

INFORMATION SERVICES TEMPLATES
(updated 5-2024)

CONTENTS

s22

s22

Section 10 of the RDA

Section 10 of the [Racial Discrimination Act 1975](#) (Cth) (RDA) applies to a law that is alleged to be discriminatory in its terms or its practical effect (see *Gerhardy v Brown* (1985) 159 CLR 70, 81 (Gibbs CJ); *Mabo v Queensland* (1988) 166 CLR 186, 198 (Mason CJ)).

As discussed, in contrast to section 9 of the RDA, a person cannot rely upon section 10 to make a complaint of unlawful discrimination to the Australian Human Rights Commission (the Commission).

This is because the Commission has no jurisdiction to inquire into an allegation that a law of the Commonwealth or of a State or Territory is invalid because it is inconsistent with section 10(1) of the RDA.

Rather, a person must lodge proceedings in either the Supreme Court of the State or Territory in which the legislation was made (as occurred in the context of the *Sex Discrimination Act 1984* (Cth)(SDA) in *Pearce v South Australian Health Commission* (1996) 66 SASR 486) or in the Federal Court (as occurred in the context of the SDA in *McBain v Victoria* (2000) 99 FCR 116).

s22