

DISCRIMINATION AND HUMAN RIGHTS

Presented by the Australian Human Rights Commission

20 September 2023



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Commission

INVESTIGATION AND CONCILIATION SERVICE

Investigates and conciliates complaints alleging unlawful discrimination and contravention of human rights under federal legislation.



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Act

AGE DISCRIMINATION ACT

DISABILITY DISCRIMINATION ACT

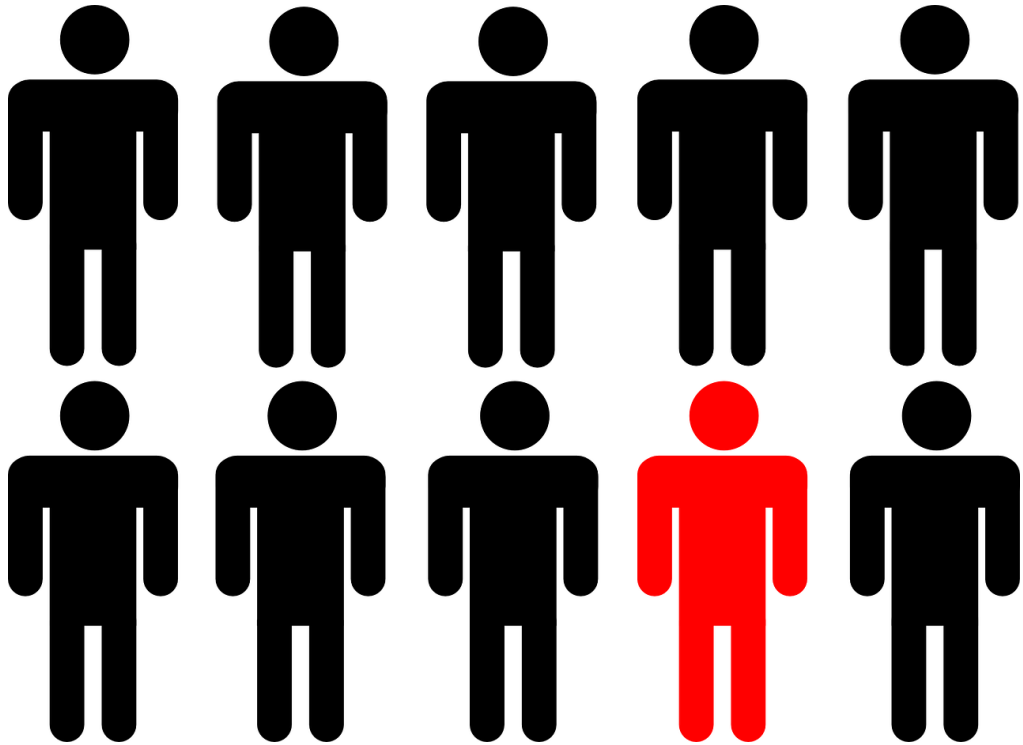
RACIAL DISCRIMINATION ACT

SEX DISCRIMINATION ACT



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WHAT IS UNLAWFUL DISCRIMINATION?



- › Less favourable treatment/disadvantage
- › Because of a particular attribute
- › In an area of public life

GROUNDS/ATTRIBUTES



Race



Pregnancy



Disability

Breastfeeding



Sex



Family responsibilities



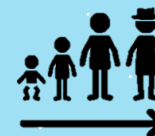
Gender identity



Sexual orientation

Intersex status

Relationship status



Age

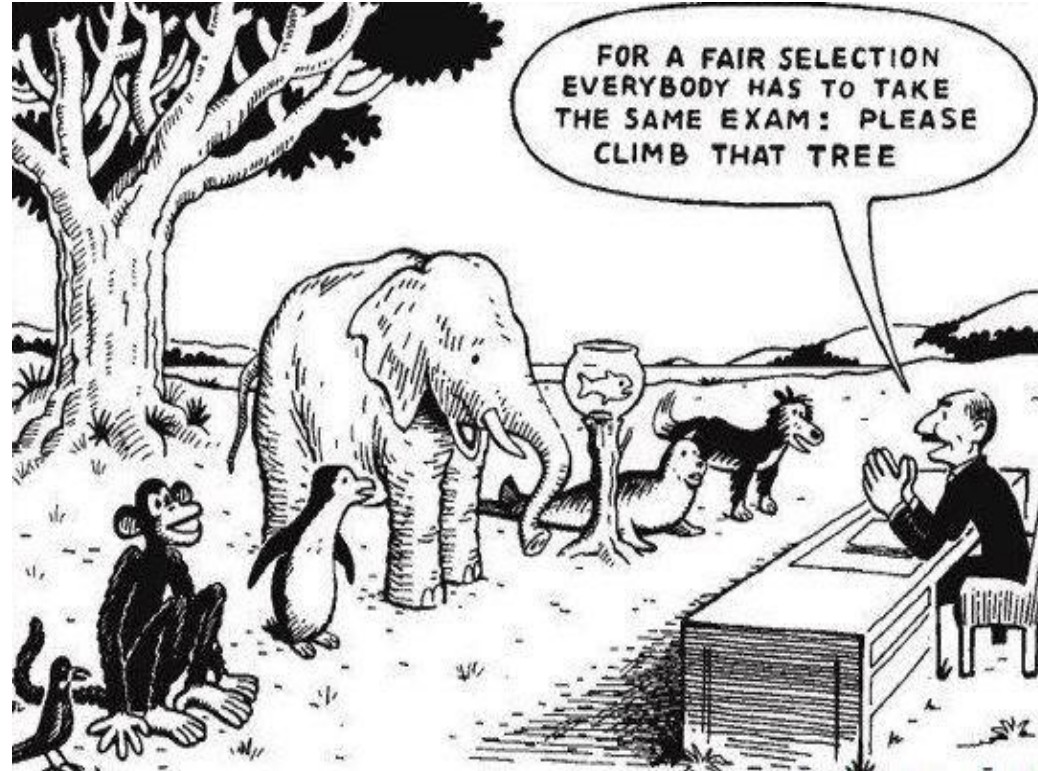
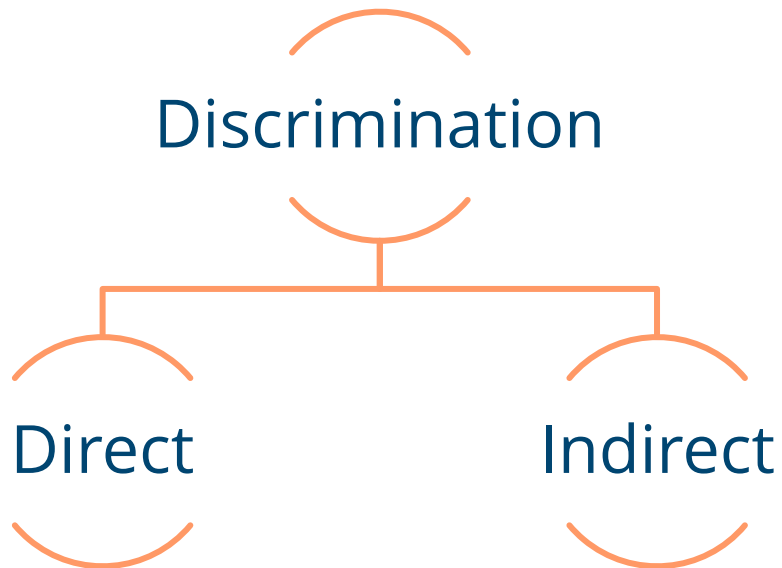


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DISCRIMINATION

Can you think of some examples of indirect discrimination?

There are two types of discrimination:



SEXUAL HARASSMENT

What are the different types of sexual harassment?

Sexual harassment is not just unwanted physical contact. It can also include:



OTHER HARASSMENT



RACIAL HATRED

- › Public act
- › Reasonably likely to offend, insult, humiliate or intimidate
- › Because of race, colour or national/ethnic origin
- › Not always unlawful



WHAT DO THESE TERMS MEAN?

Accessory liability

Vicarious liability

Victimisation



EXEMPTIONS & EXCEPTIONS

- › Situations when discrimination is **not** against the law
- › Respondents must demonstrate an exemption or exception applies
- › Can include
 - › Positive measures
 - › Inherent requirements
 - › Direct compliance with laws
 - › Temporary exemptions

HUMAN RIGHTS

- › Breaches by or on behalf of the Commonwealth
- › Rights and freedoms recognised under certain international instruments
- › No enforceable remedy



EQUAL OPPORTUNITY AT WORK



- › Discrimination in employment or occupation
- › On particular grounds, including
 - › Criminal record
 - › Religion
 - › Trade union activity
- › Not always discrimination
 - › Inherent requirements
 - › Staff of religious institutions
- › No enforceable remedy

WHAT DO YOU THINK?

For each of the following examples, consider whether you think the law may have been breached.



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NATIONAL INFORMATION SERVICE

- › Information about your rights and responsibilities under federal human rights and anti-discrimination law
- › Information about making a complaint or how the law may apply to your situation
- › Information about how to make a complaint, respond to a complaint or deal with specific discrimination issues
- › Referral to another organisation that may be able to help you, if we can't



COMPLAINTS MUST...

- › Be in writing
- › Be from or on behalf of the affected person or group
- › Set out the details of the alleged discrimination/breach of human rights



COMPLAINTS SHOULD BE LODGED...

- › **Within 6 months** of alleged unlawful discrimination under the DDA, RDA, ADA
- › **Within 24 months** of alleged unlawful discrimination under the SDA
- › **Within 12 months** of alleged breaches of human rights or discrimination in employment or occupation



HOW ARE ALLEGED BREACHES OF THE LAW DEALT WITH?



- › Preliminary assessment
- › Notification of respondent/s
- › Provision of information/response
- › Amendments
- › Conciliation
- › Closure



CONCILIATION

- › Flexible and confidential process
- › Different formats
- › Role of conciliator
- › Parties can bring a representative and/or support person with the consent of the conciliator
- › Online conciliation register and other resources



COURT – UNLAWFUL DISCRIMINATION

- › Must apply **within 60 days** of termination
- › May need to seek the court's leave to proceed
- › Types of orders
- › Costs jurisdiction
- › Commission interventions



LEGISLATIVE AMENDMENTS

Anti-Discrimination and Human Rights Legislation Amendment (Respect at Work) Bill 2022

- ▶ Positive requirement on employers/PCBUs to take reasonable and proportionate measures to eliminate, as far as possible, unlawful sex discrimination
- ▶ Commission to monitor, assess and enforce compliance with positive requirement
- ▶ Prohibition on hostile workplace environments on the ground of sex
- ▶ Sex-based harassment required to be “demeaning” rather than “seriously demeaning”

LEGISLATIVE AMENDMENTS

Anti-Discrimination and Human Rights Legislation Amendment (Respect at Work) Bill 2022

- ▶ Class actions in court proceedings (must have consent of all class members)
- ▶ Commission to have powers to inquire into systemic unlawful discrimination or suspected systemic unlawful discrimination
- ▶ Timeframes for complaints under the ADA, DDA and RDA extended to 24 months
- ▶ Clarifying that victimisation can form basis for civil action for unlawful discrimination under ADA, DDA and RDA

QUESTIONS ?



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THANK YOU

If you have any questions or would like further information please contact the National Information Service at:

Telephone: **1300 656 419**

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Website: www.humanrights.gov.au



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