



Discrimination *Toolkit*

**Your Guide to Making a
Discrimination Complaint**

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Your Guide to Making a Discrimination Complaint

Published in 2007 by:

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Foreword

Like all good projects, the Discrimination Toolkit started with an unmet need, an idea, lots of enthusiasm and a few committed individuals willing to take on a big job. But it was only made possible with the generous financial and in-kind support we received from many people and organisations that believed in what we were doing and wanted to help.

First and foremost, we would like to thank the Australian Institute of Administrative Law for providing the seed funding to get this project off the ground and the Legal Aid Commission of New South Wales for meeting the costs of the printing and launching of the publication. Without this assistance there would be no Discrimination Toolkit.

We would also like to extend our most sincere thanks to the Elizabeth Evatt Community Legal Centre, Kingsford Legal Centre and the Legal Aid Commission of New South Wales for so fully supporting our involvement in this project and for resourcing its development and production in so many ways.

We also acknowledge and thank our external legal reviewers, David Hillard (Clayton Utz), Jonathon Hunyor (Human Rights and Equal Opportunity Commission), Nancy Hennessy and Amanda Curtin (Administrative Decisions Tribunal). Your thoughtful suggestions and constructive comments on the draft were of great value and very much appreciated. While we are indebted to you for your assistance, we acknowledge that final responsibility for the content is ours.

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Thanks also to Sarah Shrubbs for her skilled editorial work in helping to make complex legal material accessible, and to Francisco Fisher for his inspired design.

The Discrimination Toolkit is the first partnership project of its kind between community legal centres (both metropolitan and regional) and the Legal Aid Commission of New South Wales, and despite the many, many hours of hard work, it has been an incredibly positive and rewarding collaboration. We hope that this Kit will be a useful and practical resource for the people and communities we have the privilege of working with.

Meredith Osborne, Elizabeth Evatt Community Legal Centre

Fiona Pace, Legal Aid Commission of NSW

Teena Balgi, Kingsford Legal Centre



About this Kit

The Discrimination Toolkit is for people who believe they have been discriminated against and want to do something about it.

It will also be a useful resource for community workers, advocates and legal practitioners who want to help clients who are experiencing discrimination.

The Kit has five sections:

Discrimination basics will help you work out if you've been unlawfully discriminated against and whether you might have grounds for a discrimination complaint.

What you can do about discrimination looks at the legal and non-legal options for dealing with discrimination and gives you some guidance about how to decide what's best for you. This section also takes you through the steps involved in making and running a discrimination complaint.

Courts and tribunals describes what happens if your discrimination case ends up in a court or tribunal. Although most discrimination cases get sorted out before this stage, it's important to know what's involved if your case does get that far. This section also gives you some basic information on court procedures and rules.

Getting help first looks at whether you should get legal representation or advice. Then there is a list of contacts for legal and non-legal help, and places where you can get more information about discrimination if you need it.

Glossary gives definitions of some of the legal words you will come across if you are making a discrimination complaint.

Dealing with the legal system can be very stressful, and sometimes the results aren't what you wanted at all. This can happen with discrimination laws too. But many of our clients tell us that using discrimination laws can also be empowering and worthwhile. There have been a lot of changes in the way individuals and organisations treat people that have happened because of our discrimination law system. So even though it's not perfect, the discrimination law system is one we believe in.

Freedom from discrimination is a basic human right. We hope this Kit will help you navigate the discrimination law system so you can stand up for that right.

Good luck!!!



Disclaimer

This Kit is for general information purposes only. It is not intended as advice on any particular matter and is not a substitute for legal advice from a qualified professional. No reader should act or fail to act on the basis of any material contained in this Kit. The Legal Aid Commission of New South Wales, Kingsford Legal Centre, Elizabeth

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Discrimination Toolkit project team.

From left Teena Balgi (Kingsford Legal Centre), Meredith Osborne (Elizabeth Evatt Community Legal Centre) and Fiona Pace (Legal Aid Commission of NSW)





Discrimination basics

‘Grounds’ and ‘areas’ of discrimination

I’ve been treated unfairly. Is it against the law?

Most people are treated unfairly at some stage. They might be bullied, excluded, or victimised. As we all know, this sort of behaviour can have a big impact on your life. We often hear people say they’ve been ‘discriminated against’ when they experience unfair treatment. But not all unfair treatment is discrimination that is against the law.

In NSW, discrimination is covered by both state (NSW) laws and federal (Australian) laws – the ‘state system’ and the ‘federal system’. These discrimination laws cover **certain types** of unfair treatment (called ‘grounds’) in **certain circumstances** (called ‘areas’).

From here on, when we use the word ‘discrimination’, we mean ‘**unlawful** discrimination’.

Discrimination is a complex and technical area of law. We can’t guarantee that your problem will be covered by the law. But here’s a basic formula you can use to help you work out if you **might** have a discrimination case:

GROUND + AREA = DISCRIMINATION

STEP 1: Find your ‘ground’

To work out whether you can take legal action for discrimination, the first thing you need to think about is the reason why you have been treated unfairly. In discrimination law, these reasons are called ‘grounds’, or ‘characteristics’.

Read the checklist on the next page, which covers all the ‘grounds’ for discrimination, and tick any of the boxes that apply to you, then move on to Step 2. If you haven’t ticked any boxes, it means you probably don’t have a ground for a discrimination complaint.



<i>I have been treated unfairly or harassed because I am ...</i>	<i>Tick if yes</i>
Male or female (sex discrimination)	
Married, single or in a de facto relationship (marital status discrimination)	
Pregnant (pregnancy discrimination)	
Gay or lesbian – or someone thinks I am gay or lesbian (homosexual discrimination)	
Too young or old (age discrimination)	
A person with a disability – either physical, mental or intellectual, or because of illness or disease (disability discrimination)	
Transgender or transsexual – or someone thinks I am transgender or transsexual (transgender discrimination)	
Aboriginal or Torres Strait Islander (race discrimination)	
From a particular racial or ethnic background, including ethno-religious background (race discrimination)	
A carer of someone, such as a child or family member (carer's responsibilities) – but only if the unfair treatment happened in employment	
Associated with someone who has one of the above characteristics	
OR I have been sexually harassed	



Unlawful discrimination happens when you are treated unfairly **because** you have one of these characteristics, or because someone thinks you have one of these characteristics, or because you are associated with someone who has one of these characteristics.

Sometimes the unfair treatment is obvious: for example, if someone tells you you cannot rent a house because you are Aboriginal, or if you apply for a job and are told that you are too old to be in the running, even though you have the skills, qualifications and experience they are looking for. This is called **direct** discrimination.

But sometimes the discrimination is less obvious. A rule or policy might look fair because it applies to everybody, but in practice it has an unfair and unreasonable effect on a particular group. This is called **indirect** discrimination.

For example, the fire brigade used to have a rule that all fire officers had to be a minimum height. Although this policy applied to everyone, it disadvantaged women and men from some ethnic backgrounds. The rule was indirectly discriminatory because both those groups were likely to be shorter than the required height and you didn't need to be that tall to do the job.

Another example of indirect discrimination is where an employer makes all employees pass a physical fitness test and the level of fitness the employer wants is not needed for the job. This might disadvantage workers with a disability or older workers.

Example

Mark works in a factory and doesn't get on with his team leader. He says that his boss picks on him, hassles him about taking breaks and won't give him any overtime. Mark thinks his boss doesn't like him because he (Mark) is outgoing and popular and the boss isn't.

Unfortunately for Mark, this is not unlawful discrimination, because he can't link his unfair treatment to a 'ground' of discrimination. But he might have other options for sorting out the problem. He could talk to his union delegate, or a more senior manager at the factory, or even a lawyer, to work out what to do.



STEP 2: Find your 'area'

The second step in working out if you might have a discrimination case is to find out whether or not your problem happened in an area of life that is covered by discrimination laws. Discrimination is only against the law when it happens in an area of 'public life', such as employment, education, accommodation, buying goods and using services. Discrimination laws do not cover your private relationships with family members or friends.

The checklist below lists all the areas of life where discrimination is unlawful. Tick any of the boxes that describe where discrimination happened to you.

<i>I was treated unfairly when I was ...</i>	<i>Tick if yes</i>
At work (this includes anything to do with work: applying for a job, getting a promotion, training, working conditions, other work entitlements)	
At school, TAFE, uni, college or another educational institution	
Using a club (such as an RSL club) or applying for membership of a club	
Getting accommodation (such as a rental property, or in a hotel, hostel or care facility) or dealing with a real estate agent or landlord	
Trying to get a service or buy something (with a government department such as the Department of Housing, Centrelink or the police, or with other services such as a bank, a hospital, a shop, a pub or a restaurant)	
Trying to use a public place or facility (such as public transport)	
OR discriminatory advertising	



If you've ticked a box in Step 1 **and** a box in Step 2, you could have a discrimination claim.

Example

Mario has epilepsy and had a seizure at the local supermarket. The manager of the shop told him this scared the other customers so he is not allowed to shop there any more. This situation is covered by discrimination law because Mario has a 'ground' (disability) and an 'area' (using a service).



Exceptions

STEP 3: Are there any exceptions?

Discrimination laws have lots of exceptions. These are called 'exemptions'. This means that some parts of discrimination law do not apply to some organisations and situations. For example, there are exemptions for some private schools, some very small businesses, some charities and religious organisations and some jobs in the defence forces.

This might mean your situation is not covered by discrimination law, even if you ticked a box for Step 1 and Step 2.

Discrimination laws also recognise that some types of unequal treatment are good for the community. For example, services that meet the special needs of a certain group, such as women's health centres, are generally OK. Also, programs that aim to fix longstanding inequalities, such as affirmative action programs or indigenous employment programs, are generally OK too.

Exceptions in discrimination law can be complex and technical (and can change over time), so it's very important to get legal advice about whether discrimination laws will cover your problem.

Example

Nada is one of four employees in a bakery. One afternoon the boss sees Nada's girlfriend pick her up from work. When she finishes her shift the next day, the boss says to her, 'Don't bother coming back tomorrow. My customers don't want to be served by a lesbian.'

This is clearly discrimination, but unfortunately Nada is not covered by discrimination laws in New South Wales. This is because she works in a business that has less than six employees – businesses of this size are exempt from the homosexuality parts of the NSW Anti-Discrimination Act. And Nada cannot use the Federal system either because sexuality discrimination is not a 'ground' of discrimination under Federal law.



Sexual Harassment, vilification and victimisation

What about sexual harassment?

Sexual harassment is against the law. It is covered by state and federal discrimination laws.

The legal definition of sexual harassment has two parts. What happens to someone has to be both these things before the law will call it sexual harassment:

- it must be unwelcome sexual behaviour; and
- it is reasonable to expect that you would feel offended, humiliated or intimidated by the behaviour.

Sexual harassment includes unwanted touching, staring or leering, suggestive comments or jokes, having to look at sexually explicit material, including offensive emails or SMS messages, unwanted invitations or requests for sex, sexually intrusive questions and inappropriate familiarity.

Sexual harassment also includes sexual behaviours that are criminal offences, such as sexual assault, indecent exposure, stalking, and obscene communications.

The law also says that having to work in an atmosphere with sexual overtones can be sexual harassment, even if it's not targeted at you directly. For example, if one of your co-workers has a screensaver of a topless woman that you see every time you walk past their desk, and you find the screensaver offensive, that could be sexual harassment.

Sexual harassment is **not** about anything that happens when two people are attracted to each other, and it's not about mutual flirting. It is about sexual behaviour that you don't want and didn't invite.



Example

Jasmine walks past a building site every morning on her way to work. The workers wolf-whistle and shout out comments about her body every day. This makes her feel a little bit scared and disgusted, and she wants to know if it is sexual harassment.

Yes, it is sexual harassment, but it is not covered by discrimination law because it didn't happen in an 'area' the law covers. But Jasmine could contact someone at the building company and make a complaint.

What is vilification, and is it covered by discrimination laws?

Vilification is when someone says or does something **in public** that could make other people ridicule or hate a particular group of people.

Discrimination laws say that vilification is against the law in some circumstances:

- vilification of people who are gay, lesbian or transgender is against the law;
- vilification of people with HIV/AIDS is against the law; and
- vilification of racial groups is against the law.

Here are some examples of vilification:

- a neighbour standing in a common area of a unit block and yelling out 'Disgusting faggots – you're all going to burn in hell' (homosexual vilification);
- writing and handing out pamphlets, or making a speech at a rally or on the radio that says 'Arabs are terrorists and the government should deport them' (racial vilification); and
- public broadcasts (such as at a rally or on radio) that ridicule or try to make listeners hate people from a particular ethnic group or people who are gay, lesbian, transgender or living with HIV/AIDS.

Some types of vilification are against the law in the state system but not the Federal system, so you need to check which laws cover the vilification you want to complain about before you lodge a legal complaint.



What is victimisation, and is it covered by discrimination laws?

Victimisation is when someone punishes you or treats you badly because:

- you have complained about discrimination or harassment; or
- they think you are going to complain about discrimination or harassment; or
- you have helped or are going to help someone with a discrimination or harassment complaint (you may be going to give evidence for them in court, for instance).

Victimisation is illegal under discrimination laws.

Here are some examples of victimisation:

- you make a sexual harassment complaint under discrimination laws and your employer fires you after he/she finds out you have made the complaint;
- you complain to your boss that another worker is saying racist things to you and you get demoted (moved to a lower-level position); and
- you try to rent a flat and the agent says, 'We don't rent to people in their early twenties. They're too unreliable.' You say, 'That's not fair. I'm going to take this further.' The agent then tells you you've been blacklisted.

If you think you have been victimised, you might be able to make a complaint under discrimination laws.





*What you
can do about
discrimination*

Know your options

There are many ways you can deal with discrimination, and many discrimination problems can be sorted out quickly and informally.

This section gives you some ideas about your options, both formal and informal.

The first thing to think about is what you want to happen. Once you know what you want, it's much easier to work out the best way to get it.

Some of the things to think about before you decide which approach you want to take are:

- Do you feel comfortable and confident enough to try to sort the problem out yourself?
- Do you have anyone who can help you?
- Can you deal with the stress and time it will take if you take legal action?
- How urgent is the situation?
- Are you likely to have an ongoing relationship with the person who has treated you badly?
- Does the person who has treated you badly have a boss you can talk to?
- Can you make a complaint within the organisation?

It is often a good idea to get some help when you're deciding what to do. If the problem is happening at work and you belong to a union, you can ask your union for help. Legal Aid, a Community Legal Centre or other community organisations might also be able to give you advice and help (see page 100).

INFORMAL OPTIONS

One option is to raise the issue directly with the person you are having the problem with. You might get a quick and easy solution by doing this.

In some situations this doesn't feel right – you might find the person intimidating or threatening, or just not feel comfortable talking to them about the problem. But you might feel that you could do it if you had a friend or family member with you.



Another option is to write a letter to the person. In the letter you should explain what the problem is, tell them what effect their behaviour has had on you and what you would like them to do. This will only work if you write a calm letter, not one that has abusive or aggressive words in it.

If you don't want to approach the person who has treated you badly or if you've tried it and it didn't work, maybe you could talk to their boss or someone more senior than them.

Example

Shanti works for a company that has a communal staff room. One day she notices a cartoon pinned to the noticeboard that makes fun of Indian people. She thinks the cartoon is racist and goes to talk to her manager about it. Her manager agrees that it's inappropriate and removes the cartoon. The manager also sends out an email to all employees reminding them that discrimination or harassment in the workplace won't be tolerated.

FORMAL OPTIONS

Many organisations have formal grievance or complaint procedures. It's a good idea to try these if they're available.

Example

Lin has worked for the same company for four years. She has always worked the 9.00am to 2.30pm shift so she can drop her children off at school and pick them up. Lin gets a new manager who tells her that she needs Lin to be more flexible with her work hours and that her shifts may vary from now on. This will make it hard for Lin and her kids. Con't next page

Lin tries to talk about it with her manager but she won't listen, so Lin goes to the union. The union helps her make a formal complaint through the company's grievance procedure. The company backs the manager's decision, so the union suggests that Lin look at her options under discrimination law.



Some professions and industries have special organisations that you can complain to about people who work in that profession or industry. For example:

COMPLAIN TO

HEALTH SERVICE
PROVIDERS (SUCH
AS DOCTORS)

the Health Care Complaints
Commission or the NSW Medical
Board

EMPLOYEES OF
GOVERNMENT
DEPARTMENTS

the Ombudsman (Commonwealth and
State)

LAWYERS

the Office of the Legal Services
Commissioner

INSURANCE
COMPANIES

the Insurance Council of Australia

PUBLIC SCHOOLS
AND TEACHERS

the Department of Education

HOTELS

the Australian Hotels Association

BANKS

the Banking and Financial Services
Ombudsman



Example

Miranda has a mild intellectual disability and needs extra learning support in the classroom. The school tells her parents that it doesn't have the resources to give her this support. Her parents contact the Department of Education, and the Department sets up a meeting – with its representative, someone from the school and Miranda's parents – to discuss what to do about getting some support for Miranda.

Example

Andre had a fall and cut his arm on a piece of glass. He goes to his local doctor to get stitches. While the doctor is treating the wound, he keeps touching Andre inappropriately. This makes Andre very uncomfortable and he leaves the surgery feeling distressed. He decides to do something about it and gets some advice from a lawyer about his options. The lawyer tells him that he can make a sexual harassment complaint under discrimination law or make a complaint to the Health Care Complaints Commission.

The NSW Anti-Discrimination Board website (see page 99) has some helpful information about how to sort out complaints about unfair treatment and where you can go for help.

Remember, if the non-legal options don't work, you can always go down the legal path. But there are deadlines for taking legal action. Under discrimination laws, you generally have to make your complaint within **one year** from when the problem occurred. There are different (and often shorter) time limits for trying other legal options (see page 23).



What if I'm victimised for speaking out?

Some people worry that they will be treated badly if they speak out. It is against the law to victimise you – to treat you badly because you have complained about discrimination, or because someone thinks you are going to complain (see page 16 for information on victimisation).

TIPS FOR HANDLING THE PROBLEM YOURSELF



- *Write things down when they happen or as soon as you can afterwards – record times, dates, names and what people said and did. You can use this to support your case later on.*

- *Keep a copy of any letters or emails you send and any you receive, and don't throw out any other paperwork.*
- *Try to stay calm – being treated unfairly can be upsetting, but try not to talk to anyone involved when you are angry or distressed. When you feel like this, talk to a friend, or a counsellor, or write down how you feel.*
- *Ask for help – confronting someone about a problem is hard to do on your own; it might be easier if you have a friend, relative, workmate or union representative there with you.*
- *Remember that there are time limits on starting legal action. If you want to try non-legal options but you're getting close to the deadline, you can start legal action and then ask for it to be put on hold while you keep trying the non-legal options.*

LEGAL OPTIONS

There are several legal options for dealing with a discrimination problem. This Kit focuses on discrimination law, but there might be other laws that cover your problem. It's best to get legal advice on what is the best approach for your case.

Making a complaint under discrimination laws is one option. We discuss it in detail later in this Kit (see page 27).

Here are some of the other laws that might apply if you've been treated unfairly at work:



Unfair dismissal

Unfair dismissal is when you are dismissed (fired) from your job and the dismissal is 'harsh, unjust or unreasonable' (unfair).

You might be able to lodge a complaint (lawyers call this 'making an application') of unfair dismissal with the NSW Industrial Relations Commission or the Australian Industrial Relations Commission.

The time limit for making an unfair dismissal application is 21 days from the date you were dismissed.

Recent changes to unfair dismissal laws mean that this option is no longer available to a lot of workers. Talk to a lawyer or your union to find out if you are still covered by unfair dismissal laws.

Unlawful dismissal

Unlawful dismissal is when you are sacked from your job for a 'prohibited reason'. Prohibited reasons include because of your age, race, disability, religion, sex or trade union activity.

Some types of discrimination are covered by unlawful dismissal laws and discrimination laws. You will need to get legal advice about which system is best for your case.

If unlawful dismissal laws do apply to you, the place to make an application is the Australian Industrial Relations Commission.

The time limit for making an unlawful dismissal application is 21 days from the date you were dismissed.

Underpayment of wages and other benefits

If your employer underpaid your wages or other benefits, or did not pay the right amount of superannuation, you might be able to apply to the Federal Magistrates Court (FMC) or the Chief Industrial Magistrates Court to have these benefits paid.



Example

Frank is fired because he is very active in the union. He wants his job back and wants to get paid the wages he is owed. He thinks he might have a case under discrimination law and gets some legal advice. His lawyer tells him that he is not covered by discrimination law (because there is no 'ground'), and even if he was covered, he would be unlikely to get his job back under discrimination law.

But his lawyer says he could have a case for 'unfair dismissal' or 'unlawful dismissal' under employment law. He might also be able to take legal action for underpayment of wages.

Workers' compensation

If you have experienced discrimination or bullying at work and it has caused you a physical or psychological injury, you might be able to apply for workers' compensation. You can do this at the same time as making a complaint under discrimination law.

Occupational health and safety (OH&S)

OH&S laws say that employers must provide a safe and healthy workplace. If you have experienced discrimination at work, this might mean you have been exposed to an unsafe workplace. You can make a complaint about this to WorkCover NSW, who might investigate and try to prosecute your employer.

Breach of contract

Whether or not you actually have a written contract with your employer, the law says that there is a contract between you – and that both you and your employer have rights and obligations under this contract. For example, your employer might have to provide a workplace where there is no discrimination, harassment and bullying. So if you have been discriminated against at work you might be able to take legal action against your employer for breaching your employment contract.



Negligence

Employers have a duty of care to employees. This means that they have to provide a workplace that is safe, and where there is no discrimination, harassment and bullying. If your employer does not do this you might be able to take legal action against them for negligence.

Superannuation disability claims

Most superannuation policies include disability insurance.

If you have a disability that means you can't do your job, you might be able to make a disability insurance claim under your superannuation policy.

If you think you can still do your job despite your disability, but your employer says you can't, you might be able to make a disability discrimination complaint.

How do I know which is the best legal option for me?

What is the best legal option for you will depend on many things, including:

- *whether the law covers your particular situation*: there are lots of rules about who is allowed to complain under different laws, and this might mean that some legal options are not available to you;
- *time limits*: there are different deadlines under different laws for starting legal action – the time limit for an unfair or unlawful dismissal claim is 21 days, but the time limit under discrimination laws is generally 12 months, for instance. So if the 21-day time limit has passed and you have not taken any action, discrimination law might be the only option you have;

Example

Nick is HIV+, and his former neighbours used to yell out abuse about his HIV+ status every time they passed his house. He has been told that he can make a vilification complaint against them, but he has just moved and is not well. At the moment he feels that he's not up to taking any legal action. For now he wants to focus on getting well. But he knows that he has 12 months to make a complaint if he wants to.



- *the result you want*: different laws can give you different results. For example, if what you want is to get your job back, it might be best to make an unfair dismissal or unlawful dismissal application. But if you want compensation for hurt, humiliation and distress you have suffered from being treated unfairly at work, you can get this under discrimination laws, but not industrial laws; and
- *your chances of winning*: you might have a stronger case under one set of laws than others.

Sometimes you can make complaints under different laws at the same time, and other times you have to choose between laws.

If you want to take legal action, get advice from a lawyer or your union about your options. Do this as soon as you can – remember those time limits.



Making a discrimination complaint

The rest of this Kit focuses on this option.

We strongly recommend that you get some advice from a lawyer before you start legal action under discrimination laws. You can go to a private solicitor with experience in discrimination law or to one of the places that offer free legal advice (see page 100).

Taking legal action for discrimination is a big step. It's a good idea to think about the things listed below before you go ahead.

THERE ARE NEGATIVES:

- ✗ making a discrimination complaint can be stressful, time-consuming and expensive;
- ✗ the amounts paid as compensation in discrimination cases in Australia are generally quite low;
- ✗ you'll have to talk about what happened to you, often several times – some people find this upsetting; and
- ✗ when you make a complaint, the person you are complaining about will usually respond with their side of the story – they might deny that the things you say happened did happen, and they might make personal attacks on you, and that can be difficult too.

AND THERE ARE POSITIVES:

- ✓ making a discrimination complaint might be the only way you can get the results you want, such as compensation or an apology;
- ✓ it might stop the unfair treatment happening again, to you or someone else; and
- ✓ you get a chance to tell your story and talk about how the unfair treatment made you feel – this can be very empowering.

Who can make a complaint?

Generally the person who has been discriminated against makes the complaint themselves, but sometimes people make complaints on behalf of other people, such as:

- parents on behalf of a child;



- a person on behalf of someone with a disability; or
- unions on behalf of union members.

Sometimes people can get together and make a group complaint if they have all been discriminated against in the same way.

Where do I start?

If you want to make a complaint under discrimination laws, you cannot go straight to a court or tribunal. You first have to make your complaint to the Anti-Discrimination Board of New South Wales (ADB) or to the Human Rights and Equal Opportunity Commission (HREOC).

The ADB and HREOC are government organisations that deal with discrimination complaints. They are not courts. Their job is to help you sort out your complaint with the person you are complaining about.

You can only take your complaint to a court or tribunal (this is where a judge, magistrate or tribunal member will decide your case) if you cannot sort it out at the ADB or HREOC first. We talk about court and tribunal processes from page 55.

If you live in New South Wales, you can make your complaint to either the ADB or HREOC.

The ADB deals with a NSW law called the *Anti-Discrimination Act*. If you make a complaint to the ADB, you are using the state system.

HREOC covers all of Australia, and deals with five federal discrimination laws:

1. *Human Rights and Equal Opportunity Commission Act*;
2. *Racial Discrimination Act*;
3. *Sex Discrimination Act*;
4. *Disability Discrimination Act* and
5. *Age Discrimination Act*.

If you make a complaint to HREOC, you are using the federal system.

The ADB has offices in Sydney, Wollongong and Newcastle. HREOC has its office in Sydney (see page 99).



Should I go to the ADB or HREOC?

You have to choose between the ADB or HREOC – this is called ‘electing jurisdiction’. You cannot make a complaint to both of them about the same issue.

Knowing which one to choose can be tricky, so it is important to get legal advice before you make your decision.

Some types of problems are only covered by state laws, and some are only covered by federal laws. This means that sometimes you’ll have no choice about where to complain. For instance:

- the federal system does not cover religious discrimination;
- for carers’ discrimination, the federal system only covers you if you’ve been sacked; the state system covers more employment situations, including applying for jobs or promotions;
- if your complaint is against a federal government department such as Centrelink, you might have to complain to HREOC;
- if your complaint is against a small business with less than six employees, you have to complain to HREOC (unless your complaint is about race or age discrimination or sexual harassment); and
- if your complaint is about racial vilification it is covered by both systems, but homosexual, transgender, and HIV/AIDS vilification are only covered by the state system.

MAKE SURE YOU COMPLAIN TO THE RIGHT ORGANISATION FOR YOUR TYPE OF PROBLEM.

Example

Joe wants to rent a house. The landlord tells Joe he can have the house, but changes his mind when Joe’s boyfriend Marcus turns up. Joe and Marcus want to make a discrimination complaint against the landlord.

They find out that homosexuality discrimination is only a ground under state law. This means they should make their complaint to the ADB, not HREOC.



Sometimes, both the ADB and HREOC have the power to deal with the issue. In that case you will have to choose which organisation best suits your problem. Knowing a little bit about what lies ahead might help you decide.

Both organisations handle discrimination complaints in similar ways at the beginning, through a process called ‘conciliation’. But if the complaint doesn’t get sorted out through conciliation, and it ends up in a court or a tribunal, procedures in the state system and the federal system become quite different.

Complaints that are made to the ADB but aren’t sorted out there can go to the NSW Administrative Decisions Tribunal (‘ADT’).

Complaints that are made to HREOC but aren’t sorted out there can go to the Federal Magistrates Court (‘FMC’) or the Federal Court of Australia (‘FCA’).

It’s important to understand the differences between the ADT and the federal courts right from the start so you know what to expect if your case goes ‘all the way’. This will help you make a decision about whether to make your complaint to the ADB or HREOC. Here are a few of the main differences:

- If your complaint ends up in the FMC or FCA, *you will probably have to pay the other side’s legal expenses (‘costs’) if you lose.* This can be thousands of dollars. It’s unusual for this to happen in the ADT.
- It’s generally easier to run your own case in the ADT than in the federal courts (see page 56).
- The federal courts can make different decisions (‘orders’) from those the ADT can make. For example, the maximum amount of compensation the ADT can give you is \$40,000, but there is no upper limit on how much the federal courts can give you.

As you can see, some of these differences are quite technical. And there are many more that we haven’t gone into! We strongly recommend that you get legal advice about which system will suit you best **before** you lodge your complaint, because getting it wrong can have big consequences later on.

The ADB and HREOC both have a telephone inquiry service and a website (see page 99). These are good starting points for getting information, but staff at HREOC and the ADB cannot give you legal advice. It is very important to get legal advice from a lawyer.



Example

Eleni had a high-paying job as a Senior Executive. She was fired, and believes that it was because she fell pregnant. She can make a complaint under state or federal anti-discrimination laws.

At first she decides to complain to HREOC (the federal system) because there is no limit on the amount of compensation she can get. But then she finds out that if her case goes to court and she loses, she will probably have to pay the other side's legal costs.

Now that she has lost her job and is about to have a baby, she cannot afford to take that risk, so she decides to lodge her complaint with the ADB instead.



Complaint procedures at the ADB and HREOC

Is there a time limit on making a complaint?

Yes. You should lodge your complaint within 12 months of when the discrimination happened. See Step 2 (below) for what to do if more than 12 months has passed.

Do I need a lawyer to represent me?

No. You can represent yourself at the ADB or HREOC. In fact, if you decide to get a lawyer, you need to get permission from the ADB or HREOC for the lawyer to represent you.

We recommend that you try to find a lawyer to represent you in the ADB or HREOC, especially if the other side has a lawyer. Lawyers sometimes represent people for free, but usually they charge. Make sure you know how much they will charge you.

If you don't have a lawyer to represent you, it is very important to at least get some legal advice about your case as early as you can. There are many places where you can get free legal advice about discrimination (see page 99). Remember, staff at the ADB or HREOC cannot give you legal advice.

These are some of the questions you should ask a lawyer:

- Do I have a good discrimination case?
- Do I have any legal or non-legal options apart from making a discrimination complaint? If so, what is best for me?
- How long do I have to lodge a complaint?
- Should I lodge my complaint with the ADB or HREOC?
- Who are the 'respondents' in my case?
- What should I include in my complaint?
- What's involved in the complaint process?
- How long does it all take?
- How should I prepare for conciliation?
- What results can I ask for?



- What happens if my complaint is not resolved at the ADB or HREOC?
- What evidence should I collect to help prove my case?
- How much will it cost for you to represent me at the ADB or HREOC?
- How much will it cost for you to represent me if my complaint goes to the ADT, the FMC or the FCA?

What happens in the complaint process?

STEP 1: Write down your complaint

All discrimination complaints to HREOC and the ADB have to be in writing. You can write a letter or email about your complaint or you can fill in an official HREOC or ADB complaint form. You can ring them up and ask them to send you a form or you can fill it in online.

If you have trouble writing down your complaint, HREOC or the ADB can help you. You can write your complaint in any language and the ADB or HREOC will get it translated (it won't cost you anything).

The complaint forms from the ADB and HREOC do not give you much room to write down what happened. We recommend that you write out (type it or get it typed, if you can) your story about what happened on another piece of paper – use as many sheets of paper as you need – and include as much detail as possible. Attach this to your complaint form and write the words 'See attached statement' in the section on the form where it says 'Describe what happened.' See below for what you need to include in your complaint.

Make sure the information you put in your complaint is right. It might be bad for your case if you change your story later.

If you can, get a lawyer to check your complaint before you send it in.

TIPS










- *If you can't write down the complaint yourself, ask someone to help you with it. HREOC or the ADB might be able to help you with this.*
- *You can write your complaint in any language. The ADB or HREOC will get it translated for you (it won't cost you anything).*



Complaint checklist

Here's a checklist of what you need to include in your complaint.

-  your name and contact details.
-  the name and contact details of the other side ('the respondent'): make sure you include the names of all the individuals you want to complain about *and* the name of the organisation they work for. You have to do this because employers are generally 'liable' (legally responsible) for discrimination and harassment in the workplace. This is called 'vicarious liability'.
-  if your complaint is against an organisation, try to find out (and write on your complaint form) the registered legal company name of this organisation, not just the name of the business. For example, 'Fancy Fred's Fruit Market' might be the name of the shop, but the registered legal name of the company could be 'Fred Fang Pty Ltd'. If you are not sure what the legal name of the organisation is, ask HREOC or the ADB to find out for you. You could also find out by doing a search of the business name on the Australian Securities and Investment Commission (ASIC) website (www.asic.gov.au).
-  the name of the person you are making the complaint for if you are doing it on behalf of someone else, such as your child.
-  the name and contact details of your lawyer or union if they have agreed to take on your case.
-  your relationship to the person you are complaining about (for instance, your boss).
-  the 'ground' or type of discrimination you are complaining about (race, sex, sexual harassment, for example).



- ✓ the 'area' it happened in (employment, goods and services, education, public transport, accommodation or advertising).
- ✓ what happened: stick to the facts, and write down as much information as possible.
- ✓ when it happened: be as specific as you can with dates and times. If you are not sure about exact dates/times, put in an estimate, and make it clear that it is an estimate. Give the reasons why you think it happened around that time. Sometimes people remember dates by thinking of what else was happening around that time: you might write, 'I cannot remember the exact date but I know it happened in the week before my daughter's birthday which is the 5th February', for instance.
- ✓ where each thing happened: be as specific as possible about the exact location where events or conversations happened.
- ✓ who was there: list the full names of all the witnesses you can remember.
- ✓ anything you've done to try to deal with the situation (such as making a complaint at your workplace), plus what has happened as a result of that.
- ✓ any documents that are connected with your complaint, such as letters, pay slips, diary notes, medical reports, termination notices: make photocopies of them to send in as part of your complaint, and keep the originals.
- ✓ the effect the discrimination has had on you: how it's made you feel and how it's affected your life; and
- ✓ the results you want from your complaint; you don't need to go into too much detail. It's probably better to get legal advice before you write exactly what you want. For example, if you want money, it might be better to say 'compensation' than to write down an exact amount.



Try to make your statement as easy to read as possible. Here are some ideas on how to do that:

- type it (or try to get someone to type it for you);
- write out your story in chronological (time) order, from beginning to end;
- use numbered paragraphs (make a new paragraph, with its number, for each new idea or event);
- use headings and subheadings;
- if your statement includes conversations, try to use the exact words people said:

My boss said, 'Angela, you are fired. You can't do the job any more now that you have a bad back.' NOT

My boss told me he was firing me because of my injury.

If you are not 100 per cent sure of the exact words that were said, write: 'My boss said something like 'Angela, you've done your back in and can't do your job. I'm going to have to let you go.'

TIPS



- *You can add to your complaint after you've lodged it if you need to, but it's best to give as much information as possible from the start. It's a good idea to get a lawyer to check your complaint, just to make sure you haven't missed anything.*
- *Tell the ADB or HREOC if there are any special reasons why you want your complaint to be dealt with urgently – for example, if you are about to be fired from your job. If you're in this situation, also write URGENT at the top of your complaint letter or form.*

What if the 12-month deadline has passed?

HREOC or the ADB might still accept your complaint if you can give good reasons why it's late. You should write out the reasons and send them in with your complaint form.

For example, you may have been unable to make the complaint for personal or health reasons, or because you were trying to sort it out in a non-legal way.



The most important things to explain are:

- why you delayed in lodging your complaint; and
- that it will not disadvantage the other side if your complaint is accepted now (because all the evidence is still available, for example).

STEP 2: Send your complaint to HREOC or the ADB

Send in your complaint by mail, fax, email or online. Make sure you keep a copy of everything you send to HREOC or the ADB, including any statements or documents you have attached to your complaint.

If you have made your complaint online, print it out before you send it, and keep that printout.

STEP 3: Wait to hear back

You should get a letter from the ADB or HREOC within about two weeks. It will just say that they have received your complaint. If you don't hear anything for a month, contact the ADB or HREOC to find out what's happening.

The ADB or HREOC will give your complaint to a staff member to assess. At HREOC these people are called Investigation/Conciliation Officers. At the ADB they are called Conciliation Officers.

STEP 4: HREOC or the ADB decides what to do with your complaint

The first thing the HREOC or ADB officers will do is check whether your complaint fits within the law and whether it has been lodged in time. They might ask you for more information to help them make this decision.

At this point, the ADB or HREOC might reject your complaint. The ADB and HREOC have different rules about this.

The ADB might reject your complaint (they call this 'declining' the complaint) if:

- it was lodged more than 12 months after the discrimination happened; or
- it doesn't show a breach of discrimination law.



If the ADB declines your complaint at this stage you cannot go to the ADT and appeal their decision. You might be able to get their decision reviewed by the Supreme Court of New South Wales, but this is an expensive and technical path. If you are thinking about doing this, get some legal advice first. You have 28 days to go to the Supreme Court.

HREOC might reject your complaint (they call this ‘terminating’ the complaint) if:

- it was lodged more than 12 months after the discrimination happened;
- it doesn’t show a breach of discrimination law;
- there’s a better path for you to take than a discrimination law complaint;
- the complaint is untrue, unfair, or has been made to annoy, punish or frighten someone; or
- the other side has taken adequate steps to fix the problem.

If HREOC terminates your complaint at this stage you can take your case to the FMC or FCA. You have 28 days to do this.

Example

Arwen is banned from the shopping mall for riding her skateboard. She feels that she is being discriminated against because none of the other kids have been banned.

She makes a complaint to the ADB but it is declined. They say her complaint doesn’t show a breach of discrimination law because there is no ‘ground’.

STEP 5: Your complaint is investigated

If your complaint was not declined or terminated in Step 4, the next step is investigation. The investigation step at HREOC and the ADB just means asking both sides for their story about what happened.

HREOC or the ADB will write to the person or organisation you are complaining about (the ‘respondent’) and give them a copy of your complaint. This of course means that you can’t make an anonymous discrimination complaint.



They will ask the respondent to put their side of the story in writing. The respondent normally has 21 days to do this, but they sometimes ask the ADB or HREOC for extra time.

If the respondent sends in a written response, you will usually be given a copy of it and asked if you want to make any comments.

Once HREOC or the ADB has both sides of the story, the investigation stage is finished.

The next stage is for the ADB or HREOC to try to arrange a conciliation conference (see page 40-52).

At any point during the investigation phase HREOC or the ADB can decide not to take your complaint any further. Again, HREOC calls this 'terminating your complaint' and the ADB calls it 'declining your complaint'. The reasons are generally the same as those listed above. They include:

- the complaint doesn't show a breach of discrimination law;
- there's a better path for you to take than a discrimination law complaint;
- the complaint is untrue, unfair, or has been made to annoy, punish or frighten someone;
- the other side has dealt with the problem adequately;
- the complaint is 'lacking in substance'; and
- the complaint is trivial (not an important enough problem).

If HREOC decides to terminate your complaint for any of these reasons you can go to the FMC or the FCA. You have 28 days to do this.

If the ADB decides to decline your complaint for any of these reasons, you can ask them to refer it to the ADT. **You have to ask within 21 days.** You will then need to get the ADT's permission to hear your case. This is called 'applying for leave' (see page 64).

During the investigation it might become clear to HREOC or the ADB that there is no chance you can sort out your complaint with the other side or it would be inappropriate to try. This might happen, for example, if the respondent doesn't reply to HREOC or the ADB, or they refuse to go to a conciliation conference. If this happens, HREOC or the ADB will usually 'terminate' your complaint. If your complaint is terminated for these reasons, you don't need permission to take your case to the FMC, the FCA or the ADT (see pages 63-76).



STEP 6: Conciliation

Conciliation is the process the ADB and HREOC use to resolve disputes. It usually involves a face-to-face meeting between you, a 'conciliator' from the ADB or HREOC and the person you are complaining about, to talk about how to resolve your complaint. This meeting is called a 'conciliation conference'. The aim is to find a result that is acceptable for both sides without involving a court or tribunal. Most complaints are resolved through conciliation.

Conciliation conferences can also be done over the phone, by teleconference. There are pluses and minuses to this – if you are thinking about doing it, talk to the conciliator or a lawyer first about the pluses and minuses.



More about conciliation

What if I don't want to conciliate?

Conciliation is voluntary. You don't have to conciliate if you don't want to, and neither does the other side. If either person says no, the complaint will be 'terminated'. This means that if you want to take it further you have to take it to a court (the FMC or the FCA) or a tribunal (the ADT) (see page 55).

There are risks when you go to court or a tribunal. It can be expensive, stressful, and time-consuming. Also, a court may not be able to give you what you want – an apology, for example. So conciliation is worth considering seriously.

Where is the conciliation conference held?

Conciliation conferences are held at the HREOC office in Sydney's CBD, or at the ADB offices in Sydney, Wollongong and Newcastle. Staff from the ADB and HREOC also travel to other areas if they think it is appropriate. It depends on where you live, where the respondent is, and where the discrimination happened.

Who goes to the conciliation conference?

The conciliation conference will be run by one or two conciliators, depending on the case.

The conciliators decide who can go to the conference. Often it will just be you, the person you are complaining about, and the conciliator.

If your complaint is against an organisation, there will usually be someone from the organisation, such as the employer, a senior manager or a human resources manager, as well as the individual person you are complaining about.

You might also be allowed to bring a support person with you – a friend, family member or community worker.

You don't have an automatic right to be represented by a lawyer, union official or other advocate. If you do have a representative who you want to go with you, you need to ask the conciliator for permission. The conciliator is more likely to give you permission for this if the other side also has a lawyer, or is an organisation.



Before and during conciliation, it is good for you to know how strong your case is and what would be a good outcome. The conciliator cannot give you legal advice, so we think it is a good idea to have a representative, such as a lawyer, at the conciliation with you if possible – especially if the other side has a lawyer.

If you are told you cannot have your lawyer in the room with you, ask the conciliator if your lawyer can wait outside the room or be available on the phone in case you need advice during the conference.

If you do not have a lawyer to represent you at the conciliation conference, we recommend that you get some legal advice beforehand.

What if I want conciliation but don't want to be in the same room as the other side?

Tell the conciliator before the conference. They will probably decide to try 'shuttle negotiations'. This is where you and the other side sit in separate rooms and the conciliator moves between the two rooms and meets with each side separately to discuss different ways to resolve your complaint.

Shuttle negotiations can be a good idea if you feel afraid or unsafe being in the same room as the other side.

What happens before conciliation?

The conciliator will tell you the date, time and place of the conciliation conference, and will let each side know who is allowed to go to the conference.

The conciliator will ask you to send them a 'settlement proposal'. This is a list of what you would like to get as the result of the conciliation – for example, an apology, money, or your job back. Your settlement proposal is generally used as a starting point for negotiations during the conciliation conference.

It is a good idea to send your settlement proposal in at least a week before the conciliation conference. If your complaint is against a large company or a government department, the people who actually come to conciliation might not be senior enough to say yes or no to your proposal on the spot. In these cases, it is good to give the people who do make these decisions in the organisation



enough time to sort out what they can offer you – for example, how much compensation, if any, they are willing to pay you. Then the people who come to the conference know how far they can go.

How do I work out my settlement proposal?

First, think carefully about what you would like to achieve. These are some things many people say they want to get as a result of their complaint:

'I don't want it to happen to anyone else.'

'I want them to acknowledge they did the wrong thing.'

'I want them to understand they can't do this.'

'I want an apology.'

'I want to not feel like a victim.'

'I want them to know how the way they treated me made me feel.'

'I want my job back.'

'I want compensation for what I've gone through.'

'I want the person who treated me badly to be disciplined.'

'I want to be able to work part-time.'

'I want to be able to get into the building in my wheelchair.'

'I want them to pay for counselling.'

When you have decided what you want, think creatively about how you can get it. One of the good things about conciliation is that a wide range of outcomes is possible, and you can ask for whatever you want. For example, if you want to stop the same thing happening to someone else, you could ask for the person who treated you badly to go and do some training on discrimination, or for the company to work out and use some anti-discrimination policies.

Here are some things people have asked for in conciliation:

- a verbal or written apology;
- anti-discrimination/harassment training for the person who treated them badly;
- a company/organisation to put together policies, procedures and training for preventing and dealing with discrimination;



- getting their job back – or a transfer to a different job in the same organisation;
- a written reference;
- counselling paid for by the other side;
- financial compensation;
- disciplinary action against the individual person who treated them badly;
- adjustments to buildings to make them more accessible; and
- changes to working conditions – such as hours of work.

Write down a ‘wish list’ of what you’d like to be the results of your complaint. This will be your settlement proposal. Make sure that what you’re asking for is reasonable. The other side will probably be more willing to negotiate if you can show that what you want can be justified. This is a good time to do some research on what has happened in other conciliation conferences and court decisions. Your conciliator can help you do this. Again, we recommend that you get some legal advice on what would be reasonable to ask for in your case.

Remember, your settlement proposal will be used as a starting point for negotiations. It is unlikely that you will get everything you ask for, so be prepared to compromise.

I want financial compensation. How much should I ask for?

Compensation is supposed to put you back in the position you would have been in if you hadn’t been discriminated against.

If you ask for money, you should show that the amount you’re asking for has been carefully calculated, and you must link the money you are asking for to the discrimination that happened.

First, work out how much financial loss you have had or will have in the future because of the discrimination. This might include:

Lost wages. You may want to claim any wages or other benefits (such as superannuation) you would have received if you hadn’t been discriminated against. Make sure you deduct any money you’ve earned from the amount you’re asking for – you can’t double-dip.

Future lost wages. If the discrimination has reduced your ability to work or find work in the future you might want to claim some compensation for this.



Out-of-pocket expenses. If you've spent money on medical treatment, medication, legal advice, counselling or anything else because of the discrimination, you might want to claim this back.

Future expenses. If you're likely to have any future expenses because of the discrimination, such as ongoing counselling, you can ask for an amount to cover these costs.

Second, you might also want to claim an amount for hurt, humiliation or distress you have suffered because of the discrimination. Lawyers call this 'general damages'. It can be very hard to put a money figure on this. If you have any evidence to show that you suffered emotional or psychological harm, it might help. You can also use outcomes in other conciliation and court cases as a guide.

We recommend that you get some legal advice to help you work out how much money to ask for.

You should also get legal advice on:

Tax issues. If the only money you are asking for is for hurt, humiliation and distress, you probably won't have to pay any tax on it. But if you are asking for other types of compensation, you might have to pay tax.

Medicare. If you are asking to be repaid for any medical treatment you've had because of the discrimination and that treatment was covered by Medicare, you might have to repay some money to the Health Insurance Commission.

Centrelink. If you are receiving Centrelink payments, you have to tell them about any compensation you get. This might affect the amount of money Centrelink is paying you. You might also have to repay money you received from Centrelink if you get compensation for lost wages.

What else do I need to think about before conciliation?

Conciliation can be emotionally draining. It's important to prepare yourself for it. Try to get a good night's sleep the night before.

Conciliation is about compromise, which means you're unlikely to get everything you ask for. It is important to go in with an open mind, and to be flexible, reasonable and realistic.



Before conciliation, it is a good idea to get some legal advice about what your options are if your complaint is not resolved by conciliation. You might want to get advice about the pluses and minuses of taking your discrimination complaint to court, and about any other legal options you might have, such as an unfair dismissal claim.

TIPS FOR BEFORE CONCILIATION



- *Leave the whole day free. Don't make any other plans.*
- *Re-read all the documents and bring them all with you.*
- *You will be asked to tell your side of the story, so write notes or a statement to help you remember what you want to say.*
- *Talk to your conciliator as much as you need to before the conference. If you have any questions, ask them.*

What happens at the conciliation conference?

This is what usually happens:

1. Before the conciliation starts, the conciliator will talk with you on your own (and with anyone you have there with you) and answer any questions you have about what happens at the conference. They will do the same with the other side.
2. If the conciliation is face to face, everyone will sit in the same room.
3. The conciliator will begin the meeting by explaining why you're all there, saying what their role is and what the ground rules for the meeting are. These rules generally include a request that:
 - everyone will treat each other with respect;
 - everyone will listen to and not interrupt each other;
 - everyone will try to resolve the complaint;
 - everything said in conciliation is confidential (this means what people say in the conciliation conference can't be quoted in a court or tribunal later if your case goes further); and
 - breaks can be taken at any time.
4. If you want to, you will get to talk about what happened to you and how it affected you. This can be hard, but a lot of people



find it is a very valuable thing to do. This is because it is a chance to say what you want to say to those who have treated you badly. If you do not end up resolving your complaint at conciliation, and you do not want to take your case to a court or tribunal, it might help you move on if you have told the other side what they have done and how you feel. If you think you will have trouble talking about what happened, try writing something out before the conciliation and taking it with you. You can read it out or give a copy of it to the other side.

5. The other side can then respond to what you have said and tell their side of the story. It is important that you don't interrupt. Often you and the other side won't agree about what happened. This is OK. At conciliation, it is usually better not to focus on the details of what happened. And the conciliator can't make any decisions about what happened or who is right or wrong anyway. What's important at conciliation is to focus on finding a solution you can live with so you can put the whole thing behind you.
6. After you've both had your say, the discussions/negotiations about possible resolutions will begin. This might happen with you all in the same room or with you and the other side in separate rooms and the conciliator moving between the two rooms. Your settlement proposal will usually be the starting point for these negotiations.
7. If both sides agree on a resolution, the conciliator will help you put it in writing. This is called a 'settlement agreement' (see page 49). Always make sure that you understand what you're agreeing to. If you don't understand, get legal advice before you sign anything. Once a settlement agreement is signed by both sides, conciliation usually comes to an end. Sometimes the other side will want to write out the agreement and send it to you to sign after the conciliation conference. You can still negotiate changes at this stage if you think it doesn't say exactly what was agreed to at conciliation. And again, get legal advice before you sign it.
8. If it's clear that you and the other side are not going to reach an agreement, the conciliator will end the conference (see page 49 for what will happen next).
9. If it looks as if the two sides might be able to find a solution but they need more time, the conciliator will usually agree to this and set a time limit. Sometimes, people need a second conciliation conference.



THINGS TO KEEP IN MIND DURING NEGOTIATIONS

- If you can't reach an agreement and you want to take your complaint further, your only option is to go to a court or tribunal. This is a big step. Don't take it lightly.
- Negotiation always involves give and take. Usually, people give up their right to take their discrimination complaint to a court or tribunal in return for things the other side agrees to give them, such as compensation. You might be asked to give up your right to take other legal action against them.
- The law says that your right to superannuation or your right to make a workers' compensation claim can't be taken away from you.
- The other side might also ask you to agree not to tell anyone about the complaint or the agreement (a 'confidentiality clause'). Even if you are happy to agree to this, make sure the agreement doesn't stop you discussing the complaint with a counsellor, a lawyer, a doctor or your partner.

How long does conciliation go for?

It depends. Sometimes it might only go for an hour or two. Sometimes it might go all day, particularly if you are negotiating a settlement agreement. You should set aside a full day, without other commitments, in case it takes that long.

Does the conciliator take sides?

No. A conciliator cannot take sides, cannot make decisions about who is right or wrong, and cannot give legal advice. The conciliator is neutral. They are there only to help the two sides sort the complaint out.

TIPS TO MAKE CONCILIATION WORK FOR YOU



- *Be flexible and willing to compromise.*
- *Try to stay calm, and don't make personal attacks. Personal attacks make negotiations more difficult.*
- *Listen when other people are talking and don't interrupt them. Everyone needs to feel that they have been heard before they*



will be ready to resolve the complaint.

- *Don't be put off if the other side seems hostile. It does not mean that you cannot resolve the complaint.*
- *Don't feel pressured to resolve the complaint on the day. If you are not sure about something, ask for some time to think about it or maybe get some legal advice.*

What is a settlement agreement?

A settlement agreement is a legal contract. It is a document that lists everything you and the other side have agreed to. It gets signed by both sides. If either side doesn't do what they have agreed to do, they can be sued for breaching the agreement.

Settlement agreements can be technical, so it is important to know exactly what you are agreeing to before you sign it. If you are not sure, ask for some time to see a lawyer and get the lawyer to explain it to you.

TIP



A settlement agreement (contract) will only be legally binding if it is signed by 'legal entities'. Individual people are 'legal entities'. Organisations are also legal entities, but you have to use their proper legal name, not just their trading name (see page 34).

What happens next if I settle my complaint at conciliation?

If you have signed a settlement agreement, the next step is for everyone to do what they agreed to do.

If the other side doesn't do what they have agreed to do, you will need to get legal advice.

Once everyone has done what they have agreed to do, the ADB or HREOC will close the file.

What happens if I don't resolve my complaint at conciliation?

If you don't resolve your complaint in conciliation at HREOC, they will 'terminate your complaint' and give you a 'termination notice'. This means they cannot take your complaint any further. If you want



to take it further, you have to go to the FMC or the FCA. You have 28 days after the termination notice to apply to do this (see page 76).

If you can't resolve your complaint at the ADB, they will tell you they cannot take it any further. They will ask you if you want your complaint sent ('referred') to the ADT. If you say yes, they will send it to the ADT (see page 63).

Example

Ivy is 62 years old. She has worked as an Administration Officer for the same insurance company for the past 18 years. Ivy likes to be busy but has noticed that since her new supervisor started she has been given less work to do. She's also overheard her supervisor saying, 'Isn't it about time Granny Ivy retired?' The situation gets worse and Ivy feels so humiliated that she resigns.

Ivy makes an age discrimination complaint to the ADB and they arrange a conciliation conference. Ivy has not been able to find another job because of her age, so she asks for a lot of compensation. The insurance company denies that they discriminated against Ivy and claim that there had been problems with her work performance for years. They are willing to offer her a small amount to settle the complaint, but Ivy refuses to accept this because of how much she has lost financially and because of how hurt she feels by the way she was treated.

Negotiations go nowhere, so the ADB terminates her complaint. Ivy must now decide whether to take her case to the ADT.

How long does the ADB/HREOC complaint process take?

The ADB says they will contact you within two weeks of getting your complaint. They aim to finalise complaints within six months, but complaints that are complex can take a year or more.

The ADB must give you progress reports at least every 90 days. If your complaint hasn't been finalised within 18 months, you can ask them to send it ('refer' it) to the ADT.

At HREOC it will usually take a few weeks before your complaint is allocated to a Conciliation/Investigation Officer. The average time it takes to finalise a HREOC complaint is about eight months. Again, more complex cases can take longer.



The ADB and HREOC like to keep the process moving and resolve complaints quickly. If you think that they are rushing you, and your complaint needs more time to be resolved properly, just ask for more time.

Can I change my mind and withdraw my complaint?

Yes, you can withdraw your complaint at any time. Just write to the ADB or HREOC and let them know that this is what you want to do.

Does conciliation work?

For some people, yes, and for others, no. There are pros and cons, and it might not suit everyone.

THE POSITIVES ARE:

- ✓ It's free.
- ✓ It gives you the chance to have your say and let the other side know how their behaviour has made you feel.
- ✓ It's flexible: you can get solutions that might not be possible in a court or tribunal.
- ✓ You can reach an outcome that everyone agrees to rather than risking having a court or tribunal impose a decision on you that you don't like.
- ✓ It gives you the opportunity to resolve your case on the spot in one day, avoiding the risks, time, stress and expense of going to court.
- ✓ It's more informal than a court.
- ✓ You can do it without a lawyer (although it's often a good idea to have a lawyer with you).
- ✓ You can settle your complaint without your name and story becoming public.
- ✓ Both sides can learn about their rights and responsibilities under discrimination law.

THE NEGATIVES CAN BE:

- ✗ You won't get your day in court, which means you won't get a decision about who's right and who's wrong.



- ✗ What happened to you won't become public, so it's less likely that your complaint will achieve change in the wider community.
- ✗ Sometimes people can feel intimidated, especially if the other side has a lawyer or is a big company.
- ✗ The compromises you might have to make to settle your case in conciliation may not seem fair.

But if you don't resolve your complaint at conciliation, your only option, if you want to keep going, is to go to a court or tribunal. This is a big step, and it is not necessarily going to result in a better outcome. It is usually more stressful, more expensive and takes more time than conciliation – and there is always a risk that you will lose.

Conciliation has a lot to offer. It can be a very successful and inexpensive way of resolving discrimination complaints. If you feel you can handle it, you really have nothing to lose by giving it a go.

Example

Sarah has made a sexual harassment complaint to HREOC against her college tutor and the college itself. The tutor denies that the harassment happened. This makes her wonder whether there is any point in having a conciliation conference, but the tutor and the college agree to go to conciliation so Sarah decides to give it a try.

At the conciliation conference Sarah feels uncomfortable and nervous about speaking. But it's important to her that she tells her story and that the other side hears how the harassment has made her feel. Even though the tutor continues to deny that anything happened, they end up reaching a settlement agreement and her complaint is resolved that day. She feels empowered because she stood up for herself got to have her say.

What if I'm not happy with how HREOC or the ADB handles my complaint?

Both the ADB and HREOC have 'service guarantees' that explain what you can expect from their staff and what to do if you have a complaint. These service guarantees are on their websites (see page 99).



DISCRIMINATION COMPLAINT ESSENTIALS

- You should make your complaint within 12 months of when the discrimination happened.
- You don't have to be represented by a lawyer but you should at least get some legal advice.
- Your complaint must be in writing.
- You can withdraw your complaint at any time.
- HREOC and the ADB won't take sides; they stay neutral.
- HREOC and the ADB can't make a decision about whether or not the discrimination happened. Only a court or tribunal can do this.
- Conciliation is free.
- Conciliation is confidential.
- Conciliation involves compromise.
- Conciliation allows some kinds of results that courts and tribunals can't give you.







*Courts and
tribunals*

General Information

As you know from the previous sections, you cannot take a discrimination complaint directly to a court or tribunal. You must first go to the ADB or HREOC. It is only if your complaint is not resolved there that you might be able to take it to a court or tribunal to get a decision.

If you lodged your complaint at the ADB and it didn't get resolved, you go to the Administrative Decisions Tribunal (ADT).

If you lodged your complaint at HREOC and it didn't get resolved, you go to the Federal Magistrates Court (FMC) or the Federal Court of Australia (FCA).

The ADT is a tribunal and the FMC and the FCA are courts. Tribunals and courts are different. Tribunals are more relaxed and informal than courts. Most tribunals, including the ADT, do not have to follow the same technical rules that a court does. This makes it easier to represent yourself in a tribunal. Also, there is usually less risk in a tribunal than a court that you will have to pay the other side's legal fees (costs) if you lose.

Discrimination case hearings in the ADT, the FMC and the FCA are open to the public.

Remember, it is your choice whether to take your case to a court or tribunal.

If you are thinking about taking your complaint to the ADT, the FCA or the FMC, here are some basic things you need to know.

What is everyone called?

When your complaint was with the ADB or HREOC, you were called 'the complainant' and the other side was called 'the respondent'. In courts and tribunals, you will be called 'the applicant' and the other side will still be called 'the respondent'. Both the applicant and the respondent are called 'parties'.

If you go to the ADT, your case will usually be decided by three people who are called 'tribunal members'. Each tribunal member will have a name plate in front of them. When you speak to the members, you should call them Member and then their last name – 'Member Smith', for instance. To make sure you get it right, ask a



staff member at the ADT on the day whether the members hearing your case have a preferred title or name.

If you are in the FCA, your case will be decided by a judge. If you are in the FMC, your case will be decided by a magistrate. When you speak to a judge or magistrate you should call them 'Your Honour'.

What do I need to prove?

In a court or tribunal, the 'onus of proof' is on you. This means that it is up to you to *prove* to the tribunal or court that you suffered unlawful discrimination. It is not up to the other side to show that they did not do anything wrong.

In discrimination cases, the 'standard of proof' (ie. the level of proof) needed is 'on the balance of probabilities'. This means you must convince the court or tribunal that it is more likely than not that you were discriminated (that is, that it is more than 50 per cent likely to be true).

You do this by presenting evidence. Evidence can be documents, or oral (spoken) testimony from witnesses.

What do 'filing' and 'serving' mean?

Courts and tribunals will often ask you to 'file' and 'serve' documents. You file documents by giving them to the 'registry' (office) of the court or tribunal. You serve documents by giving them to the other side.

Courts and tribunals have strict rules about how documents have to be filed and served. You should always contact the registry to find out:

- *how many copies of the documents they want;*
- *how you can file the documents;*
- *how the documents should be served on the other side; and*
- *when they have to be served on the other side.*

Filing documents usually has two steps:

STEP 1:

Give the registry the number of copies of the documents they want – plus one copy for yourself, plus a copy for every respondent. (You usually have to file the documents by going to the registry in person



or posting the documents to the registry. Sometimes you might be able to fax or email the documents to the registry. Always check first.)

STEP 2:

The registry will put a court stamp on all the copies. They will keep the copies they need and give you back the others – one for you to keep and the copies for you to serve on the respondent.

Serving documents usually means giving a stamped copy of the documents to each respondent. Make sure you check with the registry about their rules for serving documents.

There are some important things to know about serving documents:

When?

- You have to serve the documents by the due date. When you file the documents, check what date they have to be served by.

Who?

- If the respondent has a lawyer representing them, you serve the documents on their lawyer. You serve the documents at the place where the lawyer works. The lawyer will usually have told the court or tribunal what address they want documents served at.
- If the respondent is not represented by a lawyer and is an individual (not an organisation), you serve the documents on that person. If the respondent is an organisation, you serve the documents on an employee of the organisation that has the 'authority to accept service' – this is someone the organisation has nominated to accept court documents on behalf of the organisation.

How?

- Sometimes you can serve documents on the respondent by posting, emailing or faxing them (always check with the registry to see if this OK), but usually they have to be served in person. This is called 'personal service'.
- If you need to personally serve documents on a lawyer or an organisation, you give the documents to an employee at the



law firm or the organisation, but you have to make sure the person you serve the documents on has the authority to accept service. Ask them, *'Do you have authority to accept service of court documents?'* Don't just leave the documents at the front desk or give them to someone and hope they will be passed on to the right person.

- If you need to personally serve documents on an individual, you should hand the documents to them in person.
- You can serve documents yourself, or you can get someone else to serve them for you. There are businesses called 'process servers' you can pay to serve documents on your behalf. They are in the Yellow Pages under 'process serving'.
- Whatever method you use (post, in person, etc), it is very important that you keep records that show you have served the documents: if you fax them, print out a fax confirmation sheet and keep a copy of it; if you send them by post, send them by registered post so that you have a record that they have been sent; and if you serve them in person, keep a note of the person you gave them to and the date, time and place. Ask that person to sign your note to acknowledge that you gave them the documents.

What is a 'summons' and a 'subpoena'?

They are the same thing: a document that contains orders of a court or tribunal. 'Summons' is the word the ADT uses and 'subpoena' is the word the FMC and the FCA use.

There are two types of these orders: the first tells someone to come to the court or tribunal to be a witness; and the second tells a person or an organisation to give documents to the court or tribunal.

You have to apply to the court or the tribunal to get a summons or subpoena. You might do this if you think a person or an organisation has documents that might help you prove your case and they won't give them to you. You might also do it if you want someone to come to your hearing and be a witness for you.

A court or tribunal will only say yes to your application for a summons or subpoena if you can convince them that the person or organisation has documents or information relevant to your case.



Talk to the registry staff about how to apply for a summons or subpoena. Usually you will have to give the court or tribunal a draft of the summons or subpoena that you want them to approve. The most important things the draft has to include are:

- the name and address of the person or organisation it is for; and
- a clear description of:
- the documents you are asking them to provide, and the date they need to provide them by; or
- the date you want them to come to court or the tribunal if you need them to be a witness.

If the court or tribunal approves your summons or subpoena they will put a court stamp on all copies. They will keep one copy for themselves and give you back the rest. You then have to serve the summons or subpoena on the person or organisation.

When you serve the summons or subpoena, you also have to give the person or organisation 'conduct money'. This is to cover expenses related to providing the documents or turning up at court. Speak to the registry about much conduct money you need to pay.

A summons or subpoena for documents will include a date when the documents have to be provided to the court or tribunal. This is called the 'return date'. You should attend the court or tribunal on the return date. If you are not able to attend, contact the registry and let them know. You will find out on the return date if the documents have been provided or not. If they have been provided, you can ask to make copies. If they haven't, speak to the registrar or court official about what to do next.

TIP



Even if you've asked someone to come to court for you to be a witness and they've agreed, it is always a good idea to get a summons or subpoena and serve it on your witness anyway. They might need to show it to their boss so they can get the time off work.

There is also the chance that even if they agreed to come when they talked to you, they might change their mind and not turn up on the day. If you've served them with a summons or subpoena they are more likely to turn up.



Are there rules for how I should behave in a court or tribunal?

Yes. Here are some tips:

- Wear smart clothes that you might wear to a nice dinner or a job interview, but make sure you are comfortable.
- Be respectful to everyone in the courtroom no matter how much you disagree with what they are saying. Don't make comments, cause distractions, shuffle papers, mutter, roll your eyes or shake your head while other people are speaking. Don't speak rudely or sarcastically or argue with the judge/magistrate/tribunal member. Doing any of these things might affect everyone's opinion of you.
- Always ask the judge/magistrate/tribunal member for permission before you do something – for example, ask for permission even if you just want to show a witness a document.
- Bow your head to the judge/magistrate/tribunal member whenever you or they walk in or out of the courtroom.
- Address the judge, magistrate or tribunal members appropriately (see above).
- Ask the 'court officer' (the court's staff member) where you should sit and keep that same spot throughout the hearing.
- Stand up and sit down at the appropriate times. If you are in the ADT you can stay sitting when you are speaking to the tribunal members or the witnesses. Stand up when the tribunal members enter the room and when they get up to leave the room. If you are in the FMC or the FCA, stand up when the judge or magistrate speaks directly to you, and stand up when you are speaking to the judge/magistrate or the witness, but sit down when the respondent (if they are representing themselves) or the respondent's lawyer is speaking.
- Turn your mobile phone off while you are in the courtroom.



The Administrative Decisions Tribunal (ADT)

The Equal Opportunity Division of the Administrative Decisions Tribunal (ADT) deals with discrimination, harassment, vilification or victimisation cases that have been referred to the ADT by the President of the NSW Anti-Discrimination Board (ADB).

Does it cost me any money to take my case to the ADT?

No. It does not cost anything to start your case in the ADT, and there are no filing fees.

If you hire a private lawyer you will have to pay their fees. You might also have to pay for getting your evidence together – getting medical reports or issuing summonses, for instance (see page 59).

Do I need a lawyer to represent me in the ADT?

Not necessarily. You can represent yourself in the ADT, but we think it's a good idea to have a lawyer representing you, because discrimination law is technical and complex, and ADT staff (including tribunal members) cannot give you legal advice or help you present your case.

If you do find a lawyer, they will need to ask the tribunal for permission to represent you. And remember, most lawyers cost money, so make sure you ask how much they will charge you.

If you don't have a lawyer to represent you, it is very important to at least get some legal advice about your case as soon as possible after the ADB process is finished.

The types of things you could ask a lawyer are:

- What are my chances of winning the case?
- Have I named the correct respondents?
- Have I described the type of discrimination correctly?
- What evidence will I need to prove my case?
- How should I prepare documents for the tribunal?
- What happens at the tribunal (case conference, mediation and hearings)?



- What orders should I ask the tribunal to make if I win, and how much money can I ask for?
- How much will it cost for you to represent me?

When can I go to the ADT?

Your complaint can only go to the ADT if it is referred there by the ADB. You don't have to fill in an application form or pay any fees to start your case in the ADT.

If the ADB declined your complaint in the first place, you will not be able to take your case to the ADT (see page 37).

The ADB *can* refer your case to the ADT if the ADB accepted your complaint for investigation but later declined it (see pages 38-39). In this situation you will need to ask the ADT's permission for your case to go ahead. This is called 'applying for leave'.

The ADB *can* refer your case to the ADT – and you won't have to 'apply for leave' – if your complaint was not resolved through conciliation, or if your complaint has been with the ADB for more than 18 months.

When the ADB refers your complaint to the ADT they send a bundle of documents called the 'President's Report' to the ADT. The President's Report contains:

- a document called the 'President's Summary of Complaint' (see below);
- copies of your complaint and any other documents you gave to the ADB; and
- copies of any documents the respondent gave to the ADB.

Once the ADB has done this they will close your file, which means your dealings with them are over.

What is the 'President's Summary of Complaint'?

The President's Summary of Complaint includes a form which sets out:

- the names and contact details of you and the respondent;
- the 'period of your complaint' (that is, when the discrimination happened);
- whether your complaint was declined by the ADB;



- the number of complaints you have made;
- the 'type of complaint' you have made, which means:
- the ground and the area of discrimination (see page 8);
- the sections and parts of the law that apply to your complaint; and
- how the other party might be 'liable' (legally responsible) for what happened – for example, are they the individual who treated you badly or are they that person's employer (who might be 'vicariously liable' for the discrimination); and
- any 'defences' from the respondent.

As well as this form, the President's Summary of Complaint also contains a summary of your complaint, the respondent's reply and what happened at the ADB. It might also mention legal issues that your case raises.

What happens when my complaint is referred to the ADT?

The ADT will send you a letter and a copy of the President's Summary of Complaint (see above). The letter will tell you what happens next.

The President's Summary of Complaint is a very important document, because it summarises your whole case for the ADT. Make sure you read it carefully and check that everything in it is correct and nothing has been left out. It's a good idea to get a lawyer to check it as well.

If there's anything about the President's Summary of Complaint that worries you, mention it at the first case conference (see pages 65-66).

The ADT says I need 'leave'. What does this mean and what will happen?

The first letter you get from the ADT will tell you if you need 'leave' (permission) before you can go any further. If you do, the letter will give you the place, date and time of your 'leave hearing'. The respondent is also invited to this hearing.

The leave hearing is when a tribunal member decides whether or not to let your case go ahead at the ADT – they can knock out ('dismiss') your case at this stage. It's up to you to convince the tribunal member that your case should be allowed to go ahead, even though the ADB declined your complaint.



The tribunal member will base their decision on what's in the President's Report and anything you and the respondent say at the hearing. Normally you are not allowed to give them any new evidence or documents at or before this hearing.

The tribunal member will consider things like:

- whether your case fits within the law, and your chances of winning at an ADT hearing;
- the ADB's reasons for declining your complaint; and
- whether the respondent has documents or information that might help you prove your case but you don't have access to them.

If you want a lawyer to represent you at this hearing, the lawyer will have to ask the tribunal member for permission on the day of the hearing.

The tribunal member might give their decision on the day or they might take some time to decide.

If your case is dismissed, the only place you can appeal that decision is the Supreme Court. You have 28 days to appeal. We strongly recommend that you get legal advice before doing this.

If the ADT grants leave for your case to go ahead, they will usually give you a date for your first 'case conference' (see below).

I don't need 'leave'. What happens next?

If you don't need leave, the first letter you get from the ADT will include the President's Summary of Complaint and give you a date for your first 'case conference' (see below). You will also get information on how to respond to the President's Summary of Complaint.

What is a 'case conference'?

A case conference is where you and the respondent meet with a tribunal member so that the tribunal member can organise how your case will be run. There can be case conferences at various stages of the tribunal process.

You can go to a case conference in person, or you can do it over the phone if you have arranged it with the ADT registry beforehand. If you have a lawyer representing you, your lawyer has to ask the ADT for permission to go to the case conference.



At the first case conference, the tribunal member will:

- find out if you have a lawyer to represent you – if you don't, they will ask whether you would like some advice from a lawyer; if you say yes, they will make an appointment for you to see a lawyer from Legal Aid who can give you free advice about your case;
- go through the President's Summary of Complaint and ask you and the respondent if you agree or disagree with what's in it – this is your opportunity to ask for any changes to be made; make sure everything that should be in your complaint is there;
- ask you and the respondent what evidence you are going to present to the tribunal;
- ask you whether you are going to have any witnesses or file any documents;
- ask you whether you want to issue any summonses (see page 59) – you need to ask for approval to issue summonses for all your witnesses and for any documents you want but can't get;
- ask you and the respondent whether you want to try mediation (see page 68) – mediation will only happen if all parties agree to it; and
- give you and the respondent the timetable for what will happen – this will give you a date for mediation (if you have agreed to mediation) and dates for getting your evidence filed and served.

Example

Fatima works at a local school. She complains to the principal that another teacher had discriminated against her because she is Lebanese. While the principal is investigating her grievance, Fatima tries to apply for a promotion, but the principal tells her she isn't allowed to apply while her grievance is being investigated.

Fatima's grievance is not resolved at the school so she makes a complaint to the ADB. She makes a complaint of race discrimination against the teacher and the school, and includes information about not being allowed to apply for the promotion.

Continued next page



Her complaint is not resolved at the ADB and her case goes to the ADT. When she is sent the President's Summary of Complaint she notices that it does not mention the promotion issue, which she thinks is 'victimisation'.

At the first case conference she tells the tribunal member about this and asks if she can amend her complaint by adding victimisation. The respondent objects but the tribunal member decides to add victimisation because Fatima had mentioned the promotion issue in her original complaint to the ADB.

How do I prepare for my case conference?

Before the first case conference, you should:

- read the information sheet given to you by the ADT – 'How to Respond to the President's Summary of Complaint';
- check the President's Summary of Complaint carefully to make sure everything that should be there is there – check that all the times when you suffered discrimination, harassment, victimisation or vilification are there, and check that all the people you are complaining about are named as respondents. Remember, if you have been discriminated against by an individual person, your complaint should normally be against the individual person as well as the organisation they work for. You must use the registered legal name of the organisation they work for, which is not always the same as the name of the business (see page 34);
- think about whether you are willing to attend mediation;
- make a list of documents that could help you prove your case and decide whether you will need a summons to get them (see page 59);
- make a list of witnesses you think could come to the ADT and give evidence to help you prove your case, so that you can ask for approval to issue summonses for them; and
- decide if you want a lawyer to represent you – if you do, find one and get them to ask the ADT for permission to represent you.



What happens after the first case conference?

The ADT will send you a document called the 'Equal Opportunity Division First Case Conference Result Sheet'. It summarises your complaint and what happened at the first case conference, and includes the timetable that you and the respondent have to follow.

If you agreed to try mediation, mediation will be the next step.

If you did not agree to try mediation, the next step is usually for you to prepare your evidence and then file and serve it.

What is mediation?

Mediation in the ADT is similar to conciliation in the ADB (see page 41). It is run by a mediator, who is a tribunal member of the ADT or an experienced mediator from outside the tribunal. Like a conciliator, the mediator cannot take sides, does not make decisions about who is right or wrong and cannot give legal advice. They are just there to help you resolve your case.

Mediation is confidential: what people say during mediation can't be quoted to the tribunal later at a hearing.

You can do mediation over the telephone if necessary, but usually people do it in person.

Mediation has many benefits. It is free, and it is another chance for you to try to resolve your case without having to go to a hearing. The success rate is quite high. Just because conciliation did not work at the ADB, don't assume mediation won't work at the ADT. The respondent may be more willing to settle the complaint at mediation, when the alternative is a hearing – hearings cost money, take time, and there's always a risk of losing.

Mediation can be done any time between the first case conference and the hearing. This means that even if you said no to mediation at the first case conference, you can usually change your mind later.

How do I prepare for mediation?

You prepare the same way you prepared for conciliation at the ADB. This includes preparing 'proposed terms of settlement' and giving them to the respondent before or at the mediation. (see pages 42-45).

It is a good idea to get some legal advice.



What happens if I settle my case at mediation?

If you come to an agreement with the respondent at mediation, the agreement will be recorded in a 'settlement agreement' (see page 49). Make sure you know exactly what you are agreeing to before you sign the agreement. If you are not sure about anything, ask for some time to see a lawyer and get the lawyer to explain it to you.

After the settlement agreement is signed, the next step is for everyone to do what they agreed to do.

The respondent will normally only settle the case at mediation if you agree to withdraw your ADT case. The agreement should say that you will withdraw your case only after the respondent has done everything they promised to do.

Talk to the mediator on the day of mediation about how to withdraw your complaint. It usually involves writing a letter to the ADT registry saying that you are withdrawing your complaint.

You should only withdraw your complaint when the respondent has done everything they agreed to do.

Example

Martin complains to the ADB that he was refused service in a pub because he is Aboriginal. The pub owner doesn't respond to any of the letters the ADB sends him, so eventually the ADB terminates Martin's complaint.

Martin takes his case to the ADT, and at the first case conference he and the pub owner are asked if they will try mediation. He is surprised when the pub owner agrees. Martin suspects that the man is treating the complaint more seriously now that it is in the tribunal.

Martin is even more surprised by what happens at the mediation: the pub owner agrees to apologise, promises that it will not happen again and agrees to pay Martin some compensation. Martin is happy that he gave mediation a go.



What if I say no to mediation or I have mediation but my complaint doesn't get settled?

You will have to prepare for a hearing.

At the first case conference, you will have been given a timetable listing all the things you and the respondent have to do to prepare for the hearing. If you agreed to mediation, the timetable will usually start after the mediation. If you didn't agree to mediation, the timetable usually starts after the first case conference.

The timetable usually has instructions (called 'directions') which say that:

- you must file and serve your documents/statements by a certain date; and
- the respondent must file and serve their documents/statements by a certain date.

The timetable might also include instructions about summonses. Part of your preparation for the hearing is making sure you get approval (from the ADT) for any summonses you need, then getting them issued by the registry and properly served (see page 59). It is your responsibility to follow up on every stage of the summons process.

It is important to stick to the timetable. If there are any genuine reasons why you can't (for example, illness, or delays caused by the respondent), ask the ADT for an extension. Before you do this, though, try to contact the respondent to see if they agree to an extension. It's easier to get an extension if the respondent has agreed to it. When you ask for the tribunal for an extension, let them know what the respondent's answer was.

What else happens before the hearing?

There will usually be at least one more case conference before the hearing.

The case conferences happen so that the tribunal member can check that your case and the respondent's case are prepared and ready for hearing. Part of this means making sure that both sides have followed the timetable. If there is anything that has not been done, the tribunal member might give you more instructions or a new timetable.

When all the things listed in the timetable have been done, your case is ready for hearing and you will be given a hearing date.



What happens at a hearing?

A hearing is like a court trial. You and the respondent put forward your cases, and the evidence you have. Three tribunal members will hear the case and then decide whether you have been unlawfully discriminated against.

One of the tribunal members is a judicial member (someone who has legal training and is similar to a judge), and the other two are non-judicial members – they are normally people who have knowledge and experience of the issues involved in your case.

The usual order in a hearing is:

1. You (or your lawyer) make an opening statement.
2. The respondent (or their lawyer) makes an opening statement.
3. One at a time, all your witnesses give evidence in the witness box (you will usually be one of them). There are three stages to giving evidence:
 - the witness answers any questions that you (or your lawyer) asks. This is called ‘examination-in-chief’;
 - the respondent (or their lawyer) gets to ask the witness questions. This is called ‘cross-examination’; and
 - you (or your lawyer) can ask your witness questions about information that came up in cross-examination. This is called ‘re-examination’.
4. The respondent’s witnesses give evidence in the witness box, and they go through the same process. This time you (or your lawyer) are doing the cross-examination.
5. You (or your lawyer) can make a closing statement summing up your case.
6. The respondent (or their lawyer) can make a closing statement summing up their case.

If you are representing yourself, the tribunal might not follow this order – they are generally more flexible in how they run things when there aren’t any lawyers involved.



When will the ADT give their decision?

They might give their decision on the spot, or they might take some time to decide – it can be anywhere from a few hours to several months.

What kind of decisions can the ADT make?

The tribunal's job is to decide whether or not you have been unlawfully discriminated against, and if you have, what should be done about it.

If you lose your case, the ADT will say that your complaint has been 'dismissed'. If you win your case, the ADT will say that your complaint is 'made out' or 'proven' or 'substantiated'.

You might win some parts of your case and lose others. For example, you might prove that you were sexually harassed on one occasion but not on another occasion.

If you win (or partly win), the tribunal will decide what 'orders' it should make against the respondent. Their aim is to try to put you in the position you would have been in if the discrimination had not happened.

The ADT can make several kinds of orders, including:

- the respondent has to pay you compensation (up to \$40,000 for each complaint);
- the person responsible for the discrimination, harassment or vilification is not to continue or repeat the action;
- the respondent has to do certain things, such as giving you back your job;
- the respondent has to publish an apology or a retraction (taking back what they said);
- discriminatory parts of a contract or agreement have to be changed; and
- the respondent has to set up a program to stop future discrimination.

How much compensation will I get?

Compensation for discrimination is different in every case. The amount you get mostly depends on what evidence you present about how the discrimination has affected you (what you have lost



because of it). The amount will also be influenced by how much has been awarded in past cases.

The maximum amount of compensation that can be ordered by the ADT is \$40,000 for each complaint.

Compensation payments for discrimination are generally not high in Australia – people are hardly ever given anywhere near the \$40,000 maximum.

Will I have to pay the other side's legal fees if I lose?

In the ADT, the general rule is that you will not have to pay the respondent's legal fees if you lose, and the respondent won't have to pay your legal fees if you win. In other words, you usually have to pay the costs of running your case, whether you win or lose.

Sometimes, the ADT might order the loser to pay the winner's legal fees. This might happen, for example, if the person who loses behaved very badly during the tribunal process or did not obey the tribunal's directions.

Can I withdraw my case if I want to?

Yes. You can withdraw it at any time before the end of the tribunal hearing. Talk to the ADT registry about how to do it. It usually involves writing a letter to the ADT to tell them you are withdrawing your complaint, and giving a copy of the letter to the other side.

If you withdraw your complaint late in the tribunal process (for instance just before or during the hearing), the other side might apply to the tribunal for an order that you pay their legal fees for defending the case. The tribunal can make this order, but it does not often do it. It might do it if you continued your case for a long time, even though you had little or no chance of winning.

What if I am not happy with the ADT's decision?

You might have a right to appeal if you lose your case. If you do, the appeal will be heard by the Appeal Panel of the ADT. This is made up of three tribunal members (but not ones who heard your case). The Appeal Panel will usually only look at whether the ADT got the law wrong ('error of law').



If you think the ADT got the law wrong, you might also be able to appeal the decision to the Supreme Court of New South Wales.

You have 28 days from the date you receive the decision to lodge an appeal to the ADT Appeal Panel or the Supreme Court.

If you are considering appealing the ADT decision, you should definitely seek legal advice. It is a technical and specialised area of law and there are risks you need to know about before you go ahead.

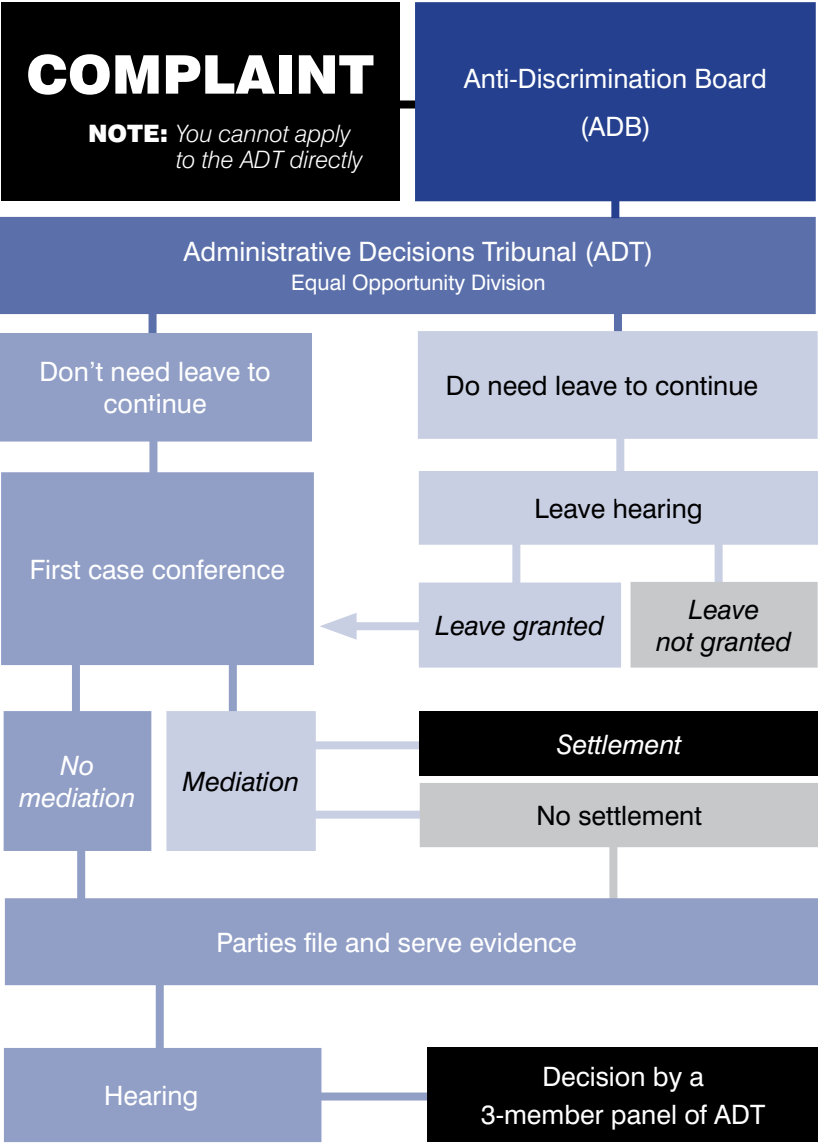
Can I get an interpreter?

Yes. If you need an interpreter when you go to the ADT, let the ADT registry know and they will organise one for you (it won't cost you anything).



Administrative Decisions Tribunal (ADT) Complaint handling process flowchart

This flowchart shows how a case usually runs in the ADT. Not all cases follow this exact order.



The Federal Courts

The Federal Court of Australia ('FCA') and the Federal Magistrates Court ('FMC') deal with cases of discrimination, harassment, vilification or victimisation that are not resolved at HREOC.

These courts can hold a hearing and decide whether or not unlawful discrimination happened, and if it did, what should be done about it.

The FCA usually deals with more complicated cases, because it is a higher level court than the FMC. It is usually cheaper to run your case in the FMC than the FCA, because if you lose and have to pay the other side's legal fees, the amount is likely to be less in the FMC.

We are only going to deal with the FMC in this section because nearly all HREOC complaints which go to court go to the FMC (not the FCA).

Before you decide to take your HREOC complaint to court, you should definitely get legal advice.

How does my HREOC complaint get to the FMC?

First, it must have been terminated by HREOC. You will know if it has been terminated because HREOC will send you a document called a 'Notice of Termination'. HREOC will also tell you (in writing) why your complaint has been terminated.

You then have to decide whether you want take your complaint further. If you do, you can take your case to the FMC. You start the process by lodging an application in the FMC.

How long do I have to decide whether to go to court?

You have 28 days from the date on the Notice of Termination to lodge your application in the FMC.

If your 28-day time limit has expired, you have to ask the court's permission to hear your case. You will need to have very good reasons for being late – being too ill to lodge your application, for example. You will have to give these reasons in writing to the court when you lodge your application. Include any documents that help explain why you were late, such as letters from your doctor. You should also tell the court in your application why it will not disadvantage ('prejudice') the other side if your application is lodged late.



Example

Yumi makes a sex discrimination complaint to HREOC that does not settle at conciliation. HREOC terminates the complaint and Yumi is advised that she has 28 days to apply to the FMC.

Yumi decides to go home to Japan for two weeks. She plans to deal with her discrimination case when she gets back. She decides to extend her holiday to catch up with some old friends, and misses her court deadline.

By the time she applies to the FMC it is three weeks past the time limit. The court will not accept her application because she cannot give a good enough reason why it was late.

Does it cost me any money to take my case to the FMC?

Usually yes. The FMC charges a 'filing fee' of \$50 when you lodge your initial (first, original) application. You will not have to pay the fee for your initial application if you:

- are getting Legal Aid;
- have a health care card;
- have a pensioner concession card;
- have a Commonwealth seniors card;
- have a Centrelink card;
- are in prison;
- are under 18; or
- are getting Austudy, Abstudy or the Youth Allowance.

If you can't afford the application fee, you can apply to have it 'waived' (this means you don't have to pay it).

You will need to lodge two forms for this:

1. an 'Application by an Individual for Fee Exemption or Waiver'; and
2. a 'Statement of Financial Position' form, which gives details of your financial situation.



Do I need a lawyer to represent me in the FMC?

Not necessarily. You can represent yourself in the FMC, but it's a very good idea to have a lawyer representing you.

Discrimination law is technical and complex. There are many rules about the court process, including what happens at a hearing, what evidence you are allowed to present to the court and the way it is presented. The federal magistrate can't give you legal advice or help you present your case.

We strongly recommend that you try to find a lawyer to represent you in court. If you can't get one, it is very important to at least get some legal advice about your case – try to do this before you lodge your initial application.

The types of things you could ask a lawyer are:

- What are my chances of winning the case?
- If I lose, what are the chances that I will have to pay the respondent's legal fees? How much are they likely to be?
- Can I apply to the court for an order which sets a limit on the maximum amount of legal fees that the person who loses will have to pay?
- How do I correctly describe the type of discrimination in my case?
- Have I named the correct respondents (see page 34)?
- What evidence do I need to prove my case?
- How do I prepare court documents, such as applications, affidavits, subpoenas?
- What orders should I ask the magistrate to make if I win (including how much money can I ask for)?

How do I lodge my initial application?

You start your case by filing these three documents at the FMC registry:

1. Application Form;
2. Information Sheet; and
3. Affidavit.



You have to file one (1) original copy of the documents, plus a photocopy for each respondent, plus a copy for yourself.

Application Form

The Application Form is the document that starts your court case. The information you have to provide on it includes:

- your personal details (name, date of birth, contact details, etc);
- the respondents' details – it is very important that you name all the respondents (all the individuals who treated you badly) as well as the organisation they work for. If you're naming any companies as respondents, make sure you use the correct company name, which could be different from the business's name (see page 34);
- whether you have a lawyer representing you (and if you do, their contact details);
- what type of discrimination you are complaining about (race, sex, disability, age, victimisation etc);
- the sections of the law that relate to your case – HREOC will usually have sent you copies of these sections after you first made your complaint; if you think HREOC might have missed something, such as victimisation (see page 16), make sure you write this on your application form;
- what outcome ('remedy') you want from your case;
- whether you need an extension of time (if you are lodging your application after the 28-day time limit), and if you do, why; and
- whether you have applied for Legal Aid.

You have to attach a copy of the original complaint you made to HREOC and the Notice of Termination to your application form.

Information Sheet

Many of the questions on the Information Sheet are the same as the ones on the Application Form.

The Information Sheet also asks if you want to apply for an 'interim' or 'interlocutory' remedy. These are temporary court orders that will keep things the same while your case is running. For example, if you think that your boss will fire you because you are complaining about



discrimination, you can ask for an interim order to keep your job until your case is decided. When the court has made a final decision about your case, these temporary orders are lifted.

Affidavit

An affidavit is a written statement of the facts that you are using to prove your case, and it has to be witnessed (someone has to see you sign it) by an 'authorised person' (a justice of the peace, solicitor or barrister) (see below). It describes what happened to you in detail and how it has affected you. The information you put in your affidavit must be correct.

The person who writes the affidavit (in this case you) is called the 'deponent'.

The person who witnesses you signing the affidavit is called the 'authorised person' (see below).

There is no standard format for an affidavit, but if you want to you can use the model form on the FMC website. There is also a sample affidavit on page 92.

Your affidavit needs to tell the story of what happened to you in chronological (time) order. Try to write it all in a clear and logical way. For example:

- use headings and sub-headings; and
- use numbered paragraphs, and start a new paragraph for each new idea or event.

What you write in an affidavit must be the facts about what happened, not your opinions. For example:

Write: Meena said to me, *'I am going now.'*

Don't write: Meena left because she was angry at how she had been treated.

And if you write that someone said something, use direct speech – the exact words the person said:

Write: Boris said to me, *'You're fired. Your leg is injured, mate, and I don't think you can do the job.'*

Don't write: Boris told me he was firing me because my leg was injured and he thought I couldn't do the job.



If you're not 100 per cent sure that you remember the exact words said:

Write: My boss said something like, '*Your leg is injured, mate. I don't think you can keep working here.*'

If you mention any documents, attach a copy of them to your affidavit. These attached documents are called 'annexures' and should be numbered Annexure 1, Annexure 2, etc. They should all be copies – keep the originals of all the documents yourself.

If you mention an annexure in your affidavit you need to say what number it is and state that it is a true and correct copy of the document. Here's an example of how to do that:

My employer sent me a letter dated 1 June 2005 saying that I was fired. Attached to this affidavit and marked 'Annexure 1' is a true and correct copy of this letter.

Each annexure attached to your affidavit should have a front page saying:

This and the following *[insert number]* pages is Annexure 1 referred to in the affidavit of *[insert deponent's name]* sworn on the *[insert the date the affidavit was signed]* before me *[insert name and signature of the authorised person who witnessed your affidavit]*.

The blanks get filled in by you and the authorised person when the affidavit is signed (see below).

On the last page of the affidavit, you need to have the following words:

Sworn /affirmed by the deponent *[insert name]*
at *[insert place]*

on the *[insert date]* day of *[insert month]* of *[insert year]*

Signature of deponent

Before me *[insert name of authorised person]*

Signature and title of person before whom affidavit sworn

This affidavit was prepared/settled by *[insert name of counsel, solicitor or party filing the affidavit]*

The blanks get filled in by you and the authorised person when the affidavit is signed (following).



'Sworn / affirmed' means that you must swear on the book of your religion (such as the Bible or Koran) or affirm (promise) that everything in your affidavit is true and correct.

Make sure you number each page of your affidavit, including the attachments.

Once your affidavit is finished, take it to an authorised person to have it properly signed and witnessed. If this is *not* done properly, the court will not accept the affidavit.

There are four things that must be done to have your affidavit properly signed and witnessed:

1. you must sign the bottom of every page of your affidavit (except the annexures) **in front of** the authorised person; the authorised person must then sign every page as well;
2. the authorised person must fill in and sign the front page of each annexure;
3. the authorised person will ask you to swear or affirm that the information in the affidavit is true and correct, and you have to do it; and
4. you must fill in and sign the last page of the affidavit **in front of** the authorised person; the authorised person must then sign that page.

The information in your affidavit is very important. It is worth spending time on getting it right.

What happens when I file my application?

When you file your application at the FMC registry, they will stamp all the copies you give them. The registry will keep one copy of your application and give you back the other stamped copies.

The registry will also write a date on the application. This is the date when you have to go to court about your case for the first time. This is called the 'first court date' (see page 83).

When do I serve my application

After your application is filed, you have to organise personal service of a stamped copy of your application on the respondent. You can do this yourself or get someone else to do it for you (see pages 57-58 for how to serve documents).



There are some other rules about serving your application on the respondent:

- you must serve your application on the respondent at least five (5) working days before the first court date; and
- the person who serves the application on the respondent should prepare an 'affidavit of service', which will say who the application was served on, and when and where it was served. This affidavit is proof for the court that you have served your application on the respondent.

A copy of your application must also be served on HREOC.

What happens after I serve my application?

The respondent will probably file a 'Response Form'. This form gives the court the respondent's contact details and says that they will be defending the case.

Can I get an interpreter?

Yes. If you need an interpreter, let the FMC registry know. They will organise one for you (it won't cost you anything).

When do I have to go to court?

You (or your lawyer, if you have one) have to go to court in person for the first court date – this is the date that was written on your application when you filed it. So does the respondent (or their lawyer).

If you don't go, the court might dismiss your application and your case won't go ahead. You might also have to pay the other side's legal fees (costs).

What happens at the first court date?

A magistrate will run things on the first court date. It is usually the same magistrate who will later hear and decide your case.

If you do not have a lawyer yet, you can ask the magistrate to refer you to the FMC's 'Unrepresented Litigant Scheme' for legal advice.



The magistrate will expect you to tell them, briefly:

- what your case is about;
- what witnesses will be giving evidence for you at the hearing; and
- how long you think the hearing will take.

The magistrate will expect the respondent to tell them, briefly:

- whether they are defending your application (arguing against you), and if so, why;
- what witnesses will be giving evidence for them at the hearing; and
- how long they think the hearing will take.

The magistrate will also ask you and the respondent:

- whether you want to try mediation (see page 85);
- whether you are going to file any more documents (such as affidavits from your witnesses); and
- whether you want any subpoenas issued (see page 59).

The magistrate will use all this information to make orders for your case. For example, they might:

- set a date for mediation, if you have agreed to try it, or give you instructions about how you can get a date;
- set a date for your hearing;
- approve the subpoenas you and the respondent asked for; and
- set a timetable for when you and the respondent have to file and serve evidence (such as affidavits from witnesses and documents).

If you have applied for interim orders, the magistrate will either:

- make a decision about them; or
- give you another court date when they will make a decision about them.

It is very important to prepare properly for your first court date. This includes being ready to answer all the questions listed above.



Should I try mediation in the FMC?

There are pluses and minuses with mediation. The three main pluses are: one, it is a chance to resolve your case without spending the time, energy and money a court hearing requires; two, respondents are often more willing to settle when a court date is coming closer; and three, mediation for discrimination cases in the FMC is free.

On the minus side, if you don't settle your case at mediation and you lose at the hearing and have to pay the other side's legal fees, the court might add in the mediation costs, so what you have to pay would be more.

What happens at mediation?

Mediation at the FMC is very similar to conciliation at HREOC.

Mediation in the FMC is not run by the magistrate who will hear your case. The mediator is usually an FCA registrar – a senior officer of the court. The mediator cannot take sides, and will not make a decision about who is right or wrong. They are just there to help you and the respondent resolve your case.

How do I prepare for mediation?

In the same way you prepared for conciliation at HREOC (see pages 41-46). This includes preparing 'proposed terms of settlement' and giving them to the respondent before or at the mediation.

Again, it is a good idea to at least get some legal advice.

What happens if I settle my case at mediation?

If you come to an agreement with the respondent at mediation, it will be recorded in a 'settlement agreement' (see page 49).

It is very important that you know what you are agreeing to before you sign. If you are not sure, ask for some time to see a lawyer and get the lawyer to explain the agreement to you.

Once the settlement agreement is signed, you and the respondent have to do what you agreed to.

The respondent will normally only settle the case at mediation if you agree to withdraw your FMC case. The agreement should say that you will withdraw your case only after the respondent has done everything they promised to do.



To withdraw your case, you file a Notice of Discontinuance in the FMC registry. You should serve a copy of this document on the respondent.

TIP



The side that loses in an FMC hearing usually has to pay the winner's legal fees (costs). If you settle your case in mediation, make sure that the agreement says who has to pay costs.

You can ask the respondent to pay your costs. If they don't agree to this, include something in the settlement agreement that says each side will pay their own costs.

What happens if I don't settle my case at mediation or I don't have mediation?

You and the respondent have to prepare for the hearing. What's involved in preparing for a hearing is different in every case.

How do I prepare for my hearing?

At the first court date, the magistrate will have given you and the respondent a timetable, and told you what you have to do to prepare for the hearing.

It is very important that you stick to the timetable. If you don't do everything you're supposed to do, the respondent might apply to the court to have your case dismissed and order you to pay their costs.

If for some reason you can't stick to the timetable, you can ask the court's permission for an extension. The court will only give you one if you have very good reasons. Also, the court is more likely to say yes to an extension if the respondent has agreed to it, so contact the respondent before you apply for an extension to see if they'll agree to it. Let the court know, when you are asking for the extension, what the respondent's answer was.

The timetable will tell you and the respondent to file and serve your evidence by a certain date.

One kind of evidence you should file is documents that help you prove you've been discriminated against (such as a letter of termination from your employer).



You should also file evidence (medical reports, etc) to show how the discrimination has affected you. This might include documents about:

- out-of-pocket expenses (such as receipts for medical bills or medication);
- lost wages (pay slips showing how much you earned);
- future expenses you are likely to have (such as a medical report saying you need ongoing counselling and an estimate of how much this will cost);
- lost earning capacity (such as a medical report saying that the discrimination has affected your ability to work or find work); and
- hurt, humiliation and distress – called ‘general damages’ (such as psychological reports).

Another kind of evidence you should file is affidavits from witnesses. These witnesses will also have to come to court to give their evidence verbally at your hearing. You should ask the court for subpoenas for these witnesses. Do this as soon as you can, then make sure the subpoenas are issued by the court and properly served on the witnesses (see pages 57-60).

You will also need to follow up any subpoenas for documents that the court has approved – you have to get the subpoenas issued, serve them, and then make sure the documents the subpoenas ask for are provided to the court.

The other thing that might happen before the hearing is that the respondent might write to you to ask for more detail about your case. This is called a ‘request for particulars’. You can do the same: ask the respondent to give you details about their defence. You don’t have to give any information that is not relevant to the case. If you’re not sure whether you should provide the information or not, get legal advice.



What happens at a hearing?

Your hearing will be held in the Federal Magistrates Court. A federal magistrate will hear the case and then decide whether or not you have been unlawfully discriminated against.

The usual order in a hearing is:

1. You (or your lawyer) make an opening statement.
2. The respondent (or their lawyer) makes an opening statement.
3. One at a time, all your witnesses give evidence in the witness box (you will usually be one of them). There are three stages to giving evidence:
 - the witness answers any questions that you (or your lawyer) ask. This is called ‘examination-in-chief’;
 - the respondent (or their lawyer) gets to ask the witness questions. This is called ‘cross-examination’; and
 - you (or your lawyer) can ask your witness questions about information that came up in cross-examination. This called ‘re-examination’.
4. The respondents’ witnesses give evidence in the witness box and they go through the same process. This time you (or your lawyer) are the one doing the cross-examination.
5. You (or your lawyer) can make a closing statement summing up your case.
6. The respondent (or their lawyer) can make a closing statement summing up their case.

If you are representing yourself, the magistrate will try to make sure you understand what is going on.

The FMC and the ADT run discrimination cases differently. The ADT does not have to follow technical rules about what things are allowed to be evidence and what aren’t, but the FMC does. These are called ‘the rules of evidence’. They are complex, and they change quite often. The court will usually give you some guidance on these rules as they come up.

Once both sides have put forward all their evidence and made their statements, the magistrate will make a decision. They might give their decision on the spot, but that is unlikely. They will usually take some time (sometimes months) before they give their decision.



What kinds of decisions can the magistrate make?

If the magistrate decides that you have been unlawfully discriminated against, they can order the respondent to:

- do certain things to make up for the loss or damage you have suffered;
- not continue or repeat the behaviour;
- employ, re-employ or transfer you (although this is uncommon);
- pay you compensation; and/or
- publish an apology or a retraction.

How much compensation will I get?

Compensation for discrimination is different in every case. The amount you get largely depends on what evidence you present about how the discrimination has affected you. It will also be influenced by how much has been awarded in past cases.

Unlike in the ADT, there is no upper limit on how much compensation you can get in the FMC. But compensation amounts paid in discrimination cases are generally not high. Look at past cases to get an idea of the amounts courts have given people in other cases. The HREOC book *Federal Discrimination Law* (which is regularly updated) can give you some guidance on this (see page 116).

Will I have to pay the other side's legal fees if I lose?

The general rule in the FMC is that 'costs follow the event'. This means that if you lose your case, the magistrate will usually order that you pay all or some of the respondent's legal fees.

The amount of costs the loser will pay depends on how many stages the case has gone through. You can get a list of costs from the FMC registry. If you have any questions about it, contact the registry.

If you win your case, you can ask the magistrate to order the respondent to pay your costs. Be aware, though, that the amount they are ordered to pay won't cover all of your legal fees and you will probably still be out of pocket.



Can I withdraw my case if I want to?

Yes, you can stop your case at any stage before the end of the hearing. This is called 'discontinuing proceedings'. To do this, you need to file a Notice of Discontinuance in the FMC registry and serve a copy of it on the respondent. You can get a Notice of Discontinuance from the FMC website or by calling the registry.

If you withdraw your case, the court will probably order you to pay the legal fees the respondent has already spent on the case. How much this is will depend on how far your case has gone when you discontinue. Again, get a copy of the list of costs from the FMC registry.

You might be able to negotiate with the respondent so that you discontinue your case in exchange for them not asking the court for an order that you pay their legal fees.

How long will the court process take?

Every case is different, but generally it will take between 6 and 12 months from the time you lodge your application with the registry to when you get a decision.

What if I lose? Can I appeal?

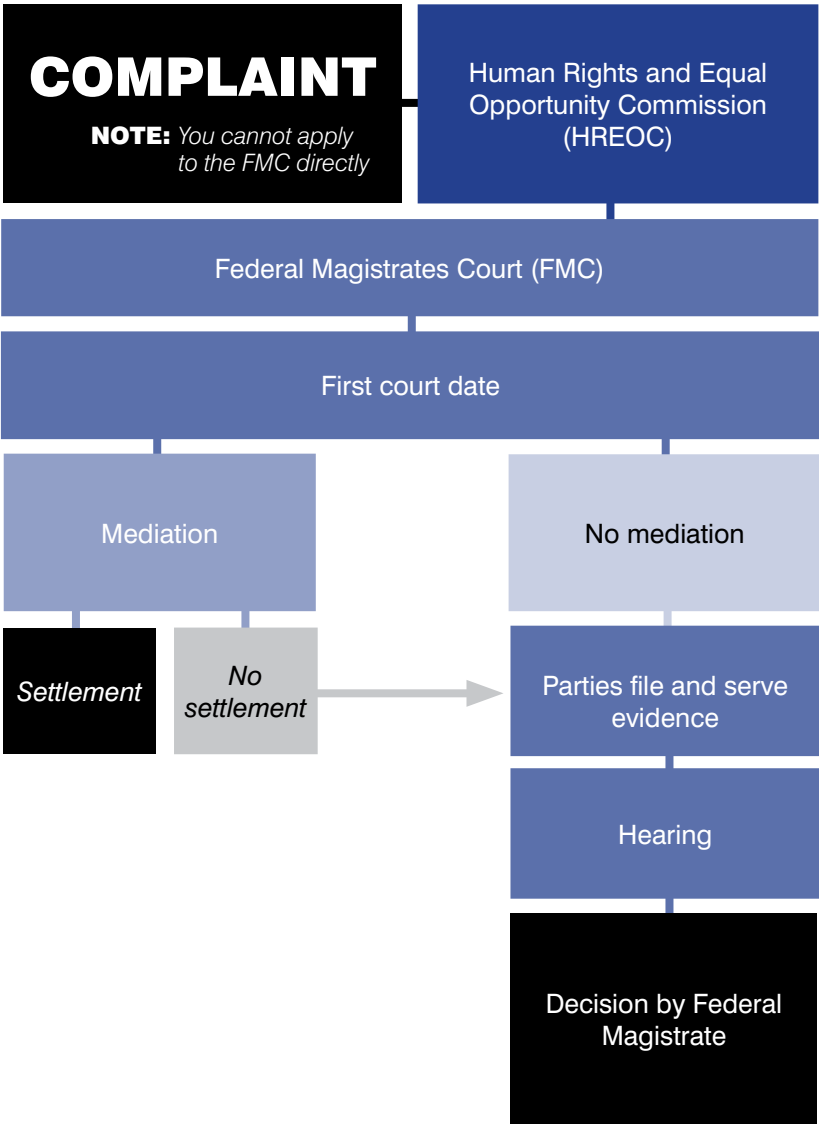
If you lose your case in the FMC, you can appeal to the FCA. The appeal will be decided by either a single Federal Court judge or by three Federal Court judges. You have 21 days from the date you receive the FMC decision to appeal to the FCA.

Appealing to the FCA is a big step, so get legal advice before you do it. The FCA is very technical and formal. If you lose, you are likely to have to pay a lot of money for the other side's legal costs. Costs in the FCA are not fixed, the way they are in the FMC.



Federal Magistrates Court (FMC) Complaint handling process flowchart

This flowchart shows how a case usually runs in the FMC. Not all cases follow this exact order.



Sample Affidavit

FEDERAL MAGISTRATES COURT OF AUSTRALIA

Affidavit

Court use only

A File Number

B Filed at
Files on

C Place of hearing

Hearing date

Hearing time

A

M

P

M

I, Sally Marie Anderson, of 444 Princes Highway, Birchville in the state of New South Wales, affirm:

1. I was born on 1 January 1976 and am 30 years of age. I am currently on the Sole Parent's Pension and have the fulltime care of my child Ben, who was born on 10 May 2006.
2. Since leaving school in 1994 I have had a number of occupations in the hospitality and service industry and have only been unemployed for short periods. I was employed by XYZ Company between 12th June 2000 and 19th December 2005. I was employed as a shop assistant and my duties mainly involved serving customers who entered the store. At the end of the financial year I would help with the stocktake. When I was asked to leave work in December 2005 I was earning \$650 per week gross including superannuation.
3. On 5th December 2005 I told my supervisor, Martina Stavos, 'I am pregnant. It's about four months. I would like to take some time off from about March 2006.' And, 'I would be really grateful if you could find out how much maternity leave I am entitled to.' I can remember that my supervisor did not look very pleased and only replied, 'Alright.'

S. Anderson *M. Stavos*



4. On or about 12th December 2005 my supervisor came to see me and said, *'Business is not as good this Christmas as we had expected. I may have to cut down some of your hours – it may even be necessary for you to have some time off without pay.'*
5. On 19th December 2005 I asked my supervisor about what she had said in the preceding week. She said, *'Look I'm really sorry, I am going to have to let you go. It's not me, it's the boss – he just doesn't think that you should be working while you're pregnant.'* And, *'Don't worry, you can have your job back after you have had the baby.'* I felt really bad about what my supervisor had said but did not know what to say in reply.
6. That afternoon my supervisor handed me my final pay cheque and said *"Give me a call after the baby is born."* I replied, *"OK. I expect to be back around the end of July."* This was the last day I worked at XYZ Company.
7. In mid June 2006 I met a friend, Winny Cheng, who worked for XYZ Company and I told her, *'I will be coming back to work in about six weeks.'* She said, *'Really? I thought you had left. That's a bit strange – they have given your job to someone else.'*
8. The next day I rang XYZ Company and spoke to my former boss Michelle Green. She said, *'I thought it was pretty clear that you weren't coming back so I have given your job to someone else. There is nothing I can do. I cannot sack her.'*
9. I was really shocked when I heard this. I felt sick in the stomach and could not sleep that night. I felt that I had been unfairly treated and began to feel very depressed. I went to see my doctor, Dr Scarlett, at the Birchville Medical Centre, and he prescribed anti-depressants and referred me to a counsellor.
10. I have tried looking for another job but have not yet been able to find one. I have applied for a number of jobs, including shop assistant work at ABC Stores and DEF Ltd, but have been unable to get an interview. I feel that I have lost a lot of confidence and do not trust people as much as I used to.
11. I have received Centrelink payments of \$252 per fortnight since 1 July 2006.

Stefan *P. Singh*



Affirmed by the Applicant on the 6th day of August 2006

(Signature of dependant)

Shubson

Before me:

P. Singh

*(Signature and title of person
before whom affidavit sworn)*

Solicitor

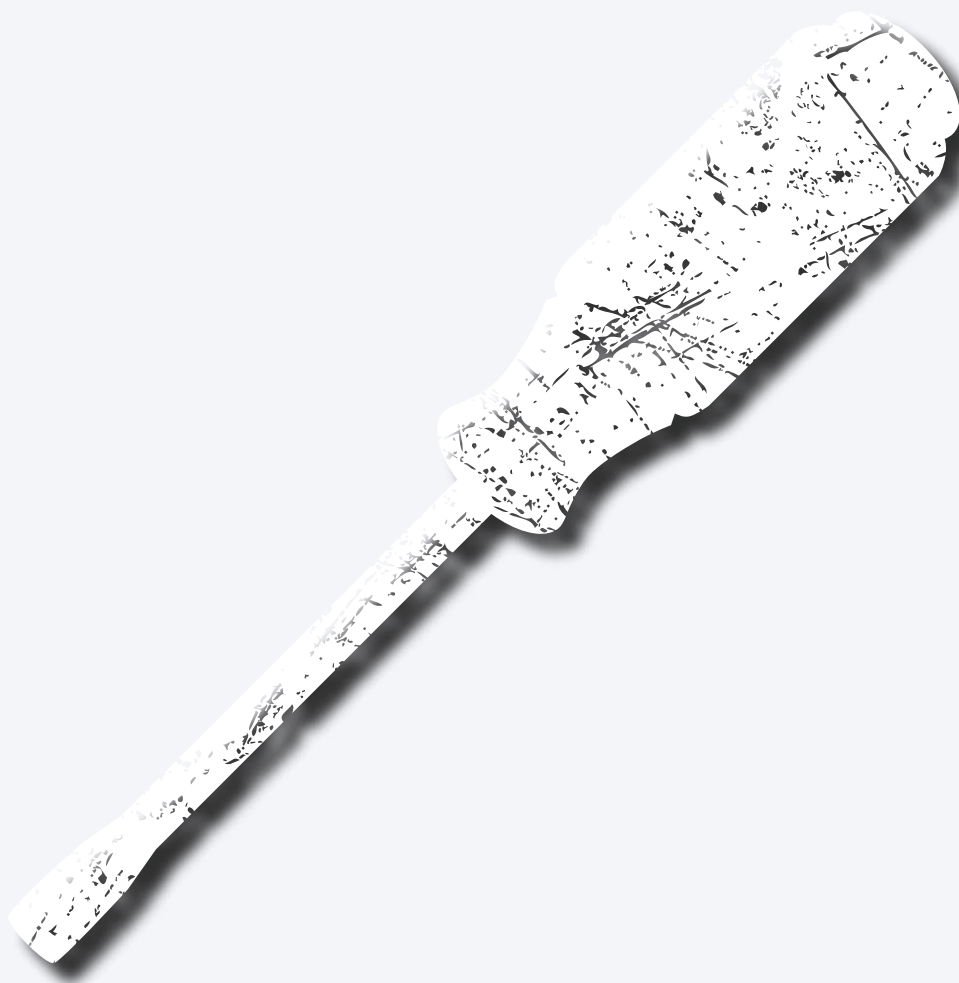
*(Print name of person before
whom affidavit sworn)*

Pravin Singh

THIS AFFIDAVIT was
prepared/settled by
*(Name of Counsel, Solicitor
or party filing affidavit)*

Pravin Singh
Solicitor of applicant
Birchville Legal Services





Getting help

Legal Advice and Representation

Do I need a lawyer?

You can take legal action for discrimination without a lawyer, but discrimination law is complex, and you might have a better chance of getting a good result if you have a lawyer representing you.

The people who work at the ADB, HREOC, ADT and FMC cannot give you legal advice.

Although you are allowed to represent yourself, a lot of people find this hard, especially if the person they are complaining about has a lawyer.

If you want a lawyer to represent you at the ADB, HREOC or the ADT you have to ask permission. You do not need permission in the FMC.

Even if you can't afford to pay a lawyer and can't find a lawyer who will represent you for free, we still think that it is very important to at least get some legal advice as early as possible.

How should I prepare for seeing a lawyer?

When you get free legal advice, you often don't get much time with the lawyer. If you do these things before you meet the lawyer, you will be able to make the most of the time you have with them:

- write out (or type, if you can) your story about what happened to you – this is called a 'statement' (see pages 33-36 for what to include in your statement); and
- collect any documents that are relevant to your case.

Take your statement and all the documents with you when you meet with the lawyer.

Where can I find a lawyer?

There are many places where you can get free legal advice – the names and phone numbers of these services are in the Useful contacts part of this Kit.

Some of these services might be able to actually represent you in your discrimination case. Talk to them about what type of help they can give you.



Legal Aid

The Legal Aid Commission of New South Wales is a government organisation that provides legal services to socially and economically disadvantaged people in New South Wales.

Legal Aid has lawyers in Sydney and in some regional centres of New South Wales, and they can give anyone free legal advice about discrimination.

If you go to Legal Aid to get advice and you want Legal Aid to represent you, ask the lawyer who gives you advice whether this is possible. If it is, you will need to apply for Legal Aid.

To apply, you need to fill out an application form and give it to a person at the Legal Aid office or send it to the address on the application form. On the application you can ask for a lawyer who works at Legal Aid to represent you, or for Legal Aid to pay a private lawyer to represent you.

You should attach a copy of your statement and of any other documents about your case to your application form so that Legal Aid has as much information as possible about your case.

Legal Aid look at all these things when they decide whether they can represent you:

- your financial position: how much money you earn and what assets you have;
- whether you have a good case – what your chances of winning are;
- how much money you might get if you win your case compared with how much it will cost Legal Aid to represent you;
- whether your case involves issues that will help others in the community; and
- whether you have any ‘special disadvantage’ that might make it harder for you to represent yourself (such as intellectual or physical disability, or being under 18 years old).

See pages 100-104 for contact details.



Community Legal Centres

Community Legal Centres are non-government community-based organisations that provide free legal services, especially for people who are disadvantaged.

Most Community Legal Centres can provide free legal advice and information about discrimination (either by phone or in person), and sometimes they can represent you as well. They can also give you referrals to other organisations – legal and non-legal.

See page 100-104 for contact details.

LawAccess

LawAccess NSW is government service that provides free legal information and referrals to people in New South Wales over the phone. You can get information about discrimination law by calling LawAccess or by visiting their website. LawAccess NSW can also refer you to a lawyer if you need further legal advice.

See page 100 for contact details.

Private lawyers

If you can afford to pay for a lawyer, the NSW Law Society can give you the names of lawyers who might be able to help you with your case. Remember to ask the lawyer how much they will charge you.

See page 104 for contact details.



Useful contacts

PLACES THAT HANDLE DISCRIMINATION COMPLAINTS.

The places listed below deal with inquiries and complaints about discrimination, victimisation and harassment.

Anti-Discrimination Board (ADB)

www.lawlink.nsw.gov/adb

Sydney
Stockland House
Level 4, 175–183 Castlereagh St
Sydney NSW 2000
PO Box A2122
Sydney South NSW 1235
(02) 9268 5544 (general inquiries)
(02) 9268 5522 (TTY)
1800 670 812
(02) 9268 5500 (fax)

Newcastle
Level 1, 414 Hunter St
Newcastle West NSW 2302
(02) 4926 4300
(02) 4929 1489 (TTY)
(02) 4926 1376 (fax)

Wollongong
84 Crown St
Wollongong East NSW 2500
PO Box 67
Wollongong NSW 2520
(02) 4224 9960
(02) 4224 9967 (TTY)
(02) 4224 9961 (fax)

Human Rights and Equal Opportunity Commission (HREOC)

Piccadilly Tower
Level 8, 133 Castlereagh St
Sydney NSW 2000
GPO Box 5218
Sydney NSW 2001
(02) 9284 9600
1800 620 241 (TTY)
1300 656 419 (complaint info-line)
1300 369 711 (general inquiries)
(02) 9284 9611 (fax)
complaintsinfo@humanrights.gov.au
www.hreoc.gov.au

Administrative Decisions Tribunal (ADT)

St James Centre
Level 15, 111 Elizabeth St
Sydney NSW 2000
(02) 9223 4677
(02) 9235 2674 (TTY)
(02) 9233 3283 (fax)
ag_adt@agd.nsw.gov.au
www.lawlink.nsw.gov.au/adt

Federal Magistrates Court (FMC) and Federal Court of Australia (FCA)

Law Courts Building
Level 16, Queens Square
Sydney NSW 2000
(02) 9230 8567
(02) 9230 8535 (fax)
nswdr@fedcourt.gov.au
www.fmc.gov.au



PLACES TO GET LEGAL INFORMATION, ADVICE AND ASSISTANCE

The places listed below can give you legal information, advice or assistance about any type of discrimination, no matter where you live in New South Wales.

Legal Aid Commission Of New South Wales

Human Rights Unit
(02) 9219 5790
(02) 9219 5216 (TTY)
133 677 (NSR)
www.legalaid.nsw.gov.au

Kingsford Legal Centre

(02) 9385 9566
(02) 9385 9572 (TTY)
www.kingsfordlegalcentre.org

Public Interest Advocacy Centre

(02) 8898 6500
www.piac.asn.au

LawAccess NSW

1300 888 529
www.lawaccess.nsw.gov.au

The places listed below have specialist services for particular groups of people. If you are in one of the groups listed, they can give you legal advice about any type of discrimination, no matter where you live in New South Wales.

WOMEN

Women's Legal Services NSW

(02) 9749 5533
1800 674 333 (TTY)
1800 801 501
www.womenslegalnsw.asn.au

ABORIGINAL OR TORRES STRAIT ISLANDER WOMEN

Wirringa Baiya Aboriginal

Women's Legal Centre

(02) 9569 3847
1800 686 587
www.wirringabaiya.org.au

Women's Legal Services NSW – Indigenous Women's Program

1800 639 784
www.womenslegalnsw.asn.au

ABORIGINAL OR TORRES STRAIT ISLANDER MEN AND WOMEN

Public Interest Advocacy Centre

(02) 8898 6500
www.piac.asn.au



CHILDREN AND YOUNG PEOPLE (UNDER 18)
National Children's and Youth Law Centre
www.lawstuff.org.au

Marrickville Legal Centre
(02) 9559 2899
www.mlc.asn.au

ABORIGINAL OR TORRES STRAIT ISLANDER YOUNG PEOPLE (UNDER 18)
Wirringa Baiya Aboriginal Women's Legal Centre
(02) 9569 3847
1800 686 587
www.wirringabaiya.org.au

GAY AND LESBIAN
Inner City Legal Centre
(02) 9332 1966
www.iclc.org.au

TRANSGENDER
Inner City Legal Centre
(02) 9332 1966
www.iclc.org.au

DISABILITY
Disability Discrimination Legal Centre
(02) 9310 7722
(02) 9310 4320 (TTY)
1800 800 708 (free)
1800 644 419 (free TTY)
www.ddlcnsw.org.au

The places listed below can give you legal advice about particular types of discrimination, no matter where you live in New South Wales.

DISABILITY DISCRIMINATION
Disability Discrimination Legal Centre
(02) 9310 7722
(02) 9310 4320 (TTY)
1800 800 708 (free)
1800 644 419 (free TTY)
www.ddlcnsw.org.au

INTELLECTUAL DISABILITY DISCRIMINATION
Intellectual Disability Rights Service
(02) 9318 0144
1800 666 611
www.idrs.org.au

HIV/AIDS DISCRIMINATION
HIV/AIDS Legal Centre
(02) 9206 2060
1800 063 060
www.halc.org.au



GENERAL

The places listed below can give you legal advice about any type of discrimination, but you need to find the centre closest to where you live.

Campbelltown Legal Aid Office

(02) 4628 2922

www.legalaid.nsw.gov.au

Central Coast Community Legal Service

(02) 4353 4988

www.nswclc.org.au

Coffs Harbour Legal Aid Office

(02) 6651 7899

www.legalaid.nsw.gov.au

Dubbo Legal Aid Office

(02) 6885 4233

www.legalaid.nsw.gov.au

Elizabeth Evatt Community Legal Centre

(Blue Mountains, Lithgow, Oberon and Bathurst regions)

(02) 4782 4155

1300 363 967

www.eeclc.org.au

Fairfield Legal Aid Office

(02) 9727 3777

www.legalaid.nsw.gov.au

Gosford Legal Aid Office

(02) 4324 5611

www.legalaid.nsw.gov.au

Hawkesbury Nepean Community Legal Centre

(02) 4588 5618

Hunter Community Legal Centre

(02) 4926 3329

(02) 4926 3220 (TTY)

1800 650 073

Illawarra Legal Centre

(02) 4276 1939

www.illawarralegalcentre.org.au

Inner City Legal Centre

(02) 9332 1966

www.iclc.org.au

Kingsford Legal Centre

(02) 9385 9566

(02) 9385 9572 (TTY)

www.kingsfordlegalcentre.org



Lismore Legal Aid Office

(02) 6621 2082 (ph & TTY)

www.legalaid.nsw.gov.au

Liverpool Legal Aid Office

(02) 9601 1200

(02) 9601 7547 (TTY)

www.legalaid.nsw.gov.au

Macarthur Legal Centre

(02) 4628 2042

(02) 4620 0348 (TTY)

www.macarthurlegal.org.au

Macquarie Legal Centre

(02) 9760 0111

(02) 9760 1190 (TTY)

www.macquarielegal.org.au

Marrickville Legal Centre

(02) 9559 2899

www.mlc.asn.au

Newcastle Legal Aid Civil Law Centre

(02) 4921 8801

www.legalaid.nsw.gov.au

North & North West Community Legal Centre

(02) 6772 8100

1800 687 687

Northern Rivers Community Legal Centre

(02) 6621 1000

1800 689 889

Nowra Legal Aid Office

(02) 4422 4351

www.legalaid.nsw.gov.au

Parramatta Legal Aid Office

(02) 9891 1600

(02) 9891 5692 (TTY)

www.legalaid.nsw.gov.au

Penrith Legal Aid Office

(02) 4732 3077

www.legalaid.nsw.gov.au

Redfern Legal Centre

(02) 9698 7277

(02) 9699 8037 (TTY)

www.rlc.org.au

Shoalcoast Community Legal Centre

(02) 4422 9529

1800 229 529

www.shoalcoast.org.au

South West Sydney Legal Centre

(02) 9601 7777

www.swslc.org.au



University of Newcastle Legal Centre

(02) 4921 8666

www.newcastle.edu.au/school/law/

Public Interest Law Clearing House (PILCH)

(02) 8898 6550

pilch@piac.asn.au

Wagga Wagga Legal Aid Office

(02) 6921 6588

www.legalaid.nsw.gov.au

Western NSW Community Legal Centre

(02) 6884 9422

1800 655 927

Wollongong Legal Aid Office

(02) 4228 8299 (ph & TTY)

www.legalaid.nsw.gov.au

The places listed below might be able to help you find a solicitor or barrister to take on your case for free or at a low cost.

Law Society of NSW

(02) 9929 0333

www.lawsociety.com.au

The NSW Bar Association

Legal Assistance Referral Scheme

www.nswbar.asn.au

PLACES THAT HANDLE OTHER SORTS OF COMPLAINTS

For a detailed directory of places you can complain to, go to www.complaintline.com.au.

The places listed below might be able to help you if you have a problem with an organisation or a government department. Usually, you have to try to sort out your problem directly with the organisation or government department before you can go to one of these organisations.

They have been arranged by type of problem.

ACCOMMODATION

Office of Fair Trading

133 220

1300 723 404 (TTY)

www.fairtrading.nsw.gov.au

BANKS AND OTHER FINANCIAL INSTITUTIONS

Banking and Financial Services Ombudsman

1300 780 808

www.abio.org.au



CONSUMER (GOODS AND SERVICES)

Australian Competition and Consumer Commission

(02) 9230 9133

1300 302 502

www.accc.gov.au

Office of Fair Trading

133 220

1300 723 404 (TTY)

www.fairtrading.nsw.gov.au

EMPLOYMENT

Industrial Relations Commission

(02) 9228 7766

(02) 9258 0877 (TTY)

www.lawlink.nsw.gov.au/irc

Australian Industrial Relations Commission

(02) 8374 6666

1300 799 675

www.airc.gov.au

Office of Industrial Relations

131 628

www.industrialrelations.nsw.gov.au

Government and Related Employees Appeal Tribunal NSW

(02) 9020 4750

www.industrialrelations.nsw.gov.au/great

WorkCover NSW

131 050 (info centre)

(02) 4321 5000

(02) 4325 4304 (TTY)

www.workcover.nsw.gov.au

Comcare Australia

NSW OHS Unit

1300 366 979

www.comcare.gov.au

EDUCATION

NSW Department of Education and Training

(02) 9561 8000

www.det.nsw.edu.au

Catholic Education Commission

(02) 9287 1555

www.cecnsw.catholic.edu.au



GOVERNMENT DEPARTMENTS

NSW Ombudsman (for
complaints about NSW
government departments)

(02) 9286 1000

1800 451 524

www.nswombudsman.nsw.gov.au

Commonwealth Ombudsman
(for complaints about
Commonwealth government
departments)

(02) 9218 3000

1300 362 072

www.comb.gov.au

HEALTH

**Health Care Complaints
Commission**

(02) 9219 7444

(02) 9219 7555 (TTY)

1800 043 159

www.hccc.nsw.gov.au

*Each health care profession
has its own organisation which
you can complain to. If you
want the name of one of these
organisations, contact the Health
Care Complaints Commission.*

HOTELS

Australian Hotels Association

(02) 9281 6922

1800 422 036

www.aha-nsw.asn.au

IMMIGRATION

**Department of Immigration
and Multicultural Affairs
Complaints**

131 881

131 880

www.immi.gov.au

**Migration Agents Registration
Authority**

(02) 9299 5446

www.themara.com.au

INSURANCE

Insurance Council of Australia

(02) 9253 5100

1300 728 228

www.ica.com.au



Financial Industry Complaints Service

1300 780 808

www.fics.asn.au

Private Health Insurance Ombudsman

(02) 8235 8777

1800 640 695

www.phio.org.au

LAWYERS

Legal Services Commissioner

(02) 9377 1800

(02) 9377 1855 (TTY)

1800 242 958

www.lawlink.nsw.gov.au

LOCAL COUNCILS

Department of Local Government

Head office: (02) 4428 4100

Sydney: (02) 9289 4000

(02) 4428 4209 (TTY)

www.dlg.nsw.gov.au

MEDIA AND ADVERTISING

Australian Broadcasting Authority

(02) 9334 7700

1800 226 667

www.aba.gov.au

Press Council

(02) 9261 1930

1800 02 5712

www.presscouncil.org.au

Media, Entertainment and Arts Alliance

(02) 9333 0999

1300 656 512

www.alliance.org.au

Advertising Federation of Australia

(02) 8297 3800

www.afa.org.au

NEIGHBOUR DISPUTES

Community Justice Centres

(02) 9228 7455

1800 671 964 (TTY)

www.lawlink.nsw.gov.au/cjc

POLICE

NSW Police Service Customer Assistance Unit

1800 622 571

www.police.nsw.gov.au

NSW Ombudsman

(02) 9286 1000

1800 451 524

www.nswombudsman.nsw.gov.au



PRIVACY

Privacy NSW

(02) 9228 8585

www.lawlink.nsw.gov.au/pc

Federal Privacy Commissioner

1300 363 992

1800 620 241 (TTY)

www.privacy.gov.au

REGISTERED CLUBS

NSW Office of Liquor, Gaming and Racing

(02) 9995 0300

www.dgr.nsw.gov.au

TELECOMMUNICATIONS

Telecommunications Industry Ombudsman

1800 062 058

1800 062 692 (TTY)

www.tio.com.au

TRANSPORT

State Transit

131 500

www.sta.nsw.gov.au

City Rail or State Rail Authority

1800 047 731

Ministry of Transport

(02) 9268 2800

Taxi Customer Feedback Management System

1800 648 478

www.transport.nsw.gov.au

OTHER PLACES TO GET HELP

If you have been the victim of a crime, call the police on 000 if it is an emergency. If it is not an emergency, call the Police Assistance Line on 131 444.

UNIONS

Unions can help their members sort out problems in the workplace. To find out more about unions contact:

Australian Council of Trade Unions

1300 362 223

www.actu.asn.au

Unions NSW

(02) 9264 1691

www.council.labor.net.au



OTHER ADVOCACY OR SUPPORT SERVICES

Below is a list of some advocacy and support groups. These groups might be able to give you some support or point you in the direction of someone who can.

Alzheimer's Australia NSW

(02) 9805 0100
1800 100 500
www.alzheimers.org.au

Carers NSW Inc.

(02) 9280 4744
1800 242 636
www.carersnsw.asn.au

Council for Intellectual Disability NSW

(02) 9211 1611
1800 424 065
www.nswcid.org.au

Deaf Society of New South Wales

(02) 9893 8555
1800 893 855
(02) 9893 8858 (TTY)
1800 893 885 (TTY)
www.deafsocietynsw.org.au

Family Advocacy

(For families with a child or an adult with developmental disability)

(02) 9869 0866
1800 620 588
www.family-advocacy.com

Federation of Parents and Citizens' Association

1300 885 982
www.pandc.org.au

Gay and Lesbian Rights Lobby

(02) 9360 6650
www.glrll.org.au

The Gender Centre Inc.

(02) 9569 2366
www.gendercentre.org.au

Immigrant Women's Speakout

(02) 9635 8022
www.speakout.org.au

Mental Health Information Service (NSW)

(02) 9816 5688
1800 674 200
www.mentalhealth.asn.au



MIGRANT RESOURCE CENTRES

For a list of Migrant Resource Centres in NSW go to the Ethnic Communities' Council of NSW website, www.eccnsw.org.au, or call (02) 9319 0288.

Multicultural Disability Advocacy Association

(02) 9891 6400

(02) 9687 6325 (TTY)

1800 629 072

www.mdaa.org.au

Multicultural Mental Health Australia (national)

(02) 9840 3333

www.mmha.org.au

People with Disabilities

(02) 9370 3100

1800 422 015

(02) 9318 2138 (TTY)

1800 422 016 (TTY)

www.pwd.org.au

Schizophrenia Fellowship of New South Wales

(02) 9879 2600

1800 985 944

www.sfnsw.org.au

Self-Advocacy Sydney Inc.

(For people with intellectual disabilities)

(02) 9622 3005

www.sasinc.com.au

Seniors Information Service

131 244

Transcultural Mental Health Centre

(02) 9840 3800

www.dhi.gov.au/tmhc



COUNSELLING SERVICES

A lot of people who have experienced discrimination find it helpful to speak to a counsellor. To find the right counsellor for you, talk to your General Practitioner, or to someone at your local Community Health Centre, or to someone at one of the advocacy and support services listed above. Look in your local phonebook if you're not sure where your nearest Community Health Centre is.

If you are a woman, you might also be able to get some free counselling at a Women's Health Centre. Contact Women's Health NSW at www.whnsw.asn.au or on (02) 9560 0866 to find the centre nearest you.

If you are Aboriginal or Torres Strait Islander, you might be able to get some free counselling at the Aboriginal Medical Service. Contact them on (02) 9319 5823.

For other useful counselling services, see www.health.nsw.gov.au.

If you need to talk to someone straight away, you can call one of the services listed below.

Lifeline

131 114

Kids Help Line

1800 551 800

Domestic Violence and Sexual Assault Helpline

1800 200 526

Lifeline's Just Ask Mental Health Information Line

1300 131 114 (rural areas only)

Mensline Australia

1300 789 978

NSW Rural Mental Health Support Line

1800 201 123

Youth Line

(02) 9633 3666



Resources

Here is a list of some resources that might help you with your discrimination complaint.

The ADB resources are on the ADB website, www.lawlink.nsw.gov.au/adb, or you can call them on (02) 9268 5544 or 1800 670 812.

The HREOC resources are on the HREOC website, www.hreoc.gov.au, or you can call them on (02) 9284 9600 or 1300 369 711.

RACE

Anti-Discrimination Board (ADB) publications

Race discrimination – your rights (Factsheet)

Aboriginal and Torres Strait Islander discrimination – your rights (Factsheet)

Treated unfairly because you are an Aboriginal or Torres Strait Islander person? (Factsheet)

Human Rights and Equal Opportunity Commission (HREOC) publications

NSW Tracking Your Rights (A manual and a training package aimed to assist Aboriginal and Torres Strait Islander peoples to use anti-discrimination laws)

Race for Business (video,

training manual and detailed guidelines for employers on the Race Discrimination Act, plus a brochure in plain English aimed at small business)

Complaints under the Racial Discrimination Act (Factsheet)

Guide to the Racial Discrimination Act 1975 (Factsheet)

Information on landmark cases under the Racial Discrimination Act (Factsheet)

Information about complaints conciliated under the Racial Discrimination Act (Factsheet)

Guide to the Racial Hatred Act (Factsheet)

OTHER RESOURCES

Racism No Way (www.racismnoway.com.au): a website with information on racial discrimination for teachers and students



SEX, SEXUAL HARASSMENT, PREGNANCY, MARITAL STATUS, AND FAMILY OR CARERS' RESPONSIBILITIES

ADB publications

Sex discrimination – your rights (Factsheet)

Harassment & sexual harassment – your rights (Factsheet)

Pregnant women and discrimination – your rights (Factsheet)

Marital Status discrimination – your rights (Factsheet)

Carers' responsibilities discrimination – your rights (Factsheet)

HREOC publications

Complaints under the Sex Discrimination Act (Factsheet)

Guide to the Sex Discrimination Act (Factsheet)

Getting to know the Sex Discrimination Act: A guide for young women (Guide)

Harsh Realities: Case Studies of Sex Discrimination in the Workplace (Case studies)

Harsh Realities 2: Further Case Studies on Sex Discrimination in the Workplace (Case studies)

Sexual harassment: Knowing your rights (Brochure)

Sexual Harassment in the Australian workplace (web resource page)

20 Years On: The Challenges Continue... Sexual harassment in the Australian Workplace (Report)

A Bad Business: Review of Sexual harassment in employment complaints 2002 (Report)

Sexual Harassment: A Code of Practice (Guidelines)

Sexual Harassment and Educational Institutions (Guidelines)

Pregnancy Guidelines (Guidelines for pregnancy and work)

Discrimination and Pregnant Workers (Brochure)

DISABILITY

ADB publications

Disability discrimination – your rights (Factsheet)

Infectious diseases discrimination – your rights (Factsheet)

Intellectual disability – Unfair treatment ... what to do (Photo story and slideshow)

HREOC publications

Know your rights under the Disability Discrimination Act (Brochure)

Complaints under the Disability Discrimination Act (Factsheet)

A Brief Guide to the Disability Discrimination Act (Guide)

Frequently asked questions on employment (FAQ)



OTHER RESOURCES

NSW Disability Discrimination Legal Centre: Using Disability Discrimination Law in New South Wales (Guide)

National Children's and Youth Law Centre: Disability Discrimination in Schools: Collection of case studies conducted in Australian schools (Report)

AGE

ADB publications

Age discrimination – your rights (Factsheet)

Age discrimination and job advertisements (Factsheet)

HREOC publications

Complaints under the Age Discrimination Act (Factsheet)

All about age discrimination (Brochure)

Age Matters: a report on age discrimination (Report)

SEXUAL PREFERENCE

ADB publications

Lesbian discrimination – your rights (Factsheet)

Homosexual discrimination – your rights (Factsheet)

HREOC publications

Human Rights for Australia's Gays and Lesbians (Report)

Know your rights: human rights and the Human Rights and Equal Opportunity Commission Act (Factsheet)

Complaints about discrimination in employment under the HREOCA (Factsheet)

Reporting process for complaints about human rights breaches (Factsheet)

The HREOCA reporting process for complaints about discrimination in employment or occupation (Factsheet)

OTHER RESOURCES

Women's Legal Services: Lesbians and the Law (Booklet)

TRANSGENDER STATUS

ADB publications

Transgender discrimination – your rights (Factsheet)

Transgender discrimination – guidelines for employers and service providers (Factsheet)



VILIFICATION AND RACIAL HATRED

ADB publications

*Vilification – your rights
(Factsheet)*

HREOC publications

*Guide to the Racial Hatred Act
(Factsheet)*

GENERAL

ADB Factsheets

*Discrimination and the Anti-Discrimination Board of NSW
- General factsheet*

*How to deal with discrimination,
unfair treatment or harassment*

*What you need to know about
anti-discrimination - simple
English factsheet*

Complaining to the Anti-Discrimination Board

*Discrimination, EEO & affirmative
action*

Victimisation - your rights

*Community languages
(Information about discrimination
in a number of languages)*

ADB guidelines

*Anti-Discrimination and EEO
Guidelines for Managers, Team
Leaders and Supervisors*

*Discrimination, Harassment
& EEO Guidelines for non-
supervisory staff*

Grievance procedure guidelines

Harassment in the workplace

Hoteliers guidelines

*NSW Anti-Discrimination and
EEO Guidelines for small*

business Owners and Managers

Union representatives' guidelines

Other ADB publications

The ADB Guarantee of Service

Sample policies package which
includes sample:

EEO policy;

harassment policy;

harassment survey;

grievance procedure;

*grievance handling guidelines
for contact officers; and*

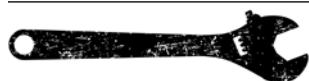
*grievance handling guidelines
for managers.*

The ADB also publishes *Equal Time* every quarter (4 times a year). It includes information about the ADB's activities and policies.

HREOC Brochures and Factsheets

*The Complaint Guide (available
in a number of languages)*

*Human Rights and Equal
Opportunity Commission
Brochure (available in a number
of languages)*



Lodge a complaint (including an online complaint form)

Know your rights: human rights and the Human Rights and Equal Opportunity Commission Act

Complaints about discrimination in employment under the HREOCA

Reporting process for complaints about human rights breaches

The HREOCA reporting process for complaints about discrimination in employment or occupation

Election of jurisdiction: information about choosing state or commonwealth law

Taking your discrimination case to court

Employment Related Discrimination Case Studies

Information for complainants - Disability Discrimination Act, Racial Discrimination Act, Age Discrimination Act and Sex Discrimination Act

Information for respondents - Disability Discrimination Act, Racial Discrimination Act, Age Discrimination Act and Sex Discrimination Act

Information for complainants - Human Rights and Equal Opportunity Commission Act

Information for respondents

- Human Rights and Equal Opportunity Commission Act

Conciliation - information for the parties.

Frequently asked questions and answers about complaint handling.

Other HREOC resources

Federal Discrimination Law

(this book and its supplements cover all federal discrimination law; they are available online or in hard copy. Make sure you get the latest version)

Pathways to Resolution: The conciliation process of the Human Rights and Equal Opportunity Commission

(this video/DVD provides useful information about the conciliation process for people who have made, or are thinking about making a complaint)

The charter of services for customers of the Commission's complaints service

Register of conciliated complaints; 'Good practice, good business' resources for employers - includes website, cd-rom and a range of brochures

You can also get anti-discrimination and harassment posters from the ADB and HREOC.



OTHER WEBSITES

LawAccess Online

(www.lawaccess.nsw.gov.au)

Law Stuff website

(www.lawstuff.org.au)

The discrimination topic covers:

Discrimination in the Workplace

Where to lodge a complaint
about discrimination

Discrimination Laws

When can I rent a flat or house?

Federal Discrimination
Complaints

OTHER BOOKS

Nick O'Neill, Simon Rice and
Roger Douglas, *Retreat from
Injustice: Human Rights Law in
Australia*, Federation Press, 2004

Chris Ronalds and Rachel
Pepper, *Discrimination: Law and
Practice*, Federation Press, 2004







*Glossary
and index*

Glossary

ADB. The Anti-Discrimination Board of New South Wales.

ADT. The NSW Administrative Decisions Tribunal.

Administrative Decisions Tribunal (ADT). A NSW tribunal (similar to a court) which runs discrimination law cases that have not been resolved at the ADB.

Affidavit. A written statement filed in court by a witness to help someone prove their discrimination case. An affidavit can only contain factual information about what that witness saw, heard or felt, not their opinions.

Affidavit of service. A statement confirming that a person has served a court document on a particular person (given it to them): it includes the place, date and time when the document was served.

Affirm. Someone who writes an affidavit must confirm that what's in the affidavit is true and correct. They can do this either by swearing on a book of their religion (such as the Bible or the Koran) or by affirming it. They have to do this in front of an authorised person.

Age Discrimination Act. A federal law that says that age discrimination is against the law in some situations. This law covers everyone in Australia.

Annexure. A document that a person attaches to an affidavit.

Anti-Discrimination Act. A NSW law that says that discrimination, harassment, vilification and victimisation are against the law in some situations. It only covers people in New South Wales.

Anti-Discrimination Board of New South Wales (ADB). A NSW government organisation that helps people in New South Wales sort out complaints of discrimination, harassment, vilification and victimisation. You have to make a complaint to the ADB before you can take it to the ADT.

Appeal. If you think the original decision in your case was wrong, you can take your case to a higher court or tribunal (appeal your case), and they then decide whether the original decision was right or wrong.

Appeal Panel. If you appeal a decision made by the ADT, it is heard by an Appeal Panel, which is a group of three tribunal members.

Applicant. What you are called when you take a discrimination, harassment, vilification or victimisation case to the ADT, the FCA or the FMC.

Application form. The document you have to prepare and file in the FMC registry or the FCA registry to start court proceedings.

Applying for leave. Asking the ADT for permission for your case to go ahead.



Area. The name for the area of public life that you have been treated unfairly in. Areas include employment, goods and services, and education. You can't make a complaint under discrimination law unless your unfair treatment happened in one of the listed areas.

ASIC. The Australian Securities and Investment Commission.

Australian Securities and Investment Commission (ASIC). A federal government organisation where people and organisations register the trading name and legal name of their business.

Authority to accept service. When a person has been given permission by another person to receive court or tribunal documents on the other person's behalf. For example, an employer can give an employee authority to accept service of documents addressed to the company.

Authorised person. A person who is allowed to witness someone swearing or affirming and signing an affidavit. Barristers, solicitors and justices of the peace are authorised persons.

Award. The word judges and magistrates use to describe giving something to the person who wins a case: they would say, 'I award the Applicant \$X as compensation for the hurt, humiliation and distress she suffered because of the unlawful discrimination.'

Carer's responsibilities. This is one of the grounds under discrimination laws. You might say that you have been treated unfairly because you have to look after or care for someone (a child, for instance).

Case conference. A conference or meeting held at the ADT and run by a tribunal member, who looks at how the case is going and gives both sides instructions about anything that needs to be done. You might have a few case conferences during the ADT process.

Closing statement. The last step in a court or tribunal hearing, where each party (side) gets to give the magistrate or tribunal members a summary of their case and why they should win.

Community Legal Centre. A non-government community-based organisation that provides free legal services for people, especially people who are disadvantaged.

Compensation. Money people who take legal action might get to compensate (make up) for the way they were treated.

Complainant. What you are called when you make a complaint of discrimination, harassment, vilification or victimisation to the ADB or HREOC.

Conciliation. Where a neutral third person, someone who is not involved in the dispute, runs a meeting between a complainant and a respondent to help them try to resolve the dispute without having a hearing. In discrimination cases in New South Wales, the conciliation process is done through the ADB or HREOC.



Conciliator. The person (in discrimination cases in New South Wales, it will be someone who works for the ADB or HREOC) who runs your conciliation conference and helps you try to resolve your dispute with the respondent.

Conciliation conference. The meeting that a conciliator from the ADB or HREOC runs to help you and the respondent try to resolve your dispute.

Confidentiality clause. The part in a settlement agreement which says that you and/or the person or organisation you are complaining about agree not to tell other people about the details of the settlement agreement.

Costs. Legal fees.

Costs order. An order made by a court or tribunal saying that one party (side) in a case has to pay for some or all of the other side's legal fees.

Costs follow the event. A phrase that means the person who loses a case has to pay the winner's legal fees.

Court documents. Paperwork filed in a court like application forms, affidavits, subpoenas, and statements.

Cross-examination. The second part of a witness giving oral (spoken) evidence in a court or tribunal hearing. In this part, the side that did not call the witness gets to ask the witness questions. It comes after examination-in-chief.

Damages. The amount a court orders one party (side) to pay another as compensation for some sort of injury.

Decline. The word used by the ADB when they decide not to accept your discrimination, harassment, victimisation or vilification complaint for investigation. This phrase is also used by the ADB if they decide during the investigation stage that your complaint should not go any further.

Defence. What a respondent says about why your discrimination, victimisation, vilification or harassment complaint or case should not succeed: it's when they disagree with you and say they haven't broken any laws.

Deponent. A person who writes, signs and swears (or affirms) an affidavit.

Direct discrimination. A type of unlawful discrimination where you have been treated worse than someone else because of a ground (age, race, sex, etc).

Directions. Instructions given to parties (sides) by a tribunal member (if the case is in the ADT) or a magistrate (if the case is in the FMC or FCA) about what the parties have to do to prepare for the hearing, and when they have to do it by.

Disability Discrimination Act. A federal law that says that disability discrimination is against the law. This law covers people everywhere in Australia.

Dismissed. The word the ADT uses at a leave hearing to say they are not accepting your case, or at a final hearing to say you have lost your case.



Electing jurisdiction. Choosing whether you will make a discrimination complaint through the state system (to the ADB) or through the federal system (to HREOC).

Enforcing the agreement. Making a person who has signed a settlement agreement do what they have agreed to do.

Equal Opportunity Division. The section of the NSW ADT that deals with discrimination, harassment, vilification and victimisation cases.

Equal Opportunity Division First Case Conference Result Sheet. A document prepared by a tribunal member of the ADT after the first case conference. It summarises the complaint and what happened at the first case conference, and includes the timetable that both parties (sides) have to follow from there on.

Evidence. Documents presented, or oral testimony (spoken answers to questions) witnesses give, to a court or tribunal at a hearing.

Examination-in-chief. The first part of a witness giving oral (spoken) evidence in a court or tribunal hearing. In this part, the party (side) that called the witness gets to ask the witness questions.

Exemptions. The name used in discrimination laws to describe the organisations or situations that are not covered by those laws. You might not be able to make a complaint under discrimination laws if an exemption applies.

Federal Court of Australia. A high-level federal court that decides complicated discrimination law cases for people (throughout Australia) when their cases have not been resolved at HREOC.

Federal Magistrate. A magistrate (like a judge) who runs hearings and decides cases in the FMC.

Federal Magistrates Court (FMC). A lower-level federal court that decides less complicated discrimination law cases for people (throughout Australia) when their cases have not been resolved at HREOC.

Federal system. Federal (national) laws and court processes that apply to people everywhere in Australia. You can make a discrimination law complaint in the federal system.

Filing documents. Giving (or 'lodging') documents to a court or tribunal registry (office).

Filing fees. Fees you have to pay for lodging documents in a court registry.

Final hearing. The final process in the FMC or ADT, where a discrimination, harassment, vilification or victimisation case is heard by a magistrate or tribunal members in a court or tribunal. At the end of the hearing, the magistrate or tribunal members make a decision about whether or not unlawful discrimination happened, and if it did, what should be done about it.

First case conference. The first tribunal date set after a complaint is referred to the ADT (from the ADB).



First court date. The first time someone who has taken their discrimination case to the FMC has to actually go to court. On this date, a magistrate will organise the case and give both parties (sides) directions about what they have to do to prepare for the hearing.

FCA. Federal Court of Australia

FMC. The Federal Magistrates Court.

Future expenses. A type of financial compensation you ask the respondent to give you, to cover costs you expect you will need to pay in the future because of the discrimination (such as medical bills).

General damages. A type of financial compensation you ask the respondent to give you because of the hurt, humiliation and distress their behaviour has caused you.

Ground. The word used in discrimination law to describe the reason you have been treated unfairly. Grounds include sex (being male or female), age (being too young or too old), pregnancy, disability and race. To make a complaint under discrimination laws, you must have a ground.

Hearing. A public session in a court or tribunal where a judge, magistrate or tribunal member makes a decision about a person's case.

HREOC. The Human Rights and Equal Opportunity Commission.

Human Rights and Equal Opportunity Commission (HREOC).

A federal government organisation that helps people throughout Australia try to sort out complaints of discrimination, harassment, victimisation and vilification. You must make a complaint to HREOC before you can take a discrimination case to the FMC or FCA.

Human Rights and Equal Opportunity Commission Act. A federal law that covers some parts of discrimination law. Federal laws cover people everywhere Australia.

Indirect discrimination. A type of discrimination where a rule or policy which appears to apply equally to everyone is actually unfair because it disadvantages one group of people, for example, women, people with a disability, etc. The rule or policy must be 'unreasonable' for this discrimination to be unlawful.

Information Sheet. A form you have to fill in and file when you lodge an Application Form in the FMC.

Interim/Interlocutory order. A decision made by a magistrate in the FMC that keeps things the way they are until the case is finished.

Interlocutory hearing. A hearing to decide whether you will get the interim/interlocutory orders you asked for.

Investigation phase. The period when the ADB or HREOC investigates a discrimination, harassment, vilification or victimisation complaint. It involves deciding whether you have a valid complaint and whether discrimination laws might have been broken, and getting both sides of the story.



Judicial member. A tribunal member of the ADT who is a lawyer or a magistrate.

LawAccess NSW– A free government telephone legal information and referral service for people living in NSW.

Leave. Permission for your case to go ahead in the ADT: you need to apply for this if the ADB declined your complaint during the investigation stage.

Leave hearing. The ADT hearing where you ask the ADT's permission to have your case go ahead in the ADT.

Legal Aid Commission of New South Wales. A NSW government organisation that provides legal services for people in New South Wales who are socially and economically disadvantaged.

Legal entities. A legal entity is a person or organisation that legal action can be brought against. Individuals and companies are legal entities.

Liable. Being held legally responsible for breaking the law.

Made out. A court or tribunal might use this to say you have won your case: 'The complaint is made out.'

Mediation. Where a neutral third person, someone who is not involved in the dispute, runs a meeting with the parties (sides) in a court case to help them try to resolve the dispute without having a court or tribunal hearing. Mediation is available in the ADT and the FMC.

Mediator. The person (in discrimination cases in New South Wales, it is someone who works for the FMC or the ADT) who runs a mediation.

Negligence. Negligence is where someone owes you a duty of care (has responsibility to look after you in some way, such as your employer making sure all occupational health and safety rules are followed at their/ your workplace) but breaches (fails in) that duty of care, and you suffer damage because of that breach.

Negotiate. Bargain with the respondent or their legal representative to try to get the results you want.

Non-judicial member. A tribunal member of the ADT who is a *not* a lawyer or a magistrate.

Notice of Discontinuance. If you decide to withdraw your application to the FMC, you have to fill in this form, then file it with the FMC and serve it on the respondent and HREOC.

Notice of Termination. A document you might get from HREOC telling you that they cannot take your complaint any further. You have 28 days from the date on the Notice of Termination to take your case to the FMC.

Oath. A promise a person makes on a book of their religion (such as the Bible or the Koran) that what they have written in an affidavit, or what they are about to say in a hearing, is true and correct.

Occupational health and safety. Legal regulations or standards about what employers and employees have to do to make sure a workplace is safe.



Onus of proof. The requirement to prove a case to a court or tribunal. In discrimination cases, the onus of proof is on the person making the complaint: they have to prove they were unlawfully discriminated against, harassed, victimised or vilified.

On the balance of probabilities.

This is the standard (level) of proof needed in discrimination, harassment, vilification and victimisation cases. Applicants must convince a court or tribunal that on the balance of probabilities (meaning that it is more likely than not), discrimination laws were broken.

Order. Something a court or tribunal tells a party (side) to do. Orders can be made at any time in a court or tribunal process.

Out of-pocket expenses. Money you ask the respondent to give you to pay you back for money you have spent because of the discrimination (medical expenses, for example).

Party. People or organisations involved in legal proceedings. The applicant and the respondent in discrimination law cases are both called parties.

Particulars. Details about your case.

Personal service. Serving documents in person (handing the document to the person), rather than sending them in the mail or by fax, etc.

President's Report. The documents the ADB sends to the ADT after it has referred a complaint to the ADT. The President's Report includes the documents the complainant and respondent gave to the ADB and the President's Summary of Complaint.

President's Summary of Complaint. A written summary prepared by the ADB about a discrimination, harassment, vilification or victimisation complaint. It is sent to the ADT (as part of the President's Report) if a complaint is not resolved at the ADB and the complaint is referred to the ADT.

Proposed terms of settlement. See Settlement proposal.

Proven. A word a court or tribunal can use to say you have won your case: 'The complaint is proven.'

Racial Discrimination Act. A federal law that says that race discrimination is against the law. This law covers everyone in Australia.

Reduced earning capacity. A legal phrase used to say that you are now less able to work, or to look for work. You might ask the respondent to compensate you for this if it was caused by them discriminating against you.

Re-examination. The third and final part of a witness giving oral (spoken) evidence in a court or tribunal hearing (after examination-in-chief and cross-examination). In this part, the party who called the witness gets to ask the witness questions again. These questions are generally about something the other side asked in cross-examination.

Referral. When the ADB sends a complaint to the ADT.

Registrar. A senior person who works for the ADT or the FMC.

Registry. The office of a court or tribunal that deals with members of the public.



Remedy. What is given to the winner in a discrimination case by a court or tribunal.

Request for particulars. A written document one party (side) gives to the other to ask them for more details about their case.

Respondent. The person or organisation you have made a discrimination, harassment, victimisation or vilification complaint about to the ADB or HREOC, or who you are running a case against in the ADT, the FMC. that is, the other side.

Response Form. A document or form from the FMC which a respondent might file and serve to tell you and the court that they will be defending the case (arguing against you).

Rules of evidence. Legal rules about what is and is not allowed to be presented to a court or tribunal as evidence (some things are not allowed because they are opinion, not fact, for instance).

Serving documents. Giving documents that have been filed in a court or tribunal to someone.

Settlement agreement. A document that lists what you and the person or organisation you are complaining about have agreed to do to resolve your complaint. A settlement agreement is signed by everyone involved in the complaint and is a legally binding contract.

Settlement proposal. A list of what results you want to get out of your complaint. financial compensation, an apology, etc. You give your settlement proposal to the respondent before or at the conciliation conference or mediation.

Sex Discrimination Act. A federal law that says that sex discrimination, including pregnancy discrimination and sexual harassment, is against the law. This law covers everyone in Australia.

Sexual harassment. This is a ground for making a complaint under discrimination laws. Sexual harassment is defined as unwelcome sexual behaviour that makes you feel offended, humiliated or intimidated. It also has to be reasonable to expect that reaction, in the circumstances.

Shuttle negotiation. Where during a conciliation conference at the ADB or HREOC, the conciliator moves between the room where you are sitting and the room where the respondent is sitting, and talks to you both about ways to resolve your dispute.

Standard of proof. The level of proof you must reach in a court case to win the case. It is different in different kinds of cases. The standard of proof under discrimination laws is 'on the balance of probabilities', which means the court or tribunal must believe that what you happened is 'more likely than not' to be discrimination.



State system. Laws and court processes that apply to people in a particular state. You can make a discrimination law complaint in the NSW state system.

Subpoena. A document from a court that tells people to go to court to be a witness in a case ('subpoena to attend') or to give documents they have to the court ('subpoena to produce documents').

Substantiated. A word a court or tribunal can use to say you have won your case: 'The complaint is substantiated.'

Summons. A document from a tribunal that tells people to go to a tribunal hearing to be a witness ('summons to attend') or to give documents they have to the tribunal ('summons to produce documents').

Supreme Court of New South Wales. A high-level state court that deals with many types of cases in New South Wales.

Swear. Someone who writes an affidavit must confirm that what's in the affidavit is true and correct. They can do this by either affirming it or by swearing on the book of their religion (such as the Bible or the Koran). They have to do this in front of an authorised person.

Terminated. The word HREOC uses to tell you they cannot take your complaint any further for whatever reason. The ADB also uses the word 'terminated', but only if the reason why they won't take the complaint further is because they don't think it can be settled at the ADB.

Time limit. A deadline for starting legal action. Different types of legal actions have different time limits. The time limit for making a complaint under discrimination laws is 12 months from when the discrimination, harassment, victimisation or vilification happened.

Tribunal members. The people from the ADT who run hearings and make decisions about discrimination, harassment, victimisation and vilification cases.

Unfair dismissal. When you are dismissed from your job and the dismissal is 'harsh, unjust or unreasonable'. In some cases you can take legal action for unfair dismissal.

Unlawful discrimination. Discrimination or unfair treatment which is against the law: that is, unfavourable treatment, on a ground, and in an area of public life, and where the respondent has no defence.

Unlawful dismissal. When you are dismissed from your job for a 'prohibited reason'. Prohibited reasons include being dismissed because of your racial background, disability, religion, etc. In some cases you can take legal action for unlawful dismissal.

Vicarious liability. A legal phrase which means that employers are generally responsible (liable) for discrimination, harassment, victimisation and vilification that happens in their workplace.



Victimisation. Where someone treats you badly because they know (or suspect) that you have made, or are going to make, a complaint of discrimination. You can make a complaint of victimisation under discrimination laws.

Vilification. Vilification is when someone says or does something in public that could cause other people to ridicule or hate a particular group of people (such as Aboriginal people). You can make a complaint under discrimination laws about some types of vilification.



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