

Issues paper - Definition of 'race'

The Act protects against discrimination on the ground of the race of a person, a characteristic that relates generally to persons of the race of the aggrieved person, or a characteristic that is generally imputed to persons of the race of the aggrieved person. It defines race to include colour, descent, ethnic or national origin or nationality. The fact that a person's race may comprise two or more distinct races does not prevent it from being a race for the purposes of the Act. It also protects from discrimination against a 'relative or associate' of a person who is protected from discrimination on the ground of their race. The concept of race, although commonly referred to, means different things to different people. **Question: Should the protections for race discrimination be broadened in the Act and, if so, how?**

The NSW and Tasmanian Acts expressly include ethno-religious origins in their definitions of 'race'. On one view, the Act's definition of race, which refers already to ethnic origin, may protect against discrimination on the ground of ethno-religious origins. The religious and political conviction Ground may also, to an extent, protect against discrimination on the ground of ethno-religious origin. When the NSW Act was amended to include 'ethno-religious' in its definition of 'race,' it was said that the effect of the amendment is to clarify that ethno-religious groups, such as Jews, Muslims and Sikhs have access to the racial vilification and discrimination provisions of the NSW Act. The amendment is in line with judicial decisions in NSW and overseas which indicate that ethno-religious background is included in the legal concept of race. **Should the Act be amended to include ethno-religious origins specifically in the definition of race?**

The extent to which the Act covers all matters that may be related to an individual's status of being, or having been, an immigrant or being the descendant of an immigrant is not entirely certain. Again, this sort of protection may already be encompassed within the Act's definition of 'race' which includes ethnic origin, descent and national origin. **Should a person's status of being, or having been, an immigrant should be included in the definition of race? Should a person's ancestry be included within the definition of 'race'?**

The Office of Multicultural Interests suggests that the definition of 'race' should be amended to include 'ethnic origin including but not limited to language spoken at home'. Again, it may be that the current reference to ethnic or national origin in the Act's definition of race protects against language discrimination. For example, under the Act it may be unlawful to discriminate against a person because of the language which they speak in the workplace if that language is directly linked to the person's ethnic or national background and the job description or requirements do not provide that essential skills for the position include a high level of spoken English in the workplace. **The Commission seeks submissions as to whether the Act's definition of race provides sufficient protections against language discrimination and, even if it does whether it should do so explicitly.**

The Commission would benefit from submissions on the above including, in particular, whether there are any persons that should be protected on the basis of race, but do not fall within the current definition. For the full discussion of these issues, see the Discussion Paper at pages 21 and 116-7.