



Australian
Human Rights
Commission

Racial Discrimination

KNOW YOUR RIGHTS



What is racial discrimination?

Racial discrimination is when a person is treated less favourably than another person in a similar situation because of their race, colour, descent, national or ethnic origin or immigrant status.

For example, it would be 'direct discrimination' if a real estate agent refuses to rent a house to a person because they are of a particular racial background or skin colour.

It is also racial discrimination when there is a rule or policy that is the same for everyone but has an unfair effect on people of a particular race, colour, descent, national or ethnic origin or immigrant status.

This is called 'indirect discrimination'.

For example, it may be indirect racial discrimination if a company says that employees must not wear hats or other headwear at work, as this is likely to have an unfair effect on people from some racial/ethnic backgrounds.



What is racial hatred or racial vilification?

Racial hatred (sometimes referred to as racial vilification) is doing something 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.

Examples of racial hatred may include:

- racially offensive material on the internet, including eforums, blogs, social networking sites and video sharing sites
- racially offensive comments or images in a newspaper, magazine or other publication, such as a leaflet or flyer
- racially offensive speeches at a public rally
- racially abusive comments in a public place, such as a shop, workplace, park, on public transport or at school
- racially abusive comments at sporting events by players, spectators, coaches or officials.



How am I protected from racial discrimination and racial hatred?

The Racial Discrimination Act aims to ensure that Australians of all backgrounds are treated equally and have the same opportunities.

This Act makes it against the law to treat you unfairly, or to discriminate against you, on the grounds of race, colour, descent, national or ethnic origin, and immigration status.

The Act also makes racial hatred against the law.

The Act gives effect to Australia's obligations under the *International Convention on the Elimination of All Forms of Racial Discrimination*, to which Australia is committed.



What does the Racial Discrimination Act do?

The Act protects you against discrimination in many areas of public life, including:

- **employment** – getting a job, terms and conditions of a job, training, promotion, being dismissed
- **education** – enrolling or studying in a course at a private or public school, college or university
- **accommodation** – renting or buying a house or unit
- **getting or using services** – such as banking and insurance services, services provided by government departments, transport or telecommunication services, professional services like those provided by lawyers, doctors or tradespeople, services provided by restaurants, shops or entertainment venues
- **accessing public places** – such as parks, government offices, restaurants, hotels or shopping centres.

The Act also protects you if you are **harassed** because of your race.



What about discrimination and harassment at work?

The Racial Discrimination Act covers situations where you feel that, because of your race, you have been:

- refused employment
- dismissed
- denied a promotion, transfer or other employment-related benefits
- given less favourable terms or conditions of employment
- denied equal access to training opportunities
- selected for redundancy
- harassed.

It doesn't matter if you are applying for a job, are an apprentice or trainee, on probation, work part-time or full-time, or if you are a casual or permanent employee – you are protected by the Act.

The law covers all types of employers, including: the Commonwealth and state governments; the private sector; as well as contract and commission-based work; and recruitment and employment agencies.

Employers have a legal responsibility to take all reasonable steps to prevent racial discrimination and should have policies and programs in place to prevent racial discrimination in the workplace.



A Maori man working for a building company claimed that his co-workers used offensive terms, such as 'blacks' and 'niggers', in his presence.

He made a complaint to the company director which led to his co-workers refusing to work with him. This led to him being made a casual, and eventually, not being offered any more work by his boss.

Through conciliation, the company agreed to pay the man financial compensation, provide him with a written reference and arrange anti-discrimination training for company staff.



When is racial hatred not against the law?

The Racial Discrimination Act aims to strike a balance between the right to communicate freely ('freedom of speech') and the right to live free from racial hatred or vilification.

To strike this balance, the Act outlines some things that are not against the law, provided they are 'done reasonably and in good faith' – even if they are done in public.

Under the Act, the things that are not against the law if they are "done reasonably and in good faith" are:

- an artistic work or performance – for example, a play in which racially offensive attitudes are expressed by a character

- a statement, publication, discussion or debate made for genuine academic or scientific purposes – for example, discussing and debating public policy such as immigration, multiculturalism or special measures for particular groups
- making a fair and accurate report on a matter of public interest – for example, a fair report in a newspaper about racially offensive conduct
- making a fair comment, if the comment is an expression of a person's genuine belief.

A woman from El Salvador said she was harassed and bullied by a co-worker during her employment with an organisation.

She said she raised her concerns with management and was told "you are being too emotional - this is because you are from South America". The woman's position was subsequently made redundant and she alleged that this constituted racial discrimination.

The organisation acknowledged that the woman had a dispute with a colleague and had complained to management. The organisation denied that comments connected to the woman's ethnic background were made as alleged. The organisation said the redundancy was due to a genuine restructure.

The complaint was resolved through conciliation with an agreement that the organisation would provide the woman with a Statement of Regret and financial compensation. The organisation also agreed to have staff complete anti-discrimination training within 6 months of the conciliation conference.

What can I do if I experience discrimination or racial hatred?

You may want to deal with the situation yourself by raising it directly with the person or people involved or with a supervisor, manager or discrimination/harassment contact officer.

Making a complaint to the Commission

If this does not resolve the situation, or you do not feel comfortable doing this, you can make a complaint to the Australian Human Rights Commission. You can also have someone such as a solicitor, advocate or trade union representative make a complaint on your behalf.

It does not cost anything to make a complaint to the Commission.

Your complaint needs to be put in writing. The Commission has a complaint form that you can fill in and post or fax to us. Or you can lodge a complaint online at our website. If you are not able to put your complaint in writing, we can help you with this.



The complaint should say what happened, when and where it happened and who was involved. A complaint can be made in any language. If you need a translator or interpreter, we can arrange this for you.

A Kenyan man was told by a real estate company that he was required to vacate the premises he rented from them.

He claimed that, even though he had negotiated a date on which he would vacate the premises, the company changed the locks on the unit without telling him. He also claimed that when he went to the unit to collect his property, he was racially abused by the company director's family member.

The company agreed that it had changed the locks on the unit but said that it only did this because the man's rent was in arrears. The company director's family member also denied racially abusing the man.

The complaint was conciliated, with the individual family member agreeing to pay the man financial compensation and attend anti-discrimination training.

What will happen with my complaint?

When the Commission receives a complaint about something that is covered by the Racial Discrimination Act, the President of the Commission can investigate the complaint and try to resolve it by conciliation.

The Commission is not a court and cannot determine that discrimination has happened. The Commission's role is to get both sides of the story and help those involved resolve the complaint. Commission staff may contact you to get further information about your complaint.

Generally, the Commission will tell the person or organisation the complaint is against (the respondent) about your complaint and give them a copy of the complaint. The Commission may ask the respondent for specific information or a detailed response to your complaint.

Where appropriate, the Commission will invite you to participate in conciliation. Conciliation is an informal process that allows you and the respondent to talk about the issues and try to find a way to resolve the complaint.

If your complaint is not resolved, or it is discontinued for another reason, you can take your complaint to the Federal Court of Australia or the Federal Magistrates Court.

What can I do to prevent discrimination?

Everyone has a role to play to help ensure that people from diverse cultures and backgrounds have the same opportunities as other Australians to participate in the political, economic and social life of our communities by letting us know what is happening.

The Commission undertakes a wide range of activities to build awareness about the rights and responsibilities that individuals and organisations have under the Racial Discrimination Act.

There is also a major focus on undertaking research and education projects to tackle racism and promote greater understanding between people of different cultures and backgrounds.

Projects have included national consultations, conferences, community forums and online forums.

The Commission has developed resources to assist sporting organisations and employers respond to and benefit from cultural diversity.

Education resources have also been developed for schools and communities.

You can find out more about what we're doing by visiting: www.humanrights.gov.au/racial_discrimination

National Anti-Racism Partnership and Strategy

In February 2011, the Commonwealth Government announced Australia's new multicultural policy, The People of Australia.

A key component of the policy was the establishment of a new national partnership to develop and implement a comprehensive National Anti-Racism Strategy for Australia.

The Race Discrimination Commissioner is leading the development and delivery of the National Anti-Racism Partnership and Strategy, and a Secretariat has been established within the Australian Human Rights Commission.

For more information, please go to: www.humanrights.gov.au/racial_discrimination/NARPS.html

Where can I get more information?

The Australian Human Rights Commission's contact details are:

Postal Address

Australian Human Rights Commission
GPO Box 5218
Sydney NSW 2001

Street Address

Level 3, 175 Pitt Street
Sydney NSW 2000

Phone: (02) 9284 9600 or 1300 369 711

TTY: 1800 620 241 (toll free)

Fax: (02) 9284 9611

Email: communications@humanrights.gov.au

Website: www.humanrights.gov.au

Complaints

Complaint Info line: 1300 656 419 (local call)

Email: complaintsinfo@humanrights.gov.au

Online: You can make a complaint online by going to www.humanrights.gov.au/complaints_information/online_form/index.html.

If you need an Auslan interpreter, the Commission can arrange this for you.

If you are blind or have a vision impairment, the Commission can provide information in alternative formats on request.

Other contact points for racial hatred complaints

If you are concerned about offensive media stories, broadcasts or online content, you can complain to the Australian Communications and Media Authority (ACMA); the Advertising Standards Board for advertisements; or the Australian Press Council for newspaper stories.

You can also complain to the Editor or Manager of the particular media organisation involved.

If you are concerned about offensive behaviour by neighbours, you can approach a Community Justice Centre to help resolve the problem, or the Department of Housing if you live in public housing.

If you are threatened with violence or violently attacked you should go to the police.

General legal advice

If you are thinking about making a complaint, you might also want to consider obtaining legal advice or contacting your trade union.

There are community legal services that can provide free advice about discrimination and harassment. Contact details for your closest community legal centre can be found at www.nacalc.org.au/directory



Disclaimer

The information in this brochure is only intended as a guide. It is not a substitute for legal advice.

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