



Unlawful discrimination

Information for people and organisations responding to complaints

What does the Commission do?

- Federal anti-discrimination law says that people can make complaints to the Commission about unlawful sex, race, disability and age discrimination. The President of the Commission can investigate and try to resolve these complaints.
- The Commission is an independent agency. Staff who deal with complaints on behalf of the President, are not advocates for the person making the complaint (the complainant) or the person or organisation the complaint is about (the respondent).
- The Commission is not a court and does not have the power to decide if unlawful discrimination has happened. Our role is to get both sides of the story and where appropriate, help those involved to resolve the complaint.
- You do not need a lawyer to make a complaint or respond to a complaint. However, you may want to organise a lawyer or other type of advocate to assist you. If necessary, we can provide you with contact details for advocacy services such as Community Legal Centres, which provide free legal advice.

What happens when the Commission receives a complaint?

- The Commission will notify you that it has received a complaint and give you 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.
- 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.
- Where appropriate, the Commission will invite you to participate in conciliation

What is conciliation?

- Conciliation is where we try to help the complainant and the respondent find a way to resolve the complaint.
- Conciliation is not like a court hearing. The person who manages the conciliation (the conciliator) doesn't decide who is right or wrong or how the complaint should be resolved. The conciliator's role is to help ensure the process is fair, help both sides talk to each other and help negotiate an agreement. The conciliator can also provide information about the law and how other complaints have been resolved.
- Conciliation can take place in a face-to-face meeting or a meeting over the telephone. In some cases, complaints can be resolved through an exchange of letters and conversations with the conciliator.
- The conciliator decides how the conciliation process will run and who will participate. If you need special assistance such as a language or sign language interpreter, the Commission can arrange this for you.
- Conciliation is 'confidential'. This means that generally, what is said or done when trying to resolve the complaint, cannot be used in any later court action regarding the complaint. The conciliator can explain to you the limited situation where information from conciliation may be considered by the court.

What happens if the complaint is not resolved?

- If the complaint is not resolved, we may ask you for more information 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 complaints for other reasons. For example, where the President is satisfied that a complaint does not have merit or has already been dealt with by another agency.
- If the complaint is terminated, the complainant may be able to take the matter to the Federal Circuit Court or the Federal Court of Australia. The complainant must make an application to the court within 60 days of the date the complaint is terminated. In some situations a complainant will need to get the court's permission to take the matter to court.
- 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, please contact the officer who is managing the complaint. More information is also available on the Complaints page of the Commission's website - www.humanrights.gov.au/complaint-information.

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