



Australian
Human Rights
Commission

AV v
DIAL-AN-ANGEL
Pty Ltd

[2015] AusHRC 97

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Contact details

For further information about the Australian Human Rights Commission, please visit www.humanrights.gov.au or email communications@humanrights.gov.au. You can also write to:

Communications Team
Australian Human Rights Commission
GPO Box 5218
Sydney NSW 2001

AV v DIAL-AN-ANGEL Pty Ltd

[2015] AusHRC 97

Report into discrimination in employment
on the basis of criminal record

Australian Human Rights Commission 2015



**Australian
Human Rights
Commission**

Contents

1	Introduction to this inquiry	3
2	Background to complaint	3
2.1	Complaint by Mr AV	3
2.2	Submissions by DAA	5
3	Relevant legal framework	5
4	Consideration	6
4.1	Is there an act or practice?	6
4.2	Does the act or practice involve a distinction, exclusion or preference on the basis of criminal record?	7
4.3	Does the distinction, exclusion or preference have the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation?	8
4.4	Was the exclusion based on the inherent requirements of the job?	8
5	Findings and recommendations	12
5.1	Power to make recommendations	12
5.2	Mr AV's submissions	12
5.3	Consideration of compensation	13
5.4	Review of DAA's policies	14
5.5	Apology by DAA to Mr AV	14
6	DAA's response	14



**Australian
Human Rights
Commission**

August 2015

Senator the Hon. George Brandis QC
Attorney-General
Parliament House
Canberra ACT 2600

Dear Attorney,

I have completed my report pursuant to section 31(b)(ii) of the *Australian Human Rights Commission Act 1986* (Cth) into the complaint made by Mr AV against DIAL-AN-ANGEL Pty Ltd (DAA).

I have found that DAA's act of refusing to engage Mr AV as personal carer constituted an exclusion made on the basis of criminal record. This had the effect of nullifying or impairing Mr AV's equality of opportunity or treatment in employment or occupation. This exclusion was not based on the inherent requirements of the job.

In light of my findings, I recommended that DAA develop its policies in relation to prevention of discrimination in employment on the basis of criminal record. I also recommended that DAA apologise to Mr AV and pay him an appropriate sum of compensation.

DAA provided a response to my findings and recommendations on 10 June 2015. In particular, DAA confirmed that it had reviewed its policies and procedures and had both issued an apology to Mr AV and made payment of compensation as per my recommendations. I have set out DAA's response to my recommendations at Part 6 of my report.

I enclose a copy of my report.

Yours sincerely,

A handwritten signature in black ink, reading "Gillian Triggs".

Gillian Triggs
President
Australian Human Rights Commission

Australian Human Rights Commission

Level 3, 175 Pitt Street, Sydney NSW 2000
GPO Box 5218, Sydney NSW 2001

Telephone: 02 9284 9600

Facsimile: 02 9284 9611

Website: www.humanrights.gov.au

1 Introduction to this inquiry

1. This is a report of the findings of the Australian Human Rights Commission following an inquiry into a complaint by Mr AV against DIAL-AN-ANGEL Pty Ltd (DAA) alleging discrimination in employment on the basis of criminal record.
2. This inquiry has been undertaken pursuant to s 31(b) of the *Australian Human Rights Commission Act 1986* (Cth) (AHRC Act). As a result of this inquiry, the Commission has found that Mr AV was discriminated against by DAA on the basis of his criminal record.
3. In light of these findings, I recommend that DAA:
 - a. pay financial compensation to Mr AV in the amount of \$5,000 as general damages for hurt, humiliation and distress;
 - b. review its internal policies to ensure compliance with current relevant laws; and
 - c. provide a formal written apology to Mr AV.
4. Following a request from Mr AV, I have made an order prohibiting disclosure of his identity pursuant to s 14(2) of the AHRC Act. For that reason he has been referred to in this report by the pseudonym 'AV'.

2 Background to complaint

2.1 Complaint by Mr AV

5. Mr AV made a complaint in writing to the Commission on 30 January 2014 alleging discrimination in employment on the basis of his criminal record.
6. Previously and for approximately 5 years, Mr AV was casually employed by DAA as a personal carer.
7. On 3 December 2013, Mr AV re-applied for casual employment as a personal carer with DAA.
8. Mr AV claims that:
 - a. on 27 November 2013, prior to submitting his application, he signed a Statutory Declaration confirming that he had no prior criminal record and he also applied for a National Criminal History Check;
 - b. on 28 January 2014 he accepted in writing DAA's offer to join the casual register and agreed to send to the DAA Recruitment Coordinator later that day the results of his Working with Children Check and National Criminal History Check;

- c. on 29 January 2014, he called the Recruitment Coordinator and advised that details of previous criminal convictions had been entered on his National Criminal History Check. He advised the Recruitment Coordinator that he had not raised the issue of the past offences with DAA when he first received the National Criminal History Check (on 10 December 2013) because he assumed that they were of no relevance. This is because he had undertaken a criminal history check for DAA when he was previously employed by DAA and the convictions had occurred so long ago;
- d. later on 29 January 2014, the Recruitment Coordinator informed him that although his case had been presented to the Recruitment Coordinator's manager, he had been withdrawn from DAA's casual register due to previous convictions showing on his National Criminal History Check;
- e. after being informed of the decision, he asked if he could speak with the manager as he felt that the decision was extremely unfair. He advised DAA that he was happy to provide a detailed explanation of the previous criminal charges and to make an assurance that the charges would not affect his work performance and he offered to participate in some type of risk assessment to determine and ensure this. The Recruitment Coordinator replied that unfortunately the decision was final; and
- f. at no time did DAA advise or allege that he had falsely declared that he had no previous criminal record.

9. Mr AV has been convicted of three offences, as listed below:

Date	Offence	Convictions
30 September 1987	Resist police	Fined \$300
30 September 1987	Hinder police	Fined \$200
20 January 1988	Drive under disqualification	Fined \$300 Licence disqualified for 2 months

10. In relation to the offences, Mr AV states that:

...these offences had occurred when I was around twenty years of age and since this time I have had no further convictions recorded... I have been working in a Public Service management role for over fifteen years and throughout this time had never had any concerns raised about previous convictions... I strongly believe that my previous criminal record has not ever hindered my work performance or employment in the past and I have not been convicted of any further criminal charges since 1988.

2.2 Submissions by DAA

11. DAA submits that:
- a. Mr AV signed two Statutory Declarations confirming that he had no criminal record as follows:
 - i. one when he was previously employed by DAA on a casual basis; and
 - ii. one on 27 November 2013.
 - b. although DAA in the past relied solely on a Statutory Declaration that employees had no criminal records, National Criminal History Checks are now required;
 - c. at Mr AV's second interview on 28 January 2014, he advised the Recruitment Coordinator that he was still waiting to receive his National Criminal History Check;
 - d. on 29 January 2014 Mr AV sent DAA his National Criminal History Check dated 10 December 2013 which revealed court outcomes;
 - e. on 30 January 2014 Mr AV was advised that 'DAA would not be able to place him in bookings, as he was not able to meet the essential criteria for the role to which he had applied and he would also be in breach of company policy'; and
 - f. also on 30 January 2014, it had become clear to DAA that Mr AV not only had a criminal record, but that he had also falsely declared that he had no police record.

3 Relevant legal framework

12. Part II, Division 4 of the AHRC Act, which contains ss 30 – 35, is concerned with the Commission's functions relating to equal opportunity in employment.
13. 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.
14. 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.
15. Australia has declared criminal record as a ground of discrimination for the purposes of the AHRC Act.¹
16. 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.

4 Consideration

4.1 Is there an act or practice?

17. 'Act' and 'practice' are defined at s 30(1) of the AHRC Act. 'Act' and 'practice' have their ordinary meanings. An act is a thing done and a practice is a course of repeated conduct.
18. On 28 January 2014, Mr AV accepted in writing DAA's offer to join the casual register. On 29 January 2014, Mr AV sent DAA his National Criminal History Check dated 10 December 2013 which revealed previous convictions.
19. In DAA's letter to the Commission dated 18 March 2014, DAA advised that on 30 January 2014, after receiving Mr AV's National Criminal History Check, DAA advised Mr AV that his registration would not be successful because his National Criminal History Check did not come back clear and because he falsely declared to DAA that he had no prior criminal record.
20. I consider that the withdrawal of Mr AV from the DAA casual register is an 'act' within the meaning of section 30(1) of the AHRC Act.

4.2 Does the act or practice involve a distinction, exclusion or preference on the basis of criminal record?

21. The withdrawal of Mr AV from the DAA casual register is an 'exclusion' within the scope of the definition of 'discrimination' in the AHRC Act. Mr AV contends that the reason for the withdrawal was his criminal record.
22. For a case of discrimination to be found regarding the withdrawal of Mr AV from the DAA casual register, it needs to be shown that the relevant exclusion was made 'on the basis' of his criminal record. In considering the expression 'based on', in a similar definition of discrimination under section 9(1) of the *Racial Discrimination Act 1975* (Cth), the Federal Court held that the words were to be equated with the phrase 'by reference to', rather than the more limited 'by reason of' or 'on the ground of' which have been interpreted elsewhere to require some sort of causal connection.² It does not need to be the sole reason.
23. There is no dispute between the parties that Mr AV's criminal record was a reason for DAA's decision to withdraw him from the DAA casual register. In its submissions, DAA states that:

after receiving Mr AV's National Criminal History Check, DAA advised Mr AV that his registration would not be successful because his National Criminal History Check did not come back clear and because he falsely declared to DAA that he had no prior criminal record.
24. DDA has confirmed that it is a policy of the company to require a clear police check for all personal carers.
25. I am satisfied that the decision of DAA to withdraw Mr AV from the DAA casual register involved an exclusion on the basis of his criminal record.
26. I wish to address briefly the allegation made by DAA that Mr AV falsely declared that he had no prior criminal record. In response to this allegation, Mr AV stated:

At no time did I deliberately attempt to misguide or provide false information to DAA. Please note that I completed the Statutory Declaration on 27/11/2013 (on the same day that I applied for the Criminal Record Check) and did not receive the results from the Criminal Record check until after 10/12/2013. At the time of signing the declaration, I was unaware that I had any criminal convictions recorded. I have previously completed several Police Checks and these convictions were never raised or brought to my attention.
27. Mr AV stated that as the convictions occurred almost 30 years ago, he had assumed 'they would be legally considered to be spent convictions'.
28. Mr AV's explanation is consistent with the spent convictions provisions of the NSW *Criminal Records Act 1991*, which sets out that convictions are considered spent if they did not attract a prison sentence of more than 6 months, were not sexual offences or against bodies corporate and a 10 year crime-free period has lapsed since the conviction. In Mr AV's case, the two convictions of 1987 would have been spent in 1997, and the traffic offence (which is treated separately under the Act) would have been spent in 1998. Spent convictions legislation allows individuals to refrain from disclosing such convictions, and Mr AV is entitled to answer any questions concerning his criminal history with reference only to any convictions which are not spent.³

4.3 Does the distinction, exclusion or preference have the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation?

29. The AHRC Act was introduced to be the vehicle by which Australia's obligations under the *Discrimination (Employment and Occupation) Convention 1958*⁴ (ILO 111 Convention) were implemented.⁵ For this reason, it is appropriate to construe the definition of 'discrimination' in s 3(1) of the AHRC Act in accordance with the construction given in international law to Article 1 of the ILO 111 Convention.⁶
30. Article 1(3) of the ILO 111 Convention defines 'employment' and 'occupation' as including access to employment and to particular occupations, and terms and conditions of employment. Further, the background materials to the ILO 111 Convention reveal that the Convention was intended to protect all workers, in all fields.⁷
31. I understand that being added to the DAA casual register does not confer any guarantee of employment. However, in order to be eligible for casual employment at DAA an individual must be registered on the DAA casual register. Had Mr AV not been withdrawn from DAA's casual register, Mr AV would have been eligible for employment with DAA on a casual basis. He was not given the opportunity to be eligible for casual employment with DAA on the basis of his criminal record. In the circumstances, it is my view that the withdrawal of Mr AV from the DAA casual register had the effect of nullifying or impairing his equality of opportunity or treatment, in employment or occupation, within the meaning of section 3(1) of the AHRC Act.

4.4 Was the exclusion based on the inherent requirements of the job?

(a) Identifying 'inherent requirements'

32. In *Qantas Airways v Christie*,⁸ the High Court considered the meaning of the term 'inherent requirements of the particular position' in s 170DF(2) of the *Industrial Relations Act 1988* (Cth). Brennan CJ stated:

The question whether a requirement is inherent in a position must be answered by reference not only to the terms of the employment contract but also by reference to the function which the employee performs as part of the employer's undertaking and, except where the employer's undertaking is organised on a basis which impermissibly discriminates against the employee, by reference to that organisation.⁹

33. In addition, Gaudron J stated:

It is correct to say, as did Gray J in the Full Court, that an inherent requirement is something that is essential to the position. And certainly, an employer cannot create an inherent requirement for the purposes of s 170DF(2) by stipulating for something that is not essential or, even, by stipulating for qualifications or skills which are disproportionately high when related to the work to be done.¹⁰

34. Justice Gummow noted that the term 'inherent' suggests 'an essential element of that spoken of rather than something incidental or accidental'.¹¹

35. Similarly, in *X v The Commonwealth*,¹² Gummow and Hayne JJ stated that the inherent requirements of employment are those which are 'characteristic or essential requirements of the employment as opposed to those requirements that might be described as peripheral'.¹³

(b) 'Based on'

36. In *Commonwealth v Human Rights and Equal Opportunity Commission and Others*,¹⁴ Wilcox J interpreted the phrase 'based on' as follows:

In the present case, there are policy reasons for requiring a tight correlation between the inherent requirements of the job and the relevant 'distinction', 'exclusion' or 'preference'. Otherwise, as Mr O'Gorman pointed out, the object of the legislation would readily be defeated. A major objective of anti-discrimination legislation is to prevent people being stereotyped; that is, judged not according to their individual merits but by reference to a general or common characteristic of people of their race, gender, age etc, as the case may be. If the words 'based on' are so interpreted that it is sufficient to find a link between the restriction and the stereotype, as distinct from the individual, the legislation will have the effect of perpetuating the very process it was designed to bring to an end.¹⁵

37. The Full Court affirmed that approach in *Commonwealth v Bradley*.¹⁶ In particular, Black CJ discussed the phrase 'based on' as follows:

Respect for human rights and the ideal of equality – including equality of opportunity in employment – requires that every person be treated according to his or her individual merit and not by reference to stereotypes ascribed by virtue of membership of a particular group, whether that group be one of gender, race, nationality or age. These considerations must be reflected in any construction of the definition of 'discrimination' presently under consideration because, if they are not, and a construction is adopted that enables the ascription of negative stereotypes or the avoidance of individual assessment, the essential object of the Act to promote equality of opportunity in employment will be frustrated.¹⁷

38. The Chief Justice then held that there must be more than a 'logical' link between the inherent requirements of the position and the exclusion of the applicant. Rather, his Honour held that there must be a 'tight' or 'close' connection.

(c) DAA's submissions

39. DAA has submitted that a 'clear police check' is an inherent requirement of the role of personal carer.
40. DAA has provided a Position Description for personal carers which states that Angels will work primarily at the client's home or premises. The Position Description also states:

Selection Criteria

ESSENTIAL:

Police Clearance Certificate

41. By email dated 27 March 2014, DAA confirmed that it is a policy of the company to require a clear police check for all personal carers. DAA state:

As we provide Angels to clients in their homes (most vulnerable people in the community ie: young children/elderly and disabled clients), we are **unable to place ANY worker into a home with any blemish against their name**. They work unsupervised and we have a reputation to uphold. We need a clear Police check so **we can stand by our brand promise**.

...

Our clients **rely on us to do as we say we do** and have only applicants with clear police checks. There are **no exceptions** to this rule at DIAL-AN-ANGEL regardless of the reportable item. This is a Governance ruling from the Board. [Emphasis in original]

42. By letter dated 28 October 2014, DAA provided the following additional reason for its policy to require a clear police check for all personal carers:

As [a] personal carer with our Company, Mr AV can be allocated work for clients in various government funded programs via brokerage arrangements. A requirement under all government funded programs is that all staff of the service providers have national police clearance.

We cannot roster shifts to Mr AV if he does not have the requisite clearance.

43. The Commission asked DAA for further information in relation to the 'requirement under all government funded programs ... that all staff... have national police clearance'. DAA responded:

By way of example, one agreement our Company has with [the] NSW district health department requires:

"written confirmation that all of your staff have undergone satisfactory National Criminal Record Check[s] prior to commencing work with your Agency and then kept current according to legislative requirements."

Without further explanatory literature as to what constitutes "satisfactory National Criminal Record Check", our Company has adhered to a policy of a clear National Criminal Record requirement.

(d) Conclusion

44. It is my view that the requirement to have a 'clear police check' is not an inherent requirement of the job. The policy itself is in breach of the prohibition against discrimination in employment under s 31(b) of the AHRC Act as it permits discrimination on the basis of criminal records. This policy does not allow for the individualised assessment of a person's suitability for the role of personal carer. Rather it perpetuates the very stereotypes that the legislation was designed to end.
45. As the case law makes clear, even where there are 'good character' requirements, the mere fact of a criminal record does not determine a person's character and the passage of time can heal past wrongdoing.¹⁸ As Coldrey J stated in *Aavelaid v Dental Board of Victoria*:

In summary, each case will necessarily turn on its own facts. The nature of the initial misconduct, the subsequent attitude of the person disqualified towards it, that person's behaviour during the period of disqualification, and the passage of time itself, are all factors which will be relevant in determining whether a person has demonstrated that they are currently of good character.¹⁹

46. Whilst I accept the submission of DAA that personal carers work with vulnerable members of society, unsupervised, in their clients' homes, I do not accept that having a clear police check is essential to the role.
47. The Commission's On the Record Guidelines²⁰ lists the information which an employer may need to consider when assessing the relevance of a person's criminal record. These include:
- a. the seriousness of the conviction or offence and its relevance to the job in question;
 - b. the age of the applicant when the offences occurred;
 - c. whether the applicant has a pattern of offences;
 - d. the circumstances in which the offence took place, for example if it was an offence that took place in a work, domestic or personal context; and
 - e. whether the applicant's circumstances have changed since the offence was committed.
48. Based on the information before me, the following factors would be relevant to an assessment of Mr AV's case:
- a. the offences occurred over 25 years ago and since this time Mr AV has had no further convictions recorded;
 - b. he was 20 years old at the time of the offences;
 - c. no custodial sentence was imposed. He received a fine of \$300 for two offences and a fine of \$200 for the third;
 - d. in the past he has worked for DAA in the same position for a period of at least 5 years without any incident; and
 - e. he has held other positions of trust, in particular he has been continually employed as a NSW Public Servant since 1997. Throughout this time Mr AV has never had any concerns raised about previous criminal convictions.
49. Finally, I wish to address the submission made by DAA that 'a requirement under all government funded programs is that all staff of the service provider have national police clearance'. DAA has not provided any evidence in support of this submission that there is a mandatory requirement imposed by government funding agreements on DAA that requires all carers to have clear criminal record checks. I do not accept the extract provided by DAA from its contract with the NSW health department as evidence of this requirement.
50. There are legislative requirements that govern certain care providers, including DAA. For example, the Accountability Principles 2014 made pursuant to the *Aged Care Act 1997* (Cth) provide that an aged care provider must ensure that:
- a. there is a police certificate for each person who is a staff member of the approved provider;
 - b. the certificate is not more than 3 years old; and
 - c. the certificate does not record that the person has been convicted of murder, or sexual assault, or convicted of and sentenced to prison for any other form of assault.

51. DAA has not provided evidence of any contractual or legislative provisions that would have prevented DAA engaging Mr AV as a personal carer.
52. As I have found that the requirement to have a 'clear police check' is not an inherent requirement of the job of personal carer, it is my view that the exclusion of Mr AV was not based on the inherent requirements of the job.

5 Findings and recommendations

5.1 Power to make recommendations

53. 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.²¹ The Commission may include in the notice any recommendation for preventing a repetition of the act or a continuation of the practice.²²
54. The Commission may also recommend:
- the payment of compensation to, or in respect of, a person who has suffered damage; and
 - the taking of other action to remedy or reduce the loss or damage suffered by a person.

5.2 Mr AV's submissions

55. Mr AV asked the Commission to make the following recommendations:
- for DAA to review their current policies and recruitment processes and undertake immediate actions to ensure that these align with current relevant laws including Anti-Discrimination legislation;
 - a written apology from DAA;
 - payment of compensation from DAA for Mr AV's loss of potential work opportunities following DAA's actions; and
 - payment of compensation from DAA for the high level of personal stress and negative impact caused.
56. In support of his submission that he had suffered a high level of personal stress, Mr AV provided:
- a. a letter from his General Practitioner dated 29 October 2014 who noted that he had:
- presented on 1/5/2014 with depressive symptoms as a consequence of uncertainty about his current job, unsuccessful in another job that he had applied based on previous criminal conviction.
- He was referred for psychotherapy and medications to improve his sleep patterns.

- b. a letter from his psychologist dated 25 November 2014 which stated that Mr AV's history, clinical presentation and Depression Anxiety Stress Scales scores are consistent with a diagnosis of an adjustment disorder with mixed anxiety and depressed mood and that:

the loss of job security and more recently the discriminatory actions of an employer have generated overwhelming stress for Mr AV and culminated in a depressive episode.

5.3 Consideration of compensation

57. I am satisfied that Mr AV suffered loss and damage and should be compensated. I consider that compensation in the sum of \$5,000 is appropriate to compensate Mr AV for his hurt, humiliation and distress. I am not satisfied that it is appropriate to make a recommendation that compensation be paid for economic loss, in all of the circumstances of this case.
58. In assessing the recommended sum, I have taken into account the matters discussed below.
59. In considering the assessment of a recommendation for compensation in cases of this type, the Federal Court has indicated that tort principles for the assessment of damages should be applied.²³ 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 in the case of a recommendation for compensation, the object should be to place the injured party in the same position as if the wrong had not occurred.²⁴

Economic loss

60. Mr AV requested that a recommendation be made that DAA pay compensation for his loss of potential work opportunities with DAA. Mr AV did not however specify the quantum of his claimed economic loss. Nor did Mr AV submit that he had given up any employment or turned down any other employment opportunities as a result of DAA's conduct.
61. I am also aware that being added to the DAA casual register does not confer any guarantee of employment.
62. I am unable to conclude that Mr AV in fact suffered quantifiable economic loss as a result of DAA's conduct and therefore do not consider it appropriate to make a recommendation with respect to payment of compensation for economic loss in this matter.

Hurt, humiliation and distress

63. Compensation for Mr AV'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.²⁵
64. I am satisfied that Mr AV suffered hurt, humiliation and distress as a result of being discriminated against on the basis of his criminal record. On the evidence before me, I accept Mr AV's submission that he has suffered a degree of personal stress and anxiety. I note from the evidence of Mr AV's GP that Mr AV has presented with depressive symptoms in part because of DAA's discriminatory conduct, and that of his psychologist who notes that the discriminatory actions of an employer have generated overwhelming stress for Mr AV and contributed to a depressive episode. I consider an award of monetary compensation for hurt, humiliation and distress in the amount of \$5,000 is appropriate. I therefore recommend that DAA pay him that amount.

5.4 Review of DAA's policies

65. I recommend that DAA review its internal policies to ensure compliance with current relevant laws. In this regard, I draw DAA's attention to the Commission's publication *On the Record: Guidelines for the Prevention of Discrimination in Employment on the Basis of Criminal Record*. I also refer DAA to Part 6 of the Accountability Principles 2014 made pursuant to the *Aged Care Act 1997* (Cth).

5.5 Apology by DAA to Mr AV

66. I consider it appropriate that DAA provide a formal written apology to Mr AV. Apologies are important remedies for discrimination. They, at least to some extent, alleviate the suffering of those who have been wronged.²⁶

6 DAA's response

67. DAA provided a written response to my findings and recommendations on 10 June 2015. DAA stated:

1. DAA is conscious of its obligations to all stakeholders in the care industry.
2. DAA sincerely regrets its failure to afford Mr AV his rights.
3. DAA has issued a written apology to Mr AV in that regard and enclosed a cheque in the amount of A\$5,000 by way of monetary compensation.
4. DAA has reviewed its policies and procedures generally and in relation to police checks, in summary, as follows:
 - a. All potential employees must have a police check completed prior to employment;
 - b. Those potential employees who do not have a clear police record and who would otherwise be selected as an employee should have their case elevated to the Group Manager HR;
 - c. The Group Manager HR will reject any potential employee whose record includes an offence prohibited by any relevant governmental agency such as Department of Veterans' Affairs, Department of Social Services, Department of Education of the National Disability Insurance Scheme; and
 - d. The Group Manager HR will, on a case by case basis, review the remainder in light of the relevant pronouncements of the AHRC and DAA's other obligations.

68. I report accordingly to the Attorney General.

A handwritten signature in black ink, reading "Gillian Triggs". The signature is fluid and cursive, with a long horizontal stroke at the bottom.

Gillian Triggs
President
Australian Human Rights Commission
August 2015

- 1 Australian Human Rights Commission Regulations 1989 (Cth), reg 4(a)(iii).
- 2 *Victoria v Macedonian Teachers' Association of Victoria Inc* (1999) 91 FCR 47.
- 3 *Criminal Records Act 1991* (NSW), s 12(b).
- 4 Done in Geneva on 25 June 1958.
- 5 *Commonwealth v Bradley* (1999) 95 FCR 218, 235 (Black CJ).
- 6 *Commonwealth v Hamilton* (2000) 108 FCR 378, 385.
- 7 International Labour Organisation, *General Survey: Discrimination in the field of employment and occupation*, ILC, (42nd Session, 1988 Report IV(1)), [86].
- 8 (1998) 193 CLR 280.
- 9 (1998) 193 CLR 280, 284.
- 10 (1998) 193 CLR 280, 295.
- 11 (1998) 193 CLR 280, 316.
- 12 (1999) 200 CLR 177.
- 13 (1999) 200 CLR 177, 208.
- 14 (1998) 158 ALR 468.
- 15 (1998) 158 ALR 468, 482.
- 16 (1999) 95 FCR 218.
- 17 (1999) 95 FCR 218, 235-236.
- 18 *Z v Director General, Department of Transport* [2002] NSWADT 67, [30]-[32].
- 19 *Aavelaid v Dental Board of Victoria* [1999] VSC 255, [75] (Coldrey J).
- 20 Australian Human Rights Commission, *Human Rights: on the record* (2012). At <https://www.humanrights.gov.au/publications/human-rights-record> (viewed 20 August 2014).
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Further Information

Australian Human Rights Commission

Level 3, 175 Pitt Street
SYDNEY NSW 2000

GPO Box 5218
SYDNEY NSW 2001
Telephone: (02) 9284 9600

Complaints Infoline: 1300 656 419
General enquiries and publications: 1300 369 711
TTY: 1800 620 241
Fax: (02) 9284 9611
Website: www.humanrights.gov.au

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