA sets the federal minimum wage at \$5.15 per hour, effective on September 1, 1997. Employees who are tipped must have a wage set at, at least \$2.13 per hour. When this wage is combined with their tips must equal at least \$5.15, and if it does not, the employer must make up the difference. The Fair Labor Standards Act also sets an overtime rate of time and a half an employee's regular rate of pay for any hours worked past 40 in a week. Employees who are classified under the Act as exempt are excluded from the minimum wage and overtime regulations as they are paid a salary rather than a wage. Non-exempt employees, on the other hand, must be paid at least the federal minimum wage and be compensated for overtime.

Another important element of the Fair Labor Standards Act is youth employment. According to the Act, children under 13 can baby-sit, deliver newspapers, or act. Between the ages of 14 and 15, children can do office work, work in a grocery store, retail store, restaurant, movie theater or amusement park. From 16 to 17, children can work at any job that is declared to be non-hazardous. After turning 18 a person has no restrictions on what jobs they can or cannot do. The FLSA also regulates the hours a person between the ages of 14 and 15 can work to 18 hours in a school week and 40 hours in a non-school week. They also can only work between 7 am and 7 pm.¹³

THE WORKPLACE RELATIONS AMENDMENT (WorkChoices) 2005

The Workplace Relations Amendment was passed on December 7, 2005. This amendment will drastically reshape employment law in Australia; it makes changes to the entirety of the Workplace Relations Act of 1996 and has implications for all employers. Because of the recent nature of the Amendment, it is yet to be seen precisely how it will

¹³ US Department of Labor

change the face of the country. WorkChoices creates a new, single national system that will oversee every aspect of employment law.

As WorkChoices is new legislation at the time of this printing, interpretation has been taken from the original Bill. WorkChoices includes a three to four year transition period. As WorkChoices is applied and tested, many changes are to be expected. What follows are the highlights of the Amendment.

WorkChoices created the Australian Fair Pay Commission as the new wage setting body. They are responsible setting the Federal Minimum Wage, and have decided that all employees covered must earn at least \$12.75 per hour. New restrictions set a work week to a maximum of 38 hours, plus “reasonable additional hours.” One distinct difference of WorkChoices to the FLSA is that there is no overtime rate. As there is no overtime rate, there is very little incentive for employees to be willing to work overtime. Employees only receive their minimum hourly rate for working in excess of 38 hours a week. However, Australian employees can work no more than an average of 38 hours a week in a four week period.

The new Australian Fair Pay and Conditions Standard is made up of: wages set by the Fair Pay Commission, the 38 hour work week cap, and four types of leave. The four types of leave are comparable to our FMLA and include annual leave, personal/carer’s leave, compassionate leave and parental leave.

As with the Annual Leave Act of 1973, employees can take four weeks of paid leave per year, with shift workers receiving one additional week after completing one year of service with an organization. Annual leave can accrue up to eight weeks in a two

year period before employers can direct employees to use them. Employees have the right to be paid in lieu of taking leave time for up to two weeks every twelve months.

Personal leave consists of ten paid days of leave per year after one year's service. This leave is pro-rated for employees who have not worked for at least one year. To ensure honesty, employees must present their workplace with a medical certificate (doctor's note) verifying illness for each time they take leave. Employees also are given two days of unpaid leave for every unexpected emergency for those in their care. Compassionate leave provides two days leave for each time a member of the employees immediate family is ill or sustains serious injury.

The fourth type of leave, Parental Leave is much the same as the Parental Leave Act of 1992. Employees are allowed up to 52 weeks of leave at the time of the birth or adoption of a child. Both full and part-time employees are entitled to leave provided that they have worked for at least on year and could, at the time of leave, have a reasonable expectation of continuous employment.¹⁰

OCCUPATIONAL SAFETY AND HEALTH ACT (OSHA) OF 1970

OSHA covers all employers and employees in the US, the District of Colombia, Puerto Rico, and all US territories. It does not, however, apply to government employees who are covered through OSHA-approved plans, but not OSHA itself. Also not covered are people who are self employed.

OSHA has two regulatory functions, to set safety standards, and to conduct inspections in order to ensure that employees are being provided safe workplaces. The Act gives OSHA the right to set standards and require that all employees have been

¹⁰ WorkChoices

trained and issued personal protective equipment to allow them to be in compliance with these standards. OSHA recognizes that it can not regulate every aspect of safety, so the Act includes a “general duty” clause. This clause [Section 5(a) (1)] says that each employer “shall furnish...a place of employment which is free from recognized hazards that are causing or likely to cause death or serious physical harm to his employees.” Thus, even if an issue is not addressed in the Act, employers are required to recognize potential hazards and strive to prevent injury.

Federal OSHA standards are divided into four categories, general industry, construction, maritime, and agriculture. Standards vary depending on the category; however, the following are standard among each:

- Access to medical and exposure records,
- Personal protective equipment,
- Hazard communication,
- Recordkeeping,
- Reporting, and
- Posting.

The Act also grants employees the right to file complaints with OSHA about health and safety conditions within their workplace. Employees also have the right to have their identities kept confidential from employers when filing complaints, to contest the period of time OSHA allows for fixing violations of standards, and the right to participate in OSHA inspections within their workplace.¹⁴

¹⁴ Occupational Safety and Health Administration

NATIONAL OCCUPATIONAL HEALTH AND SAFETY COMMISSION ACT (OHS) OF 1985

The country of Australia is comprised of six States and two Territories. Within their form of government, each State and Territory is responsible for writing and enforcing their own laws about workplace health and safety. OHS does require certain compliance, however, from each of the States and Territories. They must follow certain national standards while instating their own regulations at their level of government.

The Act applies to all employees, including seasonal, permanent employees and family members. It also covers contractors and all visitors to a workplace. Employers, including self-employed people, have several general duties, they include: ⁴

- Provide safe plant, equipment and systems of work and ensure they are properly maintained.
- Provide safe materials and substances and systems of work so they can be used, handled, stored and transported without risks to health and safety of employees.
- Provide information, instruction, training and supervision so those employees can carry out their jobs without risk to their health and safety.
- Protect the health and safety of visitors.
- Provide and maintain a healthy working environment.
- Provide information to employees about plant and substances including precautions and conditions for use; health and safety risk; results of tests or research carried out on plants or substances.

⁴ Employment and Workplace Relations Services for Australians

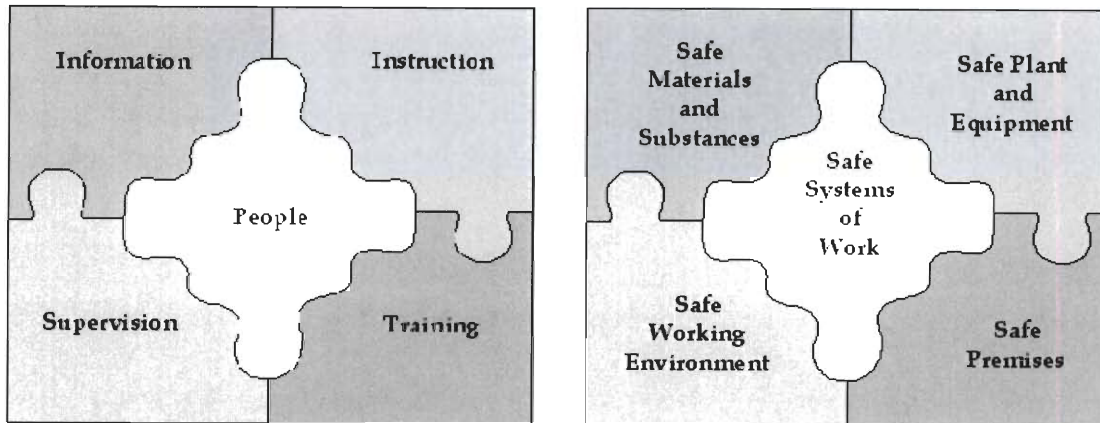
It is interesting to note, that in Australia, employees have obligations to their employers in regards to safety. The Act states that employees must not harm other employees or other people while in the workplace. They must also take care not to misuse or interfere with health and safety equipment. Surprisingly, individuals can be held individually responsible for injuries if they stand in the way of, or don't support management's health and safety initiatives.

The Act states that the person who is in control of the workplace, such as the property owner has a duty to ensure that people in or on the premises are safe. This includes providing safe access to and from the property, fire protection systems, and safe structures and systems.

The most important obligation employers have specified in the Act is to exercise a "duty of care" in regards to health and safety in the workplace. This duty means that employers must anticipate all possible causes of injury and illness, and must do everything reasonably practical to remove or minimize possible causes of harm. The Australian standard of "reasonably practical" is equivalent to the US reasonable person standard. When considering what is reasonably practical, the Australian government takes many factors into account, including:

- The nature and severity of the hazard,
- Knowledge of severity of the hazard,
- Knowledge of solutions,
- Availability of solutions,
- Common standards of practice, and
- Costs of solutions.

The Australian Safety and Compensation Commission suggests the following visualizations of puzzles when considering safety. A safety plan is not complete if a piece is missing:⁴



A COMPARISON OF THE US AND AUSTRALIAN LAWS

Each of the laws analyzed here has a counterpart that is comparable in the Australia or the US, respectively. This observation leads to the conclusion that certain human rights are basic to all people, no matter who they are or where they reside. Neither country has had a smooth transition from its humble beginnings to becoming a superpower as they are today. Australia's laws are newer, but they have the same fundamental rights that the laws from the US provide.

Both the US and Australia are striving towards the same type of society. Both covet freedom and a world free from discrimination where all people are treated equally. Of great importance to the people in each country is the need for laws to protect homosexual workers.

⁴ Employment and Workplace Relations Services for Australians

There are several notable differences in employment laws in the US and Australia. Many find this surprising as the countries seem so similar in history, make-up and actions. An interesting aside is that Australia is the only world super-power who has never fought against the US in a war. One could speculate that the following differences come from Australia's intense focus on its people.

In the US, the Age Discrimination in Employment Act (ADEA) only applies to organizations with over 15 employees. The Age Discrimination Act in Australia applies to every employee, regardless of the size of the organization. Many laws in the US are passed only after filibusters and major negotiations, such as the ADEA only applying to companies with more than 15 employees. An example of a filibuster gone wrong in the US is Title VII. The prohibition of discrimination based on sex was added to the Act just before it was voted on to prevent the act from being passed. The attempt was unsuccessful however, as today, sex is one of the six factors Title VII prohibits discrimination based upon.

Another major difference in the Age Discrimination Acts is that in Australia, all employees are protected, while in the US only people over the age of 40 are covered. Thus, the ADEA is successful in protecting older American workers. However, it is perfectly legal to discriminate against younger workers. This means that if you have two equally qualified workers, one who looks to be 25 and the other who looks to be 50, it is legal to hire the older looking worker based solely on age.

The FLSA sets the federal minimum wage at \$5.15 an hour. The minimum wage in Australia starkly contrasts \$5.15 an hour, being set at \$A12.30 an hour. Even with an exchange rate where \$1 US = \$ A1.35, this is an impressive difference. Converting

Australian dollars to US dollars, an Australian worker would make \$ 9.10 an hour. One could surmise that the rate of pay is one factor in the contrast of the number of homeless people in the two countries. Another impact of these laws could be the poverty rate. In the US, where there is a much lower federal minimum wage, the poverty rate is 12.5%, while in Australia, it is 9.3%. Many other factors affect the poverty rate and homelessness such as difference social programs, but these issues could be due in part to pay rates.¹⁶

Also pertaining to the FLSA is the standard length of the work week. In the US 40 hours is considered to be one week's worth of work, whereas in Australia, it is set at 38 hours. Interestingly, Australian businesses are not allowed to require regular overtime of their employees. Their federally mandated 38 hour work week provides a stronger emphasis on a work-life balance. This balance has only just recently been recognized in the US. Also interesting is Australia's lack of an overtime rate. This provides no incentive for employees to work extra hours, again emphasizing a work-life balance. The Australian government mandates that employees are entitled to four weeks of paid leave after one year of service. In the US, the number of weeks of paid vacation (leave) time is negotiable, but upon entry to the labor market, it is generally set at one to two weeks off per year.

Both the US and Australia offer leave acts for employees. In the US there is the FMLA, and in Australia, there are annual leave, personal/carer's leave, compassionate leave and parental leave. The notable differences in these laws are the number of regulations that apply to FMLA. For example, there must be 50 or more employees within 75 miles of work. They must have worked for 12 months and 1250 hours with a

¹⁶ Kryger, Tony

specific company to qualify for FMLA. In Australia, these regulations don't exist. The Australian parental leave act qualifies parents to take up to 52 weeks of unpaid leave after the birth of a child. In the US, parents can receive a maximum of 12 weeks of leave.

There is an interesting difference in the Health and Safety regulations in the two countries. In the US the central government regulates safety in organizations through the Occupational Safety and Health Act. However, in Australia, there is a federal minimum standard that employers must follow, but it is left to the states to enforce the law.

Australia and the US are both common law countries, meaning our laws are created in part by decisions made by judges. These decisions set precedence, and in effect become laws. Thus, with many of the employment laws in the US being around for 50 years, there is a great deal of case law. One notable effect that WorkChoices will have on Australia is that it will eliminate case law. This means that if there is any gap in WorkChoices, there will be no laws governing that gap until a judge makes a ruling on it, in a sense wiping the slate clean. This seems minute, but think of what a huge effect there would be if they had forgotten to include a detail like the minimum age children could work.

The government of Australia passed the WorkChoices Amendment in December of 2005 to simplify and centralize their employment laws. However, Australians are in an uproar over the passing of WorkChoices. Employers are no longer required to offer certain rights such as:

- Rest and meal breaks,
- Incentive-based pay,
- Allowances,

- Penalty rates and overtime, and
- Control over hours and rosters.

WorkChoices favors individual employment agreements and removes much of the power unions previously held. Employees will be encouraged to discuss grievances directly with their employers; if an employee feels that s/he is being treated unfairly, they are now required to contact the Office of Workplace Services. However, employees are under the impression that they are losing their bargaining power, as unions will become a thing of the past.

Australian employees are furious as they feel they are losing many rights that the old system afforded them. It is notable that many people are having a difficult time understanding the new law, and people tend to dislike what they do not understand. The transition period for the Act is three to four years (meaning that all current awards and decisions will continue during the transition period), so it is too soon to tell the precise ramifications that WorkChoices will have.¹⁰

COMPARISON OF EMPLOYMENT LAWS IMPACT ON THE BUSINESS WORLD

Understanding the differences in the laws in the US and Australia provides a good foundation to understanding how employment laws have affected the business world. The following is a discussion of the impact of the age discrimination, disability discrimination, sex discrimination and health and safety acts.

¹⁰ WorkChoices

It's surprising to discover how rampant Age Discrimination actually is. In 1967 and 1996, respectively, the US and Australia passed laws prohibiting discrimination based on age. Yet, even years later, companies are still being sued, and losing for dismissing, or refusing to hire workers based solely upon their age.

Virgin Blue, an airline in Australia recently lost a major lawsuit against eight women, between 36 and 56 in age. The women claimed that they weren't hired because they were too old. Virgin Blue was encouraging an environment of "youth and beauty" described as "Virgin Flair." Because these well qualified flight attendants were older, they were not chosen for employment.¹⁷

Just this month a similar case was filed here in the US. In 2004, Guidant Corp. laid off 721 employees, 62% of whom were over the age of 40, and thus protected by the ADEA. According to the complaint, Guidant wanted to replace older, highly paid workers with younger, cheaper labor. Shortly after the layoffs, many of the older workers were in fact replaced with younger employees.¹⁸

What companies such as Virgin Blue and Guidant fail to realize, is that while older employees are more expensive, they bring a set of knowledge and experience to the workforce that younger employees have not yet gained.

In 2003, the Australia Post lost a federal court case against a former employee, as they took away a stool she had used for the past 12 years. The employee suffered from osteoarthritis and used the stool when she became too sore to stand. The Australia Post had a policy against allowing employees to sit behind the counter, and refused to make an exception. The judge ruled against the Post's claims that other employees would trip

¹⁷ Gregory, Jason

¹⁸ Swiatek, Jeff

over the stool and required that they pay Daghlian for her legal costs and loss of earnings in response to their failure to comply with the Disability Discrimination Act.^{19, 20}

A comparable case occurred in the US in 2005. ConAgra Grocery Products Company offered a temporary employee a permanent position, contingent upon passing a physical examination. When it was discovered that the employee had uncontrolled diabetes, the job offer was rescinded. Damages are still being determined at this time.²¹

The Equal Pay Act in the United States was passed in 1963, and in Australia, the Sex Discrimination Act was passed in 1984; both laws were passed to create equality between the sexes. Despite the fact that the law prohibiting wage discrimination was passed 20 years earlier in the US, Australia's pay differential is considerably lower. In Australia, the average difference between men and women's pay rates is 18%, while in the US, it is a startling 30%.^{22, 23, 24}

One could argue that the way the way the courts have ruled on discrimination cases accounts for this vast difference. In 1972, the Arbitration Commission of Australia decided that equal pay must be awarded for equal work. However, in the US comparable work does not earn comparable pay. This is due to the AFSCME vs. the State of Washington decision of 1985. This decision acknowledged that there is a basis of supply and demand in the workforce, meaning that even if two jobs are rated to be equal, if there are only a few candidates for a job, it can pay more than a comparable job. The decision

¹⁹ Denholm, Matthew

²⁰ Victory for Post Worker

²¹ Greenwald, Judy

²² Garan, R.

²³ Williams, Nadine

²⁴ Uren, David

allowed that female dominated jobs be paid less than comparable male dominated jobs because of the number of women trying to obtain work in pink collar industries.³

An interesting difference exists when comparing how race discrimination is portrayed in the press in the two countries. On the surface, it would seem that Australia has reason to celebrate; the number of race discrimination complaints continues to drop. When searching for cases and articles on the subject, there were few to be found. However, investigation shows that one reason for the lack of complaints is employees' fear of filing them. Mr. Ferguson the president of the Australian Council of Trade Unions says, "Workers are fearful of complaining; anti-discrimination bureaus and equal opportunity commissions are far too removed from workers. State and federal agencies are still not co-operating effectively enough in targeting discrimination in the workplace."^{25, 26}

A landmark case in the US created an exception to Title VII. In 1972, United Airlines required people applying to be pilots to have a college degree and 500 hours of flying time. It was found that these requirements screened out considerably more black applicants than white applicants. When this case went to trial, it was found that United Airlines practices were legal, because the qualifications were necessary and job related. Thus United Airlines was allowed to continue its screening practices, even though it had adverse impact against a protected group.³

A shocking difference exists in the way the US and Australia apply their Health and Safety laws. A 16-year old Australian boy was killed when the forklift he was

³ Deshpande, Satish

²⁵ McGregor, Richard

²⁶ Pengelley, Jill

³ Deshpande, Satish

driving fell over. The company he was working for was fined \$25,000. A 29-year old young man was crushed between a paper machine's rollers as they didn't have proper training or guards in place. The paper company was fined \$120,000. Yet in the US, when two men were killed in an underground sewage tank, the company was fined \$1.7 million and given nine years of probation. The difference in awards in these cases is astounding. While the US is known for its huge settlements, one must consider the value of a life. Is it reasonable that in one country, a death at work should result in one-tenth the fines of the other?^{27, 28}

It's amazing that after having laws prohibiting sexual harassment on the books for well over 20 years, it is still a problem facing many workers today. In Australia, a Fox Sports presenter was assaulted in her make-up room repeatedly over a two year period. And in the landmark case of Thoreson v. Penthouse, a woman's manager forced her to have sex with two business associates establishing the concept of quid pro quo. There is a distinct parallel in the types of cases filed in the US and Australia in regards to sexual harassment.^{29, 3}

RESEARCH IMPACT

Considering the cultural similarities of the United States and Australia, it is surprising to note the differences in their employment law. Australia didn't become an independent country until 1901, yet in so many ways they appear to be ahead of the US in regards to their human right's law practices.

²⁷ Gilbert, James

²⁸ "Dad slams "joke" fine over son's crushing death"

²⁹ Blake, Sarah

³ Deshpande, Satish

Both countries appear to be at a similar point with regards to age discrimination. On the surface, this seems logical as the two cultures are so similar. Yet, the US passed legislation protecting workers from discrimination 30 years earlier than Australia did. Even now, there are on average, 16,850 ADEA claims per year in the US, while in Australia the HREOC received only 26 claims in 2002-2003.^{30, 31}

The US passed the ADA in 1990, and Australia passed the Disability Discrimination Act in 1992. Again however, Australian files far fewer disability discrimination complaints than their US counterparts do. Americans file 15,810 claims per year, while Australian filed only 493 complaints with the HREOC in 2002-2003.^{37, 38}

A similar observation can be made when looking at pay differentials between men and women in both countries. The US passed the EPA in 1984; 21 years later, Australia passed the Sex Discrimination Act. Again, one can note that Australia has been much more effective in implementing their law as women's pay is on average 18% lower than men's in Australia, while in the US, it is 30% lower.^{4, 5}

One would expect the US to be much closer to having a society embracing equality when looking at how much longer we have had legislation supporting it. Yet, in Australia, there are considerably fewer discrimination claims filed per year. One reason for this could be that Australia has a more harmonious culture where people truly do view diversity to be an asset in the business world. Perhaps Australians truly view all people to be equal.

³⁰ HR Hero

³¹ HREOC Home

⁴ Employment and Workplace Relations Services for Australians

⁵ Public Service Association of NSW

Another cause for the lower discrimination claim rate in Australia is that their award rates are incredibly lower than US counterparts. Americans consider a life to be worth approximately \$1.54M USD, while Australians value a life at A\$1.26M (the equivalent of \$918,668 USD). Average court awards for loss of life could not be located, but, on a case by case basis this research shows that Australians are awarded considerably less than the value of a life when killed on the job. Perhaps the half a million dollar difference in the value of life between the two countries is again rooted in their culture. Utilitarianism may be so deeply engrained in Australia's mindset that while an accidental death is unfortunate, it is not something to be reimbursed for. Or, perhaps the cause lies in the difference in wealth between the two countries as the US holds an amazing 40% of the world's wealth. This would explain the ability of Americans to pay the large settlements that are so common.³²

A third reason for the significantly smaller number of discrimination claims in the US and Australia was correctly identified by Mr. Ferguson, the president of the Australian Council of Trade unions. He suggests that Australians are afraid of filing complaints as workers are so far removed from the bureaus responsible for preventing and correcting for discrimination.²⁶

After realizing how much more advanced Australians appear to be in regards to human rights laws, it is almost surprising to see the parallel with the United States when looking at sexual harassment. Both countries have had laws about hostile work environments and quid pro quo in effect for 20 years. Yet, the US and Australia are both continuing to struggle with this in the courts. Perhaps sexual harassment is a problem

³² Abelson, Peter

²⁶ Pengelley, Jill

facing people the world over and is so deeply engrained in human behavior that legislation prohibiting it is merely a step in the right direction and not a solution.

A final, remarkable difference in employment laws in the US and Australia is the enactment of WorkChoices in December of 2005. The impact of this law on Australians is yet to be seen, of course. However, based on the backlash this new law is receiving, one could predict that the ramifications could be remarkable. It is human nature to dislike change, and replacing the accepted employment laws with one overarching, all encompassing law is change in the extreme. References to this new law in the popular press indicate that neither employers nor employees understand WorkChoices. It would be foolish to expect that a law that is not understood will be properly implemented in the business world. As employees don't fully understand how their rights have changed, it will be more difficult for them to file charges against employers who encroach on their protected rights. As Australia is a common law country, replacing laws has a profound impact upon past precedent. Even if the government did a perfect job encompassing all of the old laws into WorkChoices, they are still losing every single piece of case law that was ruled upon in the last hundred years. Without a solid knowledge base of common law, this seems unimportant. But stop to consider how important each judge's ruling is to the people it affects. Take, for instance, the case of the Australian Post worker who had such bad arthritis that she couldn't work unless she was allowed to rest periodically by sitting on a stool. If arthritis isn't listed as a protected disability under WorkChoices, her employer can take away her stool again, thus leaving her in the same situation that she was in before an expensive, emotionally draining legal battle.

The major, notable group of people that neither country is protecting are gays and lesbians. It will be interesting to see how laws change as different lifestyle preferences become more mainstream. While it is acceptable in both countries for states to pass laws protecting this group, there is no federal law in either country at this time.

The United States and Australia have both come a long way in protecting both the rights of employees and businesses. Citizens in these countries are some of the most protected in the world from issues like discrimination and safety. Views will change and laws will be amended, but employees today are significantly better off than they were one hundred years ago.

Works Cited

1. "Hewitt." 23 Nov. 2005. 5 Mar. 2006
<<http://was4.hewitt.com/hewitt/ap/resource/newsroom/pressrel/2005/11-23-05.htm>>.
2. "Nobscot Corp." 5 Mar. 2006
<http://www.nobscot.com/survey/us_voluntary_turnover_0804.cfm>.
3. Deshpande, Satish P. Lecture. Management 352, Fall 2004.
4. Employment and Workplace Relations Services for Australians. Australian Government. 19 June 2005
<<http://www.workplace.gov.au>>.
5. Public Service Association of NSW. 13 July 2003. 21 June 2005
<<http://www.psa.labor.net.au/women/equity.html>>.
6. Equity and Diversity. 20 June 2005
<<http://www.defence.gov.au/equity/harassment.htm#6>>.
7. "Resource Sheet: Making a Complaint to HREOC." HREOC. 2 Apr. 2006
http://www.hreoc.gov.au/youthchallenge/unit3/stage7/resource_complaint.html
8. Human Rights and Equal Opportunity Commission. 18 June 2005
<<http://www.hreoc.gov.au/index.html>>.
9. The Online Source for All Australians Over 50. 19 June 2005
<<http://www.seniors.gov.au/internet/seniors/publishing.nsf/Content/Human%20Rights%20and%20Equal%20Opportunities%20Act?OpenDocument&ResponseURL=%2Finternet%2Fseniors%2Fpublishing.nsf%2FContent%2FHuman+Rights+and+Equal+Opportunities+Act&UNID=89F786242636E23BCA256F390009A8C8&DocTitle=Human+Rights+and+Equal+Opportunities+Act&FailURL=%2Finternet%2Fseniors%2Fpublishing.nsf%2FContent%2FHuman%2BRights%2Band%2BEqual%2BOpportunities%2BAct&email=seniors@health.gov.au&RateContentFilter=RateContent&wantedInfo=No&useful=No&Go=Go>>.
10. "WorkChoices." Australian Government. Mar. 2006 <www.workchoices.gov.au>.
11. "The Americans with Disabilities Act: Questions & Answers." 5 Mar. 2006
<<http://www.umass.edu/eod/americans.html>>.
12. ACT Work Act. 19 June 2005
<<http://www.workcover.act.gov.au/labourreg/>>.
13. "US Department of Labor." Mar. 2006 <www.dol.gov>.

14. "Occupational Safety & Health Administration." US Department of Labor. Jan. 2006 <<http://www.osha.gov/>>.
15. Kryger, Tony. "Poverty Rates by Electorate." Parliment of Australia. 23 May 2005. 3 Apr. 2006 <<http://www.aph.gov.au/LIBRARY/pubs/RN/2004-05/05rn49.htm>>.
16. Gregory, Jason. "We're not too old." The Advertiser 11 Oct. 2005, sec. News: 3. LexisNexis. Western Michigan University, Kalamazoo. 5 Mar. 2006.
17. Swiatek, Jeff. "61 ex-workers sue Guidant, claiming age discrimination." Indianapolis Star 2 Mar. 2006. LexisNexis. Western Michigan University, Kalamazoo. 5 Mar. 2006.
18. Denholm, Matthew. "Cheque's in the mail for post worker." The Daily Telegraph 25 July 2003, sec. Local: 25. LexisNexis. Western Michigan University, Kalamazoo. 5 Mar. 2006.
19. "Victory for post worker." Manly Daily 26 June 2003. LexisNexis. Western Michigan University, Kalamazoo. 5 Mar. 2006.
20. Greenwald, Judy. "5th Circuit finds bias in ConAgra withdrawal of diabetic's job offer." Business Insurance 21 Nov. 2005, sec. News: 4. LexisNexis. Western Michigan University, Kalamazoo. 5 Mar. 2006.
21. Garran, R. "Australian women's pay "more equal"" Sunday Herald 15 Apr. 1990. LexisNexis. Western Michigan University, Kalamazoo. 5 Mar. 2006.
22. Williams, Nadine. "It's law, but there's still no equal pay." The Advertiser 9 Mar. 2005, sec. News: 13. LexisNexis. Western Michigan University, Kalamazoo. 5 Mar. 2006.
23. Uren, David. "Gender pay gap wider at the top." The Australian 1 Dec. 2005, sec. Local: 6. LexisNexis. Western Michigan University, Kalamazoo. 5 Mar. 2006.
24. McGregor, Richard. "Complaints Drob But Racxism's Curse Lingers." The Australian 1 Oct. 2003, sec. Local: 4. LexisNexis Academic. Western Michigan University, Kalamazoo. Mar. 2006.
25. Pengelley, Jill. "Workplaces Not Giving Migrants Fair Go: Actu." The Advertiser 24 Feb. 1995. LexisNexis Academic. Western Michigan University, Kalamazoo. Mar. 2006.
26. Gilbert, James. "Far west fined \$17 million." KRTBN Knight-Ridder Tribune Business News-The Sun 27 Jan. 2006. LexisNexis. Western Michigan University, Kalamazoo. 5 Mar. 2006.

27. "Dad slams "joke" fine over son's crushing death." AAP Newsfeed 28 Oct. 2004, sec. Financial News. LexisNexis. Western Michigan University, Kalamazoo. 3 Mar. 2006.
28. Blake, Sarah. "'Bra Case" Woman Has No Regrets-Maybe It Will Teach People a Lesson." Sunday Mail 29 July 2003, sec. News: 5. LexisNexis Academic. Western Michigan University, Kalamazoo. Mar. 2006.
29. "HR Hero." 1 Jan. 2005. 20 Mar. 2006 <<http://www.hrhero.com/hl/070105.shtml>>.
30. "HREOC Home." 20 Mar. 2006
<http://www.hreoc.gov.au/annrep02_03/chap2.html>.
31. Abelson, Peter. "Applied Economics." Macquarie University. 20 Mar. 2006
<http://www.applieconomics.com.au/pubs/papers/pa03_health.htm>.
32. Castello, Renato. "Business slows to take steps." Messenger-Southern Times 9 Apr. 2003, sec. News: 11. LexisNexis. Western Michigan University, Kalamazoo. 5 Mar. 2006.
33. "Greenburg Trauring." June 1999. 5 Mar. 2006
<<http://www.gtlaw.com/pub/alerts/1999/eeoc99.htm>>.
34. Wade, Rohan. "Father blasts court's leniency." Hobart Mercury 10 Nov. 2005, sec. Local: 9. LexisNexis. Western Michigan University, Kalamazoo. 5 Mar. 2006.
35. ACTU Worksite for Schools. Union Sponsors. 19 June 2005
<http://worksite.actu.asn.au/showall.php3?secid=3&page=article&artid=182&workst_Session=b80b8375c458e60bc83faf09624f2bf2>.
36. UniSA Library. 20 June 2005
<<http://www.library.unisa.edu.au/resources/subject/employ.asp>>.
37. Workplace Professionals. 2002. WebWorking. 20 June 2005
<<http://www.workplace.com.au/>>.
38. "Tangled Web Weaved Government's New Bill May Prove Very Hard to Understand." Townsville Bulletin (2005): 13. LexisNexis. Western Michigan University, Kalamazoo.