



# Race discrimination

## What does the law say about race discrimination?

It is generally against the law in NSW to treat you unfairly or harass you because of:

- your race, colour, nationality, descent, ethnic or ethno-religious background; or
- the race, colour, nationality, descent, ethnic or ethno-religious background of any of your relatives, friends, associates or work colleagues.

The law is not entirely clear on the definition of ethno-religious background. It would cover a situation where one ethnic group has a particular religion that is exclusive to that group, such as Sikhs. It would be unlikely to cover a situation where people from many different ethnic groups have the same religion, such as Catholics. However there are situations in between these two examples where the coverage is not certain.

### Indirect discrimination

Indirect race discrimination is also against the law. This occurs when there is a rule or requirement that disadvantages people of a particular race more than people of other races – unless it can be shown that the rule or requirement is ‘reasonable in all the circumstances’.

Following are some examples of requirements that could be against the law:

- it would be against the law for an employer to make you wear a uniform that does not meet your ethno-religious dress needs – unless doing so is reasonable for the particular job;
- it would be against the law to stop you speaking in your own language at work or when you are studying at college, university and so on – unless speaking in your language stops the work or study being done properly; and
- it would be against the law for an employer to insist that you speak English fluently or without an accent – unless this is reasonable for the particular job.

## When does this law apply?

Race discrimination is generally against the law in the following areas:

- **in employment** – when you apply for a job, when you are at work and when you leave a job. This also covers bodies which issue licences to perform particular jobs;
- **when you get or try to get most types of goods or services** – for example, from shops, banks, lawyers, government departments, the police, public transport, local councils, doctors, hospitals and other medical services, hotels, sporting venues and entertainment venues;
- **when you apply to get into or study in any State educational institution**, which includes any government school, college or university;
- **when you rent or buy accommodation** such as houses, units, flats, hotel or motel rooms, caravans or commercial premises; and
- **when you try to enter or join a registered club, or when you get services from one.** A registered club is a club that sells alcohol or has gambling machines.

### **Racial vilification is also against the law**

Racial vilification is also against the anti-discrimination law. Vilification is defined as any public act that could encourage hatred, serious contempt, or severe ridicule towards people of a particular race.

Public acts could include remarks in a newspaper or journal, in other publications, on radio or television or on the internet, including social networking sites. They could also include graffiti, posters, verbal abuse, speeches or statements, gestures and badges or clothing with slogans on them, as long as these are displayed, made or worn in public. The vilification law does not cover acts that are not public, for example abuse over a back fence that no-one else can hear.

For more information about this part of the law, refer to our website and select 'Anti-discrimination law', ask for our factsheet Vilification or contact the Anti-Discrimination Board's Enquiry Service.

### **What can I do if I am treated unfairly or harassed because of my race?**

First you need to work out if what has happened to you seems to be against the law. If you are not sure after reading this factsheet, phone our Enquiry Service for more information.

If what's happened to you does seem to be against the law, you should try talking to the person or organisation involved. The organisation may have a policy on these issues or a process in place to deal with grievances, and you may be able to address your problem through these channels. You can also get help from other sources such as trade unions.

If you don't feel able to talk to the person or organisation, or you talk to them but it doesn't solve the problem, you can make a complaint to the Anti-Discrimination Board. It won't cost anything to make a complaint, and you don't need a lawyer.

If what has happened to you is not against the law, there may be other ways you can solve the problem. Refer to our factsheet *How to deal with discrimination, unfair treatment or harassment* or phone our Enquiry Service for advice.

### **Making a complaint**

Your complaint must be in writing. You can make a complaint by completing our discrimination complaint form, which is available on our website or from our Enquiry Service. Another option is to write to the President of the Anti-Discrimination Board, explaining what happened and why you think you have been discriminated against because of your race. Our addresses and phone numbers are at the end of this factsheet.

You can write to us in any language, or in Braille, and we will have your complaint translated free of charge. If you need assistance to write your complaint down, phone us and we will help you or refer you to somewhere else for help.

We also accept complaints on your behalf by organisations such as trade unions and other representative bodies (for example an ethnic community association). In this case you must be named in the complaint and it must be clear in the complaint that you agree with it being made. You may also be asked to show that you consent to the complaint being made on your behalf.

If you want to make a complaint on behalf of a child or a person with a disability who cannot make their own complaint, contact us for more information.

The Board can only accept a complaint if the discrimination or harassment occurred in the twelve months before we receive the complaint. If you make a complaint about events that occurred more than twelve months before we receive it, we may not investigate the complaint.

If your problem is urgent (for example you are about to lose your job or housing), make this clear in your complaint and we will try to help you quickly.

### What happens after you make a complaint?

We will generally investigate your complaint to make sure that what has happened to you is against the law. If this is the case, we will try to conciliate your complaint. This means we will try to help you and the person or organisation you are complaining about to reach a private settlement that you both agree on. The Board is impartial in this process and does not take sides.

The settlement will depend on the circumstances of your case, on what the other parties are willing to offer and what you are willing to accept. It could be an apology, financial compensation, getting your job back, changes to your working arrangements, getting the service you were denied, and so on.

We treat all complaints confidentially, but we have to inform the organisation or person you are complaining about of the complaint. This is so we can give them a fair chance to respond to your complaint. We will not release information about your complaint to anyone else except with your permission or if we are required to by law.

Most complaints are conciliated. If yours isn't, you may go to the Equal Opportunity Division of the Administrative Decisions Tribunal, which is like a court. It provides a legal judgment that must be followed. Very few cases need to go to the Tribunal and in some circumstances you can ask for your details to be kept confidential.

### Victimisation is also against the law

It is against the law for anyone to hassle or victimise you or treat you unfairly because:

- you have complained to your employer or another person about race discrimination;
- you have complained to the Anti-Discrimination Board; or
- you have supported someone with a race discrimination complaint, or acted as a witness in a race discrimination case.

You can lodge a separate complaint of victimisation with the Anti-Discrimination Board if you have been victimised because of a race discrimination complaint.

### Examples of race discrimination complaints we have handled

- An Aboriginal woman complained that when she went to collect her winnings from the poker machines at the local golf club, the bar manager asked her if she was a member, and then began serving a white man who had arrived at the bar after her. The complaint was resolved when the president of the club and the bar manager agreed to provide a statement of regret about the incident, and confirmed that she was welcome at the club.
- A Jewish man complained that a public official vilified Jewish people when he made derogatory comments about the background of a person who asked him a question in a public meeting, and did so again during a radio interview about the first incident. The complaint was resolved when the public official provided an apology, which was distributed as a joint media release.
- Two men of Vietnamese background complained that their employer in a bakery said that he hated Vietnamese people and told them that they had to speak English in the workplace or they could leave. At a conciliation conference, the employer said that he was joking but agreed to apologise. One of the complainants accepted this but the other did not, and his complaint was referred to the Administrative Decisions Tribunal.
- A security guard from the former Yugoslavia complained that on his first day at work his supervisor said "here's another bimbo Yugoslav joining us". From then on he was harassed and subjected to disparaging comments, given no supervision or training, and victimised by being transferred when he reported this to management. Eventually he resigned and found another job. The complaint was settled when the employer agreed to provide a payment of \$3,930, a statement of service, and an undertaking to train employees about harassment and discrimination.

### **Examples of race discrimination complaints we have handled**

- A woman of Islander background complained that the production manager at the manufacturing company where she worked made derogatory remarks about her race, including telling her to “go back to your country”, and her co-workers also insulted her. She said that when she complained about this treatment she was dismissed. The complaint was settled when the employer agreed to pay her \$2,000.
- An Indo-Fijian man complained that a subordinate at work abused him racially, and when he reported this his employer didn’t deal with the matter adequately. The complaint was resolved when the respondent agreed to review its policies and procedures on harassment and anti-discrimination and the complainant was provided with a verbal apology.
- A group of men made complaints of race and sex discrimination against a number of bars and nightclubs that would not allow them to enter. In one case they were told that there were already too many men inside, in another the premises were too full, and in another it was members only. However the complainants alleged they were turned away because they were ‘of Middle Eastern appearance’, although they were not all from the Middle East. The complaints were resolved when the venues agreed to pay each of the men compensation of \$500.
- An Aboriginal man alleged that his application for accommodation was not progressed on the ground of his race. He said that he was advised that he would need to go on a three month trial lease if he was the successful applicant. His application was ultimately rejected and the agent refused to provide with reasons for the rejection. The complainant accepted a \$4,000 payment in settlement of his complaint.

### **The Anti-Discrimination Board of NSW**

#### **Enquiries**

Phone (02) 9268 5544  
Toll free number 1800 670 812  
(if you are calling from outside Sydney)  
Email: adbcontact@justice.nsw.gov.au

#### **Complaints**

Phone (02) 9268 5544  
Toll free number 1800 670 812  
(if you are calling from outside Sydney)  
Email: complaintsadb@justice.nsw.gov.au

#### **Telephone interpreter service**

Phone 13 14 50

#### **Website**

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

#### **Parramatta**

Level 7, 10 Valentine Avenue, Parramatta NSW 2150  
PO Box W213, Parramatta Westfield NSW 2150  
Phone (02) 9268 5555 Fax (02) 9268 5500

#### **Wollongong**

84 Crown Street, Wollongong NSW 2500  
PO Box 67, Wollongong NSW 2520  
Phone (02) 4267 6200 Fax (02) 4267 6261

#### **Newcastle**

Suite 5, Level 5, 400 Hunter Street,  
Newcastle NSW 2300  
PO Box 1077, Newcastle NSW 2300  
Phone (02) 4903 5300 Fax (02) 4929 7952

**For more detailed information on making a complaint and the complaint process refer to our website and select ‘Making a complaint’, or ask for our factsheet on *Complaining to the Anti-Discrimination Board*.**