



Racial discrimination

Racial discrimination occurs when a person is treated less favourably, or not given the same opportunities, as others in a similar situation, because of their race, the country where they were born, their ethnic origin or their skin colour.

The *Racial Discrimination Act 1975* (RDA) makes it unlawful to discriminate against a person because of his or her race, colour, descent, national origin or ethnic origin, or immigrant status.

The RDA protects people from racial discrimination in many areas of public life, including employment, education, getting or using services, renting or buying a house or unit, and accessing public places.

The RDA also makes racial hatred unlawful.

Employees and potential employees

The RDA makes it unlawful to discriminate when advertising jobs, during recruitment and selection processes, when making decisions about training, transfer and promotion opportunities, and in the terms, conditions and termination of employment.

Examples of racial discrimination in employment could include:

- insisting that all employees speak English at all times, even during their breaks
- not employing someone from a particular racial group because ‘those people are unreliable’
- not employing or promoting someone because of assumptions they wouldn’t ‘fit in’ with their colleagues, or
- unfair treatment in the course of work on the basis of race such as subjecting employees to negative comments about their race.

Example

Sam, who was born in Ghana, worked in a manufacturing company. His co-workers would call him a “black bastard” and “monkey” and ask him “Where is there a well-developed black country?” Sam said his work was over-scrutinised compared to other employees and that he was rarely acknowledged by his co-workers and manager.



The RDA also protects people from being treated unfairly because of their association with a person of a particular race, colour or national or ethnic origin.

All types of employers and employment relationships are covered under the RDA, including Commonwealth Government employees, state government employees and private sector employees, full-time, part-time and casual employees, contract workers and commission agents, as well as apprentices, trainees and those on probation.





It also covers recruitment processes organised through labour hire companies and recruitment and employment agencies.

Customers

The RDA makes it unlawful to discriminate in the provision of services, such as banking and insurance services; services provided by government departments; transport or telecommunication services; professional services, such as those provided by lawyers, doctors or tradespeople; and services provided by restaurants, shops or entertainment venues.

This means that it is against the law for a provider of goods or services to discriminate against a person by:

- refusing to provide a person with goods, services and facilities
- providing them with goods, services and facilities on less favourable terms and conditions, or
- providing the goods, services and facilities in an unfair manner

because of his or her race.

For example, it would be discriminatory if a real estate agent refused to rent a house to a person because they were of a particular race or skin colour.



Direct and indirect discrimination

Discrimination can be direct or indirect.

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

Indirect discrimination can be less obvious. It can happen when employers or service providers put in place conditions, requirements or practices which appear to treat everyone the same but which actually disadvantage some people because of their race, colour, descent, national or ethnic origin or immigrant status. If the requirement is not reasonable in regards to the circumstances of the case, it could be indirect discrimination.

*For example, it would be **direct discrimination** if an employer refused to hire a suitably qualified Aboriginal person as a shop assistant and instead hired a less qualified person of a different race because they felt they could lose customers if they had an Aboriginal person working in the shop.*



It may be **indirect 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 certain racial or ethnic backgrounds.



When discrimination is not unlawful

Like other anti-discrimination laws, the RDA sets out certain limited circumstances in which it is not unlawful to discriminate against a person on the basis of their race. However, the exceptions included in the RDA are more restricted than those in other anti-discrimination laws and only permit discrimination on the grounds of race or ethnicity in very limited circumstances.

Special measures

The primary exception in the RDA involves special measures. Special measures have the goal of fostering greater racial equality by assisting groups of people who face, or have faced, entrenched discrimination so they can have similar access to opportunities as others in the community.

For example, the rental assistance given to Aboriginal and Torres Strait Islander tertiary students as part of the Aboriginal Study Grant Scheme (ABSTUDY) is a form of special measure. The purpose of this assistance is to increase participation rates of Aboriginal and Torres Strait Islander students in tertiary education to a level equivalent to the non-Indigenous community.



Nationality, citizenship and visa status

Although acts of discrimination based on 'national or ethnic origin' are prohibited by the RDA, acts of discrimination based on nationality or citizenship are not prohibited by the RDA. 'National origin' is different to 'citizenship'. According to the law, 'national origin' should be limited to characteristics determined at the time of birth – either by the place of birth or by the national origin of a parent or parents, or a combination of some of those factors.

However, it can be against the law for an employer to not employ someone or offer them employment opportunities because of their immigrant status. This does not mean that an employer has to employ someone who does not have a valid work visa.

It is also possible for an employee to bring a complaint against his or her employer in relation to discrimination on the basis of nationality under the *Australian Human Rights Commission Act 1986* – see the fact sheet, *Other areas of workplace discrimination* at www.humanrights.gov.au/employers.



Complaints of racial discrimination resolved by the Commission

A Greek woman employed by a large company as a travel consultant asked her team leader for leave on a particular Friday for religious and cultural reasons, as Greek Orthodox Good Friday did not coincide with the Easter weekend public holidays. She alleged that her team leader laughed at her request, said 'You are in Australia and should celebrate Australian Easter', told her that if she was unhappy about this she should 'go back to her own country' and made fun of her surname by calling it 'the alphabet'.

The complaint was resolved through conciliation with the company agreeing to provide the woman with financial compensation, a statement of regret and a statement of service.

A man claimed that a staff member at a supermarket checked his bag on the way out because of his race and skin colour. The supermarket stated that it is a condition of entry that customers may be randomly asked to have their bags checked and that the race or skin colour of customers are not factors in the random selection of customers for bag checks.

The complaint was resolved through conciliation and the man accepted a private statement of regret from the supermarket.





What is racial hatred?

Under the RDA, it is unlawful to do or say something in public that is reasonably likely to offend, insult, humiliate or intimidate a person or group because of their race, colour, or national or ethnic origin.

This behaviour is called racial hatred.

Examples of racial hatred could include:

- racially offensive material in print or on the internet (including e-forums, blogs, social networking sites and video sharing sites), such as:
 - displaying racist posters, or
 - posting racially offensive cartoons, ‘memes’ or other images, or
- racially offensive behaviour or language in a public place, like a workplace or a shop, such as:
 - calling people racist names, or
 - making racially offensive comments, jokes or gestures.

A person who subjects another person to racially offensive behaviour is primarily responsible for his or her behaviour. However, employers can be held responsible – or vicariously liable – for acts of racial hatred by their employees or agents.

The RDA aims to strike a balance between freedom of speech and the right to live free from racial hatred or vilification.

To strike this balance, the RDA 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 RDA, 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.



Complaint of racial hatred resolved by the Commission

Two Nigerian men were employed as factory workers with a manufacturing company. They alleged that their supervisor made racially derogatory comments towards them such as “black idiot”, “you eat like a monkey” and “go back to Africa”. They also alleged that he verbally and physically threatened them.

Following conciliation, the company agreed to pay the men financial compensation and provide them with written apologies. The company also agreed to establish an anti-discrimination policy, to provide anti-discrimination training to all staff members and to encourage the supervisor to attend training and counselling.



Employers' obligations

Employers have a legal responsibility to take all reasonable steps to prevent racial discrimination.

'Reasonable steps' may include putting in place policies and procedures to create a discrimination-free environment. It could also include procedures to deal with allegations of discrimination and harassment made by employees or customers.

It is against the law to victimise a person for making, or proposing to make, a complaint to the Australian Human Rights Commission about racial discrimination or racial hatred.

Employers can also be held legally responsible for discrimination or harassment by their employees. For more information, see the fact sheet, *Vicarious liability* at www.humanrights.gov.au/employers.

Useful links

Workplace Cultural Diversity Tool

<https://culturaldiversity.humanrights.gov.au>



Racism. It Stops with Me

<https://itstopswithme.humanrights.gov.au>

Further information

Australian Human Rights Commission

Level 3, 175 Pitt Street
SYDNEY NSW 2000

GPO Box 5218
SYDNEY NSW 2001

Telephone: (02) 9284 9600
National Information Service: 1300 656 419
TTY: 1800 620 241

Email: infoservice@humanrights.gov.au
Website: www.humanrights.gov.au/employers



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Revised November 2014.