How the Racial Discrimination Act Serves all Australians

Fact sheet from: Human Rights and Equal Opportunity Commission, 1995.

Conciliation and Public Hearings

The *Racial Discrimination Act 1975* (RDA) can serve all Australians who suffer from acts of racial discrimination, as well as being the basis for test cases of national legal and social significance, such as Koowarta and Mabo. In its twenty years of operation, over 10,000 complaints have been received. Of these, over 3,000 were successfully conciliated but few have proceeded to public hearing or to the courts. The RDA is administered by the Human Rights and Equal Opportunity Commission (HREOC).

The Complaint Handling Process - Conciliation

If a complaint of racial discrimination is made to HREOC, the Race Discrimination Commissioner and her staff will investigate the matter. If it is decided that the matter should be pursued, Commission staff will attempt to conciliate the complaint.

Conciliation is a process in which a third party intervenes in a dispute between two principals with a view to helping them arrive at a mutually satisfactory resolution of their differences. Resolution of disputes through conciliation means that the complainant and respondent work towards an outcome with which they both agree.

Some examples of successful conciliation

1. The complainant was a young Aboriginal man who was refused employment, as arranged, because he was 'too Aboriginal'. The parties settled the matter, with the respondent agreeing to publicly apologise in two metropolitan newspapers, send a written apology to the complainant, and pay $15,000 in damages.

2. In another case, an Aboriginal woman was refused service in a Queensland motel. The matter was conciliated when the respondent agreed to provide a written apology to the complainant and pay $2,300 in compensation.

3. An Indian Muslim woman who was employed as a process worker alleged harassment from her supervisor. She complained to management, who allegedly blamed her race and religion for making her 'over sensitive'. She complained to the union, but this action further alienated management and her employment was terminated due to "poor work performance". After conciliation, the complaint was settled for a payment of $10,000 and a reference.

4. A conciliation conference was held between the niece of a woman who had died and the hospital at which the death had occurred. The aunt had arrived at the hospital by ambulance one evening and remained in casualty overnight with no treatment. The aunt could not speak English and doctors and staff made no attempt to communicate with her by use of an interpreter service. Nine hours after admission, doctors discovered that she required emergency surgery, but by then it was too late. In the conciliation conference, the hospital agreed to pay compensation to the niece. It also agreed to amend hospital practices and

to institute staff training to improve services for non-English speaking people.

The Complaint Handling Process - Hearings

- If the conciliation process succeeds, that will be the end of the matter. However, if the Race Discrimination Commissioner is of the opinion that the matter cannot be settled by conciliation, or conciliation has been attempted but has not been successful, she will refer it to the Commission for public hearing, together with a report of the inquiries she and her staff have made.
- If the Commission does not find the complaint substantiated, it must dismiss it. If it finds the complaint substantiated, it must formally state the fact and decide on an appropriate remedy. The Commission may make a declaration that the respondent pay compensation to the complainant, or take some other appropriate action such as an apology.

Some examples of Commission determinations

1. Bull & Bull v Kuch & Kuch (1993) - Accommodation

Facts: The complainants, a married couple of Aboriginal descent, sought emergency housing. The respondents had advertised the availability of caravans for hire but refused to rent a caravan to Aboriginal people under any circumstances whatsoever. When informed that this was discriminatory, the first respondent replied that she did not care.

Determination: In what the Commission found to be a "serious and significant case of blatant racial discrimination", the sum of $20,700 was awarded to the aggrieved complainants and an apology was ordered.

2. Ardeshirian v Robe River Iron Associates (1990) - Employment

Facts: The complainant lodged two complaints under the RDA claiming that:

(i) he was subjected to repeated incidents of racist abuse and harassment from his co-workers during his period of employment with the respondent;

(ii) his dismissal was due to his race, colour or national origin.

The Commission found that during his employment, the complainant had been subjected to a significant degree of hostility in the workplace due to his skin colour and the fact that he was from Iran. The hostility had been exacerbated by the attitudes of his fellow workers to his lifestyle, which did not fit in with theirs. The events which led to the complainant's dismissal started with a racist attack on him by a fellow worker.

Determination: The complainant was awarded $10,000 damages. This figure took account of the fact that he was unemployed for three months following his dismissal, as well as providing some compensation for hurt and humiliation.

3. Djokic v Sinclair & Central Qld Meat Export Co Pty Ltd - Employment

Facts: Complaints were lodged under the RDA and the Sex Discrimination Act 1984 (SDA), alleging both racial and sex discrimination in employment, and sexual harassment. The complaints were heard simultaneously as they related to "interwoven events occurring in the same period of time".

The complainant was employed as a meat packer in meatworks owned by the second respondent for three years and was acknowledged to be good worker. She was subjected to racial abuse and isolated from the work force. She also alleged that she was subjected to sex discrimination in that her

application to be trained as a slicer was refused on the basis that male slicers refused to train women. Finally, she argued that she was subjected to sexual harassment by her supervisor (the first respondent), in that he treated her in a hostile and oppressive manner on the ground of her sex. In particular he said to her, after she declined to give a reason for refusing to work overtime, "F---- you woman! I'll bring you to your knees". The complainant swore at the first respondent in response, and her employment was terminated on the basis of this incident.

Determination: The termination of employment was "the culmination of a history of discrimination of the complainant in the workplace on the ground of both her sex and her race." As a result of the continuing discrimination, the complainant's health was severely impaired. Although there was little evidence of economic loss, the complainant was awarded substantial damages for extreme pain, suffering and humiliation. She was awarded $11,000 financial compensation in relation to complaints lodged under the RDA, and $11,000 in relation to complaints lodged under the SDA.

4. White & White v Gollan - Provision of services

Facts: The complainants were Aboriginal people who alleged that they were refused service in the public bar of Tattersall's Hotel, Toowoomba, because of their race, contrary to section 13 of the Racial Discrimination Act. Both were well-dressed and well-behaved, and were not affected by liquor. There were no other Aboriginal people in the bar while they were there.

Determination: The licensee of the hotel was held directly responsible for the refusal of service to the complainants. The first complainant was awarded $2,000, and the second complainant $1,000. The respondents were ordered to make a public apology in writing to the complainants, and to publish the apology in the local newspaper.

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