

Your Guide to the Racial Discrimination Act



Human Rights and
Equal Opportunity
Commission

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Additional copies of this Guide and the Voices of Australia publication and audio CD are available free of charge while stocks last from the Publications Officer, phone (02) 9284 9600.

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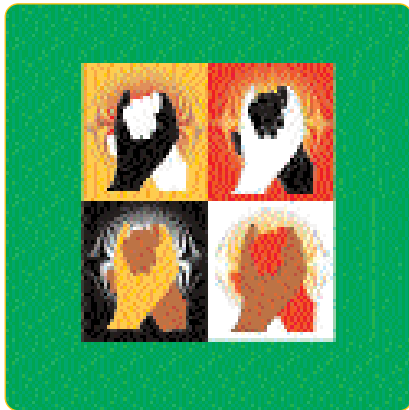
Additional information about the Voices of Australia project and the Racial Discrimination Act 1975 (Cth) is available on the HREOC website: <http://www.humanrights.gov.au/voices/>

Website information includes stories from the publication and other submissions, download of the Voices of Australia audio CD, project background, and a complete list of the Race Discrimination Unit projects in the last 30 years at HREOC, and information about additional activities that marked the 30th anniversary of the Racial Discrimination Act, including articles and speeches.

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How Australia got its human rights law



Reconciliation by Katrin Chrysaphis ©, NSW.

In 1966, many countries gathered at the United Nations to discuss how to deal with the problem of racial discrimination.

As a result of these discussions, the countries formed an international agreement which is now an important part of international human rights law. The agreement is called the *International Convention on the Elimination of All Forms of Racial Discrimination*. In this document, we refer to it as 'the Convention'.

The Convention says that racial discrimination occurs if a person is, or a group of people are:

- ❖ treated less favourably because of their race, their colour, their descent, their national origin or their ethnic origin; **and**
- ❖ because of this less favourable treatment they are stopped from fully enjoying their human rights and their fundamental and basic freedoms.

Now 156 countries have agreed to the Convention.

Australia's commitment to stop racial discrimination

Australia ratified the Convention on 30 September 1975. This means that Australia promises to do the following:

- ❖ not to racially discriminate against individuals, groups of people or institutions,
- ❖ to make sure that Australia's government bodies do not racially discriminate against individuals, groups of people or institutions
- ❖ to not sponsor, not defend and not support racial discrimination by any individuals or organisations
- ❖ to review government, national and local policies, and to change, or abolish, laws and regulations which create or continue racial discrimination
- ❖ to ban and to stop racial discrimination by individuals, groups and organisations
- ❖ to ban organisations and propaganda that promote racial superiority, racial hatred, racial violence or racial discrimination (however, Australia has qualified the extent to which it will comply with this requirement¹)

¹The reservation reads: "The Government of Australia ... declares that Australia is not at present in a position specifically to treat as offences all the matters covered by article 4 (a) of the Convention. Acts of the kind there mentioned are punishable only to the extent provided by the existing criminal law dealing with such matters as the maintenance of public order, public mischief, assault, riot, criminal libel, conspiracy and attempts. It is the intention of the Australian Government, at the first suitable moment, to seek from Parliament legislation specifically implementing the terms of article 4 (a)."



- ❖ to provide effective protection and solutions for victims of racial discrimination
- ❖ to take any special measures needed to make sure that disadvantaged racial groups have full and equal access to human rights and to basic freedoms, and
- ❖ to tackle the prejudices that lead to racial discrimination, and to eliminate the barriers between races. Australia will do this through education and information, and by encouraging communication and harmony between people from different races.

Rights and freedoms guaranteed to all Australians

Some of the basic rights and freedoms guaranteed under the Convention include:

- ❖ The right to be treated equally by the courts and other tribunals
- ❖ The right to be protected by the government against violence or bodily harm
- ❖ The right to vote and take part in government and to have equal access to public services
- ❖ The right to get married and the right to choose who you will marry
- ❖ The right to express your opinion
- ❖ The right to practice your religion and beliefs
- ❖ The right to housing, education, public health, social security and services
- ❖ The right to work, to choose where you work, and to be given equal pay for equal work, under fair conditions
- ❖ The right to form and join trade unions
- ❖ The right to participate freely in cultural activities
- ❖ The right to participate in political parties and have political opinions
- ❖ The right to use public spaces — for example, hotels, restaurants, shopping centres, cafés, and parks
- ❖ The right to use public services — for example, transport and medical centres.

For more information on the Convention, visit:

http://www.unhchr.ch/html/menu3/b/d_icerd.htm

What are Australia's laws against racial discrimination?

The most important thing Australia has done to uphold the Convention is to pass the *Racial Discrimination Act 1975* (Cth). In this document, we refer to that law as 'the Act'. It began on 31 October 1975. Each of the states and territories has adopted similar legislation.

Racial discrimination laws under the Act

The Act supports the principle that everyone has a right to enjoy the same fundamental freedoms and human rights — regardless of their race, their colour, their descent (ancestry), their national origin, their ethnic origin or, in some cases, their immigrant status. Treating people differently because of these characteristics is against the law under the Act. This is called **racial discrimination**. We discuss it below.

Racial hatred laws under the Act

On 13 October 1995, the Act was changed so as to give additional protection to people who are being publicly and openly offended, insulted, humiliated or intimidated because of their race, their colour, or their national or ethnic origin. This part of the Act is known as the **Racial Hatred** section. We discuss it at page 8.

The equivalent law in the states and territories

The Act was Australia's first federal anti-discrimination law. However, there are other laws in the states and territories that also deal with race discrimination, and occasionally racial hatred. We discuss these in more detail at page 10.

Religious discrimination and hatred not covered by the Act

Although the Act does not prohibit discrimination or vilification against someone because of their religion, there are other laws that apply in this situation. We discuss them at page 10.

The Act: 2 types of racial discrimination

The Act prohibits 2 different types of discrimination:

- ❖ 'direct discrimination'; and
- ❖ 'indirect discrimination' — when discrimination is hidden, or is less obvious than direct discrimination.

What 'direct discrimination' is prohibited?

The Act prohibits someone being treated less favourably (because of their race, their colour, their descent, their national origin or ethnic origin) than the way someone of a different race, colour, descent or origin would be treated in a similar situation. This is known as '**direct discrimination**'.

Example

An Aboriginal woman complains that security guards at a shopping centre stopped, questioned and then followed her 15 year old daughter. The mother believes her daughter is being discriminated against because of her race and age. She thinks that the security guards follow all Aboriginal young people around and either stop them entering or from moving freely around the centre.



Example

An Egyptian man who is employed by a real estate company feels he is being treated less fairly and harassed because of his race. This is being done by the owner and another sales person. They make comments such as "dirty little Arab" and "Sand Nigger". They ask him about his "camel". They make fun of his accent. After 9 months, the Egyptian man felt pressured to resign.

What 'indirect discrimination' is prohibited?

The Act prohibits a policy or rule:

- ❖ if it puts at a disadvantage more people of a particular race, colour, descent or national or ethnic origin than people of another race, colour, descent or national or ethnic origin
- ❖ even if it applies equally to everyone and appears to treat everyone in the same way.

This is known as '**indirect discrimination**'.

However, this sort of discrimination can be acceptable if the policy or rule itself is reasonable and it has an important purpose.

Example

A supermarket requires the people who stack its shelves at night to have a high level of English language skills — even though at work they rarely need to speak with anyone. This requirement disadvantages newly arrived refugees as they are less likely to have English skills and so are less likely to be hired. This is indirect discrimination.

(However, if the job was taking telephone orders of groceries, then a requirement of good English skills would not be discrimination and so would be acceptable.)

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Who must comply with the Act?

The Act applies to:

- ❖ businesses — from the smallest to the largest,
- ❖ schools,
- ❖ local governments,
- ❖ State and Territory government agencies and departments,
- ❖ Commonwealth Government agencies and departments and
- ❖ individuals.

In what situations is discrimination prohibited?

It is against the law to discriminate against someone when the discrimination prevents them from enjoying their human rights. The following are examples of situations in which people might be discriminated:

- ❖ **Employment** including: when looking for work; advertising or interviewing for jobs; being employed; training; promotion opportunities; the terms and conditions of employment; termination (ending) of employment.



- ❖ **Land, housing and accommodation** including: when buying a house or land; or when renting a flat or a house, or other accommodation.
- ❖ **Education** including: school education, TAFE, University, etc.
- ❖ **Providing goods and services** including: when buying something; hiring a car; applying for credit; using banks; seeking help from government departments, lawyers, doctors and hospitals; or attending or using restaurants, pubs, entertainment venues, or nightclubs; and so on.
- ❖ **Access to places and facilities meant for use by the public** including: parks, beaches, libraries, government offices, hotels, places of worship (such as churches, synagogues and mosques), entertainment centres, and public transport; and so on.
- ❖ **Advertising** – including an advertisement for a job which states that people from a certain ethnic group cannot apply.
- ❖ **Trade union membership.**

What you can do?

If you are discriminated against in any of these situations, then you can make a complaint — using the Act to help you get fair and equal treatment. See page 11.



In what situation is discrimination allowed?

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It is not against the law to make racial distinctions:

- ❖ **in private life** — for example, when choosing a live-in nanny or when choosing your friends or people you have contact with or allow into your house. In those cases, making racial distinctions is allowed; and
- ❖ **as part of ‘special measures’** designed to help groups or individuals who have been unfairly treated and now need support to help them fully enjoy their human rights. For example, Indigenous people in Australia suffer from greater social and economic disadvantage than other groups in society. Because of this disadvantage, they may need special assistance to enjoy their rights to education, employment, and health to the same level that other Australians enjoy those rights.

What are the requirements for ‘special measures’?

For ‘special measures’ to be lawful, they must:

1. be by either a government body or a private organisation; and
2. be helpful to some or all members of a group who share a common race, colour, descent, national origin or ethnic origin; and
3. have the sole purpose of assisting the group to enjoy human rights and fundamental freedoms equally with others; and

4. be necessary to making sure that the group achieve that purpose; and
5. stop once their purpose has been achieved. The special measures cannot last forever — even if they take a long time to achieve their aim.

Example

Indigenous health services are a legitimate special measure because they are designed to help Indigenous people equally enjoy the right to health (which is a basic human right). Since special measures must be temporary, Indigenous health services will stop qualifying as a special measure once Indigenous people enjoy health standards equivalent to other Australians.

For more information about Special Measures, visit:

http://www.humanrights.gov.au/racial_discrimination/guide_law/special_measures.htm

How does the Act deal with ‘racial hatred’?

The Act was changed in October 1995 to prohibit public behaviour that is racially offensive or abusive.

This means it is against the law for someone to offend, insult or humiliate a person or group in public because of the other person’s race, colour, or national or ethnic origin. This behaviour is sometimes called **racial hatred** or **racial vilification**.

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What are some examples of ‘racial hatred’?

The prohibited behaviour can be using speech, images or writing in public — for example:

- ❖ writing racist graffiti in a public place — including school playgrounds or bus stop shelters
- ❖ making racist speeches at a public rally or assemblies
- ❖ placing racist posters or stickers in a public place
- ❖ making a racially abusive comment, joke, song or gesture in a public place — including shops, workplaces, parks, public transport, and schools
- ❖ offensive racist comments or drawings in a newspaper, leaflet, website or other publication.

When is ‘racial hatred’ not prohibited by the Act?

The law against racial hatred aims to strike a balance between two values or rights:

- ❖ the right to communicate freely — known as ‘freedom of speech’; and
- ❖ the right to live free from racial vilification.

To strike this balance, the Act does not prohibit:

- ❖ racial hatred or vilification that is not made ‘in public’, and
- ❖ racial hatred or vilification which is "done reasonably and in good faith" — even if it is done in public.

When is behaviour 'in public'?

Racial hatred or vilification is made 'in public' when members of the public have heard or seen it.

Example of NOT 'in public'

If someone behaves offensively during a private telephone conversation or in someone's home at a party, then that is private. So because the behaviour is not 'in public' it is not prohibited.

Example of 'in public'

A woman says her neighbour called her 15 year old daughter a "black nigger" out the front of their home, where it could have been heard from the street. This is prohibited as it is 'in public'.

Example of 'in public'

A radio presenter made insulting comments about an African performing group who had recently toured Australia. The presenter also made offensive statements about people of African backgrounds by saying they were "uncivilised", "tribal in the way they lived", that "they should go back to their country" and made reference to them as belonging to "mud races". One of the performers or any member of the African community living in Australia could make a complaint on the basis that the comments were likely to offend, insult and humiliate African people.

When can racial hatred or vilification be justified as having been "done reasonably and in good faith"?

The Act says that racial hatred of the following types is not against the law if it is **"done reasonably and in good faith"**:

- ✦ **an artistic work or performance** - for example, a play in which racist attitudes are expressed by a character.
- ✦ **an academic publication, discussion or debate** - for example, discussing and debating public issues and policies such as immigration, multiculturalism, or special measures for particular groups.
- ✦ **a fair and accurate report on an issue which the public may be interested in** - for example, a fair report in the media about something which happened that encouraged racial discrimination and hatred or was racially offensive behaviour.
- ✦ **a fair comment** - but only if the comment reflects a view that a fair-minded person could have held and the person who made it actually holds that view.

For more information about the Racial Hatred sections of the Act, visit:

http://www.humanrights.gov.au/racial_discrimination/racial_hatred_act/index.html

For a copy of the 'Racial Hatred Act – a guide for people working within the media', visit:

http://www.humanrights.gov.au/racial_discrimination/media_guide/index.html



How is religious discrimination and vilification dealt with?

Although the *Racial Discrimination Act* does not apply to religious discrimination or vilification, other federal laws do apply — at least in relation to job-related discrimination.

If someone believes they have been discriminated against because of their religion in getting a job or at work, then they can complain to the Human Rights and Equal Opportunity Commission. Instead, it is set up under the *Human Rights and Equal Opportunity Commission Act 1986*.

What are the laws in the different States and Territories?

As well as the *Racial Discrimination Act*, there are anti-discrimination laws in all Australian states and territories. They also make racial discrimination against the law.

These laws mean that:

- ✦ under both federal and **all** state anti-discrimination laws, it is against the law to discriminate against someone because of their race, descent or national or ethnic origin; but
- ✦ in only **some** states is it against the law to racially vilify another person. Also, different states and territories deal with religious discrimination and vilification differently.

The following table shows those states and territories that have racial discrimination laws, religious discrimination laws, racial hatred laws and religious hatred laws.

	Federal	NSW	QLD	VIC	SA	WA	ACT	TAS	NT
Racial Discrimination	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Religious Discrimination	No*	No**	Yes	Yes	No	Yes	Yes	Yes	Yes
Racial Vilification/Hatred	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	No
Religious Vilification/Hatred	No	No	Yes	Yes	No	No	No	Yes	No

* HREOC can hear complaints about religious discrimination in employment.

** There is protection for ethno-religious discrimination under the NSW definition of racial discrimination.

For more information about racial discrimination, racial hatred and vilification, and religious discrimination and vilification laws across states and territories in Australia, visit:

http://www.humanrights.gov.au/racial_discrimination/isma/report/chap1.html#1_4

What can you do if you experience racial discrimination or racial hatred?

If you have been discriminated against or vilified because of your race there are a number of things you can do about it. You can:

- ✦ **Discuss it.** You can talk directly to the person or organisation responsible for the behaviour;
- ✦ **Get outside help.** You can get help from an organisation which represents your racial, ethnic or national group — for example, a Migrant Resource Centre or an Aboriginal Legal Centre;
- ✦ **For media complaints.** If you want to complain about a media story or broadcast, then contact the organisations listed on page 15.
- ✦ **For neighbour complaints.** For complaints about neighbours, you may approach the Community Justice Centres to help you resolve the problem. If you live in public housing, then you can complain to the Department of Housing or other public housing authority.
- ✦ **If there is actual or threatened violence or bullying.** If you are threatened with violence or you are violently attacked, including bullying, then you can:
 - ◆ if it happens at school, go to the teacher or counsellor; or
 - ◆ go to the police.
- ✦ **Formal discrimination complaint to the relevant authority.** If you have tried to solve the problem, then you or someone else on your behalf, (for example, a solicitor or trade union) can make a complaint to the Human Rights and Equal Opportunity Commission or your state anti-discrimination agency.

How do you complain to the Human Rights and Equal Opportunity Commission (HREOC)?

Normally, a complaint can be made only by:

- ✦ a person who was **personally affected** by what they believe was racial discrimination or racial hatred; or
- ✦ the representatives (for example, a lawyer or trade union) of the person affected.

For example, you cannot complain formally about someone talking about ‘dirty Greeks’ if you are not of Greek background. However, if a non-Greek person wishes to make a complaint, they can do so on behalf of a Greek person if they have that person’s written permission to do so.

For more information on HREOC and its complaints process, see page 12.

If you are thinking about making a complaint, then you might want to also think about speaking with:

- ✦ your trade union, or
- ✦ a lawyer. Community legal services can give you free advice about discrimination.



Human Rights and Equal Opportunity Commission's Complaint Process

for complaints about sex, race, disability and age discrimination

The Human Rights and Equal Opportunity Commission is an independent third party which investigates complaints. It does not act as an advocate or legal representative for either party. The complaint process is simple and free and is outlined below:

MAKE AN ENQUIRY

- ❖ Telephone HREOC's Complaint Information Line on 1300 656 419 to discuss issues you think might be discrimination.
- ❖ We can send you a complaint form to start the process.
- ❖ If we can't help, we can refer you to someone who may be able to assist you.

LODGING A COMPLAINT

- ❖ Making a complaint is free and you do not need a lawyer.
- ❖ Your complaint must be in writing, this includes email or fax, and can be in your preferred language.
- ❖ Our officers can assist you to write down your complaint.
- ❖ You can lodge a complaint via our website (www.humanrights.gov.au).

INVESTIGATION

- ❖ A HREOC officer will contact you to discuss your complaint.
- ❖ The officer will contact the person/organisation you are complaining about, provide them with a copy of your complaint and ask for their comments and other relevant information.
- ❖ We will review all of the information provided.
- ❖ HREOC may decide to terminate (finalise) or conciliate the complaint.

- ❖ If we decide to terminate the complaint we will talk to you about this and explain why.

CONCILIATION

- ❖ Conciliation means we try to help you and the person/organisation you are complaining about resolve the matter.
- ❖ This might be through a face-to-face meeting, a telephone meeting or conveying messages.
- ❖ The outcome of conciliation may include: an apology, policy changes, compensation and/or staff training.

WHAT NEXT?

- ❖ If the complaint is not resolved or is terminated for another reason you have the option to then take the matter to court.
- ❖ HREOC is not a court and cannot decide that discrimination has happened.
- ❖ We cannot take the matter to court for you or help you run the court case.

GOING TO COURT

- ❖ You have 28 days from when the complaint is terminated by HREOC to apply to have the matter heard by the Federal Magistrates Court or the Federal Court of Australia.
- ❖ You may need to talk with a lawyer or a legal service about going to court.

Further information is available by calling our **Complaints Information Line on 1300 656 419** or by looking at our website at www.humanrights.gov.au

SEX DISCRIMINATION

includes:
sexual harassment
pregnancy
marital status
family responsibility

RACE DISCRIMINATION

includes:
colour
national origin
ethnic origin
descent
race
racial hatred

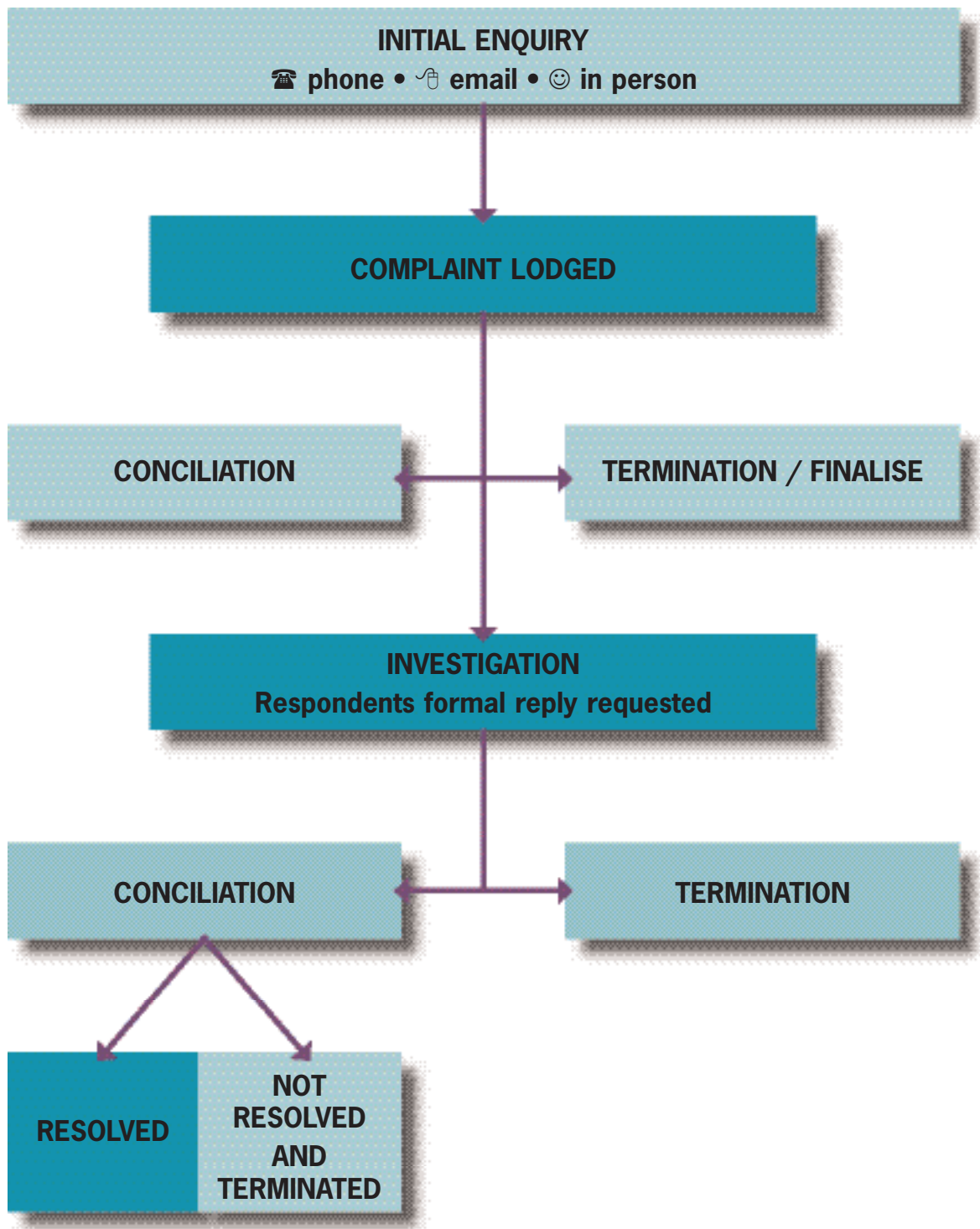
DISABILITY DISCRIMINATION

includes:
physical
psychiatric
neurological
learning
sensory
medical conditions
assistance animals
associates

AGE DISCRIMINATION

includes:
mature aged
youth

Human Rights and Equal Opportunity Commission's Complaint Process



Where can you make a complaint or find out more information?

Contact details across Australia

If you believe you have been racially discriminated against or racially vilified you may be able to put in a complaint at the following places:

National – Human Rights and Equal Opportunity Commission (HREOC)

The Human Rights and Equal Opportunity Commission was established in 1986 by an act of the Federal Parliament. Our goal is to foster greater understanding and protection of human rights in Australia and to address the human rights concerns of a broad range of individuals and groups. We are an independent statutory organisation and report to the federal Parliament through the Attorney-General.

The Commission's responsibilities include education and public awareness, discrimination and human rights complaints, human rights compliance and policy and legislative development.

Complaints Infoline: 1300 656 419 (cost of a local call)

Website: www.humanrights.gov.au

(If you are deaf or hearing impaired, the Commission can arrange for an Auslan interpreter if you need it. You can also communicate with us by TTY by calling 1800 620 241)

Australian Capital Territory – Human Rights Office

Complaints Infoline: (02) 6207 0576 / TTY: (02) 6207 0525

Website: <http://www.hro.act.gov.au/>

New South Wales – Anti-Discrimination Board

Complaints Infoline: (02) 9268 5555 / TTY: (02) 9268 5522

Website: <http://www.lawlink.nsw.gov.au/adb>

Northern Territory – Anti-Discrimination Commission

Complaints Infoline: 1800 813 846 / TTY: (08) 8999 1466

Website: <http://www.nt.gov.au/justice/adc/>

Queensland – Anti-Discrimination Commission

Complaints Infoline: 1300 130 670 / TTY: 1300 130 680

Website: <http://www.adcq.qld.gov.au/>

South Australia – Equal Opportunity Commission

Complaints Infoline: (08) 8207 1977 / TTY: (08) 8207 1911

Website: <http://www.eoc.sa.gov.au/>



Tasmania – Anti-Discrimination Commission

Complaints Infoline: 1300 305 062 / TTY: (03) 6233 3122

Website: <http://www.antidiscrimination.tas.gov.au/>

Victoria – Equal Opportunity Commission

Complaints Infoline: (03) 9281 7100 / TTY: (03) 9281 7110

Website: <http://www.eoc.vic.gov.au/>

Western Australia – Equal Opportunity Commission

Complaints Infoline: (08) 9216 3900 / TTY: (08) 9216 3936

Website: <http://www.equalopportunity.wa.gov.au/>

Complaints about the media

You can also complain to the Editor or Manager of the media organisation. Also:

For complaints about newspapers and magazine publications – Australian Press Council

Complaints Infoline: 1800 025 712

Website: <http://www.presscouncil.org.au/>

For complaints about advertisements – Australian Advertising Standards Council

Complaints Infoline: (02) 6262 9822


Website: http://www.advertisingstandardsbureau.com.au/about_the_asb.html

For complaints about material on television, radio or the internet – Australian Broadcasting Authority

Complaints Infoline: 1800 226 667 / TTY: (02) 9334 7777

Website: <http://www.aba.gov.au/>





Source:

Voices of Australia

30 years of the Racial Discrimination Act: 1975 - 2005

To read stories from this publication please visit

www.humanrights.gov.au/voices