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## Racial Discrimination

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### What is racial discrimination?

Racial discrimination occurs when a person is treated less favourably, or not given the same opportunities, as others in the same or a similar situation, because of their race.

There are both federal laws and state/territory laws that make racial discrimination unlawful.

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

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.

### Direct and indirect racial discrimination

Racial discrimination can be direct or indirect.

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

**Indirect discrimination** is focused on the impact of rules, practices or policies that are applied equally but which have a disproportionate impact on some people because of their race, colour, descent, national or ethnic origin or immigrant status. If the requirement is not reasonable in the particular circumstances, it could be indirect discrimination.

For example, it would be **direct discrimination** if a tennis coach refused to coach a person because they were of a particular race.

It may be **indirect discrimination** if a basketball club makes a rule that all athletes have to train on Fridays to be eligible for selection in the team. This rule is not directly discriminatory, but it has a discriminatory effect on people who cannot attend training on Fridays because of religious commitments. The club would need to make a more flexible rule or demonstrate why the requirement to train on Fridays is reasonable.

### What is racial harassment?

Racial harassment is any unwelcome conduct, verbal or physical, that intimidates, vilifies, offends or humiliates another person and which happens because of the person's race, colour or national or ethnic origin.

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The information on *Play by the Rules* is not intended as a substitute for legal or other professional advice.

*Play by the Rules* recommends you seek professional advice if a specific situation arises involving harassment or discrimination.

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In determining whether a person has engaged in harassment towards another person it is irrelevant whether or not the first person is aware of the harassment, and whether or not the behaviour is intentional.

Behaviour need not be repeated or continuous to constitute harassment, a single incident or comment can amount to harassment.

Examples of behaviours that could amount to harassment include:

- an athlete teasing a team mate because of his/her race;
- a coach imitating an athlete's accent;
- a sports administrator telling a racist joke; and
- a referee calling a player an offensive name or using unsuitable language because of his/her race.

## What is racial hatred or racial vilification?

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 of people because of their race, colour or national or ethnic origin. This behaviour is called racial hatred (or racial vilification).

Provisions relating to racial hatred/vilification are also contained in state/territory legislation.

Examples of racial hatred could include:

- a tennis club displaying racist posters in its club room;
- a hockey coach making racist statements at a team meeting in an effort to encourage hatred and contempt for an opposing team member because of his/her race; and
- an athletics association publishing a racist cartoon in its newsletter.

The RDA aims to strike a balance between freedom of speech and the right to live free from racial hatred and vilification. To this end, the RDA provides that the following things are not unlawful, provided they are *'done reasonably and in good faith'*, even if they are done in public:

- an artistic work or performance;
- a statement, publication, discussion or debate made for genuine academic or scientific purposes;
- making a fair and accurate report on a matter of public interest; and
- making a fair comment, if the comment is an expression of a person's genuine belief.

## When is racial discrimination not unlawful?

Anti-discrimination laws set out certain limited circumstances in which it is not unlawful to discriminate against a person on the basis of their race.

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, specific grants programs that support Indigenous participation and complement existing mainstream programs. An example of this type of program is Active Canberra's Indigenous Sports Grants Program (<http://www.sport.act.gov.au/grants/indigenous-sports-grants-program>).

## What can I do if I experience discrimination, harassment or racial hatred?

If you consider that you have experienced discrimination, harassment or racial hatred there are several options available to you.

Your options include:

- seeking to deal with the situation yourself by raising your concerns directly with the person or people involved;
- discussing your concerns with a friend, family member or club/team member or official;
- contacting your Member Protection Information Officer (MPIO). If your club/association does not have an MPIO you may try contacting your state/territory sports association;
- contacting your state/territory department of sport and recreation to obtain further information and/or clarify the options available to you;
- lodging a complaint under an applicable member protection policy;
- contacting the equal opportunity/anti-discrimination commission in your state or territory to obtain further information and/or make a complaint; or
- contacting the Australian Human Rights Commission to obtain further information and/or make a complaint.

A person who makes a complaint, or intends to make a complaint about discrimination or harassment is protected from being victimised. Victimisation is unlawful under both state and federal laws.

### Useful links and further information

#### **Racism. It Stops with Me**

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

#### **Australian Human Rights Commission**

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

#### **Victorian Equal Opportunity and Human Rights Commission**

[www.humanrightscommission.vic.gov.au](http://www.humanrightscommission.vic.gov.au)

#### **Anti-Discrimination Board of New South Wales**

[www.antidiscrimination.justice.nsw.gov.au](http://www.antidiscrimination.justice.nsw.gov.au)

#### **Anti-Discrimination Commission of Queensland**

[www.adcq.qld.gov.au](http://www.adcq.qld.gov.au)

#### **South Australia Equal Opportunity Commission**

[www.eoc.sa.gov.au](http://www.eoc.sa.gov.au)

#### **Equal Opportunity Commission Western Australia**

[www.eoc.wa.gov.au](http://www.eoc.wa.gov.au)

#### **Northern Territory Anti-Discrimination Commission**

[www.adc.nt.gov.au](http://www.adc.nt.gov.au)

#### **ACT Human Rights Commission**

<http://hrc.act.gov.au>

#### **Office of the Anti-Discrimination Commission (Tasmania)**

<http://equalopportunity.tas.gov.au>