

Week 1: Introduction

- We are trying to come to terms with what we see as critical debates about what is discrimination?
- Confront ideas re whether law can address equality and discrimination.
- We think about how to pursue the ADL – certain prohibited grounds: you cannot discriminate on the notions of gender, sexuality, race, religion, etc. Is it easy to decide these?
- Is discrimination about not treating people the same? Or is it about acknowledging the differences?
- Treating everyone equally is the end measure or is it something more than that?
- Direct discrimination or indirect discrimination?
- Historically we have constructed certain grounds about age, sex, religion. What about issues re genetic discrimination? Are other grounds irrelevant?
- Purpose and end goals of discrimination. Does the law drive the societal change?
- ADL allows you to make complaints about treatment but that is not the sole or only purpose. It is also about setting standards of community behaviours. It can represent values and also can be symbolic in some sense. It can encourage people to speak out on certain issues.

Core Components of Framework

1. Sources of ADL – no common law of equality in ADL. It is purely a creature of Statute. Federal, State & Territory legislation. That's where ADL comes from. There is no entrenched Bill of Rights or Equality or Non-Discrimination Guarantees. It is ordinary legislation and does not give rise to entrenched rights. There some implied constitutional rights – like freedom of speech. There is no right to equality as an implied constitutional law. Some states have their own charter of bill of rights – VIC/ACT. NSW do not. As a consequence there is no right per se not to be discriminated against. The right at most, is not to be subject to conduct of prescribed discrimination. You complain about your own personal experiences. The complaints structure doesn't always work well.
2. Legal form of ADL
3. Operation

Source of AD Law: Federal Legislation

Main pieces of legislation:

- Racial Discrimination Act 1975 – consultation of race
- Sex Discrimination Act 1984 - one gender, marital and domestic relationship arrangements
- Disability Discrimination Act 1992 – is there practical application?
- Age Discrimination Act 2004 – young or old?

= these four legislations, are by decades. You can see there is a slow and incremental process. It has been there for some time. It does not keep up with international trends. In

the titles, you will see that it is about a ground of discrimination. We do not have one instrument but rather several.

Sources of Law: State Level

Anti-Discrimination Act 1977 (NSW):

- ❖ sex, including pregnancy and breastfeeding
- ❖ race
- ❖ age (including compulsory retirement)
- ❖ marital or domestic status
- ❖ homosexuality
- ❖ disability
- ❖ transgender status
- ❖ carers' responsibilities

Legal Form: basic structure

1. Ground or attribute
2. Area
3. Form of discrimination: direct or indirect
4. Exceptions and exemptions

You need to find a ground or an attribute (gender, race, etc) in an area (for example, employment, work) whether it was direct or indirect, subject to exceptions and exemptions. Treating someone the same but which has a different impact is an indirect form of discrimination.

Areas of 'public life'

Areas where you cannot be discriminated at:

- Employment
- Provision of goods and services
- Education
- Other areas – access to premises, accommodation, advertising, clubs, government functions, insurance, sport

Operation: Institutions and dispute resolution process

Federal:

- Complaints made to AHRC - <http://www.humanrights.gov.au>
- Proceedings: Federal Court or Federal Circuit Court

State:

- Complaints made to ADB <http://www.lawlink.nsw.gov.au/ADB>
- Proceedings NCAT