



THINKING EMPLOYMENT AND DISCRIMINATION

In recent months the Australian community has been faced with the prevalence of anti-Islamic beliefs causing some Australian citizens to think and act antagonistically towards Muslims and the Islamic faith. Often the attitude taken is born out of ignorance. It is necessary for the Australian community to consider our hegemonic values and current laws that condemn racial discrimination and harassment as abhorrent and unlawful in Australia.

The following scenarios illustrate matters that may constitute unlawful discrimination in the workplace:

Scenario 1: Miss Z is a Chinese woman who applied for the position of retail assistant. The potential employer was impressed with her communication skills during a phone interview and she consequently progressed to the next round of face-to-face interviews.

When arriving at the interview the employer observed that Miss Z was Chinese and immediately informed Miss Z that the position had already been filled. He asked her to leave without interviewing her.

Scenario 2: Mr Singh is a Sikh. As a part of his religion he is required to keep and maintain a beard. He works at a fruit packing plant and is informed by his employer that beards are banned for health and safety reasons and is told he must shave off his beard or lose his job. It is however company policy that a facemask may be used to address safety and health concerns.

Both scenarios are examples of unlawful discrimination, albeit one is direct and the other indirect. It is unlawful to discriminate against an individual on the basis of their race or religion. It is necessary to ensure that all employees are treated equally; that the same rules and policies apply for all employees; and, that racially abusive comments are avoided in the workplace at all times.

In addition to provisions contained in the Fair Work Act 2009, there are various laws that operate on both a State and Federal level that specifically focus on matters concerning unlawful discrimination both within and outside of employment. The Australian Human Rights Commission Act 1986 prevents unlawful

discrimination on the basis of race, colour, sex, religion, political opinion and nationality (amongst other things).

In New South Wales the Discrimination Act 1991 generally overlaps and prohibits the same type of discrimination. Despite the overlap there may be gaps in the protections offered on Federal and State levels and as such the exemptions and exceptions afforded must be carefully considered given there are no uniform laws.

Outside of the workplace the Racial Discrimination Act applies preventing harassment and racial hatred. "Racial hatred" includes but is not limited to racially offensive:

1. material on the internet.
2. material, comments or images in print media or other publication.
3. speeches or abusive comments in a public place, including shops, the workplace, parks, transport, schools and sporting events.

This Act gives effect to Australia's obligations under the International Convention on the Elimination of All Forms of Racial Discrimination.

Current legislation aims to balance the right to freedom of speech with the right to live free from racial harassment or vilification. Accordingly, under the Act the following things that may cause offence are lawful provided it is done "reasonably" and "in good faith":

- a. an artistic work or performance (i.e. a play including reflective attitudes by a character)
- b. a statement, publication, discussion or debate made for genuine academic or scientific purposes
- c. making a fair and accurate report on a matter of public interest (i.e. a fair report in a newspaper about racially offensive conduct).

Should you have any concerns or believe you have been or currently are subjected to racial discrimination we invite you to attend our complimentary First Saturday chats. This is an obligation free legal advice service, which is offered between 10.00am and 1.00pm on the first Saturday of each month at the offices of Legal Minds

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Navneet K Mullee
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Thinking

employment and discrimination



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and tenacity needed
to get you there.

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