c) El actor marroquí también consigue invitación para entrevista pero no se llega a realizar:

Caso 53, Barcelona
Primera llamada (actor marroquí)

— Empleador: ¿Sí, dígame?
— Inmigrante: Hola, bon dia!
— E.: ¿Sí?
— I.: Llamo por el anuncio publicado en la revista «El Sol» de hoy mismo, que os falta un maquinista para encuadernación.
— E.: Veiam, un moment, si us plau (Mire, un momento, por favor).
— I.: O.K.
— E.: Escolta.
— I.: Sí, dígame.
— E.: Et passo amb l'encarregat ara mateix (Le paso con el encargado de este tema).
— I.: Vale.
— E.: Diguim.
— I.: Hola, bon dia!
— E.: Hola, buenos días.
— I.: Me llamo Mohamed y llamo por el aviso publicado en la revista «El Sol» de hoy.
— E.: Sí, necesito un maquinista de Tren Kolbus línea 36.
— I.: Sí, pues, yo sé manejar esa máquina.
— E.. ¿Sabe manejarla?
— I.: Sí, sí, yo estuve trabajando en Castellón, en una copistería.
— E.: Bueno, pues te pasas por aquí, te haremos una **entrevista.**
— I.: Vale, ¿a qué hora?
— E.: Toma nota: calle XX, nave L, polígono industrial XX, en San Andrés de la Barca.
— I.: Sí, y qué me hacéis, ¿una entrevista o una prueba?
— E.: Haremos una entrevista y, después, cuando acabemos, una prueba.
— I.: Sí, sí.
— E.: ¿Cómo te llamas?
— I.: Me llamo Mohamed.
— E.: ¿Mohamed?
— I.: Sí, y soy marroquí.
— E.: **¿Tienes los papeles en regla?**
— I.: Sí, sí, todos en regla.
— E.: ¿Conoces bien la máquina?
— I.: La máquina sí sé manejarla, estuve trabajando con ella.
— E.: ¿Sabes poner medidas?
— I.: Sí, sí.
— E.: Bueno, ¿Mohamed...?
— I.: Mohamed XX. separando El.
— E.: Es igual, ya me lo dirás cuando vengas.
— I.: Sí, vale. Pero, ¿cuándo voy?
— E.: Cuando quieras.
— I.: Bueno, mañana.
— E.: ¿Mañana?
— I.: Sí, por la tarde.
— E.: Bueno, a partir de las 4,30.

— I.: ¿Por quién pido?
— E.: Pide por el encargado.
— I.: Vale, vale, hasta mañana. Gracias.
— E.: Adiós.

Segunda llamada (actor autóctono)

— Autóctono: Hola, bon dia!
— Empleador: Bon dia!
— A.: Miri, trucaba per l'anunci de la revista «El Sol» de maquinista d'enquadernaciò (Mire, llamo por el anuncio de la revista «El Sol» de maquinista de encuadernación).
— E.: Ya, Kolbus.
— A.: Sí, de Tren Kolbus, ja he vist que ho posava l'anunci, sí. He estat 3 anys i mig treballant i la coneixo bé (Sí de Tren Kolbus, ya he visto que ha puesto el anuncio. Yo he estado trabajando 3 años y medio con ella y la conozco muy bien).
— E.: La coneixes? (¿La conoces?)
— A.: Sí.
— E.: Doncs, seria questió que passesis per aquí, et fariem una entrevista... cóm et dius? (Entonces sería cuestión de que te pasaras por aquí para hacerte una entrevista... ¿cómo has dicho que te llamabas?).
— A.: Guillem.
— E.: Un telefón.
— A.: El telefón, mira, es el xxxxxxxx.
— E.: Be, doncs apunta't l'adreça que et dono, passa't per aquí per l'entrevista... (Bueno, apunta la dirección que te doy y pásate por aquí para una entrevista).
— A.: D'acord, diga'm. (De acuerdo, dígame).
— E.: Mira, es el carrer XX, nau L, polígon XX de Sant Andreu de la Barca.
— A.: Val. Llavors, per passar, a quina hora he de passar? (Bien, de acuerdo, ¿a qué hora he de pasar?)
— E.: A la que et vagi bé, a quina hora et pots passar? (A la que te venga bien, ¿a qué hora te puedes pasar?)
— A.: Tant es al matí o a la tarda?, es igual? O sigui, avui a la tarda o demá al matí podría passar també? (¿Da igual por la mañana que por la tarde? ¿O es posible hoy mismo por la tarde o mañana por la mañana, también?)
— E.: Com vulguis, si et passes a la tarda es a partir de las 4,30 (Como desees, pero si te pasas por la tarde que sea a partir de las 4,30).
— A.: Molt bé. Gràcies, bon dia.

Al día siguiente, el empleador llama al actor marroquí para decirle que no acuda a la entrevista prefijada porque la plaza ya está ocupada. En cambio, al actor autóctono no le llaman para anular la entrevista.

En esta segunda etapa se producen 40 casos de **trato desigual**, de los que en 35 ocasiones se prefiere al actor autóctono frente al marroquí (2.3) y en 5, a la inversa: es preferido el actor marroquí (2.4). **La «discriminación neta» o diferencia entre casos de preferencia de un actor sobre otro es de 30 en contra del actor marroquí (7,8 por ciento del total de casos útiles). Y la discriminación acumulada de las dos primeras etapas es de 126 en contra del actor marroquí (96+30), 32,7 por ciento del total de casos útiles**. En esta

segunda etapa la discriminación se reduce a una tercera parte comparada con la primera etapa.

1.1.3. Resultados de la tercera etapa: «ofertas de empleo» en las entrevistas

El procedimiento metodológico plantea que cuando los dos actores son invitados a una entrevista, ambos acudan y cada uno trate de conseguir el empleo ofertado, poniendo al empleador en la tesitura de tener que elegir entre solicitantes con idéntica experiencia y cualificación para el puesto ofertado. Tal como se ha expuesto anteriormente, en esta tercera parte aparecieron dificultades específicas que impidieron en 61 ocasiones la realización de la entrevista (3.1.1), respecto a un total de 112 entrevistas concedidas «a los dos actores invitados» (3.1). La situación más comprometida se presenta cuando se exige la realización de una prueba *in situ* para una especialidad en la que uno o ninguno de los actores cuenta con la habilidad requerida; en otras ocasiones se exigía un desplazamiento de más de 100 kilómetros y, en algún caso, coincidieron temporalmente dos entrevistas concertadas para un mismo actor y hubo que optar por la que representaba el sector más conveniente para el desarrollo de la investigación.

Las entrevistas realizadas tuvieron características diferentes respecto a los actores. En unos casos a un actor le hicieron una entrevista muy corta, casi de trámite, mientras que se interesaron por el otro de modo claro; en otros casos se realizaron una serie de entrevistas, como proceso de selección, junto a otros candidatos externos al equipo. Finalmente, en las solicitudes de empleo en la construcción o no hay llamada telefónica (se solicitó a pie de obra) o no hay entrevista formal, dado que si hay trabajo, se cita al solicitante a la obra para que empiece, sirviendo esto de prueba de selección.

Se realizaron 51 entrevistas (3.1.3), algo menos de la mitad (45,5 por ciento) de las invitaciones obtenidas. En 25 casos no se ofreció empleo a ningún actor (3.1.3, *a)*) y en otros 26, sí: 9 casos de «empleo ofrecido a ambos actores» (3.1.3, *d)*), 14 de «empleo ofrecido sólo al autóctono» (3.1.3, *b)*) y 3 de «empleo ofrecido sólo al marroquí» (3.1.3, *c)*). Según estos resultados, la discriminación neta contra el actor marroquí en la tercera etapa es de 11 casos (14-3), 2,9 por ciento del total de casos útiles y la discriminación acumulada durante las tres etapas del procedimiento aplicado es de 137 casos (96+30+11), 35,6 por ciento del total de casos útiles.

1.2. Resultados totales de «trato desigual»

El total de casos comprobados de discriminación neta contra el actor marroquí en las tres etapas del procedimiento aplicado es de 137: 155 (106+35+14) a favor del actor autóctono y 18 (10+5+3) a favor del actor marroquí; esto **supone el 35,6 por ciento del total de casos útiles** (ver cuadro 12). Según el procedimiento aplicado, esto significa que en más de una tercera parte de las pruebas útiles el actor autóctono ha llegado más lejos que el marroquí, disponiendo en esa medida de mayores oportunidades de obtener el empleo ofertado. **Desde el punto de vista estadístico, el 35,6 por ciento de discriminación neta acumulada en las tres etapas es tres veces y media superior al 10,0 por ciento que supone la «tasa crítica» requerida para rechazar la hipótesis nula con un nivel de significación del 5 por ciento. Del resultado obtenido se concluye que existe notable discriminación contra el grupo de jóvenes varones marroquíes semicualificados en el momento de la contratación en comparación con jóvenes autóctonos de similares características.**

Cuadro 12. Pruebas útiles con resultado de trato desigual

Primera etapa	
• A favor del autóctono	106
• A favor del marroquí	10
— Discriminación neta contra actor marroquí	96
— Discriminación en %	24,9%
Segunda etapa	
• A favor del autóctono	35
• A favor del marroquí	5
— Discriminación neta contra actor marroquí	30
— Discriminación en %	7,8%
— Discriminación acumulada (1+2)	32,7%
Tercera etapa	
• A favor del autóctono	14
• A favor del marroquí	3
— Discriminación neta contra actor marroquí	11
— Discriminación en %	2,9%
— Discriminación acumulada (1+2+3)	35,6%

1.3. Interpretación de resultados

Del procedimiento aplicado obtenemos dos tipos de resultados. El primero es la **discriminación neta acumulada**, señalada anteriormente, por el que se comprueba que al menos en el 35,6 por ciento de los casos útiles el actor autóctono es preferido al marroquí y puede llegar más adelante en el procedimiento establecido de obtención de empleo.

El segundo incluye los casos en los que ningún actor es invitado a entrevista (2.1), los dos son invitados, pero a ninguno se ofrece empleo (3.1.3, *a)*) y los dos son invitados pero «no es realizada» (3.1.1). En este conjunto amplio de casos, 180 (94+25+61), no se ha podido determinar la discriminación de hecho. Sin embargo no quiere decir que haya que descartarla, dado que los empleadores no han tenido que hacer una elección de hecho prefiriendo a un actor sobre otro, al haberse interrumpido el procedimiento. Si la tendencia de la práctica de los empleadores es la comprobada anteriormente, podríamos esperar que en igual proporción se hubiera dado discriminación sobre este conjunto de casos. Por tanto, puede considerarse que la incidencia de casos con **trato desigual** en números absolutos es mayor que lo constatado.

Por otra parte, los resultados del primer tipo, esto es, la **discriminación neta** puede fácilmente malinterpretarse. Si en el 35,6 por ciento de los casos útiles se ha comprobado que existe discriminación neta contra el actor marroquí, podría erróneamente concluirse que en el resto (64,2 por ciento) no se ha encontrado o que en tal resto el actor marroquí habría conseguido el empleo. Tal tipo de razonamiento no se ajusta al procedimiento empleado. Téngase en cuenta que se trata de una **medida de discriminación** durante un proceso establecido, no de un resultado de suma 100. Válidamente puede concluirse que de las 385 pruebas útiles, en 18 casos (10+5+3) el actor marroquí ha sido preferido al autóctono contra 137 veces en que ha sido postergado claramente frente a aquél. No es igual, por lo tanto, responder a la cuestión de «en cuántas ocasiones de las 385 aplicaciones realizadas se

ha comprobado que existe discriminación contra el actor marroquí» que saber «cuántos empleos le habrán ofrecido al actor marroquí en las 385 solicitudes que realizó».

Para poder responder a la última cuestión, se debe aclarar en cuántos casos las vacantes de empleo localizadas terminan en un ofrecimiento de empleo. Para realizar esto, el método propuesto por la OIT plantea desarrollar la siguiente secuencia:

a) el modo directo de responder a la pregunta sería saber el número de empleos obtenidos por los actores sobre el total de ofertas vacantes localizadas y útiles. Pero esto no es posible, dado que algunas citas para entrevista no se realizaron (porque exigían pruebas no factibles o, simplemente, porque sólo fue invitado uno de los actores y el procedimiento terminó en ese momento);

b) sin embargo, es posible calcular el número de invitaciones de entrevistas. Y se sabe la importancia de obtener una entrevista en orden a conseguir un empleo: el actor que más entrevistas consiga, tendrá más posibilidades de obtenerlo. Si nos situamos en el resultado de la tercera etapa del procedimiento, podemos inferir de modo aproximado las posibilidades de obtener empleo por el actor autóctono y el marroquí. Por tanto, conociendo el número total de entrevistas conseguidas por los actores, podremos calcular el número de empleos que podrían haber sido ofrecidos a cada uno de ellos. Se trata, pues, de un procedimiento de cálculo estimativo y no de lo ocurrido durante el proceso seguido. Realicemos el cálculo para fundamentar la estimación:

— en la **primera etapa** del procedimiento, los actores demandantes de empleo recibieron tres tipos de respuestas: *a)* se les denegó el empleo a ambos; *b)* fueron entrevistados brevemente por teléfono y aceptados ambos, o *c)* se produjo una situación de **trato desigual**: un actor es preferido al otro (sólo aceptado el autóctono o sólo el marroquí), en cuyo caso el procedimiento termina para los dos.

  El **cuadro 12** presenta los resultados de esta etapa. En ella se puede observar que la categoría 1.1.2, *b)* «aceptado sólo el autóctono» tiene 106 casos. En ninguno de ellos el actor marroquí fue aceptado pero tampoco en todos éstos el actor autóctono recibe automáticamente invitación para una entrevista. Hasta el momento estos casos han sido considerados de **trato desigual** y no han sido desglosados. Pero es necesario hacerlo si se desea determinar cuántas invitaciones a entrevista pudieran obtener los actores. El desglose de los 106 casos es el siguiente: en 80 el actor autóctono recibió invitación para entrevista y en 26 no. Por su parte, la categoría «aceptado sólo el marroquí» tiene 10 casos, de los que 7 son invitaciones a entrevista y 3 no.

— Si observamos los resultados de la **segunda etapa**, en 112 casos los dos actores fueron invitados a entrevista, en otros 35 fue «invitado sólo el autóctono» y en 5 «invitado sólo el marroquí».

  Realizado el desglose de estos casos en las dos primeras etapas del procedimiento, hemos obtenido un total de 227 casos (80+112+35) en los que el actor autóctono fue capaz de conseguir una entrevista (58,9 por ciento del total de casos útiles), mientras que el actor marroquí obtuvo un total de 124 (7+112+5), 32,2 por ciento del total de casos útiles. En resumen, el **actor autóctono recibió casi dos invitaciones para entrevistas por cada una del actor marroquí durante las dos primeras etapas.**

— La **tercera etapa** de la aplicación muestra que de las 51 entrevistas realizadas por ambos actores (3.1.3), el autóctono consiguió empleo en 25 casos (3.1.3, *b)*=14 y 3.1.3, *d)*=9): 49,02 por ciento de éxito; y el marroquí en 12 casos (3.1.3, *c)*=3 y 3.1-.3, *d)*=9): 23,53 por ciento de éxito.

Si aplicamos esta proporción a las entrevistas obtenidas y no realizadas de las dos primeras etapas, podremos estimar que el actor autóctono hubiera conseguido otras 111 ofertas de empleo más (49,02 por ciento de éxito sobre 227 invitaciones estimadas para entrevistas) y el marroquí otras 29 más (23,53 de éxito sobre 124). En números absolutos, el actor autóctono podría haber conseguido 136 (111+25) empleos durante todo el procedimiento y el marroquí 41 (29 +12). Esto es, por cada empleo conseguido por el inmigrante, el actor autóctono habría obtenido 3,2.

El cálculo realizado permite fundamentar una estimación que va más allá de los resultados comprobados de **discriminación neta** contra uno de los actores en el procedimiento aplicado (sea en la versión de «proporción mínima» o «máxima», como se expondrá a continuación). La estimación es útil en cuanto que proporciona una indicación más de la situación real del grupo de jóvenes varones marroquíes semicualificados en el momento de acceso al mercado laboral español.

1.4. Trato aparentemente igual pero realmente diferente

En el procedimiento empleado, se considera **trato igual** cuando los dos actores de un mismo equipo culminan el proceso en la misma etapa y con el mismo resultado. Sin embargo, nos encontramos casos, sea en la primera etapa (1.1.1 «ningún solicitante aceptado»), en la segunda (2.1 «ningún actor invitado», 2.5 «casos pendientes») o en la tercera (3.1.1 «entrevistas no realizadas» y 3.1.2 «entrevistas pendientes») que consideramos de trato igual en cuanto al procedimiento seguido, pero que, en realidad, contienen diferencias.

Nos situamos ahora en un nivel distinto del que mide el método empleado, es decir, según el procedimiento no ha resultado «aceptación o rechazo» de uno de los actores pero se han observado **diferencias de trato**: reservas a la hora de aceptar referencias de anteriores trabajos, resistencia a aceptar la situación legal del inmigrante, mejor trato en la entrevista, etc. Situados en este nivel, cuenta la percepción subjetiva del propio actor y del equipo de investigación, aunque apoyada en la interpretación de los datos observados. Por ello, a pesar de ser bastantes los casos señalados en las tres etapas con una supuesta diferencia de trato, una vez sometidos a revisión en los equipos, retenemos 15 casos (5 en Madrid, 3 en Barcelona y 7 en Málaga) como **trato aparentemente igual pero realmente diferente** (ver cuadro 13).

En estos 15 casos, según el procedimiento aplicado, el actor marroquí recibió un trato igual que el autóctono, pero en 14 ocasiones se observaron diferencias reales en el tratamiento, esto es, menor aceptación; sólo en un caso se observó que la diferencia actuaba contra el actor autóctono.

1.5. Proporción máxima de discriminación

Si se suman los casos de **trato desigual** (ver cuadro 12) y los de **trato aparentemente igual pero realmente diferente** (cuadro 13) contra el actor marroquí (106+35+14+14) y contra el actor autóctono (10+5+3+1), y después se restan entre sí, obtenemos el máximo acumulado de discriminación neta contra el actor marroquí: 150 casos (169-19), que suponen el 38,96 por ciento del total de casos útiles. Este resultado es la proporción máxima de discriminación neta acumulada (ver cuadro 14).

Cuadro 13. Casos de trato aparentemente igual pero realmente diferente

• Casos útiles de la muestra total	385
• Trato aparentemente igual pero realmente diferente (favorece al autóctono)	14
• Trato aparentemente igual pero realmente diferente (favorece al marroquí)	1
— Discriminación neta contra actor marroquí	13
— Discriminación neta en %	3,37%

Cuadro 14. Proporción máxima de discriminación

• Casos útiles	385
• Trato igual [1]	197
• Trato aparentemente igual pero realmente diferente (favorece actor marroquí)	1
• Trato aparentemente igual pero realmente diferente (favorece actor autóctono)	14
• Trato desigual, a favor actor autóctono	155
• Trato desigual, a favor actor marroquí	18
— Discriminación neta acumulada contra actor marroquí	150
— Discriminación neta acumulada contra actor marroquí en %	38,96%

1.6. Resultados del estadístico CHI2

La aplicación del estadístico CHI2, según se expuso en la Parte III, 3.3, permite saber si unas frecuencias obtenidas empíricamente difieren significativamente o no de las que se esperarían bajo cierto conjunto de supuestos teóricos. En Madrid y Barcelona, al contar con dos equipos de actores (A, B autóctonos y C, D marroquíes) que se intercambian entre sí, obtenemos cuatro combinaciones (AC, AD, BC y BD); como además temporalmente se intercambiaron dos veces, obtenemos resultados de Fase 1, Fase 2 y el total. En Málaga, comenzó sólo el equipo AC; el recambio del actor marroquí al final de la aplicación permitió la creación del equipo AD. En el cuadro 15 pueden observarse los resultados de la CHI2 en las tres unidades espaciales de aplicación de las pruebas.

Los resultados obtenidos de la CHI2 adquieren valores mayores del esperado (3,84) en Madrid (6,28) y Málaga (7,5); en Barcelona se sitúa por debajo (3,50). Los resultados de las dos primeras unidades indican que puede descartarse la hipótesis nula (que no existe relación alguna entre unidad espacial y comportamiento de los empleadores).

[1] Este número se obtiene sumando todos los casos de trato igual: 212 (2.1=94 + 2.5=23 + 3.1.1=61 + 3.1.3, *a)*=25 + 3.1.3, *d)*=9) y restándole los de trato aparentemente igual pero realmente diferente que son 15; 212-15=197.

Cuadro 15. Resultados de CHI2, por unidades espaciales

	Madrid						Barcelona						Málaga
	Fase 1		Fase 2		Total		Fase 1		Fase 2		Total		Fase única
a) **Pruebas útiles por cada equipo y fase**													
	A	**B**	**A**	**B**	**A**	**B**	**A**	**B**	**A**	**B**	**A**	**B**	**A**
C	39	38	12	42	51	80	20	16	10	8	30	24	24
D	27	33	40	17	67	50	17	16	11	9	28	25	6
b) **Número de casos teóricamente esperados de discriminación**													
	A	**B**	**A**	**B**	**A**	**B**	**A**	**B**	**A**	**B**	**A**	**B**	**A**
C	9,7	9,4	3,0	10,4	15,2	23,9	9,9	7,9	5,0	4,0	14,9	11,9	5,5
D	6,7	8,2	9,9	4,2	20,0	14,9	8,4	7,9	5,4	4,5	13,9	12,4	2,0
c) **Número de casos empíricamente obtenidos de discriminación**													
	A	**B**	**A**	**B**	**A**	**B**	**A**	**B**	**A**	**B**	**A**	**B**	**A**
C	15	5	10	7	20	17	11	12	5	2	16	14	11
D	13	10	9	0	23	9	2	12	6	3	8	15	4
CHI2	11,3		22		6,2		9,2		1,5		3,5		7,5

Desde el punto de vista estadístico, se recomienda utilizar la prueba del CHI2 en determinadas situaciones. En primer lugar, cuando el número total de observaciones sea superior a 50 y los valores teóricos no inferiores a 5[1]. En el caso de España no puede utilizarse la muestra conjunta, dado que se trata de aplicaciones realizadas por equipos diferentes en cada unidad espacial. De las unidades espaciales (ver cuadro 15), Barcelona se sitúa en torno a las 50 observaciones (53), Málaga se aleja mucho del mínimo (15) y Madrid con 69 observaciones permitiría la aplicación con cierta holgura. Respecto al límite de los valores teóricos, encontramos valores por debajo de 5 en las tres unidades espaciales: el equipo BD de la segunda fase de Madrid, los equipos BC, BD y AC de la segunda fase en Barcelona y el equipo AD en Málaga.

En segundo lugar, cuando alguna de las frecuencias teóricas esperadas descienda por debajo de 10[2] se recomienda realizar la corrección de Yates o corrección de continuidad (se trata de añadir o sustraer 0,5 a las frecuencias observadas) con objeto de reducir el tamaño de la CHI2. Realizada la misma en las tres unidades espaciales, disminuye el valor de la CHI2 en Madrid de 6,28 a 5,18 y en Barcelona de 3,50 a 3,04 mientras permanece igual en Málaga (7,5). Estos resultados son muy similares a los anteriores, excepto el caso de Madrid donde se rebaja la discrepancia en 1,1 puntos, pero aún sobrepasa en 1,34 el valor admitido para no descartar la hipótesis nula.

[1] Ver Bugeda, 1974, págs. 217-218.

[2] Ver Blalock, 1966, págs. 245-246.

Por otra parte, si se aplica la CHI2 como medida de intensidad entre resultados de equipos, se observa, por ejemplo, que en Barcelona el equipo BC en la segunda fase y el AD en el total, ofrecen resultados que no llegan a lo esperado (2 en lugar de 4 y 8 en vez de 13,9). Después de proceder a una revisión sistemática caso por caso no se ha hallado una razón técnica del resultado; sin embargo, al no repetirse en ninguno de los casos un mismo actor, deducimos que no es achacable a ninguno de ellos la divergencia señalada.

Desde el punto de vista de la dinámica del mercado laboral, estamos realmente ante diversas submuestras de empleadores en cada una de las unidades espaciales de Madrid y Barcelona, dado que la aplicación de pruebas se realizó en dos y tres sectores laborales, respectivamente. Según se expuso en la Parte II, 1.4, no se comportan igual unos sectores que otros. Por otro lado, si se intenta homogeneizar la muestra en cada unidad espacial, entonces se pierde la significación social del resultado; pero la subdivisión en submuestras nos deja sin base numérica suficiente para la aplicación de la CHI2. Tampoco parece adecuado considerar un sector laboral, donde se aplican observaciones en diversas unidades espaciales, como una submuestra a los efectos que tratamos, dado que se trata de aplicaciones por equipos distintos.

En suma, desde nuestro punto de vista, la aplicación de este indicador estadístico no aporta elementos significativos y, por contra, está sometido a serias dudas.

2. Resultados específicos

Hasta ahora nos hemos limitado a ofrecer los resultados de la aplicación en el conjunto de España, pero el diseño presentado por Colectivo Ioé contempla otros aspectos de interés: se trata de una muestra única pero compuesta de **tres unidades espaciales** diferentes (Madrid, Barcelona y Málaga); además, en las tres unidades se seleccionó el **sector servicios** para aplicar las pruebas de actores, en Madrid y Barcelona se añadió el **sector de la construcción**, y en esta última unidad se aplicaron pruebas también al **sector industrial**. Por tanto podemos desglosar los resultados por cada una de las tres unidades espaciales y al interior de Madrid y Barcelona observar los distintos sectores del mercado laboral donde se han realizado pruebas de actores; asimismo podemos observar el resultado conjunto del sector servicios en las tres unidades o el de la construcción en Madrid y Barcelona.

El interés que presentan estas desagregaciones es evidente, pero siempre teniendo en cuenta que no todas las submuestras tienen el mismo peso y consiguiente fiabilidad estadística. Tal como se ha indicado anteriormente, sólo el conjunto del sector servicios y la submuestra de Madrid alcanzan las 170 pruebas requeridas para que el tamaño muestral cumpla los requisitos. El cuadro 16 presenta en resumen los apartados en los que podemos desglosar los resultados, con sus correspondientes tasa crítica de discriminación e índices de discriminación en la tres etapas del procedimiento. La presentación de todos estos resultados puede extenderse en exceso, por lo que optamos por un comentario breve señalando las diferencias más significativas entre las unidades espaciales y los sectores del mercado laboral comparadas con el resultado total correspondiente.

Cuadro 16. Resultados por unidades espaciales y sectores económicos

	Unidades espaciales				Sectores económicos			Sectores económicos/unidades espaciales					
								Madrid		Barcelona			Málaga
	Madrid	Barcelona	Málaga	Total	Servicios	Construcción	Industria	Servicios	Construcción	Industria	Construcción	Servicios	Hostelería
Primera etapa													
Llamadas telefónicas	306	210	36	552	334	143	75	228	78	75	65	70	36
1.1. Casos válidos (muestra total)	58	103	6	167	81	53	33	43	15	33	38	32	6
1.1.1. Ningún solicitante aceptado (válidos pero fallidos)	248	107	30	385	253	90	42	185	63	42	27	38	30
1.1.2. Casos útiles (de provecho)	201	48	20	269	180	68	21	145	56	21	12	15	20
a) Las dos demandas aceptadas	42	55	9	106	69	17	20	37	5	20	12	23	9
b) Aceptado sólo el autóctono	5	4	1	10	4	5	1	3	2	1	3	0	1
c) Aceptado sólo el marroquí													
Primera etapa Discriminación neta (b-c)	37	51	8	96	65	12	19	34	3	19	9	23	8
Discriminación neta (%)	14,9	47,7	26,7	24,9	25,7	13,3	45,2	18,4	4,8	45,2	33,3	60,5	26,7
Segunda etapa													
Invitación para entrevistas	201	48	20	269	180	68	21	145	56	21	12	15	20
2.1. Ningún actor invitado	72	18	4	94	52	33	9	47	25	9	8	1	4
2.2. Los dos actores invitados	76	30	6	112	78	22	12	58	18	12	4	14	6
2.3. Invitado sólo el autóctono	29	0	6	35	28	7	0	22	7	0	0	0	6
2.4. Invitado sólo el marroquí	5	0	0	5	1	4	0	1	4	0	0	0	0
2.5. Casos pendientes, segunda etapa	19	0	4	23	21	2	0	17	2	0	0	0	4
Segunda etapa Discriminación neta (2.3-2.4)	24	0	6	30	27	3	0	21	3	0	0	0	6
Discriminación neta (%)	9,7	0,0	13,3	7,8	10,7	3,3	0,0	11,4	4,8	0,0	0,0	0,0	13,3
Discriminación acumulada (1.ª+2.ª)	61	51	14	126	92	15	19	55	6	19	9	23	14
Discriminación acumulada (%)	24,6	47,7	46,7	32,7	36,4	16,7	45,2	29,7	9,5	45,2	33,3	60,5	46,7
Tercera etapa													
Ofertas de empleo (en las entrevistas)	76	30	6	112	78	22	12	58	18	12	4	14	6
3.1. Entrevistas a los dos actores	41	15	5	61	46	8	7	34	7	7	1	7	5
3.1.1. No realizadas (exigen pruebas, etc.)	0	0	0	0	0	0	0	0	0	0	0	0	0
3.1.2. Entrevistas pendientes	35	15	1	51	32	14	5	24	11	5	3	7	1
3.1.3. Entrevistas realizadas	17	8	0	25	13	8	4	10	7	4	1	3	0
a) No se ofreció empleo	9	4	1	14	13	1	0	9	0	0	1	3	1
b) Empleo ofrecido sólo al autóctono	1	2	0	3	2	0	1	1	0	1	0	1	0
c) Empleo ofrecido sólo al marroquí	8	1	0	9	4	5	0	4	4	0	1	0	0
d) Empleo ofrecido a ambos actores													
Tercera etapa Discriminación neta (b-c)	8	2	1	11	11	1	-1	8	0	-1	1	2	1
Discriminación neta (%)	3,2	1,9	3,3	2,9	4,3	1,1	-2,4	4,3	0,0	-2,4	3,7	5,3	3,3
Discriminación acumulada (1.ª+2.ª+3.ª)	69	53	15	137	103	16	18	63	6	18	10	25	15
Discriminación acumulada (%)	27,8	49,5	50,0	35,6	40,7	17,8	42,9	34,1	9,5	42,9	37,0	65,8	50,0
Tasa crítica de discriminación	12,4	18,9	35,8	10,0	12,3	20,7	30,2	14,4	24,7	30,2	37,7	31,8	35,8

2.1. Resultados por unidades espaciales de aplicación

En las tres unidades espaciales (**Madrid, Barcelona y Málaga**) donde se han aplicado las pruebas, se ha duplicado en términos generales el número inicialmente propuesto de las mismas (ver cuadro 17), lo que les proporciona mayor valor muestral, destacando el caso de Madrid y el sector servicios.

Resalta en las tres unidades espaciales que la discriminación neta acumulada contra el actor marroquí supera el valor de la tasa crítica de discriminación (ver cuadro 19). Sin embargo en ninguna de estas tres unidades se iguala la gran diferencia entre la tasa crítica de discriminación y el resultado obtenido de discriminación acumulada en el total de España (más de tres veces y media): Barcelona con 2,5 veces la tasa crítica exigida es la unidad donde mayor diferencia se observa; Málaga con 1,39 veces obtiene la menor diferencia y Madrid se sitúa en un valor intermedio: 2,2 veces. Si tenemos en cuenta el valor de la «proporción máxima de discriminación» y no sólo el de la «mínima», la diferencia observada aumenta algo más en Málaga y menos en Barcelona, pero sin alterar el resultado anterior (ver cuadro 18).

Puede concluirse, por tanto, que en el conjunto de España y en cada una de las unidades espaciales seleccionadas se ha comprobado la existencia de comportamientos de **trato desigual** por parte de empleadores en el momento de la contratación contra el grupo de jóvenes varones marroquíes.

2.2. Resultados por sectores del mercado de trabajo

Los tres sectores laborales en los que se han aplicado las pruebas de actores tienen distinta representación en la muestra general, según se justificó en la Parte II, 3. El **sector servicios** ha sido considerado en las tres unidades espaciales y supone el 65,7 por ciento del total; el **sector de la construcción** se ha aplicado en Madrid y Barcelona, suponiendo casi la cuarta parte del total (23,3 por ciento); mientras que el **sector industrial**, sólo considerado en Barcelona, representa una de cada 11 pruebas aplicadas.

Se observan diferencias muy notables en el comportamiento de cada uno de estos tres sectores respecto al resultado de la discriminación acumulada, comparada con la tasa crítica de discriminación. Los resultados obtenidos suponen la constatación empírica de **discriminación estadísticamente significativa en los sectores de servicios e industria, pero no se ha constatado la misma tendencia en el sector de la construcción** (ver cuadro 19).

— El **sector servicios** supera en 3,3 veces la tasa crítica de discriminación, por lo que se concluye que es muy elevada en el conjunto de España contra los jóvenes varones marroquíes semicualificados en relación con los homólogos autóctonos; no se observan diferencias notables en la intensidad de discriminación entre Madrid (2,3 veces la tasa crítica) y Barcelona (2,0), bajando sin embargo dicha intensidad en Málaga (hasta 1,39 veces).

— En el **sector industrial** sólo se aplicaron pruebas de actores en Barcelona y la discriminación acumulada supera en casi una vez y media (1,42 veces) la tasa crítica. Se puede afirmar, por tanto, que en este segmento del mercado laboral y en Barcelona se ha comprobado la discriminación pero con la mitad de intensidad que la discriminación observada en el sector servicios en España e inferior a la del mismo en Barcelona (2 veces la tasa crítica).

Cuadro 17. Pruebas útiles en cada unidad espacial

	Total	Servicios	Construcción	Industria
Madrid	248	185	63	—
Barcelona	107	38	27	42
Málaga	30	30	—	—
Realizadas	385	253	90	42
Propuestas	175	75-90	55-70	30-35

Cuadro 18. Proporciones, mínima y máxima, de discriminación, por unidades espaciales (Madrid, Barcelona, Málaga)

	España %	Madrid %	Barcelona %	Málaga %
Mínima	35,6	27,8	49,5	50,0
Máxima	38,9	29,8	52,3	70,0
Tasa crítica de discriminación	10,0	12,4	18,9	35,8

Cuadro 19. Tasa crítica de discriminación, según sectores laborales

	Servicios	Construcción	Industria
Tasa crítica de discriminación	12,3	20,7	30,2
Discriminación acumulada en %	40,7	17,8	42,9

	Servicios			Construcción		Industria
	Madrid	Barcelona	Málaga	Madrid	Barcelona	Barcelona
Tasa crítica de discriminación	14,4	31,8	35,8	24,7	37,7	30,2
Discriminación en %	34,1	65,8	50,0	9,5	37,0	42,9

— El **sector de la construcción** desvela un resultado sorprendente comparado con los otros dos sectores, al presentar una tendencia contraria a los mismos. Es el único sector del mercado laboral donde la discriminación acumulada (17,8 por ciento de los casos útiles), no iguala la tasa crítica de discriminación (20,7 por ciento); en Madrid se sitúa incluso en un tercio de la misma. No se puede descartar en este caso la hipótesis nula y por tanto no se puede concluir que la discriminación observada constituya una tendencia significativa. Este comportamiento del sector se puede deber, en nuestra opinión, a la dinámica propia de este segmento del mercado laboral que se ajusta menos

que los otros sectores, en el nivel que hemos actuado, a un modelo formal.

2.3. Características de la empresa ofertante de empleo

Siguiendo la propuesta metodológica, la búsqueda de ofertas de empleo se dirigió a un segmento diversificado de empresas, teniéndose en cuenta dos características de las mismas: el tamaño y la dependencia.

En cuanto al **tamaño** se establecieron tres agrupaciones: empresas con 100 o más empleados (**grande**), con menos de 10 (**pequeña**) y la franja entre 10 y 99 (**mediana**). Existe una dificultad real a la hora de determinar el tamaño de la empresa ofertante del empleo: ¿se trata de una sucursal de una corporación mayor? ¿tiene varios centros de trabajo o sólo el lugar al que se acude? Como regla práctica en la investigación se ha determinado el tamaño de la empresa, identificándola con el lugar de trabajo donde se desarrolla la actividad para la que se ofertaba el empleo. El resultado de las aplicaciones en España y en las tres unidades espaciales puede verse en el cuadro 20.

La **pequeña empresa** tiene una presencia mayoritaria en el conjunto de aplicaciones realizadas en España, en torno a las dos terceras partes del total (62,7 por ciento), acentuando su importancia en Madrid (más de las tres cuartas partes) y descendiendo en Barcelona, donde las empresas **medianas** superan a las pequeñas. Las **empresas medianas** suponen entre la tercera y la cuarta parte del conjunto, sobresaliendo el peso que alcanzan en Barcelona (casi la mitad: 46,1 por ciento) y disminuyendo mucho en Madrid (16,3 por ciento). Respecto a las **empresas grandes**, su peso en el conjunto no es importante (8,4) destacando Málaga, aunque siguen suponiendo el segmento minoritario en dicha unidad espacial (16,6 por ciento).

Sin considerar la adecuación de estos resultados a la estructura empresarial española, el método de búsqueda de empleos poco cualificados se ha mantenido fuera de los circuitos que establecen las grandes empresas, lo que puede haber incidido en la sobrerrepresentación de las pequeñas. También los resultados del estudio realizado en Cataluña por Solé y Herrera (1991) corroboran que los inmigrantes africanos y asiáticos trabajan mayoritariamente (el 94 por ciento) en empresas menores de 10 empleados.

La **dependencia** de la empresa (privada, pública o mixta) es la segunda característica considerada. En el diseño inicial ya se indicó la poca presencia de empresas mixtas en España y la no adaptación de la oferta de empleo de las empresas públicas al método propuesto para esta investigación (dado que suelen realizarlo por concurso/oposición). En general, el resultado obtenido confirma las previsiones (ver cuadro 21). Prácticamente no aparecen los tipos de empresa **pública** y **mixta**, siendo las de dependencia **privada** el 98,9 por ciento del total.

Cuadro 20. Pruebas realizadas, según tamaño de empresa (en %)

	Grande	Mediana	Pequeña	Total
Madrid	6,3	16,3	77,4	100
Barcelona	10,1	46,1	43,8	100
Málaga	16,6	36,2	47,2	100
TOTAL	8,4	28,9	62,7	100

Cuadro 21. Pruebas realizadas, según dependencia de empresas (en %)

	Privada	Pública	Mixta	Total
Madrid	302	4	—	306
Barcelona	209	--	1	210
Málaga	35	--	1	36
TOTAL	546	4	2	552

3. Conclusión

La conclusión general del procedimiento metodológico aplicado en España es que los jóvenes varones marroquíes semicualificados que solicitan empleo sufren discriminación de intensidad notable en el momento de la contratación, en comparación con el grupo homólogo de jóvenes varones autóctonos. El resultado estadístico obtenido por esta investigación muestra que se supera en 3,5 veces la tasa crítica de discriminación establecida como umbral mínimo en las observaciones realizadas. El significado directo de esta conclusión es que, al menos, en una de cada tres solicitudes de empleo, el grupo de jóvenes marroquíes es tratado desfavorablemente en comparación con el grupo homólogo de autóctonos.

El resultado de **trato desigual** en contra del grupo de inmigrantes marroquíes se ha comprobado en las tres etapas de la aplicación, pero resalta más en la primera (breve entrevista por teléfono), momento en el que se registró el 70 por ciento del total de rechazos. Esta **primera etapa** en la solicitud de empleo actúa de filtro para el grupo de jóvenes marroquíes semicualificados; a los rechazados en la conversación telefónica no se les permite exponer la propia cualificación y su idoneidad para el empleo demandado, mientras que sí lo pueden hacer los jóvenes autóctonos. La contestación más frecuente al solicitante marroquí fue: «el puesto ya está cubierto», aun cuando el actor autóctono hiciera la segunda llamada telefónica solicitando el empleo y, entonces, se le ofreciera una entrevista para explicarle las condiciones del mismo. La significación real del resultado obtenido **en la primera etapa** es que **en uno de cada cuatro casos el grupo de jóvenes marroquíes ha sido descartado por el empleador** y no ha tenido la oportunidad de acceder al empleo solicitado, aunque estuviera realmente cualificado para el mismo. En la **segunda etapa** la discriminación neta contra el grupo de jóvenes marroquíes es 7,8 por ciento de los casos útiles y en la **tercera etapa** 2,9 por ciento. **La discriminación neta acumulada contra los inmigrantes marroquíes en las tres etapas es el 35,5 por ciento de los casos útiles, superando por 3,5 veces el 10 por ciento que establece la tasa crítica de discriminación como umbral mínimo exigido para comprobar la existencia de la misma.**

En el conjunto de la muestra de **España**, sumados los porcentajes de discriminación neta acumulada en cuanto «trato desigual» (35,6 por ciento) y «trato aparentemente igual pero realmente diferente» (3,3 por ciento), al menos en el 38,9 por ciento de las pruebas hechas se ha encontrado alguna forma de trato desfavorable hacia el grupo de jóvenes varones marroquíes. Por **unidades espaciales**, la mayor discriminación se observa en Barcelona, seguida de Madrid, y la menor en Málaga. Respecto a los **sectores del mercado laboral**, se ha comprobado que en la construcción no puede descartarse la hipótesis nula, ni como sector ni en ninguna de las unidades espaciales donde se aplicó (Madrid y Barcelona), esto es, no se ha comprobado estadísticamente la existencia de discriminación en el nivel establecido. Sin embargo, los sectores de servicios e industria superan con creces la tasa crítica de discriminación, siendo notablemente alta en los servicios y, sobre todo, en Madrid.

Los resultados estadísticos del procedimiento aplicado permiten, también, fundamentar una estimación sobre la proporción de entrevistas que conseguiría cada grupo de jóvenes sobre el total de solicitudes de empleo realizadas. Pues bien, el grupo de jóvenes autóctonos obtiene entrevista en el 58,9 por ciento de las solicitudes realizadas, mientras que el de marroquíes la obtiene en el 32,2 por ciento de las mismas. Esto es, casi dos veces más de éxito en el grupo autóctono y, por consiguiente, casi dos veces menos en el marroquí. El significado real del anterior resultado está en consonancia con el hecho de que la entrevista es, la mayoría de las veces, el paso necesario para conseguir empleo. Y, además, según los resultados obtenidos, el éxito de la entrevista o la consecución del empleo es, también, el doble para el grupo autóctono (49,02 por ciento de éxito y 23,5 por ciento, respectivamente). En números absolutos, dado el número de entrevistas obtenidas realmente y de las estimadas, el grupo autóctono consigue 136 empleos y el inmigrante 42 (ver Parte IV, 1.3); esto es, por cada empleo ofertado al grupo inmigrante se ofrecen 3,2 al grupo de jóvenes autóctonos.

La notable proporción de discriminación comprobada estadísticamente en este estudio contra el grupo de jóvenes marroquíes varones semicualificados en el momento de la contratación es un obstáculo importante para la oportunidad de obtener empleo. En suma, la situación que encuentran los jóvenes marroquíes varones semicualificados en el momento de la contratación laboral en el mercado de trabajo español es notablemente más difícil que el que encuentran los jóvenes autóctonos de similares condiciones.

Bibliografía

Blalock, H.M. (1966): *Estadística social* (México, Fondo de Cultura Económica).

Bovenkerk, F. (1992): *Testing discrimination in natural experiments: A manual for international comparative research on discrimination on the grounds of «race» and ethnic origin* (Ginebra, OIT).

Bovenkerk, F., Grass, M. y Ramsoedh, D.: *Discrimination against workers and ethnic minorities in access to employment in the Netherlands*, International Migration Papers, núm 4 (Ginebra, OIT).

Bugeda, J. (1974): *Manual de Técnicas de Investigación Social* (Madrid, IEP).

Centi, C. (1988): "Mercado de trabajo y movilización" en *Sociología del trabajo*, núm. 4, otoño, 1988, págs. 43-66.

Colectivo Ioé. (1987): "Los inmigrantes en España" en *Documentación social*, núm. 66 (Madrid).

---------. (1989): "España, de un país de emigración a un país de inmigración", en Roque, M.A. (ed), *Simposium internacional: Movimientos humanos en el Mediterráneo occidental* (Barcelona, ICEM).

---------. (1993a): "Rasgos generales y perfil sociodemográfico", en Giménez, C. (coord.), *Inmigrantes extranjeros en Madrid*, tomo I (Madrid, Comunidad de Madrid).

---------. (1993b): *Trayectorias laborales de los inmigrantes extranjeros en el mercado de trabajo español* (Madrid, Centro de Investigaciones Sociológicas).

---------. (1994a): "La inmigración extranjera en España: sus características diferenciales en el contexto europeo" en Contreras, J. (comp.): *Los retos de la inmigración* (Madrid, Talasa).

---------. (1994b): *Discursos de los españoles sobre los extranjeros. Las paradojas de la alteridad*, Estudio núm. 2119 (Madrid, Centro de Investigaciones Sociológicas [en prensa]).

---------. (1995): *Comportamiento ocupacional de la inmigración en una situación de trabajo en crisis* (Madrid, Dirección General de Migraciones).

Cross, H. et al. (1990): *Employer Hiring Practices: Differential Treatment of Hispanic and Anglo Job Seekers* (Washington D.C, Urban Institute Press).

Daniel, W.W. (1968): *Racial Discrimination in England* (Harmondsworth, Pelican, Penguin Books).

Dirección General de Informática y Estadística. (1992): *Stock de trabajadores extranjeros no comunitarios a 31 de diciembre de 1991*, Madrid, 1992 y *Stock de trabajadores comunitarios a 30 de junio de 1991* (Madrid, Ministerio de Trabajo y Seguridad Social).

---------: *Boletín de Estadísticas Laborales* [varios números y años] (Madrid, Ministerio de Trabajo y Seguridad Social).

---------. (1993): *Encuesta de Coyuntura Laboral*, [segundo trimestre de 1992] (Madrid, Ministerio de Trabajo y Seguridad Social).

Dirección General de Migraciones. (1995): *Plan para la integración social de los inmigrantes* (Madrid, Ministerio de Asuntos Sociales).

Hubbock, J. & Carter, S. (1980): *Half a Chance? A report on Job Discrimination against young blacks in Nottingham* (London, Commission for Racial Equality).

Joweel, P. & Prescott-Clarke, P. (1970): "Racial discrimination and white-collar workers in Britain", en *Race*, núm. 11.

López de Lera, D. (1991): "*Análisis de la estadística sobre población extranjera*", en Serie de Artículos y Ponencias del Instituto de Demografía (Madrid, CSIC).

McIntosh, N. & Smith, D. (1974): "The Extent of Racial Discrimination", en *Political and Economic Planning* Broadsheet, núm. 547 (London).

Newman, J.M. (1978): "Discrimination in recruitment: an empirical analysis", en *Industrial and Labor relations review*, núm. 32.

Requena, Félix. (1991): *Redes sociales y mercado de trabajo. Elementos para una teoría del capital relacional* (Madrid, Centro de Investigaciones Sociológicas).

Secretaría de Estado de Economía. (1988): *Análisis de las condiciones de vida y de trabajo en España* (Madrid, Ministerio de Economía y Hacienda).

Solé, C. (1995): *Discriminación racial en el mercado de trabajo* (Madrid, Consejo Económico y Social).

Solé, C. y Herrera, E. (1991): *Trabajadores extranjeros en Cataluña. ¿Integración o racismo?* (Madrid, CIS-Siglo XXI).

Wrench, J. y Taylor, J. (1993): *A research manual on the evaluation of anti-discrimination training activities* (Ginebra, OIT).

Zegers de Beijl, Roger. (1992): *Bien qu'égaux devant la loi...La portée de la législation antidiscriminatoire et ses répercussions sur la discrimination, dans le marché du travail, à l'encontre des travailleurs migrants au Royaume-Uni, aux Pays-Bas et en Suède*, Programme mondial de l'emploi, document de travail 56 (Ginebra, OIT).

B. La protección contra la discriminación a los inmigrantes en España: Del papel mojado a una legislación efectiva

Rafael Pérez Molina

1. Introducción

El presente estudio se propone dos fines: Primero mostrar el marco legal vigente en España con relación a la discriminación de que puedan ser objeto los inmigrantes y las minorías étnicas en el mundo del trabajo, incluidas las instituciones públicas implicadas en ello, y segundo, evaluar la eficacia de todo este entramado jurídico-administrativo.

En razón de estos objetivos, se ha dividido el estudio en dos partes, una descriptiva, donde se presenta la legislación y los organismos de la Administración encargados de fomentar y proteger la igualdad de oportunidades entre trabajadores nacionales y extranjeros, y otra, más analítica, donde lo que se pretende es comprobar si en la realidad estos mecanismos legales cumplen con el fin propuesto, es decir, si la tutela y amparo antidiscriminatorio hacia estos colectivos es eficaz.

Finalmente se presentan unas sugerencias con el ánimo de optimizar la eficacia en la lucha por la igualdad de oportunidades y la erradicación de la discriminación.

Para abordar la legislación española antidiscriminatoria con respecto a los trabajadores inmigrantes y las minorías étnicas es preciso situar, al menos de un modo sucinto, la situación del migrante en España; pues así se puede entender tanto el aparente vacío legal que existe en la legislación interna con respecto a la discriminación basada en la diferente "nacionalidad" (carencia de leyes específicamente antidiscriminatorias para estos colectivos), como por otro lado, el abundante número de tratados y convenios de carácter internacional firmados por España que promueven situaciones de igualdad para el trabajador migrante (Naciones Unidas, OIT, Consejo de Europa, tratados bilaterales, etc).

Tradicionalmente España ha sido un país emisor de mano de obra y esto se manifiesta en los numerosos textos legislativos y normas que tienen como objeto la defensa de los derechos del emigrante. Este carácter protector hacia la emigración es recogido literalmente por la Constitución Española del año 1978 en su artículo 42 : "El Estado velará por la salvaguardia de los derechos económicos y sociales de los trabajadores españoles en el extranjero y orientará su política hacia su retorno".

A partir de los años setenta y ochenta, con los cambios políticos y económicos que se producen en España, el país va transformando paulatinamente su tendencia a la emigración, para comenzar a ser país también receptor de mano de obra extranjera (Izquierdo, 1994; OCDE, 1993). Este cambio de tendencia hace que en el año 1990 el gobierno español elabore - a petición del Congreso de los Diputados - un informe sobre las lineas básicas de la política española de extranjería, en el que, entre otras cuestiones, se habla de establecer cauces para la promoción e integración social de los inmigrantes. Una muestra significativa de esta transformación de país emisor de mano de obra a país también receptor lo tenemos en el propio cambio de denominación del organismo de la administración encargado de las migraciones, pues dejó de denominarse Instituto Español de Emigración para ser actualmente Dirección General de Migraciones.

Como se vera, en muchos casos, es la legislación internacional firmada por España en los años de fuerte emigración la que más incidencia tiene en el campo de la lucha contra la discriminación y la equiparación de derechos hacia el nuevo fenómeno de la inmigración.

La legislación española presenta cuatro niveles distintos de reconocimiento de derechos a los extranjeros, que se pueden resumir en : a/ Los derechos que corresponden a todo individuo por el hecho de serlo; b/ los derechos que se reconocen tanto a los españoles como a los extranjeros; c/ Los derechos que inducen a dudas sobre si afectan o no a los extranjeros y para los que será necesaria la interpretación judicial y d/ los derechos que sólo pertenecen a los que poseen la nacionalidad española.

En cuanto a la legislación interna, los textos fundamentales del marco legislativo antidiscriminatorio serán, por un lado la Constitución, que establece en su artículo 1.1 que el ordenamiento jurídico español se basa, entre otros, en el concepto de igualdad; y por otro una serie de normas, bien de carácter general, como la Ley 7/85 de Derechos y Libertades de los Extranjeros en España, bien específicamente laborales, como la ley 8/80 del Estatuto de los Trabajadores y la Ley de Infracciones y Sanciones en el Orden Social que amparan, sin exclusiones de origen o de pertenencia a una minoría étnica, a cualquier trabajador ante la discriminación en el empleo, ya que se basan en principios de igualdad de trato en derechos y obligaciones.

Quizás sea útil aclarar en esta introducción que para evitar posibles problemas terminológicos, este estudio concibe el término " discriminación racial" tal y como aparece definido en el Convenio Internacional para la Eliminación de todas las Formas de Discriminación Racial (CERD), del que España es signataria y que en su artículo 1 dice: "La expresión discriminación racial denotará toda distinción, exclusión, restricción o preferencia basada en motivos de raza, color, linaje u origen nacional o étnico que tenga como resultado anular o menoscabar el reconocimiento, goce o ejercicio en condiciones de igualdad, de los derechos humanos y libertades fundamentales en las esferas política, económica, social y cultural o en cualquiera otra de la esfera de la vida pública". Esta definición es pertinente para las minorías étnicas del país, como los gitanos, pero excluye cualquier alusión a la discriminación por poseer una nacionalidad distinta a la del país donde se reside y trabaja.

2. Legislación antidiscriminatoria

La estructura legislativa española presenta tres niveles. La referencia legal de más alto rango es la Constitución y de ella deriva todo el entramado legislativo español. Después se encuentra la legislación internacional firmada por España, que tiene generalmente un valor orientativo (artículo 10.2 Constitución Esp.) y puede ser alegada en quejas y demandas por discriminación racial. También hay normas internacionales que una vez ratificadas pasan a formar parte de la legislación interna del país (artículos 92 al 96 de la Constitución Esp.), como ocurre con las leyes de la Unión Europea o los Convenios de la OIT. Finalmente, la legislación interna que hace referencia a la igualdad de trato entre nacionales y extranjeros se encuentra dispersa en artículos de diversas leyes, desde el código penal y civil hasta la legislación social. Las dos leyes que más relación guardan con la discriminación en el empleo son la Ley 8/80 del Estatuto de los Trabajadores y la Ley 7/85 sobre derechos y libertades de los extranjeros en España.

Al margen de los Convenios y acuerdos internacionales firmados por España, no existe ninguna ley especifica que combata la discriminación hacia las minorías étnicas ni los trabajadores extranjeros en el mundo del trabajo. Serán aspectos concretos repartidos en diversas leyes los que tengan incidencia ante la discriminación laboral de estos colectivos.

Es preciso señalar, desde ahora, una diferencia básica entre los dos grupos objeto de este estudio que parte de la propia Constitución: Por un lado, no deja lugar a dudas en cuanto al amparo y la igualdad legal de las minorías étnicas nacionales, pues el artículo 14 dice que no podrá prevalecer ante la ley ninguna discriminación "por razón de nacimiento, raza, sexo, religión, opinión o cualquier otra condición o circunstancia personal o social", lo que incluye, claro esta, a toda aquella persona que posea la nacionalidad española, sea cual sea su origen étnico o nacional; y por otro lado, plantea ciertas diferencias de trato entre españoles y extranjeros (Segarra, 1991, pág 63), muchas veces motivado por la imprecisión terminológica que se emplea. Una de estas diferencias claras de trato se da en el acceso al empleo (artículo. 35.1). La sentencia 107/84 del Tribunal Constitucional lo afirma rotundamente al decir que "no existe tratado ni ley que establezcan la igualdad de trato entre nacionales y extranjeros para el acceso a un puesto de trabajo" (Mulas, 1986, pág 279). Posteriormente veremos como el Estatuto de los Trabajadores reconoce la igualdad no en el acceso, pero si una vez contratado el trabajador.

3. Legislación internacional incorporada

En España, la legislación internacional presenta tres niveles de incidencia, según se trate de normas de carácter universal, que por ello afectarían a cualquier migrante, como son las emanadas de organismos pertenecientes al sistema de Naciones Unidas, y especialmente en el caso que nos ocupa, las de la Organización Internacional del Trabajo y el Convenio para la Eliminación de todas las Formas de Discriminación Racial. En un escalón más restringido situaríamos la legislación de la Unión Europea y por último, los acuerdos bilaterales sobre migración firmados por España con otros países con los que o bien tiene lazos histórico-culturales o bien eran tradicionales receptores de emigración española. Para el inmigrante todo ello se traduce, en la práctica, en la existencia de tres niveles diferentes de trato, según sea nacional de un país de la Unión Europea, nacional de un país con el que hay convenios de reciprocidad o nacional de un tercer país.

3.1. Legislación de carácter universal

De todo el sistema de Naciones Unidas, los únicos acuerdos que son incorporados directamente a la legislación interna española son los Convenios de la Organización Internacional del Trabajo (OIT) que España ratifica. Aunque España tiene ratificados sólo dos Convenios que afecten directamente a la discriminación del trabajador migrante [convenio (n° 97) 1949] y a las minorías étnicas [convenio (n° 111) 1958]; esto no significa que en la mayoría de los otros convenios de la OIT ratificados no se defienda un trato igualitario, pues como dice Valticos "los convenios internacionales del trabajo son aplicables a los extranjeros cuando no contienen disposición expresa al respecto" (Valticos, 1977, pág 444).

Convenio n° 97 de la Organización Internacional del Trabajo sobre trabajadores migrantes. Revisado en 1949 [1]

Todo el convenio es pertinente, pero podemos destacar especialmente el artículo 6, pues obliga a aplicar a los inmigrantes legales un trato de igualdad con respecto a los nacionales en materias que dependan de las autoridades administrativas, tales como salarios, formación profesional, vacaciones, afiliación sindical, vivienda y seguridad social y uso del servicio público de empleo.

El citado artículo menciona, entre otras causas, la no discriminación tanto por raza como por nacionalidad: "Todo Miembro para el cual se halle en vigor el presente Convenio se obliga a aplicar a los inmigrantes que se encuentren legalmente en su territorio, sin discriminación de nacionalidad, raza ... un trato no menos favorable que el que aplique a sus propios nacionales".

Convenio n° 111 de la Organización Internacional del Trabajo sobre discriminación (empleo y ocupación), 1958 [2]

Se centra en los trabajadores nacionales, incluyendo evidentemente a los que pertenecen a minorias étnicas. Es también util porque se definen conceptos como: discriminación, empleo y ocupación.

Declaración Universal de los Derechos Humanos

Esta declaración es citada expresamente por la Constitución española (artículo 10.2) como fuente interpretativa directa de todas las normas que tienen relación con los derechos fundamentales. Los artículos más significativos en el tema que nos ocupa, en sus dos vertientes, racial y laboral son, el artículo 2, en cuanto que define a la persona como sujeto de derechos y libertades sin que ninguna distinción basada, entre otras, en "la raza, color, sexo ... origen nacional o social" pueda mermar su condición de igualdad, y el artículo 23, pues se centra en los derechos laborales de la persona: igualdad en el derecho al trabajo, a condiciones equitativas y satisfactorias de empleo y en el salario, etc.

Convenio Internacional sobre la Eliminación de todas las formas de Discriminación Racial [3] (CERD)

Es sin duda el acuerdo internacional más centrado en la materia, y como se apuntó en la introducción, en él se define la expresión "discriminación racial", cuestión que no es baladí, pues en toda la legislación española aparecen problemas terminológicos relacionados con la discriminación, comenzando por la propia Constitución, donde aparece raza, pero no nacionalidad. Al respecto, puede ser aclaratoria la respuesta que da el representante de España en el informe de la 36 asamblea general del Comité para la eliminación de la Discriminación Racial, cuando literalmente dice: "el término 'raza' que figura en la Constitución incluye todas las etnias y no puede haber discriminación basada en este criterio (le terme "race" que figurait dans la Constitution incluait toutes les etnies et il ne pouvait y avoir de discrimination fondée sur ce critère)" (CERD, *Documents Officiels*: 36 session, 1981, pág. 31).

[1] Ratificado por España el 23.2.67. (BOE. 7.7.67)

[2] Ratificado por España el 26.10.67 (BOE. 4.12.68)

[3] Ratificado por España el 23.4.69. (BOE 17.5.69)

En otro sentido, también tiene transcendencia el punto 2 del artículo 1, por el cual, la discriminación a los extranjeros sin que exista un acto racial ilegal queda fuera del ámbito de aplicación de dicho Convenio "Esta Convención no se aplicará a las distinciones, exclusiones, restricciones o preferencias que haga un Estado parte en la presente Convención entre ciudadanos y no ciudadanos". También se define en esta Convención, el concepto de "acción positiva" hacia grupos que requieran una protección especial (artículo 1. punto 4).

Al campo concreto de la discriminación en el empleo se refiere el artículo 5. punto E.i, cuando dice que los Estados partes se comprometen a prohibir y eliminar la discriminación racial, particularmente en (cita varios derechos) "el derecho al trabajo, a la libre elección de trabajo, a condiciones equitativas y satisfactorias de trabajo, a la protección contra el desempleo, a igual salario por trabajo igual y a una remuneración equitativa y satisfactoria".

También hay referencias a las indemnizaciones debidas a las victimas de hechos racistas (artículo 6).

Es importante recordar el artículo 14, donde se apunta la posibilidad de hacer una declaración de reconocimiento a "la competencia del Comité para recibir y examinar comunicaciones de personas o grupos ... que alegarén ser victimas de violaciones por parte de ese Estado, de cualquiera de los derechos estipulados en la presente Convención. El Comité no recibirá ninguna comunicación referente a un Estado parte que no hubiere hecho tal declaración".

España no reconoce esta competencia (CEE, 1992, pág 33), lo que no significa que la Convención no tenga un peso específico y una influencia determinante a la hora de enjuiciar conductas discriminatorias, sino más bien al contrario, tal y como parece desprenderse de ciertas declaraciones del Comité que examina los informes que España envía al CERD: "Los miembros han tomado nota de las informaciones contenidas en el informe, según las cuales, las disposiciones de la Convención son una fuente referencial para la interpretación de las cuestiones de discriminación racial y de igualdad de derechos para la magistratura española ("Des membres ont pris note des renseignements contenus dans le rapport selon lesquels les dispositions de la Convention étaient une source de références pour l'interpretation des questions de discrimination raciale et d'égalité de droits par la magistrature espagnole" (CERD, *Documents Officiels*: 40 session, 1985, pág. 132).

Además de estos convenios, hay toda una serie de pactos y acuerdos basados en los conceptos de derechos humanos de la Declaración Universal que amparan un trato igualitario para los migrantes y las minorías étnicas. En todos hay un compromiso por eliminar la discriminación racial, tanto de hecho como de derecho, y se defiende en ellos un trato igualitario entre las distintas comunidades que conviven en el país signatario. Los firmados por España con estas características son:

Pacto Internacional de Derechos Civiles y Políticos [1]

Este pacto se centra en la igualdad de derechos políticos de las minorías. Son especialmente significativos los considerándoos y los artículos 20.2 "Toda apología del odio nacional, racial o religioso que constituya incitación a la discriminación ... estará prohibida por la ley" y para las minorías étnicas nacionales el artículo 25 en su conjunto y especialmente el punto c : "Tener acceso en condiciones generales de igualdad, a las funciones públicas de su país".

[1] Ratificado por España el 27.4.77 (BOE. 30.4.77).

Pacto Internacional de Derechos Económicos, Sociales y Culturales [1]
Hay ciertos artículos (como el número 7) que se ocupan especialmente de reconocer el derecho a la igualdad de cualquier ser humano en el trabajo: condiciones laborales, salarios, formación, oportunidades, etc.

En el ámbito del Consejo de Europa, España tiene ratificadas normas que, sin el peso legal de las emanadas por la Unión Europea, también aluden al trato sin discriminación hacia los migrantes y las minorías étnicas, teniendo en cuenta que el término trabajador migrante designa sólo a súbditos de países miembros. Concretamente, la **Carta Social Europea** [2] dice que todos los trabajadores tienen derecho a unas condiciones equitativas de trabajo (parte I, punto 2) y específicamente se refiere a las condiciones de empleo, remuneración, afiliación sindical y alojamiento (articulo 19.4). Todo ello se complementa con la igualdad de trato en materia de impuestos y contribuciones (punto 5), la reagrupación familiar (punto 6) y la igualdad de trato en acciones procesales (punto 7).

También el Consejo de Europa elaboró un **Convenio relativo al Estatuto Jurídico del Trabajador Migrante**, [3] donde se defiende "un trato no menos favorable que el que disfrutan los trabajadores nacionales del estado de acogida" con respecto a las condiciones de trabajo (artículo 16), la Seguridad Social (articulo 18) y lo que es muy importante, en los recursos que estos, los migrantes, puedan plantear ante los tribunales y las autoridades administrativas (artículo 26). Al igual que la Carta Social Europea, [4] este Convenio sólo afecta a los países firmantes y no a la totalidad de países del Consejo de Europa (artículo 1.1).

3.2. Legislación de la Unión Europea

Por el tratado de Roma (modificado por el Tratado de Maastricht), los reglamentos y las decisiones de la Unión Europea priman sobre la legislación nacional (Gisti, 1994, pág 41). Dicho esto, hay que precisar que la Unión Europea no tiene una política definida sobre los trabajadores extracomunitarios que viven y trabajan en cualquiera de los países que forman la Unión, ni tampoco existen normas dentro del Derecho comunitario que los asistan, excepto las establecidas dentro de acuerdos de cooperación con terceros países (Ramos, 1993, págs 11 y 12); por lo tanto estamos hablando de medidas legales que implican y asisten sólo a la libre circulación de trabajadores con nacionalidad de alguno de los países miembros. Sobre este punto destaca el texto del articulo 48.2 del Tratado constitutivo de la Comunidad Económica Europea donde se dice que : "La libre circulación (de trabajadores) supondrá la abolición de toda discriminación por razón de la nacionalidad entre los trabajadores de los Estados miembros, con respecto al empleo, la retribución y las demás condiciones de trabajo".

[1] Ratificado por España el 27.4.77. (BOE. 30.4.77)

[2] Ratificada por España el 29.4.80. (BOE. 26.6.80)

[3] Ratificado por España el 6. 5.80 (BOE. 18.6.83)

[4] Países que firmaron el 18 de octubre de 1961 la Carta Social Europea:
Austria, Bélgica, Chipre, Suiza, Dinamarca,España, Francia, Alemania, Grecia, Islandia, Irlanda, Italia, Luxemburgo, Paises Bajos, Noruega, Suecia, Turquia y Gran Bretaña.

El **Reglamento n° 1612/68**, relativo a la libre circulación de trabajadores es el que más se centra en la situación de los trabajadores de países comunitarios que se encuentran en España trabajando, y que complementa al mencionado artículo 48 del Tratado Constitutivo. En general, todo el título I y II, "del acceso al empleo" y "del ejercicio del empleo y de la igualdad de trato" (artículo 1 al 9) son pertinentes. En ellos se recogen los derechos relacionados con el trabajo y el empleo de los nacionales de los países miembros de la Unión Europea, que van más allá de los normalmente reconocidos a los inmigrantes de terceros países, incluso aunque existan convenios bilaterales de igualdad de trato. Se intenta equiparar al inmigrante comunitario con el trabajador nacional para que la libertad de movimiento y establecimiento a lo largo del espacio comunitario sea real. De hecho este reglamento tiene más peso que las leyes nacionales que intentan proteger o beneficiar al trabajador nacional en exclusiva.

También es interesante el Reglamento 1281/70, por el que se otorgan derechos a los trabajadores para permanecer en el territorio de un Estado miembro después de haber ejercido en él un empleo.

Aunque como hemos visto, todas estas medidas sólo favorecen la movilidad laboral y la igualdad de trato entre miembros de la Unión Europea, también se han firmado acuerdos con terceros países que afectan al trato de los migrantes de los países firmantes, como es el caso de Marruecos. Según los artículos 40 y 41 de los acuerdos de cooperación entre la Comunidad Europea y el Reino de Marruecos [1]: "Toda discriminación basada en la nacionalidad entre trabajadores de la Comunidad y los de nacionalidad marroquí, con relación a las condiciones de trabajo o de remuneración, así como en el campo de la Seguridad Social, deben ser eliminadas" (*Migration News Sheet*, September 1994, pág 1).

4. Legislación interna

No existe ninguna ley española que se ocupe específicamente de la discriminación racial, sino que las normas sobre el tema se hayan dispersas en numerosos artículos de muy diversas leyes, desde la Constitución hasta el Código Civil. Las dos leyes que más afectan la discriminación en el empleo de los migrantes, son, por un lado, la Ley 8/80 del Estatuto de los Trabajadores, que reglamenta la actividad laboral, y por otro, la Ley 7/85, que trata de los derechos y libertades de los extranjeros en España.

4.1. La Constitución

Hay preceptos constitucionales que aluden a la orientación que debe tomar el legislador, y otros, que son orgánicos o de aplicación directa, es decir, que pueden ser invocados por la persona ante la justicia.

El concepto de igualdad es uno de los principios básicos sobre los que se asienta la Constitución y por lo tanto rectores de la actuación legislativa y de la de los poderes públicos (artículos 1 y 9.2), reconociéndose además un papel preponderante a la Declaración Universal

[1] Firmados el 27.4.76

de Derechos Humanos y a los tratados internacionales firmados por España, a la hora de interpretar normas que afecten a la dignidad y derechos de la persona.

El texto constitucional tiene una terminología ambigua, al utilizar a veces conceptos como "individuos", que no permite distinguir claramente si lo expuesto atañe sólo a los españoles o, si también, hace referencia a otras personas que se encuentran en el país.

Entre los artículos constitucionales que guardan relación con la discriminación, algunos hacen mención sólo a la igualdad de trato entre españoles, como por ejemplo el artículo 139, donde se reconoce la igualdad de éstos en derechos y obligaciones en cualquier parte del Estado, cuestión que es importante, pues defiende ante posibles desigualdades en el trato que pudieran aparecer relacionadas con la distribución político-administrativa en Comunidades Autónomas que presenta el Estado español (migración interna) o con grupos étnicos minoritarios como los gitanos.

Directamente relacionado con el trabajo, la Constitución es clara al reconocer el derecho al trabajo sólo a los españoles, tal y como dice el artículo 35, cuya aclaración final "sin que en ningún caso pueda hacerse discriminación por razón de sexo" es interesante, pues defiende elocuentemente ante casos de discriminación laboral por motivo de género, pero no es claro con respecto a otro tipo de discriminaciones laborales que puedan producirse.

Otros artículos antidiscriminatorios de la Constitución parecen afectar tanto a nacionales como a extranjeros. Tal ocurre cuando se garantiza el derecho al honor, a la intimidad y a la propia imagen, cuestión importante para los grupos culturales y nacionales diferenciados (articulo 18.1). También el derecho a la protección y a la defensa jurídica ampara a " todas las personas ... sin que en ningún caso pueda producirse indefensión" (articulo 24) lo que significa que la tutela judicial abarcaría también a los inmigrantes ilegales, y más si interpretamos este derecho a la justicia en el sentido que marcan ciertas normas internacionales, y especialmente, la citada, Declaración Universal de Derechos del Humanos (artículos 6 y 7). Sin embargo, parece que sólo el extranjero que se encuentra en una situación regular goza de protección y tutela judicial efectiva, pues según Manjón "aún reconocidas su personalidad jurídica y todos sus derechos como tal, el goce efectivo está subordinado a una autorización individual que le coloque en una situación regular, con residencia legal en el territorio donde resida" (Manjón, 1991, pág 146).

También relacionado con el mundo del trabajo está la asistencia que ofrece el sistema de Seguridad Social. En principio, de la lectura del articulo 41 se deduce que ésta afecta sólo a los españoles, pues se utiliza el término ciudadanos, pero Olarte Encabo opina que siguiendo los dictados de los diferentes acuerdos de carácter internacional sobre la materia firmados por España, el termino ciudadanos debe interpretarse aquí en el sentido amplio, más allá de la noción restrictiva de súbdito o nacional (Olarte, 1993, págs 551-553).

El artículo 13.1 es importante, ya que dice que "los extranjeros gozarán en España de las libertades públicas que garantiza el presente Título (se refiere a los Derechos y Deberes fundamentales) en los términos que establezcan los tratados y la ley". Posteriormente veremos como esto se plasma en la Ley Orgánica 7/85 sobre Derechos y Libertades de los Extranjeros en España y en los decretos y reglamentos que la desarrollan, sobre todo el Real Decreto 1119/86 y el Real Decreto 1099/86. Este artículo 13.1 ha sido objeto de numerosa polémica e interpretaciones debido a la importancia que tiene el sentido de "los términos que

establezcan los tratados y la ley". Así vemos que son muchas las sentencias del Tribunal Constitucional que giran sobre este punto:

> el artículo 13 no significa que los extranjeros gozarán sólo de aquellos derechos y libertades que establezcan los Tratados y las Leyes. Significa , sin embargo, que el disfrute.....podrá atemperarse en cuanto a su contenido a lo que determinen los Tratados internacionales y la Ley interna española (Tribunal Constitucional); [1]

o también :

> La Constitución no dice que los extranjeros gozarán en España de las libertades que les atribuyen los Tratados y la ley, sino de las libertades que 'garantiza el presente Título ...' de modo que los derechos y libertades reconocidos a los extranjeros siguen siendo derechos constitucionales ... pero son todos ellos sin excepción en cuanto a su contenido, derechos de configuración legal. Esta configuración puede prescindir de tomar en consideración como dato relevante para modular el ejercicio del derecho, la nacionalidad o ciudadanía del titular, produciéndose así una completa igualdad entre españoles y extranjeros, como la que efectivamente se da respecto de aquellos derechos que pertenecen a la persona en cuanto tal y no como ciudadano ... de aquellos que son imprescindibles para la garantía de la dignidad humana, que conforme el artículo 10 constituye el fundamento del orden político español. Derechos tales como el derecho a la vida, a la intimidad ... etc, corresponden a los extranjeros por propio mandato constitucional, y no resulta posible un tratamiento desigual respecto a ellos en relación a los españoles (Tribunal Constitucional) [2].

Esta sentencia advirtió sobre la inexistencia de un principio constitucional de igualdad que equiparé como regla general a los extranjeros con los españoles. De la Mata llega a decir que la Constitución permite al legislador "la aplicación del principio de discriminación -no sólo formal, sino material- por razón de la nacionalidad" (De la Mata, 1995, pág 37).

Aunque el artículo 149 no esta relacionado directamente con la discriminación, parece útil señalarlo, pues indica la exclusiva competencia del Estado en materia de nacionalidad, inmigración, emigración, extranjería y derecho de asilo. Ello no impide que las Comunidades Autónomas puedan legislar sobre estas materias para su área de influencia, tal y como especifica el artículo 150.1.

4.2. Normas con incidencia laboral

Ley 8/80 Estatuto de los Trabajadores

Por mandato constitucional (artículo 35.2), el texto legal más importante en materia laboral es la **Ley 8/80** del Estatuto de los Trabajadores (BOE 14.3.80), pues afecta a todos los trabajadores asalariados, sin discriminar, diferenciar o excluir si estos son nacionales o extranjeros (en situación legal), tal y como se especifica en su ámbito de aplicación (artículo 1). Los únicos colectivos que quedan expresamente excluidos de la aplicación del Estatuto de los Trabajadores son los funcionarios públicos, los consejeros de administración de las empresas, los que intervengan en operaciones mercantiles y los que realicen trabajos familiares en lo que no se demuestre la condición de asalariado. Uno de los indicios más evidentes de que el Estatuto de los Trabajadores no discrimina entre trabajadores nacionales e inmigrantes podría ser la propia ausencia de mención específica a este colectivo. Sólo aparece el término "extranjero" en dos artículos, y es siempre para remarcar un derecho a

[1] Sentencia 481/85 del Tribunal Constitucional. Sala 2. Fecha: 30. 9.85

[2] Sentencia 107/84 del Tribunal Constitucional. Sala 2. Fecha: 23.11.84.

la igualdad con el trabajador nacional. En uno se menciona la posibilidad que tienen los extranjeros en situación legal (marcada por la ley 7/85) para ser contratados (artículo 7.c) y en otro se les equipara a los nacionales en su derecho a poder ser electores y elegibles en los procesos electorales que se realicen en la empresa (artículo 69).

El Estatuto de los Trabajadores ha sido en gran parte reformado (Ley 11/94), pero sus modificaciones no afectan a los temas de la discriminación en el empleo de que puedan ser objeto los inmigrantes. A lo largo de toda la ley 8/80 hay diseminados puntos concretos que tienen connotaciones antidiscriminatorias. Así, el artículo 3, que trata de la regulación de las relaciones laborales, dice que "sin que en ningún caso puedan establecerse en perjuicio del trabajador condiciones menos favorables o contrarías a las disposiciones legales y convenios colectivos" y el artículo siguiente plantea el derecho a no ser discriminado "para el empleo o una vez empleado" por diversos motivos, entre los que se cita la raza y la lengua dentro del Estado español (artículo 4). Estos aspectos guardan relación con ciertos convenios de la OIT, entre otros con los números 97 (1949); 111 (1958) y 156 (1981).

Pero sin duda, el artículo más importante y directamente implicado con el objeto de este estudio es el **articulo 17**, pues hace referencia a los derechos y deberes derivados del contrato de trabajo y que en su punto 1 dice textualmente:

> Se entenderán nulos y sin efectos los preceptos reglamentarios, las cláusulas de los convenios colectivos, los pactos individuales y las decisiones unilaterales del empresario que contengan discriminaciones desfavorables por razón de edad o cuando contengan discriminaciones favorables o adversas en el empleo, así como en materia de retribuciones, jornadas y demás condiciones de trabajo, por circunstancias de sexo, origen, estado civil, raza, condición social ... y lengua dentro del Estado español.

Aunque se vuelve a omitir el término "nacionalidad", se entiende que también atañe al trabajador extranjero, tanto por el espíritu que contienen el Estatuto, como por la mención que el convenio n° 97 de la OIT, ratificado por España y por tanto incorporado a su legislación interna, hace del término "sin distinción de la nacionalidad" (artículo 6.1 ya citado) (Ver: OIT, 1988).

Ley Orgánica 7/85 sobre derechos y libertades de los extranjeros en España, conocida también como Ley de Extranjería obedece al mandato constitucional (artículo 13) de regular la situación de los extranjeros residentes. En la introducción de la Ley se habla de la preocupación por dotar a los extranjeros de la "máxima cuota de derechos y libertades, cuyo ejercicio queda prácticamente equiparado al de los propios españoles" y además se pretende "favorecer la integración del extranjero en la sociedad española". La Ley expone la tipología y condiciones para la obtención de los diferentes permisos de trabajo que permiten a los extranjeros residir y trabajar legalmente en España, con la limitación de que no haya trabajadores españoles en desempleo en el mismo sector u oficio en el que vaya a trabajar el extranjero que solicita el permiso. Algunas de las condiciones que se establecen para la concesión de los permisos de trabajo pueden considerarse discriminatorias, pues crean diferencias de trato basadas en la preferencia de ciertas nacionalidades o culturas, en concreto a los iberoamericanos, portugueses, filipinos, andorranos, ecuatoguineanos y los sefardíes; tanto para la obtención y renovación de los permisos de trabajo (artículo 18.3), como para la exención de los gastos que estos conllevan (artículo 23). El Defensor del Pueblo planteó al Tribunal Constitucional la inconstitucionalidad de varios artículos de dicha Ley, por entender que vulneraban los principios de igualdad de derechos y libertades de los extranjeros, lo que en parte fue reconocido por dicho tribunal (BOE. 3.7.85).

La adhesión de España a las Comunidades Europeas, y por tanto, a los acuerdos para la libre circulación de trabajadores nacionales de países de dicha comunidad, marca una nueva categoría de inmigrantes que modificó el status legal del extranjero de origen comunitario, el cual se rige específicamente por el **Real Decreto 766/92**, que derogó al Real Decreto 1099/86. Todo ello establece nuevas diferencias de trato no tanto en cuanto a los derechos en el empleo, pues estos son equivalentes en todos los inmigrantes legales, sino a la hora de acceder al empleo, ya que las directivas comunitarias hablan de igualdad en y para el empleo, (es útil recordar aquí los Reglamentos 1612/68 y 1251/70) con lo que, por ejemplo, la necesidad y condiciones para la obtención de permisos de trabajo recogidas en la Ley Orgánica 7/85 afectaría exclusivamente a los inmigrantes extracomunitarios, pues este colectivo de trabajadores de origen comunitario sólo precisan una tarjeta de residencia que es gratuita y renovable automaticamente en la mayoría de los casos.

Real Decreto 1119/86[1] aprueba el reglamento de ejecución de la Ley 7/85 de Extranjería y contiene algunos artículos claves en materia de antidiscriminación en el empleo, pues dice que "el salario y demás condiciones de trabajo de los extranjeros autorizados a trabajar en España por cuenta ajena no podrán ser inferiores, en ningún caso, a los fijados por la normativa vigente en territorio español o determinados convencionalmente para los trabajadores españoles en la actividad, categoría y localidad de que se trate" (artículo 32); así como que la autoridad laboral denegará el permiso de trabajo A (actividades estacionales, cíclicas o de temporada y no es susceptible de renovación) y el permiso B (válido para una profesión, actividad y ámbito de trabajo determinado, su vigencia no puede ser superior a la del contrato de trabajo, con renovación anual) cuando "las condiciones fijadas en el contrato que acompaña a la solicitud fueran inferiores a las establecidas por la normativa vigente para la misma actividad, categoría y localidad" (artículo 37.4. b).

Este Real Decreto presenta aspectos que son discriminatorios, pues producen desigualdades en el trato para conseguir ciertos permisos de residencia/trabajo, según sea la procedencia del inmigrante (especialmente los artículos 39.2 y 39.3). El Real Decreto 1119/86 otorga a la Inspección de Trabajo la vigilancia de las disposiciones legales de trabajo que afectan a los extranjeros (artículo 78).

Real Decreto Legislativo 521/90 por el que se aprueba el texto articulado de la Ley de Procedimiento Laboral. En este Real Decreto Legislativo aparecen dos situaciones relacionadas con la discriminación. Por un lado se define como nulo cualquier despido que tenga como fundamento "algunas de las causas de discriminación previstas en la Constitución y en la ley, o la violación de derechos fundamentales y libertades públicas del trabajador" (artículo 108.2) y por otro se dice que la extinción del contrato de trabajo será nula cuando "resulte discriminatoria o contraria a los derechos fundamentales y libertades públicas del trabajador" (artículo 122.c). A pesar de que estos dos artículos son positivos en cuanto que defienden al trabajador ante un despido basado en una discriminación, sin embargo, su aplicación práctica puede no ser tan positiva para el trabajador inmigrante, ya que puede llegarse a producir un efecto contrario al deseado - combatir la discriminación - al perder el inmigrante su trabajo (declarado nulo), lo que incluso puede hacer peligrar su status de legalidad al no sustentar su permiso de residencia/trabajo con ningún contrato legal de empleo.

[1] BOE 12.6.86

Hasta ahora hemos enfocado el marco laboral de los inmigrantes asalariados o, utilizando la terminología del Estatuto de los Trabajadores, "por cuenta ajena". Para los extranjeros que trabajan en España por cuenta propia la legislación no especifica condiciones concretas de trabajo, pero también van a estar discriminados, según sean o no oriundos de la Unión Europea, pues les afecta del mismo modo la tenencia del permiso unificado de residencia y trabajo (artículo 15.1 de la Ley 7/85), siendo para ellos igualmente válidos los diferentes baremos que menciona el artículo 18.3 sobre preferencias a la hora de conseguir el permiso de trabajo. En el caso de trabajadores extranjeros por cuenta propia que deseen instalar un establecimiento comercial, no será evidentemente la presencia de trabajadores españoles desempleados lo que puede restringir el otorgamiento o no de su permiso de trabajo por cuenta propia, sino "el grado de saturación en la zona" (artículo 1.3 apartados a y b del Real Decreto 1884/78).

Con respecto a la libertad sindical, la legislación española reconoce este derecho sin hacer ninguna distinción entre trabajadores nacionales y extranjeros, siguiendo la igualdad conceptual de trabajador que emana del Estatuto de los Trabajadores y de las normas internacionales, especialmente las de la Organización Internacional del Trabajo. En este sentido la **Ley Orgánica del 11/85 de Libertad Sindical** es clara cuando dice que "Todos los trabajadores tienen derecho a sindicarse libremente para la promoción y defensa de sus intereses económicos y sociales" (artículo 1), lo que esta en consonancia con el ya citado convenio n° 97 (1949) de la OIT (artículo 6 a ii).

En el ámbito de la normativa del empleo se producen muchas ambiguedades, pues si bien es cierto que se parte del hecho de que el derecho al trabajo sólo es reconocido específicamente a los españoles (artículo 35 de la Constitución), por otro es claro que se trata de leyes con un alto contenido social, que abarcan también a los inmigrantes legales que se encuentran trabajando. La **Ley 51/80 Básica de Empleo** dice que "serán principios básicos de la política de colocación la igualdad de oportunidades y de trato en el empleo, sin que pueda establecerse cualquier distinción , exclusión o preferencia basada en motivos de raza ... ascendencia nacional u origen social" (artículo 38.2). Al tratarse aspectos relacionados con la colocación, esta afectaría positivamente a inmigrantes con nacionalidad de países de la Unión Europea o a minorías étnicas españolas, pero no a los inmigrantes de países terceros, aunque el empleo del término "ascendencia nacional" es ambiguo. Sin embargo, dentro de la normativa relacionada con el empleo, el punto más polémico es el de las prestaciones por desempleo, pues se producen contradicciones entre la legislación laboral y la de extranjería, que pueden entenderse como claramente discriminatorias hacia los inmigrantes que han cotizado por esa contingencia, pues dependen del permiso de trabajo. Así, la Ley 31/84 de protección por desempleo al especificar las causas por las que se extingue la prestación habla sólo de rechazo o negativa infundada a una oferta de colocación, pero nunca se hace alusión explícita a la vigencia de los permisos de trabajo.

Ley 10/94 sobre medidas urgentes de fomento a la ocupación. En ella se establece que las agencias privadas de colocación " deberán garantizar, en su ámbito de actuación, el principio de igualdad en el acceso al empleo, no pudiendo establecer discriminación alguna basada en motivos de raza ... origen, etc." (artículo 1.2).

También son pertinentes en aspectos relacionados con la igualdad de trato en el trabajo algunas de las bases que se establecen en la **Ley 7/89 de Bases de Procedimiento Laboral**, ya que además de considerarse el beneficio de justicia gratuita para todos "los trabajadores,

los beneficiarios del régimen público de la Seguridad Social, y quienes acrediten insuficiencia de recursos para litigar" (base novena); se plantea el tema de la inversión de la prueba en los procedimientos a seguir en caso de discriminación por motivo de sexo, lo que sería también muy útil poder aplicar en los casos de denuncia por discriminación laboral por motivos raciales.

4.3. Del ámbito de la Seguridad Social

Entre las situaciones de igualdad legal en que se encuentra el inmigrante con el trabajador nacional esta la obligatoriedad de la inscripción y cotización al sistema de la Seguridad Social. Lo que a veces no está tan claro en la práctica es si esta igualdad de deberes (cotización) lo es también de derechos (prestaciones).

La **Resolución de 15/4/68**, desarrolla lo dispuesto en el Convenio n° 97 de la OIT, quedando equiparados a los trabajadores españoles "los trabajadores inmigrantes que se encuentren legalmente en territorio español, sin discriminación de nacionalidad, raza, ... etc., sin perjuicio de lo establecido en Convenios o Acuerdos Internacionales para la conservación de derechos adquiridos y en curso de adquisición" (punto 1.a), y esto a pesar de que en el texto refundido de la **Ley General de la Seguridad Social**[1] se vuelve a producir una discriminación en la equiparación de unos inmigrantes y otros dependiendo de su pertenencia cultural o de su nacionalidad (artículo 7).

Para los trabajadores de países miembros de la Unión Europea, la norma aplicable se encuentra recogida en los Reglamentos del Consejo de las Comunidades Europeas n° 1408/71 y 574/72.

4.4. Derecho común

Al margen de la legislación específicamente laboral hay también leyes que contienen artículos que afectan a la discriminación de los inmigrantes. Entre ellas consideramos las que aparecen en el **Código Civil**, donde se dice que "Los extranjeros gozan en España de los mismos derechos civiles que los españoles, salvo lo dispuesto en las Leyes especiales y en los Tratados" (articulo 27), lo que esta en sintonía con el artículo 13.1 de la Constitución. Con respecto al modo de adquirir la nacionalidad española, o la doble nacionalidad, se establece, de nuevo, una discriminación entre los propios migrantes basada en el tiempo necesario de residencia en España para adquirirla que, según el artículo 22, será de diez años, excepto para los "nacionales de origen de los países iberoamericanos, Andorra, Filipinas, Guinea Ecuatorial, Portugal o Sefardíes, que acrediten su respectiva condición". Según datos recientes "el porcentaje de iberoamericanos a los que se les concede la nacionalidad española alcanza, en algunos casos el 52 por ciento de las que se conceden cada año ... una media de 12.000 a 15.000 cada año" (Aragón, 1994, pág. 16).

También en el **Código Penal** se encuentran algunos artículos que castigan la discriminación y el racismo; así por ejemplo, al artículo 165 pena con arresto mayor y multa de 10.000 a un millón de pesetas a las personas que trabajando en un servicio público denegaren una

[1] Aprobado por el Real Decreto Legislativo 1/94 de 20 de Junio

prestación a la que se tuviera derecho, por razón de la pertenencia a una étnia o raza. Este artículo esta relacionado con el artículo 194, por el que se inhabilitará a la autoridad o funcionario público que impida a una persona el ejercicio de los derechos civiles reconocidos por las leyes, o también a quien "usando de maquinaciones o procedimientos maliciosos imponga a los trabajadores a su servicio condiciones laborales o de seguridad social que perjudiquen los derechos que tengan reconocidos por disposiciones legales o convenios colectivos sindicales" (artículo 499 bis).

Muy importante es el artículo 173.4 que declara asociaciones ilícitas las que "promuevan la discriminación racial o inciten a ella". Sin embargo, no hay ninguna referencia a indemnizaciones para reparar el daño infringido a las victimas de acciones racistas, tal como es habitual en otras legislaciones y como por otra parte recomienda el artículo 6 del Convenio para la Eliminación de toda forma de Discriminación Racial (CERD) que España ha firmado y ratificado "... así como el derecho a pedir a esos tribunales satisfacción o reparación justa y adecuada por todo daño de que puedan ser víctimas como consecuencia de tal discriminación". Aquí se aprecia, de nuevo, la carencia de una legislación específicamente antidiscriminatoria.

Es importante señalar que actualmente no se consideran los hechos racistas o discriminatorios como circunstancias agravantes de delito, pero por declaraciones del M° de Justicia a los medios de comunicación, en el nuevo Código Penal parece que se van a reforzar las medidas contra la discriminación y el racismo. Esto mismo se apunta en el duodécimo informe que España presentó ante el Comité para la Eliminación de la Discriminación Racial: "En el proyecto de Código Penal, en discusión parlamentaria en la actualidad (1992), figura la discriminación racial como una circunstancia agravante en los delitos contra las personas" (Duodécimo informe presentado por España en el 43 período de sesiones del CERD, 1993. punto 5, pág. 2).

Aunque no exista una norma que valore la reparación de daños o perjuicios causados por un hecho discriminatorio, si existe la posibilidad de recibir compensaciones ante una falta o delito, según se refleja en diferentes artículos tanto del Código Civil, del Penal y en el Real Decreto de Promulgación de la Ley de Enjuiciamiento Criminal, donde se dice que "De todo delito o falta nace acción penal para el castigo del culpable, y puede hacer también acción civil para la restitución de la cosa, la reparación del daño y la indemnización de perjuicios causados por el hecho punible" (artículo 100). Con respecto a la responsabilidad en un delito, incluido la discriminación, hay referencias claras en el Código Civil (artículo 1902) y en el Penal (artículos 19, 101 y 104). El artículo 1.902 del Código Civil señala que "el que por acción u omisión causa daño a otro, interviniendo culpa o negligencia, esta obligado a reparar el daño causado".

4.5. Infracciones y sanciones

Ley 8/88 sobre Infracciones y Sanciones de Orden Social (boe 15.4.88) agrupa las diferentes conductas "contrarías al orden social" en materias de empleo, seguridad social, migración, emigración y trabajo de extranjeros. Así como también el tipo de faltas y las correspondientes sanciones que conlleva el incumplimiento de la legislación laboral. Esta Ley 8/88 es la que anula al artículo 57 del Estatuto de los Trabajadores (infracciones laborales del empresario) y en ella se concreta que es la Inspección de Trabajo el organismo de la

Administración encargado de plantear el procedimiento administrativo sancionador (artículo 1.2).

El capitulo V esta específicamente dedicado al colectivo de migrantes y, curiosamente, sólo se consideran infracciones del empresario las relacionadas con la contratación ilegal de inmigrantes (artículo 35.1) y no las acciones del empresario que supongan un trato desigual en el trabajo hacia los trabajadores extranjeros. De ello se deduce que los otros tipos de faltas cometidas en el trabajo, entre ellas, las que suponen discriminaciones en las condiciones de trabajo por cuestiones de nacionalidad o pertenencia a otro grupo social o étnico se incluyen dentro de las faltas e infracciones que atentan contra derechos reconocidos al total de los trabajadores, tal y como se define el concepto de infracción laboral: "Las acciones u omisiones de los empresarios contrarías a las normas legales, reglamentarias y cláusulas normativas de los convenios colectivos en materia laboral, de seguridad e higiene y salud laborales, tipificadas y sancionadas de conformidad a la presente Ley" (artículo 5). Esta equiparación entre inmigrantes legales y trabajadores españoles a la hora de las sanciones por incumplimiento de la legislación laboral vendría ya dada en el artículo 12 del Decreto 1860/75, citado posteriormente.

Las sanciones presentan tres niveles: leves, graves y muy graves, dependiendo del deber infringido y la entidad del derecho afectado. Entre las que más relación tienen con nuestro estudio destaca la que califica como infracción grave "la modificación de las condiciones sustanciales de trabajo impuesta unilateralmente por el empresario, según lo establecido por el Estatuto de los Trabajadores" (articulo 7. punto 49) o "establecer condiciones de trabajo inferiores a las reconocidas legalmente o por convenio colectivo, así como actos u omisiones que fueren contrarios a los derechos de los trabajadores" (artículo 7, punto 9).

Mas centradas en el hecho discriminatorio y consideradas como infracciones muy graves son, según el artículo 8.12, "las decisiones unilaterales del empresario que impliquen discriminaciones desfavorables por razón de edad o cuando contengan discriminaciones favorables o adversas en materia de retribuciones, jornadas, formación, promoción y demás condiciones de trabajo, por circunstancias de sexo...raza...y lengua dentro del Estado español". También lo expuesto en el artículo 28.2 "establecer condiciones mediante la publicidad, difusión de ofertas de trabajo o por cualquier otro medio, que constituyan discriminaciones favorables o adversas para el acceso al empleo por motivos de sexo, raza".

Tipos de sanciones

El artículo 37 trata de la graduación de las sanciones, "que podrán imponerse en los grados de mínimo, medio y máximo". Los puntos 3 y 4 de dicho artículo especifica los montantes de las faltas graves y muy graves.

El procedimiento administrativo para la imposición de sanciones por infracción de leyes sociales se recogen en el Decreto 1860/75 (boe 12.8.75), que aunque ha sido posteriormente modificado y actualizado, mantiene en vigencia su articulo 12 que trata de las actas de infracción por incumplimiento de los preceptos que regulan el empleo, régimen de trabajo y establecimiento de los trabajadores extranjeros en España.

La ley 11/94 modifica determinados artículos de la Ley 8/88, y aunque en lo sustancial no ofrece cambios significativos a lo anteriormente expuesto, incluye entre las infracciones consideradas como graves las que establezcan "condiciones, mediante la publicidad, difusión

o por cualquier otro medio, que constituyan discriminaciones favorables o adversas para el acceso al empleo por motivos de raza, sexo, edad, estado civil, religión, opinión política, afiliación sindical, origen, condición social y lengua dentro del Estado" (artículo 28. 2).

5. Tutela en los conflictos por discriminación

La protección y defensa de los derechos de los extranjeros en España viene determinada por un complejo y variado marco jurídico, ya sea internacional o nacional. Se parte del hecho de que toda persona tiene derecho a la tutela judicial (artículo 24 Constitución Esp.) y por lo tanto, deben existir los mecanismos e instituciones que la hagan posible.

En primer lugar, hay que tener presente que generalmente los inmigrantes no pueden plantear sus quejas ante las diversas instituciones y tribunales internacionales que velan por el cumplimiento de acuerdos o convenios internacionales ratificados por España de un modo individual, sino que deben hacerlo a través de representantes legales, por ejemplo, organizaciones sindicales. La institución más pertinente para plantear quejas por discriminación en la materia que nos ocupa sería la Organización Internacional del Trabajo, si se considera vulnerado alguno de los aspectos que plantean los Convenios n° 97 (1949) y n° 111 (1958). El Comité para la Eliminación de toda Forma de Discriminación Racial ejerce una función de tutela "indirecta" (los Estados firmantes deben presentar ante dicho Comité informes sobre sus políticas, medidas y cumplimiento de la legislación antidiscriminatoria) ya que España no ha ratificado el artículo 14 de dicha Convención, que es el que permite plantear quejas, incluso individualmente, por incumplimiento de algunos de los artículos de dicho Convenio ante del Comité del mismo.

Para el ámbito de la Unión Europea es el Tribunal de Justicia de las Comunidades Europeas el órgano que dilucida en última instancia sobre los casos de discriminación a los trabajadores migrantes. Ahora bien, no pueden ser estos los que interpongan directamente su demanda ante el Tribunal de Justicia, sino que serán los tribunales nacionales los que la plantearán en caso de dudas sobre la interpretación que ha de darse a la normativa social comunitaria, por lo que "interesa al trabajador fundamentar la duda para que el tribunal nacional pida su aclaración al Tribunal de Justicia Comunitario" (Rojas, 1992. pág. 170).

En cuanto a los mecanismos internos españoles para tutelar los derechos de los inmigrantes existe, al igual que veíamos que pasaba con las legislación, una dispersión de órganos e instituciones que, en mayor o menor grado, tienen por misión velar por el cumplimiento efectivo y real de la normativa antidiscriminatoria hacia las minoría étnicas y los inmigrantes. Lo que no existe es ninguna institución oficial que tenga como cometido propio informar a los interesados, velar por el cumplimiento de la legislación antidiscriminatoria o promover la igualdad de trato a los colectivos objeto de nuestro estudio, como existen por ejemplo en Bélgica, Países Bajos, Reino Unido, Suecia, Canadá o Estados Unidos (Raskin, 1993; Rutherglen, 1994; Zegers de Beijl, 1992). En cualquier caso, los inmigrantes pueden acudir a los tribunales, cualquiera que sea la rama jurídica de que se trate (penal, civil, contencioso-administrativo o laboral) "al no estar prevista distinción alguna basada en la nacionalidad" (Polo, 1994, pág. 374) e incluso pueden presentar recurso de inconstitucionalidad ante el Tribunal Constitucional una vez agotados los cauces judiciales anteriores.

En España, los temas relacionados con la extranjería afectan a cuatro ministerios: Exteriores, Trabajo, Asuntos Sociales e Interior. Al que además tenemos que añadir el de Justicia, pues estamos tratando de la tutela jurídica ante la discriminación. Este panorama, más que garantizar una actuación clara del Estado en defensa de minorías étnicas e inmigrantes, lo que hace es dispersar la actuación del mismo, restando eficacia y efectividad. Para armonizar a las diversas instituciones oficiales encargadas de temas relacionados con los extranjeros, se creó la Comisión Interministerial de Extranjería.

Podemos hablar de instituciones u organismos oficiales que tutelan los derechos y libertades de los extranjeros en general: el Tribunal Constitucional, el Fiscal General, los Tribunales de Justicia y el Defensor del Pueblo; y otros que centran su actuación en la defensa de estos colectivos con relación al mundo del trabajo: la Inspección de Trabajo, y en menor medida las Direcciones Provinciales de Trabajo y la Dirección General de Migraciones.

5.1. Marco de la extranjería

El Tribunal Constitucional es el órgano competente ante el que cualquier persona, incluidos los extranjeros, puede interponer un recurso de amparo si considera violado alguno de los derechos y libertades que la Constitución le otorga (artículo 162 1b de la Constitución Esp.). También es pertinente la actuación del Fiscal General del Estado cuando se trata de "Promover la acción de la justicia en defensa de la legalidad, de los derechos de los ciudadanos y del interés del público tutelado por la ley, de oficio o a petición de los interesados" (artículo 1. Ley 50/81), lo que quiere decir que puede recibir denuncias y enviarlas a la autoridad judicial (articulo 5). También tiene la potestad, a través de una memoria anual, de elevar al Gobierno "las reformas convenientes para una mayor eficacia de la justicia" (articulo 9).

Si la discriminación parte de la administración pública, por acción o por omisión, cualquier persona, natural o jurídica (también el inmigrante en situación irregular) puede dirigir su queja al Defensor del Pueblo. Es interesante remarcar el hecho de que "ni la nacionalidad... ni la incapacidad legal del sujeto" (artículo 10. Ley Orgánica 3/81) son impedimentos para plantear la queja, de modo gratuito, ante el Defensor del Pueblo. Si éste la estima conveniente, se inicia una investigación para esclarecer los hechos. Las competencias del Defensor del Pueblo son la supervisión de la actividad de la Administración, así como formular sugerencias para corregir las presuntas irregularidades que ésta cometa. También puede plantear, de oficio, acciones de responsabilidad contra los causantes de posibles irregularidades.

5.2. Marco del empleo

En cuanto a la tutela especifica de la no discriminación en el mundo del trabajo, será la Inspección de Trabajo el órgano técnico de la Administración encargado hacer efectivo el cumplimiento de la legislación laboral (ley 39/62). Según el artículo 11 de esta ley, la Inspección podrá actuar por iniciativa propia o como consecuencia de una denuncia.

En el **Decreto 2122/71**, se precisa que la Inspección de trabajo fiscalizará el cumplimiento de la legalidad en cuanto al "Régimen de empleo, trabajo y establecimiento de los extranjeros

en España" (artículo 2. III. punto 12). Recordemos que también el Real Decreto 1119/86 le otorga este papel.

Muy próxima y complementaria a la labor de la Inspección es la que realizan las Direcciones Provinciales de Trabajo, a las que el Real Decreto 1801/81 encomienda el ordenamiento y control de los movimientos migratorios y cualquier otro asunto relacionado con las materias de empleo y promoción social, incluyendo la prevención y sanción de actividades fraudulentas en la contratación y el empleo (artículos 13 y 19).

La Dirección General de Migraciones, que es el órgano de la Administración más directamente implicado en las cuestiones migratorias, no tiene competencias claras y directas en la tutela de los inmigrantes ante hechos que supongan una discriminación laboral; sino que su labor se centra particularmente en la ejecución de una "política activa de inmigración...y el diseño y animación de los programas de promoción e integración social dirigidos al colectivo inmigrante" (Real Decreto 1458/91). Sin embargo, puede plantear o sugerir cambios en la legislación que afecta a los inmigrantes, pues tiene encomendadas labores tendentes a la promoción e integración social de estos en colaboración con otras instituciones de la Administración. Ahí radica el peso y la importancia de la Dirección General de Migraciones en este tema, promover acciones y programas que favorezcan la igualdad de trato entre trabajadores nacionales y extranjeros.

Pero en muchos casos, la tutela más directa y efectiva de los inmigrantes y de las minorías étnicas las realizan tanto los sindicatos como otras organizaciones no gubernamentales, que por encontrarse más cerca de estos colectivos, dirigen y asesoran las quejas que se puedan producir por discriminación.

6. Evaluacion de la eficacia del marco legislativo-institucional

¿ Es el marco legislativo-institucional existente realmente eficaz para proteger al migrante de la discriminación racial en el trabajo o presenta lagunas y problemas que le restan validez ?.

6.1. Marco Legislativo

La legislación laboral española de carácter antidiscriminatorio puede ser tachada, al menos, de pasiva, ya que si bien es cierto que existen disposiciones que pueden proteger de la discriminación racial en el empleo, no lo es menos que estas son muy poco utilizadas en la práctica por los colectivos afectados. Hay que partir del hecho de que "la Constitución establece la posibilidad de introducir legítimamente diferencias de trato no sólo entre nacionales y extranjeros, si no también entre los propios extranjeros, ya en función de relaciones de parentesco con nacionales, ya de cargo y oficio, ya en función de la misma nacionalidad que ostenten" (L. Santos, 1993, pág. 105).

También hay que distinguir en el estatuto jurídico-laboral de los extranjeros dos conjuntos normativos diferenciados: la situación jurídica antes de su incorporación al mercado de trabajo, y el régimen jurídico aplicable una vez incorporado a él (Olarte, 1993), pues es el

contrato de trabajo el "elemento originador de la completa igualdad en la relación laboral" (Cardona, 1990, pág. 1169).

Sobre el papel, la legislación laboral española no es discriminatoria con los inmigrantes que se encuentran trabajando en situación legal, ya que las diferentes leyes y normas de trabajo, empezando por la más importante, el Estatuto de los Trabajadores, no discriminan entre los trabajadores por su origen nacional o por su pertenencia a grupos étnicos diferenciados, y además hay normas que penan las diferentes circunstancias en las que se pueden producir situaciones de trato desigual en el trabajo. Pero la existencia de todas estas normas no asegura que en la realidad no existan casos de discriminación para y en el empleo (ver parte A) y, menos aún, que estos sean castigados.

Para centrar el tema de la discriminación en el empleo a los inmigrantes en la legislación española hay que tener en cuenta dos circunstancias claves: 1/ La discriminación laboral al extranjero no esta tipificada - "ex profeso" - como delito; y 2/ el carácter discriminatorio y controlador que posee la legislación general de extranjería.

El primer punto tiene una significación importante, pues al no estar tipificada como delito la discriminación laboral por motivo de la nacionalidad, realmente no existe la posibilidad de establecer procesos por discriminación en el trabajo basados en esta causa, sino en todo caso, procesos por incumplimiento de la legalidad laboral, lo que diluye la actuación legal-institucional ante este tipo de procesos.

Diversas son las causas que motivan la inexistencia de una legislación específicamente antidiscriminatoria, entre ellas podemos señalar, en primer lugar, dos razones con un fundamento histórico: a/ la aún escasa tradición democrática del país, que poco a poco se va dotando de un corpus legal más acorde con la defensa de los derechos humanos, tal y como promulga la Constitución del 1978 y, sobre todo, b/ al todavía reciente cambio de país de emigración a país de inmigración. En segundo lugar, razones con un fundamento socioeconómico, pues se pasa de una situación de complementariedad o de escasa incidencia en el mercado de trabajo por parte del extranjero residente a otra de competitividad laboral. Antes de los procesos de regularización de inmigrantes en situación irregular, cerca del 60 por ciento de la población extranjera era inactiva (Aragón Bombín y Chozas Pedrero, 1993, pág. 183), y con un nivel económico alto - o eran jubilados - con lo que no se producía competencia en el mercado laboral, sino todo lo contrario. En cuanto a su procedencia, al menos hasta 1985, fecha de la primera de las dos campañas de regularización, la mayoría eran nacionales de países de la Unión Europea (OCDE, 1993 y M° del Interior, 1992), lo que parecia evitar brotes de discriminación social o laboral.

Con respecto al segundo punto, vemos que el principal problema de la legislación de extranjería es que trata más de aspectos quasi policiales y requisitos legales que deben reunir los extranjeros, que en afirmar derechos y fomentar medidas integradoras. "No existe una política migratoria, es decir un diseño global que contemple de forma integrada todos los aspectos del fenómeno migratorio. En relación a tal política, apenas existen unos esbozos inconexos. De lo que si hemos dispuesto hasta ahora, es de unas normas de extranjería que, como tales, ponen el acento en los aspectos puramente policiales -administrativos y que se han caracterizado por los elementos de precariedad e inestabilidad con fines probablemente disuasorios" (Santos, 1993. pág. 31). El profesor Segarra llega a hablar incluso de "contradicciones entre el preámbulo y el articulado" de la ley 7/85 y añade que "la

discrecionalidad con frecuencia se puede tornar en arbitrariedad en manos de cualquier persona que esté o que se crea investida de autoridad pública" (Segarra y Trias, 1991, págs. 101-102). Cristina Polo afirma que "la preocupación por reconocer a los extranjeros la máxima cota de derechos y libertades dista mucho de los efectos reales producidos en su situación jurídica" (Polo, 1994, pág. 76). De hecho, el Plan para la Integración Social de los Inmigrantes, aprobado en diciembre de 1994, intenta corregir esta tendencia tan marcadamente controladora hacia los migrantes que poseen las leyes españolas de extranjería.

Podemos resumir los problemas y carencias de la legislación en los siguientes puntos.

1/ Diferenciación de trato

En primer lugar, existe una diferencia de trato de origen constitucional entre los trabajadores nacionales y los extranjeros en el acceso al empleo, tal y como quedó plasmada en la sentencia 107/84 del Tribunal Constitucional cuando dice que "no existe tratado ni ley que establezcan la igualdad de trato entre nacionales y extranjeros para el acceso a un puesto de trabajo". Este aspecto aparece incluso en normas internacionales, como puede ser el Convenio n° 97 (1949) de la OIT, pues en él no aparece como derecho el acceso a un empleo en igualdad de condiciones con el nacional. La igualdad para la titularidad y ejercicio de los derechos laborales se adquiere una vez producida la contratación, lo que para Olarte puede "introducir una excepción legal al principio constitucional de igualdad" (artículo 13 y 14 de la Constitución) (Olarte, 1993, págs. 548-549).

Algunos autores, como González-Sancho, opinan que el hecho de incluir la cláusula de nacionalidad, tanto en normas nacionales como internacionales, supone una discriminación "per se", pues ello conlleva reducir unos derechos y obligaciones por los que se ha cotizado - se refiere en concreto a la legislación de la Seguridad Social - por la simple razón de la nacionalidad (González-Sancho, 1993. pág 169).

También hay diferencias de trato dentro de la propia normativa sobre extranjería, que originan, por ejemplo, discriminaciones entre los propios inmigrantes a la hora de otorgar y renovar los permisos de residencia/trabajo. Basta recordar al respecto, no sólo el diferente status de los trabajadores nacionales de países de la Unión Europea, los cuales no necesitan permiso de trabajo, sólo la tarjeta de residencia, gratuita y renovable automaticamente, que señala el Real Decreto 766/92 (ver pág. 11); sino también las preferencias que se establecen con ciertos nacionales de países con los que España posee lazos histórico-culturales. En efecto, la Ley Orgánica 7/85 y el Decreto 1119/86 señalan ciertas preferencias en los permisos de trabajo. Por ejemplo, el requisito de tiempo de residencia legal para conseguir el permiso de 5 años, es de 2 años de residencia para los inmigrantes iberoamericanos, portugueses, filipinos, andorranos, ecuatoguineanos o sefardíes y de 8 años de residencia legal y titularidad de un permiso de trabajo los doce meses anteriores a la solicitud para el resto de inmigrantes (artículo 39.2.b y 39.3). Otra discriminación basada en la normativa de los permisos de trabajo es que sólo los inmigrantes del permiso de 5 años estan disfrutar de las subvenciones que generan los programas de fomento de empleo.

La discriminación que producen todas estas diferencias entre inmigrantes por motivo de su procedencia ha quedado demostrada en los recientes procesos de regularización de inmigrantes. Por ejemplo, en la última de las dos regularizaciones, nada menos que el 73 por ciento de los permisos concedidos eran de Tipo B (un año de duración), lo que para Aragón

Bombín[1] "puede explicarse por el gran peso del colectivo marroquí, que no ha podido beneficiarse del tratamiento específico que se daba a los iberoamericanos que, con acreditar dos años de residencia, podían obtener el permiso de Clase C" (cinco años de duración) (Aragón, 1994, pág. 16).

Por otro lado, la Ley 7/85 también plantea discriminaciones a la hora de conseguir los permisos de residencia/trabajo según se sea asalariado o trabajador por cuenta propia. Estos últimos gozan de menos trabas a la hora de conseguir los documentos que les otorgan el status de legalidad, por varias razones, entre ellas, y muy importante en la práctica, porque no dependen de un tercero, el empleador, para que certifique la contratación laboral y la cotización patronal a la Seguridad Social, pues serán ellos mismos, utilizando idénticos procedimientos que los españoles que trabajan por cuenta propia, los que deben acreditar que poseen la documentación y las autorizaciones que dan acceso a los permisos (artículo 17.3).

Quizás debido a lo poco afortunada y compleja que resulta toda la normativa sobre permisos de trabajo, el profesor Ojeda Aviles dice que "toda esta normativa sobre permisos de trabajo es nula por discriminatoria, al infringir el artículo 17 del Estatuto de los Trabajadores, y el trabajador extranjero sólo tiene obligación de obtener el permiso de residencia" (Ojeda, 1984, pág. 229). Además, la necesidad de permiso de trabajo genera otra diferencia de trato entre el trabajador nacional y el extranjero, tal y como sentenció el Tribunal Central de Trabajo, ya que este último no puede disfrutar de contratos fijos o indefinidos, pues "esta condicionado (el contrato) a la existencia de permiso con la temporalidad que ello supone" (Tribunal Central de Trabajo, sentencia 15.6.88). Polo habla de una discriminación indirecta cuando el contrato se acaba por finalización del permiso de trabajo, ya que no da lugar a la normativa establecida para casos de despido, pues no obedece a una decisión unilateral del empresario (Polo, 1994, pág. 148).

2/ Indefinición terminológica

Uno de los principales problemas lo plantea la indefinición terminológica que existe en la legislación y que se manifiesta en dos sentidos: a/ Indefinición sobre los colectivos que son afectados por las normas antidiscriminatorias y b/ indefinición de la discriminación a causa de la "nacionalidad".

Con referencia a la primera indefinición, se constata la dificultad para concretar el término "extranjero", ya que existe una falta de uniformidad dentro de la expresión "condición jurídica de extranjero" (Polo, 1994, pág. 41). El uso en la legislación de expresiones como "raza" u "origen" resultan ambiguos y oscuros en cuanto a si cubren o no al extranjero en general, a ciertos colectivos de no nacionales o si se refieren exclusivamente al ciudadano español de diferente raza o grupo étnico. La Constitución habla de ciudadanos, personas y extranjeros, y las leyes en que se mencionan las diferentes situaciones de los migrantes con relación al trato de igualdad hablan de raza, origen social, etc, pero sin utilizar en ningún caso el termino "otra nacionalidad", lo que da lugar a dudas importantes en cuanto a la cobertura de los inmigrantes por muchos estos artículos antidiscriminatorios (Polo, 1994, págs. 54 y 108). El Estatuto de los Trabajadores parece más claro al respecto, pues dice textualmente que "La presente Ley será de aplicación a los trabajadores que voluntariamente presten sus servicios retribuidos por cuenta ajena y dentro del ámbito de organización y dirección de otra persona, física o jurídica, denominada empleador o empresario" (artículo

[1] Director General de Migración.

1.1). Entendemos, junto a otros autores (Polo, 1994, págs. 78,80,82,146 y 181) que el concepto trabajador aquí incluye a todo aquel que mantiene una relación asalariada de producción, sin entrar a distinguir si es un trabajador nacional o inmigrante.

En cuanto al segundo supuesto de indefinición terminológica es notorio, sobre todo en el Estatuto de los Trabajadores, que una persona puede plantear una queja por ser discriminada por la edad, sexo o el estado civil, pero no lo podría hacer por la nacionalidad. Sería necesario reforzar la legislación civil y social que penara de un modo concreto y preciso las actitudes discriminatorias por poseer distinta nacionalidad y que se considerara el racismo como una circunstancia agravante del delito.

Es evidente también la insistencia de la legislación sancionadora por controlar y evitar los fraudes de los empleadores en aspectos burocrático-legales relacionados con el trabajo de los inmigrantes, como puedan ser la contratación fraudulenta, el fraude fiscal o el incumplimiento de normas sociales (seguridad e higiene en el trabajo, derechos sindicales, etc); e incluso se tipifican sanciones para algunos tipos de discriminación (género, edad, etc), pero nunca aparece un concepto sancionador por discriminación especifica a los inmigrantes en y para el empleo.

3/ Discrecionalidad y descoordinación normativa

Ya se han venido comentando algunos problemas de diferenciación de trato derivados de los solapamientos e incluso contradicciones (Moya, 1993) que presentan ciertas normas de extranjería con otras de carácter laboral. Otros autores hablan incluso de discrecionalidad por parte de la Administración por el continuo recurso de la legislación de extranjería a conceptos jurídicos indeterminados, lo que crea la "total inseguridad del extranjero" (Adroher, 1992, pág. 584).

Los casos más notorios se producen en las prestaciones por desempleo, que según la legislación "ad hoc" vienen condicionadas por la pervivencia del permiso de trabajo. Los conflictos con el Instituto Nacional de Empleo (INEM) sobre aspectos relacionados con el cobro de las prestaciones por desempleo e incluso con la inscripción de los inmigrantes que se encuentran en paro como demandantes de empleo genera una casuística que es paradigmática del tipo de problemas que plantea la dispersión de normas y la diversidad competencial de la administración con respecto al status legal y laboral de los inmigrantes.

La legislación general de extranjería, donde se plantean las normas referidas a los permisos de residencia/trabajo, no plantea ningún supuesto que guarde relación con la caducida/renovación de los permisos de trabajo cuando el inmigrante se encuentre en situación de desempleo, lo que es básico para interpretar la legislación laboral referida a este tema, pues las prestaciones por desempleo de los trabajadores extranjeros vienen condicionadas a la pervivencia del permiso de trabajo, pues éste es el que justifica la capacidad de trabajar, premisa fundamental para recibir la prestación (Artículo 17 de la Ley Básica de Empleo y Artículo 1.1 de la Ley 31/84 de Protección por Desempleo), cayéndose así en una manifiesta discriminación, pues el inmigrante pierde un derecho que le correspondió y por el que cotizó cuando estaba trabajando, - legislación laboral - y que pierde por unas disposiciones que se enmarcan en la legislación especifica de extranjería. Una sentencia del Tribunal Central de Trabajo (19/12/84) declara que "una vez comenzado el percibo de la prestación, ésta ha de durar, con independencia de otras circunstancias, el tiempo derivado del correspondiente al de ocupación cotizado". Sobre este punto, Olarte plasma un ejemplo de esta indefinición

jurídica cuando cita una sentencia del Tribunal Superior de Justicia de Baleares (13/2/91), en la que se plantea la limitación de la prestación por desempleo de un inmigrante que cotizó por dicha contingencia y que sin embargo ve negada dicha prestación por la caducida de su permiso de trabajo (Olarte, 1993, pág. 569). Para González Ortega "la protección se dispensa no tanto por la carencia de empleo, sino por la pérdida de trabajo y ocupación inmediatamente anterior a esta situación" (González, 1985, pág. 232).

Podemos concluir este punto con la clarificadora y contundente opinión de Sofia Olarte cuando dice que "el elevado grado de indeterminación jurídica plantea numerosos problemas a la hora de su practicabilidad. De modo que puede decirse que, por un lado se guardan las apariencias (ya que no encontramos ni una sola referencia legal que excluya a los trabajadores extranjeros del sistema de protección por desempleo) y, a la vez, se conjugan los distintos elementos normativos de tal modo que el grado de indeterminación sea lo más posible, provocando un no desdeñable número de contenciosos que contrastan con la ignorancia de este tema por parte de la legislación laboral, que tal vez, no consideró tanto las tendencias inmigratorias como las de emigración" (Olarte, 1993, pág. 569).

4/ Miedo a la denuncia

Durante la realización de este estudio se comprobó la dificultad que existe para encontrar quejas por discriminación laboral presentadas por inmigrantes, lo que dificulta conocer con exactitud la dimensión del problema y la auténtica eficacia de las medidas adoptadas sobre este tema. Nadie hace uso de un derecho legítimo si el precio a pagar puede ser más caro. Parece por tanto evidente que el trabajador inmigrante no plantea denuncias por discriminación temiendo las represalias laborales que le puede ocasionar exigir el trato igualitario que la legislación de lo social le ofrece. El dato más significativo de la poca validez de las medidas legales antidiscriminatorias, por la transcendencia real e incluso simbólica que tiene, es el escaso número de denuncias planteadas.

Calderón Fochs, en su informe sobre la discriminación racial en el empleo en España dice "los asuntos de discriminación en las relaciones laborales contra inmigrantes de otras razas u origen étnico no suelen llegar a los tribunales (the issue of discrimination towards immigrants of another race or ethnic origin in labour relations does not often come up before the courts)" o "es practicamente imposible investigar la jurisprudencia sobre el tema (It is therefore practically impossible to follow up on jurisprudence in the subject)" (Calderón, 1994, pág. 130).

El origen del miedo a plantear denuncias tiene su fundamento en una legislación de extranjería que impone al inmigrante una dependencia del empresario para conseguir y mantener su situación de legalidad para residir y trabajar. Esta dependencia "vital" de un tercero - el empresario - es la diferencia de status más importante que existe con respecto a los trabajadores nacionales. En efecto, el proceso burocrático-legal para adquirir o renovar los permisos hace que el trabajador extranjero dependa del empresario, pues necesita probar documentalmente su situación con certificados que sólo el empresario puede ofrecer, (certificado de trabajo y cotización empresarial a la Seguridad Social, por ejemplo) y por lo tanto se establece una relación de dependencia que puede fácilmente generar una relación de sumisión, donde el inmigrante acepte condiciones de trabajo discriminatorias.

Para los trabajadores españoles, la denuncia al empresario por incumplimiento de alguna norma laboral puede significar en el peor de los casos el despido, pero continuarán gozando

de todos los derechos sociales - incluidas, por ejemplo, las prestaciones por desempleo - que garantiza su nacionalidad, pero para los otros, los inmigrantes, el despido puede ser perderlo todo. Incluso aunque la denuncia sea condenatoria para el empresario supone casi inevitablemente el despido del trabajador y con ello, primero la posible perdida del status legal que le otorga el permiso de residencia y trabajo (si tiene " papeles") y, posteriormente, la expulsión del país. Por lo tanto, con o sin papeles, no existe una igualdad de hecho entre oriundos e inmigrantes. Ante tal presión, es lógico que prácticamente no haya denuncias de discriminación en el empleo. Además existe una dificultad práctica añadida, que es mostrar que realmente se ha producido una actuación discriminatoria, ya que tendrá que ser la propia victima la que demuestre que se le ha discriminado, lo que no siempre es fácil, tanto por la propia naturaleza que muchas veces tiene la discriminación como por la dificultad de encontrar testigos - ya que pueden sufrir represalias laborales.

Con respecto a la utilización por parte de los inmigrantes de la legislación de carácter internacional que los ampara de posibles discriminaciones en el empleo, tampoco se han podido constatar documentalmente denuncias formales, ni en los informes de cumplimiento del Convenio n° 97 (1949) ni en el del n° 111 (1958) de la OIT. Sólo hay algunas sobre inmigrantes irregulares, por ejemplo, en las zonas de recogida de fruta del Maresme, aunque muy vagas e imprecisas. Si los inmigrantes no conocen o no utilizan las vías de denuncia internas, más difícil resulta pensar que puedan utilizar las que les ofrecen los acuerdos internacionales. Aquí tienen los sindicatos un papel muy importante que jugar, pues los inmigrantes no pueden plantear las quejas individualmente ante la OIT (ver página 17).

Tampoco el panorama legislativo de la Unión Europea con respecto a los inmigrantes de países terceros es mejor, pues las medidas tomadas hasta el momento están más próximas de las discriminatorias y excluyentes basadas en aspectos económicos y policiales que de las encaminadas a la igualdad de trato, ya que están excluidos de la protección ofrecida por el derecho comunitario (Ramos, 1993).

Parece evidente que el número de denuncias por desigualdad en el trato o directamente de discriminación en y para el empleo no guarda relación con una realidad que es manifiestamente discriminatoria tanto en España (ver parte A) como en otros países europeos (Zegers de Beijl, 1992), a pesar de que existan medidas legales protectoras.

Por todo lo dicho, podemos afirmar con Oscar López que "en general, se trata de una panorámica laboral sustancialmente desventajosa para el colectivo extranjero en relación a las situaciones, leyes y normativas que rigen las condiciones laborales y los derechos del trabajo para los nacionales" (López, 1992, pág. 38).

Para concluir diremos que el rápido y creciente número de inmigrantes, así como la difícil situación del mercado laboral español plantea problemas de discriminación que obligan a revisar la utilidad real de la política de extranjería y de las legislación social antidiscriminatoria. Cristina Polo habla de la insuficiencia de las normas jurídicas como mecanismo que garantiza los derechos de los trabajadores, lo que produce la necesidad de recurrir a los tribunales de lo social para lograr la tutela efectiva de dichos derechos (Polo, 1994, pág. 85) y de hecho, el más alto órgano de la administración para temas de migraciones, "la Comisión Interministerial de Extranjería" ha aprobado "estudiar si los instrumentos legales, si el cuadro legal y, en especial, si el Reglamento y la Ley Orgánica

de Extranjería constituyen el marco más adecuado para conseguir o facilitar la integración de los inmigrantes" (Aragón, 1994, pág. 21).

6.2. Marco institucional

¿ Cómo y quién tienen realmente facultades y capacidad para vigilar el efectivo cumplimiento de las diferentes medidas legales existentes o proponer nuevas medidas que solucionen los problemas que surgen ?

Falta un órgano de la Administración que se encarge de la promoción y protección de los derechos de los inmigrantes y las minorías étnicas. De hecho, la diseminación de medidas legales y el reparto de diferentes competencias en la materia entre diversos organismos de la administración se traduce, tanto en solapamientos como en la existencia de espacios sin cubrir, ya que a cada uno le afectan diferentes facetas, a veces, sin limites precisos, de un mismo problema. El Real Decreto 511/92 (BOE 4/6/92) crea la Comisión Nacional de Extranjería, que agrupa a los diversos ministerios implicados en temas de inmigración. Entre sus cometidos esta la posibilidad de elevar modificaciones legales antidiscriminatorias si considera que se producen desigualdades de trato manifiestas y no amparadas por la legislación entre trabajadores oriundos y extranjeros. También tiene otro cometido no menos importante: "impulsar la aplicación efectiva de los derechos civiles, económicos y sociales reconocidos a los extranjeros por la legislación española" (artículo 3 f).

El Defensor del Pueblo, aunque mantiene un interés probado por la problemática de los inmigrantes (Defensor del Pueblo, 1994), tiene limitada exclusivamente su posibilidad de actuación a plantear denuncias e informar de actos discriminatorios producidos por alguna institución o persona de la Administración, pero no tiene capacidad para modificar la legislación, ni para imponer sanciones por dichos actos, sino sólo para recomendar modificaciones - por ejemplo, que una ley sea declarada inconstitucional.

Entre las funciones atribuidas a la Dirección General de Migraciones (Ministerio de Asuntos Sociales) no existe la potestad de proponer la modificación de texto legales o la activación de medidas que optimicen la defensa de la igualdad de trato en y para el empleo entre migrantes y trabajadores nacionales. Tampoco tiene atribuciones directas de vigilancia y control de la legalidad laboral de los inmigrantes.

Posteriormente, el Real Decreto 1521/91 (BOE 26/10/91) sobre creación, competencias y funcionamiento de las Oficinas de Extranjeros incluye entre las actividades de estas "la elevación a los órganos competentes de las oportunas propuestas de resolución relativas a todo tipo de sanciones gubernativas en materia de extranjería", por lo que entendemos que se trata sólo de temas relacionados con la tramitación de permisos y visados [1], es decir relacionados con la Ley 7/85 y no con condiciones de empleo, que afectaría a la legislación laboral, lo que remarca la tendencia del legislador hacia el control del inmigrante y no a hacia la igualdad entre trabajadores extranjeros legales y nacionales.

Quien esta realmente capacitado para obrar en el tema que nos ocupa es la Inspección de Trabajo, pues es el órgano de la Administración encargado de velar por el cumplimiento de

[1] Ver al respecto: Art. 3°, puntos A y B del Real Decreto 1521/91.

la legalidad laboral y, por tanto, de luchar contra la discriminación que se pueda producir en el trabajo hacia los inmigrantes. Sin embargo, la actuación de la Inspección de Trabajo parece insuficiente y quizás poco adecuada para combatir estas situaciones discriminatorias, cuya labor tiene la obligación de realizar, bien por denuncias - ya se ha comentado la dificultad que tienen las victimas de discriminación para presentar denuncias - bien "de oficio".

La poca actividad de la Inspección en combatir la discriminación laboral hacia los migrantes es mencionada en el informe del Defensor del Pueblo relativo al año 93 cuando dice que "la Inspección de Trabajo refuerce su actuación de control y sanción sobre la contratación irregular y las condiciones de trabajo infralegales de los trabajadores" (Carta de España, n° 485, pág. 17). Además, casi siempre que la Inspección actúa en temas de inmigración es para detectar ilegalidades relacionadas con el trabajo clandestino, lo que suele concretarse en actuaciones contra trabajadores inmigrantes en situación irregular. Lidia Santos añade que además la presión sobre el empleador irregular es "menor" (Santos,1993, pág 116).

A través del contacto establecido para la realización de este estudio, la Inspección de Trabajo no sólo admite la escasez de denuncias que se producen, sino que incluso las actuaciones referidas a hechos discriminatorios hacia inmigrantes y miembros de minorías étnicas son recogidas en una especie de "cajón de sastre" informativo titulado "otras discriminaciones", en donde no se especifican las causas de la discriminación. Tras la modificación realizada en el año 1994 en la estructura del sistema de información de la propia Dirección General de la Inspección, ésta nos comunica que "sigue sin poder identificarse dentro del apartado 'Discriminación otros trabajadores' las causas que generan éstas - excluidas las de edad, sexo o minusvalía - ... aunque no se descarta la idea de contemplar una futura modificación del sistema de información en este sentido" (Carta de la Subdirección Gral. de la Inspección de la Seguridad Social, 19.8.94).

Todo ésto, no viene sino a mostrar un cierto despego en la protección de los inmigrantes legales por parte de las instituciones oficiales, e incluso demuestra la falta de reflejo de éstas por acomodarse a las nuevas circunstancias, como es la presencia cada vez más numerosa de inmigrantes. Un ejemplo palpable del "retraso" en la actualización normativa y formal con respecto a la incorporación de extranjeros al sistema español de Seguridad Social lo puede indicar el hecho de que en la documentación para inscribirse (darse de alta) en la Seguridad Social no aparezca el dato referido a la nacionalidad, ni siquiera, a la localidad de nacimiento. ¿ Cómo interpretar esta ausencia, falta de interés por conocer cuántos extranjeros están dados de alta o carencia total de discriminación en el sistema?.

Por todo lo anterior podemos afirmar que existe una auténtica desconfianza hacia las instituciones, especialmente hacia la policía y la justicia, que consideran priman al nacional frente al extranjero (López, 1992). De las demandas presentadas por inmigrantes ante los Tribunales de lo Social entre los años 1976 y 1994, sólamente el 23 por ciento fueron favorables a estos, y concretamente, en sentencias por despido sólo 20 de 121 durante el mismo periodo resultaron favorables a los inmigrantes (Cachón, 1994, pág 27), lo que puede ser significativo de una falta de actualización legislativa frente al problema migratorio, a pesar de que no se pueda medir la eficacia de la protección brindada por los Tribunales de lo Social en función del porcentaje de resoluciones favorables a los inmigrantes .

Al margen de las instituciones de la Administración, los sindicatos son, por su propia naturaleza, las organizaciones sociales que más cerca se encuentran de los inmigrantes y por tanto, los cauces "naturales" y directos para la defensa del trabajador extranjero ante casos de discriminación. Recordemos de nuevo que el sindicato es el instrumento necesario para plantear quejas ante la OIT. Los dos sindicatos españoles más representativos cuentan con centros especiales de asistencia a los trabajadores extranjeros, al margen de que estos se encuentren afiliados en la rama sindical que corresponda a su ocupación.

En manifestaciones orales (para realizar este informe) de los sindicatos UGT y CC.OO sobre la presencia de condiciones de trabajo y de salario discriminatorias hacia los migrantes se vuelve a constatar que la discriminación por motivos raciales esta presente en el medio laboral, pero que generalmente no se denuncian por el ya comentado temor a las represalias que puede producir la propia denuncia. Así, por ejemplo, se puede leer en un informe sobre el perfil socio-profesional de la inmigración en España elaborado por la UGT que "cuando se les aducía la posibilidad de denunciar la situación ante el sindicato (incumplimiento de las condiciones de contrato a un grupo de marroquíes en Huelva), su silencio evidenciaba el miedo a perder su puesto de trabajo, en los casos en que la respuesta no era clara y explícitamente negativa" (López, 1992, pág. 36). Pero los sindicatos tampoco resultan, de momento, muy eficaces como organizaciones que canalizan la defensa del inmigrante, pues chocan con diversos problemas que les restan eficacia. El ya suficientemente comentado miedo del inmigrante a denunciar la discriminación lleva, no sólo a rechazar la denuncia de su situación a un sindicato, sino incluso a evitar la militancia sindical por temor a significarse como "problemático" o reivindicativo dentro de la empresa.

6.3. Política de integración

Además de lo expuesto anteriormente, se aprecia una falta de políticas sociales que favorezcan la igualdad de trato y por tanto que abran el camino a la integración en la sociedad de acogida. Por ejemplo, los cursos de formación profesional específicamente preparados para los migrantes -que se incluyeron en el Plan de Formación e Inserción Profesional y en la Orden del 9/1/91- son escasísimos en comparación a otros colectivos (Defensor del Pueblo, 1994, pág 22), tal y como se aprecia en la memoria del año 1992 de la Dirección General de Migraciones (Dirección General de Migraciones, 1993). Incluso la corta duración de los permisos de residencia/trabajo no favorecen la posible integración del inmigrante en la sociedad receptora, evitando la reintegración familiar y discriminandole en el empleo, pues no adquiere conceptos como el de antiguedad, que no sólo tienen aspectos económicos sino también directos en la propia cualificación laboral del trabajador.

Plan para la Integración Social de los Inmigrantes

En diciembre de 1994, el Consejo de Ministros aprobó el llamado "Plan para la Integración Social de los Inmigrantes", que se enmarcar dentro de la aún reciente política española de inmigración. Después de actuaciones tendentes al control y regularización de la inmigración - legislación de extranjería, campañas de regularización, fijación de cupos migratorios, etc - comienzan a aparecer los primeros intentos por abordar aspectos más sociales del fenómeno migratorio que tiene una manifestación clara en el cambio de estructura y dependencia administrativa de la Dirección General de Migración (del M° de Trabajo y Seguridad Social al M° de Asuntos Sociales).

El plan presenta un conjunto de medidas para facilitar la integración social y laboral de los inmigrantes en condiciones más ventajosas que las que existían hasta ese momento. A parte de medidas de carácter general, entre ellas, la participación de los extranjeros en elecciones municipales cuando exista reciprocidad o dotar a la mujer de un estatuto jurídico independiente del de su cónyuge; hay también otras que afectan específicamente al campo sociolaboral, por ejemplo, la ampliación de los permisos de trabajo a cinco años, el acceso a los programas de empleo promovidos por los poderes públicos o el impulso de las negociaciones colectivas en sectores con mayoría de trabajadores extranjeros.

En cuanto a las introducción de nuevas medidas legales o modificaciones de las ya existentes con relación al trato discriminatorio, el Plan dice que "es necesario potenciar las medidas legales contra quienes ejecuten, justifiquen o toleren comportamientos o actitudes de esta naturaleza" (M° Asuntos Sociales, 1994). Pero el plan no es más que una declaración de intenciones, un marco de actuación, pues no especifica períodos de tiempo para su aplicación ni se concreta quién o quiénes serán las instituciones encargadas de realizar tales medidas. Lo más destacado es que muestra la preocupación de la Administración por la problemática migratoria más allá de meras políticas de control y manifiesta un interés por establecer medidas legales más certeras contra la discriminación a los migrantes y a favor de su paulatina integración en igualdad de condiciones, oportunidades y trato.

Podemos resumir que la principal dificultad para evitar los hechos discriminatorios en el mundo del trabajo hacia los migrantes y las minorías étnicas estriba en problemas relacionados con la carencia o mal funcionamiento de los mecanismos encargados de informar y hacer cumplir la legislación existente, y no tanto en la falta de medidas legales concretas, aunque ésta sea cierta y real. La significativa ausencia de denuncias parece obedecer no a la inexistencia de discriminación hacia estos colectivos, sino sobre todo a dificultades y recelos sobre las posibilidades reales de amparo que la aplicación de la legislación les ofrece.

Los derechos sólo tienen sentido si es posible ejercerlos, por ello, resulta ilustrativo sobre el estado de la cuestión finalizar recordando las siguientes palabras de Peces-Barba: "Si un derecho fundamental no puede ser alegado, pretendiendo su protección, se puede decir que no existe" (Peces Barba, 1980, pág. 168).

7. Conclusiones

7.1. La situación en España

A pesar de que las últimas encuestas realizadas - enero 1995 - por el Centro de Investigaciones Sociológicas parecen mostrar, al menos sobre el papel, una actitud cada vez menos xenófoba por parte de los ciudadanos españoles (*El País*, 1995), hay datos que muestran un aumento de los brotes racistas en España (Banton, 1994 y 1995; Solé 1995). La presencia creciente de trabajadores extranjeros puede dar lugar a situaciones discriminatorias y racistas que se pueden manifestar especialmente en las relaciones laborales, pues, aunque no se alcanzan las cifras de inmigración de otros países, tradicionalmente receptores, se dan circunstancias que parecen favorecer la presencia y propagación de actitudes discriminatorias contra los inmigrantes, como pueden ser: el rápido incremento en

el número de extranjeros residentes, de 250.000 en 1989 se pasa a 400.000 en 1992 (SOPEMI, 1993, pág 91); la presencia localizada de los colectivos más numerosos de inmigrantes en puntos concretos del país (Aragón Bombín, 1994); los problemas por los que atraviesa el mercado laboral español, que posee la cifra de desempleo más alta de los países de la Unión Europea, y, no lo olvidemos, la ausencia de pautas culturales que favorezcan la integración.

Los hechos discriminatorios, y no sólo los referidos al mundo del trabajo, van unidos directamente a las características socioeconómicas (bajo nivel adquisitivo o directamente pobreza) y al número de los extranjeros o de las minorías étnicas existentes, tal y como parecen demostrar los datos extraídos de encuestas realizadas sobre el tema por el Centro de Investigaciones Sociológicas (CIS) o por el Centro de Investigación sobre la Realidad Social (CIRES, 1994, pág. 94), donde se muestra como el colectivo que sufre mayor discriminación es de origen nacional, los gitanos, seguido de los norteafricanos (magrebies), que son el colectivo de inmigrantes no europeos más numeroso y de más rápido crecimiento.

Muchas veces se buscan razones pretendidamente culturales - choque cultural, inadaptación, etc. - para basar teorias que justifiquen la existencia de discriminaciones, pero la causa primera para la existencia de hechos discriminatorios y abusos hacia los trabajadores inmigrantes hay que buscarlas en la indefensión jurídica e institucional de éstos.

7.2. La legislación y las instituciones antidiscriminatorias

Es comúnmente aceptado, que las leyes siempre van por detrás de la sociedad y de los problemas que se presentan. El asesinato por motivos racistas de la inmigrante dominicana Lucrecia Martínez en 1992 parece haber motivado un mayor interés tanto de las instituciones como de la sociedad española hacia los problemas de racismo y discriminación que sufren los trabajadores extranjeros.

España tiene elementos para mejorar la actuación legal e institucional contra la discriminación laboral hacia los inmigrantes y las minorías étnicas por varias razones:

a/ Posee un marco legislativo basado en la igualdad y el respeto a las minorías.
b/ La legislación laboral parte de principios antidiscriminatorios.
c/ Existe la voluntad política de evitar la discriminación, que se plasma en el Plan para la Integración Social de los Migrantes.
d/ Los sindicatos muestran interés en atajar los problemas discriminatorios hacia los migrantes.

Pero también hay actualmente unas carencias importante en el plano legislativo-institucional que favorecen o al menos no evitan con el rigor necesario la realización de actos discriminatorios hacia los colectivos objeto del presente estudio. Podríamos sintetizar estos problemas en :

a/ Falta de una legislación especifica contra la discriminación, incluyendo la motivada por la nacionalidad, así como los mecanismos sancionadores de tales prácticas.
b/ Dispersión de la legislación que presenta aspectos antidiscriminatorios, lo que origina desconocimiento de la misma, especialmente entre los interesados.

c/ La terminología empleada en las normas legales que afectan a los extranjeros es confusa, lo que da pie a diferentes interpretaciones y a cierta discrecionalidad en la aplicación.

d/ La legislación posee aspectos discriminatorios, pues establece diferencias de trato y de status a los diferentes grupos de extranjeros, según sean nacionales de un país de la Unión Europea, de un país con los que existen lazos histórico-culturales o de un tercer país.

e/ La legislación de extranjería se centra, sobre todo, en el control de los extranjeros, lo que además de no facilitar legalmente la integración, origina recelos y miedos entre estos.

f/ Las instituciones administrativas encargadas de velar por el cumplimiento de la legislación antidiscriminatoria y, especialmente en el terreno laboral, la Inspección de Trabajo muestran una escasa eficacia para asegurar una verdadera protección de los migrantes en el tema que nos ocupa.

g/ Ausencia de cauces eficaces para denunciar la discriminación laboral.

h/ Falta de reconocimiento por parte de España del artículo 14 del CERD, que permite plantear quejas individuales por motivos de discriminación racial. Al respecto, es interesante recordar la resolución 90/C 157/01 adoptada el 29 de mayo de 1990 por el Consejo de las Comunidades Europeas (*Official Journal of the European Communities*, 1990) en el que se indica que "sería deseable el reconocimiento por parte de los Estados que no lo hayan hecho del artículo 14 del CERD" (Punto 2.b.).

i/ El debil papel de los sindicatos como canalizadores de denuncias.

Todas las carencias que se acaban de enumerar motivan tanto la desconfianza del colectivo de inmigrantes hacia la sociedad de acogida, como impiden conocer las fallas del sistema legal de protección a los migrantes y las minorías étnicas, debilitando de raíz los procesos de integración.

8. Sugerencias a modo de epilogo

Todos sabemos que si se posee un marco legal adecuado y mecanismos administrativos y judiciales que funcionen correctamente se tienen unas bases eficaces para evitar la discriminación, pero también somos conscientes de que las leyes, por si solas, no garantizan la desaparición de la discriminación, pues éste es un hecho con profundas raíces culturales que debe ser combatido desde muy diversos ángulos. Por ello, para concluir este estudio, se aportan unas sugerencias, algunas de las cuales han podido quedar ya patentes en las páginas anteriores, con la intención de ayudar a mejorar o a complementar la eficacia de las medidas ya existentes:

1/ Creación de una normativa específicamente antidiscriminatoria, donde aparezca como delito y como agravante de delito la discriminación racial. Parece necesario un enfoque más activo y positivo de la legislación hacia los extranjeros, que no obedezca sólo a medidas de control, con una clara vocación igualitaria, y que, por ejemplo, siguiera los pasos de las medidas legales emprendidas contra la discriminación en el empleo por motivos de género, donde se admite la inversión de la prueba en casos de acoso sexual, asi como reconocer el artículo 14 del CERD para permitir plantear quejas de modo individual ante una institución internacional.

2/ Creación de un órgano de la administración encargado de velar, informar y potenciar el cumplimiento de las medidas antidiscriminatorias. Se indicaba unas líneas más arriba las dificultades que supone para el migrante plantear la denuncia de un hecho discriminatorio, pues no sólo tiene que denunciarlo, sino que tiene que probarlo, con las consiguientes presiones y represalias laborales que puede ejercer el empresario ante él y ante los compañeros de trabajo.

Además de promover la información, seguimiento y potenciación de las medidas antidiscriminatorias y de aconsejar, proteger y orientar a los inmigrantes, éste nuevo órgano de la administración podría canalizar jurídicamente las quejas por discriminación; así como desarrollar cursos de formación sobre la materia entre personas que trabajan directamente con inmigrantes o que están relacionadas con la administración de Justicia o de Interior, siguiendo el ejemplo de instituciones semejantes que ya existen en algunos países como en el Reino Unido o en los Países Bajos.

La actuación del Instituto de la Mujer en campañas de defensa de la igualdad de trato en el trabajo para las mujeres y en la denuncia y seguimiento de los casos de discriminación, incluso al margen de la denuncia de la propia victima, el seguimiento específico de la legislación para que se eviten y denuncien explícitamente cualquier atisbo de discriminación hacia la mujer así como el fomento que dicho Instituto realiza para que, a través en muchos casos de acciones positivas, la integración de ésta al mercado laboral sea lo más efectiva posible, pueden ser un ejemplo de actuación para las instituciones encargadas de la integración laboral y social de inmigrante que trabaja en España.

3/ Medidas legales que fomenten las acciones positivas para contrarrestar el peso de la cultura excluyente, por ejemplo, con acceso a derechos políticos (sufragio en elecciones municipales) y por supuesto a derechos sociales como la participación en cursos de formación profesional que puedan capacitar al inmigrante para desarrollar tareas que no sean sólo "de desecho", y a tener su propia carrera profesional en igualdad de condiciones que los trabajadores autóctonos.

4/ Campañas antidiscriminatorias entre la población, en la enseñanza primaria y secundaria e información a los agentes sociales y a los trabajadores de los servicios públicos, (actualmente se esta realizando una campaña de este tipo en la administración pública organizada por el M° de Asuntos Sociales y el sindicato Comisiones Obreras).

5/ Favorecer la integración socio-laboral mediante el apoyo y la promoción de la reagrupación familiar y la ampliación de los plazos de los permisos de residencia/trabajo, con el fin de estabilizar la situación de los migrantes y sus familias en un marco de tranquilidad legal que ayude a profundizar en el conocimiento de las pautas sociales y culturales de la sociedad de recepción.

Por otro lado, la reciente transferencia de la Dirección General de Migraciones del M° de Trabajo y Seguridad Social al M° de Asuntos Sociales puede reforzar esta labor de integración, así al menos parece entenderlo el Director General de Migraciones "el objeto o el eje que debe ser prioritario ha de ser el eje de la integración de los inmigrantes. Esta es la clave para entender el significado de la transferencia de la Dirección Gral de Migraciones desde el M° de Trabajo al M° de Asuntos Sociales: abandonar la consideración del trabajador extranjero sólo como un trabajador y abordar desde una perspectiva global todos los

problema" (Aragón, 1994, p. 19) y por ahí van, felizmente, muchos de los aspectos recogidos en el Plan para la Integración Social de los Inmigrantes.

Bibliografía

Adroher Biosca, S. (1992): "La inmigración en España: el reto de la integración", en *Razón y Fé*, Tomo 225 (1992), páginas 581-592.

Aragón Bombín, R. (1994a): "Balance del proceso de regularización y los nuevos proyectos para la integración de los inmigrantes" en *Regularización de trabajadores y reagrupación familiar de inmigrantes extranjeros en España*, Itinera Cuadernos (Barcelona, Fundación Paulino Torres Domènech) páginas 11-21.

---------. (1994b): "Inmigración y empleo. Consideraciones generales", en *Papers* n° 43 (Barcelona)

Aragón Bombín, R.; Chozas Pedrero. (1993): *La regularización de los inmigrantes durante 1991-92*. (Madrid, M° de Trabajo y Seguridad Social).

Banton, M. (1994): *Draft Report of the Committee on the Elimination of Racial Discrimination to the General Assembly at its forty-ninth session*, CERD, c/45/CPR.1/add.19. (Ginebra) página 3.

---------. (1995): "International Report", en *New Community*, Vol 21. [1] (Coventry) páginas 115-120.

Boletín Oficial del Estado (1985): Fecha 3/7/85 (Madrid).

Cachón, L. (1994): *Preventing racism at the workplace. Report on Spain (draft)* (Dublin, European Foundation for the Improvement of Living and Working Conditions).

Calderón Fochs, R. (1994): "Spain", en *National Reports on Racial Discrimination in Employment in the member States*, Vol. II, Section 7 (Brussels, European Human Rights Foundation) página 130.

Cardona Torres, J. (1990): "La contratación laboral de los trabajadores extranjeros en España", en *La Ley*, tomo II (Madrid).

Carta de España (1994): número 485, (Madrid, Dirección General de Migraciones) página 17.

CERD (1981): Documents Officiels, Trente-sixième session, supplément n° 18 (A/36/18), point 84, página 31.

---------. (1985): Documents Officiels, Quarantième session, supplément n° 18 (A/40/18), point 577, página 132.

---------. (1993): Duodécimo Informe presentado por España, 43 período de sesiones. C/226/Add.11. punto 5. pág 2.

Commission des Communautes Européennes (1992): *Moyens juridiques pour combattre le racisme et la xénophobie* (Bruxelles) página 33.

CIRES (1994): *Actitudes hacia los inmigrantes* (Madrid) página 94.

De la Mata, F. (1995): "Racismo y xenofobia" en Alegría Borrás (dir): *Diez años de la ley de extranjería: balance y perspectivas*, Itinera libros (Barcelona, Fundación Paulino Torres Domènech) página 37.

Defensor del Pueblo (1994): "Situación jurídica y asistencial de los extranjeros en España", en *Informes, estudios y Documentos* (Madrid).

El País (1995): 27 de Marzo, página 27

GISTI (1994): *La circulation des étrangers dans l'espace européen*, juin. página 41.

González-Sancho, E. (1993): "La Seguridad Social de los migrantes no comunitarios que trabajan en la Comunidad Europea", en *Revista de Trabajo y Seguridad Social n° 9* (Madrid, Ministerio de Trabajo y Seguridad Social) páginas 155-174.

González Ortega. (1985): "La ley 31/84 de Protección por desempleo: objeto de la protección y personas protegidas", *Comentarios a la nueva legislación* (Madrid, Tecnos).

Izquierdo Escribano, A. (1994): "Consecuencias de la regularización de extranjeros de 1991", en *Papers n° 43* (Barcelona) página 126.

López, O. (1992): *Perfil socio-profesional de la inmigración en España. Análisis de resultados del estudio cuantitativo* (Madrid, UGT).

Manjón Manjón, J.R. (1991): "Inmigración y extranjería en los Tratados Internacionales", en *Revista de economía y sociología del trabajo n° 11* (Madrid, M° de Trabajo y Seguridad Social) página 146.

Migration News Sheet (1994): n° 56.139, september (Brussels).

MINISTERIO DE ASUNTOS SOCIALES (1995): *Plan para la integración social de los inmigrantes* (Madrid).

Moya Escudero y otros. (1993): *Régimen Jurídico del permiso de trabajo de los extranjeros en España* (Granada) páginas 15-20.

Mulas, A. (1986): *Legislación laboral y de empleo* (Madrid, M° de Trabajo y Seguridad Social) página 279.

OCDE (1993): *Sopemi, Annual Report* (Paris).

Official Journal of the European Communities (1990): *Annex III. n° C 157/1* [27.6] (Brussels).

OIT (1988): "*Igualdad en el empleo y la ocupación*. Estudio general de la Comisión de Expertos en Aplicación de Convenios y Recomendaciones, 75 Reunión de la Conferencia Internacional del Trabajo (Ginebra).

--------. (1994): *Libertad sindical y negociación colectiva*, 81 Reunión de la Conferencia Internacional del Trabajo, (Ginebra).

Olarte Encabo, S. (1993): "Protección por desempleo de los trabajadores extranjeros en el sistema español de seguridad social", en *Actualidad laboral n° 31* [septiembre] (Madrid).

Ojeda Aviles, A. (1984): "El procedimiento de colocación, revisitado", en *Revista Española de Derecho del Trabajo* (Madrid).

Peces Barba, G. (1980): *Derechos fundamentales* (Madrid).

Polo Sánchez, C. (1994): *Derechos fundamentales y libertades públicas de los trabajadores extranjeros en España*, Colección Estudios. (Madrid, Consejo Económico y Social).

Ramos Yuste, A. (1993): *La Inmigración en Europa Occidental. Evolución, Situación y Perspectivas* (Bruselas, Instituto Sindical Europeo).

Raskin, C. (1993): *De facto discrimination, immigrant workers and ethnic minorities: A Canadian Overview* (Ginebra,OIT).

Rojas, M. (1992): "Derecho Comunitario Social. Cuatro proyectos contra la discriminación", en *Revista de Trabajo y Seguridad Social n° 8* [octubre-diciembre] (Madrid) páginas 127-172.

Rutherglen, G. (1994): *Protecting aliens, immigrants, and ethnic minorities from discrimination in employment: The experience in the United States*. Word Employment Programme, Working paper 76 (Ginebra, OIT).

Santos, A y otros. (1993): "De nuevo sobre el trabajador extranjero y la regularización de 1991", en *Itinera Cuadernos* (Barcelona, Fundación Paulino Torres Doménech).

Santos, L. (1993): "Elementos Jurídicos de la integración de los extranjeros", en *Inmigración e Integración en Europa*. Itinera libros (Barcelona, Fundación Paulino Torras Domènech) páginas 91-125.

Santos, L. (1993): "Elementos Jurídicos de la integración de los extranjeros", en *Inmigración e Integración en Europa*. Itinera libros (Barcelona, Fundación Paulino Torras Domènech) páginas 91-125.

Segarra y Trias, E. (1991): *Los derechos fundamentales y las libertades públicas de los extranjeros en España* (Barcelona, J.M. Bosch).

Sole, C. (1995): "Racial Discrimination againts foreigners in Spain", en *New Community*, vol. 21 [1] (Coventry) páginas 95-101.

Valticos, N. (1977): *Derecho Internacional del Trabajo* (Madrid, Ed. Tecnos).

Zegers de Beijl, R. (1992): *Bien qu'égaux devant la loi ...La portée de la législation antidiscriminatoire et ses répercussions sur la discrimination, dans le marché au Royaume-Uni, aux Pays-Bas et Suède*. Programme Mondial de L'Emploi, Document de travail 56 (Ginebra, OIT).

International migrations papers
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Colectivo IOE: M.A. de Prada; W. Actis; C. Pereda, y R. Pérez Molina, 1995.

WORLD EMPLOYMENT PROGRAMME

WORKING PAPER

INTERNATIONAL MIGRATION FOR EMPLOYMENT

Discrimination Against Immigrant Workers in Australia

by

Lois Foster
Anthony Marshall
Lynne S. Williams

International
Labour
Office
Geneva

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WORLD EMPLOYMENT PROGRAMME RESEARCH

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A. FOREWORD

This is a paper of the ILO's International Migration for Employment Branch. The objectives of the Branch are to contribute to (1) the evaluation, formulation and application of international migration policies suited to the economic and social aims of governments, employers and workers' organisations, and (2) the increase of equality of opportunity and treatment of migrants and the protection of their rights and dignity. Its means of action are (a) research and reports, (b) technical advisory services, (c) technical co-operation, (d) meetings and (e) work concerned with international labour standards. The Branch also collects, analyses and disseminates relevant information and acts as the information source for ILO constituents, ILO units and other interested parties.

The ILO has a constitutional obligation to protect the "interests of workers when employed in countries other than their own". This has traditionally been effected through the elaboration, adoption and supervision of international labour standards, in particular the Migration for Employment Convention (Revised), 1949 (No. 97); the Discrimination (Employment and Occupation Convention), 1958 (No. 111); the Equality of Treatment (Social Security) Convention, 1962 (No. 118); the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143); the Maintenance of Social Security Rights Convention, 1982 (No. 157); and the non-binding Recommendations supplementing them.[1] International legal instruments of this kind mainly aim to influence national laws and regulations in such countries as ratify the binding Conventions; and in this way they change not only legislation but the actual practices as well.

The key concern of ILO standards for migrant workers is non-discrimination or equality of opportunity and treatment. Many countries broadly adhere to this objective in the economic and social spheres. Some countries ratify ILO Conventions[2] and do their level best to fulfill the obligations deriving from them. One might expect, therefore, that discrimination would no longer be part of the legislation or practices of these countries. Unfortunately, there is a great deal of circumstantial evidence that this assumption does not hold in certain respects and especially not at the workplace in private or public enterprises; and such evidence also exists for countries not having ratified ILO Conventions. There may be several reasons for this, such as the scope of national and international laws and regulations or their generality or their seeming inapplicability to, for example, the question of work allocation in private enterprises.

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1 See also W.R. Böhning: "The protection of migrant workers and international labour standards", International Migration, Vol. 26, No. 2 (1988), pp. 133-145.

2 Thirty-eight in the case of Convention No. 97, fifteen in the case of Convention No. 143, thirty-seven in the case of Convention No. 118 and two in the case of Convention No. 157.

Whatever the reason, the indications of discriminatory treatment where it should not exist according to established general principles were sufficiently strong to initiate a review of available information. My colleague, Roger Zegers de Beijl, undertook this review in fields of key ILO concern in respect of major European countries employing non-nationals.[3] It was not confined to countries having ratified relevant ILO Conventions because it was not, as such, the purpose to look into the effect of ILO Conventions in this field.

The Australia Bureau of Immigration Researcch graciously accepted to prepare a wide-ranging review of the Australian literature and data on this subject, which is presented in the present working paper.

July 1991

W.R. Böhning

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3 Roger Zegers de Beijl: Discrimination of migrant workers in western Europe (Geneva, ILO, December 1990; mimeographed World Employment Programme working paper; restricted).

B. DISCRIMINATION AGAINST IMMIGRANT WORKERS IN AUSTRALIA

by

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CHAPTER 1

INTRODUCTION

1.1. BACKGROUND

Discrimination against immigrants in the labour market has negative effects both for the immigrant and the receiving country. The immigrant suffers loss of self esteem, (potential) loss of income, and reduced job satisfaction. As well, the receiving country, through discriminatory practices, may not get the full benefit of immigrants' skills thus resulting in productivity (and production) below what it might have been. Loss of skills may also contribute to lower than potential technical progress and to structural blockages in the meeting of any labour market shortages within the economy, and so on.

A major concern of the International Labour Organisation (ILO) is to protect "the interests of workers when employed in countries other than their own" (Zegers de Beijl 1990). That is, the ILO's focus is on the rights of individuals rather than the potential benefits to the receiving country. That is the approach taken in this current report.

Several ILO conventions are aimed at ensuring that non-discrimination and equality of opportunity and treatment exist for immigrant workers. However, despite the existence of both international and local legislation, significant evidence exists that suggests that immigrants, or at least particular groups of immigrants, could be subject to various forms of discrimination in the labour market.

In an attempt to develop a broad picture of the extent of this discrimination internationally, the ILO has mounted a major research program both in-house and through country-specific commissioned pieces. The first work in this series is an in-house ILO Working Paper entitled 'Discrimination of Migrant Workers in Western Europe' (Zegers de Beijl 1990).

Late in 1990, the ILO commissioned the Bureau of Immigration Research (Australia) to look at the extent of discrimination against immigrant workers in Australia. This report is the result of that work.

1.2 SCOPE OF THE REPORT

It is important at the outset to note that this report is about Australia, which is one of the three countries in the world with large immigration programs comprising specified component group targets (the other two are the United States and Canada). Thus it may not be appropriate to compare it, for example, to the European countries covered in a similar study by Zegers de Beijl (1990). As well, as will be shown in Chapter 2, the composition of Australia's immigrant intake in terms of source countries is extremely varied and has changed over time. This too impacts on the types of experiences of more recent immigrants.

A further distinguishing feature of Australia's immigration program is that immigration to Australia is seen by both immigrants themselves and the Australian authorities to be permanent. Once immigrants have settled in Australia, whether they become citizens or remain permanent residents, they are, in the eyes of the law, 'Australians'. With the exception of the right to vote, to which only citizens are entitled, immigrants accrue the major rights, privileges and responsibilities of <u>all</u> other Australians. Thus when examining the existence or otherwise of discrimination, the analysis of legislation needs to be broader than that which deals specifically with discrimination against immigrants.

This report aims to assess discrimination in employment within the context of protection of rights generally, and rights of minority (immigrant) groups in particular. Kallen (1989) states that:

> From a human-rights perspective, the eradication of existing prejudices and forms of discrimination is a necessary, but not sufficient, condition for the equalization of minority opportunities and for the protection of minority rights. To these ends, public policies, laws and social practices need to be critically assessed and appropriately amended so as to provide minorities with suitable forms of redress against the long-term inequities and indignities they have suffered as collective victims of systemic discrimination. Additionally, in order to secure permanent guarantees for minority rights, specified provisions protecting the individual and collective rights of all minority groups need to be entrenched in constitutional and statutory law.

This report not only examines the legislative structures as they relate to discrimination and equal opportunity, but also examines the experiences of immigrant groups in Australia for evidence of whether discrimination against immigrants in the labour market exists. A variety of sources are used to assess the nature, extent and severity of such discrimination. These include available literature, analyses of relevant statistics, interviews with informants in both government and private sectors, and existing anecdotal evidence.

The major focus of this report is on those workers who arrive as 'permanent' immigrants to Australia. It should be noted, however, that there is a significant and increasing number of workers arriving under the temporary movements category. These include groups such as temporary workers (about 106,000 in 1989/90), overseas students (these totalled nearly 82,000 in 1989/90) and illegal arrivals (estimates range from a total of 65,000 to 90,000). Many of these temporary arrivals subsequently apply for and are awarded change of status thus boosting the number of permanent immigrants above that reflected in the official immigration program. The importance of this group is not denied but their identification and labour market behaviour after arrival in Australia is difficult to trace, and is worthy of future separate study.

1.3 DEFINITION OF DISCRIMINATION

In the most general terms, to discriminate means to make a distinction in favour of or against a person or thing on an inappropriate basis. In Australian law, discrimination is treated in terms of its various 'types' - sex, race etc.
Defining discrimination in the labour market, however, is not clear-cut. The economics literature offers several definitions. These range from two individuals who are equally productive but receiving different remuneration (Cain, 1976), to discrimination being based on poor information (Arrow, 1973), to the existence of a segmented labour market resulting in discrimination. None of these are totally satisfactory. Sociologists generally adopt a different perspective - they define discrimination in terms of inequality, inequity, social conflict and unequal opportunity. As well, discrimination is defined by contrasting the experiences of a minority group to the status quo - contrasts between minority groups are not well covered (Cushing, 1981).

Irrespective of whether discrimination is defined from an economic or sociological perspective, consensus at least exists that there are two forms of discrimination: direct and indirect. Direct discrimination occurs when an individual is treated less favourably than another individual in the same or similar circumstances on an unlawful ground (for example, in Australia, sex). Indirect discrimination occurs when certain criteria are imposed which are likely to disproportionately disadvantage those in a particular group, such as women or migrants from non-English speaking backgrounds (NESB).

The ILO, in their Convention 111 (Discrimination (Employment and Occupation), describe the term discrimination to include (Article 1)

> "(a) distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment"

In the end, the question of unlawful discrimination comes down to social and political judgement . However, while there is no generally accepted, well-specified definition of discrimination, this should not be allowed to detract from the importance of the general issues. This report thus concentrates on examining support for or against the existence of discrimination rather than definitive evidence that it exists.

1.4 LITERATURE REVIEW, METHODOLOGY AND DATA SOURCES

1.4.1. A brief overview of recent Australian literature

Recent Australian literature provides a variety of views on the existence or otherwise of discrimination against immigrants in the workforce. Some (e.g. Whitfield 1987, Jupp 1986) argue that immigrant workers in company with women, young people, older people, Aborigines, the physically and mentally handicapped are disadvantaged groups within the workforce. In their view, the disadvantage resides in the fact that these groups of workers exhibit a labour market status worse than the national average and bear a disproportionate share of the problems of labour market adjustment. They suggest that the indicators of labour market disadvantage are rates of unemployment well above the national average, low occupation/industrial status, lower level of earnings, and higher degree of labour turnover. (Statistics on these indicators are provided in Chapter 4). The reasons for such disadvantage are generally agreed to be some combination of the following: discrimination, non-labour market activities (eg. demands of parenting), language difficulties, unequal productivity, limited access to education or training, the role of unions in the labour market, and lack of motivation.

There is now some concern about this kind of categorisation. Criticisms range from the stigmatising effect of putting together such disparate groups and simply labelling them disadvantaged to concerns that such aggregation masks extensive differences within groups and hence, fails to reflect accurately the 'real world'.

A second set of literature points to particular groups of migrants who, by their location in the labour market, are inevitably disadvantaged. One such example are the outworkers or those engaged in home work, particularly in the clothing trade (De Villegas, 1990). The features here which give rise to concern are first, that much home work remains unrecognized and thus becomes part of the 'hidden' labour market where sub-standard working conditions and rewards could exist. Second, home work is mainly women's work due to their family responsibilities and to their weaker position in the labour market. Many immigrant women do not look for regular employment because of language barriers, low level of formal education, and fear of discrimination. Some wish to remain invisible for social and cultural reasons. The disadvantageous arrangements for home work and for inadequate unionisation in the workplace leave such outworkers without sound protection.

Turpin (1986) also makes the observation that segmentation in the labour market has placed culturally distinct waves of migrants in the least desirable occupational structures including unemployment. The pattern once established is difficult to break. The discrimination is reinforced because the combination of internal labour mechanisms and immigration policies in Australia has given social, economic and political problems a cultural significance. Such segmentation and stigmatisation is likely to be diminished only by affirmative action measures because the discrimination is structured as well as attitudinal. This picture is supported by Castles et al.(1986, pp. 69-71) in a study of patterns of disadvantage among

overseas born Australians and their children although they caution that 'migrant-ness' is not synonymous with 'being disadvantaged'. Data must be disaggregated by birthplace, age and gender in order to obtain any useful information. A confluence of factors influence degree of advantage or disadvantage including education and vocational training before migration, discrimination and prejudice, employment constraints in time of recession, relative segregation of some birthplace groups from the rest of the population leading to the maintenance of separate group identities, youth or older age often combined with recency of arrival, inadequate English competence and being female. These authors are at pains to point out that many migrants from a variety of ethnic and national origins do as well or better than their native born peers.

The literature is also unclear on the stance trade unions feel is appropriate regarding potential discrimination against immigrant workers. Quinlan (1989) suggests that if one examines the question from the perspective of the blue collar unions, one must conclude that 'the question of immigration has always been a sensitive one for the Australian union movement'. This ambivalence has led Australian governments since the Second World War to seek a political accord with the union movement in order that the latter should not obstruct active recruitment of migrants. Until very recently, however, the unions have been reluctant to make more than a minimal adjustment in their treatment of migrant workers and especially with regard to workers of non-English speaking background. The attitude of the union movement has been shaped by material circumstances, that is, it is more likely to be favourable in times of economic prosperity. There have been suggestions that other considerations have played a part too; factors which have included overt racism and hence discrimination but which have also arisen, for example, from a desire on the part of craft unions to enforce trade standards or concern that all migrants should abide by Australian union norms. Quinlan concludes (1989, p.223):

> By several criteria it may be hard to conclude that non-Anglophone migrants conform to the orthodox stereotypes of good unionists. They are frequently ignorant of their rights, often conscripted through the closed shop, occasionally vocal in their criticism of unions, and only rarely present in the higher councils of union government. Notwithstanding all these things, it can still be argued that migrant workers have chosen Australian unions as their primary means of organised representation and display an interest in industrial matters that is not conspicuously lower than that found among Australian-born unionists.

There is also some evidence that discrimination may exist in the while collar sectors. For example, the Public Service Commission, which controls employment of all white collar employees in the Australian Public Service, in 1990 found that some ethnic groups believe that there is 'hidden discrimination' operating to reduce opportunities to gain employment in the Public Service (also, in large private corporations) or to achieve employment (Public Service Commission (PSC), 1990). The mechanism is that the selection committees or interviewers are prejudiced, albeit unwittingly, against people who speak with an unfamiliar accent or use an unfamiliar idiom or who do not fit the image of past occupants of such positions.

Further evidence of potential discrimination in the workplace is provided through analyses of skill recognition procedures, both in general and by particular professional and trade associations. (e.g. Castles et al., 1989, 1990; Iredale, 1988; Sumner, 1989, p.11) Bodies such as the Australian Medical Association , it is alleged, are in danger of promoting rules to protect existing members from competition or which entrench restrictive (trade) practices, usually by means of denial of appropriate qualifications from the migrant's home country combined with extremely difficult examinations in the substantive subject matter which results in very high failure rates. Until migrant applicants can clear these hurdles, they cannot practise their professions. Non-recognition of overseas qualifications is discussed in more detail in Chapter 7.

Some literature, on the other hand, denies the existence of discrimination against immigrants in the workforce. Haig (1987) for example, identifies the mechanisms in place in Australia to protect workers generally and migrant workers in particular. These include minimum pay legislation and Boards and Commissions whose task is to avoid or reduce possible discrimination. (Other examples are the recent and increasing spread of superannuation provisions and job security provisions, admittedly stronger in the public than the private employment sector). He points also to the fact that migrants are the majority in some sectors of the workforce and hence, their position is strengthened through sheer numbers. He does admit, however, that there are especially vulnerable groups, for example, workers of non-English background who cannot avail themselves of the higher rewards for higher qualifications. In that sense, he is acknowledging some market discrimination.

Another case against the existence of discrimination is made by Evans and Kelley (1988, p.1) in an article entitled 'Migrants - do employers discriminate?' They state:

> Many people believe that Australians are prejudiced, even racist, and that migrants don't get a fair go. However, research by the National Social Science Survey shows that much of the debate has been ill-informed. In the key area of employment, the fact of the matter is that migrants get a fair go: they get jobs as good as Australian born people of similar education and experience.

Basing their argument on the 1981 Census and a national social science survey done in 1984-5, they agree that many migrants work at unpleasant, low paying jobs. But, they counter, many migrants also have modest education, limited English skills and little experience working in Australia. Australian born people with similar qualifications are just as likely to get undesirable jobs. Evans and Kelley claim that when asked directly about job discrimination, the vast majority of Australians including migrants, and an equally vast majority of employers, say that they would give migrants a fair go. These results, say Evans and Kelley, seem to support the neo-classical economists' argument that market forces and the primacy of the profit motive prevent discrimination in a competitive market. They say, however, that they found compelling evidence against this thesis. The answer lies not in market pressures but simply that few employers are very prejudiced. Most employers do not want to discriminate and hence they provide plenty of jobs for ethnic minorities.

Evans and Kelley also explore the hypothesis that 'economic discrimination', defined as some receiving less pay than others with the same economic productivity, exists in Australia. They find no support for this. The sociological concept of discrimination focuses on exclusion and social distance. Hence discrimination in the exclusionary sense can lead to exclusion from jobs or segmentation in the workforce. A problem arises if the assumption is made that exclusionary discrimination leads to economic discrimination. Evans and Kelley assert that their research supports the view that exclusionary discrimination does not generally cause economic discrimination because equally good opportunities are not necessarily the same opportunities.

Over the 1980's many studies used regression analysis to investigate various aspects of immigrants' labour market performance relative to that of Australian born. Several studies looked at whether immigrants experienced earnings disadvantage relative to their skills and qualifications (e.g. Chiswick and Miller, 1985, Beggs and Chapman 1988 a,b, Evans and Kelley 1989, Chapman and Iredale, 1990). Overall, the results are not sufficient to support the existence of discrimination against immigrants.

Results of studies related to the unemployment experience of immigrants similarly did not support the existence of discrimination (Brooks and Volker, 1985, Inglis and Stromback, 1986, Beggs and Chapman 1988a and Wooden and Robertson, 1989). Rather, factors such as lack of English language proficiency and period of residence were

found to be major determinants of differences between the unemployment experiences of overseas and Australian born. However, this is not to deny that particular subgroups of immigrants tend to do relatively worse in the labour market. For example, refugees and those from non-English speaking backgrounds (particularly certain parts of Asia) tend to have lower or perhaps not directly transferable skills, and lack proficiency in English so do less well as a group in the labour market.

A slightly dissenting view is provided by Stromback (1988), who sees job/employment discrimination as only one part of an entire fabric of discrimination including housing, education and social life. He notes that although in theory competitive forces should eliminate discrimination in Australian society, this does not seem to hold and counter argues that statistical discrimination may operate as groups are stigmatised and so receive lower wages even when, in fact, they are more capable than the average level of their group.

Overall the literature offers alternative and competing views on the existence or otherwise of discrimination against immigrants in the Australian labour market. It is clear that more evidence is needed and that more empirical study is required on the great range of employment locales and circumstances in which immigrants find themselves.

1.4.2. Methodology and Data Sources

This report examines discrimination against immigrant workers by dividing the analysis into three. First, an analysis of the legislation of the ILO, the Federal and State Governments is undertaken both in terms of general laws against discrimination and those specific to immigrant workers. This is justified on the grounds that laws other than those specific to immigrant workers will affect immigrants' labour market performance.

Data sources for this analysis include ILO conventions and recommendations, Australian Federal laws relating to various aspects of discrimination and equal opportunity, and the plethora of laws which exist on these subjects in the individual States and Territories comprising Australia.

Second, the statistical data for Australia on various labour market and education characteristics are examined for evidence of correlation between discrimination against immigrants and their labour market status.

Data presented are primarily from the monthly Population Survey conducted by the Australian Bureau of Statistics (ABS), though other Government surveys are quoted where appropriate.

Third, existing evidence of individual experiences of particular immigrant workers is summarised. This evidence includes reports prepared on specific immigrant groups, particular sectors of the workforce with high migrant concentrations, and cases to the Human Rights and Equal Opportunity Commission (HREOC).

1.5 OUTLINE OF THE REPORT

The report is divided into nine chapters. Following this introduction, Chapter 2 contains a brief overview of historical patterns of immigration to Australia, to provide a flavour of the range of the immigration intake, and its differences to European immigration. Chapter 3 summarises and analyses the international (ILO), Federal and State legislation as it relates to discrimination in general and discrimination against immigrant workers in particular. In Chapters 4, 5 and 6 the statistical evidence on the labour market status, educational and training achievements of those born in Australia is contrasted to those born overseas, where this latter group is divided (at least) into those from English speaking and non-English speaking (ES and NES) backgrounds. A summary of the work on the

recognition of overseas qualifications is provided in Chapter 7. Chapter 8 looks at individual experiences of discrimination, and provides examples of discrimination in the workplace in general, and related to non-recognition of overseas qualifications and trade union dissatisfaction in particular. Chapter 9 draws together the major themes of the report and offers some comments on the existence or otherwise of discrimination against immigrant workers in Australia.

CHAPTER TWO

THE HISTORICAL PERSPECTIVE ON IMMIGRATION : POLICY, INTAKE LEVELS AND POPULATION DIVERSITY

2.1 INTRODUCTION

The genesis of 'white' Australia quite simply lies in England's exploration ventures and imperial tendencies in the 17th, 18th and 19th centuries. Out of these came an Australian Anglo-Irish settler society which quickly embarked on nation-building on a continental scale and which involved the ruthless 'pushing aside' of the original inhabitants. The British heritage has been a pervasive thread in Australian identity and, indeed, has had a significant impact on Australian immigration policy to the present day. It could be said that the experience of unfree labour in the form of the convict system also has influenced the concept of the Australian nation. These are only two of the complex of factors which have influenced nation building in Australia and in which the history of immigration plays a highly salient role.

The brief survey of Australian immigration in this chapter can only sketch the barest outline of the development and continuation of immigration policy as a crucial strategy for increasing population. That an enormous diversification in ethnic terms was the result of the post World War II immigration policy was a central but unintended consequence.

2.2 IMMIGRATION PRE-WORLD WAR II

2.2.1 From settlement in 1788 to Federation in 1901

The first European settlement was of 1,000 or so settlers in 1788. Of these, three quarters were convicts, generally of English/Irish origin. The first free settlers arrived in 1793, but there were more convicts than free settlers until the migration schemes of the 1830's. For example, between 1788 and 1830, a total of 77,000 immigrants settled in Australia, of which only 18% were free settlers (DILGEA, nd). These were mostly of British origin.

The increase in free settlers came about with the first assisted immigrants in the 1830's. In NSW, the Bounty Scheme was introduced, which encouraged landowners and businessmen to sponsor immigrant employees from Britain. Around 3,000 adults emigrated to Australia under this scheme, the first organised immigration program. Between 1831 and 1850, over 200,000 British emigrated to Australia under these bounty schemes (ABS:8). In 1841, all forms of assisted immigration to Australia were suspended, although there was substantial immigration in that decade due to the Irish famine refugees. Western Australia was settled in 1829, Victoria in 1835, and South Australia in 1836, under schemes which were generally funded by land sales. South Australia also became the destination for refugees: German Lutherans escaping religious persecution in their home country.

The gold-rushes in the 1850's substantially changed the nature of immigration to Australia, bringing a large number of immigrants from many countries. More than 600,000 immigrants arrived in Australia during this decade, with Australia's non-aboriginal population growing from 405,356 to 1,145,585 in the ten years from 1850 to 1860. Seventy five per cent of the population increase during that decade was a result of net migration (DILGEA 1988, p.11). The bulk of the increase was due to British migration but there were also considerable numbers of Germans, other Europeans, and Americans. The overwhelming proportion of non-Europeans were the Chinese. For example, in 1859 in Victoria (a major site of the gold-rushes), Chinese made up 8% of the population and almost one-fifth of the male population. Unfortunately, the Chinese were hated and despised by the other ethnic groups and this prejudice was to remain a pervasive thread in ethnic relations into the twentieth century (Sherington 1980, p.65).

Net migration was the major component of population growth in Australia until the 1900's. In the years between 1851 and 1891, 1,390,000 people had immigrated to Australia. By 1891, Australia had reached the stage where the majority of its population had been born in the country (DILGEA 1988, p.11-12). From 1861 to 1900, Australia's net gain from migration was 766,000 persons, around half of whom were assisted settlers. Immigration levels slowed from the high levels of the 1850's and tended to follow economic conditions. Economic development such as the building of railways led to increased immigration, yet in times of drought or low economic activity, there were some periods where emigration exceeded immigration. Table 2.1 provides the birthplace groups mix of the 1891 population.

Table 2.1: Australia - Birthplace Groups 1891

Australia	2 158 975
England & Wales	470 399
Ireland	226 949
Scotland	123 818
Asia	46 623
Germany	45 008
Pacific Islands	10 673
Sweden & Norway	10 121
United States	7 472
Denmark	6 406
France	4 261
Italy	3 890
Africa	3 044
Canada	3 027
Russia	2 881
Switzerland	2 086
Austria, Hungary & Czechoslovakia	1 639
Greece	482
Other	.....
Total	3 174 392

Source: DILGEA, Australia and Immigration 1788 to 1988, p.12.

2.2.2 From Federation to World War I

The immigration of thousands of Chinese miners during the 1850's (40,000 by 1861) (DILGEA 1988 p.11), led to a deal of racial tension which sowed the seeds for the White Australia policy of 1901. Likewise the importing of Pacific Islanders known as "Kanakas" (10,673 by 1891) (DILGEA 1988 p.11) to work on the Queensland cane fields fuelled concerns regarding cheap labour that might threaten jobs. In 1901, the new Australian Federal Parliament passed an Act outlawing the employment of Pacific Islanders, and the 'White Australia' policy was implemented. This Act, the

Immigration Restriction Act of 1901, contained provisions for a dictation test which could be given in any language, and was used as a device for exclusion of non-European migrants.

After Federation, the states continued administering their own immigration programs, and reintroduced assisted migration schemes. Between 1901 and 1905, however, there were no assisted passage schemes and immigration levels were low. In that time, emigration exceeded immigration by around 16,800 persons. Between 1906 and 1914, assisted passages and free land offers again raised immigration levels, and around 187,000 assisted settlers arrived in Australia.

The 1901 Census revealed that at that time 22.8% of Australia's population of 3,773,801 was overseas born. Of the overseas born the great majority were from the British Isles (more than 680,000), about 70,000 came from North and Southern Europe and about 47,000 from Asia and Africa including South Africa (Price, 1979:A20). With the commencement of World War I in 1914, immigration ceased.

2.2.3 Immigration between the Wars

In the 1920's, more than 300,000 immigrants arrived in Australia, around 65% of them assisted. The majority came from Britain, under the Empire Settlement Scheme, but there was also growing interest from Italians, Greeks and Yugoslavs. In 1921 Australia's population included 8,100 Italian born persons. By 1930, this had risen to 31,300, and by 1940, there were 40,400 (DILGEA, nd). The Depression of 1929 and the early 1930's severely curtailed immigration, and the assisted passage schemes were again halted. Over the first five years of the decade, Australia suffered a net loss of 10,800 persons. In 1938, the Empire Settlement Scheme was resumed, and in that year Australia began its first quasi refugee program, agreeing to take 5,000 refugees a year from Nazi Europe a year. With the outbreak of World War II, this refugee program stopped; Australia having taken only 7,000 refugees (DILGEA, nd).

Some picture of Australia's ethnic mix in the 1930's is provided from the 1933 Census. These data indicate that in the period since the previous Census (1901) the population had increased from 3,773,801 to 6,629,839 with the total born outside Australia being 903,273. In 1933 then, the Australian born population far exceeded those born overseas. The overseas born comprised a very diverse mix with the largest contingents coming from UK and Ireland, New Zealand, Germany and Italy. The exclusionary effect of the 'white' Australia policy is evident with a total Asian population of only 24,840, amongst whom the Chinese numbered 8,579.

Once again, all immigration ceased with the beginning of the World War II (DILGEA, 1988, pp. 23-25).

2.3 IMMIGRATION FROM 1945 TO 1979

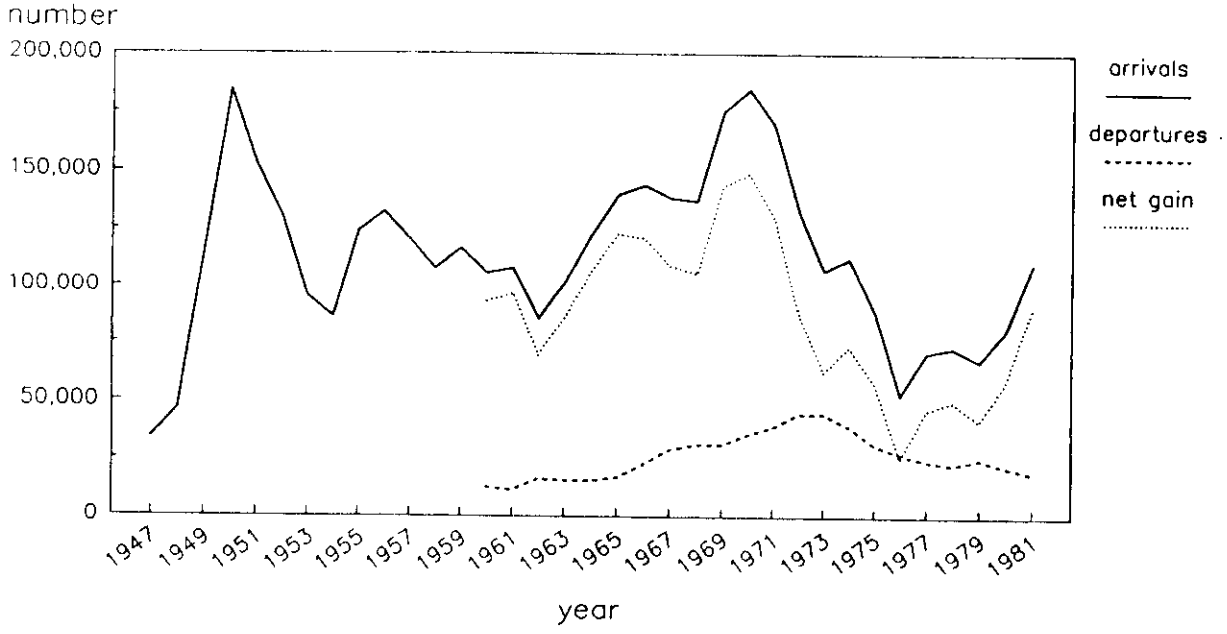
As Collins (1988, p.20) states:

> After the Second World War, Australia enjoyed a period of sustained economic growth and expansion, with immigration indispensable to this long boom.

The post-war immigration program was stimulated by Australian concerns over its small population size, labour shortages, and defence needs. Australia's business community eagerly embraced a greatly increased immigration intake. Less sanguine in attitude were the working class and the trade union movement. Despite the commitment to 'white' Australia and the intention to fill the quotas with British immigrants, it was not long before the Federal Government had to seek other immigrants. These at first came from the Displaced Persons camps of Europe and then

more generally from a large number of European countries, at first from Northern Europe and, by the 1950's and 1960's, to Southern Europe. Into the 1970's, the range of source countries had expanded further, with immigrants coming from Yugoslavia and parts of Asia as well as the traditional areas. Figure 1 provides Census and other data on numbers of immigrants and their source countries compared with the Australian born, for the period 1947 to 1981. The great fluctuations in inflow are clearly illustrated in Figure 1.

Figure 1: Permanent arrivals, departures, and net gain Australia 1945-1947 to 1979-1981



Source: Extracted from Bureau of Immigration Research, Australia's Population Trends and Prospects 1990, 1991, p.29.

Figure 1 shows the rapidity with which the new large scale sponsored immigration program was put in place. Commencing in 1947, numbers reached a peak in 1951, when Australia received over 150,000 immigrants. Such a level was not achieved again until 20 years later in 1971. The effects of times of economic downturn are noticeable as they coincide with troughs in the immigration curve. The Federal Government was conveniently able to turn off the immigration 'tap' when problems like unemployment intensified. The sharp decrease in the 1973 -75 period was due to a policy change by the Whitlam Labor Government and, in particular, its reluctance to take Vietnamese refugees after the end of the Vietnam War. After 1979, the inflow increased again in the time of the Fraser Liberal/National Party Coalition Government, but the level was still well below the 150,000 mark.

Between 1947 and 1981, Australia's total population almost doubled from 7,579,358 to 14,576,330 - a remarkable increase. The overseas born totals moved up from 744,187 to 3,003,834. If the Australian born offspring of overseas parents are included, the total contribution of immigration is even more significant. Interesting trends in the table are: (i) the great diversity of source countries; (ii) the relative tapering off of the increase in the European born from 1971 to 1981; (iii) the great increase in New Zealanders from 1971; (iv) the relatively small proportion of

African born except for South Africans; (v) the appearance of Chileans from 1971, many of whom were refugees; and (vi) the extraordinary increase in Asian immigrants due partly to the introduction of a non-discriminatory immigration policy, the consequence of Australia's involvement in South East Asia conflicts, civil war as in Lebanon, and natural disasters such as, for example, earthquakes in Turkey.

In order to stimulate the flow of immigrants who could be expected to become permanent settlers, Australia adopted a number of strategies. These included assisted passage schemes funded by Australia, and source countries which were willing to enter into immigration agreements with Australia. Australian Citizenship was created in 1949 to replace the previous status of British citizen. Permanent residents from any source country, after due process, could become naturalised and receive the status (involving privileges and obligations) of Australian citizen. The Good Neighbour Council and Citizen Conventions placed an emphasis on the permanence of immigration to Australia, and offered encouragement for immigrants to assimilate into Australian society. In the 1950's with the decline of applications from Britons to migrate, an official campaign called 'Bring out a Briton' was launched. There was some emphasis on skilled immigration in this period although it was not until the 1970's that Australia moved to set up a Points System for migrant selection similar to that adopted by Canada in the 1960's. The issues of skilled versus unskilled immigrants and the recognition of overseas qualifications were matters which received less than systematic attention until the 1980's.

In 1969, however, a Committee on Overseas Professional Qualifications was established and in 1970 an increased emphasis was given to providing English language training in Australia for those immigrants from non-English speaking countries. In 1977 an Ethnic Affairs Branch was added to the Department of Immigration to advance policies on migrant integration. In 1978 a new immigration policy was announced which provided for some relaxation of the criteria for family reunion, a more consistent and structured approach to migrant selection (with the establishment of a points system termed originally Numerical Multifactor Assessment System or NUMAS), an emphasis on skilled immigration and a renewed commitment to apply immigration policy without discrimination (DILGEA 1988, p.66).

Collins (1988:53-72) has highlighted the role refugees have played in Australia's immigration program. An official refugee policy was not put into place until 1945; prior to that date 'refugees' were considered no differently than settlers. The first post-war groups came out under the Displaced Persons category and were mainly Eastern Europeans who were unable to return to their home countries because of the devastation of war or changes in political regimes. This wave (about 180,000 people) entered between 1947 and 1951. Refugees were treated somewhat differently than other immigrants in that they were required to take up certain kinds of employment in designated locations before they were free to settle wherever they wished and in this process families were usually separated. It was not until 1976 that the second wave of refugees commenced to flow into Australia with the unheralded arrival of the Vietnamese boat people in Northern Australia. From that, developed a regulated program which has resulted in the entry of nearly 70,000 Indo-Chinese refugees (including people from Laos, Kampuchea as well as Vietnam) between 1975 and 1982.

In addition to these two major waves, smaller numbers of refugees have sought settlement in Australia following political turmoil in places such as Chile, El Salvador, Timor, Iran, Iraq, the Lebanon, Sri Lanka, Irian Jaya and various African countries. Soviet Jews have continued to come also. In summary, Collins (1988, pp.71-2) says:

> While numerically relatively insignificant, the refugees have been important in breaking new ground in changing the ethnic mix of Australia's post-war migrants. Both major waves of refugees incited strong public controversy and had to battle with Australian prejudice. Nevertheless the refugee's settlement experience is remarkably free of any major incidents

of racial violence which have characterised countries such as Britain, France and West Germany.

In this period, another significant move was the Federal Government sponsored inquiry into settlement services for immigrants and refugees. Australia has always included settlement policy as a complement to immigration policy. The 1978 Galbally Report resulting from the inquiry laid the groundwork for features of settlement services which have continued in modified form to the present time. There was an emphasis on education as a key feature of successful settlement. For example, additional funds were made available for the teaching of English to immigrant adults and children. There was a belated recognition of the role of bilinguals in all sectors of service delivery, government departments, and other services in the community. For example, the employment of ethnic liaison officers was stimulated in many public sector enterprises. There was an upsurge of interest in multiculturalism as an official government policy for the management of ethnic diversity to be cultivated especially in the schools. There was also an emphasis on self help among ethnic communities with financial support being made available to migrant resource centres, ethnic welfare and other agencies, for ethnic schools and so on. Other important measures included the setting up of multicultural television(SBS) and further resources being given to ethnic radio, while the Telephone Interpreter Service (TIS) was a further unique development.

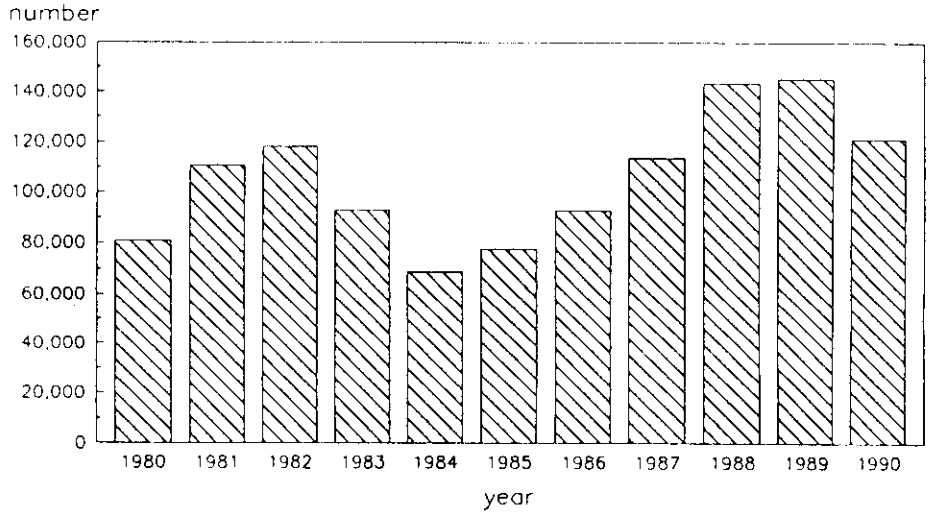
2.4 IMMIGRATION IN THE 1980's AND 1990's

2.4.1 Size and Composition of Immigrant Flows

Figure 2 and Tables 2.2 and 2.3 provide an overview of immigration to Australia in the 1980's and into the 90's.

Figure 2 repeats a familiar story and provides a visual representation of the size of the immigration inflow for the 1980's. Even for one decade, the immigration inflow shows considerable variability. The highest intake years have been from 1987-88 to 1989-90, exceeding 140,000 persons per annum. The lowest inflow occurred in 1983-84, coinciding with the election of the Australian Labor Party. There was some reversion to the traditional Labor stance for a lower immigration level at this time but the Labor Government has shown a remarkable turn around, according to some commentators because it has bowed to the wishes of the pro-immigration lobby including the ethnic lobby groups.

Figure 2: Permanent arrivals, Australia, 1979 to 1989-90



Source: Bureau of Immigration Research, Australia's Population Trends and Prospects 1990, 1991, p.31.

Table 2.2 identifies the components of the immigration program. There are three major components in the program; family migration, skill migration and humanitarian. A smaller component is that of special eligibility, the largest section of which is the arrangement made for open entry for New Zealand citizens. The categories within the major components indicate the highly structured and controlled nature of the immigration program operating as it does with an overall ceiling or target. The proportions of these categories can be varied according to circumstances. For example in May 1991, the Federal Government announced a reduction in the overall target for 1991-92. To achieve this, it intends to reduce both the skill and family components while slightly increasing the humanitarian component. In 1990-91 an accelerated outflow of New Zealanders has occurred which if continued means that the special eligibility component will be reduced by itself rather than having to be set by the Government and this, therefore, provides greater flexibility in the other component ceilings. It can be seen that the family component remains the largest followed by skilled immigration. Australia's recession is being blamed for the necessity to reduce the immigration total in 1991-92 and for a greater reduction in the skill rather than the family reunion component.

Table 2.2: Eligibility category of settler arrivals, Australia, 1988-89 and 1989-90

Category	*1988-89*		*1989-90*	
	No.	*%*	*No.*	*%*
Family Migration	59592	41.0	49941	41.2
Preferential Family				
Spouses/Fiancees	17028	11.7	17994	14.8
Parents	11050	7.6	8486	7.0
Other	3327	2.3	3554	2.9
Concessional Family	28187	19.4	19907	16.4
Skill Migration	43645	30.0	42836	35.3
Employer Nominations	8119	5.6	10148	8.4
Business Migration	10051	6.9	10001	8.2
Occupational Share System[a]	8344	5.7	-	-
Special Talents	- -		226	0.2
Independent	17131	11.8	22461	18.5
Humanitarian	10887	7.5	11948	9.9
Refugees	3623	2.5	1537	1.3
Special Humanitarian	7264	5.0	10411	8.6
Special Eligibility	31192	21.5	16502	13.6
Visaed	1822	1.3	1223	1.0
Non-Visaed	1822	1.3	1223	1.0
New Zealand Citizens	27234	18.7	13345	11.0
Other	2136	1.5	1934	1.6
Total	145316	100.0	121227	100.0
Total Visaed	115946	79.8	105948	87.4
Total Non-Visaed	29370	20.2	15279	12.6

Source: Bureau of Immigration Research, Australia's Population Trends and Prospects 1990, 1991, p.32.

Note: [a] From July 1989 OSS is part of Independent.

Table 2.3 provides a summary of the composition of the immigrant intake by source country. It illustrates the steady increase in the proportion of the immigrant intake to come from the various countries of the Asian region (in fact, Vietnam, Malaysia, Hong Kong and the Philippines supply the bulk of Asian immigrants). By 1989-90, the Asian component accounted for over 40% of immigrant arrivals. Because of the priority given to family reunion, this proportion will be sustained in the foreseeable future and may even increase further. For some Australians, who give only limited support for the official multiculturalism policy in Australia, the Asian inflow which has the potential to increasingly influence the population mix and cultural forms, represents a less than desirable trend. The European inflow still remains the second largest source, with the UK and Ireland being the largest overall source countries.

Table 2.3: Birthplace of settler arrivals, 1985-86 to 1989-90

Country		1985-86	1986-87	1987-88	1988-89	1989-90
Europe	(no.)	28020	36434	43566	42437	38386
	(%)	30.3	32.2	30.4	29.3	31.7
M.East	(no.)	6348	7345	9817	7834	5623
	(%)	6.9	6.5	6.8	5.4	4.6
Americas	(no.)	6719	7122	7699	7391	7140
	(%)	7.3	6.3	5.4	5.1	5.9
Africa	(no.)	5128	7656	7839	5040	4192
	(%)	5.5	6.8	5.5	3.5	3.5
Asia	(no.)	30583	38183	48889	54601	50607
	(%)	33.1	33.7	34.1	37.6	41.7
Oceania	(no.)	15611	16564	25680	28013	15279
	(%)	16.9	14.6	17.9	19.3	12.6
Total		92409	113304	143490	145316	121227

Source: Bureau of Immigration Research, Australia's Population Trends and Prospects 1990, 1991, p. 35.

The question of Australia's national identity either as a Euro-oriented society or as an Asian-oriented society is one of the big questions of the 1990's. The 'Asianisation' of Australia places the greatest stress on the host society's response to immigrants. Discrimination and prejudice is heightened to a greater degree over Asian ethnic groups than for any others.

2.4.2 Federal Government Initiatives

Two major events in the 1980's, with implications for immigration and sponsored by the Hawke Labor Government, were the 1987 FitzGerald Inquiry into immigration and the 1989 announcement of an agenda for Australian multiculturalism. The FitzGerald or CAAIP (Committee to Advise on Australia's Immigration Policies) Report 1988 came out strongly in favour of sharpening the economic focus of the immigration program and this has been reflected in the increase in the skill category and, within that, of setting up the distinctive but controversial Business Migration Program to encourage capital inflow and the establishment of new businesses to boost employment. The Report also favoured increased resources for English language and other training programs for immigrants once they arrived in Australia.

The National Agenda on Multiculturalism was an attempt to underscore the official legitimacy of a large number of policy initiatives to catalyse the emergence of a 'multicultural' cultural and economic reality to match Australia's 'multicultural' demographic reality. It attempted to define Australian multiculturalism (see Chapter 3 for the dimensions) and the limitations on the concept, that is, to warn Australians of whatever ethnic background that they must accept Australia's institutions. For example, English is the sole official language; the Westminster system of democratic and multi-party government is the official parliamentary and

political norm; and Australian law based on British and some elements of American precedent takes priority over the legal conventions of other countries and also religious law. The Agenda and the associated range of policies based on notions of access and equity are an obvious move to defuse ethnic group tensions and to minimise discrimination on racial and ethnic grounds.

2.4.3 Aborigines

It is generally, if very belatedly, agreed that the racial group which has suffered greatest from the effects of 'white' ethnocentrism, prejudice and discrimination is the Australian Aboriginal people. Dispossessed from their traditional lands, their culture and languages have been supressed to a large extent. The issues of land rights and human rights for Aborigines, though receiving much more attention now than ever before, have by no means been resolved. Indicators such as unemployment levels, mortality rates, imprisonment (including deaths in custody), low levels of education, health problems, all indicate that Aboriginal people are the most oppressed in Australia.

Persons of Aboriginal descent are included in the Australian born population. In the 1986 Census, there were around 206,000 persons identified as being of Aboriginal descent. This represented about 1.3% of the Australian population. When European settlement of Australia occurred, it is estimated that there were around 300,000 aborigines in Australia (DILGEA, 1988). The Aboriginal population has higher fertility and mortality rates than the rest of the population, resulting in a young median age of 18.9 years as at the 1986 Census . The distribution of Aborigines also differs from the rest of the population, with the majority located in NSW and Queensland (about 50%) and a large proportion living in rural areas.

With a revival of Aboriginal activism in Australia from the late 1970's on, Aboriginal Australians have confronted white Australians on many issues. Aboriginal control of Aboriginal affairs has been particularly stressed and there has been some response at the Federal Government level with the formation of the Aboriginal and Torres Strait Islander Commission (ATSIC). Aboriginal leaders have asserted the claim that their people are the 'real' Australians and are not in general a strongly pro-immigration group. Neither are they strong supporters of an inclusive concept of multiculturalism, that is, the notion the all Australians belong to a multicultural Australia in which all cultures are equally valued. Aboriginal leaders often express the view that Aboriginality has superior claims to those of the many and diverse ethnic groups who have come in as 'migrants'.

Although outside the parameters of this Report which deals with discrimination against immigrant workers, it must still be noted that of any cultural grouping in Australia, Aborigines are the most disadvantaged and discriminated against according to virtually all economic and sociological measures.

2.4.4 A Brief Overview Of Emigration

Each year a number of former settlers and other residents (Australian born and other temporary residents), permanently depart Australia. Table 2.4 provides some picture of the extent of emigration from Australia in the 1980's.

The data show that the Australian born depart in greater numbers than those born in the other four top countries named. The greatest emigration occurs with people of English speaking backgrounds; the only non-English speaking county to 'make ' it into the top five is Yugoslavia. This should be modified by taking note of the 'other' category. A relatively large number from a diversity of other birthplace groups also leave each year. In terms of the total inflow of immigrants, and if we were to count in the Australian born returning to Australia, the outflow is very low. One assumes this is one indicator of satisfaction with life in this country.

Table 2.4: Permanent departures: top five birthplace countries, 1985-86 to 1989-90

Birthplace	1985-86	1986-87	1987-88	1988-89	1989-90	Total
Australia	5600	6099	6762	6560	8399	33420
New Zealand	4750	5550	5235	5248	7846	28629
UK/Ireland	3401	3439	3721	4382	4843	19886
USA	510	512	513	498	639	2672
Yugoslavia	366	323	266	216	283	1454
Other	3500	4000	3970	4750	5790	21990
Total	18100	19930	20470	21650	27900	108050

Source: Bureau of Immigration Research, Australia's Population Trends and Prospects 1990, 1991, p.54.

The significance of emigration is greater in times of low population increase (through either low levels of immigration and/or natural increase). Since World War II, emigration has only exceeded immigration once - with a loss of Australian population in the order of 8,100 persons in 1975 (NPC 1990, p.1). In general, studies have confirmed that there are fairly strong correlations between immigration levels and emigration levels two to three years later. However data regarding levels of emigration and settler loss are not accurate measures of real movements, as some permanently departing persons may return to Australia, and others may not identify themselves as previous permanent settlers. Emigration or settler loss data is however a useful guide as to the effectiveness of Australia's immigration program, and the characteristics of departing settlers may give some indication of the degree of difficulty they faced in their new country, or even the areas of discrimination faced by different birthplace groups.

The issue of emigration has not been given a high profile in Australia until recent years, given the lack of control over this population movement, and the relatively small numbers involved. Studies into emigration in Australia have been undertaken only in recent years, and have generally been limited to the period from the 1970's.

For example, a study conducted by the Immigration Advisory Council Committee on Social Patterns into the departure of settlers during the period 1971 to 1973, considered rates of departure, reasons for leaving, and attempted to identify patterns in emigration flows. The study found that settler loss for the period 1966-71 was between 22 and 24%, with highest departure rates being from birthplace groups of English-speaking background. Peak movements appeared to be in the first and third year after arrival. The study also found that a majority of settlers tended to leave for reasons other than dissatisfaction with Australia.

Price (1975) used official Australian Bureau of Statistics figures to determine a rate of settler loss for the period 1947 to 1971. He estimated that it was of the order of more than 25%. The Green Paper, (Australian Population and Immigration Council, 1977), found that around 20% of immigrants to Australia after 1945, had left Australia, indicating permanent departure. Although this figure appears high, it was considered to compare favourably with the experience of other countries at that time. The 1978 Department of Immigration and Ethnic Affairs overseas departures survey covered both temporary and permanent departures, with an aim to identify the types of people leaving Australia, and their reasons for so doing. The survey found that most overseas born migrants were returning to their country of birth for personal reasons.

These studies generally identified that overseas born settlers departing permanently were likely to be returning to their country of birth. Permanent departure was generally not as a result of dissatisfaction with Australia. These studies also referred to the large proportion of settlers leaving after the first year of

settlement, and to the relatively young age and higher skill level of emigrants. It is useful to review briefly more recent studies. The Lukomskyj and Richards study (1986), which considered the permanent departures by 1984, of settlers who had arrived in Australia in 1980, found that immigrants' early departure rates had declined from previously thought levels, to a rate of around 12%. Settlers in the Family Reunion immigration entry component had the highest departure rates (of around 13%), whereas refugees tended to have extremely low departure rates, of around 0.6%. The study also found that the reasons settlers from some countries were more likely to depart reflected the socio-economic characteristics of their country of origin, and the reasons for their initial settlement.

Further study of emigration during the 1980's has been drawn together in the National Population Council (NPC) Report on Emigration (1990). The NPC study found that almost 30% of the number of settler arrivals had departed Australia permanently between 1947 and 1989. Again, they found that the majority of both Australian born and overseas born departing permanently are young people, generally highly skilled, with a larger proportion in the professional/technical occupations when compared with immigrants. (Note that any systematic consideration of this issue would need to reconcile the differing emigration rates reported by these studies.) The study reported that the majority of emigrants (around 75%) were either born in Australia, New Zealand, the UK or Ireland. Nearly 40% of Australian born emigrants are aged under 14 years old, so there may be a proportion in this category who are children of overseas born settlers leaving Australia (NPC 1990, p.6). Trans Tasman migration is generally work related, and there has been an increase in the amount of immigration from that country in recent years. A corresponding increase in the amount of emigration of New Zealand born settlers has therefore been evident in recent years. There have been very few emigrants from Asian or Middle East background areas, probably given that most immigration from those sources was refugee, with little possibilities of return.

2.5 OVERVIEW AND CONCLUSION

Over six million people have migrated to Australia since British settlement in 1788 and in 1991, around 22% of Australia's population was born overseas (ABS 1990, p.8). The number of immigrants to Australia and the composition of the intake have varied considerably over time, in response to various economic, political and social factors both in Australia and overseas. The great diversification of the population came after World War II. From this time also, immigration policy has been formalised and immigration legislation, rules and regulations have become voluminous and the subject of considerable controversy. The bureaucracy to administer the immigration policy and implement the program has grown in size and complexity. It could be said that immigration is one of Australia's larger industries. If account is taken of the servicing of the settlement program and also the structures and programs required to satisfy Australia's official multiculturalism policy, complements to the immigration policy and program, then the 'immigration' industry is very large indeed.

Kalantzis et al. (1990, pp.1-2) sum up Australia's achievement in this sphere in the following words:

> Australia is the site of a quite remarkable social experiment. In just over four decades since the post-war immigration programme began, the Australian population has more than doubled...in a half century when global mobility has been greater than ever before, Australia's immigration programme has been greater than that of any first world country relative to the size of the existing population, bar the peculiar historical phenomenon of the establishment of the state of Israel. The diversity of Australia's post-war immigration intake is also remarkable. As well as about 150 extant Aboriginal languages, there are now over 100 immigrant ethnic groups, speaking about 80 different languages. Immigrants have been encouraged to come and become citizens, not guestworkers. In broader social terms, one of the world's most homogeneous societies, culturally

> insular and racist, has been peacefully transformed into one of the most diverse.

This is not to deny that there are pro- and anti-immigration factions in Australia nor that there are remaining reservoirs of racism, prejudice and discrimination against immigrants and Aboriginal people. This chapter concludes by a listing of some of the lively immigration issues of the 1990's.

* How many immigrants should Australia take and from what sources?

* How many refugees should Australia take and from what sources?

* Does a diverse immigration intake threaten Australia's social cohesion?

* How large is Australia's illegal immigrant population? Is it a matter of serious concern and if so what can be done about it?

* Is there any case to be made for sanctioning and even promoting forms of temporary immigration?

* Can Australia maintain its priority for taking skilled immigrants in the light of 'brain drain' from third world countries and a failure to train and re-train the underskilled in the present Australian population?

* Are there alternatives to immigration for population growth in Australia?

* Are there alternatives to immigration as a tool to satisfy in part Australia's foreign aid obligations?

* Can Australia maintain a high level of immigration in times of economic recession?

* What is a sustainable population for Australia given the human impact on the environment?

Birrell and Birrell (1987, p.292) subsume many of these issues in their statement that the central issue in the immigration debate should be:

> If Australia must become more competitive in international markets, can this be accomplished while it simultaneously copes with the burdens of a growing population?

CHAPTER 3

THE LEGISLATIVE APPROACH TO DISCRIMINATION

3.1 INTRODUCTION

Chapter 3 considers the legislative approach to minimising discrimination against immigrants. This is accomplished within a perspective, moving beyond a narrow description of existing legislation, to account for the many complexities that stimulate the use of legislation. It is important to note the paradox that

legislation also operates in some ways to ensure that such a tool never totally removes potential or actual discrimination.

In this chapter, it is inadequate merely to list the appropriate legislation to do with discrimination without exploring many related aspects including the international precedents for such legislation, the relationship between the Commonwealth and States' jurisdictions in Australia's federal system, and the assumptions underlying the concept of discrimination itself.

3.2 THE CONTEXT

3.2.1 International precedents

Binavince (1987) has suggested that although international law establishes the norms of conduct which temper the relationship of nation states and world organization in the international community, yet it lacks the sanctions and authoritativeness of domestic law. In Australia, as in some other countries (for example, Canada), international law must be translated into Australian law by the enactment of specific statutes. Hence, when Australia takes steps to ratify international treaties or sanctions, it is merely expressing its intent to comply with the treaty, covenant, law or whatever and, before this becomes a reality, the Australian legislature, executive or judiciary will have to be involved in order to enact the statutes. Thus, for example, international human rights instruments provide the global standard to which Australian legislation should conform but Federal and State codes may vary one with the other, may be proclaimed at differing times and, in any event, some States may not bring in particular codes even though they accept in principle an international (or national) precedent.

Australia has a long association with the Human Rights Commission of the United Nations. It has been a member of that Commission in the following periods 1947-56, 1978-83, 1985-87 and was re-elected again in 1990 (Australian Foreign Affairs and Trade [AFAT] 1990, p.321). Such membership demonstrates Australia's support for United Nations human rights mechanisms and complements its high level of bilateral human rights activity. Australia has played a part in monitoring human rights in the region and in the development of new international instruments such as the Convention on the Rights of the Child and the Second Optional Protocol against Capital Punishment. Although somewhat paradoxical (considering this country's record of its treatment of the Aborigines), Australia has been in the forefront of countries applying sanctions against regimes practising apartheid.

International standards to which Australia subscribes include

* The Universal Declaration of Human Rights 1948 (UDHR) which indicates that 'freedom, equality, and dignity are natural rights that accrue to every human being simply by virtue of belonging to the human species' (Kallen, 1989:5).

* Later human rights instruments have developed the principles of the Universal Declaration of Human Rights in more detail and applied them to particular problems and the needs of specific groups. For example:

(i) The Convention on the Elimination of All Forms of Racial Discrimination; (HRC), 1985:5);

(ii) The Declaration of the Rights of the Child; (HRC, 1985:5);

(iii) The Declaration on the Rights of Disabled Persons; (HRC, 1985:5);

(iv) The Declaration on the Rights of Mentally Retarded Persons; (HRC, 1985:5);

(v) The International Bill of Rights 1978 (IBHR) comprises the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) together with the Optional Protocol on Civil and Political Rights (OPCPR); (Kallen,1989:6-7).

(vi) The Convention on the Elimination of All Forms of Discrimination Against Women 1979 (CEDAW); (Human Rights and Equal Opportunity Commission [HREOC],1990:10).

(vii) The Organisation for Economic Cooperation and Development (OECD) Guidelines on the Protection of Privacy and Transborder Flows of Personal Data; and

(viii) Various ILO Conventions (to be discussed later).

These international conventions do not have the force of law in Australia unless specifically incorporated into domestic law by legislation. Hence, for example, the United Nations' International Covenant on Civil and Political Rights (ICCPR) and the Declarations on the Rights of the Child are attached as Schedules to the Human Rights and Equal Opportunity Commission Act 1986 and referred to in its preamble (Folk Law 1990, p.18).

3.2.2 Interaction of federal and states systems

Australia is a federation of six states and two territories. There is a Commonwealth or Federal level of government, State or Territory level of government and the third level is that of Local government. Australian practice is for the Commonwealth government to consult the States and seek their agreement before ratifying any international legislation , for example, conventions. This echoes the principle of international law (perceiving all nation-States as sovereign and not to be forced into doing something against their will) in regard to Australia's federation in that the States are perceived as autonomous units responsible for laws within their jurisdiction. Under the Australian Constitution, the Commonwealth has power only in relation to matters specified therein, and the power to pass laws relating to other matters or areas remains with the States. The Federal government is the level of government charged with the responsibility for entering into treaties and for maintaining international relations. The Federal government, however, does not have express power to legislate for human rights whereas the States have plenary legislative power but 'lack international personality and cannot become parties to international instruments' (HREOC 1990, p.6).

This kind of federation, based not only on an explicit distribution of powers, but also including implicit residual powers, leads to some ambiguity in precedence of the States vis a vis the Commonwealth. To take a specific example, regarding industrial dispute resolution, in addition to the question of the broader capacity of the States to legislate directly on employment matters, the lack of precise demarcation between the Federal and State systems means that a lot of attention has to be paid to the question of which system prevails in the event of conflict. In fact, Section 109 of the Constitution provides that a State law is invalid (inoperative) to the extent that it is inconsistent with Commonwealth law. A federal industrial award is not a 'law' of the Commonwealth as such although its provisions are by the terms of the Industrial Relations Act 1988 brought into force as part of the Commonwealth. An award may accordingly be the source of inconsistency and thus prevail over a State law or over a State award even though, in technical terms, it is the Act which has the effect. This is reinforced by s.152 of the Act which explicitly states the Commonwealth's intention that awards are to be taken to override State laws. Provision is also made for the Federal Court to grant a declaration that a State law is invalid on this basis (s.153). In spite of this, particular problems have been encountered in relation to the consistency of State employment protection laws with federal awards which do no more than regulate limited aspects of the employer's power to terminate employment (Creighton and Stewart 1990, ch.5).

3.2.3 Assumptions underlying the concept of discrimination

Having established the human rights context to discrimination, other contextual elements need to be sketched in prior to an examination of the concept itself. A brief background to Australia's position on rights and freedoms including the right to migrate must be drawn.

3.2.3.1 Australia and basic rights and freedoms

Because Australia is a democracy, the basic freedoms are held in respect by the political culture. These freedoms include the freedom of belief and religion, of speech and of assembly (Jones 1990, p.2). There are, on the other hand, only limited constitutional guarantees for these rights. As with the United Kingdom, the principle of individual rights is based on Common Law. However, with Common Law Rights, the State is able to, and does, limit such rights by statute. This has raised the question of the desirability of Australia having its own Bill of Rights or amendments to the Constitution to incorporate inherent rights such as those enshrined in the American Constitution. In lieu of these changes, the primary responsibility for the protection and realization of human rights continues to rest with Australian Governments. The principle of legality is another essential element in the mechanism of protection of the rights of persons (Human Rights 1990, pp.6,17). The principles espoused by the Australian Government for human rights protection include the principles of universality, non-discrimination and widely accepted parity between civil and political and social and economic, and hence employment rights.

There is a potential problem, nonetheless, if human rights are incorporated in law. There may come a point when the inclusion of principles that are not enforced brings them into disrepute. Also, the continued refinement of the concepts of rights may lead to a greater likelihood of inconsistency between them (for example, the right to privacy must be 'balanced' against the right to freedom and information). Notwithstanding, in Bailey's view (1990, p.10), the International Bill of Rights provides the best formulation of our rights as human beings (hence, denying discrimination on the grounds of sex, culture, race, or other status) although there is a lack of incorporation of a statement on group rights.

Unlike Canada and the United States, Australian institutions such as government and the legal system tend not to operate in terms of minority rights. The categories which have been included in 'rights' legislation are the broad categories such as race and sex. This is not to say that refinements of those categories are not being debated and introduced but this occurs in Australia more at the level of States legislation and not in all States. Minority rights as such tend not to be made explicit. The overwhelming orientation is towards to rights of all Australians , with only residual reference to difference (for example, see the way multiculturalism policy has been interpreted).

Another stream of thinking (and policy) in Australia which bears on the concept of discrimination and how it is to be dealt with has resulted in the development of policies to manage Australia's growing cultural and ethnic diversity, and has been catalysed by the problem of endemic disadvantage becoming linked to ethnicity (the complex issue of the status of the Aboriginal people is not being addressed here). The current solution is the adoption of a National Agenda for a Multicultural Society, launched by Prime Minister Hawke in July 1989, which has as its central focus full equality of rights and opportunities for all citizens, regardless of their ethnic background. The three dimensions of multicultural policy (National Agenda, 1989, p.vii) are:

> Cultural identity: the right of all Australians, within carefully defined limits, to express and share their individual cultural heritage, including their language and religion;

Social justice: the right of all Australians to equality of treatment and opportunity, and the removal of barriers of race, ethnicity, culture, religion, language, gender or place of birth; and

Economic efficiency: the need to maintain, develop and utilise effectively the skills and talents of all Australians, regardless of background.

There is a heavy emphasis here on an inclusionary orientation . The policy is for 'all Australians' not just for 'ethnic minorities'. Multiculturalism is defined as an essential feature of the liberal Australian State and necessarily entails economic, social and political rights. Notwithstanding, there is a recognition that there are structural barriers to the removal of the marginal status that many migrants occupy in Australia and to the achievement of increasing equality of access and opportunity. Legislation is one strategy to do this. The Agenda's failure to take class into account, however, leaves intact the problem of gross inequality and increasing inequality of income distribution. Castles alludes to another but different kind of negative factor in the attempt to remove discrimination and prejudice in Australia, the rise of 'new racist intellectuals, who have tried to mobilise public opinion around an exclusionary concept of national identity'. Such ideas are difficult to deal with by legislative means.

3.2.3.2 Australia and immigration

Australia is one of the foremost countries of legal immigration in the world. In the context of the present report, one must acknowledge that once immigrants have settled in Australia, whether they become citizens or remain permanent residents, they are, in the eyes of the law, 'Australians'. They accrue the major rights, privileges and responsibilities of <u>all</u> other Australians. Two riders should be added. First, the Australian government does not require immigrants to become Australian citizens. Some permanent residents choose not to assume this status. Second, there are some disadvantages of non-citizenship. For example, non-citizens do not have the right to vote (voting is compulsory in Australia), to become elected members of parliament, or permanent members of the Australian Public Service. Notwithstanding, any consideration of discrimination must address the general matter of how it is to be defined for <u>all</u> Australians as well as looking perhaps at specific aspects of particular relevance to migrant Australians. This statement, in turn, raises the complex and controversial question of who is an immigrant or when does one stop being an immigrant. Surprisingly, there is no clear cut answer, even in the 1990's, to that question. The most relevant part of this wider issue for this chapter is whether immigrant-ness of itself incurs disadvantage in Australian society?

The social impact of immigration raises a wide range of issues including social mobility, social justice and social cohesion, as well as individual health, education and welfare. Wooden et al. (1990, p.19), having conducted a wide ranging survey of Australian immigration, concluded that Australia's vast immigration intake has not undermined social cohesion and that non-English speaking immigrants have largely succeeded in overcoming economic and social obstacles to upward mobility and improved welfare, especially over the longer term. Implied in this assessment is the relative openness of Australian society (and work) to the integration of immigrants.

3.3 IMMIGRANTS IN AUSTRALIAN SOCIETY : DISADVANTAGE AND DISCRIMINATION?

The study of ethnic relations in an immigrant receiving society rests on a two fold approach. The first entails developing theoretical models for explanation and prediction which can be applied to understanding many social settings. The second is to make an empirical assessment of those relations in the 'real world' to check the plausibility of theory. A brief comment on theoretical approaches follows and in the final section of this chapter some aspects of an empirical assessment are described.

According to Baker (1983), power is the primary determinant of group relations in any society. Groups be they racial, ethnic, class, religious or otherwise are constantly competing for control of the resources and privileges of society. Group power contests take place primarily within political and economic arenas where most crucial distributive decisions are made. Structural and/or cultural factors influence the consequences of distributive decisions for migrants. Group relations are shaped by group ethnocentrism, intergroup competition, and the power capabilities of groups. It is the operation of power, in addition to individual attributes and actions, which plays a large part in determining access to and participation in societal life including employment and hence, helps to shape life chances and life styles. The consequences of immigrant participation and non-participation in the labour force, education and training, in access to work, and in achieving recognition of overseas qualifications are indicators in the 'real world' of the power differential between host and migrant groups. (Statistical and other evidence on these indicators are to be found in Chapters 4, 5, 6, and 7.)

In Australia, the elites in government, business, the unions, the professions, etc are dominated by Anglo and Celtic background Australians. The cultural and structural decisions on policies affecting racial and ethnic minorities are made by them and shaped by their inherent racial and ethnic attitudes and beliefs. Social commentators have suggested that these attitudes and beliefs have been influenced by ethnocentrism. For this reason, it is only relatively recently that non-discriminatory immigration and multicultural settlement polices have been accepted. To explore the consequences of dominant group decisions requires a critical examination not only of legislative decrees but also of behavioural norms and practices. Such an approach would help to answer two crucial questions: to clarify and explain the structure of group relations and how they have evolved and to provide a basis for understanding present and future patterns of inter-group relations. Clearly such a task is beyond the scope of this report. Only preliminary data can be provided on both the legislative attempts to deal with discrimination and persistent discriminatory norms and practices.

Radis (1988, pp.14-9) offers some support for this perspective. He comments that

> The targets of racial discrimination are most often minority groups which for one reason or another 'offend' the dominant group. Racial and other forms of discrimination are essentially the product of, and are reinforced by, existing socio-economic and political inequalities in society. From this it follows that only persons with power, privilege and influence can discriminate effectively.

He suggests that the nature of power in Australian society exhibits a monopolistic character (others have referred to the hegemony of the dominant groups of the Anglos and Celts). By this is meant that social, economic and political power is centred in the predominantly Anglo-or Celtic-Australian classes and institutions. To achieve an egalitarian sharing of power and a 'mainstreaming' of power structures would require the breaking of this monopoly. Any index of such breakdown (for example, the numbers of NESB persons in the three levels of government) suggests that change is coming only very slowly (Jupp 1986; Collins, 1988; Foster and Stockley, 1988; Jupp (ed.), 1989; Castles et al., 1990).

3.4 EXPLAINING DISCRIMINATION

3.4.1 Defining discrimination grounds in Australia

In Australia, the statutory grounds covering discrimination are:

* Race and related grounds: Race is covered by all laws. Related grounds of colour, national and ethnic origin are covered by Commonwealth, New South Wales and Victorian legislation.

* Sex and related grounds: Sex and marital status are grounds in all existing legislation. Sexual harassment has been held to be discrimination on the ground of sex, but is separately identified as an unlawful act in Victoria, South Australia, Western Australia and the Commonwealth. Pregnancy is a prohibited ground in the Commonwealth legislation and in South Australian and Western Australian legislation and is an aspect of sex discrimination in New South Wales. In Victoria, pregnancy is a characteristic of the female sex which falls within sex discrimination. Homosexuality and sexuality are prohibited grounds in New South Wales and South Australia respectively.

* Disability or impairment: Physical disability or impairment is a prohibited ground in New South Wales, Victoria, South Australia and Western Australia. Intellectual disability or impairment is a prohibited ground only in New South Wales, Western Australia and Victoria.

* Lawful religious or political belief or activity: A lawful religious or political belief or activity is a prohibited ground of discrimination in Victoria. Western Australia prohibits discrimination on the basis of religious or political conviction. The Commonwealth and other States and Territories do not deal with this ground at all.

* Victimisation: In each State, any action taken against a person who has lodged a complaint of discrimination just because they have done so (known as victimisation) is unlawful. This is so even if the original complaint is unsuccessful.

* Discrimination in employment on other grounds: Discrimination in employment on grounds not covered by Commonwealth or State legislation, such as age, medical record or political belief, may be dealt with by the Human Rights and Equal Opportunity Commission (HREOC), a Commonwealth government agency, whose primary responsibility relates to discrimination on the grounds of race, sex and privacy. The Commission will attempt to conciliate between the employee and the employer, but, in the absence of any legal prohibition, if conciliation fails, no other legal action can be taken. The areas in which discrimination is prohibited vary as it does with the grounds of discrimination. There are core areas which always appear. Those areas are employment (extending to employment agencies, qualifying bodies, trade unions and partnerships), provisions of goods and services and accommodation, and education. In New South Wales and Victoria, the legislation does not apply to small employers who have 5 employees (New South Wales) or 3 (Victoria) employees or fewer. Other areas in which discrimination is prohibited are clubs (Commonwealth, New South Wales, Victoria, Western Australia), professional and other organizations (Victoria and Western Australia) and access to places and facilities (Commonwealth, New South Wales and Western Australia). Victoria also prohibits discrimination in municipal councils and South Australia in associations.

Bailey (1990) asks the question whether anti-discrimination is part of human rights? One of the fundamental concepts embodied in the Charter of the United Nations(U.N.) refers to human rights without any element of discrimination. One can accept that the U.N. exists to promote respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion. In addition to the International Bill of Rights, there are 8 instruments within a list of 70 general instruments relating to human rights promulgated under the auspices of the U.N. which refer specifically to the prevention of discrimination. Among the most important are the Racial Discrimination Convention and the Women's Discrimination Convention.

Each (anti-discrimination) Act in Australian law includes specific exemptions for certain activities which would otherwise be prohibited discrimination. There is also an exemption in all legislation for special measures to remedy the effects of past discrimination of disadvantaged groups. This enables the implementation of affirmative action programs to be undertaken.

3.4.2 Measures in Australia to prevent or minimise discrimination generally and specifically in employment

Measures include actual legislation , regulations and a variety of structures established to mediate the established norms to reduce discrimination.

(a) Legislative (general)

Since the 1970's, a body of anti-discrimination legislation has been passed at Federal and State level encompassing racial discrimination, sex discrimination, human rights, affirmative action, equal opportunity, racial vilification, and so on (for details, see Annex II). Equal opportunity in Australia is the positive side of anti-discrimination. There is no definition in legislation; the approach is one of making certain acts unlawful. It is clear that Australia, at Federal and State levels, is supplied with an abundance of formal means of preventing or reducing discrimination and promoting equal opportunity. Whilst there are obvious differences between the States and Commonwealth on the nature and extent of legislation, the bulk of the States have similar kinds of legislation to that pertaining at the Federal level. There is protection afforded to all permanent residents of Australia, regardless of their status as overseas or native born, citizen or permanent resident.

(b) Regulation (employment)

Australia has been very active in boosting the general measures against discrimination by paying particular heed to the potential for discrimination in the workplace. This is expressed in the ratification of ILO Conventions (for details, see Annex IV).

These Conventions take into account particular kinds of work or occupations, classes of worker, conditions of work and grounds of discrimination. By referring back to the general legislative measures, it can be seen that the specific regulations for employment are complemented and reinforced by them. It is important to note also that the great majority of the ILO Conventions are directed at all permanent workers, with only minimal reference to immigrant workers per se. Convention 111 is clearly thought to be of particular importance as it has been appended to the Human Rights and Equal Opportunity Commission Act. It establishes an explicit definition of discrimination in employment by identifying discriminatory grounds for distinction, exclusion or preference as race, colour, sex, religion, political opinion, national extraction or social origin.

One of the most recently ratified conventions is Convention 156 which has significant implications for all workers, male and female, and immigrant and non-immigrant.

Article 3 of the ILO Convention 156 on Workers with Family Responsibilities (Glezer 1990) states:

> With a view to creating effective equality of opportunity and treatment for men and women workers, each Member shall make it an aim of national policy to enable persons with family responsibilities who are engaged or seek to engage in employment to exercise their right to do so without being subject to discrimination and, to the extent possible, without conflict between their employment and family responsibilities.

In response to this orientation, in August 1990, the Industrial Relations Commission in ruling on the parental leave test case delivered by the Australian Council of Trades Unions (ACTU), decided on a package of leave and part-time work for both parents involved with the birth or adoption of a child. By deciding to grant 12 months paternity leave to men, this was an acknowledgment for the first time of the right as well as the responsibility of men to be involved in the care of young children and to have it enshrined in industrial law. By this move, the Industrial Relations Commission recognised paternity leave as a legitimate industrial issue. It should be noted that employer groups were critical of the Commission's decision because of the extra administrative and financial burden on employers which would ensue.

There are other conventions which relate specifically to immigrant employment. These are Convention 97 Migration For Employment (Revised) 1949, Convention 118 Equality of Treatment (Social Security) 1962, Convention 143 Migrant Workers (Supplementary Provisions) 1975 and Convention 157 Maintenance of Social Security Rights 1982 (Zegers de Beijl 1990). These have not been ratified by Australia, although Convention 143 is still under consideration. One explanation may be that other domestic legislative provisions obviate the necessity for ratification because they already take into account possible discriminatory conditions.

The ratification process is an ongoing one. For example since 1988, Australia has been giving consideration to a number of ILO Conventions (see Annex V). Amongst these is a Convention specifically related to migrant workers, Convention 143. Convention 143 concerns migrations in abusive conditions, respect for basic human rights and the promotion of equality of opportunity and treatment of migrant workers (information provided by Department of Industrial Relations Canberra). It is concerned with discrimination against illegal migrants who may be unlawfully employed in the country of entry and calls for the suppression of such movements and unlawful employment because of the special vulnerability of such immigrant workers. The second major focus is on access and equity in employment for legitimate immigrant workers. One might speculate that the failure to ratify this Convention is because the problem of illegals and illegal (immigrant) workers has not been serious or at a level even to excite much public interest. The increasing attention being paid to this issue in 1991 has been focussed on identifying and deporting such persons. The second part of the Convention already receives attention in a range of legislative and other measures in Australia.

(c) Mechanisms for implementing legislation and regulation

There are major structures for promoting anti-discrimination via the application of appropriate legislation and regulation. Some of these operate at the Federal level, for example, the Human Rights and Equal Opportunity Commission and The Office of the Status of Women. Others are found only at the State level, for example, the NSW Anti-Discrimination Board. These bodies have a mixture of jurisdictions, that is, some apply only to the public sector; others to the private sector and still others to the public and private sectors. (For example, in the latter cases the Federal Affirmative Action Act requires all higher education institutions and private sector employers of 100 or more people to develop and implement an affirmative action program).

(i) The Human Rights and Equal Opportunity Commission (HREOC)

HREOC has responsibility for many matters which have a significant impact on people's lives, especially at work. Responsibilities were undertaken from the early 1970's to 1986 by the antecedents of HREOC, the Office of the Commissioner of Community Relations and then the Human Rights Commission. Federal legislation protects people from discrimination on a range of grounds and from many other abuses of their human rights. The Australian Parliament established HREOC in December 1986. The Commission has responsibility for four Acts of Parliament:

* Human Rights and Equal Opportunity Commission Act 1986

* Racial Discrimination Act 1975

* Sex Discrimination Act 1984

* Privacy Act 1988

There are four Commissioners to oversee the Human Rights and Equal Opportunity Act (1986). The Human Rights Commissioner exercises certain statutory powers of inquiry, conciliation and settlement of human rights complaints under the Act on behalf of the Commission. Similarly, the other Commissioners (Race Discrimination Commissioner, Sex Discrimination Commissioner, Privacy Commissioner) carry out those functions in their specific fields. It is important to recognise that the major strategy for dealing with alleged instances of discrimination in any of these areas is the institution of systematic inquiries, the bringing together of the parties of purposes of negotiation and conciliation and the goal of settlement of complaints via a range of possibilities from the tendering of a public apology to actual payment of compensation. This represents a radical departure from the legal norm of the adversarial process whereby parties are locked in 'combat' from the commencement of proceedings. The philosophical and procedural bases for the conciliation model derive from the desire to facilitate a process of exchange and amelioration of differences, an understanding that an act of unlawful discrimination is not a criminal offence and therefore that there is no automatic assumption of 'guilt' or 'innocence'.

In early 1988, HREOC began to consider a strategy aimed at raising awareness among private sector employers of the way in which racism operates in the workplace and at developing ways to deal with that racism which would be acceptable to the private sector. Thus the Race Relations in the Workplace Program was initiated (see Chapter 8).

(ii) Equal Employment Opportunity Programs and the Affirmative Action Agency

The Equal Employment Opportunity Act 1987 enforces the creation of such programs in the public sector. These programs focus on sex discrimination and are inclusive of immigrant and non-immigrant workers. Such programs aims to ensure that; (i) appropriate action is taken to eliminate unjustified discrimination against women and persons in designated groups in relation to employment; and (ii) measures are taken to enable women and persons in designated groups to compete for promotion and transfer in positions as effectively as other persons. Designated groups include Aboriginals and Torres Strait Islanders, migrants whose first language is not English and their children, persons who are physically and mentally disabled, and any other persons declared by the regulations to be a 'designated group'.

Programs are required to include measures to:

* examine practices and patterns (whether ascertained statistically or otherwise) in relation to employment matters that unjustifiably discriminate against women and persons in designated groups;

* eliminate or ameliorate such patterns and practices;

* inform officers and employees in the department of the content of the program and of the results of any reviews of the program;

* collect and record relevant information (including statistical information);

* assess the effectiveness of the program; and

* give effect to any guidelines.(Department of the Prime Minister and Cabinet, Office of the Status of Women, 1985).

The Affirmative Action Agency was established to monitor employer compliance with the requirements of the Affirmative Action legislation. While the Sex Discrimination Act is based on individual complaints, the Affirmative Action legislation takes a systematic approach to change. It aims to eliminate employment discrimination against women and to support equal employment opportunity for women.

(iii) Federal Office of the Status of Women (OSW)

A particular example of the work of this agency is the role OSW has taken in response to the ratification of the ILO Convention 156 on Workers with Family Responsibilities, including immigrant and non-immigrant workers. OSW will encourage greater opportunities for women and men to successfully combine family and work spheres through a three year community education program. The program will focus on measures to address women's double load of paid and unpaid work, and in particular, those women with young children as they still bear the vast majority of domestic and parental responsibilities. OSW is working with the Work and Family Unit of the Department of Industrial Relations and other agencies to ensure a better deal for people juggling family and work (OSWOMEN 1991, p.2).

(iv) Industrial Tribunals

In Australia, over 80 per cent of employees are covered by awards made by industrial tribunals, either Commonwealth (the Australian Industrial Relations Commission) or State. Not all the rights and obligations of the employee come from these awards, they come also from what is agreed between employer and employee, that is, the contracts of employment as well as from Commonwealth and State legislation (for example, the latter state conditions of annual leave, long service leave, health and safety requirements). Awards made by industrial tribunals generally provide minimum obligations for employees and employers and cover most conditions of employment. Aspects of employment contracts are wages and allowances, hours of work and work breaks, shiftwork and holidays (Wallace and Pagone, 1990). Unsuccessful moves have been made at the State level to integrate the industrial relations tribunal system with the equal opportunity enforcement system (e.g. in NSW in 1989, as reported in CCH, 1990, p.9403; it is expected that another attempt will be made in 1991).

The two main issues which tribunals have been required to determine have been whether an award was appropriate given the circumstances of the industry, firm or employee groups concerned and the form such an award should take, that is, the amount of notice, severance pay and other entitlements (Routley, 1986: 93-106).

(v) Anti-Discrimination Boards (State level only)

The New South Wales Board is one such example of part of the machinery to deal with the legislative requirements for Equal Employment Opportunity for immigrant and non-immigrant workers. It has the power to require the production of documents and the answering of questions where complaints of discrimination are referred to it by the Director of Equal Opportunity in Public Employment. Once the investigation is complete, the Board may make recommendations to the Director and/or the organisation or furnish a report with or without recommendations to the Premier. In turn, the Premier may direct an organisation to amend its management plan by a written instrument. Some States have similar agencies but under another name. For example, in Western Australia, the agency is termed the Western Australia Equal Opportunity Tribunal and there is a Commissioner for Equal Opportunity. South Australia and Victoria also have Commissioners for Equal Opportunity; the former has as well an Anti-Discrimination Board and the latter an Equal Opportunity Board (CCH 1990, p. 10001).

3.5 ASSESSING THE SUCCESS OF ANTI-DISCRIMINATION MEASURES

This chapter has detailed the provision of legislation and regulation to eliminate or minimise unlawful discrimination but there is still the question of whether these measures are achieving their goals. There are a number of ways to make such an assessment ranging from systematic and unsystematic observation of workplaces, individual experiences of work, analysis of the nature of the measures themselves and extent and trends in complaints received by the Human Rights and Equal Opportunity Commission. Only some of these can be explored here and then only briefly. This chapter will focus on the latter two and the former will receive some attention in Chapter 8. Examples here will reflect various grounds (eg. sex, race or ethnic origin, disability) for negative discrimination.

3.5.1 The nature of measures themselves

Anti-discrimination legislation is designed to reduce discrimination against all women and men, people of all ethnicities, the disabled of whatever background, and so on. In similar fashion, any negative discrimination is potentially injurious. Although discrimination in employment is pervasive, discrimination in other spheres of life may potentially also affect the quality of working life. The assessment below is based on relevant literature which provides: (i) a critical overview of Australian anti-discrimination legislation generally; and (ii) a brief but critical survey of anti-discrimination legislation which focuses specifically on sex, race/ethnicity or disability to identify inherent flaws and flaws of implementation.

(i) Anti-Discrimination legislation generally

Creighton and Stewart(1990) characterise anti-discrimination or equal opportunity legislation as proscribing discrimination in terms of stated grounds and in stated areas. There is a reliance upon reinforcement by means of individual complaints presented to a specialised tribunal. In their view, such legislation is based on a model of 'negative regulation' and they suggest (1990, p.250) that:

> There seems little doubt that legislation of this type can play a constructive role in helping to eliminate discrimination on grounds of race, sex, disability and so on. A law which proscribes discriminatory conduct and provides a means of redress for the victims of such discrimination could reasonably be expected to reduce the incidence of overt acts of discrimination on proscribed grounds. Over time, it may help to eliminate the prejudice which underpins the discrimination. But it cannot solve the problems of disadvantaged groups in their entirety. To do this requires that the causes of disadvantage be clearly articulated and that effective action be taken to eliminate these causes at source.

On the other hand, they acknowledge that there have been some positive developments especially where measures have gone beyond the negative regulation model. For example, the Federal legislation on affirmative action and the ACTU case on parental leave might be thought of as making significant progress. Their cautious assessment is that such legislation can be, at best, only a very partial response to the problems which confront women, racial and ethnic minorities, and other disadvantaged groups, especially in the labour market.

In addition, Davis and Nieuwenhuysen (1984, pp.22,60) point to other problematic aspects of the legislation. They state that the anti-discrimination laws may be undermined by the large array of agencies which are concerned with their implementation and functioning. Not everyone feels comfortable with the negotiation, conciliation and complaint raising provisions of the legislation.

Perhaps the liaison between Federal and State agencies is less than perfect? Maybe it is time that reform by way of unification and simplification of the legislation were attempted, in particular by having one set of agreed laws at the Federal level with which employers are familiar and which can more easily be monitored? A further issue is the fact that status in the workforce, for all Australians not only migrants, is a highly complex matter. It is unlikely that all contingencies affecting equality of opportunity can be simply legislated into existence. Measures must be taken on other fronts including recognition of qualifications, encouragement of positive attitudes towards immigrants, recognition of the additional burdens lack of language ability brings in the workplace, and culturally sensitive personnel practices. Of course, anti-discrimination measures are the province not only of legislation and governments but also require the co-operation and indeed initiative of private employers.

(ii) Anti-Discrimination legislation on the grounds of Sex, Race/Ethnicity, Disability

Ronalds (1987, p.9) suggests that with respect to gender inequality and measures to eliminate discrimination on the grounds of sex:

> A legislative strategy may address some expressions and seek to confront some of their underlying institutional foundations. However, social and economic inequalities cannot be removed by legislative decree. The realisation of their objectives depends on changing conditions in a number of spheres that are beyond the scope of the legislation itself. Legislation is a manifestation in statutory form of the recognition that these inequalities require the attention and response of government. It confirms that they are major public concerns which need to be addressed in a systematic and planned way.

The fact that affirmative action schemes are needed and have been put in place is an acknowledgement that statutes that prohibit discrimination cannot eliminate all structural discrimination in the workforce. The statutes aim to prohibit direct and systemic discrimination whereas an equal employment opportunity program seeks to eliminate artificial and unfair barriers to recruitment and promotion. Hence, unless both strategies are invoked in a complementary way, success in eliminating sex discrimination, and particularly in the case of women, is unlikely to be fully achieved. To illustrate, Elladis et al. (1989, pp.56-7) are concerned particularly about the 'invisibility' of women of non-English speaking background (NESB). They assert that:

> Women from NESBs are often the victims of discrimination and disadvantage on the basis of both their ethnicity and their gender.

Ronalds (1987, p.103) warns that there is still a long way to go, given that:

> The employment profile of women in Australia shows that they are working in a narrow range of occupations, receive lower pay than male workers and have less opportunities for promotion.

Whilst this picture of women's employment profile may be a true one, Ronalds does not put forward a complete explanation for its configuration. In Davis and Nieuwenhuysen's judgement (1984, p.18), there are multiple reasons, negative discrimination being only one. Demand influences, institutional and labour costs, supply variables and social factors are all part of the explanation for labour market segmentation.

There are other aspects to the position for women. For example, one informant indicated that the Federal Women's Directorate receives many complaints and

inquiries about discrimination related to pregnancy and maternity leave. It seems that existing legislative provisions are either inadequate or poorly understood. The record of complaints received by the Sex Discrimination Commissioner of the HREOC provides empirical support for these observations. There have been suggestions also that the Federal Sex Discrimination Act and the Anti-Discrimination Act (NSW) specifically exclude awards from their coverage. Therefore, discrimination in awards is not illegal. Given that such awards cover a large percentage of employed (women) workers, it appears that further modification of the legislation is needed to eliminate such anomalies.
Niland and Champion's assessment (1990) is based on one of the few studies on EEO programs with a specific focus on immigrants. The public sector respondents who were in a situation where EEO programs are compulsory indicated that the programs were very difficult to administer given the statistical reporting requirements of the compliance agencies (eg. gender, racial and national origin, age, marital status, major occupational groups, hires, promotions, assignments, training, appraisals, sick leave, years of service, attrition and educational qualifications). In addition, there are minority personnel who do not supply information because they do not wish to be labelled 'disadvantaged'. They concluded that while it might be assumed that EEO for women has delivered tangible benefits because a set of factors work well in relation to women, these same factors might not apply for immigrants. Examples of factors include the relative ease of extracting personnel data on women, the relative homogeneity of the group, a rights consciousness among women raising their expectations of success in their careers and the strength of various women's organisations in promoting women's employment rights.

In their study, the situation of immigrant workers varied in almost every respect. They did not form a cohesive group. Most did not want to be labelled as different. The setting up of data bases to assess the status and progression of various groups of immigrant workers was difficult. Ethnic lobbies seemed to place settlement, education and welfare rights ahead of employment and related issues. Immigrant workers seemed not to be as rights conscious as women and their expectations of work were not as high. EEO programs for migrants did not seem to be driven with the same energy as for women. In the private sphere, some companies reported that they have good programs for women but no EEO programs for immigrants because they have no blue collar workforce. This reasoning was based on the view that the program is something to be done for a group at an economic disadvantage and not a program for enhancing the productivity of under-achieving immigrant workers.

These authors (Niland and Champion 1990, p.177) caution that:

> It is likely that a coercive approach by way of mandatory EEO programs for NESB [non-English speaking background] will tend to perpetuate the conflict model of industrial relations and social change. Consequently, there is a danger that short term gains for immigrant workers may be outweighed by the negatives of using compliance to bring about changes that are in the interests of all parties. There should be thorough investigation of non-legislative approaches to advocating and implementing 'managing diversity' programs.

Turpin (1986, p.22) has also studied the situation of <u>immigrant</u> workers. He has suggested that:

> Segmentation in the labour market has the effect of placing culturally distinct waves of migrants in the least desirable occupational structures (including unemployment) and making it difficult for them to break out of this employment pattern. The significance of this is that the combination of Australian internal labour market mechanisms and immigration policies have given social, economic and political problems a cultural significance [eg. back injuries are given labels such as 'Lebanese back']. (Further evidence of this supposed phenomenon is given in Chapter 8).

To overcome this wider form of discrimination, in Turpin's view, requires an appropriately broad policy emphasis including community consultations, occupational health and safety, information programs, English language programs, retraining programs and affirmative action programs. These pragmatic strategies must be employed along with anti-discrimination and equal employment opportunity legislation.

Lewocki and Kassis (1990, p.151) refer to the position of many migrants in the workforce as being 'at the crossroads'. They are concerned with the unintended discrimination against some NESB workers as industry and award restructuring is pursued with greater intensity. The benefits of restructuring are likely to be distributed differentially if, for example, NESB workers are not given adequate opportunity to develop skills through appropriate training programs, if English language training is not embedded in awards, or if unions and employers are incapable of communicating with their NESB workers (See Chapter 5).

Not only have governments put in place legislation to prohibit discrimination against the disabled, immigrant and non-immigrant, in employment but in Australia, the Federal Government, for example, has encouraged employers to hire disabled workers by offering direct wage subsidies. Recent research, however, has indicated that only a slight increase in the number of disabled persons has been achieved. The offer of government-subsidised wages appears to be insufficient inducement to employers. The research indicated that employment decisions were not related solely to wage costs. Other likely factors were uncertainty, discrimination and economically rational wage productivity considerations (International Journal of Manpower, 1990:213). Legislation is unlikely to be able to encompass such an array of factors which arise from differing sources and yet find expression in reluctance to give fair treatment to disabled workers in the job market.

3.5.2 Evidence of complaints presented to HREOC

One of the few ways by which a quantitative assessment of the occurrence of discrimination in employment can be made is through the complaints procedure of the HREOC and similar procedures undertaken by Equal Opportunity bodies at State level. Statistics for complaints received and dealt with are made publicly available in the annual reports of the Commission and the State Equal Opportunity bodies.

The HREOC reports indicate that the numbers of complaints received about discrimination in employment relative to the total labour force and segments of that labour force (for statistics, see Chapter 4) are extremely small. This could be construed as overwhelming evidence that discrimination is at an extremely low level in employment for all workers, for all workers from non-English speaking backgrounds, and for women workers of either ES or NES background, on the grounds of human rights, racial discrimination and sex discrimination legislation. Reports from State bodies (e.g. Equal Opportunity Commission of Western Australia, 1990), however, indicate that complaints of sex discrimination are considerably more common than complaints of racial discrimination and that employment is the area in which most complaints overall arise. As the trends are in line with the HEROC statistics, the comments following will refer specifically to the picture presented by the HEROC reports.

However, several other factors need to be borne in mind:
(1) The data refer only to reported complaints. There may be numerous other complaints which are not reported.

(2) The data refer only to the grounds covered by the HREOC charter. There may be other aspects of discrimination which are not encompassed. In fact, in the very recent reports, the Commission noted the receipt of complaints on grounds other than those covered by the present legislation.

Given these caveats, however, what else do these statistics suggest?

* With the introduction of the Sex Discrimination Act and more refined categorisation of complaints, recent reports provide a more detailed picture of reported discrimination. For example, it is now possible to note trends based on ethnicity with respect to complaints pertaining to racial discrimination in employment. Some idea on the gender breakdown of complaints about racial and sex discrimination in employment is also possible. It is disappointing, however, that the trends for sex and ethnicity breakdown in the grounds for discrimination in employment are not made available in the reports.

* The most common complaints against discrimination in employment are made on sex discrimination grounds, followed by those on racial grounds. It seems that Australia's image as a 'man's' country is more resistant to change than its image as the last bastion of England's former empire in the southern hemisphere.

* Sex discrimination in employment is by far the major category of complaints and the opportunities afforded by the Sex Discrimination Act are taken up overwhelmingly by women although they are intended to redress problems for both women and men. This may mean (and probably does) that women actually experience much greater discrimination. We must allow, however, that perhaps men are not as aware of the opportunities under the legislation. It would be of great interest to know the proportions of complainants coming from ES and NES backgrounds.

* With regard to racial discrimination, it is not until the 1986/87 report that information on total number of complaints, number of complaints linked to employment, the ethnicity breakdown on complaints linked to employment, and the gender breakdown in total complaints is included. Over the entire period from 1981 to 1990, there are three phases in the numbers of complaints. The 1981/82 low figure can be related to the setting up of the new Commission and the phasing out of the previous mechanism reflected in the work of the Commissioner for Community Relations. There is a sharp increase in the years 1982/86 and a reduction but consistent level from 1986/90. The introduction of the Sex Discrimination Act may be an important influence here. Perhaps of more interest is the trend for discrimination on racial grounds to be found largely in the sphere of employment. Within the overall relatively low level of complaints, employment is obviously an area of perceived problem. At no stage since 1986 has the percentage of complaints dropped below 37 per cent. For all but the 1989/90 period, the proportion of complaints from NESB workers has exceeded 40 per cent. Note, however, that complaints under the Racial Discrimination Act alone rose by 22 per cent for the year from mid 1989 to mid 1990. In striking contrast to the situation of sex discrimination, however, women workers provide fewer than a third of the complaints against racial discrimination in employment. One can only speculate whether this is related to actual low levels of discrimination on these grounds (impressionistic and more solid survey evidence would seem to discount that explanation), to reluctance of women workers to take advantage of the legislation through fear of backlash or because of the rigours of the inquiry process, or whether, for NESB women located in the low level unskilled workforce where some of the worst exploitation is thought to occur, their lack of education or competence in English, lack of representation in, or support from unions, and the like are the factors inhibiting NESB women workers from acting.

* Examining the three grounds for discrimination, that is, on the basis of general human rights, racial discrimination and sex discrimination, one must acknowledge a persistent if residual level of discrimination in employment. The great array of legislation and regulation has not been able to abolish such discrimination.

It is important to register the following general implications:

(i) Overt and officially recognised discrimination in employment in quantitative terms is a small but continuing problem. The evidence from the HREOC cannot be dismissed as purely anecdotal or impressionistic. The complaints registered at State level add to the problem which is highly reistant to amelioration by legislative means.

(ii) Covert informal discrimination goes unassessed even by such a high profile mechanism as the HREOC.

(iii) The qualitative side of discrimination in employment, whether in terms of life chances or lifestyles, is equally or even arguably more significant, but there exist few indicators of its extent. Official complaints represent only a small proportion of the discrimination experienced by workers on the job.

(iv) Even the HREOC does not reveal the extent of possible discrimination suffered by all categories of workers, in particular NESB women. It is hard to understand why, given the over 40 year history of the large scale immigration program in Australia and the intense rhetoric of the Multiculturalism Agenda alone, that such an analysis is not freely available.

3.6 OVERVIEW AND CONCLUSION

3.6.1 Overview

The overriding theme of this chapter has been that it is inadequate to consider anti-discrimination legislation without placing it in a broader context. The context includes some idea of the federal nature of the Australian state, the definition of discrimination as part of a wider concept of rights, the international and domestic pressures (and precedents) on human rights provision and especially with reference to the workplace, and even Australia's place as a leading immigrant-receiving country. These elements are of necessity treated only briefly but many of the issues raised in this chapter are taken up in succeeding ones, in particular, statistical evidence on the place of immigrants in Australian society generally and in the labour force in particular, and more impressionistic evidence on the treatment of migrant workers.

The context in which any exploration of discrimination in Australia must be set has been drawn by sketching in the international precedents for legislation. There is no doubt that Australia has recognised the necessity for legislation and has accepted avidly the guidelines set by agencies such as the United Nations and the International Labour Organisation. Just how this has been done and the subsequent initiatives in domestic law and regulation is an immensely complex picture which cannot be traced here. What has been attempted is the identification of factors which have shaped their expression in the Australian situation. These include, first, the relationship between the Commonwealth and the States in government, legal and other jurisdictions with its complications ranging from how the lines of demarcation are set to the often inordinate length of time required to secure States and Commonwealth government approval for the ratification of international conventions. Second, Australian perceptions of discrimination are mediated by its stance on rights and freedoms generally and on immigration. The overwhelming principle has been to gain permanent immigrants for Australia who will become Australian citizens and, before the law, become indistinguishable from other Australians. Such a view has inhibited many developments which are found in other countries including the evolution and implementation of multiculturalism policy and a particular emphasis on minority rights.

The place of immigrants in Australian society highlights the dilemmas in coming to undisputed conclusions about disadvantage and discrimination in Australia, even in the narrow field of employment. The theoretical proposition that unequal distribution of power in any society inevitably leads to unequal distribution of society's 'goods' and that, in multiethnic societies, ethnicity can intensify class and gender differences is widely accepted. What is not so easy is to find sound evidence to explain what happens in the 'real world' and to assess the extent to which ethnicity of itself contributes to any disadvantage, and further, to identify how much of that disadvantage can be attributed to actual discrimination.

Explaining discrimination has entailed referring to economic, sociological and political science theoretical concepts and models. Unfortunately, the conclusion appears to be that these have limited application in the Australian setting thus far. One of the reasons for this lies in the multi-faceted nature of the term discrimination. Hence, considerable attention was given to outlining a legalistic definition of discrimination because Australia, in common with other Western post-industrial societies, has placed great store on the protection for human rights and against discrimination to be afforded by legislation.

The most obvious point is that the greatest concern in this chapter has been with negative discrimination. Second, strong emphasis has been placed on discrimination on the grounds of race and sex in respect of employment, partly because of the statutory grounds covering discrimination and the measures Australia has taken to prevent or minimise discrimination generally and specifically in employment. This is not to deny the other grounds, and any fully comprehensive study of discrimination against migrants in employment should include matters such the effect of disability , religion or political belief and activity. Third, it would appear that in Australia, there is ever more refinement of the concept and grounds of discrimination and an ever proliferating range of measures including legislation, regulations and structures for their implementation and monitoring. The inevitable question is whether this highly sophisticated apparatus has inherent limits and limitations? If so, the further questions are at what stage should governments and bureaucracies stop tinkering with the apparatus and accept that the law of diminishing returns has taken over?

No answers have been found to those questions, but raising them has meant that some attempt at assessment of the success of anti-discrimination measures had to be made. In this chapter, the assessment was attempted by examining the literature for analyses of the nature of the measures themselves and the trends reported by the HREOC and State bodies over the decade from 1980 to 1990. Analyses have suggested that at best the law is a blunt instrument. That is to say, in regard to employment, it is accessed by few; it does not strongly target immigrants and especially non-English speaking immigrants; it is unable to address all the factors which may lead to negative discrimination for groups such as women and immigrants; the attributes of gender and ethnicity, being social constructions, are in themselves not fully amenable to neat classifications and formalised rules and regulations; and the class position of immigrants in Australia receives scant attention in legislation, regulations and structures. Having said that, Australia is much better off for having formal measures against discrimination recognised widely and in place. The evidence from the HREOC and the State level bodies reveals a continuing, consistent residue of negative discrimination against workers, marked more especially in the case of women but also affecting NESB immigrants. There is room for improvement in the reporting practices of the HREOC in order to obtain better evidence.

3.6.2. Conclusion

It must be emphasised again that focussing narrowly on the evidence for overt and formally defined discrimination against immigrants in employment ignores (i) covert and other forms of discrimination; (ii) does not differentiate clearly between discrimination on the grounds of sex as opposed to discrimination on the grounds of race; and (iii) cannot assess the extent of discrimination in other areas of life which also affect the employment experience.

The review undertaken in this chapter has been unable to take into account employment related developments occurring currently in Australia which have important implications for identifying and assessing the nature and extent of discrimination in employment. Examples here include considerations of other grounds for discrimination including age related compulsory retirement, legislation against racial vilification, award and industry restructuring with its language and other training consequences for workers, labour force segmentation and measures to reduce this, gender relations in the workplace and the role of women in unions, and

locational issues including incentive schemes for relocation of businesses and workers.

CHAPTER 4

LABOUR MARKET STATUS OF IMMIGRANTS

4.1 INTRODUCTION

The purpose of this chapter is to examine key indicators of the labour force status of immigrant workers in Australia. Key indicators examined are participation in the labour force (section 4.2), including persons employed (section 4.3.1) and unemployed (section 4.3.2), and persons not in the labour force (section 4.3.3). Chapter 4 then examines the relative concentration of immigrants in different industries (4.4.1) and occupations (4.4.2), relative earnings (4.5), relative labour mobility (4.6.1) and unionisation rates of immigrant workers (4.6.2). Section 4.7 provides an overview and conclusion for the chapter and analyses patterns which might be considered consistent with evidence of discrimination against immigrant workers in the Australian labour market. August 1990 data is compared with August 1985 data wherever possible. Where August 1990 data have been unavailable, the most recent ABS data have been analysed.

4.2 PARTICIPATION IN THE LABOUR FORCE

The Australian labour force comprised more than 8.4 million persons in August 1990. Of these, nearly 2.2 million persons were born outside Australia. More than 1.2 million people were born in countries that did not have English as the first language (Table 4.1).

Between August 1985 and August 1990, the labour force grew by more than 1.1 million persons or 16.1%. Growth was almost identical for both persons born in Australia (16.1%) and persons born outside Australia (16.0%).

However, there was a significant difference between the proportion of labour force growth accounted for by females and males. Between August 1985 and August 1990, the number of females in the labour force who were born in Australia grew by 25.8%, while the corresponding number for those born outside Australia was 23.4%. Male participation in the labour force grew more slowly with increases of 9.8% and 11.8% for males born in Australia and born overseas respectively.

The proportion of females in the labour force also grew between August 1985 (38.5%) and August 1990 (41.5%). This growth occurred for both females born overseas (from 9.4% of the labour force in 1985 to 10.0% in 1990) and females born in Australia (from 29.0% of the labour force in 1985 to 31.5% in 1990).

Table 4.2 shows labour force participation rates by birthplace for August 1985 and August 1990. The total labour force participation rate increased from 61.2% in August 1985 to 64.3% in August 1990. In aggregate, this increase was due entirely to persons born in Australia (60.9% in 1985 to 65.2% in 1990). The participation rate for persons born outside Australia actually decreased during this period from 62.0% in 1985 to 61.8% in 1990.

Table 4.2 shows a significant increase in the female participation rate from 46.5% in 1985 to 52.9% in 1990. The male participation rate declined during this period from 76.1% to 75.9%.

Table 4.1: Labour force by birthplace August 1985 and August 1990

Birthplace	*1985 ('000)*			*1990('000)*		
	Males	*Females*	*Persons*	*Males*	*Females*	*Persons*
Born in Australia	3,269.9	2,103.9	5,373.7	3,590.8	2,646.7	6,237.6
Born outside Australia	1,190.4	684.2	1,874.6	1,330.9	844.0	2,174.9
Africa	39.7	22.3	61.9	46.7	29.2	75.9
America	37.3	25.2	62.4	47.1	34.4	81.5
Asia	164.1	111.1	275.1	263.3	177.0	440.3
Lebanon	20.3	6.8	27.1	27.1	8.9	36.0
Vietnam	29.3	17.7	47.0	34.6	21.8	56.5
Europe	850.4	456.3	1,306.7	834.7	505.3	1,340.0
Greece	59.2	30.3	89.5	51.4	30.9	82.3
Italy	117.4	44.8	162.2	106.9	45.3	152.2
Malta	24.5	11.9	36.4	19.9	8.8	28.7
Poland	18.8	10.6	29.3	16.7	12.3	28.9
U.K. & Ireland	415.4	250.3	665.8	424.1	279.1	703.3
Yugoslavia	58.7	33.0	91.7	64.2	41.5	105.7
Oceania	86.9	62.0	148.9	129.7	91.4	221.1
New Zealand	75.8	53.0	128.8	109.6	74.5	184.1
Main English Speaking Countries	523.2	326.1	849.3	573.5	381.4	954.9
Other than Main English Speaking Countries	667.1	358.1	1,025.2	757.4	462.5	1,220.0
Total	4,460.2	2,788.1	7,248.3	4,921.8	3,490.7	8,412.5

Source: ABS Labour Force Survey, August 1985 and August 1990, tables on microfiche, Group 600, Table AN13.

The most dramatic increase in the participation rate occurred among married females, where the rate increased by 8.6 percentage points to 53.0% between 1985 and 1990. By August 1990, contrary to historical patterns, the participation rate of married females was higher than that of unmarried females.

As mentioned above, the participation rate for persons born outside Australia declined between August 1985 and August 1990. Once again the male experience was entirely different from the female experience. The participation rate for males born outside Australia decreased by 2.5 percentage points to 73.8% over the five years ending August 1990. In contrast, the participation rate of females born outside Australia increased by 2.4 percentage points to 49.2%. However, the participation rate for married females born overseas increased even more significantly (4.6 percentage points to 51.5%).

Table 4.2 shows that the participation rate for persons born outside Australia in NES countries was consistently lower than the rate for persons born outside Australia in ES countries. The difference widened over the five years to be significantly greater in August 1990 than in August 1985 for both males and females.

In 1985, the participation rate for males from ES countries was 76.8% (1.0 percentage point greater than males from NES countries). By August 1990, the participation rate for males from ES countries had increased to 77.0%, while the participation rate for males from NES countries had decreased to 71.6%. The participation rate for females in ES countries in 1985 was 50.1% (5.9 percentage points greater than the rate for females in NES countries). By August 1990, the difference had grown to 8.6 percentage points. The participation rate for females from ES countries had grown to 54.2% while the rate for females from NES countries had grown to only 45.6%.

Excluding males born in Australia, males born in New Zealand had the highest participation rate (87.3%) in August 1990 followed by males born in America (83.6%) and Vietnam (75.7%). Males born in Poland (49.2%) experienced the lowest participation rate followed by Italy (67.6%) and Greece (70.1%). Between 1985 and 1990, the participation rate for males born overseas decreased in all but three of the country classifications. These decreases are largely due to an overall aging of the overseas born population of Australia with the associated increasing proportion of immigrants moving into retirement (Schulz et al. 1991).

The participation rate for females in 1990 was also varied. Excluding females born in Australia, females born in New Zealand (68.7%), America (56.7%) and Yugoslavia (54.6%) experienced the highest participation rates. Females from Lebanon (25.8%), Poland (31.8%) and Italy (34.0%) experienced the lowest rates. Of the fourteen country and region of origin classifications listed in Table 4.2, eight of the female classifications experienced an increased participation rate between 1985 and 1990. This reflects an overall movement of women, and in particular married women, into the workforce.

For persons, those born in New Zealand (78.7%), America (69.7%) and Yugoslavia (65.3%) experienced the highest participation rates while those born in Poland (40.0%), Lebanon (50.5%) and Italy (52.2%) experienced the lowest participation rates.

4.3 LABOUR FORCE STATUS

4.3.1 Employed

More than 7.8 million persons were employed in Australia in August 1990, with almost 6.2 million (78.7%) of these employed full-time. However, the proportion of persons employed full-time varies according to gender, country of birth and ES/NES classifications.

Table 4.2: Labour force participation rate by birthplace August 1985 and August 1990

Birthplace	*1985 (Per cent)*				*1990 (Per cent)*			
	Males	*Married Females*	*Total Females*	*Persons*	*Males*	*Married Females*	*Total Females*	*Persons*
Born in Australia	76.1	43.4	46.4	60.9	76.7	53.7	54.2	65.2
Born outside Australia	76.3	46.9	46.8	62.0	73.8	51.5	49.2	61.8
Africa	80.0	53.4	49.6	65.6	74.9	57.1	51.0	63.5
America	75.1	48.6	50.8	63.0	83.6	58.5	56.7	69.7
Asia	77.3	49.7	48.9	62.6	72.5	49.9	48.0	60.2
Lebanon	77.7	27.5	30.7	56.1	73.8	20.4	25.8	50.5
Vietnam	76.7	59.4	59.7	69.3	75.7	54.4	51.5	64.1
Europe	75.6	45.4	45.0	61.1	72.6	50.1	47.1	60.3
Greece	74.8	45.1	41.2	58.6	70.1	47.8	44.9	57.9
Italy	77.4	37.8	38.1	60.2	67.6	35.7	34.0	52.2
Malta	79.4	38.7	40.4	60.3	74.0	40.6	38.8	57.9
Poland	55.7	35.2	36.2	46.6	49.2	42.2	31.8	40.0
U.K. & Ireland	75.0	47.6	47.6	61.7	74.3	54.3	50.9	62.8
Yugoslavia	75.3	51.4	48.5	62.8	74.8	59.5	54.6	65.3
Oceania	84.7	55.3	60.2	72.4	86.8	64.7	66.6	77.1
New Zealand	86.9	55.0	61.7	74.4	87.3	65.2	68.7	78.7
Main English Speaking Countries	76.8	49.0	50.1	63.7	77.0	56.3	54.2	65.9
Other than Main English Speaking Countries	75.8	45.3	44.2	60.7	71.6	48.2	45.6	58.9
Total	76.1	44.4	46.5	61.2	75.9	53.0	52.9	64.3

Source: ABS Labour Force Survey, August 1985 and August 1990, tables on microfiche, Group 600, Table AN13A.

Table 4.3 shows that in August 1990, 77.5% of employed persons born in Australia were employed full-time compared with 82.4% for persons born outside Australia. Both shares represent increases from August 1985, when the corresponding percentages were 81.0% and 84.4% respectively.

Overall, 59.9% of employed females worked full-time compared with 92.0% of employed males. However, males and females born outside Australia were more likely to be employed full-time than males and females born in Australia.

For males, the countries of birth (excluding Australia) where employed males were most likely to be employed full-time were Greece (98.4%), Yugoslavia (98.1%) and Malta (97.4%). Males least likely to be employed full-time were from Lebanon (89.7%), Africa (92.7%) and America (93.1%).

For females, those most likely to be employed full-time (excluding females born in Australia) were born in Vietnam (91.3%), Poland (74.0%) and Yugoslavia (72.9%). Those least likely to be employed full-time were from Italy (56.4%), Malta (57.8%) and UK and Ireland (59.8%).

The ABS (ABS, Queensland 1990) detailed unpublished data on employment status from the August 1989 Labour Force Survey. Table 4.4 shows that in August 1989, employed persons born outside Australia were more likely to be employers (5.0%) or self employed (10.5%) than persons born in Australia (4.7% and 9.8% respectively). This circumstance was particularly evident in females. Further, persons born in NES countries were more likely to be employers or self employed than either persons born in ES countries or persons born in Australia. Persons born in southern Europe had a large proportion of self employed (particularly Greece (23%) and Italy (16%)). Lebanese born were also more likely to be employers (13%) or self employed (25%).

Persons born outside Australia in ES countries (85.8%) were more likely to be wage and salary earners than either persons born in Australia (84.8%) or persons born in NES countries (82.3%). Overall, females were more likely to be wage and salary earners than males.

The ABS (ABS, Queensland 1990) also details 1986 Census data which indicate that the period of residence in Australia is another factor determining whether overseas born persons are self employed. The ABS found that only 4% of overseas born persons were self employed during their first year of residence. For immigrants resident in Australia for 5 to 14 years, the proportion of self employed increased to 8% and to 13% for overseas born persons resident for 20 years or more.

4.3.2 Unemployed

In August 1990 in Australia there were 587 thousand persons unemployed of which 478 thousand (81.4%) were looking for full-time employment.

Of persons unemployed and looking for employment, 28.4% were born outside Australia (9.7% from ES countries and 18.7% from NES countries).

A significant majority of unemployed persons in 1990 were male (57.5%), reflecting the greater participation of males in the labour force. Among those looking for full-time employment, an even greater majority were males (63.8%).

Table 4.3: Employed persons by birthplace August 1990

	Males ('000)		*Females ('000)*		*Persons ('000)*	
Birthplace	*Full-time*	*Total*	*Full-time*	*Total*	*Full-time*	*Total*
Born in Australia	3,064.7	3,350.8	1,440.7	2,466.0	4,505.4	5,816.8
Born outside Australia	1,153.9	1,233.0	500.6	775.2	1,654.4	2,008.2
Africa	40.5	43.7	18.0	27.6	58.5	71.3
America	41.7	44.8	21.0	32.1	62.6	76.9
Asia	207.7	232.5	116.0	153.8	323.6	386.3
Lebanon	18.2	20.3	4.9	7.0	23.1	27.3
Vietnam	26.4	27.6	16.8	18.4	43.2	46.0
Europe	745.2	783.1	284.8	472.6	1,029.9	1,255.7
Greece	48.4	49.2	20.2	29.3	68.6	78.5
Italy	98.8	102.5	24.6	43.6	123.4	146.1
Malta	18.5	19.0	4.8	8.3	23.3	27.3
Poland	13.9	14.3	7.7	10.4	21.6	24.8
U.K. & Ireland	377.9	399.6	157.8	263.7	535.7	663.3
Yugoslavia	56.7	57.8	27.2	37.3	83.8	95.1
Oceania	110.8	119.5	57.3	82.8	168.0	202.2
New Zealand	96.5	102.2	45.8	68.1	142.3	170.2
Main English Speaking Countries	508.2	539.2	220.6	358.7	728.7	897.9
Other than Main English Speaking Countries	645.7	693.8	280.0	416.5	925.7	1,110.3
Total	4,218.5	4,583.8	1,941.3	3,241.2	6,159.8	7,825.0

Source: ABS Labour Force Survey, August 1990, tables on microfiche, Group 600, Table AN13.

Table 4.4: Employed persons: Status of worker by birthplace August 1989

Birthplace	*Employer (Per cent)*	*Self-employed (Per cent)*	*Wage and salary earners (Per cent)*	*Total (a) (Per cent)*
		Males		
Australia	5.6	11.7	82.2	100.0
Overseas	5.7	11.7	82.2	100.0
Main English Speaking Countries	4.2	11.1	84.5	100.0
Other than Main English Speaking Countries	6.9	12.2	80.5	100.0
Total	5.6	11.7	82.2	100.0
		Females		
Australia	3.5	7.3	88.3	100.0
Overseas	4.0	8.6	86.4	100.0
Main English Speaking Countries	3.2	8.1	87.8	100.0
Other than Main English Speaking Countries	4.6	9.0	85.2	100.0
Total	3.6	7.6	87.8	100.0
		Persons		
Australia	4.7	9.8	84.8	100.0
Overseas	5.0	10.5	83.8	100.0
Main English Speaking Countries	3.8	9.9	85.8	100.0
Other than Main English Speaking Countries	6.0	11.0	82.3	100.0
Total	4.8	10.0	84.5	100.0

Source: ABS: Labour Force Survey, August 1989 (unpublished data) reproduced from ABS Queensland "The Economic Status of Migrants in Australia", BIR, 1990, p.81.
(a) Includes unpaid family helpers.

Table 4.5 shows unemployment rates in August 1985 and August 1990. In August 1990, Australia had an unemployment rate of 7.0%. The unemployment rate for persons born in Australia (6.7%) was less than the rate for persons born outside Australia (7.7%). However, persons born outside Australia in ES countries had a lower unemployment rate (6.0%) than persons born in Australia. Persons born in NES countries experienced an unemployment rate of 9.0%, 2 percentage points higher than the national average.

Of the countries listed in Table 4.5, persons born in Lebanon (24.2%), Vietnam (18.5%) and Poland (14.5%) experienced the highest unemployment rates in August 1990, while persons born in Italy (4.0%), Greece (4.6%) and Malta (4.9%) experienced the lowest rates.

In August 1990, females experienced a marginally higher rate of unemployment than males (7.1% compared with 6.9%). The difference between the unemployment rate of females and males born in Australia was only 0.1 of a percentage point (6.8% and 6.7% respectively), but this differential was more significant for persons born outside Australia (0.7 of a percentage point).

Both males and females born in ES countries experienced an unemployment rate of 6.0%, significantly lower than that of those born in Australia. Males from NES countries experienced an unemployment rate of 8.4% (1.7 percentage points greater than the rate for males born in Australia), while females from NES countries had an unemployment rate of 10.0% (3.2 percentage points greater than females born in Australia).

Males born in Italy (4.1%) experienced the lowest unemployment rate followed by males born in Malta and Greece (both 4.3%). Males born in Lebanon (24.9%) experienced the highest unemployment rate with males born in Vietnam (20.3%) and Poland (14.2%) second and third highest respectively. Females born in Italy (3.7%) experienced the lowest unemployment rate followed by females from Greece (5.1%) and Africa (5.3%). Females born in Lebanon (21.9%) experienced the highest unemployment rate followed by Vietnamese (15.7%) and Polish (14.9%) females.

When the unemployment situation of August 1990 is compared with August 1985, a number of recent trends become evident.

The difference between the unemployment rate of persons born in Australia and persons born outside Australia had decreased marginally between 1985 and 1990 (by 0.2 of a percentage point). However, the difference for females had increased (from 0.9 to 1.3 percentage points).

While in 1985, the unemployment rate for persons born in ES countries was slightly higher than persons born in Australia, by 1990, it was considerably lower. This difference was particularly significant for females (1.1 percentage points).

However, for persons born in NES countries the difference between the unemployment rate of persons born in Australia and persons born outside Australia increased between 1985 and 1990. The decrease in the difference in rates for NESB males between 1985 and 1990 (0.7 of a percentage point) was more than offset by the increase for NESB females (1.9 percentage points).

Persons born in America experienced a significant decrease in their unemployment rate between 1985 and 1990 (4.9 percentage points), as did persons born in Greece (4.5 percentage points) and New Zealand (5.2 percentage points). Conversely, persons born in Poland (3.7 percentage points) and Yugoslavia (1.7 percentage points) experienced increases in their unemployment rates.

Table 4.5: Unemployment rate by birthplace August 1985 and August 1990

Birthplace	*1985 (per cent)*			*1990 (per cent)*		
	Males	*Females*	*Persons*	*Males*	*Females*	*Persons*
Born in Australia	7.5	7.8	7.6	6.7	6.8	6.7
Born outside Australia	8.8	8.7	8.8	7.4	8.1	7.7
Africa	5.3	8.7	6.5	6.5	5.3	6.0
America	9.9	11.3	10.5	4.9	6.5	5.6
Asia	16.9	11.1	14.6	11.7	13.1	12.3
Lebanon	30.2	26.9	29.4	24.9	21.9	24.2
Vietnam	25.5	19.9	23.4	20.3	15.7	18.5
Europe	7.0	7.6	7.2	6.2	6.5	6.3
Greece	9.0	9.2	9.1	4.3	5.1	4.6
Italy	5.4	3.6	4.9	4.1	3.7	4.0
Malta	4.2	12.9	7.0	4.3	6.1	4.9
Poland	10.1	12.1	10.8	14.2	14.9	14.5
U.K. & Ireland	6.7	7.3	6.9	5.8	5.5	5.7
Yugoslavia	8.2	8.4	8.3	10.0	10.1	10.0
Oceania	12.3	12.1	12.2	7.9	9.5	8.5
New Zealand	12.5	12.9	12.7	6.8	8.6	7.5
Main English Speaking Countries	7.4	8.2	7.7	6.0	6.0	6.0
Other than Main English Speaking Countries	9.9	9.1	9.6	8.4	10.0	9.0
Total	7.8	8.0	7.9	6.9	7.1	7.0

Source: ABS Labour Force Survey, August 1985 and August 1990, tables on microfiche, Group 600, Table AN13A.

4.3.3 Not in the Labour Force

Table 4.6 shows that in August 1990 in Australia, more than 4.67 million persons were recorded as being not in the labour force. Of these, 28.8% were born outside Australia. A far greater proportion of females (47.1%) were recorded as not being in the labour force than males (24.1%).

On a proportionate basis, more males and females born outside Australia (primarily from NES countries) were classified as not being in the labour force than for males and females born in Australia. In August 1990, the proportion of females born in NES countries who were not in the labour force was 8.6 percentage points higher than for females born in ES countries (54.4% and 45.8% respectively). The corresponding differential for males was 5.4 percentage points (28.4% and 23.0% respectively).

Between August 1985 and August 1990, the proportion of persons not in the labour force decreased from 38.8% to 35.7%. A small increase in the proportion of males not participating in the labour force (0.2 of a percentage point to 24.1% due primarily to NESB males) was more than offset by a significant decrease in females not participating in the labour force (6.4 percentage points to 47.1%).

Between 1985 and 1990, the proportion of females born in NES countries not participating in the labour force decreased by 1.4 percentage points to 54.4%. Female NESB non-participation remains significantly higher than for either females born in Australia or females born in ES countries (both 45.8%).

4.4 INDUSTRY AND OCCUPATION CONCENTRATIONS

Section 4.4 discusses industry and occupation concentrations in the Australian workforce.

4.4.1 Industry Concentrations

Table 4.7 shows an industry breakdown of employment at August 1990 in Australia. In August 1990, the largest employers in Australia were the wholesale and retail trade (1.6 million persons), followed by the community services (1.4 million persons) and manufacturing industries (1.2 million persons). The smallest employers were mining (96 thousand persons), followed by electricity, gas and water (105 thousand persons) and communication (145 thousand persons).

Most overseas born persons were employed in the manufacturing industry (449 thousand) followed by the wholesale and retail trade (374 thousand persons) and community services (338 thousand persons) industries. Electricity, gas and water employed fewest persons born outside Australia (22 thousand), followed by mining (24 thousand persons) and communication (37 thousand persons).

Column 6 of Table 4.7 shows relative concentration ratios (RCR's) for males, females and persons. This ratio is the proportion of overseas born persons employed in an industry relative to the share of that industry in total employment. The higher the ratio, the greater the concentration of overseas born persons in the industry, relative to the share of total persons in the industry.

The RCR calculations for total overseas born persons show that they were significantly over-represented in manufacturing (1.46), particularly metal products (1.48), and construction (1.18). Overseas born persons were significantly under-represented in agriculture (0.39), electricity, gas and water (0.83) and public administration and defence (0.86).

The relative representation of overseas born males and females born outside Australia was not uniform. Males were less over-represented in manufacturing (1.34) and construction (1.13) than females (1.72 and 1.26 respectively). Males were also over-represented in recreational, personal and other services (1.13).

Table 4.6: Not in the labour force by birthplace August 1985 and August 1990

	1985 ('000)			1990 ('000)		
	Males	*Females*	*Persons*	*Males*	*Females*	*Persons*
Birthplace						
Born in Australia	1,026.7	2,428.4	3,455.1	1,088.7	2,237.5	3,326.1
Born outside Australia	370.7	777.7	1,148.4	472.2	873.3	1,345.5
Africa	9.9	22.6	32.5	15.7	28.0	43.7
America	12.4	24.3	36.7	9.2	26.3	35.5
Asia	48.2	116.0	164.2	99.7	192.0	291.7
Lebanon	5.8	15.4	21.2	9.6	25.7	35.3
Vietnam	8.9	11.9	20.8	11.1	20.6	31.7
Europe	274.7	557.0	831.7	315.0	568.3	883.4
Greece	19.9	43.3	63.2	21.9	38.0	59.9
Italy	34.3	72.8	107.2	51.2	87.9	139.1
Malta	6.3	17.6	23.9	7.0	13.9	20.8
Poland	14.9	18.6	33.5	17.2	26.3	43.5
UK & Ireland	138.2	275.2	413.4	146.8	269.6	416.4
Yugoslavia	19.3	35.1	54.4	21.7	34.5	56.1
Oceania	15.7	41.1	56.7	19.6	45.9	65.6
New Zealand	11.4	32.9	44.4	15.9	34.0	49.9
Main English Speaking Countries	157.7	325.4	483.1	171.7	322.2	493.9
Other Than Main English Speaking Countries	213.0	452.3	665.3	300.5	551.1	851.6
Total	1,397.4	3,206.1	4,603.5	1,560.8	3,110.8	4,671.6

Source: ABS Labour force survey, August 1985 and August 1990, tables on microfiche, Group 600, Table AN13

Table 4.7: Employment by industry and birthplace, August 1990

Industry	*Australian born ('000)*	*Total Overseas born ('000)*	*Main English speaking countries ('000)*	*Other than main English speaking countries ('000)*	*Total ('000)*	*Relative concentrations ratio (%)*
Males						
Agriculture etc.	276.3	28.2	13.2	15.0	304.5	0.3
Mining	66.0	20.6	14.9	5.8	86.6	0.9
Manufacturing	564.4	318.3	117.0	201.3	882.6	1.3
Food beverages & tobacco	100.6	33.8	9.9	23.8	134.4	0.9
Metal Products	105.8	64.9	23.3	41.6	170.8	1.4
Electricity, gas & water	72.4	20.1	8.4	11.7	92.5	0.8
Construction	355.1	154.9	67.6	87.4	510.1	1.1
Wholesale and retail trade	659.2	226.2	100.8	125.3	885.4	1.0
Transport & storage	273.9	82.1	36.7	45.4	320.0	1.0
Communication	78.7	27.3	9.6	17.7	106.0	1.0
Finance, property & business services	332.8	116.7	56.0	60.7	449.5	1.0
Public administration and defence	174.5	42.3	20.8	21.5	216.8	0.7
Community services	365.1	122.8	67.3	55.4	487.9	0.9
Recreational, personal & other services	168.5	73.5	26.9	46.6	242.0	1.1
Total males	3,350.8	1,233.0	539.2	693.8	4,583.8	1.0
Females						
Agriculture etc.	105.6	14.6	7.5	7.1	120.2	0.5
Mining	6.5	3.0	2.5	0.5	9.5	1.3
Manufacturing	187.0	130.8	38.3	92.4	317.8	1.7
Food beverages & tobacco	38.6	19.7	6.1	13.7	58.3	1.4
Metal Products	17.9	11.0	4.9	6.1	28.9	1.6
Electricity, gas & water	10.3	2.1	0.2	1.9	12.4	0.7
Construction	52.6	22.7	12.0	10.6	75.2	1.3
Wholesale and retail trade	578.5	148.3	69.1	79.1	726.7	0.9
Transport & storage	63.6	18.5	9.3	9.2	82.2	0.9
Communication	29.2	9.7	3.5	6.2	38.9	1.0
Finance, property & business services	352.4	102.5	53.4	49.0	454.8	0.9
Public administration and defence	110.7	38.4	17.9	20.5	149.1	1.1
Community services	719.9	215.0	113.4	101.7	934.9	1.0
Recreational, personal & other services	249.7	69.7	31.5	38.1	319.4	0.9
Total females	2,466.0	775.2	358.7	416.5	3,241.2	1.0
Persons						
Agriculture etc.	381.9	42.8	20.7	22.1	424.7	0.4
Mining	72.5	23.6	17.3	6.3	96.1	1.0
Manufacturing	751.4	449.0	155.3	293.7	1,200.4	1.5
Food beverages & tobacco	139.2	53.5	16.0	37.5	192.7	1.1
Metal Products	123.7	75.9	28.2	47.7	199.6	1.5
Electricity, gas & water	82.6	22.2	8.6	13.6	104.8	0.8
Construction	407.7	177.6	79.6	98.0	585.3	1.2
Wholesale and retail trade	1,237.7	374.4	170.0	204.5	1,612.1	0.9
Transport & storage	301.5	100.7	46.0	54.6	402.2	1.0
Communication	108.0	37.0	13.1	23.9	145.0	1.0
Finance, property & business services	685.1	219.2	109.4	109.8	904.3	0.9
Public administration and defence	285.2	80.7	38.7	42.0	366.0	0.9
Community services	1,085.0	337.8	180.7	157.1	1,422.8	0.9
Recreational, personal & other services	418.2	143.1	58.4	84.7	561.3	1.0
Total persons	5,816.8	2,008.2	897.9	1,110.3	7,825.0	1.0

Source: ABS Labour Force Survey, August 1990, tables on microfiche, Group 800, Table E24.

* *Relative Concentration Ratio = Nij/Ni / Nj/N where*

N = level of total employment

Ni = level of total overseas born employment

Nj = level of total employment in the industry

Nij = level of overseas born employment in the industry

i.e. the population of all overseas born employed in the industry relative to the share of total employment in industry j.

As mentioned above, overseas born females were particularly over-represented in manufacturing (1.72). Interestingly, overseas born females were over-represented in food, beverages and tobacco (1.41), while overseas born males were under-represented (0.93). Females were also relatively more over-represented in construction (1.26) than males (1.13). However, only a small number of females were employed in construction (75,200). Overseas born females were under-represented in agriculture (0.51), electricity, gas and water (0.71) and the wholesale and retail trade (0.85). Females born outside Australia were over-represented in public administration and defence (1.08), while overseas born males were significantly under-represented (0.72).

Further analysis of the relative concentrations of NESB persons in industry based on Table 4.7 shows that NESB persons (particularly females) were more highly represented in manufacturing than persons born in ES countries. Also, both NESB males and females had a significant over-representation in communication while ESB persons were under-represented.

Persons born in NES countries were significantly under- represented in mining, while persons born in ES countries were over-represented. Also, the significant under-representation of persons born in NES countries in the community services sector was offset by the over- representation of persons born in ES countries.

4.4.2 Occupation Concentrations

Table 4.8 shows an occupation breakdown of employment in Australia in August 1990. At that time, the largest occupation was 'clerks' with 1.33 million persons. Another four occupations each consisted of more than 1 million persons (tradespersons, labourers, salespersons and professionals). The smallest occupation was para-professionals with 472 thousand persons.

The occupation with the largest number of overseas born persons was labourers (354 thousand) followed by tradespersons (339 thousand persons) and clerks (301 thousand persons). Para-professionals contained fewest overseas born persons (112 thousand persons).

Column 6 of Table 4.8 shows the RCR's for males, females and persons (see section 4.4.1 above for explanation). The RCR for total overseas born persons show that they were significantly over-represented as plant and machinery operators and drivers (1.28) and labourers and related workers (1.16). Overseas born were also slightly over-represented as tradespersons (1.09) and professionals (1.05). Overseas born persons were under-represented as salespersons (0.84), managers and administrators (0.85), clerks (0.88) and para-professionals (0.92).

Overseas born males were significantly over-represented as labourers (1.14) and professionals (1.13) and significantly under-represented as managers and administrators (0.85), para-professionals (0.86) and clerks (0.89).

Overseas born females were highly over-represented as plant and machinery operators and drivers (2.30), labourers (1.39) and tradespersons (1.13). They were significantly under- represented as managers and administrators (0.78), salespersons (0.79), professionals (0.92) and clerks (0.93).
Further analysis using data in Table 4.8 reveals that persons born in NES countries are significantly more over-represented as plant and machinery operators and drivers and labourers than persons born in ES countries. NESB persons were significantly under-represented as professionals, para- professionals, clerks and salespersons compared with ESB persons. The concentration of NESB persons was similar to ESB persons in the managers and administrators and tradespersons classifications.

Both NESB males and NESB females were significantly less concentrated in the para-professionals classification than persons born in ES countries. Also, NESB females were significantly more concentrated in the plant and machinery operators and drivers occupation than ESB females.

Table 4.8: Employment by occupation and birthplace August 1990

Occupation (ASCO major group)	Australian born ('000)	Total overseas born ('000)	Main-English speaking countries ('000)	Other than Main-English speaking countries	Total ('000)	RCR (%)
Males						
Managers and administrators	506.2	150.2	68.1	82.1	656.4	0.85
Professionals	412.8	180.9	87.9	93.0	593.7	1.13
Para-professionals	202.3	60.5	33.5	27.0	262.8	0.86
Tradespersons	788.0	306.1	134.6	171.5	1,094.0	1.04
Clerks	229.7	72.0	37.0	35.0	301.7	0.89
Salespersons and personal service workers	309.3	108.9	55.5	53.4	418.2	0.97
Plant & machine operators & drivers	346.8	139.3	54.7	84.6	486.0	1.07
Labourer and related workers	555.8	215.1	67.8	147.3	700.9	1.14
Total Males	3,350.8	1,233.0	539.2	693.8	4,583.8	1.00
Females						
Managers and administrators	166.5	38.0	19.4	18.6	204.6	0.78
Professionals	327.5	92.5	48.3	44.1	420.0	0.92
Para-professionals	157.9	51.2	31.3	19.9	209.1	1.02
Tradespersons	88.8	33.0	15.0	18.0	121.9	1.13
Clerks	798.3	229.1	118.4	110.7	1,027.4	0.93
Salespersons and personal service workers	604.4	140.7	73.3	67.4	745.1	0.79
Plant & machine operators & drivers	42.5	51.9	10.5	41.4	94.4	2.30
Labourer and related workers	280.0	138.7	42.5	96.2	418.7	1.39
Total females	2,466.0	775.2	358.7	416.5	3,241.2	1.00
Persons						
Managers and administrators	672.8	188.2	87.5	100.7	861.0	0.85
Professionals	740.4	273.4	136.3	137.1	1,013.7	1.05
Para-professionals	360.2	111.7	64.8	46.9	471.9	0.92
Tradespersons	876.8	339.1	149.5	189.6	1,215.9	1.09
Clerks	1,028.0	301.2	155.4	145.7	1,329.2	0.88
Salespersons and personal service workers	913.7	249.6	128.8	120.8	1,163.3	0.84
Plant & machine operators & drivers	389.3	191.2	65.2	126.0	580.5	1.28
Labourer and related workers	835.8	353.8	110.4	243.5	1,189.6	1.16
Total persons	5,816.8	2,008.2	897.9	1,110.3	7,825.0	1.00

Source: ABS Labour Force Survey, August 1990, tables on microfiche, Group 800, Table E24.

** Relative Concentration Ratio = Nij/Ni / Nj/N where:*

N = level of total employment

Ni = level of total overseas born employment

Nj = level of total employment in the industry

Nij = level of overseas born employment in the industry

i.e. the population of all overseas born employed in the industry relative to the share of total employment in industry j

4.5 EARNINGS RELATIVITIES

Table 4.9 shows gross weekly income of income recipients by birthplace. These data are from the most recent Income Distribution Survey, undertaken by the ABS in 1986.

Table 4.9 shows that in September-December 1986, persons born in Australia recorded a mean weekly income of $280, while persons born overseas had a slightly lower mean income of $275. Persons born in ES countries recorded a mean income significantly higher than persons born in Australia ($298), while persons born in NES countries recorded a mean income significantly lower ($257) than Australian born.

Persons born in Malta ($207) and Greece ($212) earned the lowest mean weekly incomes of the countries listed in Table 4.9, while persons born in New Zealand ($335) and the UK and Ireland ($289) earned the highest mean weekly incomes. Median weekly incomes were significantly less than mean weekly incomes for all birthplace categories, implying a significant concentration of income earning power among a relatively few high income earners.

Males experienced a higher mean weekly income ($366) than females ($191). This reflects the higher proportion of females than males working part-time. Australian born males experienced a mean weekly income of $371, lower than income earned by males born in ES countries ($383), but significantly higher than males born in NES countries ($327). Males born in New Zealand recorded the highest mean weekly incomes ($400) of the countries listed in Table 4.9, followed by males born in the UK and Ireland ($376). Males born in Poland ($241) and Greece ($276) recorded the lowest mean weekly income.

Females born in New Zealand ($266) and Africa ($217) recorded the highest mean weekly income of the countries listed in Table 4.9. Surprisingly, femal
The ABS (ABS, Queensland 1990) has undertaken a more extensive analysis of the 1986 Income Distribution Survey data using income (usually family) units rather than individuals as the recording unit. The ABS found that generally, the findings relating to individual income were similar to those of income units.

4.6 LABOUR MOBILITY

In the year to February 1990, 18.0% of total employed changed either their employer or their business. Persons born in Australia (18.5%) experienced less job mobility than persons born in ES countries (21.1%), but significantly more job mobility than persons born in NES countries (13.0%). On average, females experienced greater job mobility than males.

4.7 UNIONISATION

Table 4.10 shows the level of unionisation by birthplace at August 1986 and August 1990.

In August 1990, 40.5% of total employees in Australia were members of trade unions. The proportion of Australian born employees who were members of trade unions at this time (39.7%) was slightly greater than the unionisation rate of persons born in ES countries (38.4%), but significantly less than the unionisation rate for persons in NES countries (46.5%).

Between August 1986 and August 1990, the rate of unionisation for all employees decreased from 45.6% to 40.5%. The unionisation rate decreased in all component birthplace categories listed in Table 4.10.

Although NESB immigrant workers have a trade union participation rate significantly higher than either Australian born or ESB immigrant workers, studies undertaken over

Table 4.9: Income recipients (a): Gross weekly income by sex and birthplace September - December 1986

Birthplace	*Number ('000)*	*Mean Income ($)*	*Number ('000)*	*Mean Income ($)*	*Number ('000)*	*Mean Income ($)*	*Median Income ($)*
	Males		*Females*		*Persons*		
Australia	4,050.9	371	4,143.7	191	8,194.6	280	227
Overseas	1,507.2	352	1,358.9	191	2,866.1	275	225
Africa	42.6	347	49.8	217	92.4	277	225
America	36.8	375	33.4	188	70.2	286	234
Asia	214.6	343	203.8	180	418.5	263	205
Vietnam	38.5	274	21.8	148	60.3	229	218
Lebanon	25.9	341	25.5	130	51.3	236	189
Europe	1,120.1	348	976.7	185	2,096.7	272	222
Poland	37.6	241	28.7	202	66.3	224	133
Greece	71.2	276	72.8	150	144.0	212	174
Italy	149.5	301	123.6	169	273.1	241	202
Malta	26.8	284	23.4	119	50.2	207	149
Yugoslavia	89.6	335	65.5	192	155.1	275	256
UK & Ireland	546.6	376	494.2	194	1,040.8	289	238
Oceania	93.0	404	95.3	257	188.3	329	256
New Zealand	83.8	400	78.7	266	162.6	335	261
English speaking countries	659.7	383	607.5	206	1,267.2	298	250
Other than Main-English speaking countries	847.5	327	751.4	178	1,599.0	257	208
TOTAL	5,558.1	366	5,502.6	191	11,060.8	279	266

Source: Australian Bureau of Statistics, Income Distribution Survey, 1986, reproduced from ABS Queensland "The Economic Status of Migrants in Australia", BIR 1990

(a) All persons aged 15 years and over, excluding those with nil, negative or not stated income.

Table 4.10: Employees who were trade union members by birthplace at August 1986 and August 1990

Birthplace	*August 1986*		*August 1990*	
	Number of Members ('000)	*Proportion of all Employees in same Category (%)*	*Number of Members ('000)*	*Proportion of all Employees in same Category (%)*
Born in Australia	1,899.0	44.7	1,932.7	39.7
Born outside Australia	694.9	48.5	726.8	42.8
Born in Main English Speaking Countries	293.5	43.7	293.7	38.4
Born in Other than Main English Speaking Countries	401.4	52.6	433.2	46.5
Total	2,593.9	45.6	2,659.6	40.5

Source: Australia Bureau of Statistics, Trade Union Members Australia, August 1990, Cat No. 6325.0.

the past 20 years suggest that NESB immigrant workers have been disadvantaged in their relations with Australian trade unions.

In 1974, Hearn (Hearn 1974) found that of 320 full-time trade union officials in Victoria, only 9 (2.8%) were from NES backgrounds (Hearn 1974, p.58). 22 full-time officials (6.9%) were born in the UK or Ireland (Hearn 1974, p.37).

Hearn interviewed 24 rank and file unionists, 42 past and present trade union officials and 16 immigrant workplace delegates (Hearn 1974, p.67). She found that generally, immigrants did not actively participate in trade union affairs. Hearn found that discrimination was present in trade union officers' relations with their NESB membership. She noted that a sense of apathy hindered the development of meaningful dialogue between trade union officers and their NESB immigrant membership.

She suggested a number of causes for these difficulties including communication problems (particularly language barriers) between the membership and union officials and a lack of interest and resources in trade union structures which blocked the pursuance of vigorous immigrant specific policies.

More recently, in 1985, Nicolaou (Nicolaou 1985) undertook a detailed study of immigrants' relations to their trade unions in NSW. Nicolaou interviewed 64 trade union officials, 195 union members and surveyed a further 4,200 unionists.

Nicolaou found that in NSW, only 3.1% of full-time trade union officials were NESB immigrants (Nicolaou 1985, p.170). He also found that a further 8.3% were immigrants born in ES countries (Nicolaou 1985, p.163). Of the 142 trade unions in New South Wales in 1985, 49 had one or more officials born overseas (Nicolaou, 1985 p. 167)

Nicolaou identified a number of specific problems:

- although NSW unionists incorporate a diverse range of countries of birth and languages, these characteristics are not reflected in the demographic profile of NSW trade union leaders. NESB immigrants (particularly NESB immigrant women) are significantly under-represented in trade union bureaucracies;

- immigrants (and other unionists from disadvantaged groups such as women) are less likely and able to participate in trade union activities or services. Also, because of the centralised power structures of trade unions, it is more difficult for the delegates of unionists from disadvantaged groups to facilitate activities tailored to their needs within trade unions; and

- because of the philosophy present in the Australian union movement that all unionists are equal members, there is a dis-acknowledgement by union officials of the special interest of factionalised groups within the movement, and a reluctance on the part of officials, to deal with issues which are only specific to certain sections of the rank and file. Accordingly, there is a lack of awareness among officials about the difficulties experienced by the immigrant membership and also a dis-acknowledgement of any relationship existing between the involvement of immigrants in trade union affairs and their representation in trade union structures.

Nicolaou suggested a number of causes of the problems outlined above:

- the approach of most trade union officials is that they will not act unless pressure comes from below. Because immigrants are not a homogeneous group

(ie. they reflect many countries of origin and languages) and experience other difficulties in organising and communicating, immigrants do not have an equal opportunity in getting their view across to the union hierarchy;

. reluctance of trade union officials to involve themselves in issues outside general bread and butter issues because of the possibility of fragmenting the unity of their union in total;

. because trade union structures are democratic, it is unlikely that an NESB immigrant will be elected if NESB members are in a minority (or are less organised than Australian born);

. personal racial or other prejudices of trade union officials or membership themselves, and the view that any affirmative action policies for immigrants will block the process of racial assimilation; and

. lack of trade union resources which restrict the union from implementing immigrant specific policies, even if this was the intention.

On the basis of available evidence, Nicolaou concluded that trade unions as a whole, had done little or nothing to deal with the needs of immigrant workers. He also said that it is likely that immigrants would take a greater interest in the activities of their union if their union took a greater interest in them (Nicolaou 1985, p. 558).

Most recently (July 1990), Griffin and Bertone commenced a study to examine the relationship between immigrants and trade unions in Victoria, and to examine the role of immigrant workers in the workplace. The researchers are surveying all trade unions operating in Victoria and are undertaking detailed case studies of 6 of those unions (including a survey of 1,500 NESB immigrant workers).

Although the study is yet to be completed, Griffin and Bertone have found that trade unions in Victoria have become far more receptive to the needs of their immigrant membership than they were when Hearn undertook her study in 1974.

Approximately 15% of Victorian trade unions now have non-English language sections in their journals or newsletters, while 35% have general multi-lingual information for their membership. 18% of Victorian trade unions now provide interpreters and 16% have bilingual staff.

They also found that 24% of Victorian unions have services specifically geared to NESB immigrants while 7% have immigrant liaison officers. 11% of Victorian unions have training courses for NES members.

Far from servicing the needs of their NESB membership, the studies outlined above suggest that, historically, the trade union movement has been one of the perpetrators of discrimination against immigrant workers in Australia, whether due to ignorance or philosophy. However, as unionisation rates continued to decrease during the 1980's, it is likely that trade unions began to appreciate the necessity of improved services to, communication with and consideration of issues of importance to immigrants. Certainly, the appointment of an Ethnic Liaison Officer by the ACTU in 1981, reflected a change in emphasis by the peak body towards immigrant workers and a recognition of their importance and disadvantage within the Australian workforce and trade union movement. In addition, the most recent (yet to be completed) study in this area by Griffin and Bertone, indicates that services by unions to NESB immigrants in Victoria, have improved over recent years.

None-the-less, Chapter 8 shows that there remains a high degree of resentment towards trade unions by NESB immigrants. The trade union movement will need to continue the process of improved relations with and services to their NESB immigrant

members if they are to stem the ill-feeling of immigrants towards unions, with the associated decrease in union participation. However, if the union movement does continue this progress, the above studies indicate that unions will reap the benefits of a strong, interested and loyal NESB membership.

4.8 OVERVIEW AND CONCLUSION

4.8.1 Overview

Although it impossible to conclude from the indicators of labour force status explored in this chapter that immigrant workers are discriminated against in the Australian labour market, the data does lend itself to analysis of patterns consistent with discrimination.

The data show that immigrant workers from English speaking backgrounds operate more successfully in the Australian labour market than either Australian born or immigrants from non-English speaking backgrounds. Immigrants from ES countries experienced higher labour force participation rates, lower unemployment rates and higher mean weekly earnings than workers born in Australia. In contrast, for both periods studied in chapter 4 (1985 and 1990), immigrants from NES countries consistently experienced lower labour force participation rates, higher unemployment rates and lower mean weekly earnings than Australian born.

As this analysis uses aggregate labour force data, it is impossible to conclude whether NESB immigrants experience disadvantage due to differences in age profile, education or period of residence and unfamiliarity with the Australian economy and society, or whether disadvantage is due to discrimination. Greater disaggregation, like the analysis undertaken by Flatau and Hemmings on transition from education to work (summarised in Chapter 6) is required for such analysis.

Although NESB immigrants experienced poorer labour market performance than ESB immigrants and Australian born workers, persons from NES countries recorded a higher proportion of employed in full-time employment than the other two classifications. NESB immigrants also showed the greatest propensity to establish their own businesses and become employers (particularly Greeks, Italians and Lebanese). The propensity of NESB immigrants to establish their own business increased with period of settlement which implies that a disproportionately high percentage of entrepreneurial activity in Australia is attributable to NESB immigrants.

Immigrant workers (particularly those from NES countries) are concentrated in those industries and occupations generally considered as requiring less skill such as the manufacturing and construction industries and the plant and machine operators and drivers and labourers and related workers occupations. However, it should be noted that overseas born (including NESB immigrants) are over-represented in the highly qualified professionals occupation. Immigrants are under-represented in the salespersons, managers and administrators and clerks occupations (where it is likely that English is an important prerequisite). Immigrant workers also have a higher unionisation rate than Australian born reflecting the employment concentration of migrants in the more highly unionised industries (ie. manufacturing and construction).

Of the countries examined in Chapter 4, persons born in New Zealand and UK and Ireland experienced generally high labour force participation and earnings, consistent with the success ESB immigrants have experienced in the Australian labour force.

Persons born in Southern Europe (ie. Greece, Italy and Malta) although experiencing very low unemployment rates, also experienced low labour force participation and very low mean weekly incomes.

Persons born in Vietnam, Lebanon and Poland experienced very high unemployment rates. In the case of Vietnamese males and females, high unemployment is associated with a very high labour force participation rate. However, the combination of high unemployment rates and low participation rates for Lebanese and Polish males and females is especially worrying. Lebanese females in particular experienced a very low participation rate, although this could reflect cultural beliefs, not solely Australian employment conditions.

The status of females in the Australian labour force improved dramatically between 1985 and 1990, particularly married women. This trend was consistent across all females classifications, including overseas born females. The participation rate for NESB women, while growing less rapidly than the female average, also experienced significant growth.

The analysis of labour mobility undertaken shows that persons born in NES countries have significantly more job mobility than either persons born in Australia or persons born in ES countries. Without further detailed information on job mobility, it is difficult to conclude whether NESB immigrants are disadvantaged in the Australian labour market, by way of job mobility. It is uncertain whether mobility signifies freedom of occupational movement or insecurity of employment.

This difference in labour force status could either be accounted for by rational economic decision making where employers give preference to employees with good written and verbal English skills and previous Australian working experience, or it could be due to discrimination. Using only the aggregate labour force data outlined in this chapter, it is impossible to conclude which explanation is more accurate.

4.8.2 Conclusion

Immigrant workers in Australia from NES countries perform worse than Australian born in most of the labour force aggregates outlined in Chapter 4. Immigrants born in ES countries consistently perform better than Australian born. Although it is not possible to conclude that NESB immigrant workers are discriminated against in the Australian labour market, the results found in Chapter 4 correlate closely with NESB immigrant worker disadvantage. This is in part due to difficulties with the English language, unfamiliarity with the Australian labour market, or discrimination by Australian employers.

Without reference to case studies such as those detailed in Chapter 3 (before the HREOC), or the individual experiences of immigrants outlined in Chapter 8, it is extremely difficult, if not impossible to isolate and determine the cause and effect of labour force disadvantage due to discrimination in this instance.

CHAPTER 5

EDUCATION AND TRAINING

5.1 INTRODUCTION

The purpose of this chapter is to examine evidence of discrimination against immigrants in education and training. Chapter 5 firstly examines participation in secondary (section 5.2) and tertiary (section 5.3) education. It then examines access to on-the-job training, in-house and external training (section 5.4.1), training for promotion (section 5.4.2) and retraining (section 5.4.3). Section 5.5 provides an overview of the data outlined in the chapter (section 5.5.1) and ends with a conclusion of how participation in education and training relate back to possible disadvantage or discrimination against immigrant workers in the labour force (section 5.5.2).

5.2 PARTICIPATION IN SECONDARY EDUCATION

In May 1990, more than 606 thousand persons aged between 15 and 19 were participating in secondary education. Most of these (nearly 441 thousand) were aged between 15 and 16 (Table 5.1).

Table 5.2 shows that in May 1990, the participation rate for females in secondary education was significantly greater than for males (44.2% for females aged between 15 and 19 and 42.9% for males). For females and males aged between 15 and 16, the differential was even greater (86.8% and 80.7% respectively).

The participation rate for persons born in NES countries was significantly higher in May 1990 (90.6% for those aged between 15 and 16 and 53.3% for those aged between 15 and 19) than for either persons born in ES countries (84.5% and 36.3% respectively) or for Australian born (82.9% and 42.4%).

Females generally experienced a higher participation rate in secondary education than males. In May 1990, 53.1% of males born in NES countries aged between 15 and 19 participated in secondary education, compared with a 53.6% participation rate for NESB females. The difference was more dramatic between males (32.0%) and females (41.6%) born in ES countries. Males aged between 15 and 19 years who were born in Australia experienced a participation rate of 41.7% while females recorded a rate of 43.0%.

While Table 5.2 shows participation in secondary education for both 15 to 16 and 15 to 19 age groups, it is very difficult to analyse participation rates in the 15 to 16 year category due to the small sample sizes involved. However, it is possible to provide an accurate description of participation rates in secondary education by gender and birthplace for the 15 to 19 age classification.

Of the birthplaces listed in Table 5.2 in May 1990 in the 15 to 19 age group, persons born in Lebanon (78.6%) experienced the highest level of participation followed by persons born in Malta (68.7%) and Greece (68.0%). Persons born in Poland (20.8%) experienced the lowest level of participation in secondary education followed by those born in the UK and Ireland (34.3%) and persons born in New Zealand (35.1%).

Males in the 15 to 19 age group born in Lebanon (70.1%) experienced the highest level of participation in secondary education followed by males born in Greece (62.8%) and Vietnam (60.9%). Males born in the UK and Ireland experienced the lowest level of participation in secondary education (30.1%) followed by males born in New Zealand (33.0%) and America (39.5%).

Table 5.1: Persons Aged 15 - 19 years: whether participating or not participating in secondary education by birthplace at May 1990

Birthplace	Aged 15-16 years		Aged 15 - 19 years	
	Participating in secondary education	Not participating in secondary education	Participating in secondary education	Not participating in secondary education
Males				
Australia	190,500	48,301	257,534	359,701
Overseas	27,262	3,792	46,313	45,267
Africa	1,808	164	2,533	2,693
America	1,470	515	1,950	2,989
Asia	7,433	316	14,718	10,414
Vietnam	1,197	0	2,312	984
Lebanon	674	0	1,467	941
Europe	7,372	1,531	9,277	18,251
Poland	392	0	392	232
Greece	609	0	609	714
Italy	206	0	429	321
Malta	202	0	202	238
Yugoslavia	•	•	•	1,079
UK & Ireland	4,245	1,530	5,414	12,560
Oceania	3,027	1,266	5,359	9,789
New Zealand	1,998	907	3,503	7,118
Main English Speaking Countries	7,481	2,436	10,545	22,447
Other than Main English Speaking Countries	14,886	1,355	25,799	22,820
Total	217,762	52,093	303,847	404,968
Females				
Australia	195,555	31,597	259,705	343,916
Overseas	27,437	2,183	42,679	37,379
Africa	465	392	1,405	1,690
America	3,597	0	4,205	3,464
Asia	7,407	733	14,620	7,887
Vietnam	1,331	0	3,783	676
Lebanon	•	•	•	•
Europe	7215	287	10,373	13,644
Poland	645	0	645	256
Greece	149	0	149	125
Italy	501	0	501	103
Malta	•	•	•	•
Yugoslavia	•	•	•	•
UK & Ireland	4,226	287	5,543	8,424
Oceania	3,795	64	5,078	8,110
New Zealand	2529	65	3,130	5,166
Main English Speaking Countries	8,514	495	11,207	15,707
Other than Main English Speaking Countries	14,324	1,688	24,991	21,673
Total	222,992	33,780	302,384	381,295
Persons				
Australia	386,054	79,899	517,239	703,617
Overseas	54,700	5,974	88,992	82,646
Africa	2,273	556	3,938	4,383
America	5,067	515	6,156	6,452
Asia	14,840	1,049	29,338	18,301
Vietnam	2,528	0	6,095	1,661
Lebanon	674	257	1,467	1,957
Europe	14,587	1,818	19,650	31,895
Poland	1,037	0	1,037	489
Greece	758	0	758	839
Italy	707	0	930	424
Malta	202	0	202	767
Yugoslavia	•	•	•	•
UK & Ireland	8,471	1,818	10,958	20,983
Oceania	6,821	1,331	10,437	17,899
New Zealand	4,528	970	6,633	12,284
Main English Speaking Countries	15,994	2,932	21,753	38,153
Other than Main English Speaking Countries	29,210	3,043	50,790	44,492
Total	440,754	85,873	606,231	786,263

Source: Australian Bureau of Statistics, Transition From Education to Work, May 1990, Cat No. 6227.0 (unpublished data)

Table 5.2: Persons aged 15 - 19 years: participation rates in secondary education by birthplace at May 1990

	Males (Per cent)		Females (Per cent)		Persons (Per cent)	
	Aged 15 - 16	Aged 15 - 19	Aged 15 - 16	Aged 15 - 19	Aged 15 - 16	Aged 15 - 19
Birthplace						
Australia	79.8	41.7	86.1	43.0	82.9	42.4
Overseas	87.8	50.6	92.6	53.3	90.2	51.8
Africa	91.7	48.5	54.3	45.4	80.3	47.3
America	74.1	39.5	*	54.8	90.8	48.8
Asia	95.9	58.6	91.0	65.0	93.4	61.6
Lebanon	*	70.1	*	84.8	*	78.6
Vietnam	*	60.9	*	*	72.4	42.8
Europe	82.8	33.7	96.2	43.2	88.9	38.1
Greece	*	62.8	*	71.6	*	68.0
Italy	*	46.0	*	54.4	*	47.5
Malta	*	57.2	*	82.9	*	68.7
Poland	*	45.9	*	*	*	20.8
Yugoslavia	*	*	*	*	*	*
UK & Ireland	73.5	30.1	93.6	39.7	82.3	34.3
Oceania	70.5	35.4	98.3	38.5	83.7	36.8
New Zealand	68.8	33.0	97.5	37.7	82.4	35.1
Main English Speaking Countries	75.4	32.0	94.5	41.6	84.5	36.3
Other Than Main English Speaking Countries	91.7	53.1	89.5	53.6	90.6	53.3
TOTAL	80.7	42.9	86.8	44.2	83.7	43.5

Source: Australian Bureau of Statistics, Transition from Education to Work, May 1990, Cat No. 6227.0 (unpublished data)
* Sample size too small for accurate result.

For females, those born in Lebanon (84.8%), Malta (82.9%) and Greece (71.6%) experienced the highest participation rates while females born in New Zealand (37.7%), the UK and Ireland (39.7%) and Africa (45.4%) experienced the lowest participation rates.

It should be noted that although a high participation rate for secondary education in the 15 to 16 age group is associated with educational and economic advantage, this is not necessarily the case for the 15 to 19 age group. A high participation rate in the latter grouping can reflect educational disadvantage, as older students (18 and 19 years) may be staying within the secondary education system while advantaged students enter the tertiary education system.

5.3 PARTICIPATION IN POST-SECONDARY EDUCATION

Table 5.3 shows that in May 1990, nearly 630 thousand persons aged between 15 and 24 years of age attended some form of tertiary education institution. More than 326 thousand of these attended either universities or colleges of advanced education while the remainder (about 304 thousand) attended other tertiary institutions. Females were more highly represented (51.8%) than males in universities and colleges of advanced education. Males achieved a far higher representation in the 'other tertiary institution' classification (59.6%).

Table 5.4 shows that 23.2% of persons aged between 15 and 19 participated in tertiary education in May 1990, while persons aged between 20 and 24 recorded a participation rate of 23.0%. The participation rate for males (24.5% for both age groups) was greater than for females (21.8% and 21.6% respectively).

As with secondary education, persons born in NES countries recorded a higher rate of participation in tertiary education for both the 15 to 19 (27.9%) and 20 to 24 (39.1%) age groups than either persons born in ES countries (18.6% and 16.7% respectively) or persons born in Australia (23.3% and 21.7% respectively). This was the situation amongst both males and females.

Persons born in Greece achieved the highest rate of participation in tertiary education in the 15 to 19 age group (37.2%) followed by those born in America (30.1%) and Lebanon (29.0%). Persons born in New Zealand (7.7%), Vietnam (13.5%) and Africa (17.5%) experienced the lowest participation rates in tertiary education.

In the 20 to 24 age group, persons born in Africa achieved the highest rate of participation (39.0%) followed by persons born in Vietnam (38.2%) and Greece (30.2%). The lowest participants in tertiary education were persons born in the UK and Ireland (15.6%), Yugoslavia (16.8%) and America (17.2%).

Persons born in Australia seem to attend tertiary institutions earlier than overseas born. In May 1990, the participation rate for Australian born was 23.3% in the 15 to 19 age group and then dropped to 21.7% for the 20 to 24 age group. However, persons born overseas experienced only a 21.9% participation rate for the 15 to 19 age group, but 29.6% for those aged 20 to 24. This implies that although proportionately more overseas born receive the benefits of a tertiary education than Australian born, Australian youth obtain their qualifications and enter the labour force significantly faster than overseas born.

Although the sample sizes for the 15 to 19 age groups are too small to obtain accurate results by gender and birthplace, we are able to analyse the male component of the 20 to 24 age group by birthplace.

For males aged 20 to 24 years, those born in Greece achieved the highest participation in tertiary education (54.7%), followed by males born in Vietnam (51.4%) and Africa (47.2%). Males born in New Zealand achieved the lowest level of participation in tertiary education (14.6%) followed by males born in the UK and Ireland (16.5%) and Italy (16.6%).

Table 5.3: Persons aged 15 - 24 years: whether attending tertiary institution and type of institution by birthplace at May 1990

Birthplace	Aged 15-19 years			Aged 20 - 24 years		
	Attended higher education institution #	Attended other Tertiary institution	Did not attend Tertiary institution	Attended higher education institution #	Attended other Tertiary institution	Did not attend Tertiary institution
Males						
Australia	53,743	98,656	464,836	68,272	60,462	429,744
Overseas	12,269	8,818	70,493	22,984	12,909	76,937
Africa	590	265	4,371	1,101	320	1,584
America	1,212	560	3,167	2,543	257	4,293
Asia	4,427	2,854	17,851	11,625	5,160	12,747
Vietnam	241	279	2,776	2,258	405	2,517
Lebanon	241	237	1,930	490	517	2,298
Europe	4,102	4,833	18,593	5,859	4,586	40,415
Poland	*	*	*	*	*	*
Greece	*	*	*	232	753	812
Italy	*	*	*	222	270	2,466
Malta	*	*	*	*	*	*
Yugoslavia	*	*	*	401	963	4,390
UK & Ireland	2,465	3,742	11,767	2,883	2,303	26,315
Oceania	1,465	347	13,336	1,368	1,911	13,894
New Zealand	382	264	9,975	714	1,420	12,503
Main English Speaking Countries	3,605	4,271	25,116	3,649	4,835	41,467
Other than Main English Speaking Countries	8,664	4,546	35,409	18,224	9,184	35,471
Total	66,012	107,474	535,329	91,256	73,371	506,681
Females						
Australia	69,590	62,649	471,382	69,509	41,425	432,753
Overseas	11,565	4,991	63,502	18,265	13,715	84,882
Africa	*	*	*	*	*	*
America	1,548	491	5,630	*	*	*
Asia	3,921	1,620	16,966	10,285	5,398	13,347
Vietnam	*	*	*	508	232	2,989
Lebanon	*	*	*	*	*	*
Europe	1,945	2,373	19,699	4,082	4,196	44,429
Poland	*	*	*	*	*	*
Greece	*	*	*	*	*	*
Italy	*	*	*	594	421	2,249
Malta	*	*	*	*	*	*
Yugoslavia	*	*	*	*	*	*
UK & Ireland	922	793	12,252	2,743	1,906	27,023
Oceania	2,572	264	10,352	1,423	2,525	13,058
New Zealand	*	*	*	795	2,208	11,119
Main English Speaking Countries	2,357	897	23,660	3,678	4,240	40,304
Other than Main English Speaking Countries	9,208	4,095	33,361	14,587	9,475	44,579
Total	81,155	67,640	534,884	87,774	55,140	517,635
Persons						
Australia	123,333	161,305	936,218	137,780	101,888	862,496
Overseas	23,834	13,809	133,995	41,249	26,624	161,820
Africa	1,091	369	6,861	1,197	824	3,166
America	2,759	1,050	8,799	3,121	383	9,691
Asia	8,347	4,476	34,816	21,910	10,558	26,093
Vietnam	767	279	6,710	2,767	636	5,506
Lebanon	497	495	2,432	490	1,238	7,690
Europe	6,046	7,207	38,292	9,942	8,781	84,844
Poland	*	*	*	*	*	*
Greece	125	470	1,002	357	754	2,564
Italy	*	*	*	816	691	4,716
Malta		*	*	*	*	*
Yugoslavia	*	*	*	401	1,521	9,547
UK & Ireland	3,387	4,535	24,019	5,625	4,210	53,338
Oceania	4,037	100	23,688	2,791	4,436	26,952
New Zealand	1,183	264	17,470	1,508	3,629	23,621
Main English Speaking Countries	5,961	5,168	48,777	8,438	7,964	81,770
Other than Main English Speaking Countries	17,872	8,641	68,769	32,811	18,660	80,049
Total	147167	175,114	1,070,213	179,029	128,512	1,024,316

Source: Australian Bureau of Statistics, Transition from Education to Work, May 1990, Cat No. 6227.0 (Unpublished Data)

Consists of Universities and Colleges of Advanced Education

* Sample size too small for accurate result

Table 5.4: Persons aged 15-24 years: Participation rates in tertiary institutions by type of institution and birthplace at May 1990

Birthplace	Aged 15 - 19 years			Aged 20 - 24 years		
	Attended Higher Education Institution # (Per cent)	Attended Other Tertiary Education Institution (Per cent)	Total (Per cent)	Attended Higher Education Institution # (Per cent)	Attended Other Tertiary Education Institution (Per cent)	Total (Per cent)
Males						
Australia	8.7	16.0	24.7	12.2	10.8	23.0
Overseas	13.4	9.6	23.0	20.4	11.4	31.8
Africa	11.3	5.1	16.4	36.6	10.6	47.2
America	24.5	11.3	35.8	35.9	3.6	39.5
Asia	17.6	11.4	29.0	39.4	17.5	56.9
Vietnam	7.3	8.5	15.8	43.6	7.8	51.4
Lebanon	10.0	9.8	19.8	14.8	15.6	30.4
Europe	14.9	17.6	32.5	11.5	9.0	20.5
Poland	*	*	*	*	*	*
Greece	*	*	*	12.9	41.8	54.7
Italy	*	*	*	7.5	9.1	16.6
Malta	*	*	*	*	*	*
Yugoslavia	*	*	*	7.0	16.7	23.7
UK & Ireland	13.7	20.8	34.5	9.2	7.3	16.5
Oceania	9.7	2.3	12.0	8.0	11.1	19.1
New Zealand	3.4	2.5	5.9	4.9	9.7	14.6
Main English Speaking Countrie	10.9	12.9	23.8	7.3	9.7	17.0
Other than Main English Speaking Countries	17.8	9.4	27.2	29.0	14.6	43.6
Total	9.3	15.2	24.5	13.6	10.9	24.5
Females						
Australia	11.5	10.4	21.9	12.8	7.6	20.4
Overseas	18.2	6.2	24.4	15.6	11.7	27.3
Africa	*	*	*	*	*	*
America	20.2	6.4	26.6	*	*	*
Asia	17.4	7.2	24.6	35.4	18.6	54.0
Vietnam	*	*	*	13.6	6.2	19.8
Lebanon	*	*	*	*	*	*
Europe	8.1	9.9	18.0	7.7	8.0	15.7
Poland	*	*	*	*	*	*
Greece	*	*	*	*	*	*
Italy	*	*	*	18.2	12.9	31.1
Malta	*	*	*	*	*	*
Yugoslavia	*	*	*	*	*	*
UK & Ireland	6.6	5.7	12.3	8.7	6.0	14.7
Oceania	19.5	2.0	21.5	8.4	14.8	23.2
New Zealand	*	*	*	5.6	15.6	21.2
Main English Speaking Countrie	8.8	3.3	12.1	7.6	8.8	16.4
Other than Main English Speaking Countries	19.7	8.8	28.5	21.3	13.8	35.1
Total	11.9	9.9	21.8	13.3	8.3	21.6
Persons						
Australia	10.1	13.2	23.3	12.5	9.2	21.7
Overseas	13.9	8.0	21.9	18.0	11.6	29.6
Africa	13.1	4.4	17.5	23.1	15.9	39.0
America	21.8	8.3	30.1	17.0	0.2	17.2
Asia	17.5	9.4	26.9	37.4	18.0	55.4
Vietnam	9.9	3.6	13.5	31.1	7.1	38.2
Lebanon	14.5	14.5	29.0	5.2	13.1	18.3
Europe	11.7	14.0	25.7	9.6	8.5	18.1
Poland	*	*	*	*	*	*
Greece	7.8	29.4	37.2	9.7	20.5	30.2
Italy	*	*	*	13.1	11.1	24.2
Malta	*	*	*	*	*	*
Yugoslavia	*	*	*	3.5	13.3	16.8
UK & Ireland	10.6	14.2	24.8	8.9	6.7	15.6
Oceania	14.5	0.4	14.9	8.2	13.0	21.2
New Zealand	6.3	1.4	7.7	5.2	12.6	17.8
Main English Speaking Countrie	10.0	8.6	18.6	8.6	8.1	16.7
Other than Main English Speaking Countries	18.8	9.1	27.9	24.9	14.2	39.1
Total	10.6	12.6	23.2	13.4	9.6	23.0

Source: Australian Bureau of Statistics, Transition from Education to Work, May 1990 Cat No 6227.0, (unpublished data)

Consists of Universities and Colleges of Advanced Education

* Sample size range too small for accurate result

5.4 ACCESS TO TRAINING

5.4.1 On-the-Job, In House and External Training

In the 12 months to July 1990, 34.9% of persons employed at July 1990 undertook some form of in-house training. The majority of employees (71.8%) undertook some form of on-the- job training while a significant proportion (9.8%) attended at least one external training course (Table 5.5).

Persons born in Australia experienced the highest proportion of on-the-job training (73.3%) followed by persons born in ES countries (71.9%) and NES countries (63.1%). However, for both internal and external training, persons born in ES countries ranked higher (37.3% and 12.9% respectively) than Australian born (36.2% and 9.9%). Again persons born in NES countries undertook fewest courses (25.0% attended at least one internal training course while only 6.8% attended some external training). This situation was true for both males and females.

Among overseas born, persons born in Africa experienced the highest participation rate for in-house training (40.1%) followed by persons born in the UK and Ireland (37.9%) and New Zealand (33.6%). Persons born in Vietnam (10.6%) experienced the lowest rate of in-house training followed by persons born in Greece (12.8%) and Lebanon (14.4%).

Persons born in New Zealand (81.0%) experienced the highest rate of on-the-job training in the 12 months to July 1990. American born experienced the second highest rate of participation (75.4%) followed by African born (74.9%). Interestingly, persons born in Vietnam recorded the fourth highest rate of participation in on-the-job training (71.9%) while recording the lowest rate of in-house training.

Persons born in Yugoslavia experienced the lowest rate of on-the-job training (42.2%) followed by persons born in Italy (47.3%) and Malta (48.5%).

For external training courses, persons born in the UK and Ireland (13.1%) experienced the highest participation rate in the 12 months to July 1990 followed by persons born in New Zealand (11.5%) and Africa (10.6%). Again, persons born in Yugoslavia experienced the lowest rate of participation (1.8%) followed by Polish born (2.7%) and Greek born (3.6%).

Further analysis of Table 5.5 shows that the results in the gender breakdown are generally consistent with the results for persons described above.

5.4.2 Training for Promotion

Table 5.6 shows that, for the purposes of promotion, in the 12 months to July 1990, 8.2% of total employees participated in in-house training and 1.6% attended at least one external training course. A higher proportion of Australian born persons (8.5%) attended in-house training courses to assist promotion than either persons born in ES (7.9%) or NES countries (7.0%). A relatively greater proportion of persons from ES countries (1.7%) attended external training courses to assist promotion than Australian born (1.6%) or persons born in NES countries (1.4%).

Among overseas born, persons born in Poland experienced the highest rate of participation in in-house training to assist in obtaining a promotion (9.0%). Persons born in Yugoslavia experienced the second highest rate (8.7%) followed by persons born in the UK and Ireland (8.4%). Persons born in Vietnam experienced the lowest participation rate (1.5%) followed by persons born in Greece (3.3%) and Lebanon (3.4%).

Table 5.5: How workers get their training: proportion of persons who had a wage or salary job and undertook training activities in the twelve month to July 1990 by birthplace

Birthplace	Undertook at least one in-house training course (Per cent)	Undertook on the job training activities (Per cent)	Undertook at least one external training course (Per cent)
Males			
Born in Australia	36.5	72.5	10.1
Born Outside Australia	30.9	67.0	11.1
Africa	38.9	74.2	12.9
America	35.4	67.2	11.5
Asia	26.2	77.2	10.3
Lebanon	19.5	61.2	9.6
Vietnam	8.2	75.5	1.2
Europe	32.4	62.2	11.4
Greece	6.4	51.5	*
Italy	15.4	43.5	7.1
Malta	29.5	46.0	6.9
Poland	31.8	61.6	*
UK & Ireland	39.8	69.2	16.2
Yugoslavia	21.7	43.2	2.3
Oceania	26.9	78.1	9.3
New Zealand	27.3	80.1	10.2
Main English Speaking Countries	37.7	69.5	15.3
Other Than Main English Speaking Countries	25.3	63.1	7.7
Total	35.1	71.1	10.4
Females			
Born in Australia	35.8	74.3	9.6
Born Outside Australia	30.6	67.5	7.5
Africa	41.7	7.6	7.2
America	30.8	87.0	3.4
Asia	29.1	72.0	7.1
Lebanon	*	75.5	*
Vietnam	17.4	61.6	11.5
Europe	29.0	62.2	7.2
Greece	19.8	50.4	7.6
Italy	14.2	54.5	2.6
Malta	15.4	53.0	2.0
Poland	28.0	70.7	5.4
UK & Ireland	35.4	67.8	8.9
Yugoslavia	12.3	40.7	0.9
Oceania	40.0	81.2	11.4
New Zealand	41.8	82.2	13.2
Main English Speaking Countries	36.9	72.0	9.8
Other Than Main English Speaking Countries	24.7	63.3	5.4
Total	34.6	72.7	9.1
Persons			
Born in Australia	36.2	73.3	9.9
Born Outside Australia	30.8	67.2	9.6
Africa	40.1	74.9	10.6
America	33.5	75.4	8.1
Asia	27.4	75.1	9.0
Lebanon	14.4	65.0	7.1
Vietnam	10.6	71.9	3.9
Europe	31.0	62.2	9.7
Greece	12.8	51.0	3.6
Italy	15.0	47.3	5.6
Malta	24.5	48.5	5.2
Poland	29.9	66.1	2.7
UK & Ireland	37.9	68.6	13.1
Yugoslavia	18.1	42.2	1.8
Oceania	32.7	79.5	10.2
New Zealand	33.6	81.0	11.5
Main English Speaking Countries	37.3	71.9	12.9
Other Than Main English Speaking Countries	25.0	63.1	6.8
Total	34.9	71.8	9.8

Source: Australian Bureau of Statistics, How Workers Get Their Training, Australia 1990, Cat No. 6278.0, (unpublished data).
* Sample size too small for accurate result
Note: Persons undertaking different forms of training are not necessarily mutually exclusive

Table 5.6: How workers get their training : persons who had a wage or salary job in the last 12 months at July 1990 who attended at least one in-house or external training course to help obtain a promotion by birthplace

Birthplace	Attended at least one in-house training course to help obtain a promotion (Per cent)	Attended at least one external training course to help obtain a promotion (Per cent)
Males		
Born in Australia	9.4	2.0
Born Outside Australia	7.9	2.0
Africa	9.7	2.9
America	6.2	1.2
Asia	5.7	2.8
Lebanon	4.6	•
Vietnam	•	•
Europe	8.6	1.8
Greece	0.9	•
Italy	3.6	0.9
Malta	7.2	2.3
Poland	9.4	•
UK & Ireland	9.5	2.4
Yugoslavia	12.5	1.2
Oceania	6.4	2.1
New Zealand	6.0	1.9
Main English Speaking Countries	8.6	2.3
Other Than Main English Speaking Countries	7.4	1.8
Total	9.0	2.0
Females		
Born in Australia	7.3	1.2
Born Outside Australia	6.7	0.8
Africa	6.3	•
America	3.5	1.5
Asia	7.8	1.6
Lebanon	•	•
Vietnam	5.9	11.5
Europe	6.0	0.6
Greece	5.9	0.9
Italy	5.2	•
Malta	•	•
Poland	8.5	•

UK & Ireland	6.9	0.9
Yugoslavia	2.8	*
Oceania	9.9	0.3
New Zealand	8.4	0.4
Main English Speaking Countries	6.9	0.9
Other Than Main English Speaking Countries	6.4	0.7
Total	7.1	1.1
Persons		
Born in Australia	8.5	1.6
Born Outside Australia	7.4	1.5
Africa	8.3	1.7
America	5.1	1.4
Asia	6.6	2.3
Lebanon	3.4	*
Vietnam	1.5	3.0
Europe	7.5	1.3
Greece	3.3	0.4
Italy	4.2	0.6
Malta	4.7	1.5
Poland	9.0	*
UK & Ireland	8.4	1.8
Yugoslavia	8.7	0.7
Oceania	8.0	1.3
New Zealand	7.1	1.2
Main English Speaking Countries	7.9	1.7
Other Than Main English Speaking Countries	7.0	1.4
Total	8.2	1.6

Source: Australian Bureau of Statistics, How Workers Get Their Training, Australia 1990, Cat No. 6278.0 (unpublished data)

* Sample size too small for accurate result.

Note: Persons undertaking different forms of training are not necessarily mutually exclusive.

In contrast with persons undertaking in-house training, persons born in Vietnam were most likely to be undertaking external training for the purpose of obtaining promotion (3.0%) in the 12 months to July 1990 than any other nationality listed in Table 5.6. Second most likely were persons born in the UK and Ireland (1.8%) and Africa (1.7%). Persons born in Greece were least likely to undertake external training courses to obtain promotion (0.4%) followed by Italian born (0.6%) and Yugoslavian born (0.7%).

Although sample sizes are too small to obtain a meaningful gender breakdown for persons who undertook external training to assist promotion, the detailed gender breakdown in Table 5.6 for persons who undertook in-house training to assist in obtaining a promotion provides some insight into gender differences in training for promotional opportunities.

Males born in Australia were more likely to attend in-house training to help obtain a promotion (9.4%) than either males born in ES countries (8.6%) or NES countries (7.4%). However, significant variance between males from different birthplaces continues. Males from Yugoslavia were most likely to attend in-house training for promotion (12.5%) followed by African born males (9.7%) and males born in the UK and Ireland (9.5%). Males born in Greece were least likely to undertake in-house training for promotion (0.9%) followed by Italian born males (3.6%) and Lebanese born males (4.6%).

Females born in Australia were also more likely to undertake in-house training to assist in obtaining a promotion (7.3%) than either females born in ES countries (6.9%) or females born in NES countries (6.4%). Among overseas born females, those born in Poland experienced the highest participation rate (8.5%) followed by New Zealand born females (8.4%) and females born in the UK and Ireland (6.9%). Females born in Yugoslavia were least likely (2.8%) followed by American born (3.5%) and Italian born (5.2%) females.

Overall, males were significantly more likely to undertake in-house training for promotion (9.0%) than females (7.1%). Males were also more likely to undertake external training (2.0% compared with 1.1%).

5.4.3 Retraining

Table 5.7 shows that in the 12 months to July 1990, 10.5% of total employees undertook some form of in-house training for the purpose of retraining. Similarly, 2.6% of employees undertook external retraining. Persons born in ES countries recorded the highest participation in-house and external training for the purpose of retraining (11.0% and 2.9% respectively) followed by Australian born (10.8% and 2.6% respectively) and persons born in NES countries (8.0% and 2.1%).

Table 5.7 shows a gender breakdown of persons who participated in an in-house course for retraining. Males from ES countries (12.4%) were more likely to attend in-house retraining than either Australian born (11.0%) or NES males (8.2%). However, females born in Australia (10.6%) were more likely to attend in-house retraining than either females born in ES (9.2%) or NES countries (7.7%).

Persons born in Africa (14.2%) were most likely to participate in in-house retraining. Persons born in Poland and New Zealand were equally second most likely (both 10.9%). Persons born in Lebanon (2.4%) were least likely to undertake an in-house retraining course, followed by Italian (3.3%) and Vietnamese (3.4%) born persons.

A gender breakdown of persons who participated in at least one external training course for the purpose of retraining shows that males born in ES countries (3.3%) were most likely to participate. Males born in Australia and NES countries were equally likely to attend (both 2.6%). As with in-house retraining, Australian born females were most likely to attend an external course for retraining (2.6%) followed by females born in ES countries (2.4%) and females born in NES countries (1.2%).

Table 5.7: How workers get their training: persons who had a wage or salary job in the last twelve months who attended at least one internal or external training course for retraining

Birthplace	Attended at lease one in-house training course for retraining (Per cent)	Attended at least one external training course for retraining (Per cent)
Males		
Born in Australia	11.0	2.6
Born Outside Australia	10.1	2.9
Africa	11.5	4.2
America	3.0	2.5
Asia	10.7	3.6
Lebanon	1.2	*
Vietnam	4.6	19.9
Europe	10.1	2.7
Greece	2.7	*
Italy	2.3	2.2
Malta	9.9	4.2
Poland	5.1	*
UK & Ireland	13.0	3.4
Yugoslavia	7.5	1.2
Oceania	10.2	1.6
New Zealand	10.5	1.9
Main English Speaking Countries	12.4	3.3
Other Than Main English Speaking Countries	8.2	2.6
Total	10.8	2.7
Females		
Born in Australia	10.6	2.6
Born Outside Australia	8.4	1.8
Africa	18.0	2.3
America	6.2	1.5
Asia	9.4	1.8
Lebanon	5.9	2.0
Vietnam	*	1.8
Europe	7.0	2.0
Greece	7.8	2.0
Italy	5.0	1.8
Malta	2.0	2.0
Poland	16.8	2.7
UK & Ireland	8.0	2.1
Yugoslavia	5.1	*
Oceania	11.5	2.2
New Zealand	11.5	2.8
Main English Speaking Countries	9.2	2.4
Other Than Main English Speaking Countries	7.7	1.2

Total	10.1	2.4
Persons		
Born in Australia	10.8	2.6
Born Outside Australia	9.4	2.5
Africa	14.2	3.4
America	4.3	2.1
Asia	10.1	2.4
Lebanon	2.4	1.4
Vietnam	3.4	*
Europe	8.8	2.4
Greece	5.1	1.0
Italy	3.3	2.1
Malta	7.1	3.4
Poland	10.9	1.3
UK & Ireland	10.8	2.8
Yugoslavia	6.6	0.7
Oceania	10.7	1.9
New Zealand	10.9	2.3
Main English Speaking Countries	11.0	2.9
Other Than Main English Speaking Countries	8.0	2.1
Total	10.5	2.6

Source: Australian Bureau of Statistics, How Workers Get Their Training, Australia 1990, Cat No. 6278.0 (unpublished data)

* Sample size too small for accurate result.

Note: Persons undertaking different forms of training are not necessarily mutually exclusive.

Maltese and African born persons were equally most likely to undertake external retraining (both 3.4%) followed by persons born in the UK and Ireland (2.8%). Persons born in Yugoslavia were least likely to participate in external courses for retraining (0.7%) followed by persons born in Greece (1.0%) and Poland (1.3%).

5.5 OVERVIEW AND CONCLUSION

5.5.1 Overview

As in Chapter 4, it is impossible to conclude from indicators of participation in education and training, that immigrant workers are discriminated against in the Australian labour market (as the analysis is based on a static comparison rather than detailed cause and effect). However, once again the data does allow analysis of patterns consistent with discrimination.

Chapter 5 shows that persons born in NES countries are advantaged in respect of education. NESB born experienced the highest participation rate in both secondary and tertiary education in Australia in May 1990. In contrast, persons born in ES countries experienced the lowest participation in secondary and tertiary education.

This situation is the reverse to the labour force aggregates outlined in Chapter 4, where ESB immigrants were consistently the most advantaged and NESB immigrants were the most disadvantaged.

Chapter 5 also shows that females have a higher participation rate in education than males. Irrespective of birthplace, in secondary education females born in ES countries consistently record a higher participation rate than their male counterparts. Males and females born in NES countries have very similar participation rates (both of which are very high compared with ESB immigrants and Australian born).

Females generally recorded higher participation rates in Universities and Colleges of Advanced Education, while males experienced higher participation in the 'Other Tertiary Institutions' (primarily trades) classification. For NES immigrants, proportionately more females attended tertiary education at younger ages, while NESB males experienced higher participation in the 20 to 24 age group. In the case of ESB immigrants, the reverse was true.

Overall, as mentioned in Section 5.2, Australian born seem to attend tertiary education earlier than overseas born and move into the labour force faster (implying a higher rate of achievement), while in aggregate, a higher proportion of overseas born do attend some form of tertiary institution.

Although NESB immigrants participate in the educational system to a greater extent than ESB immigrants or Australian born, they remain disadvantaged in respect of training. NESB immigrants recorded the lowest participation rate for on-the job, in-house and external training. Conversely, ESB immigrants experienced a high rate of participation for on-the job training and experienced the highest participation rate in both in-house and external training. NESB immigrants also recorded the lowest participation rate in training for promotion and retraining, while ESB immigrants experienced the highest participation rate in total for both classifications. Unlike the data on participation in secondary and tertiary education, the results of the training data coincide closely with the conclusions of NESB immigrant disadvantage in the labour force aggregates outlined in Chapter 4. Undoubtedly, NESB immigrants are disadvantaged in respect of training in the workplace.

5.5.2 Conclusion

The data on training outlined in Chapter 5 suggest that NESB immigrants already in the labour force experience fewer opportunities for promotion and multi-skilling than either ESB immigrants or Australian born. In a time of economic contraction and rapid structural adjustment, fewer training opportunities (and in particular retraining), suggests that NESB immigrants will be less able to adapt sufficiently fast to the changing economy and enterprise. As economic restructuring continues in Australia, there is a strong likelihood that NESB immigrants will continue to contribute disproportionately to structural unemployment.

However, the data on education indicate that the younger generation of NESB immigrants (those aged between 15 and 24) will (on average) achieve higher educational standards than either immigrants born in ES countries or Australian born. None-the-less, NESB born youth enter the labour market at an older age than either Australian born or ESB born. This may put NESB youth at a disadvantage when competing for jobs. However, it could imply that they are better placed to enter the labour market, particularly in times of rapid economic change. Without further research on this topic it is impossible to conclude either way.

CHAPTER 6

TRANSITION FROM EDUCATION TO WORK

6.1 INTRODUCTION

The purpose of this chapter is to examine the transition of immigrants from education to work and to identify differences between the experience of first, second and later generation immigrants. Chapter 6 begins with an examination of the transition of immigrants from secondary education to work (section 6.2) and tertiary education to work (section 6.3). The chapter then examines the relationship between educational attainment and participation rates (section 6.4.1) and unemployment rates (section 6.4.2). Second and higher generation immigrants are then compared with first generation immigrants in section 6.5 which summarises the findings of the Flatau and Hemmings study 'Labour Market Experience, Education and Training of Young Migrants in Australia' (1991). Concluding comments are offered in section 6.6.

6.2 TRANSITION FROM SECONDARY EDUCATION TO WORK

Table 6.1 shows the labour force status at May 1989 of persons who had attended a secondary education institution full-time in the previous year but no longer did so. At May 1989, 93.2% of total persons in this classification were participating in the labour force. Persons born in ES countries experienced the highest rate of labour force participation (94.1%), slightly higher than the rate for persons born in Australia (93.9%). Persons born in NES countries experienced the lowest participation rate (81.2%).

In most instances, the labour force participation rate in May 1989 of males who had attended a secondary education institution full-time in the previous year was greater than that of females. Australian born males experienced the highest rate of participation in the labour force (95.1%) followed by males born in ES countries (92.0%). Again, males born in NES countries experienced the lowest participation rate (91.9%).

Females born in ES countries experienced the highest rate of participation in the labour force (96.8%) followed by Australian born females (92.4%). Females born in NES countries experienced a participation rate significantly less than the rates for the other two classifications (70.0%).

Table 6.1: Transition from education to work: labour force status at May 1989 for persons who attended secondary education institution full-time in 1988 by birthplace

Birthplace	Labour force (Per cent)	Employed in labour force (Per cent)	Unemployment rate (Per cent)	Not in the labour force (Per cent)
Males				
Born in Australia	95.1	87.6	12.4	4.9
Born outside Australia	91.9	85.9	14.1	8.1
Main English speaking countries	92.0	80.4	19.6	7.9
Other than main English speaking countries	91.7	91.3	8.7	8.3
Total	94.8	87.4	12.6	5.2
Females				
Born in Australia	92.4	85.3	14.7	7.6
Born outside Australia	81.7	66.1	33.9	18.3
Main English speaking countries	96.8	76.4	23.6	3.2
Other than main English speaking countries	70.0	55.1	44.9	30.0
Total	91.3	83.6	16.4	8.7
Persons				
Born in Australia	93.9	86.6	13.4	6.1
Born outside Australia	87.2	77.4	22.6	12.8
Main English speaking countries	94.1	78.7	21.3	5.9
Other than main English speaking countries	81.2	76.2	23.8	18.8
Total	93.2	85.7	14.3	6.8

Source: Australian Bureau of Statistics, Transition from Education to Work Survey May, 1989 (unpublished data) reproduced from ABS Queensland 1990, The Economic Status of Migrants in Australia, AGPS, Canberra.

In May 1989, of persons who had attended a secondary education institution full-time in the previous year, Australian born persons experienced the lowest unemployment rate (13.4%). Persons born in both ES (21.3%) and NES (23.8%) countries experienced significantly higher unemployment rates.

Males experienced a lower unemployment rate than females in each classification. Surprisingly, males born in NES countries experienced the lowest unemployment rate (8.7%). The unemployment rates for males born in Australia (12.4%) and in ES countries (19.6%) were both significantly higher.

Among females, those born in Australia experienced the lowest unemployment rate (14.7%) which was only marginally higher than that for Australian born males. The unemployment rate for females born in ES countries was 23.6% (4.0 percentage points higher than the unemployment rate for male ESB born). However, the unemployment rate for females born in NES countries was a massive 44.9% (36.2 percentage points higher than the unemployment rate for NESB born males).

6.3 TRANSITION FROM TERTIARY EDUCATION TO WORK

Table 6.2 shows the labour force status at May 1989 of persons who had attended a tertiary education institution full-time in 1988, but no longer did so. In May 1989, 92.8% of all persons in this classification were participants in the labour force. Persons born in ES countries experienced the highest rate of participation (96.1%) followed by Australian born (93.4%) and persons born in NES countries (86.8%).

Males born in ES countries recorded a very high labour force participation rate (98.1%). Australian born males recorded a rate of 94.4% while males born in NES countries experienced a participation rate of 90.9%.

At May 1989, females who had attended a tertiary institution full-time in 1988 experienced a lower labour force participation rate than males in all classifications listed in Table 6.2. The differential ranged between 8.3 percentage points for males and females born in NES countries to 1.9 percentage points for males and females born in Australia.

As with males, females born in ES countries recorded the highest labour force participation rate (94.0%) followed by females born in Australia (92.5%) and females born in NES countries (82.6%).

The unemployment rate in May 1989 for persons who had attended a tertiary education institution full-time in 1988 was 13.0%. Persons born in ES countries experienced by far the lowest rate (3.6%). The unemployment rates for persons born in Australia (13.5%) and NES countries (16.7%) were significantly higher.

Males born in ES countries recorded an unemployment rate of 6.7% in May 1989, while males born in Australia recorded a rate of 12.8%. Males born in NES countries experienced an unemployment rate of 13.9%. Surprisingly, females born in ES countries recorded an unemployment rate of 0.0%. However, this figure is likely to have been influenced downward due to the very small sample size. Females born in Australia recorded a rate of 14.1% while females born in NES countries experienced a rate of 19.8%.

6.4 EDUCATIONAL ATTAINMENT BY LABOUR FORCE STATUS

6.4.1 Educational Attainment and Participation Rates

Table 6.3 shows the level of educational attainment and labour force participation rates by birthplace. In May 1989, persons with a degree were most likely to be in the labour force (participation rate of 89.4%) followed by those with a trade

Table 6.2: Transition from education to work: labour force status at May 1989 for persons who attended tertiary education institution full-time in May 1988 by birthplace

Birthplace	Labour force (Per cent)	Employed in labour force (Per cent)	Unemployment rate (Per cent)	Not in the labour force (Per cent)
Males				
Born in Australia	94.4	87.2	12.8	5.6
Born outside Australia	93.9	89.1	10.9	6.1
Main English speaking countries	98.1	93.3	6.7	1.9
Other than main English speaking countries	90.9	86.1	13.9	9.0
Total	94.3	87.7	12.3	5.7
Females				
Born in Australia	92.5	85.9	14.1	7.5
Born outside Australia	87.0	88.4	11.6	13.0
Main English speaking countries	94.0	100.0	0.0	6.0
Other than main English speaking countries	82.6	80.2	19.8	17.4
Total	91.4	86.4	13.6	8.6
Persons				
Born in Australia	93.4	86.5	13.5	6.6
Born outside Australia	90.5	88.8	11.2	9.5
Main English speaking countries	96.1	96.4	3.6	3.9
Other than main English speaking countries	86.8	83.3	16.7	13.2
Total	92.8	87.0	13.0	7.2

Source: Australian Bureau of Statistics, Transition from Education to Work Survey May 1989 (unpublished data): reproduced from ABS Queensland 1990, The Economic Status of Migrants in Australia, AGPS, Canberra.

Table 6.3: Transition from education to work: level of educational attainment and participation rate by birthplace in 1989 (Aged 15-64 years)

Birthplace	With post-school qualifications				Without post-school qualifications (Per cent)	Total (Per cent)
	Degree (Per cent)	Trade qualifications/ apprenticeship (Per cent)	Certificate/ Diploma (Per cent)	Total (Per cent)		
Males						
Born in Australia	94.9	92.9	93.8	93.5	87.0	86.2
Born outside Australia	91.5	88.4	88.6	89.2	81.9	84.1
Main English Speaking Countries	93.4	89.3	92.0	90.9	86.9	88.3
Other Than Main English Speaking Countries	90.0	87.5	85.3	87.6	79.4	81.3
Total	93.7	91.6	92.3	92.2	85.2	85.5
Females						
Born in Australia	83.2	63.8	76.4	76.6	58.1	62.8
Born outside Australia	81.0	62.6	70.0	71.4	50.8	57.3
Main English Speaking Countries	89.6	65.1	70.9	73.2	58.5	64.2
Other Than Main English Speaking Countries	75.6	60.8	69.1	69.9	46.3	52.7
Total	82.5	63.4	74.7	75.2	56.2	61.3
Persons						
Born in Australia	90.2	90.2	82.3	86.3	71.1	74.5
Born outside Australia	87.8	85.7	76.9	82.2	64.8	71.3
Main English Speaking Countries	92.1	87.2	78.6	84.0	70.6	76.8
Other Than Main English Speaking Countries	84.6	84.3	75.2	80.6	61.7	67.5
Total	89.4	88.9	80.8	85.1	69.4	73.5

Source: Australian Bureau of Statistics, Transition from Education to Work Survey, May 1989 (unpublished data) reproduced from ABS Queensland 1990, The Economic Status of Migrants in Australia, AGPS, Canberra.

qualification (88.9%). Persons with a certificate or diploma recorded a participation rate of 80.8% while persons who had no post-secondary qualifications had a participation rate of only 69.4%.

In May 1989, 94.9% of degree holding males born in Australia participated in the labour force. This compares with a 93.4% participation rate for males with degrees born in ES countries and 90.0% for males born in NES countries. Of males with trade qualifications, those born in Australia again had the highest labour force participation rate (92.9%) followed by males born in ES countries (89.3%) and NES countries (87.5%).

Of males with certificates or diplomas, those born in Australia again had the highest labour force participation rate (93.8%). Males born in ES countries had a participation rate of 92.0%. The labour force participation rate for males born in NES countries who have obtained certificates or diplomas was significantly less (85.3%).

Males without post-secondary qualifications experienced a lower labour force participation rate in each birthplace classification. Males in this group who were born in Australia had a participation rate of 87.0%, marginally higher than males born in ES countries (86.9%). Males born in NES countries had a participation rate of 79.4%.

Of females who held a degree in May 1989, those born in ES countries experienced the highest labour force participation rate (89.6%). Australian born females who held degrees experienced the second highest rate (83.2%) followed by females born in NES countries (75.6%). Females born in ES countries also recorded the highest labour force participation rate of those with trade qualifications (65.1%). The participation rates for both females born in Australia (63.8%) and females born in NES countries (60.8%) who held trade qualifications were within 4.3 percentage points.

Australian born females recorded the highest participation rate of females who had obtained a certificate or diploma (76.4%). Females born in ES and NES countries recorded labour force participation rates of 70.9% and 69.1% respectively. ESB born females had the highest participation rate of those without post-secondary qualifications (58.5%) followed by Australian born females (58.1%) and females born in NES countries (46.3%).

6.4.2 Educational Attainment and Unemployment Rates

In May 1989, the Australian unemployment rate was 6.3%. Persons with degrees experienced the lowest unemployment rate (2.4%) while persons with trade qualifications experienced a rate of 3.3%. Persons with a certificate or diploma had an unemployment rate of 5.0%, while the rate for those with no post-secondary qualifications was 7.9% (Table 6.4).

Among degree holding males, those born in ES countries had the lowest unemployment rate (0.9%), followed by those born in Australia (1.5%) and those born in NES countries (5.7%). Contrary to trend, of males with trade qualifications, those born in NES countries experienced the lowest unemployment rate (2.9%), followed by males born in Australia (3.0%) and males born in ES countries (3.1%).

Of males with certificates or diplomas, those born in Australia experienced the lowest unemployment rate (3.2%) while males born in ES countries recorded a rate of 4.2%. Males holding a certificate or diploma who were born in NES countries recorded an unemployment rate of 7.0%. Males with no post-secondary qualifications recorded higher unemployment rates in all birthplace classifications. Males without post-secondary qualifications born in ES countries experienced an unemployment rate of 6.1%, while the unemployment rates for those males born in Australia and NES countries were both significantly higher (8.0% and 8.7% respectively).

Table 6.4: Transition from education to work: level of educational attainment and unemployment rate by birthplace in 1989 (Aged 15-64 years)

Birthplace	With post-school qualifications				Without post-school qualifications (Per cent)	Total (Per cent)
	Degree (Per cent)	Trade qualifications/ apprenticeship (Per cent)	Certificate/ Diploma (Per cent)	Total (Per cent)		
Males						
Born in Australia	1.5	3.0	3.2	2.8	8.0	5.0
Born outside Australia	3.5	3.0	5.6	3.9	7.8	5.8
Main English Speaking Countri	0.9	3.1	4.2	3.0	6.1	4.4
Other Than Main English Speaking Countries	5.7	2.9	7.0	4.7	8.7	6.9
Total	2.2	3.0	3.8	3.1	8.0	5.8
Females						
Born in Australia	2.0	6.9	5.6	5.0	7.6	7.0
Born outside Australia	5.1	8.6	6.2	6.0	8.3	7.4
Main English Speaking Countri	5.5	9.7	4.9	5.3	7.7	6.9
Other Than Main English Speaking Countries	4.8	7.8	7.5	6.8	8.7	7.9
Total	2.9	7.4	5.7	5.3	7.8	7.1
Persons						
Born in Australia	1.7	3.3	4.7	3.6	7.9	6.3
Born outside Australia	4.0	3.4	5.9	4.6	8.0	6.4
Main English Speaking Countri	2.4	3.6	4.6	3.8	6.9	5.4
Other Than Main English Speaking Countries	5.4	3.3	7.3	5.4	8.7	7.3
Total	2.4	3.3	5.0	3.9	7.9	6.3

Source: Australian Bureau of Statistics, Transition from Education to Work Survey, May 1989 (unpublished data) reproduced from ABS Queensland 1990, The Economic Status of Migrants in Australia, AGPS, Canberra.

Females experienced higher unemployment rates than males in most of the birthplace and qualification classifications considered in this section. Of degree holding females, those born in Australia experienced the lowest unemployment rate (2.0%) followed by females born in NES countries (4.8%) and ES countries (5.5%). Of females with trade qualifications, Australian born again experienced the lowest unemployment rate (6.9%). Females born in NES countries recorded the second lowest unemployment rate (7.8%) followed by females born in ES countries (9.7%).

Amongst females holding certificates or diplomas, those born in ES countries experienced the lowest unemployment rate in 1989 (4.9%). Australian born females recorded an unemployment rate of 5.6% while females born in NES countries recorded a rate of 7.5%. As in the case of males, females who did not obtain post-secondary qualifications recorded a higher unemployment rate than qualified females in each birthplace category. Females without post-secondary qualifications born in Australia recorded an unemployment rate of 7.6%, marginally less than females born in ES countries (7.7%). Females born in NES countries who did not hold post-secondary qualifications experienced an unemployment rate of 8.7%.

Among males, those born in ES countries had the lowest unemployment rate (4.4%), due mainly to the relatively lower unemployment rate of males from ES countries with no post- secondary qualifications (6.1% compared with 8.0% for Australian born males with no post-secondary qualifications and 8.7% for those born in NES countries). Australian born males with certificates or diplomas had lower unemployment rates than any of their overseas born counterparts (3.2% compared with 4.2% for ESB males and 7.0% for NESB males). Males born in ES countries who held degrees also recorded the lowest unemployment rate (0.9% compared with 1.5% for Australian born and 5.7% for NESB born males).

For females, the picture is slightly different. Here, Australian born females have slightly lower unemployment rates than their overseas born counterparts, both in aggregate and for those with degrees, trade qualifications and those with no post-secondary qualifications. Unlike males, the lowest unemployment rates among females with certificates or diplomas are those born in ES countries.

6.5 THE IMPACT OF PERIOD OF RESIDENCE AND GENERATION LEVEL ON LABOUR FORCE STATUS

In 1986, first and second generation immigrants comprised 40% of the Australian population. Since World War II, the mix of immigrants has changed significantly. For example, in 1947, 81% of first generation immigrants were from ES countries, but by 1986, this percentage had fallen to 44%. Due to this change in the composition of the migrant intake, various generations of immigrants are not strictly comparable.

The only major study on this topic for Australia is that entitled Labour Market Experience, Education and Training of Young Migrants in Australia (Flatau and Hemmings 1991).

The study uses data for 1985 from the Australian Longitudinal Survey (8998 respondents aged between 16 and 26) for its analyses. It should be noted that the focus of the study is on intergenerational comparison rather than a comprehensive comparison of ESB, NESB and Australian born at specified generations. However, Flatau and Hemmings do provide some insight into the labour force characteristics of second and higher generation immigrants.

6.5.1 Labour Force Status

In 1985, the participation rate for first generation immigrant females was 64.7%, significantly less than the rate for higher generation females (75.1%). For males, higher generation immigrants also recorded a significantly higher participation rate (84.2%) than first generation immigrants (76.1%) (see Section 4.1 for further analysis).

In 1985, the unemployment rate for first generation immigrant persons was higher (19.6%) than second generation immigrants with one parent born overseas (18.0%), second generation immigrants with both parents born overseas (17.1%) and higher generation immigrants (15.1%). The unemployment rate varied according to country of origin for first and second generation immigrants (see Section 4.2).

Surprisingly, second generation immigrants from the UK and Ireland experienced a higher rate of unemployment than first generation UK and Ireland immigrants (18.3% compared with 16.4%). Also, second generation immigrants from Asia experienced a very low unemployment rate (5.9%) compared with the relatively high rate for first generation immigrants (16.5%).

6.5.2 Wages

The study concluded that in 1985, there was remarkably little variation in hourly wages received by various generations of immigrants. Surprisingly, first generation female immigrants received slightly higher hourly pay than either second or higher generation females. For males, first generation immigrants were paid exactly the same as higher generation immigrants.

The study found that, all other things being equal, for persons holding educational qualifications increased hourly pay. Interestingly, young first and second generation immigrant females where both parents were born overseas, received a higher hourly rate of pay than second generation immigrants with one parent born overseas and higher generation immigrants.

The study found that while young first and second generation immigrants may have experienced difficulty gaining a job, once employed, the hourly wage rate was similar if not higher than higher generation immigrants. The authors speculated that in the case of immigrant females, the first generation found it so difficult to get a job, those who did obtain employment were of a very high quality and therefore received higher wages than higher generation females.

6.5.3 Education and Training

The study found that second generation immigrants achieved higher educational levels than either first or higher generation immigrants. First year immigrants were more likely to leave school at year nine or below and were less likely to obtain trade qualifications than immigrants of higher generations. However, first generation immigrants also had relatively high retention levels.

First generation male and female immigrants received less training than males and females of higher generations. This was particularly evident in the case of formal on-the-job training for females and formal off-the-job training for males. Second generation immigrants received only slightly less training than higher generation immigrants (see Section 5.3 for further analysis). ESB immigrants generally received more training overall than NESB immigrants.

6.5.4 Occupation and Industry Distribution

The study showed that the distribution of second and higher generation immigrants across industries and occupations were similar. The distribution of first generation immigrants reflected the trends evident for higher generations. However, the concentrations for the first generation were more extreme (see Section 4.3). First generation immigrants were concentrated in the manufacturing and construction industries and in the labourer and related worker, plant and machinery operator and driver occupations.

The study showed that each generation of immigrants was under-represented in agriculture and over-represented in manufacturing. However, this situation became less significant with each successive generation.

6.6 OVERVIEW AND CONCLUSION

6.6.1 Overview

Chapter 6 shows that persons born in NES countries are disadvantaged during the transition from education to work, while immigrants born in ES countries are correspondingly advantaged. Of those at May 1989 who had spent 1988 in full-time education but no longer attended, ESB immigrants had the highest labour force participation rate in respect of both secondary (94.1%) and tertiary education institutions (96.1%). Of those at May 1989 who had attended a tertiary education institution full-time in 1988, ESB immigrants had the lowest unemployment rate (3.6%). NESB immigrants experienced the lowest participation rate and the highest unemployment rate at May 1989 for those who attended secondary (81.2% and 23.8% respectively) and tertiary (86.8% and 16.7% respectively) education full-time in 1988.

It should be noted that NESB males who attended a secondary education institution in 1988 recorded the lowest unemployment rate at May 1989 of any of the classifications (8.7%). However, this was more than offset by females in the same classification who recorded a massive 44.9% unemployment rate. This confirms the particular labour force disadvantage experienced by NESB females.

Chapter 6 also shows that the higher the level of educational attainment achieved by persons generally, the more favourable is their labour force position (ie. higher participation rate and lower unemployment rate). However, there remains a significant amount of variation amongst each educational grouping.

Of persons who finished secondary school, irrespective of whether they went on to obtain higher qualifications, NESB persons recorded the lowest labour force participation rate and the highest unemployment rate on average.

Regarding participation rates relative to qualifications obtained, for any level of qualifications, Australian born usually recorded the highest participation rate with ESB immigrants recording a very similar level, and NESB immigrants having significantly lower rates. A similar situation existed in unemployment, with Australian born usually recording the lowest unemployment rate, similar to that shown by ESB immigrants, and NESB immigrants recording unemployment rates significantly higher.

Section 6.4 summarises the Flatau and Hemmings (1991) multi-generation study of immigrants in the labour force using data from the 1985 Australian Longitudinal Survey. The study found that first generation immigrants experienced a higher unemployment rate and a lower labour force participation rate than higher generation immigrants, who progressively adopted the labour force characteristics of the higher generation Australian born. Flatau and Hemmings also found that although first generation immigrants received less training than Australian born (see Section 5.3), second and higher generation immigrants received training at a rate very similar to higher generation Australian born. As would be expected in a country with centralised wage fixing and a system of awards, first generation immigrants received very similar rates of pay to Australian born.

Section 4.3 provided a detailed analysis of industry and occupation concentration of immigrants in the Australian economy. Section 6.4.4 confirms many of the conclusions of section 4.3, and extends the analysis to conclude that although second and higher generations of immigrants remain concentrated in the manufacturing, construction and transport industries and the labourer and related worker and plant and machinery operator and driver occupations, this degree of concentration progressively decreases.

6.6.2 Conclusion

Chapter 6 largely confirms the findings in Chapters 4 and 5 that although immigrants are advantaged in the education system, NESB immigrants in particular remain disadvantaged in their overall labour force status. This is particularly evident in the transition from education to work, where NESB immigrants rank worse than ESB and Australian born in virtually all of the cross classifications detailed in Chapter 6.

However, Chapter 6 also shows that young second generation immigrants adopt most of the labour force characteristics of higher generation Australian born. Although immigrant workers in Australia are disadvantaged in the Australian labour force, it seems that their children do not share that disadvantage. If institutional or economic discrimination against immigrant workers does occur in Australia, the data suggest that it is not perpetuated down through the generations.

CHAPTER 7

RECOGNITION OF OVERSEAS SKILLS AND QUALIFICATIONS

7.1 INTRODUCTION

Chapter 7 examines the system of recognition of overseas skills and qualifications in Australia. The chapter begins with a description of the historical context of skills and qualifications recognition (section 7.2), followed by an analysis of the effects and consequences of non-recognition (section 7.3). Section 7.4 details recent State and Commonwealth Government initiatives which attempt to streamline recognition procedures. Section 7.5.1 provides an overview of the chapter and discusses how the system of recognition in Australia discriminates against immigrant workers, particularly those from NES countries. Section 7.5.2 provides some concluding comments on the subject.

7.2 HISTORY

Since World War II, Australian Governments have promoted immigration to Australia in order to enlarge the population generally, and, among other reasons, to increase the labour force. The national acquisition of skilled workers in occupations in short supply within Australia has been an important aspect of this policy.

Iredale (1987) notes that a significant proportion of the European refugees who began arriving in Australia in 1935, held professional qualifications. However, the relatively high levels of unemployment in Australia immediately after the Depression contributed to the protection of occupational membership through the development of recognition and admission procedures to ensure that only fully qualified persons (by Australian standards) were allowed to practice as tradespersons and professionals. This was largely initiated by the professional associations and trade unions themselves. As the Australian system of trades and professions is based on the British system (like other Commonwealth nations), skills and qualifications obtained in Commonwealth countries were fairly readily accepted. Rather, this policy particularly disadvantaged immigrants from non-Commonwealth countries, especially NES countries.

The increasingly restrictive recognition practices and associated strengthening and development of professional associations, trade unions, Government funded registration bodies and restrictive recognition legislation effectively restricted the labour market, thereby increasing wages, prestige and the status of tradespeople and professionals.

After World War II, the then Commonwealth Minister for Immigration, Arthur Calwell began a large scale campaign of European immigration in order to repopulate Australia and to feed the continually expanding post-war labour market. Most post-war immigration comprised low or semi-skilled workers. However, Iredale (1987) points out that immigration of skilled labour, although a smaller proportion, was still a crucial part of the immigration campaign. From the early 1950's, the Commonwealth Government increasingly used immigration as a mechanism to overcome short-run skills deficits. This 'quick-fix' solution to skills disequilibrium in the Australian labour market contributed to manpower planning and work based training being given an increasingly lower priority after World War II. In response, the Commonwealth Government relied even more directly on skilled immigration to be a quick and cheap means of obtaining the skills most in demand within Australia, rather than establishing workforce training and education which was seen to involve greater direct expenditure and to require a longer time horizon.

Although the Commonwealth Government passed the Tradesmen's Rights Regulation Act in 1946, thereby creating a uniform national system of recognition of overseas qualifications for overseas trained workers (and non-apprentice workers trained in Australia), this Act only encompassed 79 trades in six major areas (engineering, electrical, blacksmithing, sheetmetal, boilermaking and bootmaking). More than 500 trades and all of the professions remained outside the jurisdiction of this Act and therefore remained under the legislative auspices of State Governments. Legislative and other requirements for recognition and accreditation became increasingly fragmented between States leading to significant problems of portability of skills and qualifications within Australia, and even greater barriers to the recognition and accreditation of overseas qualifications.

7.3 THE EFFECTS OF NON-RECOGNITION OF OVERSEAS QUALIFICATIONS

The non-recognition of overseas qualifications, depending upon the type of qualification held by the immigrant, can have either of two effects: a neutral effect on economic welfare within Australia if the skills or qualifications of immigrants are inappropriate to the Australian economy, or it can generate a significant decrease in potential economic activity if the Australian economy is losing relevant and useful skills.

If the educational qualifications of immigrants incorporate a high proportion of country specific skills, which are not easily transferable between countries, the skills and qualifications obtained overseas may be considered as being less useful in the Australian labour market than corresponding skills obtained in Australia itself. Immigrants with skills and qualifications from NES countries are over-represented in this category due to the very different institutions and systems and different technical capabilities of their countries of origin. Immigrants from ES countries are likely to have obtained skills and qualifications similar to those obtainable in Australia due to the similar institutional histories and cultures of most of the ES countries. It would be highly inappropriate, on an economic basis, to treat country specific skills or qualifications obtained overseas, which are not appropriate for the Australian setting, as equal to those obtained in Australia (Foster and Baker 1991).

However, the confused history of Australian skills and qualifications recognition and accreditation procedures has meant that the decision of whether to recognise skills and qualifications gained overseas is not always economically rational. Many overseas skills or qualifications are not recognised in Australia, even though they are fairly applicable to the Australian labour market. This is particularly problematic for migrants from NES countries, especially those in trades or professions which are controlled by strong occupational bodies or legislative requirements. This wasted talent causes a reduction in potential national productivity and output. MEET (1989) estimate that the net national economic loss to Australia due to non-recognition of skills is in the range of $100 to $350 million per annum.

Two recent studies (Castles et al. 1989 and Mitchell et al. 1990) reinforce the view that significant barriers exist in the recognition and accreditation process, particularly for immigrants from NES countries. Recognition and accreditation procedures for trade and professional skills and qualifications were found to be unduly complicated and administratively unwieldy, with difficulties particularly evident for non-English speakers. Immigrant tradespeople or professionals, if they are ultimately accepted, experience lengthy delays in entry into appropriate occupations. The difficulties in obtaining recognition of qualifications also contributes to immigrant unemployment, and more significantly, underemployment.

In certain occupations where professional or trade associations have a stranglehold over accreditation procedures (often with the assistance of various State Government legislation) such as medicine, dentistry, law and architecture, immigrants (particularly NESB immigrants) are almost completely blocked from participating in their respective fields of expertise.

Another recent study by the Victorian Department of Labour (Labour Market Research Branch 1990) also found that for each of the twelve qualification sub groups examined for indications of labour market disadvantage, overseas qualified persons were more likely to be employed in lower skill occupations and to have lower average incomes than persons trained or educated in Australia. The study also concluded that persons with overseas qualifications (especially those from NES countries), were over-represented in unemployment.

7.4 RECENT GOVERNMENT INITIATIVES

As noted above, the State and Commonwealth Governments have developed a diverse range of recognition and accreditation procedures which create difficulties for immigrants who attempt to have their skills or qualifications recognised in Australia. During the 1980's, this issue took increasing prominence. A number of reports and committees of inquiry were commissioned by Commonwealth and State Governments to examine the issues. These included:

- the 1982 Committee of Inquiry into the Recognition of Overseas Qualifications (the Fry Report). This report sought ways to make it easier for immigrants to overcome barriers to recognition and accreditation within the current system;

- the 1986 Review of Migrant and Multicultural Programs and Services (the Jupp Report) reiterated the major problems of recognition and accreditation of overseas qualifications;

- the 1988 Committee to Advise on Australia's Immigration Policies (the FitzGerald Report) promoted the need to rationalise the processes of recognition and accreditation of overseas skills; and

- the 1989 National Agenda for a Multicultural Australia also promoted rationalisation in these areas.

In 1989, the Commonwealth Government established a National Office of Overseas Skills Recognition (NOOSR) to coordinate and promote the rationalisation of recognition and accreditation procedures. NOOSR is working with State Governments, professional associations, registration bodies and post-secondary education institutions to promote methods of skills assessment emphasising competence and experience rather than formal qualifications. NOOSR is also developing national occupational skills standards, encouraging greater cooperation between organisations and promoting the provision of suitable bridging programs and access to education and training.

The States have also taken up this issue. In 1989, the NSW Government commissioned a Committee of Inquiry into recognition of overseas qualifications which led to the

establishment of the New South Wales Migrant Employment and Qualifications Board (in May 1989). The Board provides advice and coordination in a variety of areas relating to the recognition of overseas skills and qualifications. The activities of the Board range from advising individuals how they may best have their skills or qualifications recognised in NSW, to advising the NSW Government on occupational regulation and training legislation. The Board also provides funding and advice to a variety of organisations to facilitate programs and courses to assist immigrants obtain professional and trade recognition within NSW.

More recently, in January 1991, the Victorian Government established a Migrant Skills and Qualifications Board which aims to increase community understanding of the potential contribution from persons with overseas skills and qualifications, identify barriers to recognition, encourage changes associated with the process of recognition of overseas skills and qualifications, and monitor the changes and assess the adequacy of programs designed to meet the needs of the overseas trained and initiate new strategies where appropriate.

South Australia has also established an Overseas Qualifications and Skills Board, while Western Australia has established an Overseas Qualifications Unit in the WA Department of Employment and Training.

7.5 OVERVIEW AND CONCLUSION

7.5.1 Overview

Historically, immigrants have experienced difficulty in gaining recognition of their skills and qualifications in Australia. This is largely due to the formation of trade, professional and statutory bodies which have developed a variety of regulations and procedures to ensure that immigrants are unable to flood their respective occupations and therefore undercut Australian born, trained and educated workers.

Differences in State systems and procedures for recognition, have also meant that portability of skills and qualifications within Australia has been difficult for many occupations.

A number of recent studies have concluded that persons born outside the Commonwealth countries, and particularly those born in NES countries, are especially disadvantaged in respect of skills and qualifications recognition within Australia.

However, during the 1980's, Governments began to appreciate the loss in economic welfare attributable to the wasted pool of talent in the immigrant population. A number of organisations were established at both the State and Federal levels which were designed to eradicate the institutionalised blockages to the recognition of overseas skills and qualifications which are suited to the Australian economy.

It is anticipated that the formation of bodies such as the Federally funded National Office of Overseas Skills Recognition, the NSW Migrant Employment and Qualifications Board and the Victorian Migrant Skills and Qualification Board will continue the process of rationalising the system of overseas skills and qualifications recognition within Australia and therefore promote greater utilisation of a previously under-tapped resource.

7.5.2 Conclusion

Although the extensive regulatory environment for occupational recognition in Australia may have originated partly due to a desire to maintain a high standard of trade and professional ability within the country, another reason was the protection of Australian workers from labour market competition from immigrant workers. In many trades and professions, immigrants, especially those from non-Commonwealth countries, have been blatantly discriminated against in the recognition process.

However, the late 1980's and 1990's has seen the recognition by Governments around the country, of the inefficiencies and inequalities generated by discrimination in the recognition of overseas skills and qualifications. As international competition forces Australia increasingly, to become more productive and efficient, to rationalise regulatory impediments and implement microeconomic reforms, there is likely to be even greater pressure placed on trades and professions to develop a less parochial and more rational system of skills and qualifications recognition within Australia.

CHAPTER 8

THE HUMAN PERSPECTIVE OF DISCRIMINATION IN AUSTRALIA

8.1 INTRODUCTION

This chapter tries to present a stronger sense of the experience of discrimination, and of the impact of discrimination, on people. For this reason, the chapter has been entitled 'the human perspective of discrimination'. Nevertheless, the questions which were identified and examined by means of historical, sociological and statistical analyses in the earlier chapters should not be ignored. Briefly, those questions focused on whether discrimination in employment exists in Australia; if so, what kinds of discrimination are there; and how extensive is its occurrence? The orientation adopted in this chapter means that there are additional questions to ask. For example, how can the perceptions of those workers who experience discrimination be tapped and how much notice can be taken of the 'alleged' evidence (in short, how 'hard' or 'soft' it is) ?

The review presented here is both brief, incomplete and necessarily selective as the authors of this report were unable to carry out any original empirical fieldwork. Section 8.2 refers to discriminatory aspects of the current context of work in Australia while Section 8.3 draws on formal and less formal sources of evidence of a subjective kind.

8.2 THE CONTEXT OF WORK IN AUSTRALIA

All workers and potential workers whether immigrant or Australian-born have been subject to changes which have had significant implications for their work environment in the decade of the 1980's and into the 1990's. Governments and other official agencies have been required to respond in various ways through, for example, legislation, regulation and the setting up of bodies with a particular charter oriented towards work and employment. Any consideration of the complexities of identifying overt and covert discrimination in employment cannot ignore such broader social impacts nor can the effects which reflect differently on different sub-groups of workers be submerged under the general effects for the whole population. Only some of the key features of the contemporary context of work can be reviewed here. One feature is the general industrial relations climate affecting all wage and salary workers and another is the indirect assessment of discrimination in employment made by different levels of government.

8.2.1 The Industrial Relations Climate

The cornerstone of industrial relations since the election of the Hawke Labor Government in 1983 has been the Wages Accord. Broadly, this is an agreement on movements between prices and incomes agreed to by the Government and the Australian Council of Trades Unions (ACTU) with a primary focus on wages in the accepted sense but incorporating also the 'social wage' concept, including undertakings for improvement in areas as diverse as taxation reform, superannuation, and health care

and social security benefits. To date, these agreements have been negotiated on six occasions. Originally, a central element on wages policy per se was the acceptance of the principle of full indexation, but this soon ceased to be a serious issue and has now been virtually abandoned. A new concept - structural efficiency - emerged in 1988. The Industrial Relations Commission implemented the structural efficiency principle as part of industry and award restructuring. Restructured awards are intended to ensure: more flexible work practices to help make industry more competitive internationally; the elimination of impediments to multi-skilling; fewer awards with new pay structures; career paths for all workers; the removal of unfair anomalies such as over-award payments, consent agreements, large disparities between minimum and paid rates awards; and the avoidance of economically unsustainable flow-on payments.

According to Hearn (1990, pp. 52-3), unions, and hence their members, have had both 'wins and losses' through the Accord. Examples of wins include industry assistance packages which have helped to preserve jobs, and the provision of career paths especially for unskilled and semi-skilled workers via training and restructuring. Losses have included a substantial decline in real wages and some job losses due to industry and award restructuring.

Looking at the experiences of immigrant workers, and in particular those of NES, there have been suggestions that they have experienced more of the negative aspects of these changes in the industrial relations climate. The assertion is that workers with lower levels of English skills have been unable to take as much advantage of retraining opportunities as have ES or Australian born workers. Second, as many NES workers are in less skilled occupations and the declining manufacturing and construction sectors, they have been more likely to bear the brunt of job losses due to the introduction of new technology etc. In fact, a media report of May 9, 1991 (The Age, p.4) stated that 44 per cent of NES migrants who had arrived in Australia in the past two years were unemployed. Thus it could be argued that immigrant workers have been indirectly discriminated against.

The socio-economic inequalities in employment have been exacerbated by Australia's economic problems. As a concomitant, there has been a perceived increase in racism and racial vilification. Claims that immigrants are taking the jobs of the Australian-born have become common and racist graffiti have been more visible. Anecdotal reports and media comment have connected some of these practices with workplaces. This was especially noted at the time of the Gulf War. Referring to racist graffiti, as only New South Wales and Western Australia have legislation against racial vilification, such practices elsewhere in Australia are technically not discriminatory. There is, of course, no redress against the former assertions in spite of official denials and empirical evidence that certain immigrant groups suffer greater unemployment than Australian born.

8.2.2 Government Recognition of Discrimination in Employment

In previous chapters we have traced the development of legislation, regulation and guidelines in association with a whole range of structures including HREOC and the National Office for Occupation and Skills Recognition (NOOSR), all of which bear on discrimination in its many forms, and especially in employment. In this section, the argument is that the presence of direct or indirect discrimination in employment (in particular affecting immigrants) can be inferred also from public and/or official documents. The recognition of the need for action is, in effect, a recognition of the existence of discrimination. In line with the approach adopted in earlier chapters, it is again emphasised that Australian law does not distinguish between immigrants and those born in Australia. Also, that discrimination experienced by immigrants in other spheres of their life can have a contributory effect on their experiences in the workplace. A selection only of such documents which discuss discrimination in the workplace and other areas of society is explored below.

8.2.2.1 Commonwealth government level

* The Public Service Commission released a report on the employment of NES people in the public service in 1990. After identifying aspects of discrimination against such workers, the Report recommended that much more needed to be done to promote equal employment opportunity (EEO) policies and codes of practice.

* The National Agenda For Women (1990) had a major focus on employment and training noting especially in its action plans (p.21):

> ...the continued development of the National Strategy on Women and the Labour Force; measures to eliminate barriers to education, training and employment of women; equitable participation by women in labour market programs; special measures to improve employment prospects for Aboriginals, Torres Strait Islander and immigrant women; protection of outworkers; implementation of ILO Convention 156; addressing occupational and safety issues for women; considering women's needs in industrial restructuring; extending the range of jobs available to women in the Australian Defence Force and improving the employment position of women in local government.

* The 1991 Report of National Inquiry into Racist Violence in Australia by the Human Rights and Equal Opportunity Commission claimed:

> Serious violence associated with discrimination against Chinese, Melanesians and minority groups of European origin (p.54); - Racist violence on the basis of ethnicity included violence against Asian Australians, the Jewish community and Arab Australians, types of violence included harassment, graffiti, violence to property and person, and institutional racism was to be found in education, workplace, media, housing and local neighbourhoods, police and the criminal justice system. (Chapter 6).

* The Department of Employment and Industrial Relations (DEIR) in 1986 developed an Equal Employment Opportunity Strategic Plan . One Part of this Plan targeted NES employees. It main objective was 'to increase promotion within and into DEIR of migrants of non-English speaking background' (p.37). Indeed, since that time, every Federal department is required to develop an EEO Plan.

8.2.2.2 State government level

* The Multicultural and Ethnic Affairs Commission of Western Australia published an Issues Paper on Community Relations in that State in November 1990. The Commissioner indicated that this had been done in the light of an unfavourable climate of opinion against immigrants especially stimulated by the 'Asian immigration debate', the activities of a racist group called the Australian Nationalist Movement, and the Middle East Crisis. Harmonious community relations were seen to be achieved only when there existed 'legitimate mechanisms to deal with conflicts and to achieve change, and by socio-economic frameworks that guarantee fairness to all members of the population' (p.9); hence, in employment as in other spheres of life. The State Government also established in 1990 a mechanism to obtain advice on an across portfolio basis via a Ministerial Advisory Council on Community Relations (MACCR).

* In 1987, the Victorian Ethnic Affairs Commission (VEAC) released a report entitled Coping With Change: Migrant Responses to Structural Changes in the Car Industry. The significance of the study rests partly on the fact that the motor vehicle industry in Australia, and in Victoria in particular, has

relied mainly on immigrant labour for its workforce. Since the mid 1970'S the motor vehicle industry has been hit by social, technological and economic pressures which have resulted in a substantial loss of jobs. As VEAC has as its primary concern the employment situation of NES residents, the study of the motor vehicle industry was a natural outcome. The study sought information on the perceptions of immigrant workers about the changes in the motor vehicle industry, the changes they perceived as affecting them, their attitudes to type of training they required to help them to adapt to such changes and the extent of job satisfaction for workers in the motor vehicle industry. The Foreword (viii) concluded:

> ...it should be stressed again that just as the burden of structural change should not be borne by only the migrant workers, the cost of necessary training and adjustment programs should not be borne solely by the motor industry. Rather the responsibility for developing, administering the necessary communication, training and readjustment programs should be the concern of the Company, the workers and their unions, and Governments and their support services.

8.2.2.3 Local government level

* The New South Wales Department of Local Government, EEO Advisory Unit published in 1989 a report entitled Utilising Diversity: Employing People of Non-English Speaking Backgrounds in Councils. In the first chapter which dealt with EEO programs for people of NESB, the question of whether local government employment patterns reflected Australia's diverse ethnic composition was addressed. The negative answer to that question was attributed to certain barriers to employment, that is, discriminatory practices including lack of recognition of overseas qualifications and language and communication problems. The subsequent chapters of the report identified ways of overcoming these barriers including modification of EEO strategies in consultation with ethnic communities, and changes in recruitment, staff development and training including cross-cultural communication, prevention of racial harassment in the workplace, and the recognition of overseas qualifications.

8.3 INDIVIDUAL IMMIGRANTS' EXPERIENCES OF DISCRIMINATION IN EMPLOYMENT

8.3.1 Formal expressions

Two sources of formal but subjectively based expressions of discrimination in employment are given. The first derives from consultations at the State (Victoria) level and the second from the complaints procedure which is part of the Human Rights and Equal Opportunity Commission (HREOC) at the national level.

8.3.1.1 The emergence of social justice as a priority goal in the late 1980's and into the 1990's has (i) heightened the importance of acknowledging subjective reporting and (ii) provided additional mechanisms for facilitating the collection of such reports. For example, the Social Justice Consultative Council established by the Victorian Government has endorsed a distinctive 'bottom up' approach to understanding the industrial training needs of workers by conducting extensive community consultations at which the workers may speak for themselves. Information has been obtained on perceptions of work in the public and private sectors from hundreds of individuals. Out of these consultations have come a set of needs/issues/problems which have been defined by workers or those seeking work, out of their personal experiences. The results of the consultations have been collected in a Consultative Council submission to the Government. It is not yet available in the public domain.

The findings were illuminating in that the subjective reports identified personal limitations such as lack of formal qualifications but as well queried the institutional limitations. For example, a female worker commented:

> 'Too much emphasis on education for a caring job is not required. Experience as a mother is undervalued by employers, but you gain a lot of skills from that experience. For a man it's called stability. I hate the word experience, you've got to give somebody a go if you want to do something.'

Other comments indicated possible institutional discrimination. Examples of workers' grievances are provided below.

* 'It's very unfair if you do the same amount of work, and you work very hard, but you don't get paid the same as everybody else.'

* 'I answered ads. in the papers, but when they heard my name because I am Asian they said the jobs are taken. But they still advertise the job next week.'

* 'I was a factory worker doing heavy and light duties. After sick leave I just got heavy duties. My claim for workcare meant dismissal because my employer says he only wants healthy workers.'

* 'In my country I was a computer operator-programmer. Now I'm a cleaner. I have to pay the loan for my house so I can't stop working to do a course.'

The Council noted that the matter of discrimination was raised mainly in respect of age, injured workers and people with disabilities, immigrants and women. The consultative approach is able to generate powerful and compelling insights into people's everyday life and work. It provides some measure of the wastage of human potential. Paradoxically, the extra emphasis on social justice which is at the core of anti-discrimination legislation serves only to indicate again that having appropriate legislation does not eliminate discriminatory practices.

8.3.1.2. Information on sex discrimination and racial discrimination in employment is collected by the HREOC. It was noted in Chapter 3 that discrimination on the grounds of sex provide the largest source of complaints to the HREOC. Second, sex discrimination in employment is the source of the greatest number of those complaints.

For example, the Sex Commissioner supported these facts in a report in 1989 (p.3):

> ...it is the field of employment from which most sex discrimination complaints emerge (76%). I continue to receive numerous complaints of pregnancy dismissal, sexual harassment, discrimination against women applying for work in non-traditional areas, and indirect employment discrimination in practices and policies.

An actual case study was presented in the HREOC 1989-90 Annual Report (1990, pp. 38-9):

> This involved a complaint of sexual harassment from a woman who had been employed by a State government authority. She alleged that her employment had been terminated because she did not respond to the unwelcome advances of her supervisor. The complaint was successfully conciliated. The terms of settlement included financial compensation, an interview for a suitable position should one become available, and a work reference.

These examples refer to discrimination against women in work. It is interesting to note that a front page story in The (Melbourne) Age of May 9, 1991 reported that almost one-third of complaints about sexual discrimination in the workplace dealt with by the Victorian Commissioner of Equal Opportunity are made by men. The Commissioner indicated that she would use three statutory powers which had not been used by past commissioners to try to reduce the high level of discrimination on sex grounds. These powers are the right to prosecute people who advertise in a way that shows they intend to discriminate; the use of restraining orders to prevent employers from continuing to discriminate while the commissioner is investigating the case; and the ability to call for an inquiry into serious, systemic discrimination against a class or group of people where it would not be appropriate for an individual to complain.

The most recent HREOC Report of 1990 provided the following information. The HREOC reported an increase of 22 per cent in complaints under the Racial Discrimination Act for the year July 1,1989 to June 30, 1990 (p.4). Additional grounds of discrimination under ILO Convention 111 increased the jurisdiction of the Commission with respect to employment. The additional grounds were age, medical record, criminal record, physical disability, mental, intellectual and psychiatric disability, nationality, marital status, sexual preference or trade union activity (pp.8-9). Employment was the dominant area in which complaints were lodged and these investigate and conciliate as the alleged discrimination was frequently covert and therefore difficult to substantiate (p.62).

Examples of case studies were provided. The following illustrates one of the types of complaints received under the Racial Discrimination Act (p.64):

> A Cambodian man who had been resident in Australia for thirteen years lodged a complaint of racial discrimination in employment. The complainant alleged that the work he was doing was inconsistent with his qualifications and that he was denied opportunities for promotion and career development. He believed that this was the result of false rumours that were being spread by staff concerning his previous activities in Cambodia. Although the employer denied that the complainant had been the victim of racial discrimination, a satisfactory conciliation agreement was reached. The terms of the settlement included the appointment of a 'mentor' who would assist the complainant with career planning, training and skill development.

Another form of evidence of racial discrimination in employment is provided by the Race Relations in the Workplace Project initiated by the HREOC in 1988. The catalyst for the Project was the concern expressed by the Race Discrimination Commissioner at the number of complaints she was receiving about racism in the workplace. The Commissioner was aware that the issue was being tackled in the public sector at both State and Federal levels but was virtually ignored in the private sector. This led to the development of a Program designed to raise awareness, among employers and employees, of the ways in which racial discrimination can operate in the workplace, and explored strategies and practical means of combating discriminatory practices. The Program aimed to set racism within the context of mainstream management and industrial relations practice (Stubbs 1990). It should be noted that this program is only in its developmental stages as of mid 1991 but it has the potential to become another strategy in the battle to minimise discrimination in the workplace.

8.3.2 Informal expressions

Informal expressions of discrimination have been sought from a number of sources including academic, Government and community studies into immigrants in Australia and newspaper articles. Advice and data have been received from the Ecumenical Migration Centre in Melbourne, the Australian Council of Trade Unions and a number of Statutory organisations in order to assist in the compilation of this selection of anecdotes.

8.3.2.1 Experiences of individual immigrants in the workplace

Although it is self evident that discrimination against immigrant workers occurs in the Australian workforce, unlike many other countries, it is neither institutionalised nor generally accepted by the Australian community or culture. The following synopses of articles about discrimination against or abuses of immigrant workers from three newspapers indicate that legislative, legal and cultural structures exist in Australia to minimise these.

> 'A family of four Portuguese immigrants were paid less than $100 per week to work as labourers on a Carnarvon banana plantation, it was claimed yesterday. WA Trades and Labour Council claimed the owner of the plantation used the Commonwealth Employer Nomination Scheme to encourage the family into Australia so that he could use them as virtual slave labour.'
> (adapted from Wainwright West Australian, 4 February 1989)

> 'Greek man awarded $32,000 in damages after being discriminated against by means of vulgar racist language, his work conditions and his dismissal from employment. Racist taunts included 'wog', 'Greek bastard' and 'black Greek wog'. Court decided unfair dismissal.'
> (adapted from Quine Sun-News Pictorial, 11 March 1989)

A number of anecdotes relate to difficulties experienced by immigrant workers in using English language. Immigrants who are not fluent in English seem to have difficulty fitting into the culture of their workplaces and relating to other (particularly Australian) workers.

> 'Discrimination was common but it's understandable. When you are working with say four Australians the migrant was always left behind in terms of promotions. Language was the main problem; you did not understand what was being asked. When the boss asked you to do something you didn't understand; naturally he would ask the Australian next time. The boss used to get angry with me because he would ask for a hammer and I would come back with a screw-driver. I didn't understand but it wasn't the boss' fault and it was not my fault; it was the situation we found ourselves in because I did not understand him and he did not understand me. We did what we could.'
> (immigrant male in Shergold and Nicolaou 1986 p. 84)

> 'I don't have much to do with the Australian workers because they seem to look at you askance because you don't speak English. Also, apart from the half-hour meal break there's no chance to talk to anyone; while you are working it is impossible to talk.'
> (female Spanish worker in DIEA 1987, p. 27)

> 'I won't find the same job because of my poor English language skills ... the lowest jobs require you to have English now.'
> (retrenched Greek female in Fotiadis, March 1989, p. 12)

> 'I was working at another workplace (for the same employer) as assistant electrician for ten years. I went overseas for three months and when I came back they didn't give me the previous job because, as I was told, I was not qualified for it. Now I work in a very isolated, boring and low paid job. I felt I was discriminated against because of my limited English and because I am a migrant.'
> (Italian male in Nicolaou 1986, p. 19)

> 'Turkish woman sacked after working four days sorting pre- packaged products because she could not speak English. Company was ordered to reinstate her.'
> (adapted from Boalch and Kennedy Daily Telegraph, 24 August 1988)

Difficulties with the English language can have dramatic effects on an immigrant's promotional and career prospects. In the following statement, an Italian born worker relates an instance where he was not given a promotion due to his poor English. He claims that he was therefore discriminated against by his employer.

> 'I have 26 years of service. I am entitled to a promotion. I have been entitled to a promotion and better job for some time now but they continue to discriminate against me with the excuse that I am not good in using English. They did not take care of my long service. Instead, because they wanted to give the better job to an Australian they asked me to read and write in English to prove to me that I should not get a better job. This was clearly an act of discrimination and took place in a formal way. I went to the union for help but I was told that it was not possible to achieve anything.'
> (Italian male in Nicolaou 1986, p. 19)

Although the respondent has obviously been disadvantaged in this instance due to his language difficulties, it is impossible from the evidence available in his statement to conclude that he was discriminated against. If the promotion required that the respondent be able to communicate effectively in English in either written or spoken form, the employer cannot be accused of discriminating in selecting someone with those skills, rather than the respondent. However, if communication using the English language was irrelevant to the promoted position, all other things being equal, this is a possible case of discrimination.

There are instances where employers take advantage of the fact that some employees have English language difficulties. Problems with English and unfamiliarity with Australia's institutional and legal framework make NESB immigrants, in particular, easy prey for an exploitative employer.

> 'Interpreter services are what I need most at the moment. Legal aid is important because not knowing English I don't know what my rights are. For example, in a factory of about 300 employees I think it is necessary for the employers to provide uniforms and they don't there. I don't know whether they should or not. I don't think the company would be interested in providing any interpreter services. They don't provide any of these things. If you have to ask for extra time off during your holidays they say you should resign; the same happens for maternity leave. They don't guarantee you a job when you come back, but they'll take you on a casual, then maybe full time.'
> (female Spanish worker in DIEA 1987, p. 28)

In Chapter 4, the data showed that immigrant workers (particularly those from NES countries) are highly concentrated in the manufacturing and construction industries and the manual and semi-skilled occupations. Working conditions in many of the firms which comprise these industries are very poor. Although not discrimination in itself (as Australian born workers in these industries and occupations are just as subject to the poor working conditions), this again reflects structural disadvantage in the labour market for immigrant workers. Also, it is arguable whether conditions would remain so poor in these industries and occupations if a greater proportion of workers in these sectors were Australian born, or at least fluent in English.

> 'Oh, it's a dirty place. There is no heating or air conditioning. We have to bring our own heater if we don't want to freeze. In summer we virtually get baked. We don't have an adequate fridge or hot water in the kitchen, let alone anything else. As they don't have a cleaner, we have to get rid of all the mess in our time.'
> (female Spanish machinist in DIEA 1987, p. 21)

Outworkers are particularly disadvantaged. Also, being predominantly NESB new arrivals, they are mostly unaware that they have certain rights.

> 'My job is badly paid. I get between 25 cents and 70 or 80 cents per garment. Do you know how many garments I have to get to make a decent amount of money at the end of the week?'
> (female Spanish outworker in DIEA 1987, p. 20)

There are a number of instances where immigrant workers feel that they are asked to do the most difficult and dirtiest jobs merely because they are immigrants. There seems to be a feeling that Australian born workers are not expected to do these types of work and that Australian born receive privileges at work that they do not.

> 'Australians think we are stupid. Because you are a Lebanese woman, for example, they think that you are less human. But we can't argue with them. They don't like us - we don't like them! The problem, of course, is that we continue to do their dirtiest jobs. When there is hard and dirty work we are the first to be asked to do it.'
> (Lebanese female in Nicolaou 1986, p. 19)

> 'Australians brought us here as cheap meat from Europe. They gave us a number. We still have those numbers. Look at this: my number is 58. They see me as a number. If I die, this means nothing to them. They will replace me with another migrant. The number will remain the same. This will tell you something about discrimination practiced by Australians by migrants. I can guarantee you that they would not ask an Australian to do my job because it's dirty and not good. A few days ago an Australian tried my job. He didn't like it and the boss gave him another one - He is now the person who looks after the meal room; and that is the easiest job you can get in the railways.'
> (Greek male in Nicolaou 1986, p. 18)

> 'Vietnamese are always asked to do the ... work. They are also asked to do more work than the others. I do anything I am told because I have no choice. Other workers, migrants or not, don't mind. Most of them like seeing us pushed around. Unions are totally useless in acknowledging the seriousness of our problems.'
> (Vietnamese male in Nicolaou 1986, p. 18)

Other respondents report high levels of discrimination in general.

> 'I feel that the boss discriminates against me when allocating overtime because I am a union delegate and even more so because I am a migrant from Italy.'
> (Italian male in Nicolaou 1986, p. 18)

> 'If you want to get into some type of work, you have to indicate nationality, country of birth and religion, the ones I applied for were mainly country of birth and whether you have been naturalised. Once you put down you're Egyptian, or whether you are Italian, Greek or whatever, and then you say you are naturalised, the first thing they say is where is you certificate of naturalisation. You show them that and 'Oh yeah, how long have you been in Australia, do you know you have an accent about you, what other languages do you speak?' How ignorant can you be. You tell them you are Egyptian and what other languages can you speak, that's nothing to ask. 'Yeah alright, don't contact us we'll contact you'. I spent 12 months in 1983 looking for work and couldn't find any.'
> (Egyptian male in Voulgaris and Castania 1987, p. 19)

In an interesting reversal, an Australian born male complains that he is discriminated against in his factory because immigrants bribe the supervisor with bottles of scotch whisky to obtain overtime. He says that he resents this type of behaviour and refuses to participate in it.

> 'I feel I have been discriminated against because I am an Australian who is proud of Australian values and practices and who would never bribe anybody for a better living. Unfortunately, people in this factory are selected for promotions not on the basis of experienced but on the basis of how close you are to the foreman. Migrants have always a better chance because they bring presents to the foreman. This is against my principles and against the Australian culture. Especially, when there is overtime, they bribe the foreman. I know migrant people, particularly, Greeks and Lebanese, who every three months would bring a bottle of whisky and as a return they get overtime every Saturday. That's not fair. We bring them in the country, we give them jobs and then, instead of saying 'thank you' to us, they try to take advantage of the system, with habits they had in their country. These are habits that an Australian cannot tolerate.'
> (Australian male in Nicolaou 1986, p. 17)

These examples provide a fascinating insight into the perceptions of immigrant workers in Australia about discrimination in the workplace. The collected experiences suggest that immigrants (particularly those born in NES countries) are the object of some degree of prejudice and informal discrimination in the workplace. While most of these cases will not find their way to organisations such as the HREOC, they are reflective of an entrenched and disturbing phenomenon.

One of the most significant problems seems to be difficulties with the English language. Without English, immigrants are unlikely to be promoted beyond menial duties. Immigrants with English difficulties also seem to suffer social and economic alienation in the workplace, in particular, an inability to recognise and act, when their rights are undermined by fellow workers or the organisations themselves.

A number of immigrant workers commented on the racist taunts they receive in the workplace. Although not discrimination in strictly legal terms (except in NSW and Western Australia, the States which have racial vilification legislation), the presence of explicit racist expressions in the workplace by fellow workers and (at times) managers and supervisors, is likely to reflect an organisational or workplace culture that would be receptive to the possibility of entrenched 'acceptable' or 'structural' discrimination (further discussion of the legislative aspects of discrimination occurs in Chapter 3).

> 'There are about fifteen Australians and this Italian guy at work and this Italian guy is really dumb. Everyone picks on him and our supervisor, he's Australian, he'd be about sixty and he calls him a ... dumb wog. I means, he's married to a Malaysian lady. He might say it to his face. I feel sorry for him because he's just scared of everyone. Everyone picks on him. He's really a nice guy.'
> (Spanish male in Voulgaris and Castania 1987, p. 20)

> 'In a shop, a cousin of mine worked, it was half migrant and half Australian, the people were good until the business changed over. The manager was Australian and he kicked out all the wogs, just cos they were wogs, no explanation. Not because they didn't work just because they were wogs.'
> (Spanish male in Voulgaris and Castania 1987, p. 21)

> 'Migrants are discriminated against. Preference was given to Australian women when I was doing factory work. Women had been there for one year and the Australian women a few months. Don't know why, but I was sacked and told that other women were more suitable. Now I work as a secretary.'
> (Turkish female in Voulgaris and Castania 1987, p. 21)

> 'I don't feel exploited or discriminated against by my workmates but I do feel extremely angry because they call us 'wogs' and 'bludgers' and because

> they say we should go back to our country ... I hurt my hand but I did not say anything because I felt that nobody would believe me because I am Lebanese. There is this rumour that migrants and especially Lebanese corrupt the compensation system. As soon as you say that you are in pain or that you hurt yourself at work, the Australians say that this is symptom of the 'Lebanese back syndrome'.'
> (Lebanese male in Nicolaou 1986, p. 22)

8.3.2.2. Experiences of individual immigrants relating to occupational health and safety.

'Lebanese back' refers to a speculated system of abuse of the workers compensation systems in Australia. The Lebanese community in particular have been accused of participating in this activity. People are said to join organisations, work for a couple of months and then feign an accident and therefore receive a workers' compensation payment. Following the high public profile of 'Lebanese back' over recent years, many other sections of society have developed resentment towards a select number of ethnic groups, which are accused of ripping off the system.

A factor often forgotten in discussion of the incidence of workplace accidents, is the relatively high representation of immigrants in industries and occupations (such as the manufacturing and construction industries and the manual labour occupation) which consist of a far higher proportion of high risk and dangerous workplaces (see Section 4.4).

Other factors such as an immigrant worker's unfamiliarity with technical or mechanical equipment and grasp of the English language (particularly when safety procedures are written or communicated in English) are also important. Greater attention is currently being paid to these factors to ensure that the incidence of injury of immigrant workers (particularly NESB) is minimised, evidenced by the recent release of the Provision of Occupational Health and Safety Information in Languages other than English Draft Code of Practice by the Victorian Occupational Health and Safety Commission (VOHSC 1991).

However, the perception of the 'Lebanese back' syndrome seems to have run fairly deep, leading in some cases to a backlash by employers, particularly if they see their workers' compensation insurance premiums increase. As part of this backlash, many employers are wary of employing persons from certain ethnic communities for fear of this occurring (with the associated increase in compensation levies). A number of respondents relate problems due to this form of discrimination.

> 'I don't want to report my name in your paper that I said this because I will be in trouble. Anyway, there were cases in the past in which I had fights with Australians who were critical of me because I could not speak English. Recently, I got involved in another fight because they told me I was a liar and dishonest when I got a sick pay. On a number of occasions I was told by my supervisor and other Australian workers that I deserved to be at this bad job because I was a member of a 'corrupted community'. They were referring to the 'Greek Conspiracy' story with Social Security ... they kept talking of us as the 'Mediterranean back heroes' suggesting that we are dishonest and prepared to pretend that we are sick in order to get money.'
> (Greek male in Nicolaou 1986, p. 22)

> 'A friend went for a job in a factory and the guy who was to employ him said 'What's that?' referring to all the gold he was wearing. 'It's just gold' he said. He asked 'What country are you from?' 'Turkey'. He said 'We can't employ you because of workers' compensation'.'
> (Turkish male in Voulgaris and Castania 1987, p. 19)

'The Egyptians might have a black mark against their name, but other nationalities have too. Lebanese for instance, when they're employed for 3 weeks to 3 months, accidentally slip, hurt their back and are on their compensation - out on their third party insurance, claiming money. So everyone here thinks 'You've got a Lebanese back' or 'Lebanese neck'. Actually we're getting associated with them.'
(Egyptian male in Voulgaris and Castania 1987, p. 19)

8.3.2.3 Experiences of individual immigrants related to recognition of overseas qualifications

Chapter 7 outlined the difficulties experienced by many immigrants when attempting to obtain Australian recognition of skills or qualifications obtained overseas. Like Government, the Australian media has picked up on this issue over recent years. For example, in late 1990, The Age newspaper published an article about a qualified agricultural engineer from Turkey who, since arriving in Australia, has found it extremely difficult getting his qualification recognised, and who has found it even more difficult to obtain employment. The article goes on to indicate that he plans to sue the Commonwealth Department of Immigration, Local Government and Ethnic Affairs for false and misleading advertising in their immigration campaign which indicated that his services would be in demand in Australia. This seems to be a constant theme among immigrants. They are often told that they have skills and qualifications in demand in Australia, and yet when they arrive, they find it difficult if not impossible to have their qualifications recognised, and almost as difficult to find employment.

'Qualified Agricultural Engineer from Turkey applied for approximately fifty jobs since entering Australia and only had one interview, for which he was rejected. Angry at Australian immigration officers for not telling him the truth about how hard it is to get a job in Australia. Main problem seems to be lack of local experience. Increasing push by qualified migrants to sue Commonwealth Government for false advertising in immigration campaign.'
(adapted from Masanauskas The Age, 22 November 1990)

From the data available, it can be intonated that problems with skills and qualifications recognition cause a high degree of resentment in the immigrant community as such problems have the effect of undermining individuals' professional and personal integrity and pride.

'I think it's crazy to demand that Doctors who have worked in their own countries for about 20 years take the exam here ... after about 20 years of specialisation, it's hard to take exams in general, essential medicine. Such people are wasting their talents here.'
(male medical doctor in Shergold and Nicolaou 1986 p. 180)

'Australia has a lot of professionals from overseas. The Government hasn't spent any money on them ... the examinations must be improved, and opportunities created to work again, even under supervision ... it's surely a benefit to this country.'
(male medical doctor in Shergold and Nicolaou 1986 p. 181)

'I am a qualified tradesman as Electrical Mechanic from my own country. They don't recognise my certificate, so I am working as a labourer, doing the dirty work ... It is discrimination when a person, like myself, is not allowed to work his/her trade due to English difficulties and/or due to the fact that such a person is a non-British, non-Angloceltic migrant. If you are a Muslin Lebanese your chances for a fair go are even more limited.'
(Lebanese male in Nicolaou 1986, p. 19)

One respondent makes the point that non-recognition of appropriate skills and qualifications in Australia leads to significant wastage of human talent in the economy. It also results in a burden to Australian taxpayers who are obliged to support unemployed immigrants with social security payments, whereas if they had their skills and qualifications accepted, they would be far more likely to find employment.

> 'I don't understand why the Government isn't pushing to raise our level and make use of our skills, especially when at the moment we are nothing but a burden on the State. I have been here only two years but some of our members have been here for ten years trying to pass the examinations ... Instead of being welcomed here because we have the extra skill of speaking other languages we are penalised and made to feel inferior because of it. Imagine if I was working in a dental hospital and we had an Arabic-speaking patient or a French speaking patient. Instead of sending the person away until an interpreter could be arranged I could treat them right away. That saves time and maybe pain for the patient and saves the Government the cost of the interpreter ... Worst of all I can't even go to a dental hospital to observe because my qualifications and my experience still mean nothing here ... We are expected to remember expertly what we learned in medical studies years ago and to have kept up with all the latest advances in research and treatment of those ailments ever since. Yet as dentists we, like dentists in Australia, have no need to be technically up to date on those matters when we are not treating people for skin rashes or liver problems (nor would we be allowed to). They require us to be virtually fully trained doctors when we are only going to be allowed to treat disorders of the teeth, mouth and gums. To pass their exams we have to do long amounts of study on books that cost around one hundred dollars each and are not necessarily available to us through libraries and to read many medical journals that are also expensive and beyond our means on social security. Then also there is no guarantee that the questions we are given will be covered by the material they tell us to study.'
> (Lebanese male dentist in Ethnic Affairs Commission of NSW July 1990, p. 9)

In Chapter 7, it is suggested that unnecessary blockages to the Australian recognition of skills and qualifications obtained overseas discriminates against immigrant workers. It also reduces potential economic welfare for Australia as a whole. The anecdotes in this section reflect the general concern and resentment felt by the immigrant population in Australia about the recognition and accreditation systems, and a desire, now shared by Government, to see a rationalisation of the process of recognition and accreditation of overseas skills and qualifications.

8.3.2.4 Experiences of individual immigrants in trade unions

Chapter 4 showed that NESB immigrants are one of the most highly unionised groups in Australian society. However, the experiences of immigrants outlined below suggest that immigrants are not necessarily happy with the services they obtain from their respective unions. Also, the evidence suggests that immigrants (particularly those from NES countries) are under-represented in the power structures, leadership and paid officer positions in the union movement generally.

One of the most constant complaints of immigrant workers is that the union does nothing for them. They seem unaware of the services on offer by most unions, and if they have a valid complaint, they perceive that the union is of little or no help.

> 'The things that concern me the most are the things relating to safety in the workplace. Every factory has dangerous equipment and some of the tasks are hazardous. We should have signs and printed information about these things in every language and the company should make it their business to provide every immigrant worker with information about the kind of risks he

> is facing, in his or her own language ... I think in Australia we don't have an agency that is independent from the unions and the company exclusively to hear and investigate complaints ... the union knows ... about the dirty and uncomfortable places all over the place and they don't say or do anything; they are happy to collect their dues.'
> (female Spanish worker in DIEA 1987, p. 27)

> '(they should) work with the workers and not for the factories. If there is industrial action, the union works things out with the firm and usually what they get is of no benefit to the workers. They achieve silly, unimportant things.'
> (female Spanish worker in DIEA 1987, p. 30)

> 'I am forced to do extra work for nothing. I have to operate two machines at the same time. I asked the union to do something about it but they don't care. I wonder if they would have helped me if I was not Lebanese.'
> (Lebanese male in Nicolaou 1986, p. 19)

In a particularly eloquent account, a female Italian born worker complains that while she is discriminated against at work because she is an immigrant and a female, the union officers she has made contact with are little better. She feels that there is as much racism and sexism evident in the union movement as there is in the work force generally.

> 'I am discriminated against in cases of allocation of work and promotion firstly because I am a woman and secondly because I am a migrant. I am a very active unionist and I approached the union for assistance; but the union doesn't do anything for the same reason ... It is my view that many union officials are as sexist and racist as many employers. Migrants and especially migrant women suffer most as a consequence.'
> (Italian female in Nicolaou 1986, p. 18)

A number of immigrant workers complain that while they are union members and pay their fees every week, they have never had any contact with the union itself. They are unaware who the union officials are and they do not know how to approach the union if they need assistance.

> 'I don't know what help he gives, I haven't seen him for a year.'
> (female Spanish worker talking about trade union official in DIEA 1987, p. 30)

> 'I've never seen him or her. The only thing I know is that I pay every week.'
> (female Spanish worker talking about trade union official in DIEA 1987, p. 30)

> 'I don't have a great opinion of unions in general, because talking to friends who work in different places and belong to different unions, I have found no difference with my own union. To most people, union is a frightening thing, you have to pay otherwise you lose your job. We don't know what to do, we don't see them, we in many cases don't even know their names.'
> (female Spanish worker in DIEA 1987, p. 30)

As with employers, a major complaint of unions by NESB immigrant workers seems to be that they are always spoken to in English, a fact that directly discriminates against NESB immigrant workers. While NESB immigrants have comprised a significant proportion of trade union representation for some time, it is only recently that unions have been making an effort to communicate in languages other than English. Multilingual communication is still not a general requirement.

> 'The union should come closer to the working people because they are not informed about things. Maybe it already helps a lot but I don't know it. If they (unions) don't send us an interpreter to inform us about the services, we don't know how to approach them. If they come to see us, how can we speak to them if we are spoken to in English?'
> (female Spanish worker in DIEA 1987, p. 30)

> 'And for goodness sake, they have to reach out and talk to the ethnic workers. They are ignored for everything except when it comes to collecting the fees. Most people like me, with my little or no English, don't know the slightest thing about unions because we never see them and when or if we do see them we are addressed in a massive meeting in English. They have ethical obligations to us but they don't care. They should start doing positive and realistic things for the workers or have the decency to stop charging us.'
> (female Spanish worker in DIEA 1987, p. 31)

Whilst NESB immigrants are one of the most highly unionised groups in Australian society, the individual experiences cited above suggest that they are unhappy with the services provided to them by the trade union movement. They seem to feel disaffected if not discriminated against by organisations that should be there to protect their rights. They resent the fact that they often have to join a trade union in order to obtain employment, while they perceive that they obtain little or no benefit from their membership.

8.4 OVERVIEW AND CONCLUSION

This chapter has presented a sample of the individual experiences of discrimination in Australia against immigrants in the workforce against a (albeit brief) background of the industrial relations scenario.

Acknowledgement that discrimination could be a problem is given by the fact that all three levels of Government (Federal, State and local), various forms of legislation exist to outlaw it. Throughout this report, attention has been concentrated not only on discrimination in employment, but also on the broader types of discrimination such as on the basis of sex and race, as indirectly these affect workplace experiences.

Examples of individual experiences of discrimination against immigrants were given in Section 8.3. These ranged from the results of formal government investigations into particular problems, to formal complaints to the HREOC, to evidence from individuals cited in various publications and the press.

However, in many cases it remains difficult to link individual complaints to the existence of direct discrimination on the basis of immigrant status. For example, English proficiency may be a desirable characteristic for a particular job in the labour force, so that those from NES countries would be disadvantaged in the labour force rather than being subject to discrimination. Nonetheless, the individual experiences presented in this chapter suggest that informal discrimination occurs at the workplace, especially against NESB immigrants.

The evidence on non-recognition of skills acquired overseas seems more clear cut. That is, it would appear that in some cases people with appropriate skills are being discriminated against because of non-recognition of overseas qualifications. However, over recent years all levels of Government have formally moved to reduce this potential source of discrimination (see Chapter 7 for further details).

There also appear to be several examples of dissatisfaction with trade union officials for their perceived lack of interest, in particular, in the problems of

immigrant workers from NES countries. This could be related to the fact that while immigrant workers in general are more highly unionised that their Australian born counterparts, they are under-represented among union officials and power structures.

CHAPTER 9

CONCLUDING REMARKS

9.1 OVERVIEW OF REPORT

This Report aimed to examine the existence or otherwise of discrimination against immigrant workers in Australia. 'Discrimination' is difficult to define both within and across disciplines. In particular, the distinction between discrimination and disadvantage based on particular demographic characteristics is not clear. Nevertheless, these difficulties do not mean that problems of potential discrimination, and the associated disadvantage both to the individual concerned and Australia as a whole, should not be examined.

Discrimination in this Report is analysed against two assumptions: one, that the Australian approach is to provide all citizens and permanent residents with equal rights irrespective of birthplace (i.e., once accepted as an Australian citizen, or a permanent resident, one is for all intents and purposes, legally Australian, with the exception that only citizens have the right to vote); and two, that to adequately examine legally defined discrimination against immigrant workers also requires analysis of discrimination on the grounds of sex and race both in the workplace and in the community at large, as all such forms of discrimination are likely to affect workplace performance and outcomes.

Australia is one of the three main immigrant receiving countries in the world. While the Commonwealth of Australia is only just over 200 years old, it has always relied heavily on immigration for both its initial population and subsequent population growth. However, the source of Australia's immigrants has changed over time, in response to both domestic and world conditions. Traditionally, the bulk of Australia's immigrants have come from ES countries, and in particular the United Kingdom. However, since World War II first the Mediterranean then countries in Asia have provided increasing numbers. As well, the composition of the Australian Government's immigration program in terms of its skill, family and humanitarian elements has varied over time. The net result has been to make Australia's population one of the most ethnically diverse in the world. Chapter 2 provided a brief overview of the history of immigration to Australia, as a background to better understanding the very broad range of birthplace groups and ethnic origins in the Australian workplace.

Recognition that discrimination on a range of factors exists is provided by the vast array of anti-discrimination legislation. This Report, in Chapter 3, focussed on legislation as it affects immigrants more broadly than just in the area of employment. The Report summarised legislation at both the international and all levels of domestic Government in the areas of human rights, race and sex, but concentrating on the employment implications. Australia has formally ratified ILO Convention 111 (Discrimination (Employment and Occupation)) and is still considering ratifying ILO Convention 143 (Migrant Workers (Supplementary Provisions)). However, the plethora of other legislation related to the issues covered in ILO Convention 143 suggest that de-facto this Convention is also operating in Australia.

In Australia, the Human Rights and Equal Opportunity Commission (HREOC) is the central agency dealing with both general rights and employment based complaints (Anti-Discrimination Boards also exist in the major individual States). Analysis of the HREOC data showed that in spite of extensive legislation making

discrimination illegal, nonetheless significant numbers of complaints on this basis in employment still occurred.

Statistical data on the experiences of immigrants in terms of their labour market characteristics, education and training opportunities, and transition from education to work were provided in Chapters 4 to 6. The data were examined in terms of detailed countries of origin and against similar characteristics of those born in Australia. As a broad generalisation, it would appear that persons from NES countries are advantaged in terms of participation in both secondary and tertiary education, relative to those from either ES countries or those born in Australia. In fact, those from ES countries tend to have the lowest participation rates in all forms of education.

However, the relative advantage displayed by those from NES countries does not translate into either participation in training once in employment, nor in labour market characteristics. Those from NES countries tend to have the lowest labour force participation rates, the highest unemployment rates and the lowest participation in all forms of training whether it be on-the-job, in-house or external. These disadvantages remain true even once qualifications are taken into account. For example, Australian born and those from ES countries tend to have higher participation rates and lower unemployment rates than those from NES countries with similar qualifications.

In general, those from ES countries and those born in Australia tend to have very similar characteristics on a range of education and labour market variables. However, analysis of access to training shows that those from ES countries do best.

The statistical data analysis presented in this Report has of necessity been descriptive. It has attempted to present an overview of the aggregate labour market outcomes of immigrants compared to those born in Australia. Other more sophisticated analyses (see Chapter 1 for a summary) have examined specific labour market outcomes and have controlled for variables such as age, English language proficiency, length of residence in Australia, qualifications and the like. Results of these studies differ, with some concluding that immigrant related characteristics such as lack of English language proficiency explain any supposed disadvantage, while others conclude that some difference still remains. The data in this Report merely confirm the on going existence of differences in labour market outcomes at the aggregate level between different groups of immigrants and those born in Australia.

An area which has received increasing policy attention in Australia over recent years is that of recognition of qualifications gained overseas. Chapter 7 summarises the literature to date and recent Government initiatives in this area. Both the Federal and State Governments have introduced a range of policies to expedite the recognition process for those whose qualifications are recognised, to provide advice on how to most efficiently gain recognition or upgrade qualifications gained overseas to local standards, and to assess the compatibility of overseas qualifications with those awarded in Australia. The results of these policy initiatives, it is hoped, will vastly reduce any potential discrimination or disadvantage in this area in the future.

While not claiming to be in any way exhaustive or representative, Chapter 8 provides evidence from individuals on their claims of discrimination. This evidence is preceded by a brief overview of the industrial relations scenario in Australia. Overall, it would appear the evidence confirms on-going, even if isolated, incidents of discrimination in the general workplace, in terms of recognition of overseas qualifications, representation by trade unions and in terms of verbal abuse. As stated above, several Government initiatives have been introduced over recent years to reduce non-recognition of overseas qualifications. However, despite the existence of significant legislation outlawing discrimination and the introduction

of racial vilification legislation in some states, there is ongoing and systemic evidence of discrimination at the general workplace level, and involving in particular immigrants from NES countries.

9.2 IMPLICATIONS FOR FURTHER RESEARCH

This Report has attempted to cover many aspects of the debate on whether or not discrimination against immigrant workers occurs in Australia. Because of the limited time available, several facets could only be covered briefly and, in some cases, superficially. Four areas in particular stand out as needing further attention.

First, there is a wealth of information contained in the HREOC data. Analysis presented here has identified the need for complaints to the HREOC to be cross-classified by type of complaint, sex and race. However, even with the data currently available, it would be possible to investigate more thoroughly the relationships between existing legislation, types of complaints, if and how these were resolved and if any changes/trends are occurring over time.

Second, the analysis of labour market outcomes of Australian versus overseas born was limited by the data available. Ideally, to try and determine whether differing labour market outcomes are the result of disadvantage or discrimination requires analysis of the same individuals over time, so that their specific experiences can be taken into account. That is, what is required is a longitudinal data set. Currently it is only possible to compare different ethnic groups/individuals at the same point in time, which does not allow for analysis of particular individuals' experiences over time. The Bureau of Immigration Research is in the process of establishing a longitudinal survey of immigrants to Australia, so the necessary data will be available in the future.

Third, the whole issue of the role of immigrants in trade unions is worthy of further investigation. The Australian Bureau of Statistics data show that immigrants are over-represented in trade union membership relative to those born in Australia, though this can partly be explained by immigrants' over-concentration in the more highly unionised industries. However, other data suggest immigrants are under-represented in union management/delegate positions. This is supported by the (albeit limited) anecdotal evidence presented in Chapter 8, where examples suggest immigrants do not feel unions pay enough attention to their immigrant specific needs. Again, the Bureau of Immigration Research has commissioned some work on this area. As well, the recently completed national survey on 'Industrial Relations at Work' should provide suitable data for analysis of this subject.

Fourth, to date the majority of research and work in the area of discrimination has been victim-oriented. That is, the focus of research has been on the alledged targets of discrimination, usually those from NES countries. However, reports such as the PSC (1990) and negative individual experiences related to trade unions suggest it is time to examine whether the potential for discrimination exists in the systems operating in the work place. For example, do APS recruitment practices provide examples of informal discrimination? Are trade unions not paying sufficient attention to the needs of their NESB members? If so, why? And more particularly, how can these systems be changed to reduce this potential discrimination? These questions and more should be the focus of additional future research into discrimination against immigrant workers in Australia.

ANNEX 1: LIST OF ACRONYMS

ABS	Australian Bureau of Statistics
ACTU	Australian Council of Trade Unions
AFAT	Australian Foreign Affairs and Trade
ATSIC	Aboriginal and Torres Strait Islander Committee
CAAIP	Committee to Advise on Australia's Immigration Program
CEDAW	Convention on the Elimination of all Forms of Discrimination Against Women
DEIR	Department of Employment and Industrial Relations
DIEA	Department of Immigration and Ethnic Affairs (now DILGEA)
DILGEA	Department of Immigration, Local Government and Ethnic Affairs (formerly DIEA)
EEO	Equal Employment Opportunity
ES	English Speaking
ESB	English Speaking Background
HRC	Human Rights Commission
HREOC	Human Rights and Equal Opportunity Commission
IBHR	International Bill of Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Convenant on Economic, Social and Cultural Rights
ILO	International Labour Organisation
MACCR	Ministerial Advisory Council on Community Relations
MEET	Minister for Employment, Education and Training
NES	Non-English Speaking
NESB	Non-English Speaking Background
NOOSR	National Office of Overseas Skills Recognition
NPC	National Population Council
NSW	New South Wales
OECD	Organisation for Economic Co-operation and Development
OPCPR	Optional Protocol on Civil and Political Rights
OSS	Occupational Share System
OSW	Office of the Status of Women
PSC	Public Service Commission
RCR	Relative Concentration Ratio
SBS	Special Broadcasting Service
TIS	Telephone Interpreter Service
UDHR	Universal Declaration of Human Rights
UK	United Kingdom
UN	United Nations
VEAC	Victorian Ethnic Affairs Commission

ANNEX II: COMMONWEALTH AND STATES LEGISLATION

Commonwealth

* Racial Discrimination Act 1975
* Ombudsman Act 1976
* Sex Discrimination Act 1984
* Public Service Reform Act 1984
  (providing a legislative base for equal employment opportunity programs)
* Affirmative Action (Equal Employment Opportunity for Women) Act 1986
* Human Rights and Equality Commission Act 1986 (replaced Human Rights CommissionAct 1981), amended by Statute Law (Miscellaneous Provisions) SL(MP) Act 1987 and SL(MP) Act 1988
* Inspector-General of Intelligence and Security Act 1986
* Equal Employment Opportunity(Commonwealth Authorities) Act 1987
  (legislation to require statutory authorities to introduce EEO programs for designated groups eg. Telecom Australia, Australia Post, Qantas)
* National Agenda for Women 1988

States and Territories

NSW

* Anti-Discrimination Act 1977
* Ombudsman (Amendment) Act 1978
* Ethnic Affairs Commission Act 1979
* Anti-Discrimination (Amendment) Act 1980;1981;1982;1983;1987
* Public Service Management Act and Regulations 1988

Vic

* Ombudsman Act 1973
* Equal Opportunity Act 1984
* Public Authorities (Equal Employment Opportunity) Bill 1987
* State Superannuation Act 1988
* Health (General Amendment) Act 1988 (S.39)

Qld

* No state anti-discrimination or equal opportunity legislation
* Parliamentary Commissioner's Act 1974-1976
* Public Service Management and Employment Act 1988

WA

* Women's Legal Status Act 1923
* Parliamentary Commissioner's Act 1971
* Equal Opportunity Act 1984
* Factories and Shops Act 1987
* Racial Vilification Legislation 1990

SA

* Ombudsman Act 1972-1974
* Racial Discrimination Act 1976
* Sex Discrimination Act 1975
* Equal Opportunity Act 1984
* Government Management and Employment Act 1985

Tas

* State Service Act 1984
* Industrial Relations Act 1984

NT

* Ombudsman (Northern Territory) Act 1977
* Public Service Act 1986

ACT

* No ACT anti-discrimination or equal opportunity legislation

Source: Adapted from P. Bailey 1990, Human Rights: Australia in an International Context, E. Davis and V. Pratt 1990 (eds), Making the link: Affirmative Action and Industrial Relations, and C. Ronalds 1987, Affirmative Action and Sex Discrimination.

ANNEX III: DETAILS OF THE ACTS IMPLEMENTED BY THE HUMAN RIGHTS AND EQUAL OPPORTUNITY COMMISSION

* Human Rights and Equal Opportunity Commission

International Covenant on Civil and Political Rights
- Declaration of the Rights of the Child
- Declaration on the Rights of Disabled Persons
- Declaration on the Rights of Mentally Retarded Persons
- Convention Concerning Discrimination in Respect of Employment and Occupation (International Labour Organisation number 111)

Note that recent Federal regulations have extended the ILO's criteria of race, colour, national extraction, social origin, sex, religion or political opinion by applying this Convention also to discrimination on the basis of age, disability (whether physical, intellectual, psychiatric or mental), impairment, sexual preference, marital status, criminal record, medical record and trade union activity)

* Racial Discrimination Act 1975

Note that the major purposes of the Act are to promote equality before the law of all persons regardless of their race, colour or national or ethnic origin and to make discrimination against people on the basis of these attributes unlawful in public life. It is unlawful to discriminate on those grounds in employment, access to public places and facilities, the provision of land, housing and other accommodation, the provision of goods and services or the right to membership of a trade union. It is also an offence under the Act to publish or display an advertisement indicating an intention to unlawfully discriminate on the basis of race, colour or national or ethnic origin.

- International Convention on the Elimination of All Forms of Racial Discrimination

* Sex Discrimination Act 1984

Note that this Act is not primarily concerned with the provision of equal opportunities or equal results but with the elimination of particular forms of unequal treatment and providing individuals with remedies when they suffer specific forms of discrimination. It is unlawful to discriminate on sex grounds in work, education, provision of goods and services, accommodation, disposal of land, membership and activities of licensed clubs and administration of Commonwealth laws and programs. Affirmative action has separate legislation, Affirmative Action(Equal Employment Opportunity for Women) Act 1986, and was introduced a couple of years later than the Sex Discrimination Act. It addresses structural patterns which disadvantage women collectively, requiring active steps to prevent individual acts of discrimination occurring rather than compensating after the event. It involves providing new opportunities to counteract the legacy of past discrimination and the operation of present discrimination. The legislation is the outcome of campaigns not just for 'equal' treatment but for 'fair' treatment (Ronalds, 1987).

- Convention on the Elimination of All Forms of Discrimination Against Women

This Convention was adopted by the U.N. General Assembly on 18 December 1979 and signed by Australia on 17 July 1980, being ratified on 28 July 1983. The significance of CEDAW is that it can be used in different contexts and provides a legal argument for the incorporation of international human rights instruments into domestic law. It imposes also legal obligations on nation States to remove discriminatory laws and legal obstacles to equality, to promote equality by

affirmative action, and to modify conduct and to eliminate prejudices and practices based on the inferiority or superiority of either sex.

* Privacy Act 1988

Note that this Act was passed in 1988 to regulate the use of personal information including the Tax File Number (TFN) which the Federal Government adopted to reduce social security and taxation fraud. The Act has two spheres of operation (i) Information Privacy Principles - to protect personal information which is collected by Federal government departments or agencies and (ii) Tax File Number Guidelines - to ensure that Tax File Numbers are collected and used only for tax related purposes.

- Organisation for Economic Cooperation and Development (OECD) Guidelines on the Protection of Privacy and Transborder Flows of Personal Data

- International Covenant on Civil and Political Rights (Article 17)

ANNEX IV: ILO CONVENTIONS RATIFIED BY AUSTRALIA

2	Unemployment 1919 (15.6.1972)
7	Minimum Age (Sea) 1920 (28.6.1935)
8	Unemployment Indemnity (Shipwreck) 1920 (28.6.1935)
9	Placing of Seamen 1920 (3.8.1925)
10	Minimum Age (Agriculture) 1921 (24.12.1957)
11	Right of Association (Agriculture) 1921 (24.12.1957)
12	Workmen's Compensation Agriculture) 1921 (7.6.1960)
15	Minimum Age (Trimmers and stokers) 1921 (28.6.1935)
16	Medical Examination of Young Persons(Sea) 1921 (28.6.1935)
18	Workmen's Compensation (Occupational Diseases) 1925 (22.4.1959)
19	Equality of Treatment (Accident Compensation) 1925 (12.6.1959)
21	Inspection of Emigrants 1926 (18.4.1931)
22	Seamen's Articles of Agreement 1926 (1.4.1935)
26	Minimum Wage Fixing Machinery 1928 (9.3.1931)
27	Marking of Weight (Packages transported by vessels) 1929 (9.3.1931)
29	Forced Labour 1930 (2.1.1932)
42	Workmen's Compensation (Occupational Diseases) (Revised) 1934 (29.4.1959)
45	Underground Work (Women) 1935 (7.10.1953)
47	Forty-Hour Week 1935 (22.10 1970)
57	Hours of Work and Manning (Sea) 1936 (24.9.1938)
63	Statistics of Wages and Hours of Work 1938 (5.9.1939)
76	Wages, Hours of Work and Manning (Sea) 1946 (25.1.1949)
80	Final Articles Revision 1946 (24.1.1949)
81	Labour Inspection 1947 (24.6.1975)
83	Labour Standards (Non-Metropolitan Territories) 1947 (15.6.1973)
85	Labour Inspectorates (Non-Metropolitan Territories) 1947 (30.9.1954)
86	Contracts of Employment (Indigenous Workers) 1947 (15.6.1973)
87	Freedom of Association and Protection of the Right to Organise 1948 (28.2.1973)
88	Employment Service 1948 (24.12.1949)
93	Wages, Hours of Work and Manning (Sea) (revised) 1949 (3.3.1954)
98	Right to Organise and Collective Bargaining 1949 (28.2.1973)
99	Minimum Wage-Fixing Machinery (Agriculture) 1951 (19.6.1969)
100	Equal Remuneration 1951 (10.12.1974)
105	Abolition of Forced Labour 1957 (7.6.1960)
109	Wages, Hours of Work and Manning (Sea) (Revised) 1958 (15.6.1972)
111	Discrimination (Employment and Occupation) 1958 (15.6.1973)
112	Minimum Age (Fishermen) 1959 (15.6.1971)
116	Final Articles Revision 1961 (29.10.1963)
122	Employment Policy 1964 (12.9.1969)
123	Minimum Age (Underground Work) 1965 (12.12.1971)
131	Minimum Wage Fixing 1970 (15.6.1973)
137	Dock Work 1973 (25.6.1974)
142	Human Resources Development 1975 (10.9.1985)
144	Tripartite Consultation (International Labour Standards) 1976 (11.6.1979)
150	Labour Administration 1978 (10.9.1985)
156	Workers with Family Responsibilities 1981 (30.3.1990)
159	Vocational Rehabilitation and Employment (Disabled Workers) 1983 (10.8.1990)
160	Labour Statistics 1985 (15.5.1987)

Total Number of Conventions ratified by Australia: 48 (Daly 1990:19)

Source: M. Daly 1990, Australia and the International Labour Conventions, p.19.

ANNEX V: ILO CONVENTIONS UNDER CONSIDERATION BY AUSTRALIA

53	Officers' Competency Certificates 1936
58	Minimum Age (Sea) (Revised) 1936
92	Accommodation of Crews (Revised) 1949
120	Hygiene (Commerce and Offices) 1964
132	Holidays With Pay (Revised) 1970
133	Accommodation of Crews (Supplementary Provisions) (1970)
135	Workers' Representatives 1971
139	Occupational Cancer 1974
143	Migrant Workers(Supplementary Provisions) 1975
151	Labour Relations (Public Service) 1978
155	Occupational Safety and Health 1981
159	Vocational Rehabilitation and Employment(Disabled Persons) 1983
162	Asbestos 1986
163	Seafarers' Welfare 1987
164	Health Protection and Medical Care (Seafarers) 1987
165	Social Security (Seafarers) 1987
166	Repatriation of Seafarers 1987
167	Safety and Health in Construction 1988
168	Employment, Promotion and Protection against Unemployment 1988
169	Indigenous and Tribal Peoples in Independent Countries 1989

Source: Department of Industrial Relations, Annual Reports, 1987-88, 1988-89, 1989-90.

REFERENCES

Australian Bureau of Statistics References:

Australian Bureau of Statistics 1985, The Labour Force Australia, Group 600, Tables AN13 and AN13A (tables on microfiche).
Australian Bureau of Statistics 1990, How Workers Get Their Training, Cat No. 6278.0 (unpublished data).
Australian Bureau of Statistics February 1990, Labour Mobility Australia, Cat No. 6209.0 (unpublished data).
Australian Bureau of Statistics May 1990, Transition from Education to Work, Cat No. 6227.0 (unpublished data).
Australian Bureau of Statistics August 1990, Trade Union Members Australia, Cat. No.5325.0.
Australian Bureau of Statistics August 1990, The Labour Force Australia, Group 600, Tables AN13 and AN13A, Group 800, Table E24 (tables on microfiche).

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Arrow, K. 1973, 'The theory of discrimination' in Discrimination in Labour Markets, eds. O. Ashenfelter and A. Rees, Princeton University Press.
Australian Bureau of Statistics, Queensland 1990, The Economic Status of Migrants in Australia, AGPS, Canberra.
Australian Council of Trade Unions 1985, Occupational Health and Migrant Workers: Resource Documents and Recent Developments, ACTU, Melbourne.
Australian Council of Trade Unions 1989, Developments in Migration, No. 61: The Image of the Trade Union Movement and Migrant Workers, ACTU, Melbourne.
Australian Council of Trade Unions 1990, Racism and Antisemitism - On the Increase?, ACTU, Melbourne.
Australian Council of Trade Unions 1991, Unions and the Australian Workforce: a selection of recent studies on unions and their response to multiculturalism, ACTU, Melbourne.
Australian Population and Immigration Council (APIC), 1977, Immigration Policies and Australia's Population : A Green Paper, AGPS, Canberra.
Backhouse, M. 1991 'Equal rights chief urges stronger laws on race', The Age, 4 February, p.5.
Bailey, P. 1990, Human Rights: Australia in an International Context, Butterworths, Sydney.
Baker, D. 1983, Race, ethnicity and power: A comparative study, Routledge and Kegan Paul, London.
Baker, M and Wooden, M. 1991, Immigration and Training, National Institute of Labour Studies, Adelaide.
Binavince, E. 1987, The Juridicial Aspects of Race Relations, Carleton University, Ottawa, mimeo.
Birrell, R. & Birrell, T. 1987, An Issue of People: Population and Australian Society, 2nd edn, Longman Cheshire, Melbourne.
Boalch, K. & Kennedy, L. 1988, 'Company told to reinstate sacked worker', Daily Telegraph, 24 August, Sydney.
Bock, A. 1991, 'A woman's work is never done - especially by the men', The Age, 9 May, p.1.
Bottomley, J. 1990, They Don't Listen to Us at All: A Survey of Greek, Macedonian and Serbo-Croation Speaking Members of the Hospital Employees Federation Number Two Branch, Urban Ministry Network Inc., Melbourne.
Bureau of Immigration Research 1989, Australian Immigration, Consolidated Statistics, Number 15, AGPS, Canberra.
Bureau of Immigration Research 1990, Immigration Update September 1990, AGPS, Canberra.
Bureau of Immigration Research 1990, Settler Arrivals 1988-89, Statistical Report No. 2, AGPS, Canberra.

Bureau of Immigration Research 1991, Australia's Population Trends and Prospects 1990, AGPS, Canberra.
Cain, G.G. 1976, 'The challenge of segmented labour market theories to orthodox theory: a survey', Journal of Economic Literature 14(4), pp. 1215-57.
Calabrese, N. 1982, Migrants and Occupational Health: Exploring the Myths, ACTU/VTHC, Melbourne.
Callus, R., Morehead, A., Cully, M. and Buchanan, J. 1991, Industrial Relations at Work: The Australian Workplace Industrial Relations Survey (Commonwealth Department of Industrial Relations), AGPS, Canberra.
Campbell, F. 1984, 'The Asian immigration debate: is it really a race debate', The National Times, April 27 to March 3, Sydney.
Canberra Times 1990, 'Bias cuts qualified migrants from jobs', 14 September, p.2, Canberra.
Carmody, H. and Adie, J. October 1990, "The Ageing of Australia: Labour Market Implications", Business Council Bulletin.
Casey, H. & Yaman, N. 1980, Slow Down the Line: Occupational health hazards amongst South American and Turkish workers in Flemington, Flemington Community Health Centre, Melbourne.
Castles, S. 1990, Global Workforce, New Racism and the Declining Nation State, Occasional Paper No. 23, The Centre for Multicultural Studies, University of Wollongong.
Castles, S. 1986, Patterns of Disadvantage Among the Overseas Born and Their Children, The Centre for Multicultural Studies, University of Wollongong.
Castles, S. 1988, Mistaken Identity: Multiculturalism and the Demise of Nationalism in Australia, Pluto Press, Sydney.
Castles, S., Mitchell, C., Morrissey, M. & Alcorso, C. 1989, The Recognition of Overseas Trade Qualifications, AGPS, Canberra.
Catanzariti, J. 1990, 'Many Guises of Discrimination', The Weekend Australian, 11 August, Sydney, p.35.
Centre for Human Rights 1990, United Nations Training Course on International Norms and Standards in the Field of Human Rights, United Nations, New York.
Chapman, B. J., and Iredale, R. R., 1990, Immigration Qualifications: Recognition and Relative Wage Outcomes, Office of Multicultural Affairs, DPMC, Canberra.
Collins, J. 1988, Migrant Hands in a Distant Land: Australia's Post-War Immigration, Pluto Press, Sydney.
Commerce Clearing House 1990, Australian Employment Law Guide, CCH, Melbourne.
Commissioner for Equal Opportunity 1990, Annual Report 1989-90, Western Australian Equal Opportunity Commission, Perth.
Creighton, B. & Stewart, A. 1990, Labour Law: An Introduction, The Federation Press, Annandale NSW.
Cushing, R. G. 1981, 'Status attainment, segmented labour markets and minority stratification: a review and critique of current theory', Department of Sociology, Australian National University , Canberra, mimeo.
Daly, M. 1990, 'Australia and the International Labour Conventions', in Current Research in Industrial Relations, ed G. Griffin, University of Melbourne.
Davis, C. & Nieuwenhuysen, J. 1984, Equal Work Opportunity in Australia: Anti-Discrimination Laws and Wider Issues, Monograph Np, M75 Committee for Economic Development of Australia, Melbourne.
Davis, E. & Pratt, V. (eds) 1990, Making the Link: Affirmative Action and Industrial Relations, Affirmative Action Agency and Labour-Management Studies Foundation, Graduate School of Management, Macquarie University, Sydney.
Department of Employment and Industrial Relations 1986, Equal Employment Opportunity Strategic Plan, AGPS, Canberra.
Department of Foreign Affairs and Trade 1990, 'Australia elected to the UN Human Rights Commission' The Monthly Record, 61(5), p.321.
Department of Immigration and Ethnic Affairs nd, A Land of Immigrants, Canberra.
Department of Immigration & Ethnic Affairs, 1978, Overseas Departures Survey, Canberra.
Department of Immigration and Ethnic Affairs 1987, And ... Giving Our Lives to this Country: A Summary Report of Spanish-Speaking Women in the Workforce, AGPS, Canberra.