

Complaint Process

Matters which appear to be complaints under the *Equal Opportunity Act 1984* (the Act) are investigated and if appropriate conciliated.

What is a complaint?

A complaint is an allegation of unlawful discrimination, harassment or victimisation which has occurred in Western Australia, on a ground and in an area covered by the Act. The complaint should be lodged by the person who experienced the alleged discrimination or harassment.

The incident or incidents in the complaint must have occurred within 12 months before the date the complaint is lodged.

In some circumstances the Western Australian Equal Opportunity Commissioner (the Commissioner) may rule there is good reason, or good cause, to include incidents that occurred more than 12 months before the complaint is lodged, but only if the complainant has shown sufficient good reason or 'good cause' for those incidents to be included.

Making a complaint

A complaint must be provided in writing to the Equal Opportunity Commission (the Commission) and can be submitted using the on-line complaint form, or by sending an email or letter. The complaint should provide details of allegations, including when and what happened and the party (the business and/or person) who allegedly discriminated or harassed, plus any supporting documents.

Onus of proof

Under the Act the person who makes the complaint has to prove the discrimination or harassment happened, and this includes ensuring the complaint is supported by evidence and is arguable.

The Act provides for exceptions and where a party relies on an exception under the Act, that party has to prove the exception applies to the circumstances.

Confidentiality

The Commissioner and staff are required by the Act to protect the confidentiality of all complaints. This means identifying information cannot be revealed to anyone other than parties to the complaint or those required to provide evidence about the complaint. Identifying information cannot be given to any other third party including the media as confidentiality can assist in the resolution of complaints.

Victimisation

It is unlawful for anyone to threaten, harass or subject a person to detriment because they have made, or intend to make a complaint under the Act. This protection is also afforded to anyone giving evidence about a complaint, or someone who complains about unlawful discrimination, even if they did not complaint to the Commission.



The Commissioner for Equal Opportunity provides information about the Act, investigates and endeavours to resolve complaints, conducts community education and training and develops programs to promote equal opportunity.

Complaint outcomes

Conciliated

Is when all parties reach a satisfactory agreement about how to resolve the complaint either outside or within a conciliation conference.

Withdrawn

Is when a complainant pulls out of the complaint process at any time.

Lapsed

Is when the complainant fails to maintain contact and the complaint file is closed or does not allow it to progress.

Dismissed

Is when the Commissioner decides at any stage that the complaint is misconceived, lacks substance, frivolous, vexatious or relates to an act that is not unlawful by reason of a provision of the Act and dismisses the complaint.

Commissioner Referred

Is when the Commissioner refers the complaint to the State Administrative Tribunal if a complaint appears to have substance and attempts at conciliation have failed.

Complainant Referred

Is when the Commissioner dismisses the complaint and the complainant has sought a referral to the State Administrative Tribunal.

Investigation

The complaint will be assessed to see if it is covered by the Act. If it is not covered, information about why the complaint is not accepted is provided to the complainant along with what other organisations may be able to assist.

The purpose of an investigation is to gather information about the complaint. The officer may ask for additional information such as the dates of specific incidents, documents, CCTV, audio and video recordings, medical information relevant to the complaint, witness statements and medical information. The Commissioner can require any person to produce relevant information about a complaint.

The Commissioner may dismiss a complaint at any stage if satisfied the complaint is misconceived, frivolous or vexatious, lacks substance, or relates to an act that is not unlawful because of a provision of the Act.

Conciliation

Where the Commissioner has not dismissed the complaint and is of the opinion the complaint may be resolved, a conciliation conference may be scheduled. The conciliation process is facilitated by a conciliation officer. Conciliation officers do not take sides in the complaint, advocate for or represent any of the parties.

Conciliation conferences may be held face-to-face, by telephone or video conference.

Conferences provide parties with the opportunity to discuss their views on the complaint and to see if a mutual resolution can be achieved. The discussions during the conciliation process are 'without prejudice' to enable the parties to speak freely.

Disclaimer

The material in this brochure is not intended to be legal advice. The Commissioner expressly disclaims any liability in respect to anything done or not done to any person in reliance upon any of the contents of this publication.

The Government of Western Australia
www.wa.gov.au

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How to contact the Commission

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