



Australian Human Rights Commission Complaint Information Service • Investigation and Conciliation Service

Charter of Service

What we do

The Australian Human Rights Commission is Australia's national independent human rights body.

One of our main functions is to inquire into and conciliate complaints made under federal human rights and discrimination law. As part of this function we provide a national Complaint Information Service which provides information about the law and the complaint process. We also provide a national Investigation and Conciliation Service which aims to help people resolve their disputes quickly and effectively.

Our service commitment

We aim to provide a service that is:

- professional;
- accessible;
- fair; and
- timely.

In providing our service you can expect us to:

- treat you with respect and courtesy;
- provide you with clear and accurate information;
- collect, store, use and disclose your personal information in accordance with Australian law;
- keep those involved in a complaint informed about the progress of the complaint;
- provide a flexible service that is responsive to individual needs;
- be impartial and fair to everyone involved;
- progress enquiries and complaints in a timely manner; and
- provide reasons for our decisions.

Please note that our service is unable to:

- provide legal advice;
- advocate for a particular person or organisation;
- investigate matters that are not covered by federal human rights and discrimination law; or
- review or investigate the decisions of courts and tribunals.

How you can help us

To assist us provide the best possible service, it is expected that people using the Complaint Information Service and the Investigation and Conciliation Service will:

- treat Commission staff with respect and courtesy;
- tell us if they have any special requirements to access the service such as a need for an interpreter or for information to be provided in an alternative format;
- keep us informed about any changes to their circumstances or contact details;
- read the information we provide;
- respond to our requests for information in a timely manner and as accurately as possible;
- keep appointments or give sufficient notice if they cannot attend; and
- comply with reasonable requests during the process.

Compliments and general suggestions for improvement

We are committed to continual improvement of our service and we value your feedback.

Please let us know if you think we have provided you with a good service or if you have any suggestions on how the service may be improved. You can do this by participating in our Service Satisfaction Survey or by sending your feedback directly to the officer who dealt with your enquiry or complaint.

Raising concerns about our service

If you are unhappy with an aspect of our service, it would be helpful if you first raise the issue with the staff member who has been dealing with the enquiry or complaint. If this is not appropriate or has not addressed your concerns, you can ask to speak with that person's supervisor. Our staff will do their best to resolve your concerns.

If you are still not satisfied with the response you receive, you can make a complaint in writing to the:

Executive Director
Australian Human Rights Commission
GPO Box 5218
Sydney NSW 2001

Please note that the Executive Director cannot investigate complaints about decisions made under the law by the President or the President's Delegate.

Our contact information

Postal address:	Street address:
GPO Box 5218	Level 3, 175 Pitt Street
SYDNEY NSW 2001	SYDNEY NSW 2000

Telephone: (02) 9284 9600 or 1300 369 711
Fax: (02) 9284 9611
TTY: 1800 620 241

Complaints Infoline: 1300 656 419
Email: complaintsinfo@humanrights.gov.au
Complaints Information Homepage:
www.humanrights.gov.au/complaints_information/index.html



The complaint process

FOR COMPLAINTS ABOUT SEX, RACE, DISABILITY AND AGE DISCRIMINATION

The Australian Human Rights Commission is an independent body which investigates and resolves complaints about unlawful sex, race, disability and age discrimination.

- **Sex discrimination** includes sexual harassment and discrimination based on sex, gender identity, intersex status, pregnancy, marital or relationship status, breastfeeding, family responsibilities and sexual orientation.
- **Disability discrimination** includes discrimination based on physical, intellectual, sensory, learning and psychiatric disabilities; diseases or illnesses; medical conditions; work related injuries; past, present and future disabilities; and association with a person with a disability.
- **Race discrimination** includes racial hatred and discrimination based on colour, descent, national or ethnic origin and immigrant status.
- **Age discrimination** includes discrimination based on being too young or too old.

You can make a complaint no matter where you live in Australia and it doesn't cost anything to make a complaint. The steps in the complaint process are outlined below.

Make an enquiry

- If you are unsure if you can make a complaint about something, you can contact the Commission's Complaint Information Service by phone on **1300 656 419** or by email to **complaintsinfo@humanrights.gov.au**

- We can send you a complaint form to start the process.
- If we can't help you, we will try to refer you to someone who can.

Make a complaint

- A complaint must be in writing. You can lodge a complaint online at **www.humanrights.gov.au/complaints/lodge-complaint**. You can also fill in a complaint form and post or fax it to us.
- You can make a complaint in your preferred language and we can help you write down your complaint if necessary.
- You do not need a lawyer to make a complaint.
- If we cannot deal with your complaint, we will explain why.

Investigation

- We will contact you to talk about your complaint and we may ask you to provide more information.
- Generally, the Commission will contact the person or organisation you are complaining about, provide them with a copy of your complaint and ask for their comments and other relevant information. We will let you know what they have said in response to your complaint.
- In some cases we may decide not to continue to deal with your complaint. If this happens, we will explain why.
- We may talk to you about trying to resolve the complaint by conciliation.

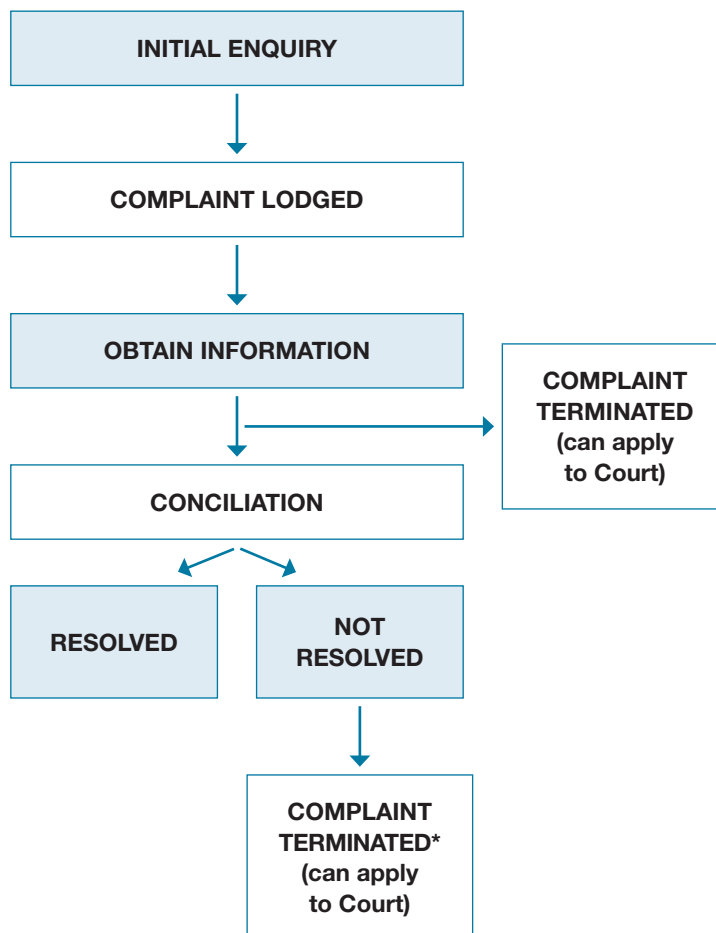
Conciliation

- Conciliation means that we try to help you and the person or organisation you are complaining about try to find a way to resolve the matter.
- Conciliation can take place in a face-to-face meeting called a 'conciliation conference' or through a telephone conference. In some cases complaints can be resolved through an exchange of letters or by passing messages by phone or email through the conciliator.
- Complaints can be resolved in many different ways. For example by an apology, a change of policy or compensation.

Possible court action

- The Commission does not have the power to decide if unlawful discrimination has happened.
- If your complaint is not resolved or is discontinued for some other reason, you can take the matter to court. The court can decide if unlawful discrimination has happened.
- You have 60 days from when the Commission finalises the complaint to make an application to the Federal Court of Australia or the Federal Circuit Court of Australia.
- The Commission cannot take the matter to court for you or help you present your case in court.
- You may need to talk with a lawyer or legal service if you want to go to court.

The complaint process



*The Commission may ask for further information before terminating the complaint.

Complaint Information Service

T: 1300 656 419 • **W:** www.humanrights.gov.au/complaints_information • **E:** complaintsinfo@humanrights.gov.au

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Information for people making complaints

UNLAWFUL DISCRIMINATION

What is the Commission's role in relation to complaints?

- Federal anti-discrimination law says that people can make complaints to the Commission about discrimination.
- When the Commission receives a complaint about an issue that is covered by the law, the President of the Commission can inquire into the complaint and try to resolve the complaint by conciliation.
- Commission staff who deal with complaints on behalf of the President are not advocates for the person making the complaint (the complainant) or the person/organisation the complaint is about (the respondent).
- The Commission is not a court and cannot determine that discrimination has happened. The Commission's role is to get both sides of the story and help those involved try to resolve the complaint.

What happens when the Commission receives a complaint?

- The Commission may contact you to get further information about your complaint. You should provide the Commission with relevant information and documents to support your complaint.
- Generally, the Commission will tell the respondent about your complaint and give the respondent a copy of the complaint.
- The Commission may ask the respondent to provide specific information or a detailed response to the complaint. The Commission will let you know what the respondent has said in reply to your complaint.
- Where appropriate, the Commission will invite you to participate in conciliation.
- You do not need a lawyer to take part in the complaint process. If you want a lawyer or advocate, you will need to organise this yourself. Some services such as Community Legal Centres can provide free legal advice or you may get advice from another advocacy organisation.

What is conciliation?

- Conciliation is an informal process that allows the complainant and the respondent to talk about the issues in the complaint and try to find a way to resolve the matter.
- Conciliation is not like a court hearing. The conciliator does not decide who is right or wrong and the conciliator does not decide how the complaint should be resolved.

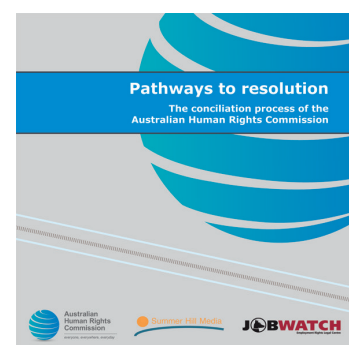
- The conciliator is there to help ensure the process is fair and to help both sides discuss and negotiate an outcome. The conciliator can also provide information about the law and how it has been interpreted.
- Conciliation can take place in a face-to-face meeting called a 'conciliation conference' or through a telephone conference. In some cases complaints can be resolved through an exchange of letters or by passing messages through the conciliator.
- The conciliator decides how the conciliation process will run and who will participate. You can ask to bring a support person or an advocate to assist you in the conciliation process. If you need special assistance such as a language or sign language interpreter, the Commission can arrange this for you.
- Conciliation is a confidential process in that the Commission cannot provide information about anything that is said or done in conciliation to the court, if further legal action is taken in relation to the complaint. You should not bring new documents or information that you want to rely on to a conciliation conference. This information should be provided to the Commission before the conciliation conference takes place.
- Complaints can be resolved in many different ways. The officer who is handling the complaint can provide you with information about how other complaints have been resolved.

What happens if the complaint is not resolved?

- If the complaint is not resolved, the Commission may request more information from you before making a final decision about the complaint.
- If the President of the Commission is satisfied that a complaint cannot be resolved, the complaint will be terminated. The President can also terminate a complaint for other reasons. For example, where the President is satisfied that a complaint is lacking in substance or is satisfied that a complaint has already been adequately dealt with.
- If the President of the Commission terminates your complaint, you may make an application to the Federal Circuit Court or the Federal Court of Australia for the court to hear the allegations in your complaint. You must make this application within 60 days of the date of termination.

What if I have more questions?

- If you have more questions about the complaint process and conciliation, please contact the officer who is handling your complaint.
- More information is available on the Complaints section of the Commission's website – www.humanrights.gov.au.
- The Commission has a DVD about conciliation that we can send you. You can also see the DVD on the Commission's website – www.humanrights.gov.au/complaints_information/pathways_to_resolution/index.html



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Information for people and organisations responding to complaints

UNLAWFUL DISCRIMINATION

What is the Commission's role in relation to complaints?

- Federal anti-discrimination law says that people can make complaints to the Commission about discrimination.
- When the Commission receives a complaint about an issue covered by the law, the President of the Commission can inquire into the complaint and try to resolve the complaint by conciliation.
- Commission staff who deal with complaints on behalf of the President, are not advocates for the person making the complaint (the complainant) or the person/organisation the complaint is about (the respondent).
- The Commission is not a court and cannot decide if discrimination has happened. The Commission's role is to get both sides of the story and help those involved try to resolve the complaint.

What happens when the Commission receives a complaint?

- The Commission will notify you that it has received a complaint and will provide you with a copy of the complaint. The Commission wants to hear your views on the matter and wants to make sure you have a fair opportunity to respond and resolve the complaint.
- Where appropriate, the Commission will invite you to participate in conciliation.
- If the Commission asks you to provide information or documents, you will also be asked to provide this within a specific timeframe. If you do not provide the information in the timeframe or you do not respond at all, the President of the Commission has power under the law to compel you to provide the information. The law also says that the President can compel people and organisations to attend conciliation.
- It is the Commission's usual practice, to give the complainant a copy of information and documents that you provide to the Commission. This can help the complainant understand how you see things.
- You do not need a lawyer to respond to a complaint. If you want a lawyer, you will need to organise this yourself. You can also seek advice from other organisations such as industry groups.

What is conciliation?

- Conciliation is an informal process that allows the complainant and the respondent to talk about the issues in the complaint and try to find a way to resolve the matter.
- Conciliation is not like a court hearing. The conciliator does not decide who is right or wrong and the conciliator does not decide how the complaint should be resolved.

- The conciliator is there to help ensure that the process is fair and to help both sides discuss and negotiate an outcome. The conciliator can also provide information about the law and how it has been interpreted.
- Conciliation can take place in a face-to-face meeting called a 'conciliation conference' or through a telephone conference. In some cases complaints can be resolved through an exchange of letters or by passing messages through the conciliator.
- The conciliator decides how the conciliation process will run and who will participate. You can ask to bring a support person or an advocate to assist you in the conciliation process. If you need special assistance such as a language or sign language interpreter, the Commission can arrange this for you.
- Conciliation is a confidential process in that the Commission cannot provide information about anything that is said or done in conciliation to the court, if further legal action is taken in relation to the complaint. You should not bring new documents or information that you want to rely on to a conciliation conference. This information should be provided to the Commission before the conciliation conference takes place.
- Complaints can be resolved in many different ways and the officer who is handling the complaint can provide you with information about how other complaints have been resolved.

What happens if the complaint is not resolved?

- If the complaint is not resolved, the Commission may request more information from you before making a final decision about the complaint.
- If the President of the Commission is satisfied that the complaint cannot be resolved, the complaint will be terminated. Once a complaint is terminated, the complainant has the option of applying to the Federal Magistrates Court or the Federal Court of Australia for the court to hear the allegations in the complaint. The complainant must make this application within 60 days of the date of termination.
- The complainant can also make an application to the court if the President terminates the complaint for some other reason. For example, because the President is satisfied the complaint is lacking in substance or is satisfied that the complaint has already been adequately dealt with.
- If the complainant makes an application to the court, the Commission may give the court the information and documents you have provided to the Commission.

What if I have more questions?

- If you have more questions about the complaint process and conciliation, please contact the officer who is handling your complaint.
- More information is available on the Complaints section of the Commission's website – www.humanrights.gov.au.
- The Commission has a DVD about conciliation that we can send you. You can also see the DVD on the Commission's website – www.humanrights.gov.au/complaints_information/pathways_to_resolution/index.html

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Email: complaintsinfo@humanrights.gov.au

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Complaints under the Age Discrimination Act

What is the Age Discrimination Act?

The *Age Discrimination Act 2004* (Cth) (the ADA) makes it against the law to treat you unfairly because of your age. The ADA protects young people, older people and everyone in between.

When can this law be used?

You can use the ADA to get fair treatment in many areas of public life such as:

- **Employment** – getting a job, terms and conditions of a job, training, promotion, being dismissed.
- **Education** – enrolling or studying in a course at a private or public school, college or university.
- **Accommodation** – renting or buying a house or unit.
- **Getting or using services** – such as banking and insurance services, services provided by government departments, transport or telecommunication services, professional services like those provided by lawyers, doctors or tradespeople, services provided by restaurants, shops or entertainment venues.

What is age discrimination?

Age discrimination happens when a person is treated less favourably than another person in a similar situation, because of their age. For example, it could be 'direct age discrimination' if an older person is not employed in a particular job because it is assumed that they are not as up to date with technology as a younger person.

Discrimination also happens when there is a rule or policy that is the same for everyone but has an unfair effect on people of a particular age. This is called 'indirect discrimination'. For example, it may be indirect discrimination if an employer requires an older person to meet a physical fitness test – which more young people are able to meet – if the fitness standard is not an inherent requirement of the job.

However, the ADA says that it is not against the law to discriminate against a person because of their age where the person cannot perform the inherent requirements of the job. For example, as a person must be over 18 years old to work in a bar, it would not be discrimination if a bar owner refused to employ a person because they are under 18 years of age.

Exemptions

Like other anti-discrimination laws, the ADA says that in some circumstances treating someone differently because of their age won't be against the law. This is known as an exemption.

The exemptions in the ADA include:

- Things done in compliance with Commonwealth laws, including laws about taxation, social security and migration.
- Things done in compliance with State and Territory laws.
- Certain health and employment programmes.
- Youth wages or direct compliance with industrial agreements and awards.

Positive discrimination

The ADA also says that it is not against the law to provide a genuine benefit to people of a particular age group or to do something that helps to meet an identified need of people of a certain age group.

Examples of 'positive discrimination' may include discounts and concessions provided to older Australians for services and/or facilities and special accommodation assistance provided to homeless teenagers.

What can I do if I experience discrimination?

You may want to deal with the situation yourself by raising it directly with the person or people involved.

If this does not resolve the situation, or you do not feel comfortable doing this, you can make a complaint to the Australian Human Rights Commission. You can also have someone such as a solicitor, advocate or trade union make a complaint on your behalf.

It does not cost anything to make a complaint to the Commission.

Your complaint needs to be put in writing. The Commission has a complaint form that you can fill in and post or fax to us or you can lodge a complaint online at our website. If you are not able to put your complaint in writing, we can help you with this.

The complaint should say what happened, when and where it happened and who was involved.

A complaint can be made in any language. If you need a translator or interpreter, the Commission can arrange this for you.

What will happen with my complaint?

When the Commission receives a complaint about something that is covered by the ADA, the President of the Commission can investigate the complaint and try to resolve it by conciliation. The Commission is not a court and cannot determine that discrimination has happened. The Commission's role is to get both sides of the story and help those involved resolve the complaint.

Commission staff may contact you to get further information about your complaint.

Generally, the Commission will tell the person or organisation the complaint is against (the respondent) about your complaint and give them a copy of the complaint. The Commission may ask the respondent for specific information or a detailed response to your complaint.

Where appropriate, the Commission will invite you to participate in conciliation. Conciliation is an informal process that allows you and the respondent to talk about the issues and try to find a way to resolve the complaint.

If your complaint is not resolved or it is discontinued for another reason, you can take your complaint to the Federal Court of Australia or the Federal Magistrates Court.

Where can I get more information?

The Australian Human Rights Commission's contact details are:

Telephone

Complaint Info line: 1300 656 419 (local call)

TTY: 1800 620 241 (toll free)

Fax: (02) 9284 9611

Post

Australian Human Rights Commission

GPO Box 5218

Sydney NSW 2001

Online

Email: complaintsinfo@humanrights.gov.au

Website: www.humanrights.gov.au

You can make a complaint online by going to
www.humanrights.gov.au/complaints_information/online_form/index.html.

If you are deaf or hearing impaired you can contact us by TTY on 1800 620 241. If you need an Auslan interpreter, the Commission can arrange this for you.

If you are blind or have a vision impairment, the Commission can provide information in alternative formats on request.

If you are thinking about making a complaint, you might also want to consider getting legal advice or contacting your trade union. There are community legal services that can provide free advice about discrimination and harassment. Contact details for your closest community legal centre can be found at www.nacalc.org.au/directory.

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Complaints under the Disability Discrimination Act

What is the Disability Discrimination Act?

The *Disability Discrimination Act 1992* (Cth) (the DDA) makes it against the law to treat you unfairly because of your disability.

You are also covered if you had a disability in the past, may develop a disability in the future or if people think you have a disability.

People who are relatives, friends and carers of people with a disability are also protected by the DDA.

When can this law be used?

You can use the DDA to get fair treatment in many areas of public life such as in:

- **Employment** – getting a job, terms and conditions of a job, training, promotion, being dismissed.
- **Education** – enrolling or studying in a course at a private or public school, college or university.
- **Accommodation** – renting or buying a house or unit.
- **Getting or using services** – such as banking and insurance services, services provided by government departments, transport or telecommunication services, professional services like those provided by lawyers, doctors or tradespeople, services provided by restaurants, shops or entertainment venues.
- **Accessing public places** – such as parks, government offices, restaurants, hotels or shopping centres.

You can also use the DDA if you are harassed because of your disability.

What is disability discrimination?

Disability discrimination happens when a person with a disability is treated less favourably than a person without the disability in the same or similar circumstances. For example, it would be 'direct disability discrimination' if a nightclub or restaurant refused a person entry because they are blind and have a guide dog.

Discrimination also happens when there is a rule or policy that is the same for everyone but has an unfair effect on people with a particular disability. This is called 'indirect discrimination'. For example, it may be indirect discrimination if the only way to enter a public building is by a set of stairs because people with disabilities who use wheelchairs would be unable to enter the building.

Exceptions

Like other anti-discrimination laws, the DDA says that in some circumstances treating someone differently because of their disability won't be against the law. This is known as an exception or exemption.

For example, the DDA says it may not be against the law to refuse to employ a person with a disability, if because of their disability they cannot perform the inherent requirements of a job. However, the DDA also says that employers must consider how the person with a disability could be provided with reasonable adjustments to help them do the job. An adjustment is reasonable if it does not impose 'unjustifiable hardship' on the employer.

Unjustifiable hardship also applies to other situations. For example, it may not be against the law to only provide entrance to a building by a set of stairs if the owner of the building can show that it would cause unjustifiable hardship to modify the building to provide wheelchair access.

What can I do if I experience discrimination?

You may want to deal with the situation yourself by raising it directly with the person or people involved.

If this does not resolve the situation, or you do not feel comfortable doing this, you can make a complaint to the Australian Human Rights Commission. You can also have someone such as a solicitor, advocate or trade union make a complaint on your behalf.

It does not cost anything to make a complaint to the Commission.

Your complaint needs to be put in writing. The Commission has a complaint form that you can fill in and post or fax to us or you can lodge a complaint online at our website. If you are not able to put your complaint in writing, we can help you with this.

The complaint should say what happened, when and where it happened and who was involved.

A complaint can be made in any language. If you need a translator or interpreter, the Commission can arrange this for you.

What will happen with my complaint?

When the Commission receives a complaint about something that is covered by the DDA, the President of the Commission can investigate the complaint and try to resolve it by conciliation. The Commission is not a court and cannot determine that discrimination has happened. The Commission's role is to get both sides of the story and help those involved resolve the complaint.

Commission staff may contact you to get further information about your complaint.

Generally, the Commission will tell the person or organisation the complaint is against (the respondent) about your complaint and give them a copy of the complaint. The Commission may ask the respondent for specific information or a detailed response to your complaint.

Where appropriate, the Commission will invite you to participate in conciliation. Conciliation is an informal process that allows you and the respondent to talk about the issues and try to find a way to resolve the complaint.

If your complaint is not resolved or it is discontinued for another reason, you can take your complaint to the Federal Court of Australia or the Federal Magistrates Court.

Where can I get more information?

The Australian Human Rights Commission's contact details are:

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GPO Box 5218

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Online

Email: complaintsinfo@humanrights.gov.au

Website: www.humanrights.gov.au

You can make a complaint online by going to

www.humanrights.gov.au/complaints_information/online_form/index.html.

If you are deaf or have a hearing impairment the Commission can arrange for an Auslan interpreter if this is needed. You can also communicate with us by TTY by calling 1800 620 241.

If you are blind or have a vision impairment, the Commission can provide information in alternative formats on request.

If you are thinking about making a complaint, you might also want to consider obtaining legal advice or contacting your trade union. There are community legal services that can provide free advice about discrimination and harassment. Contact details for your closest community legal centre can be found at www.nacalc.org.au/directory.

Disability discrimination legal services

There are also legal services which provide free specialist advice about disability discrimination. Contact details for your nearest Disability Discrimination Legal Centre can also be found at www.nacalc.org.au/directory.

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Complaints under the Racial Discrimination Act

What is the Racial Discrimination Act?

The *Racial Discrimination Act 1975* (Cth) (the RDA) makes it against the law to treat you unfairly because of your race, colour, descent, national or ethnic origin or immigrant status.

The RDA also makes racial hatred against the law.

When can this law be used?

You can use the RDA to get fair treatment in many areas of public life such as:

- **Employment** – getting a job, terms and conditions of a job, training, promotion, being dismissed.
- **Education** – enrolling or studying in a course at a private or public school, college or university.
- **Accommodation** – renting or buying a house or unit.
- **Getting or using services** – such as banking or insurance services, services provided by government departments, transport or telecommunication services, professional services like those provided by lawyers, doctors or tradespeople, services provided by restaurants, shops or entertainment venues.
- **Accessing public places** – such as parks, government offices, restaurants, hotels or shopping centres.

What is racial discrimination?

Racial discrimination happens when a person is treated less favourably than another person in a similar situation because of their race, colour, descent, national or ethnic origin or immigrant status. For example, it would be 'direct discrimination' if a real estate agent refuses to rent a house to a person because they are of a particular racial background or skin colour.

Racial discrimination also happens when there is a rule or policy that is the same for everyone but has an unfair effect on people of a particular race, colour, descent, national or ethnic origin or immigrant status. This is called 'indirect discrimination'. For example, it may be indirect discrimination if a company says that employees must not wear hats or other headwear at work, as this is likely to have an unfair effect on people from some racial/ethnic backgrounds.

What is racial hatred?

It is against the law to do something in public based on the race, colour, national or ethnic origin of a person or group of people which is likely to **offend, insult, humiliate or intimidate**.

Examples of racial hatred may include:

- racially offensive material on the internet, including eforums, blogs, social networking sites and video sharing sites
- racially offensive comments or images in a newspaper, magazine or other publication such as a leaflet or flyer
- racially offensive speeches at a public rally
- racially abusive comments in a public place, such as a shop, workplace, park, on public transport or at school
- racially abusive comments at sporting events by players, spectators, coaches or officials.

When is offensive behaviour based on race not against the law?

The RDA aims to strike a balance between the right to communicate freely ('freedom of speech') and the right to live free from racial hatred. The RDA says that the following things are not against the law if they are **"done reasonably and in good faith"** in:

- **an artistic work or performance** – for example, a play in which racially offensive attitudes are expressed by a character.
- **a statement, publication, discussion or debate made for genuine academic or scientific purposes** – for example, discussing and debating public policy such as immigration, multiculturalism or special measures for particular groups.
- **making a fair and accurate report on a matter of public interest** – for example, a fair report in a newspaper about racially offensive conduct.
- **making a fair comment**, if the comment is an expression of a person's genuine belief.

What can I do if I experience discrimination or racial hatred?

You may want to deal with the situation yourself by raising it directly with the person or people involved.

If direct contact does not resolve the situation, or you do not feel comfortable doing this, you can make a complaint to the Australian Human Rights Commission. You can also have someone such as a solicitor, advocate or trade union make a complaint on your behalf.

It does not cost anything to make a complaint to the Commission.

Your complaint needs to be put in writing. The Commission has a complaint form that you can fill in and post or fax to us or you can lodge a complaint online at our website. If you are not able to put your complaint in writing, we can help you with this.

The complaint should say what happened, when and where it happened and who was involved.

A complaint can be made in any language. If you need a translator or interpreter, the Commission can arrange this for you.

What will happen with my complaint?

When the Commission receives a complaint about something that is covered by the RDA, the President of the Commission can investigate the complaint and try to resolve it by conciliation. The Commission is not a court and cannot determine that discrimination has happened. The Commission's role is to get both sides of the story and help those involved resolve the complaint.

Commission staff may contact you to get further information about your complaint.

Generally, the Commission will tell the person or organisation the complaint is against (the respondent) about your complaint and give them a copy of the complaint. The Commission may ask the respondent for specific information or a detailed response to your complaint.

Where appropriate, the Commission will invite you to participate in conciliation. Conciliation is an informal process that allows you and the respondent to talk about the issues and try to find a way to resolve the complaint.

If your complaint is not resolved or it is discontinued for another reason, you can take your complaint to the Federal Court of Australia or the Federal Magistrates Court.

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Telephone

Complaint Info line: 1300 656 419 (local call)

TTY: 1800 620 241 (toll free)

Fax: (02) 9284 9611

Post

Australian Human Rights Commission

GPO Box 5218

Sydney NSW 2001

Online

Email: complaintsinfo@humanrights.gov.au

Website: www.humanrights.gov.au

You can make a complaint online by going to

www.humanrights.gov.au/complaints_information/online_form/index.html.

If you are deaf or hearing impaired you can contact us by TTY on 1800 620 241. If you need an Auslan interpreter, the Commission can arrange this for you.

If you are blind or have a vision impairment, the Commission can provide information in alternative formats on request.

Other contact points for racial hatred complaints

If you are concerned about offensive media stories, broadcasts or online content, you can complain to the Australian Communications and Media Authority (ACMA); the Advertising Standards Board for advertisements; or the Australian Press Council for newspaper stories. You can also complain to the Editor or Manager of the media organisation.

If you are concerned about offensive behaviour by neighbours, you can approach a Community Justice Centre to help resolve the problem, or the Department of Housing if you live in public housing.

If you are threatened with violence or violently attacked you should go to the police.

General legal advice

If you are thinking about making a complaint, you might also want to consider obtaining legal advice or contacting your trade union. There are community legal services that can provide free advice about discrimination and harassment. Contact details for your closest community legal centre can be found at www.nacalc.org.au/directory.

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Complaints under the Sex Discrimination Act

What is the Sex Discrimination Act?

The *Sex Discrimination Act 1984* (Cth) (the SDA) makes it against the law to treat you unfairly because of your: sex; gender identity; intersex status; sexual orientation; marital or relationship status (including same-sex de facto couples); family responsibilities; because you are pregnant or might become pregnant; because you are breastfeeding.

The SDA also makes sexual harassment against the law.

When can this law be used?

You can use the SDA to get fair treatment in:

- **Employment** – getting a job, terms and conditions of a job, training, promotion, being dismissed.
- **Education** – enrolling or studying in a course at a private or public school, college or university.
- **Accommodation** – renting or buying a house or unit.
- **Getting or using services** – such as banking and insurance services, services provided by government departments, transport services, professional services like those provided by lawyers, doctors or tradespeople, services provided by restaurants, shops or entertainment venues.

What is sex discrimination?

Sex discrimination happens when a person is treated less favourably than a person of a different sex would be treated in the same or similar circumstances. For example, it may be **direct** sex discrimination if male employees are paid more than employees of a different sex who are doing the same work.

Discrimination also happens when there is a rule or policy that is the same for everyone but has an unfair effect on people of a particular sex. This is called **indirect** discrimination. For example, it may be indirect discrimination if a policy says that managers must work full-time, as this might disadvantage women, who are more likely to need to work part-time due to responsibilities for caring for children.

What is gender identity discrimination?

Gender identity discrimination happens when a person is treated less favourably because of that person's gender-related identity, appearance or mannerisms or other gender-related characteristics of the person. It does not matter what sex a person was assigned at birth or whether the person has undergone any medical intervention.

Direct gender identity discrimination happens when a person is treated less favourably than a person with a different gender identity would be treated in the same or similar circumstances. For example, it may be direct gender identity discrimination if a shop-assistant refused to serve a person who identifies and presents as a woman but has a deep masculine sounding voice because she felt uncomfortable about that person's gender identity.

Indirect gender identity discrimination occurs when there is a requirement or practice that is the same for everyone but has an unfair effect on people of a particular gender identity. For example, it may be indirect discrimination if an organisation's human resources policies do not permit changes to an employee's records. Such a policy may require a transgender woman to continually disclose information about her gender identity in order to explain discrepancies in personal details.

What is intersex status discrimination?

Intersex status discrimination happens when a person is treated less favourably because that person has physical, hormonal or genetic features that are:

- neither wholly female nor wholly male; or
- a combination of female and male; or
- neither female nor male.

Direct intersex status discrimination happens when a person is treated less favourably than a person who is not intersex would be treated in the same or similar circumstances. For example, it may be direct discrimination for a physiotherapist to refuse to treat an intersex person because the person's biological characteristics make the physiotherapist uncomfortable.

Indirect intersex status discrimination occurs when there is a requirement or practice that is the same for everyone but has an unfair effect on people who are intersex. For example, a policy that says that certain medical treatments, such as treatment for ovarian cancer, is only appropriate for women may disadvantage an intersex man who has male and female sex characteristics.

What is sexual orientation discrimination?

Sexual orientation discrimination happens when a person is treated less favourably because that person has a sexual orientation towards:

- persons of the same sex; or
- persons of a different sex; or
- persons of the same sex and persons of a different sex.

Direct sexual orientation discrimination happens when a person is treated less favourably than a person with a different sexual orientation would be treated in the same or similar circumstances. For example, it may be direct sexual orientation discrimination for an employer not to promote an employee because it has become aware that he is bisexual.

Indirect sexual orientation discrimination occurs when there is a requirement or practice that is the same for everyone but has an unfair effect on people of a particular sexual orientation. For example, a company policy that offers benefits to an employee's husband or wife, such as discounted travel or gym membership, may disadvantage employees with a same-sex partner because of their sexual orientation and/or relationship status.

What is discrimination on the ground of marital or relationship status?

Discrimination on the ground of marital or relationship status happens when a person is treated less favourably because the person is:

- single
- married
- married, but living separately and apart from his or her spouse
- divorced
- the de facto partner of another person
- the de facto partner of another person, but living separately and apart from that other person
- the former de facto partner of another person
- the surviving spouse or de facto partner of a person who has died.

Direct marital or relationship status discrimination happens when a person is treated less favourably than a person with a different marital or relationship status would be treated in the same or similar circumstances. For example, it may be direct discrimination for a company not to employ a married woman because it assumes she will want to start a family.

Indirect marital or relationship status discrimination occurs when there is a requirement or practice that is the same for everyone but has an unfair effect on people of a particular marital or relationship status. For example, a company that offers only married employees working in remote locations allowances and leave to visit their families may be disadvantaging employees who are single or in de facto relationships.

What is pregnancy discrimination?

Direct pregnancy discrimination happens when a woman is treated less favourably than another person because she is pregnant or because she may become pregnant. For example, it would be direct pregnancy discrimination if an employer refused to employ a woman because she was pregnant or because she may become pregnant.

Indirect pregnancy discrimination occurs when there is a requirement or practice that is the same for everyone but has an unfair effect on pregnant women. For example, it may be indirect discrimination if a policy says that all employees must wear a particular uniform if it is difficult for a pregnant employee to wear that uniform.

What is discrimination on the ground of breastfeeding?

Direct breastfeeding discrimination happens when a woman is treated less favourably because she is breastfeeding or needs to breastfeed over a period of time. For example, it would be direct discrimination if a cafe refused to serve a woman because she is breastfeeding.

Indirect breastfeeding discrimination occurs when there is a requirement or practice that is the same for everyone but disadvantages women who are breastfeeding. For example, it may be indirect discrimination if an employer does not allow staff to take short breaks at particular times during the day. This may disadvantage women who are breastfeeding as they may need to take breaks to express milk.

What is family responsibilities discrimination?

Family responsibilities discrimination occurs when a person is treated less favourably than another person because the person has family responsibilities. Under the SDA, family responsibilities include responsibilities to care for or support a dependent child or a member of your immediate family.

For example, it may be discrimination for an employer to refuse to employ a person, demote a person or reduce a person's hours of work because the person needs to care for a family member.

What is sexual harassment?

Sexual harassment is any unwelcome sexual behaviour which is likely to **offend, humiliate or intimidate**. It has nothing to do with mutual attraction or friendship. Examples include:

- unwelcome physical touching
- staring or leering
- suggestive comments or jokes
- unwanted requests to go out on dates
- requests for sex
- emailing pornography or rude jokes
- sending sexually explicit texts
- intrusive questions about your private life or body
- displaying posters, magazines or screen savers of a sexual nature.

Everyone has the right to be safe and free from harassment while at work. The SDA also covers you if you are sexually harassed when you are purchasing or providing a good or a service or when you are studying at a school, college or university.

What can I do if I experience discrimination?

You may want to deal with the situation yourself by raising it directly with the person or people involved.

If this does not resolve the situation, or you do not feel comfortable doing this, you can make a complaint to the Australian Human Rights Commission. You can also have someone such as a solicitor, advocate or trade union make a complaint on your behalf.

It does not cost anything to make a complaint to the Commission.

Your complaint needs to be put in writing. The Commission has a complaint form that you can fill in and post or fax to us or you can lodge a complaint online at our website. If you are not able to put your complaint in writing, we can help you with this.

The complaint should say what happened, when and where it happened and who was involved.

A complaint can be made in any language. If you need a translator or interpreter, the Commission can arrange this for you.

What will happen with my complaint?

When the Commission receives a complaint about something that is covered by the SDA, the President of the Commission can investigate the complaint and try to resolve it by conciliation. The Commission is not a court and cannot determine that discrimination has happened. The Commission's role is to get both sides of the story and help those involved resolve the complaint.

Commission staff may contact you to get further information about your complaint.

Generally, the Commission will tell the person or organisation the complaint is against (the respondent) about your complaint and give them a copy of the complaint. The Commission may ask the respondent for specific information or a detailed response to your complaint.

Where appropriate, the Commission will invite you to participate in conciliation. Conciliation is an informal process that allows you and the respondent to talk about the issues and try to find a way to resolve the complaint.

If your complaint is not resolved or it is discontinued for another reason, you can take your complaint to the Federal Court of Australia or the Federal Circuit Court of Australia.

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Online

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You can make a complaint online by going to
www.humanrights.gov.au/complaints/lodge-complaint.

If you need an interpreter you can call the Translating and Interpreting Service (TIS) on **131 450** and ask to be connected to the Australian Human Rights Commission.

If you are deaf or have a hearing or speech impairment you can contact the National Relay Service (NRS) on **133 677** (TTY/Voice) or **1300 555 727** (Speak & Listen) and ask to be connected to the Australian Human Rights Commission. If you need an Auslan interpreter, the Commission can arrange this for you.

If you are blind or have a vision impairment, the Commission can provide information in alternative formats on request.

If you are thinking about making a complaint, you might also want to consider obtaining legal advice or contacting a community organisation. There are community legal services that can provide free advice about discrimination and harassment. Contact details for your closest community legal centre can be found at www.nacalc.org.au/directory.

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Fact sheet

Complaints under the Sex Discrimination Act: Gender Identity

What is the Sex Discrimination Act?

The *Sex Discrimination Act 1984* (Cth) (the SDA) makes it against the law to treat you unfairly because of your: sex; marital status; family responsibilities; because you are pregnant or might become pregnant or because you are breastfeeding. The SDA also makes sexual harassment against the law.

As of 1 August 2013 the SDA also makes it against the law to treat you unfairly because of your **gender identity**, intersex status; sexual orientation and marital or relationship status (including same-sex de facto relationships).

The Australian Human Rights Commission will be able to accept complaints of discrimination on the ground of **gender identity** about things that have happened on or after the commencement date.

What is gender identity?

Gender identity means the gender-related identity, appearance or mannerisms or other gender-related characteristics of a person. This includes the way people express or present their gender and recognises that a person's gender identity may be an identity other than male or female.

Terms commonly used to describe a person's gender identity include trans, transgender and gender diverse. The SDA provides protection from discrimination to people with a range of gender identities including, but not limited to, trans, transgender and gender diverse. It does not matter what sex a person was assigned at birth or whether the person has undergone any medical intervention.

What is gender identity discrimination?

Direct gender identity discrimination happens when a person is treated less favourably than a person with a different gender identity would be treated in the same or similar circumstances. For example, it may be direct gender identity discrimination if a shop-assistant refused to serve a person who identifies and presents as a woman but has a deep masculine sounding voice because she felt uncomfortable about that person's gender identity.

Indirect gender identity discrimination occurs when there is a requirement or practice that is the same for everyone but has an unfair effect on people of a particular gender identity. For example, it may be indirect discrimination if an organisation's human resources policies do not permit changes to an employee's records. Such a policy may require a transgender woman to continually disclose information about her gender identity in order to explain discrepancies in personal details.

When can this law be used?

You can use the SDA to get fair treatment in:

- **Employment** – getting a job, terms and conditions of a job, training, promotion, being dismissed.
- **Education** – enrolling or studying in a course at a private or public school, college or university.
- **Accommodation** – renting or buying a house or unit.
- **Getting or using services** – such as services provided by restaurants, shops or entertainment venues, banking and insurance services, services provided by government departments, transport services, professional services like those provided by lawyers, doctors or tradespeople.

What can I do if I experience discrimination?

You may want to deal with the situation yourself by raising it directly with the person or people involved.

If this does not resolve the situation, or you do not feel comfortable doing this, you can make a complaint to the Australian Human Rights Commission. You can also have someone such as a solicitor, advocate or trade union make a complaint on your behalf.

It does not cost anything to make a complaint to the Commission.

Your complaint needs to be put in writing. The Commission has a complaint form that you can fill in and post or fax to us or you can lodge a complaint online at our website. If you are not able to put your complaint in writing, we can help you with this.

The complaint should say what happened, when and where it happened and who was involved.

A complaint can be made in any language. If you need a translator or interpreter, the Commission can arrange this for you.

What will happen with my complaint?

When the Commission receives a complaint about something that is covered by the SDA, the President of the Commission can investigate the complaint and try to resolve it by conciliation. The Commission is not a court and cannot determine that discrimination has happened. The Commission's role is to get both sides of the story and help those involved resolve the complaint.

Commission staff may contact you to get further information about your complaint.

Generally, the Commission will tell the person or organisation the complaint is against (the respondent) about your complaint and give them a copy of the complaint. The Commission may ask the respondent for specific information or a detailed response to your complaint.

When appropriate, the Commission will invite you to participate in conciliation. Conciliation is an informal process that allows you and the respondent to talk about the issues and try to find a way to resolve the complaint.

If your complaint is not resolved or it is discontinued for another reason, you can take your complaint to the Federal Court of Australia or the Federal Circuit Court of Australia.

Where can I get more information?

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TTY: 1800 620 241

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Email: complaintsinfo@humanrights.gov.au
Fax: (02) 9284 9611

Go online

Website: www.humanrights.gov.au
Make a complaint: www.humanrights.gov.au/complaints/lodging-your-complaint

The Australian Human Rights Commission can make reasonable adjustments for people with disability to aid participation in the complaint process.

You do not need a lawyer or advocate to make a complaint about discrimination. If you are seeking advice or advocacy you can contact your trade union, an advocacy organisation or a community legal centre. Contact details for your closest community legal centre can be found at www.nacalc.org.au/directory.

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Fact sheet

Complaints under the Sex Discrimination Act: Intersex Status

What is the Sex Discrimination Act?

The *Sex Discrimination Act 1984* (Cth) (the SDA) makes it against the law to treat you unfairly because of your: sex; marital status; family responsibilities; because you are pregnant or might become pregnant or because you are breastfeeding.

The SDA also makes sexual harassment against the law.

As of 1 August 2013 the SDA also makes it against the law to treat you unfairly because of your **intersex status**; gender identity; sexual orientation and marital or relationship status (including same-sex de facto relationships).

The Australian Human Rights Commission will be able to accept complaints of discrimination on the ground of **intersex status** about things that have happened on or after the commencement date.

What is intersex status?

Intersex status means the status of having physical, hormonal or genetic features that are:

- neither wholly female nor wholly male; or
- a combination of female and male; or
- neither female nor male.

Being intersex is about biological variations, not about gender identity. An intersex person may have the biological attributes of both sexes, or lack some of the biological attributes considered necessary to be defined as one or other sex.

What is intersex status discrimination?

Direct intersex status discrimination happens when a person is treated less favourably than a person who is not intersex would be treated in the same or similar circumstances. For example, it may be direct discrimination for a physiotherapist to refuse to treat an intersex person because the person's biological characteristics make the physiotherapist uncomfortable

Indirect intersex status discrimination occurs when there is a requirement or practice that is the same for everyone but has an unfair effect on people who are intersex. For example, a policy that says certain medical treatments, such as treatment for preventing ovarian cancer, is only appropriate for women may disadvantage an intersex man who has male and female sex characteristics.

When can this law be used?

You can use the SDA to get fair treatment in:

- **Employment** – getting a job, terms and conditions of a job, training, promotion, being dismissed.
- **Education** – enrolling or studying in a course at a private or public school, college or university.
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- **Getting or using services** – such as services provided by restaurants, shops or entertainment venues, banking and insurance services, services provided by government departments, transport services, professional services like those provided by lawyers, doctors or tradespeople.

What can I do if I experience discrimination?

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A complaint can be made in any language. If you need a translator or interpreter, the Commission can arrange this for you.

What will happen with my complaint?

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Fact sheet

Complaints under the Sex Discrimination Act: Sexual Orientation

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The SDA also makes sexual harassment against the law.

As of 1 August 2013 the SDA also makes it against the law to treat you unfairly because of your **sexual orientation**; marital or relationship status (including same-sex de facto relationships); gender identity and intersex status.

The Australian Human Rights Commission will be able to accept complaints of discrimination on the ground of **sexual orientation** about things that have happened on or after the commencement date.

What is sexual orientation?

Sexual orientation means a person's sexual orientation towards:

- persons of the same sex; or
- persons of a different sex; or
- persons of the same sex and persons of a different sex.

Terms commonly used to describe a person's sexual orientation include gay, lesbian, homosexual, bisexual, straight and heterosexual. The SDA does not use these labels, as they may be inaccurate. However, the SDA is intended to protect people with these sexual orientations from discrimination.

What is sexual orientation discrimination?

Direct sexual orientation discrimination happens when a person is treated less favourably than a person with a different sexual orientation would be treated in the same or similar circumstances. For example, it may be direct sexual orientation discrimination for an employer not to promote an employee because it has become aware that he is bisexual.

Indirect sexual orientation discrimination occurs when there is a requirement or practice that is the same for everyone but has an unfair effect on people of a particular sexual orientation. For example, a company policy that offers benefits to an employee's husband or wife, such as discounted travel or gym membership, may disadvantage employees with a same-sex partner because of their sexual orientation and/or relationship status.

When can this law be used?

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What will happen with my complaint?

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Commission staff may contact you to get further information about your complaint.

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When appropriate, the Commission will invite you to participate in conciliation. Conciliation is an informal process that allows you and the respondent to talk about the issues and try to find a way to resolve the complaint.

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Understanding and preparing for conciliation

UNLAWFUL DISCRIMINATION

What is conciliation?

- Conciliation is an informal, quick, and cost effective way to resolve a complaint.
- Conciliation gives the person who made the complaint (the complainant) and the person or organisation being complained about (the respondent) the opportunity to talk about the issues in the complaint and try to resolve the matter themselves.
- Conciliation can take place in a face-to-face meeting called a 'conciliation conference' or through a telephone conference. In some cases, complaints can be resolved through an exchange of letters or by passing messages through the conciliator (shuttle conciliation).
- Conciliation is not like a court hearing. The conciliator does not decide who is right or wrong and does not tell either side what they must do.

What does the conciliator do?

- After talking with both sides, the conciliator will decide how conciliation will take place and who will participate.
- The conciliator is not an advocate for either side. The conciliator helps both sides talk about the issues in the complaint and makes sure that the process is as fair as possible for everyone involved.
- While the conciliator does not decide who is right or wrong, the conciliator can provide information about the law and how the law may apply to the complaint.
- The conciliator also helps the complainant and respondent think about ways to resolve the complaint and helps them negotiate an outcome they can agree on.
- While the conciliator does not tell either side what they should do to resolve the complaint, the conciliator can provide information about how other complaints have been resolved.

Who participates in conciliation?

- The complainant and the respondent are the main people in a conciliation process. Where the respondent is a company or organisation, the representative who participates in conciliation should understand the purpose of conciliation and have authority to make a decision on behalf of the company or organisation.

- You do not need a lawyer to participate in conciliation. If you want to bring a lawyer or another type of advocate to conciliation, you need to discuss this with the conciliator before the process begins. **Important information about the Commission's conciliation process for advocates and lawyers is on page 4.**
- You can also ask to bring a support person to assist you in conciliation. A support person usually does not take an active part in conciliation but is there to give you moral support.
- If you need assistance such as a language or sign language interpreter, the Commission can arrange this for you.

Is conciliation confidential?

- Conciliation is a confidential process in that the Commission cannot provide information about anything that is said or done in conciliation to the court, if further legal action is taken in relation to the complaint. This allows both sides to have an open and frank discussion.
- Important information that you want to rely on to support your version of events should be provided to the Commission before or after conciliation takes place.
- The Commission also expects that the complainant and respondent will agree to keep conciliation discussions and negotiations confidential. The Commission will ask both sides to agree to this in good faith. This means that you agree not to use what is said and done in the conciliation process in any related court proceedings, if the complaint does not resolve. You also agree not to make the information public in any other way.

What happens at a conciliation conference?

- You will usually have some private time with the conciliator before the conference begins and also at different stages during the process. As a rule, the conciliator will not tell the other side what you say in these private meetings unless you agree. If the conciliator thinks it is important to pass on something you have said, the conciliator will discuss this with you first.
- It is often the case that the complainant and respondent will then meet together with the conciliator. The conciliator will give both sides the opportunity to talk about the complaint and how they see things.
- After the face-to-face meeting, the conciliator will help you talk about ways the complaint may be resolved. This may take place with both sides together in the room with the conciliator or you may be in separate rooms, and the conciliator will pass messages between you.
- At any time during the process you can ask for a break or some private time to discuss things with the conciliator or with your advocate or support person.

How are complaints resolved?

- De-identified examples of complaints and how they were resolved are on the Commission's website www.humanrights.gov.au/complaints_information/register/index.html.
- How a complaint is resolved will depend on what the complaint is about and what the complainant and respondent are prepared to agree on. For example, complaints may be resolved on the basis of:
 - an apology or a statement of regret;
 - an agreement to introduce policies to prevent discrimination;
 - an agreement to provide anti-discrimination training;
 - reinstatement to a job or an offer of employment; and/or
 - financial compensation for monetary loss or injury to feelings.

What happens when a complaint is resolved?

- If a complainant and respondent can agree on a way to resolve the complaint, this is usually written up in a 'conciliation agreement'.
- The conciliator will help the parties negotiate what will be in the agreement and can also help write up the agreement.
- The parties can decide whether the terms of agreement are to be kept confidential or not.
- Where a complaint is resolved, the Commission will finalise the complaint under the law.

What happens if the complaint is not resolved?

- Sometimes if a complaint is not resolved at a conciliation conference, the conciliator may help the parties continue to negotiate by conveying information by telephone.
- If it appears that the complaint can't be resolved, the Commission may ask you for more information before making a final decision about the complaint.
- If the complaint can't be resolved or the Commission thinks the complaint should not continue for some other reason, the complaint will be terminated. Once a complaint is terminated, the complainant can apply to have their allegations heard and determined by the Federal Circuit Court or the Federal Court of Australia. The complainant has 60 days to apply to the court.

How can I prepare for conciliation?

- Make sure that you commit to the date and time for the conciliation process. The Commission may be unable to reschedule the conciliation and so it is important that you make every effort to participate on the allocated date.
- Make sure that you tell the conciliator before the day of the conference if there is any change in who will be attending with you.
- Make sure you understand how the law may apply to the complaint and what might happen if the complaint can't be resolved in conciliation. The officer handling the complaint can explain this to you.
- Think about what you want to say about the complaint. If conciliation is going to be successful, both sides need to be able to talk and negotiate with each other. Therefore, it is important that you are prepared to listen to the other side and treat everyone in a respectful way.
- It is also important to remember that while both sides may see things differently; this doesn't mean that the complaint can't be resolved. It is often the case that complainants and respondents will disagree about what happened but they can agree that it is better to try to resolve the complaint than go to court.
- Think about how you would like the complaint to be resolved and be prepared to explain why you think this is fair. Try to have a number of different options in mind. Also, think about how far you may be willing to compromise to resolve the complaint.
- You may want to get advice from an advocate or lawyer, if you feel this is necessary. If you get advice from a lawyer you will need to pay for this yourself. You may be able to get free legal advice from a Community Legal Centre or industry group.

What if I have more questions?

- If you have more questions about conciliation, please contact the officer who is handling the complaint.
- More information is available on the Complaints section of the Commission's website – www.humanrights.gov.au.

The Commission has a DVD about conciliation that we can send you. You can also see the DVD on the Commission's website – www.humanrights.gov.au/complaints/complaint-guides/pathways-resolution-conciliation-process-australian-human-rights

Important information for advocates and lawyers

The following information is provided to assist advocates and lawyers understand and participate in the Commission's conciliation process. If you have any questions about this information, please contact the officer who is handling your client's complaint.

- It is part of the conciliator's role to decide, in consultation with the complainant and respondent, whether advocates or lawyers will attend and/or participate in a conciliation conference. This is to ensure that the conciliation process is as fair as possible for everyone involved.
- The Commission's conciliation process is not like a court hearing. It is not a forum for determining facts, cross-examining parties, deciding legal issues, judging whether or not a breach of the law has occurred or making orders about what action should be taken.
- The Commission expects that advocates and lawyers will participate in conciliation with the aim of trying to resolve the complaint and will communicate in a conciliatory manner.
- The Commission also expects that advocates and lawyers will cooperate with the conciliator and be available to discuss the complaint and their client's views prior to a conciliation process.
- Advocates and lawyers can assist their client prepare for conciliation by:
 - providing advice about the law and the strengths and weaknesses of the case;
 - providing advice about what may happen if the complaint is not resolved;
 - helping their client understand benefits and risks of pursuing or defending a complaint at court;
 - encouraging their client to actively participate in conciliation, as appropriate;
 - helping their client consider a range of different options to resolve the complaint;
 - helping their client prioritise these resolution options and consider how far they may be willing to compromise to resolve the complaint;
 - thinking about the preferred form and content of any conciliation agreement.

● National Information Service

Telephone: 1300 656 419

Website: www.humanrights.gov.au/complaints_information

Email: infoservice@humanrights.gov.au

● Disclaimer

The information on this fact sheet is only intended as a guide.
It is not a substitute for legal advice.



Information for advocates and lawyers participating in conciliation

AUSTRALIAN HUMAN RIGHTS COMMISSION •
INVESTIGATION AND CONCILIATION SERVICE

The Commission values the positive role that advocates and lawyers can play in conciliation. Advocates and lawyers can provide important support to parties, assist parties understand and articulate how they see the law applies to a complaint and advise parties on possible options to resolve the complaint.

Conciliators at the Commission decide whether it is appropriate for an advocate or lawyer to participate in conciliation and the role that an advocate or lawyer will play. These decisions are made on a case by case basis, in consultation with the parties and with a view to ensuring a fair process that is consistent with the underlying principles of Alternative Dispute Resolution.

The Commission has certain expectations of advocates and lawyers when they participate in a conciliation process and these are explained in this document.

Before conciliation

In preparation for a conciliation process the Commission expects advocates and lawyers to:

- be available to discuss the complaint and their client's views with the conciliator;
- make all reasonable efforts to attend conciliation conferences on the scheduled date and provide adequate notice and reasons if unable to attend;
- provide any information requested by the conciliator in a timely manner;
- help their client understand the benefits of conciliation;
- understand and advise their client about the law and the apparent strengths and weaknesses of the complaint;
- advise their client about what may happen if the complaint is not resolved, including helping the client understand the potential risks and/or benefits of pursuing or defending a complaint in court; and
- assist their client proactively consider a range of options to resolve the complaint, prioritise these options and explore areas for compromise.

During conciliation

During a conciliation process the Commission expects advocates and lawyers to:

- genuinely participate with the aim of trying to resolve the complaint and encourage their client to do likewise;
- cooperate with the conciliator;

- encourage their client to directly participate in the conciliation process, where appropriate;
- communicate in a conciliatory manner including listening to the other party's views and treating all participants with respect and courtesy;
- respect the difference between conciliation and an adversarial court process and refrain from actions such as cross-examination or seeking determination of legal issues;
- ensure their client understands what is required in relation to confidentiality;
- actively assist their client explore all possible options for resolution; and
- be prepared to assist in negotiations regarding the preferred form and content of any conciliation agreement.

After conciliation

Following the conclusion of a conciliation process the Commission expects that advocates and lawyers will:

- complete any tasks agreed to at conciliation, such as drafting an agreement in a timely manner; and
- cooperate with the Commission in relation to any other action necessary to finalise the complaint.

More information

If you would like to understand more about how you can positively participate in the Commission's conciliation process, please contact the officer responsible for your client's complaint.

Additional information about federal discrimination law and conciliation is available on the Commission's website. This includes:

- a video on the Commission's conciliation process
www.humanrights.gov.au/complaints_information/pathways_to_resolution/index.html
- information sheets about understanding and preparing for conciliation
www.humanrights.gov.au/complaints_information/UPC/index.html
- a Conciliation Register which provides de-identified summaries of complaints and information about how these complaints were resolved
www.humanrights.gov.au/complaints_information/register/index.html
- a publication which provides a comprehensive overview of case law decided under Australia's federal discrimination law
www.humanrights.gov.au/legal/FDL/index.html

Complaint Information Service

Telephone: 1300 656 419

Website: www.humanrights.gov.au/complaints_information

Email: complaintsinfo@humanrights.gov.au

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