

Ref: 221855

16 March 2023

Oscar Fernandez
via FYI.org.nz

Tēnā koe Mr Fernandez

Response to your request for Official Information

On 20 February 2023 you requested the following information from the Human Rights Commission (“the Commission”) under the Official Information Act 1982 (“OIA”):

- (1) Has the Human Rights Commission received any complaints on ‘Caste discrimination’ since 1993?*
- (2) How many complaints has the Human Rights Commission received on ‘Caste discrimination’ from 1993 to till date (20/02/2023)?*
- (3) Does the Human Rights Commission have any framework or guidelines to deal with complaints on ‘Caste discrimination’?*
- (4) Since 1993, has the Human Rights Commission published any reports on ‘Caste discrimination’ in Aotearoa?*

We set out our responses to each of your requests below.

Requests 1 and 2 – Complaints on caste discrimination

In response to your first request, we confirm that since 1993 the Commission has received communications and complaints which raise issues in relation to caste.

In response to your second request, we first note that the Commission does not hold comprehensive information about complaints it received historically. As with all agencies, the Commission maintains and holds records for a set period of time. We generally dispose of our enquiries records after five to ten years, depending whether the matter is considered significant (such as matters that have progressed to mediation).

From the records we hold, we have identified that between 2003 to 2022 the Commission received at least 20 communications and complaints which raise issues in relation to caste. Some of these communications and complaints included allegations that people in Aotearoa have been treated differently on the basis of their caste.

Request 3 – Guidelines for dealing with complaints of caste discrimination

In response to your third request, the Commission does not itself hold a dedicated framework or guidelines for dealing with complaints of discrimination on the basis of

caste. We do however draw on existing external resources in relation to this issue.¹

By way of general overview, the Commission would approach a complaint of this nature, as we do with all others, by assessing it in light of the test for unlawful discrimination under the Human Rights Act 1993.² The complaint would be passed to our dispute resolution team if it appeared to amount for a claim of unlawful discrimination.

The case law on the meaning of ethnicity and race suggests that, depending on the evidence, different treatment by reason of caste could amount to racial harassment or to racial discrimination. It is also possible that the different treatment might amount to discrimination by reason of religious belief as being Brahman, for instance, is a religious category not exclusively an ethnic one. Complaints involving allegations of caste discrimination may also indicate intra-ground discrimination, within or between groups in society (for example, hereditary classes of Hindu society).

The Commission appreciates race-grounds (colour, ethnic or national origins and race) and religious discrimination can be subtle and insidious – we therefore take a liberal approach when assessing whether a complainant's allegation engages the Human Rights Act and to offer our processes including mediation and alternative dispute resolution.

Request 4 – Publications on caste discrimination

In response to your fourth request, we have searched our historic records and have not found any reports which the Commission has published specifically on caste discrimination in Aotearoa. Accordingly, we must decline this request on the basis that the information does not exist or, despite reasonable efforts to locate it, cannot be found.³

Alternative avenues

If you are not satisfied with this response, under the Official Information Act you are entitled to complain to the Ombudsman's Office. Information about how to make a complaint is available at www.ombudsman.parliament.nz or on freephone 0800 802 602.

Nāku noa, nā



Philippa Moran

Legal Advisor | Kaitohu Ture

New Zealand Human Rights Commission | Te Kāhui Tika Tangata

¹ See, for example, United Nations Network on Racial Discrimination and Protection of Minorities 'Guidance Tool on Descent-Based Discrimination: Key Challenges and Strategic Approaches to Combat Caste-Based and Analogous Forms of Discrimination' available at: <https://www.ohchr.org/sites/default/files/Documents/Issues/Minorities/GuidanceToolDiscrimination.pdf>.

² See Human Rights Act 1993, Part 1A and Part 2; New Zealand Bill of Rights Act 1990, s 19.

³ Official Information Act 1982, s 18(e).