

Racial discrimination and the law

Resource sheet

Key words

- Discrimination:** Any distinction, exclusion, restriction or preference made on a particular basis such as race, religion, national origin which has the purpose or effect of denying recognition, enjoyment, or exercise, on an equal footing, of human rights and freedoms in society.
- Perpetrator:** a person who commits or performs a crime, blunder or anything outrageous.
- Race:**
1. each of the major divisions of human-kind, having distinct physical characteristics.
 2. a tribe, nation.
 3. a group of persons connected by common descent.
- Vilification:** a public act of showing and inciting hatred towards a person or group of persons.
- Ethnicity:** having common national, racial, cultural, religious, or linguistic characteristics.

Key questions

- What is racial discrimination?
- What is a special measure?
- Are there differences between levels of jurisdiction (ie. between state and federal governments)?

Racial discrimination is treating someone less favourably because of his or her race, colour, descent, national origin or ethnic origin than someone of a different 'race' would be treated in a similar situation. This is known as '*direct discrimination*'.

Example:

An employer refuses to hire a suitably qualified Aboriginal shop assistant and hires a less qualified non-Aboriginal assistant instead. He argues he could lose customers if he had Aboriginal people working in the shop. Direct discrimination can never be justified.

It is also racial discrimination to make everyone satisfy the same criterion when the effect is that a higher proportion of people of one 'race' cannot satisfy it. This is known as '*indirect discrimination*'. Unlike direct discrimination, indirect discrimination may be able to be justified, unless the criterion is reasonable and relevant to the particular circumstances.

Example:

A rule that police recruits must be taller than 175cms will exclude a higher proportion of applicants of Asian descent, and possibly many women. Unless the police service can justify the minimum height requirement, it will be unlawful. Australian police services no longer impose a minimum height requirement.

'*Special measures*' are not unlawful discrimination. Special measures are programs with the objective of securing the adequate advancement of a group, or individual members, affected by historic disadvantage to help them enjoy and exercise their human rights in full equality. These programs cannot be continued after equality has been achieved.

Example:

Commonwealth programs that aim to increase Aboriginal school retention and achievement rates, such as the Aboriginal Student Support and Parent Awareness (ASSPA) funding program, are 'special measures'.

When is racial discrimination unlawful?

The RDA makes racial discrimination unlawful whenever it impairs a person's equal enjoyment of his or her human rights and fundamental freedoms. Therefore, it is unlawful to discriminate in the following situations:

- Employment (including advertising jobs, recruitment, the selection process, access to training, promotion opportunities, the terms and conditions of employment, termination of employment).
- Renting accommodation or selling real estate.
- Education (including school education, TAFE, University, etc).
- Provision of all goods and services (for example, when buying something, hiring a car, applying for credit, using banks, seeking assistance from government departments, lawyers, doctors and hospitals, or attending restaurants, pubs, entertainment venues and so on).
- Access to places and facilities intended for use by the public (for example, parks, libraries, government offices, hotels, places of worship, entertainment centres, public transport and so on).
- Trade union membership.

Other important human rights that can be impaired by racial discrimination include the right to equal treatment by the courts and other agencies in the legal system, the rights to vote and join the public service and the right to privacy.

Racial discrimination is unlawful at different levels of society.

1. Many schools have policies against racist behaviour. In some states there is a compulsory anti-racism policy across all schools. Check with your school Principal on the details of this policy. Further information can be found at <http://www.racismnoway.com.au/strategies/programs/>
2. Racial discrimination is unlawful in each state and territory in Australia.

Jurisdiction	Legislation
NSW	<i>Anti-Discrimination Act 1977</i> (Part 2 Division 3A)
QLD	<i>Anti-Discrimination Act 1991</i> (section 124A)
VIC	<i>Racial and Religious Tolerance Act 2001</i>
SA	<i>Racial Vilification Act 1996</i> (section 4)
WA	<i>Equal Opportunity Act 1984</i> (section 160)
ACT	<i>Discrimination Act 1991</i>
TAS	<i>Anti-Discrimination Act 1998</i> (section 19)
NT	<i>NT Anti-Discrimination Act 1996</i>

3. Racial Discrimination is unlawful at the federal level of government in Australia. The *Racial Discrimination Act, 1975* aims to ensure that all people in Australia are equal under the law.
4. There are also international conventions that provide guidelines around racial discrimination. The most relevant convention is the *International Convention on all forms of Racial Discrimination 1966* (ICERD).

Where is racial discrimination covered under international law?

The *International Convention on the Elimination of All Forms of Racial Discrimination* (ICERD) is the international treaty from which Australia's anti-discrimination legislation is derived.

ICERD was one of the first human rights treaties to be adopted by the United Nations. More than 156 countries have ratified this convention. Australia ratified the convention on 30 September 1975.

Under the *ICERD*, racial discrimination is where a person or a group is treated differently because of their race, colour, descent, national origin or ethnic origin and this treatment has the purpose or effect of impairing their human rights and fundamental freedoms.

Other international conventions that refer to racial discrimination are; the *International Convention on Civil and Political Rights* (ICCPR) article 2, the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), article 2 and the *Convention on the Rights of the Child* (CRC), article 2.

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