
INFORMATION NOTE

Legislation against Racial Discrimination in Selected Places

1. Introduction

1.1 This information note introduces the relevant legislation against racial discrimination in Australia, the United Kingdom and the United States. It provides information about the definition of racial discrimination, areas of activities that discriminatory behaviours based on racial grounds are prohibited or exempted, and responsible bodies that implement the law against racial discrimination. The appendix summarizes the key features of legislation against racial discrimination in the selected places and those of the proposed legislation in the Hong Kong Special Administrative Region.

2. Racial discrimination

2.1 Article 1 of the *International Convention on the Elimination of All Forms of Racial Discrimination* (Convention), which entered into force on 4 January 1969, defines "racial discrimination" as "*any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin*".

2.2 Australia, the United Kingdom and the United States, as state parties of the Convention¹, observe this definition of racial discrimination when making legislation against racial discrimination. The legislation against racial discrimination in these selected places is broadly in line with the principles adopted by the Convention, and does not provide a definition of each racial ground, i.e. race, colour, descent and national or ethnic origin, leaving their meaning to the court's interpretation.

2.3 Discriminatory behaviours based on racial grounds can be broadly grouped into two types. Direct racial discrimination (called "intentional discrimination/disparate treatment" in the United States) occurs when a person is treated less favourably than another person in a similar situation on racial grounds. For instance, an employer refuses to hire a suitably qualified applicant and hires a less qualified applicant instead because the former is a non-white and the latter is a white.

2.4 Indirect racial discrimination (called "disparate impact/effects" in the United States) occurs when a requirement or condition is applied equally to different racial groups, but the requirement or condition cannot be complied with by a large proportion of persons of a particular racial group. For instance, a rule that employees or students must not wear headgear could exclude Sikh men and boys who wear a turban, or Jewish men or boys who wear a yarmulka.

¹ As at 9 June 2004, there were 177 state parties in the Convention.

3. Australia

Legislation

3.1 The *Racial Discrimination Act 1975* and *Human Rights and Equal Opportunity Commission Act 1986* are the two major pieces of legislation against racial discrimination in Australia.

3.2 The *Racial Discrimination Act 1975* makes provisions for prohibiting racial discrimination and giving effect to the Convention. Established under this Act, the Office of Commissioner for Community Relations is vested with power to handle racial discrimination complaints. This power has been transferred to the Human Rights and Equal Opportunity Commission which is established under the *Human Rights and Equal Opportunity Commission Act 1986*.

Areas of protection

3.3 The *Racial Discrimination Act 1975* as amended by the *Racial Hatred Act 1995* prohibits racial discrimination in the following areas of activities:

- (a) employment – seeking and offering employment, training, promotion, equal pay or conditions of employment;
- (b) education – receiving school education;
- (c) housing – buying a house or land, or renting a flat or a house;
- (d) goods and services – buying goods and services from non-government organizations and seeking assistance from governmental organizations;
- (e) public places and facilities – entering public places and facilities such as parks, libraries, government offices, hotels, places of worship or entertainment centres;
- (f) trade unions – joining trade unions; and
- (g) race relations – racially offensive behaviours such as making racist speeches at a public rally and placing racist posters or stickers in a public place.

Special measures

3.4 Under the *Racial Discrimination Act 1975*, federal and state governments are allowed to implement special measures to improve the circumstances of disadvantaged racial groups, such as immigrants of a particular racial group, in order to enhance their chances of achieving equal opportunity. Examples of these special measures include:

- (a) English language programmes for particular racial groups;
- (b) special medical services for racial groups suffering from poor health;
- (c) rental assistance for students from disadvantaged racial groups; and
- (d) employment programmes aiming to get people from disadvantaged racial groups into jobs.

3.5 These special measures are temporary and stop once the purpose of enhancing the chances of achieving equal opportunity has been achieved, thereby preventing the setting up of separate rights permanently for a particular racial group.

Responsible body

3.6 The Human Rights and Equal Opportunity Commission is an independent statutory body established under the *Human Rights and Equal Opportunity Commission Act 1986*. The Commission is responsible for promoting human rights and combating discrimination on the grounds of race, age, sex and disability in Australia.

3.7 In order to fulfil its responsibilities, the Commission:

- (a) fosters public discussion, and undertakes and co-ordinates research and educational programmes;
- (b) investigates complaints about discrimination and attempts to resolve these cases by conciliation;
- (c) provides assistance to the Federal Court or the Federal Magistrates Court in human rights and alleged unlawful discrimination court cases; and
- (d) conducts inquiry into acts or practices that may infringe human rights or that may be discriminatory, and recommends actions to resolve the identified infringement or discrimination.

3.8 The Commission is administered by a President who is appointed by the Governor-General of Australia.² As the chief executive officer of the Commission, the President is assisted by five Commissioners. The Commissioners are also appointed by the Governor-General of Australia based on their appropriate qualifications, knowledge or experience in the relevant field of anti-discrimination.

3.9 Each Commissioner is responsible for a specific area of discrimination, with the Race Discrimination Commissioner being responsible for racial discrimination matters. In accordance with the *Racial Discrimination Act 1975*, the Race Discrimination Commissioner's responsibilities include:

- (a) promoting research and educational programmes that combat racism;
- (b) fostering awareness of and compliance with the *Racial Discrimination Act 1975*;
- (c) assisting the Federal Court or the Federal Magistrates Court in court cases relating to racial discrimination; and
- (d) referring racial discrimination matters to the Commission for conducting public inquiries.

4. The United Kingdom

Legislation

4.1 The *Race Relations Act 1976* as amended by the *Race Relations (Amendment) Act 2000* and the *Race Relations Act 1976 (Amendment) Regulations 2003* are the two major pieces of legislation against racial discrimination in England, Wales and Scotland. The *Race Relations Act 1976* stipulates the prohibition of racial discrimination in various fields of activities such as employment and education, and establishes the Commission for Racial Equality to handle racial discrimination matters.

4.2 The *Race Relations (Amendment) Act 2000* extends the prohibition of racial discrimination to more public functions, e.g. policing, licensing and immigration, and places on most public authorities a general duty to promote race equality. The *Race Relations Act 1976 (Amendment) Regulations 2003* is enacted to enhance the provisions of the *Race Relations Act 1976* as amended, e.g. on the definition of indirect discrimination so that it meets the *EC Article 13 Race Directive*³.

² The current President, Hon John von Doussa QC, was a judge. Two of the past Presidents were also judges while the other one was a law professor.

³ The *EC Article 13 Race Directive* establishes a minimum standard of legal protection from racial discrimination across Europe that must be adhered by member states.

4.3 The *Race Relations (Northern Ireland) Order 1997* and the *Northern Ireland Act 1998* are the two major pieces of legislation against racial discrimination in Northern Ireland. The former legislation stipulates the prohibition of racial discrimination in various fields of activities such as employment and education while the latter legislation establishes the Equality Commission for Northern Ireland to handle, among others, racial discrimination matters.

4.4 The *Race Relations (Northern Ireland) Order 1997* provides an interpretation of racial group. It stipulates that the Irish Traveller community, i.e. people with a shared history, culture and traditions including, historically, a nomadic way of life on the island of Ireland, is a racial group.

Areas of protection

4.5 Both the *Race Relations Act 1976* as amended by the *Race Relations (Amendment) Act 2000* and the *Race Relations (Northern Ireland) Order 1997* prohibit racial discrimination in the following areas of activities:

- (a) employment – recruitment, selection, promotion, transfer, training, pay and benefits, dismissal and terms and conditions of work;
- (b) education – admission, treatment of students and exclusion from establishments;
- (c) housing – selling, letting and management of properties;
- (d) goods, facilities and services – receiving public goods and services as well as buying goods and services open to the public and entering public facilities;
- (e) public function – when law and order enforcement agencies, such as police and the Crown Prosecution Service, carrying out their duties; and
- (f) trade unions – joining trade unions.

Special measures

4.6 Under the *Race Relations Act 1976* and the *Race Relations (Northern Ireland) Order 1997*, special measures known as "positive actions" are allowed. These positive actions are undertaken by both governmental and non-government organizations to meet the special needs in education, training or welfare of a particular racial group in order to prevent discrimination and to overcome past discrimination. Examples of positive actions include:

- (a) employers to offer training for people from a particular racial group when over the previous twelve months no one or only very few persons from that racial group have been doing the type of work concerned;
- (b) education providers to offer English as a second language classes for a particular racial group; and
- (c) health authority to offer a special health screening service for members of a particular racial group.

4.7 However, positive actions that make the recruitment and selection process favour a particular racial group are not allowed.

Responsible body

4.8 The Commission for Racial Equality is established under the *Race Relations Act 1976*. As an independent statutory body, the Commission is responsible for eliminating racial discrimination and promoting equality of opportunity and good relations between persons of different racial groups in England, Wales and Scotland.

4.9 In order to fulfil its responsibilities, the Commission:

- (a) provides information and advice to people who consider themselves having suffered from racial discrimination or harassment;
- (b) conducts formal investigations on alleged racial discrimination cases or a defined area of activities, such as secondary school admissions, whether or not discrimination is occurring;
- (c) works with public bodies, businesses and organizations from all sectors to promote policies and practices that will help ensure equal treatment for all;
- (d) runs campaigns to raise awareness of race issues and to encourage organizations and individuals to play their part in creating a just society; and
- (e) makes sure that all new laws take full account of the *Race Relations Act 1976* and the protection it provides against discrimination.

4.10 The Equality Commission for Northern Ireland is established under the *Northern Ireland Act 1998*. As an independent statutory body, the Commission is responsible for combating racial and other forms of discrimination, and promoting equality of opportunity in Northern Ireland. The Commission fulfils its responsibilities by providing advice and carrying out promotional and enforcement activities similar to the Commission for Racial Equality.

5. The United States

Legislation

5.1 In the United States, the regulation of discriminatory behaviour based on racial grounds is governed by several pieces of legislation. The major pieces of legislation against racial discrimination are the *Civil Rights Act of 1964* and the *Civil Rights Act of 1991*. Other pieces of legislation include the *Educational Opportunity Act of 1972*, the *Equal Employment Opportunity Act of 1972*, the *Equal Pay Act of 1963*, the *Voting Rights Act of 1965* and the *Fair Housing Act of 1968*.

5.2 The *Civil Rights Act of 1964* is an act "to enforce the constitutional right to vote, to confer jurisdiction upon the district courts of the United States to provide injunctive relief against discrimination in public accommodations, to authorize the Attorney General to institute suits to protect constitutional rights in public facilities and public education, to extend the Commission on Civil Rights, to prevent discrimination in federally assisted programs, to establish a Commission on Equal Employment Opportunity, and for other purposes." The *Civil Rights Act of 1991* makes provisions to allow claiming monetary compensation in cases of intentional employment discrimination.

Areas of protection

5.3 The *Civil Rights Act of 1964*, together with other legislation against racial discrimination, prohibits racial discrimination in the following areas of activities:

- (a) employment – all aspects of the hiring and employment process, e.g. job application, hiring, firing, promoting and training;
- (b) education – admission, recruitment, financial aid, academic programmes, student treatment and services, counselling and guidance, discipline, classroom assignment, and grading;
- (c) housing – provision, rehabilitation or operation of housing; sale, leasing, rental and lending of residential properties;

- (d) public facilities – privately-owned facilities that offer food, lodging, gasoline or entertainment to the public, facilities that owned and operated by public authorities, such as hospitals and parks;
- (e) law enforcement – police department, jail and juvenile correctional facilities;
- (f) federally-assisted programmes – provision of and accessibility to aids, benefits and services funded by the federal government such as hospital services;
- (g) labour unions – membership; and
- (h) voting – the right to vote.

Special measures

5.4 Under Title VII of the *Civil Rights Act of 1964*, special measures known as "affirmative actions" are allowed. Affirmative actions are "*those actions appropriate to overcome the effects of past or present practices, policies, or other barriers to equal employment opportunity.*"

5.5 Examples of affirmative actions are:

- (a) designing recruitment programmes to attract qualified members of a particular racial group;
- (b) revamping selection instruments or procedures in order to reduce or eliminate exclusionary effects on particular groups in specific job classifications; and
- (c) formulating training plans and programmes which provide minorities and women with the opportunity, skill and experience necessary to perform the functions of skilled trades, crafts or professions.

5.6 The federal government encourages state governments and private organizations to develop voluntary affirmative action programmes. For example, the federal government requires government contractors to develop a written affirmative action programme for each of its establishments.

Responsible body

5.7 Instead of having one single authority responsible for policies against racial discrimination, government departments of the United States are responsible for eliminating racial discrimination in their respective policy areas. For instance, the Department of Education enforces Title VI of the *Civil Rights Act of 1964* to ensure educational institutions which receive federal financial assistance protect students from discrimination on the grounds of race, colour or national origin.

5.8 With respect to employment, the Commission on Equal Employment Opportunity, established under the *Civil Rights Act of 1964*, is responsible for promoting equal opportunity in the workplace and enforcing federal laws prohibiting employment discrimination based on race, colour, sex, religion or national origin. In order to fulfil its responsibility, the Commission:

- (a) co-ordinates all federal equal employment opportunity regulations, practices and policies;
- (b) investigates alleged employment discrimination cases;
- (c) attempts to conciliate parties involved in employment discrimination cases; and
- (d) adjudicates claims of discrimination and issues decisions.

5.9 Under the *Civil Rights Act of 1964*, the United States Commission on Civil Rights is formed. The Commission is composed of eight Commissioners, with half of them being appointed by the President of the United States and the other half by Congress. No more than four members of the Commission shall be of the same political party. This bipartisan Commission is responsible for monitoring discrimination or a denial of equal protection of the laws under the Constitution of the United States because of race, colour, religion, sex, age, disability or national origin, or in the administration of justice.

5.10 The United States Commission on Civil Rights performs its monitoring role in all forms of discrimination, including racial discrimination, by:

- (a) studying and collecting information by means of holding hearings and consulting its state advisory committees;
- (b) appraising federal laws and policies;
- (c) referring complaints it receives to the appropriate federal, state or local government, or private organizations for action;
- (d) submitting reports, findings, and recommendations to the President of the United States and Congress; and
- (e) issuing public service announcements to discourage discrimination.

Appendix

Legislation against racial discrimination in selected places

	Australia	United Kingdom		United States	Hong Kong
		England, Wales and Scotland	Northern Ireland		
Legislation	<ul style="list-style-type: none"> • <i>Racial Discrimination Act 1975</i> • <i>Human Rights and Equal Opportunity Commission Act 1986</i> 	<ul style="list-style-type: none"> • <i>Race Relations Act 1976</i> • <i>Race Relations (Amendment) Act 2000</i> • <i>Race Relations Act 1976 (Amendment) Regulations 2003</i> 	<ul style="list-style-type: none"> • <i>Race Relations (Northern Ireland) Order 1997</i> • <i>Northern Ireland Act 1998</i> 	<ul style="list-style-type: none"> • <i>Civil Rights Act of 1964</i> • <i>Civil Rights Act of 1991</i> 	<ul style="list-style-type: none"> • Proposed Race Discrimination Bill
Definition	<ul style="list-style-type: none"> • Making reference to Article 1 of the <i>International Convention on the Elimination of All Forms of Racial Discrimination</i> which defines "racial discrimination" as "<i>any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin</i>" 				
Provision to define racial grounds	<ul style="list-style-type: none"> • No 	<ul style="list-style-type: none"> • No 	<ul style="list-style-type: none"> • Yes, the Irish Traveller community is defined as a racial group 	<ul style="list-style-type: none"> • No 	<ul style="list-style-type: none"> • No. While the consultation paper entitled <i>Equal Opportunities: A Study of Discrimination on the Ground of Race</i> published in 1997 suggested to cover new arrivals from the Mainland, the present consultation paper states that "<i>the discrimination experienced by new arrivals from the Mainland is not based on race. Rather, it is a form of social discrimination and therefore, outside the intended scope of the Bill.</i>"

Appendix (cont'd)

	Australia	United Kingdom		United States	Hong Kong
		England, Wales and Scotland	Northern Ireland		
Areas of protection	<ul style="list-style-type: none"> Covering major areas of everyday life, such as employment, education, housing, goods and services, and public places and facilities 				
Special measures	<ul style="list-style-type: none"> Temporary measures to enhance the chance of achieving equal opportunity of a particular racial group 	<ul style="list-style-type: none"> Positive actions should be limited to special needs in education, training or welfare of a particular racial group 	<ul style="list-style-type: none"> Affirmative actions to overcome barriers to equal employment opportunity 	<ul style="list-style-type: none"> Special measures to enhance the chance of achieving equal opportunity of a particular racial group 	
Responsible bodies	<ul style="list-style-type: none"> Human Rights and Equal Opportunity Commission 	<ul style="list-style-type: none"> Commission for Racial Equality 	<ul style="list-style-type: none"> Equality Commission 	<ul style="list-style-type: none"> Various government authorities enforcing civil rights law United States Commission on Civil Rights monitoring the enforcement 	<ul style="list-style-type: none"> Equal Opportunities Commission or a new Commission for Racial Equality

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