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## Unlawful discrimination

# Information for people making complaints

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### 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 or the person or organisation the complaint is about. Our role is to get both sides of the story and where appropriate, help those involved to resolve the complaint.
- The Commission is not a court and does not have the power to decide if what you are complaining about is unlawful discrimination. However, in some cases, for example where your complaint is not resolved, you may be able to take your complaint to court. The court can decide if what you are complaining about is unlawful discrimination.
- 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 law says that complaints must meet certain requirements. For example, your complaint must be about something that could be unlawful discrimination. You also need to provide as much detail as possible about what happened and say why you think it is unlawful discrimination.
- In some cases, the President may decide not to investigate a complaint. If this happens, we will explain why.
- Usually, we will contact the person or organisation you are complaining about and give them a copy of your complaint. We may ask them to provide specific information and/or a response to the complaint. The information collected by the Commission in response to your complaint may include personal (including sensitive) information about you.
- Sometimes, we may also need to contact other people you have mentioned in your complaint and provide them with information about your complaint.

- In some cases, the President may decide to stop investigating a complaint. If this happens, we will explain why.
- We may also talk to you about trying to resolve your complaint by conciliation.

## **What is conciliation?**

- Conciliation is where we try to help you and the person or organisation you are complaining about, 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 your complaint is terminated, you may be able to take your complaint to the Federal Circuit Court or the Federal Court of Australia. You must make an application to the court within 60 days of the date your complaint is terminated. In some situations, you will need to get the court's permission to take the matter to court.
- The Commission cannot take the matter to court for you or help you present your case in court. So, you may need to talk with a lawyer or legal service if you want to go to court.

## **What if I have more questions?**

- If you have more questions, please contact the officer who is managing your complaint. More information is also available on the Complaints page of the Commission's website - [www.humanrights.gov.au/complaint-information](http://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.**