

Accreditation of Academic and Vocational Qualifications Bill

Legislation against Age Discrimination and that on Complementary Measures in support of Training in Overseas Countries

At the meeting of the Bills Committee on the Accreditation of Academic and Vocational Qualifications Bill (the Bill) held on 11 November 2005, the Education and Manpower Bureau (EMB) was requested to provide information on legislation against age discrimination and the complementary measures, such as those on working hours, minimum wage, training subsidy and paid training leave in overseas countries where qualifications framework (QF) had been established.

2. This paper sets out the information on legislation against age discrimination and that on complementary measures in support of training in Australia, New Zealand, England and Scotland. These countries have a long history of developing vocational education and training, and are pioneers in developing the QF. Given the time constraint, the information presented in this paper (which is based on internet research) may not be exhaustive.

Age Discrimination

3. In Australia, *the Age Discrimination Act 2004 (ADA)* is a federal law which addresses age discrimination in many areas of public life. Applicable in all Australian States and Territories, the ADA prohibits less favourable treatment not only because of age, but also because of characteristics generally pertaining to age and characteristics generally imputed to people of that age. In the area of employment, the ADA covers employees, commission agents and contract workers in relation to offers of employment, terms and conditions of employment, access to promotion and training, and dismissal.

4. Similarly, *Part II of the Human Rights Act 1993* in New Zealand sets out the non-discrimination standards and deals with discrimination in both the private and public sectors in relation to employment, sexual harassment, racial disharmony, racial harassment and victimization. The prohibited grounds of discrimination listed in *section 21 of the Human Rights Act 1993* and referred to in *section 19 of the Bill*

of Rights Act 1990 include any age discrimination commencing with the age of 16 years.

5. On the other hand, both England and Scotland have adopted administrative measures rather than legislation to encourage equal opportunities for their citizens. For instance, *the Code of Practice on Age Diversity* of Scotland sets out the key principles that employers can adopt to avoid discriminating on grounds of age, and advises employers to recruit on the basis of the skill and abilities needed for the job concerned.

Maximum Working Hours

6. In Australia, *section 22 of the Industrial Relations Act 1996* provides for maximum ordinary hours of employment. It stipulates that the number of ordinary working hours of an employee must not exceed 40 hours per week, averaged over a 12 week period. However, those ordinary hours may be averaged over a period not exceeding 52 weeks in case of seasonal employment.

7. The *Working Time Regulations*, which came into force in the United Kingdom in October 1998, stipulate limits on the length of the working day and working week as well as on the minimum amount of paid leave. In particular, there is a general limit of 48 hours in a working week. However, this can be averaged over 17 weeks or even 26 weeks under special circumstances. Individual employees can agree in writing with their employers to be exempt from applying this 48-hour limit. Such an agreement is valid only if the employer concerned maintains up-to-date records of all employees who have agreed not to be bound by the 48-hour limit, and makes such records available to their Health and Safety Executive or the local authority.

8. Our research indicates that there is no legislative backing for maximum working hours in New Zealand.

Minimum Wage

9. The *Minimum Wage Act 1983* of New Zealand provides for a minimum wage level for its employees. Under the Act, the Minister of Labour conducts annual reviews which consider the effectiveness of the minimum wage in meeting its objectives and there are set criteria for reviewing changes to the minimum wage.

10. The minimum or basic wage concept of Australia was established by the Industrial Court in 1907 in the Harvester case. The *Minimum Conditions of Employment Act 1993* sets out minimum conditions on various types of leave, as well as minimum pay levels. It applies to all employers and employees working in the State labour relations system. Certain types of employees including persons with a disability working in a supported employment service; persons paid wholly by commission or piece rates; and volunteers are excluded from the provisions of *the Minimum Conditions of Employment Act 1993*. A separate schedule of minimum wage levels for trainees and apprentices is also in place.

11. In the United Kingdom, the national minimum wage level was introduced in 1999. *The National Minimum Wage Act 1998* stipulates that workers who have ceased to be of compulsory school age shall be paid at least the national minimum wage prescribed by the Secretary of State from time to time.

Paid Training Leave and Training Subsidy

12. In Australia, *the Aboriginal Communities and Organisations (Western Australia) Award 2001* stipulates that a union delegate, shop steward, or a recognised employee workplace representative shall be entitled to, and the employer shall grant, up to five days' leave each year, non-cumulative, to attend courses conducted by an accredited training provider.

13. Similar to Australia, there is legislation in New Zealand which provides for paid training leave. Part 7 of the *Employment Relations Act 2000* specifies that a union is entitled to allocate a maximum of 5 days of employment relations education leave to employees who are union members.

14. According to our research, both England and Scotland do not have legislation on paid training leave. There is also no legislation providing for training subsidy in these four countries.