

Race Discrimination

It is unlawful under the Equal Opportunity Act 1984 (the Act) to discriminate against a person because of their race.

Under the Act race includes skin colour, descent, ethnic or national origin or nationality and may comprise two or more distinct races.

Race discrimination can be **direct** or **indirect**.

Direct Race Discrimination

Direct race discrimination occurs when a person is treated unfairly because of their race, or the race of a relative or associate compared to another person of a different race, in the same or similar circumstances.

Indirect Race Discrimination

Indirect race discrimination is when a requirement, condition or practice that is the same for everyone has an unfair effect on someone because of their race, and is unreasonable in the circumstances.

Where does the protection apply?

Under the Act it is unlawful to discriminate against a person because of their race, in certain areas of public life, including:

- Work
- Education
- Accommodation
- Provision of goods, services and facilities
- Clubs
- Access to places and vehicles
- Application forms
- Advertisements
- Disposal of land or estates

Responsibilities

Organisations must ensure they provide a working environment and services that are free from race discrimination and they must take all reasonable steps to prevent it from happening or they may be held responsible for their employees' actions.

For the purposes of the Act, a person who causes, instructs, persuades, aids, or permits another person to engage in unlawful conduct is taken to have engaged in that conduct themselves.

Making a Complaint

A person who believes they have been discriminated against because of their race can lodge a complaint with the Commissioner. The onus of proof lies with the person making the complaint.

Complaints must be submitted in writing, but you are not required to use English. You may write your complaint in the language you feel most comfortable using. Complaints can be submitted via email, post, or through the complaint form on the Equal Opportunity Commission's website.

The incident or incidents referred to in the complaint must have occurred within the 12 months prior to the date the complaint is lodged.

In some circumstances, the Commissioner may determine that there is good reason — or good cause — to include incidents that occurred more than 12 months before the complaint was submitted.

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Exceptions

There are some instances under the Act where it is not unlawful to discriminate against a person because of their race and these exceptions include:

- Domestic workers in private households
- Genuine occupational qualification
- Measures intended to achieve equality or meet special needs
- Where Australian citizenship is required (this applies to public bodies only)
- Accommodation provided by charitable or other voluntary bodies solely for the people of one race
- Accommodation in private households
- Racial or ethnic clubs, except based on colour
- Disposal of an estate or interest in land by will or gift
- The provision of charitable benefits
- Admission as a member of a voluntary organisation
- Establishments providing accommodation for aged people – admissions and benefits
- The ordination of priests or ministers of religion.

If an individual or organisation relies upon an exception under the Act when a complaint is made against them, they must justify the use of that exception to the Commissioner for Equal Opportunity.

Examples of race discrimination:

An Aboriginal employee is consistently passed over for secondment opportunities, with management saying they “don’t want to put pressure on her” – despite her expressing interest and meeting all criteria.

A rental agency requires all applicants to provide multiple forms of Australian ID and proof of long-term employment – a policy that disproportionately disadvantages recent migrants and refugees from culturally and linguistically diverse backgrounds.

A qualified applicant of Asian heritage is overlooked for promotion in favour of a less experienced white colleague, with the manager saying they “just wouldn’t fit the culture.”

A restaurant refuses to seat a Māori customer, claiming his traditional tā moko (cultural tattoo) on his face is “intimidating to other diners,” despite it being a recognised cultural expression.


How to Contact the Commission

Call

General enquiries: 08 9216 3900

Training courses: 08 9216 3927

Country callers: 1800 198 149

 Interpreter service: 13 14 50

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