

# harmony

in the workplace

delivering  
the diversity  
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## Fact Sheet 5: Workplace Discrimination and Legal Frameworks

Embracing cultural diversity and nurturing a fair and inclusive workplace culture is positive for your organisation and its employees, and is also the most effective way to avoid workplace discrimination and unlawful behaviour.

Lawsuits are expensive and, beyond the immediate financial costs, they reduce staff productivity, wellbeing and morale. They also create reputational and brand damage. So it's vital that employers and staff are acutely aware of the legal parameters concerning workplace discrimination and that proactive strategies are used to avoid workplace bullying, harassment and discrimination.

Promoting and openly embracing cultural diversity is the best way to avoid workplace discrimination and unlawful behaviour.

### What is workplace discrimination?

Under Federal and State legislation, unlawful discrimination occurs when someone, or a group of people, is treated less favourably than another person or group as a result of:

- Race, nationality or ethnic origin
- Gender, pregnancy or marital status
- Age
- Disability
- Religion
- Trade union activity
- Any other characteristic specified under anti-discrimination or human rights legislation.

Workplace discrimination can occur:

- During the recruitment process

- When determining employment contract terms, conditions and benefits
- During professional development and training opportunities, particularly who receives opportunities and what is offered
- During employee selection for transfer, promotion, retrenchment or dismissal
- When assessing performance and making pay decisions.

The following examples demonstrate implicit and explicit workplace discrimination on the basis of race or ethnicity:

- Recruiting staff solely on their ethnicity.
- Knowingly or subconsciously selecting candidates that don't appear to be from a culturally or linguistically diverse (CALD) background.
- Declaring a job applicant unsuccessful on the basis that "they won't fit in".
- Making assumptions about certain ethnic groups having or lacking particular skills.
- Failing to deal with alleged cases of racial discrimination in a timely and appropriate manner.
- Failing to award CALD employees with promotions and career progression opportunities, despite meeting all performance expectations.
- Having a workplace culture that makes CALD employees feel uncomfortable or excluded.
- Encouraging or endorsing jokes based on race.
- Earmarking CALD employees for early departure in a redundancy exercise.
- Dismissing or indiscriminately targeting a worker due to his/her English speaking abilities.

For more information, visit the Australian Human Rights Commission (AHRC) website:  
<http://www.humanrights.gov.au/>.

## Who deals with workplace discrimination?

Australian legislation dealing with workplace discrimination and harassment includes:

- Human Rights and Equal Opportunity Commission Act (1986)
- Racial Discrimination Act (1975)
- Sex Discrimination Act (1984)
- Disability Discrimination Act (1992)
- Age Discrimination Act (2004).



Ultimately, everyone is responsible for behaving lawfully and appropriately to avoid engaging in, or contributing, to workplace discrimination.

As an employer, you can be held liable for the actions of your workers, so you need to protect your staff from discrimination and sexual harassment and vilification. This is called 'vicarious liability' and means that if a complaint is made against a worker in an organisation, both the worker and the employer can be held liable.

## Tips to avoid workplace discrimination

Avoiding discrimination is everyone's responsibility. The following tips for employers and staff will help you to embrace cultural diversity and avoid workplace discrimination:

- Implementing a workplace anti-discrimination policy, ensuring staff are well aware of their rights and responsibilities. If workplace discrimination occurs, having an anti-discrimination policy clearly shows that bullying, harassment or racism are not

tolerated by the organisation and its employees. Examples of specific policies may include an Equity, Diversity and Inclusion Plan, a Multicultural Action Plan or an Anti-Racism Policy. (For information on how to access examples of these documents see *Factsheet 10: Where to From Here?*).

- Establishing a complaints system or set of procedures to respond to workplace discrimination in a timely and appropriate fashion. Also ensuring staff are aware of external complaints mechanisms available.
- Engaging in activities, training and discussions that create a positive and inclusive working environment to avoid cases of workplace discrimination. Prevention is the best cure.
- Supporting the national 'Racism. It Stops With Me.' campaign to send a clear message that your organisation doesn't tolerate racism in the workplace. For more information, please visit [www.itstopswithme.humanrights.gov.au](http://www.itstopswithme.humanrights.gov.au).

## How to Report Workplace Discrimination

If an employee believes he/she has been the subject of workplace or racial discrimination, they should contact the Fair Work Ombudsman to discuss the situation and seek help in making an unlawful workplace discrimination complaint.

For further details, please visit [www.fairwork.gov.au](http://www.fairwork.gov.au) or the call the Fair Work Infoline on 13 13 94.

The Australian Human Rights Commission can also investigate and resolve complaints of workplace discrimination, harassment and bullying based on a person's race, including colour, descent, national or ethnic origin, immigrant status and racial hatred.

More information about making a complaint is available at [www.humanrights.gov.au](http://www.humanrights.gov.au) or by calling 1300 656 419 or (02) 9284 9888.



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