

Race Discrimination Ordinance

Direct and Indirect Racial Discrimination in the Provision of Goods, Facilities or Services

In relation to the provision of goods, facilities or services, the Race Discrimination Ordinance (“RDO”) protects any person acquiring, seeking to obtain or using those goods, facilities or services (“service user”) from being discriminated against by another person concerned with the provision of goods, facilities or services (“service provider”) on the ground of race.

Direct discrimination occurs when a person is treated less favourably than another person under comparable circumstances because of race. It is direct racial discrimination for a service provider refusing or deliberately omitting to provide services to the service user, or by refusing or deliberately omitting to provide services of the like quality, in the like manner and on the like terms as other service users on the ground of race.¹ For example, if a service user of a particular racial group makes an enquiry about support services provided by an organisation, the organisation’s staff refuses to provide assistance due to the fact that “there are no support services for ethnic minorities”. However, another service user belonging to other racial group (such as a Chinese or a Caucasian) is not turned away by the staff when making same enquiry, the staff can be regarded as giving less favourable treatment to the person of that particular race, which amounts to direct discrimination under the RDO.

¹ The Race Discrimination Ordinance (“RDO”) provides exceptions for certain measures or services not regarded discriminatory although they are targeted at specific racial groups to the exclusion of others.

Special measures (Section 49 of the RDO): Special measures that are intended to ensure that persons of a particular racial group have equal opportunities with other persons, or to provide persons of a particular racial group goods, benefits or access to services, facilities, programmes or opportunities, to meet their special needs. For example, special measures such as “headstart programmes” or “remedial classes” are specifically arranged for children of ethnic minorities.

Charities and charitable acts (Section 50 of the RDO): It is not rendered unlawful when a charity applies a provision which is contained in a charitable instrument for conferring benefits on persons of a particular racial group. For example, an organisation offers scholarships exclusively for ethnic minority youths in accordance with its charitable instrument.

Indirect racial discrimination occurs when a same requirement (rule, policy, practice, criterion or procedure) or condition, which cannot be justified on non-racial grounds, is applied equally on people of different races but which has an unfair effect on a particular racial group because (i) only a small proportion of people from that racial group can meet that requirement compared to the proportion of people of other racial groups, and/or (ii) the condition is to the detriment of the persons of that particular group because they cannot meet it. For example, an organisation provides Chinese information and application form only for the services. When a service user of a particular racial group requests the organisation to provide information in English, the service user is being rejected. Hence, the service user has no way to seek help and is unable to apply for the services. In fact, the Chinese language proficiency of this particular racial group is much lower than that of other racial groups such as Chinese, putting persons belonging to that particular racial group at a disadvantage. In addition, in terms of resources and manpower, it is difficult for the organisation to justify not providing any English assistance to service users. It may constitute indirect racial discrimination.

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