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## Fact sheet

# Complaints under the Racial Discrimination Act

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## What is the Racial Discrimination Act?

The *Racial Discrimination Act 1975* (Cth) (the RDA) makes it against the law to treat you unfairly because of your race, colour, descent, national or ethnic origin or immigrant status.

The RDA also makes racial hatred against the law.

## When can this law be used?

You can use the RDA to get fair treatment in many areas of public life such as:

- **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 or 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.

## What is racial discrimination?

Racial discrimination happens 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.

Racial discrimination also happens 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 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?

It is against the law to do 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.

## **When is offensive behaviour based on race not against the law?**

The RDA aims to strike a balance between the right to communicate freely ('freedom of speech') and the right to live free from racial hatred. The RDA says that the following things are not against the law if they are "**done reasonably and in good faith**" in:

- **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.

## **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.

If direct contact 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 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.

For your complaint to be valid it must be reasonably arguable that the events you want to complain about are unlawful discrimination and you must provide sufficient details about your allegations including 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, the Commission can arrange this for you.

## **What will happen with my complaint?**

When the Commission receives a complaint about something that is covered by the RDA, 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 Circuit Court. In certain circumstances, you can only take a matter to court if the court has granted you leave to do so.

## **Where can I get more information?**

The Australian Human Rights Commission's contact details are:

### **Telephone**

Complaint Info line: 1300 656 419 (local call)

TTY: 1800 620 241 (toll free)

Fax: (02) 9284 9611

### **Post**

Australian Human Rights Commission

GPO Box 5218

Sydney NSW 2001

### **Online**

Email: [complaintsinfo@humanrights.gov.au](mailto:complaintsinfo@humanrights.gov.au)

Website: [www.humanrights.gov.au](http://www.humanrights.gov.au)

You can make a complaint online by going to [www.humanrights.gov.au/complaints\\_information/online\\_form/index.html](http://www.humanrights.gov.au/complaints_information/online_form/index.html).

If you are deaf or hearing impaired you can contact us by TTY on 1800 620 241. 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 media organisation.

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.naccl.org.au/directory](http://www.naccl.org.au/directory).

**Disclaimer: The information on this fact sheet is only intended as a guide. It is not a substitute for legal advice.**