

Good practice, good business



Australian
Human Rights
Commission

everyone, everywhere, everyday

Eliminating discrimination and harassment from your workplace

RACE DISCRIMINATION AND RACIAL HATRED

The information provided is a guide only. Employers should obtain legal advice if they have specific questions about their obligations under racial discrimination legislation.

What is racial discrimination?

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**'.

For 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 not be justified even for business reasons such as this.

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, unless the criterion is reasonable and relevant to the particular circumstances. This is known as '**indirect discrimination**'.

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

What racial discrimination is not

The Racial Discrimination Act provides for 'special measures'. These 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.

Racial discrimination in employment

The *Racial Discrimination Act 1975* makes it unlawful to discriminate in the area of employment in: advertising jobs, recruitment, the selection process, access to training, promotion opportunities, the terms and conditions of employment, termination of employment.

It is also unlawful in the provision of goods and services, the right to join a trade union; access to places and facilities; land, housing and other accommodation.

What is racial hatred?

The *Racial Discrimination Act (1975): Racial Vilification* makes offensive behaviour based on racial hatred unlawful. Racial hatred can include unlawful racially offensive behaviour in public based on the race, colour, national or ethnic origin of a person or group of people which is likely to offend, insult, humiliate or intimidate.

Unlawful offensive behaviour might include:

- a speech at a public rally
- putting racist posters or stickers in a public place
- writing racially offensive comments in a publication

The act must have occurred within sight and hearing of other people (although other people do not have to be present) or in a place to which the general public is invited or has access.

What racial hatred is not

The racial hatred provisions state that the following things are not unlawful if 'done reasonably and in good faith':

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- an artistic work or performance - for example, a play in which racist attitudes are expressed by a character
- an academic publication, discussion or debate – for example, discussing and debating public policy such as immigration, multiculturalism, or special measures for particular groups
- a fair and accurate report on a matter of public interest – for example, a fair report in the media of an act of racial incitement or racially offensive conduct
- a fair comment if the comment is an expression of a person's genuine belief.

This fact sheet is part of *good practice, good business* – information and resources for employers to address discrimination and harassment in the workplace.

Available online at www.humanrights.gov.au/employers/

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