

Fact Sheet: Race Discrimination and COVID-19

If someone has treated you unfairly because they have associated COVID 19 with your race, colour, nationality or ethnic background, they may have unlawfully discriminated against you.

You can call Kingsford Legal Centre on 9385 9566 or 1300 722 795 for free legal advice about discrimination.

What is unlawful discrimination?

Under Australian federal law, there are two main types of race discrimination:

- **Direct discrimination** is doing an act based on a person's race, colour, descent or national or ethnic origin which is aimed at or has the effect of impairing that person's human rights and fundamental freedoms.
- **Indirect discrimination** is imposing an unreasonable requirement which a person cannot meet, and is aimed at or has the effect of impairing the human rights and fundamental freedoms of people who share the same race, colour, descent or national or ethnic origin.

Example: a policy that requires job applicants to have Australian university qualifications even though they are not necessary for the job might be indirect discrimination against people of different national backgrounds who do not hold those qualifications.

In addition to the broad requirement not to impair a person's right to enjoy their human rights, federal and NSW laws specifically prohibit race discrimination in areas such as employment, access to goods and services and housing.

What about racist comments and behaviour?

Australian discrimination laws also prohibit offensive behaviour based on racial hatred, including racist comments that are made in public. Under federal law, racist behaviour is unlawful if it is:

- Done in public;
- Reasonably likely to offend, insult, humiliate or intimidate a person or group; and
- Done because of the race, colour or national or ethnic origin of that person or group.

Example: a Chinese Australian family's home was graffitied with the words "COVID 19 China die." This is unlawful racist behaviour and was reported to police. The family could also make a complaint under federal or NSW discrimination laws against the perpetrators, if they could be identified.

Race Discrimination and COVID-19

There have been reports in the media of people being targeted with racist abuse connected to COVID-19. This kind of behaviour is prohibited by Australian law. If you experience abuse or violence of any kind you can **report it to the police**.

You may also be able to make a discrimination complaint.

When can you be treated differently?

In some circumstances you can be treated differently because you have COVID-19 **but not** because of your race.

Discrimination on the basis that you have an infectious disease (like COVID-19) is allowed where it is **reasonably necessary to protect public health**.



If you have COVID-19, it might be reasonable for your employer to tell you not to come to work, or a shopkeeper to ask you to get your goods delivered rather than coming into the shop.



It would not be reasonable for your employer to tell you not to come to work because they believe people with your national background all have COVID-19.



If you have been discriminated against at work, you may also have rights under employment law. If you have lost your job, you may have to take action within 21 days. You should quickly seek legal advice.

Where can you go if you have been discriminated against?

Australian Human Rights Commission

You can complain to the AHRC about racial discrimination.

- Free
- Assist you to negotiate with the person who discriminated against you
- Time limit for complaint: **6 months**

Anti-Discrimination NSW

Alternatively, you can complain to ADNSW about racial discrimination.

- Free
- Assist you to negotiate with the person who discriminated against you
- Time limit for complaint: **12 months**

Fair Work Commission

If you have been treated unfairly or discriminated against at work, you may be able to complain to the Fair Work Commission.

- Fee of \$73.20 (as of July 2020)
- Assist you to negotiate with your employer, and in some situations make a decision about your case
- Time limit for complaint:
 - **21 days** if you are complaining about losing your job.
 - **6 years** if you are not complaining about losing your job.

You should get legal advice about the best option for you.

If you live in NSW, you can contact **Kingsford Legal Centre on (02) 9385 9566 or 1300 722 795 or email us at legal@unsw.edu.au** for advice about discrimination.

This factsheet is current as at 5 August 2020. It contains general information only and does not constitute legal advice.