

Discrimination Toolkit

Your guide to making a
discrimination complaint

Edition 4



Discrimination Toolkit: Your Guide to Making a Discrimination Complaint

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Foreword

Each and every person in Australia has a right to be treated equally and not be discriminated against.

Discrimination can be intentional or unintentional, but for the person who has been discriminated against the effect can be profound. Attitudes underpinning discrimination can also lead to harassment, vilification, public acts that threaten or incite violence, and victimisation.

The legal system exists to ensure people are protected from discrimination and similar behaviour, but also that people who undertake discrimination are held to account. To speak up can help yourself and others.

It is not easy. I am a quadriplegic from a spinal cord injury playing rugby 26 years ago. As a wheelchair user, I am often required to negotiate access to premises. However, inclusion is more than just physical access and, on occasion, I have had to deal with difficult situations in accessing public transport, employment and education.

When I was younger, I would often remain silent when people made a comment or behaved in a way that was discriminatory. It is important you do not. In part, the reason I did not speak up was that I was unaware of my rights or how to make a complaint. The *Discrimination Toolkit – Your guide to making a discrimination complaint* provides invaluable assistance in making a complaint.

In time, I have realised the rights individuals have to make a complaint and why the ability to make a complaint is important. As a solicitor and a barrister, I always admired my clients

who spoke up when they had been mistreated. Please do so. Complaints can often be resolved in a way that ensures individuals are treated with dignity and respect.

Thanks to Legal Aid NSW for updating the 2021 edition of the *Discrimination Toolkit – Your guide to making a discrimination complaint*. The Toolkit is a critical and important resource.

Dr Ben Gauntlett
Disability Discrimination Commissioner
October 2021

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They include Graeme Innes, (Disability Commissioner from 2004–2014), the Australian Human Rights Commission, the Federal Circuit Court of Australia, Anti-Discrimination NSW, the NSW Civil and Administrative Tribunal, Ashurst, Clayton Utz, and principal contributors Kingsford Legal Centre, Legal Aid NSW and Central Tablelands and Blue Mountains Community Legal Centre (previously Elizabeth Evatt Community Legal Centre).

The 2021 edition was updated by Legal Aid NSW.

About this Toolkit

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 lawyers who want to help clients who are experiencing discrimination.

The Toolkit has five sections:

1. Discrimination basics

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

2. 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 is best for you. This section also takes you through the steps involved in making and running a discrimination complaint.

3. 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 is involved if your case does get that far. This section also gives you some basic information on court procedures and rules.

4. Getting help

looks at how you can get legal representation or advice. It has a list of contacts for legal and non-legal help, and places where you can get more information about discrimination if you need it.

5. 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 stressful, and sometimes the results aren't exactly what you hoped for. But using discrimination law and standing up for your rights can be empowering and worthwhile. There have been a lot of positive changes in the way people are treated because of our discrimination laws. Freedom from discrimination is a basic human right. We hope this Toolkit will help you navigate the discrimination law system so you can stand up for that right.

Do you need help to contact us?



If you need an interpreter, call the Translating and Interpreting Service (TIS National) on **131 450** (9am–5pm) and ask for LawAccess NSW.

Do you find it hard to hear or speak?



If you are deaf, or have a hearing or speech impairment, contact us through the [National Relay Service NRS](#). Ask for LawAccess NSW on **1300 888 529**.

Disclaimer

This publication is a general guide to the law. You should not rely on it as legal advice, and we recommend that you talk to a lawyer about your situation. The information is correct at the time of printing. However, it may change. For more information, contact LawAccess NSW on 1300 888 529.



Discrimination basics

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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 feel 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

What are the grounds of unlawful discrimination?

Step 1: 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. Under discrimination law, these reasons are called 'grounds', or 'characteristics'.

Unlawful discrimination happens when you are treated unfairly because you have one of these characteristics.

The grounds of discrimination covered by state discrimination laws and federal discrimination laws are similar, but not exactly the same. Sometimes the way a ground is defined will mean that your situation is covered by the federal laws but not the state laws, or vice versa. Sometimes these differences can be tricky to work out.

Read the checklist below, which covers all the 'grounds' for discrimination under state and federal discrimination laws. Tick any of the boxes that apply to you.

Grounds checklist

I have been treated unfairly or harassed because of my:

- ☐ Race
- ☐ Sex
- ☐ Marital, domestic or relationship status
- ☐ Pregnancy or potential pregnancy
- ☐ Breastfeeding
- ☐ Homosexuality or other sexual orientation
- ☐ Gender identity (including trans, transgender and gender diverse)
- ☐ Intersex status
- ☐ Age
- ☐ Disability (or disability aid or assistance animal)
- ☐ Carer's or family responsibilities
- ☐ Association with someone who has one of these characteristics

OR I have experienced:

- ☐ Sexual harassment
 - ☐ Vilification
 - ☐ Victimisation
 - ☐ Public threats of violence
-

If you haven't ticked any boxes, it means you probably don't have a ground for a discrimination complaint.

If you have ticked one or more boxes, move on to **Step 2** on >> **page 18**.

- **Race discrimination** includes being discriminated against because of your race, colour, descent, nationality, ethnic or ethno-religious origin.
- **Sex discrimination** is being discriminated against because of your sex, including because you are male or female.
- **Marital or relationship status discrimination** is being discriminated against because you are married, married but living separately, single, divorced, widowed or in a de facto relationship. It applies to opposite sex and same-sex relationships.
- **Pregnancy discrimination** is being discriminated against because you are pregnant or might become pregnant.
- **Homosexuality discrimination** is being discriminated against because you are gay or lesbian, or because someone thinks you are gay or lesbian, or because you are a relative, friend or colleague of someone who is gay or lesbian.
- **Sexual orientation discrimination** is being discriminated against because of your sexual orientation, including because you are gay, lesbian or heterosexual.
- **Intersex status discrimination** is being discriminated against because you have physical, hormonal or genetic features that are neither wholly female or wholly male, are a combination of female and male or are neither female nor male.
- **Gender identity (including transgender discrimination)** is being discriminated against because of your gender-related identity, appearance or mannerisms. It includes being treated unfairly because someone assumes you have a particular gender identity or because you are the relative, friend or

colleague of a person with a particular gender identity. Transgender discrimination includes being treated as your former sex or having to follow a rule as your former sex.

- **Age discrimination** is being discriminated against because you are too young or too old, or because someone thinks you are too young or too old. It is also against the law to force you to retire because of your age.
- **Disability discrimination** and harassment includes being discriminated against or harassed because of a physical, intellectual, psychiatric, sensory or other disability, illness or disease. It includes a disability you have now, have had in the past, might have in the future or which someone assumes you have. Discrimination against people who have a carer, assistant, assistance animal (such as a guide dog) or a disability aid is also against the law.
- **Carer's or family responsibility discrimination** includes being discriminated against because you are responsible for caring for (or guardian for) a dependent child or step-child or caring for relatives such as an immediate family member, spouse or former spouse, parent or step-parent, brother or sister, step-brother or step-sister, grandparent or step-grandparent, grandchild or step-grandchild.

Mark works in a factory and doesn't get on with his boss, Greg. Mark says that Greg picks on him, hassles him about taking breaks and won't give him any overtime. Mark thinks Greg doesn't like him because he is more outgoing and popular than Greg.

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

Sometimes you might be covered by discrimination law even if you don't actually have one of the characteristics or 'grounds' that is protected. If someone treats you unfairly because they believe you have one of these characteristics (even if you don't) you might still be able to use discrimination law. For example, if your employer treats you differently because they think you have a disability, and you don't, you would have a 'ground' under discrimination law.

Jose works at a medical centre as a casual receptionist. He overhears one of the senior doctors saying to the practice manager that he doesn't think 'having a queer at the front desk is a good look'. Shortly after this Jose's shifts are reduced from four a week to one only. None of the other casuals have had their shifts reduced. Jose is not gay but believes he has been discriminated against because the bosses think he is. He has a ground to make a discrimination complaint.

Is it direct or indirect discrimination?

Under Australian discrimination law, there are two types of discrimination.

The first is called **direct discrimination**. This is where the unfair treatment is obvious – you are treated unfairly because of one of the 'grounds' or 'characteristics' compared to someone else who does not have that characteristic: for example, if someone says 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.

The second type of discrimination covered by the law is **indirect discrimination**. This is where 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 of people.

These are some examples of indirect discrimination:

- 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 minimum height and you didn't need to be that tall to do the job.
- Where an employer makes all employees work full time hours. This is likely to disadvantage workers with a disability who might not be able to work full time. It is also likely to disadvantage women with children or other family carer responsibilities, which is unlawful under NSW law.
- 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.



Eva works in retail. Team meetings have always been held once a week during lunchtime. The manager sends an email to all staff saying that team meetings will now be held at 8.00am instead of lunchtime and that attendance is compulsory. Eva has two children who need to be dropped at school every morning.

Eva could make a complaint of indirect discrimination on the grounds of her carer's responsibilities and her sex. This is because her manager is imposing a blanket rule on everyone that doesn't single anyone out but has the practical effect of

being more likely to disadvantage people caring for children and women (because women are statistically more likely than men to be the primary carers of children).

Ravi is a high school student at a public school. He has a disability that causes incontinence. This means that when he needs to go to the toilet, he has to get there quickly. There is a toilet just outside his classroom but it is kept locked. The school has a strict rule that says no students are allowed to use that toilet. They must use another toilet that is further away. Students without a disability have no problem following the rule, but students with a disability like Ravi's are not able to get to that toilet in time without embarrassing themselves. Ravi could make a complaint of indirect disability discrimination against the school.



What areas of life are covered by discrimination law?

Step 2: 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 law. Discrimination is only against the law when it happens in an area of public activity such as employment,

education, accommodation, buying goods and using services. Discrimination law does not cover your private relationships with family members, friends or flatmates, for example.

The checklist on the next page lists the areas of life where discrimination is unlawful under state and/or federal discrimination laws. Remember that some situations might only be covered by federal laws but not state laws, or vice versa.

Tick any of the boxes that describe where discrimination happened to you.

Areas checklist

I was unfairly treated in:

- ☐ Employment
- ☐ Education
- ☐ Accommodation
- ☐ Clubs and associations
- ☐ Goods and services
- ☐ Accessing public places or facilities
- ☐ The administration of Commonwealth laws and programs
- ☐ Sport
- ☐ Land

-
- **Employment** includes anything to do with work, such as applying for a job (including through employment agencies), getting a promotion, training, working conditions, losing your job or other work entitlements.
 - **Education** covers all educational institutions and qualifying bodies including schools, TAFEs, universities or colleges. It includes applying for enrolment, what happens during your studies and being suspended or expelled.
 - **Accommodation** includes renting a property, buying a property, using a hotel, hostel or care facility or dealing with a real estate agent or landlord.
 - **Clubs and associations** includes all registered clubs and associations, such as RSL or leagues clubs.



- **Goods and services** includes accessing services or buying products from government departments (eg. Centrelink, police and public hospitals) or private businesses (eg. banks, private hospitals, shops, pubs or restaurants).
- **Public places and facilities** includes accessing public space or transport, for example.
- **Administration of Commonwealth laws and programs** covers how federal laws and programs are administered and run.
- **Sport** covers trying to participate in any sporting activities, including administrative or coaching activities in sport.
- **Land** covers dealings which involve the disposal or sale of an estate or an interest in land. It does not cover land dealings under a Will or by gift.

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 anymore. This situation is covered by discrimination law because Mario has a 'ground' (disability) and an 'area' (using a service/buying goods).

Sexual harassment, vilification, victimisation and public acts threatening or inciting violence

What about sexual harassment?

Sexual harassment is a type of discrimination that 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 that you would feel offended, humiliated or intimidated by the behaviour.

It can be physical, verbal or written. Sexual harassment also has to happen in one of the areas of life covered by discrimination law.

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 scared and humiliated, and she wants to know if it is sexual harassment.

Yes, it is sexual harassment, but unfortunately it is not covered by discrimination law because it didn't happen in an area the law covers. Jasmine is not being sexually harassed in her workplace or in any of the other areas of activity covered by discrimination law. But Jasmine could contact someone at the building company and make a complaint about the unwelcome behaviour of the construction workers.

Sexual harassment includes unwanted touching, staring or perving, suggestive comments or jokes, unwanted invitations or requests for sex, sexually intrusive questions, offensive emails or having to look at sexually explicit material.

The law also covers sexual harassment through the use of technologies such as the internet, email, social networking sites and mobile phones.

Sexual harassment can include sexual behaviours that are criminal offences, such as sexual assault, indecent exposure, stalking, and obscene communications. These types of offences should be reported to the police.

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 your co-workers in adjoining work stations tell sexual jokes that you can hear and find offensive, that could be sexual harassment.

Although most sexual harassment complaints are made by women, men can also complain about unwelcome sexual behaviour that happens to them.

Musa just got an apprenticeship as a motor mechanic. One of his new workmates, Jack, decides that Musa needs to be “initiated” into the workplace. He tries to pull down Musa’s shorts when he walks past, gropes him from behind when Musa is at the workbench and leaves pornographic magazines in his bag. Jack also sends a picture of his girlfriend’s breasts to Musa’s mobile phone. Musa is scared, embarrassed and humiliated by this behaviour. He can make a sexual harassment complaint in employment against Jack and the company as well.

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.

What is vilification?

Vilification is when someone says or does something in public that could make other people ridicule, hate or have serious contempt for a particular group of people.

The *Anti-Discrimination Act (NSW)* says that the following types of vilification are against the law:

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

Here are some examples of vilification:

- A neighbour of a same-sex couple stands in the common area of their unit block and yells out "Disgusting faggots – you're 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).
- 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.

What is racial hatred?

Racial hatred is similar to racial vilification but it can be easier to prove. It happens when someone says or does something in public that could "offend, insult, humiliate or intimidate a person" because of their race, colour or national or ethnic origin. This can include things put on the internet. Racial hatred is against the law under the *Racial Discrimination Act*.

What are public acts that threaten or incite violence?

In NSW if someone does a public act that threatens or incites violence against another person or a group of people because of their:

- Race
- Religion
- Sexual orientation
- Gender identity
- Intersex status
- HIV/AIDS status

they are guilty of an offence under the criminal law.

“Inciting violence” means saying or doing things that urge other people to do acts of violence.

A “public act” includes any way of communicating to the public. It includes:

- Speaking, writing, displaying notices, playing recorded material, broadcasting.
- Social media and other electronic ways of communicating.
- Any other acts the public can see. For example, actions, gestures, wearing or displaying clothing, signs, flags, emblems and insignia.
- Spreading or sending anything to the public.

If you see someone else being threatened with violence because they have one of the those characteristics, you should report it to the police.

You can report this to the police by phone, or by going to your nearest police station. See >> **page 144** for contact details.

What is victimisation?

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

Here are some examples of victimisation:

- You make a sexual harassment complaint under discrimination law and your employer fires you after they find out you have made the complaint.
- You complain to your boss that another worker is saying racist things about you and you get moved to a lower-level position.
- 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 ticked a box in **Step 1** and a box in **Step 2**, you could have a discrimination complaint. Now move on to **Step 3** on >> **page 26**.

Exceptions and exemptions



Are there any exceptions in discrimination law?

Step 3: The third step is to find out whether a legal exception or exemption might apply in your situation. Some parts of discrimination law do not apply to some organisations or situations. Sometimes, for example, parts of discrimination law might not cover private schools, very small businesses, charities, single sex sports and religious organisations.

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

Discrimination law also recognises 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 for women or Aboriginal employment programs, are generally OK too.

Discrimination law does not override other commonsense laws. For example, the minimum legal ages for drinking alcohol, driving a car or voting are exempt from the age discrimination laws.

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

Nada works in a bakery with three other employees. 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 dyke."

This is clearly discrimination, but unfortunately Nada is not covered by discrimination law in NSW. 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 *Anti-Discrimination Act (NSW)*.

But Nada can use the federal discrimination law system because sexual orientation is a 'ground' of unlawful discrimination under the *Sex Discrimination Act (Cth)* and the law applies to businesses of any size.



What you can do about discrimination

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Know your options

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

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 might 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 directly to the organisation or person you are complaining about?

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 NSW, a community legal centre or other community organisations might also be able to give you advice and help (see from >> **page 138**).



Can I deal with a discrimination problem informally?

Yes. 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 how their behaviour has affected you and what you would like them to do to fix the problem. This will only work if you write a calm letter, not one that has abusive or aggressive words in it. A community worker or lawyer might be able to help you with this.

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.

Shanti works for a company that has a communal staff room. One day she notices a cartoon pinned to the notice board 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 is against the company's equal opportunity policy and won't be tolerated. The manager attaches the policy to the email and puts a printed copy on the lunchroom wall.

What if I want to deal with the problem more formally?

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

Lin is a single parent and 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 says Lin needs to be more flexible with her work hours and that her shifts might vary from now on. This will make it hard for Lin and her kids. 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 consider 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. Contact details for the organisations listed below are in the **Useful contacts** section on >> **page 142**.

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 Miranda this support. Miranda's parents make a written complaint to 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 her. They work out a solution without needing to make a discrimination complaint.

INDUSTRY COMPLAINTS

I want to complain about:	I can complain to:
Health service providers such as hospitals, doctors, nurses, therapists, complementary medicine practitioners in NSW	Health Care Complaints Commission
Government departments and employees	Ombudsman (Commonwealth and State)
Lawyers	Office of the Legal Services Commissioner
Insurance companies	Australian Financial Complaints Authority
Public schools and teachers	NSW Department of Education
Hotels	NSW Fair Trading
Banks and other credit providers	Australian Financial Complaints Authority
Products or traders	NSW Fair Trading or NSW Civil & Administrative Tribunal
Advertising	Ad Standards

Andre is Aboriginal. He fell and cut his arm on a piece of glass. He goes to the local GP to get stitches. During the treatment the doctor says “I suppose you were drunk when this happened. I see too many of your people in here because of the drink”. Andre leaves the surgery feeling upset. 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 race discrimination complaint under discrimination law and/or make a complaint about the doctor’s comment to the Health Care Complaints Commission.

The Anti-Discrimination NSW website (see >> **page 137**) 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. There are deadlines for taking legal action. You generally have to make complaints under NSW discrimination law **within 12 months** from when the problem happened. You generally have to make complaints under Federal discrimination law **within 24 months** from when the problem happened. There are different (and often shorter) time limits for trying other legal options, especially if your case is about your employment (see from >> **page 34**).

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 for people to victimise you – to treat you badly because you have complained about discrimination, or because someone thinks you are going to complain (see >> **page 25** 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 complaint later on.



Keep a copy of any letters or emails you send or receive, and don't throw out any other relevant 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 discrimination 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.

I want to take legal action. What are my options?

You might have different legal options for dealing with a discrimination problem. Making a complaint under discrimination law is one option. Most of this Toolkit focuses on discrimination law complaints.

If you've been treated unfairly at work, there are likely to be a few legal options available to you. Many of these options are in a law called the *Fair Work Act*.

Depending on the circumstances of your case, you might have to pick one legal option only, but sometimes you can choose more than one. Making the right decision can be very complicated. We strongly recommend that you get legal advice on what is best for you.

If you have lost your job it's very important that you get legal advice as soon as possible because the law says you have to start some types of legal action very quickly, often within 21 days.

What legal options do I have if the unfair treatment happened in my employment?

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 (or forced to quit) from your job and the dismissal is 'harsh, unjust or unreasonable'. Dismissals can be unfair for different reasons, including discrimination.

You might be able to make an unfair dismissal claim to the Fair Work Commission. Most non-government employees in NSW are covered by the *Fair Work Act*. If you are employed by the NSW Government or a Local Council you are not covered by the *Fair Work Act*. Instead, you must make an unfair dismissal claim to the Industrial Relations Commission of NSW.

The time limit to start an unfair dismissal case at the Fair Work Commission or the Industrial Relations Commission is **21 days** from the date that the dismissal takes effect. These time limits are very strict. Talk to a lawyer or your union urgently to find out if you have an unfair dismissal claim and where to make this claim.



General protections

General protections laws cover lots of problems that employees face. One of these problems is discrimination because of a prohibited ground (like age, race, sex or disability).

General protections laws also cover being treated badly (including being dismissed) because of your workplace rights. Workplace rights include things like making a discrimination complaint, taking sick leave, or asking for parental leave..

You might be able to make a complaint about general protections to the Fair Work Commission. The time limit to make a general protections claim involving a dismissal is **21 days** from the date the dismissal takes effect.



If you and your employer can't sort out your complaint when you are at the Fair Work Commission then you could apply to the Federal Court or the Federal Circuit and Family Court of Australia to hear your case and make a judgment. In court the employer has to prove they did not discriminate against you.

If you are going to apply to the court you should talk to a lawyer or your union urgently. If your complaint involves dismissal and it isn't sorted

out at the Fair Work Commission, the Commission will give you a certificate saying the Commission is satisfied that all reasonable attempts to resolve the dispute by conciliation have been unsuccessful. You only have **14 days** to apply to the court from the date the certificate is issued.

You can also make a complaint to the Fair Work Commission or apply directly to the court about general protections if you have not been fired. You have **6 years** to apply to the court about general protections from the date your workplace rights were breached.

Bullying

If you feel that you have been bullied at work you might have grounds to complain to the Fair Work Commission.

The law says bullying is where 'an individual or group repeatedly behaves unreasonably towards a worker and the behaviour creates a risk to health and safety'.

The Fair Work Commission can make an order to try and stop the bullying from happening again, but cannot make the employer pay a fine or compensation for bullying. It cannot order that a worker be given their job back.

For the Fair Work Commission to make a 'stop bullying order', there must be a risk that the worker will continue to be bullied at work. This means that the Fair Work Commission will not do anything about bullying complaints where the employment has already ended.

Underpayment of wages and other benefits

If your employer didn't pay your award wages or other benefits (like overtime), you can make a complaint to the Fair Work Ombudsman. You might be able to apply to the Federal Circuit and Family Court of Australia or the Local Court to have these benefits paid. If your employer has underpaid or not paid your superannuation benefits then you can make a complaint to the Australian Taxation Office.

Jasmine is a hairdresser who has been employed casually by Snip Happy for 2 years. When Jasmine started at Snip Happy she was an apprentice, but she is now a qualified hairdresser. Jasmine recently found out that she is pregnant and took a few days off work because of bad morning sickness. Last week, Jasmine's boss said that she was unreliable and fired her. Jasmine discovered that she was not being paid the correct wage under the Hair and Beauty Industry Award because she was still being paid as an apprentice. Jasmine gets legal advice and her lawyer tells her she may be able to make an unfair dismissal, general protections or discrimination claim about being fired. Jasmine could also start a case in the Chief Industrial Magistrates Court or Federal Circuit and Family Court of Australia for the wages she is owed. Jasmine's lawyer helps her decide which option is best for her.

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 or under the *Fair Work Act*.

If you feel that you are being treated unfairly at work because you are on workers' compensation you could have a few legal options, including a discrimination or general protections complaint. This is a complex area of law and there are strict time limits for workers' compensation claims. It is important to get legal advice as soon as possible after you are injured to work out your options.

Tip



If you take time off because of an injury, make sure you get a certificate of capacity/certificate of fitness from your doctor which covers the period you are away from work. You should give this certificate to your employer. It is illegal for your employer to dismiss you because you have taken time off work where you have provided your employer with a certificate of capacity/certificate of fitness.

Work Health Safety (WHS)

WHS laws say that employers must provide a safe and healthy workplace. If you have experienced discrimination, harassment or bullying at work, this might mean you have been exposed to an unsafe workplace. You can make a complaint about this to Safe Work 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. You might be able to take legal action against your employer for breaching your employment contract. Breach

of contract claims can be legally complicated. If you think that you might have a breach of contract claim you should speak to a lawyer.

Superannuation disability claims

Many superannuation policies include disability insurance. Many employees don't know they have that insurance. It's always a good idea to check with your superannuation fund.



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's insurance. If the insurance company refuses to pay your claim for some reason, you may be able to make a complaint to the Australian Financial Complaints Authority.

You can also see a lawyer who might be able to help you with a claim against the insurance company.

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. If you've missed a deadline it might mean that there are not as many options available to you.

- **The result you want.** Different laws can give you different outcomes. For example, if you want to get your job back, it might be best to make an unfair dismissal claim. 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 law or a general protections complaint but not through an unfair dismissal claim.
- **Your chances of success.** You might have a stronger case under one set of laws than others.
- **Costs.** Under some laws you might have to pay the other side's legal costs if you lose your case. It is very important that you get legal advice on the costs risks under different laws.

Nick is fired when his boss finds out that he is HIV+. Nick is very upset and wants to take legal action. But Nick is not well at the moment, so doesn't see a lawyer for 3 months. His lawyer tells him that he had a good unfair dismissal or general protections case against his employer, but has missed the 21 day deadline. His lawyer also tells him he has a good case under discrimination law – and that he either has 12 or 24 months from the date he was sacked to make the complaint. At the moment Nick feels that he's not up to taking any legal action and wants to focus on getting well. But he knows that he has 12 or 24 months to make a discrimination complaint if he wants to.

There is a **24 month** time limit under federal discrimination law and a **12 month** time limit under NSW discrimination law.

Sometimes you can make complaints under different laws at the same time, and other times you have to choose between laws. Once you make your choice you might not be able to change your mind later.

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!

Discrimination law complaints

I want to make a discrimination law complaint. Where do I start?

We recommend that you get some advice from a lawyer before you start legal action under discrimination law. You can go to one of the places that offer free legal advice (see from >> **page 138**) or to a private solicitor with experience in discrimination law. The Law Society of NSW can help you find a solicitor in your area.

Taking legal action for discrimination is a big step but there can be many positive outcomes:

- you get a chance to tell your story and talk about how the unfair treatment made you feel. This can be very empowering;
- making a discrimination complaint might stop the unfair treatment happening to you or someone else;
- you can get outcomes that are personally important to you such as an apology, introduction of anti-discrimination policies, training programs, policy changes, disciplinary action against the person who treated you unfairly etc;
- you can get financial compensation for any money you have lost as well as for the hurt, humiliation and distress you experienced.

But it's also a good idea to think about the things listed below before you go ahead:

- taking legal action can be stressful, time-consuming and might cost you money if it has to go to court;

- the amounts paid as compensation in discrimination cases in Australia have generally been quite low;
- you'll have to talk about what happened to you, often several times. Some people find this upsetting;
- you might not get everything you want. Resolving a discrimination complaint usually involves making a compromise;
- you might damage your relationship with the person you are complaining about. This might be uncomfortable if you still need to deal with that person (for instance if they are your boss or landlord);
- when you make a complaint, the person you are complaining about will usually respond with their side of the story. They might deny your story or say things about you that you don't like.

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 for a child;
- a person for someone with a disability; or
- unions for 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 make my complaint?

If you want to make a complaint under discrimination law, you cannot go straight to a court or tribunal. You first make your complaint to **Anti-Discrimination NSW (ADNSW)** or to the **Australian Human Rights Commission (AHRC)**.

ADNSW and the AHRC are government organisations that deal with discrimination complaints. They are not courts. They

do not make decisions about what happened, who was right or wrong or whether the law has been breached. 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 Federal Court judge or tribunal member will decide your case) if you cannot sort it out at ADNSW or the AHRC first. We talk about court and tribunal processes from >> **page 79**.



If the discrimination happened in NSW, you can make your complaint to either ADNSW or the AHRC.

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

The AHRC is a national organisation that covers all of Australia. It deals with five federal discrimination laws:

- *Australian Human Rights Commission Act*;
- *Racial Discrimination Act*;
- *Sex Discrimination Act*;
- *Disability Discrimination Act*; and
- *Age Discrimination Act*.

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

ADNSW and the AHRC both have their offices in Sydney (see >> **page 137**). Staff from ADNSW and the AHRC can travel to regional areas to run conciliation conferences close to where you live (see from >> **page 61** for information about conciliation).

Get to know your acronyms

AHRC stands for the Australian Human Rights Commission

ADNSW stands for Anti-Discrimination NSW

NCAT stands for the NSW Civil and Administrative Tribunal

FCFCOA stands for the Federal Circuit and Family Court of Australia

FCA stands for the Federal Court of Australia

Should I go to ADNSW or the AHRC?

You have to choose between ADNSW or the AHRC. This is called 'electing jurisdiction'. You cannot make a complaint to both of them about the same problem.

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

Some types of discrimination 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:

- if your complaint is against a federal government department such as Centrelink, or about the administration of a Commonwealth law or program, you have to complain to the AHRC;
- if your complaint is against a small business with less than six employees, you have to complain to the AHRC (unless your complaint is about race or age discrimination or sexual harassment);
- some types of vilification are only unlawful in the state system so you have to complain to ADNSW;
- if your complaint is about intersex status discrimination you have to complain to the AHRC.

Make sure you complain to the right organisation for your type of problem. Always try to get legal advice first.

Allan finds a rental unit he loves, advertised through an inner city real estate agency. The real estate manager tells Allan he can have the house and arranges a time for him to come in and sign the lease. When Allan turns up to the agency with his partner Rosie, to put her on the lease too, the manager looks surprised. He says to Allan “Oh, I thought you were single and gay. We won’t be able to rent that place to both of you”. Allan and Rosie think they’ve been discriminated against because they are in a relationship together. They go to see a lawyer at a community legal centre. The lawyer tells them they can make a complaint of discrimination on two different grounds – marital/relationship status and sexual orientation discrimination (in the area of accommodation); they can make a complaint of marital/relationship status to either ADNSW or the AHRC; but discrimination because of heterosexuality is covered by federal laws (*Sex Discrimination Act (Cth)*) and not state laws (*Anti-Discrimination Act (NSW)*). That means it is best for them to make their complaint to the AHRC and not ADNSW.

Sometimes, both ADNSW and the AHRC have the power to deal with the issue. For example, sex, race, age and disability are grounds of discrimination under both systems. 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 and this could involve a process called ‘conciliation’. 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 ADNSW but aren’t sorted out there can go to the NSW Civil and Administrative Tribunal (‘NCAT’). See from >> **page 88** for details.



Complaints that are made to the AHRC but aren't sorted out there might go to the Federal Circuit and Family Court of Australia ('FCFCOA') or the Federal Court of Australia ('FCA'). See from >> **page 106** for details.

It's important to understand the differences between NCAT 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 decide whether to make your complaint to ADNSW or the AHRC. Here are a few of the main differences:

- The federal courts can make different decisions ('orders') to those NCAT can make. For example, the maximum amount of compensation NCAT can give you for each complaint is \$100,000, but there is no maximum limit on how much the federal courts can give you.
- If your complaint ends up in the federal courts and you lose the case you will probably have to pay the other side's legal expenses ('costs'). This can be thousands of dollars. It's unusual for this to happen in NCAT.
- Similarly, if you win your case in the federal courts, the other side will probably have to pay your legal costs. This is unlikely to happen in NCAT.
- It's generally easier to run your own case in NCAT because the federal courts are more formal and have more technical rules.

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.

ADNSW and the AHRC both have a telephone inquiry service and a website (see >> **page 137**). These are good starting

points for getting information, but staff at the AHRC and ADNSW cannot give you legal advice. It is very important to get legal advice from a lawyer.

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 pregnancy discrimination complaint under state or federal anti-discrimination law or under employment law.

Eleni gets some legal advice and decides that the best option for her is to make a discrimination complaint. Next she has to choose between the AHRC and ADNSW. She likes the idea of complaining to the AHRC because there is no limit on the amount of compensation she can get if her complaint goes 'all the way' to court. But she also knows that if her case goes to court and she loses, she will probably have to pay the other side's legal costs. Eleni does not want to take that risk, so she decides to lodge her complaint with ADNSW instead.

Bob lives with a vision impairment and has a guide dog. He receives a Disability Support Pension from Centrelink. One day Bob booked a taxi but the driver refused to pick him up because he didn't want animals in his taxi. Bob has been to Legal Aid NSW and they have agreed to represent him in his case. After being told that he has the option of making a complaint to ADNSW or the AHRC, Bob decides the federal system is best for him. He is not too worried about the risk of having to pay the other side's legal costs if he loses. This is because he has been advised that he has a strong case and he knows that with Legal Aid NSW representing him, the first \$15,000 of any legal costs he could be ordered to pay would be covered by Legal Aid NSW.

Complaint procedures at ADNSW and the AHRC



Is there a time limit on making a complaint?

Yes. If you are complaining to the AHRC you should make your complaint within **24 months** of when the discrimination happened. If you are complaining to ADNSW you should make your complaint within **12 months** of when the discrimination happened. See >> **page 54** for what to do if these time limits have passed.

Do I need a lawyer to represent me?

No. You can represent yourself at ADNSW or the AHRC. A lawyer can also make a complaint on your behalf. However, if you do have a lawyer they will need to get permission from ADNSW or the AHRC to attend a conciliation conference with you. This is usually not a problem.

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, including community legal centres and Legal Aid NSW. They might also be able to represent you in your case (see from >> **page 138**). Remember, staff at ADNSW or the AHRC cannot give you legal advice.

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

- Is this appointment free?
- How much will it cost for you to represent me at ADNSW or the AHRC?
- Do I have a good discrimination case?
- Do I have any non-legal options apart from making a discrimination complaint? If so, what is best for me?
- Do I have any other legal options apart from making a discrimination complaint? For example – if your complaint is about discrimination in your workplace – would I be better off taking action in the Fair Work Commission or making a complaint to the Fair Work Ombudsman? Do I have a potential workers' compensation claim?
- How long do I have to lodge a discrimination complaint?
- Should I lodge my discrimination complaint with ADNSW or the AHRC?
- Who are the 'respondents' in my case?
- What should I include in my discrimination complaint?
- What's involved in the discrimination complaint process?
- How long does it all take?
- How should I prepare for conciliation?
- What results can I ask for?
- What happens if my discrimination complaint is not resolved at ADNSW or the AHRC?
- What evidence should I collect to help prove my case?
- How much will it cost for you to represent me if my complaint goes to NCAT, the FCFCOA or the FCA?

How do I make a complaint?

All discrimination complaints made to the AHRC and ADNSW have to be in **writing**. You can write your own letter or email about your complaint or you can fill in an official AHRC or ADNSW complaint form. You can ring them up and ask them to send you a form or you can download and print one from their websites. The AHRC also lets you lodge a complaint online.

If you have trouble writing down your complaint, the AHRC or ADNSW can help you. You can write your complaint in any language and ADNSW or the AHRC will get it translated. It won't cost you anything. You can also lodge a complaint in braille.

The complaint forms from ADNSW and the AHRC might not give you enough 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' or 'What happened?'. See the checklist on >> **page 52** 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.

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 back 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 ADNSW or the AHRC 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.

Complaint checklist

What information should I include in my 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 the AHRC or ADNSW 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 or landlord).
- ☐ 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, accommodation etc).
- ☐ 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 has affected your life.
- ☐ 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.

What if the deadline has passed?

The AHRC and ADNSW can still accept your complaint if you give good reasons why it's late. If you're outside the **24 month** time limit for the AHRC or the **12 month** time limit for ADNSW, you should always write out the reasons and send them in with your complaint form.

For example, you might 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
- why it will not disadvantage the other side if your complaint is accepted now (because all the evidence is still available, for example).

If your reasons for the delay in lodging your complaint are medical or psychological ones, you should provide ADNSW or the AHRC with something from your health practitioners.

In practice, the AHRC will initially accept your complaint even if it's out of time, but might later decide to terminate it if more than 24 months has passed.

ADNSW might accept your complaint if it's outside the **12 month** time limit if you have provided good reasons for the delay in making your complaint. Remember to provide your reasons in your initial complaint.

Can I include events that happened more than 12 months ago in my complaint?

Sometimes discrimination happens over a long period of time, maybe even years.

The AHRC and ADNSW will generally look at a pattern of unfair treatment that has happened over a long time, as long as some of the events occurred in the last 12 or 24 months. (Remember, the AHRC has a **24 month** time limit and ADNSW **12 months**.)

If any of the events you're complaining about happened more than 12 months ago, it might be better to complain to ADNSW rather than the AHRC.

Salma is 19 years old and lives at home with her parents. She works as a trainee in a bank. Her manager often makes sexually suggestive comments about her figure and asks if she has a boyfriend. Salma does not respond when he says these things and feels uncomfortable being around him. She doesn't feel like she can tell him to stop, or tell anyone else about it because she has just started in the job and wants a career in banking. His behaviour gets worse and one evening after everyone else has left he comes up behind her and puts his hand up her skirt and tries to kiss her neck. After this incident Salma starts having panic attacks and is unable to work. She is very depressed and anxious but feels too ashamed to tell anyone what's happened. Two years later, Salma is diagnosed with post traumatic stress disorder after confiding in her doctor about her experience. Her doctor refers her to a psychologist and a lawyer. Even though the incident happened more than 24 months ago, her lawyer encourages her to lodge a sexual harassment complaint with the AHRC because she has very good reasons for the delay. Her lawyer gets a letter from her doctor and her psychologist to explain the delay.

How do I lodge my complaint with the AHRC or ADNSW?

Send in your complaint by mail, fax, email or online. Make sure you keep a copy of everything you send to the AHRC or ADNSW, 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 copy.



How long before I hear back?

You should get an acknowledgement letter from the ADNSW or AHRC within 2 weeks. The letter will just say that your complaint has been received. If you don't hear anything for a month, contact ADNSW or the AHRC to find out what's happening.

ADNSW or the AHRC will give your complaint to a staff member to investigate and try to resolve.

At the AHRC these people are called investigators or conciliators. At ADNSW they are called conciliation officers.

What will the ADNSW or AHRC do with my complaint?

The first thing the ADNSW or AHRC 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, ADNSW or the AHRC might reject your complaint. ADNSW and the AHRC have different rules about this.

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

- it was lodged more than **12 months** after the discrimination happened; or
- what you believe is unlawful discrimination is not actually against the law.

If ADNSW declines your complaint at this stage you cannot go to NCAT and appeal their decision. You might be able to get ADNSW's 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.

The AHRC might reject your complaint. They call this 'terminating' the complaint. This might be for one of a number of reasons, including if:

- it was lodged more than **24 months** after the discrimination happened;
- what you believe is unlawful discrimination is not actually against the law;
- there's a better path for you to take than a discrimination law complaint;
- the complaint is trivial, lacking in substance, misconceived or vexatious (malicious); or
- the complaint has already adequately been dealt with in another way (by another statutory authority for example).

In practice only a small percentage of complaints are terminated by the AHRC at this stage. If the AHRC does terminate your complaint upfront you might be able take your case to the FCFCOA or FCA. If your complaint is terminated for the above reasons, you will need permission from the court (called 'leave') before you can start your case there. You have **60 days** to do this.

Arwen and her friends are banned from the plaza for riding their skateboards in the carpark. Arwen thinks this is discrimination.

She makes a complaint to ADNSW but gets a letter back from them saying it has been declined. They say her complaint doesn't show a breach of discrimination law because there is no 'ground'.

What happens if my complaint is accepted?

If your complaint is accepted, the next step is usually investigation. The investigation step at the AHRC and ADNSW just means asking both sides for their story about what happened.

The AHRC or ADNSW will write to the person or organisation you are complaining about (the 'respondent') and give them a copy of your complaint. This means that you can't make an anonymous discrimination complaint.

ADNSW will ask the respondent to put their side of the story in writing. The respondent normally has 28 days to do this, but they might ask ADNSW for extra time.

The AHRC might get the respondent's side of the story in writing or they might decide to go straight to a conciliation conference, depending on the circumstances. We think it is a good idea to ask for the respondent to provide a written response to your complaint before conciliation. That way you can go to a conciliation conference more prepared (and probably feeling less anxious) because you know what the respondent will say about your complaint. You won't be surprised or put off by hearing their response for the very first time in the conciliation conference – and can use that conciliation process to stay focused on resolving the complaint. You will also be able to get proper legal advice about the strengths and weaknesses of your case before the conference because the lawyer will have seen everyone's versions of events.

If the respondent sends a written response to the AHRC or ADNSW, you will be given a copy and you can usually comment on it if you want to.

The next stage is usually for the AHRC or ADNSW to try to arrange a conciliation conference (see >> **page 61**).

What if my complaint is rejected during the investigation phase?

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

- the complaint is lodged with the AHRC more than **24 months** and with ADNSW more than **12 months** after the discrimination happened;
- what you believe is unlawful discrimination is not against the law;
- there's a better path for you to take than a discrimination law complaint;
- the complaint has already adequately been dealt with in another way (including by another statutory authority for example);
- the complaint is trivial, lacking in substance, misconceived or vexatious (malicious); or
- there is no reasonable prospect of resolving the complaint in conciliation.

If the AHRC terminates your complaint for any of these reasons you can go to the FCFCOA or the FCA. In most cases, you will have to apply to the court for permission to make the application. This is called 'applying for leave'. You have **60 days** to do this.

If ADNSW decides to decline your complaint for any of these reasons, you can ask them to refer it to NCAT. You have to ask within **21 days**. You will then need to get NCAT's permission to



hear your case. This is called ‘applying for leave’ (see >> **page 92**).

If 18 months has passed since you lodged your complaint with ADNSW, and you still have not had a conciliation conference, you can ask ADNSW in writing to refer your complaint to NCAT.

During the investigation it might become clear to the AHRC or ADNSW 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 the AHRC or ADNSW, or they refuse to go to a conciliation conference. If this happens, ADNSW will ask you if you would like your case to be referred to NCAT. The AHRC will usually ‘terminate’ your complaint and you don’t need permission to take your case to the FCFCOA or the FCA.

Conciliation

What is conciliation?

Conciliation is the process ADNSW and the AHRC use to resolve discrimination complaints. It usually involves a telephone (or sometimes face-to-face) meeting between you, a 'conciliator' from ADNSW or the AHRC 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 are usually done over the phone, by teleconference. They can also be done by video conference. There are positives and negatives to this. If you are thinking about doing it by phone or video, talk to the conciliator or a lawyer first about whether it's the right process for you.

What if I don't want to conciliate?

Conciliation is usually voluntary, although ADNSW and the AHRC have powers to call compulsory conciliation conferences. If either person says no to conciliation, the AHRC and ADNSW will finalise your complaint. This means that if you want to take it further you have to take it to a court (the FCFCOA or the FCA) or a tribunal (NCAT) (see from >> **page 79**).

There are risks when you go to court or a tribunal. It can be expensive, stressful, and time-consuming. Also, a court might not give you what you want – an apology or a specific policy change,

for example. Conciliation is worth considering seriously and we recommend it in most cases.

Where is the conciliation conference held?

Conciliation conferences may take place at the AHRC office in Sydney's CBD, or at the ADNSW office in Parramatta. They might also be held by telephone or video conference. Staff from ADNSW and the AHRC may also travel to other areas of NSW if they think it is appropriate. It depends on where you live, where the respondent is, and where the discrimination happened. If it's important to you to have a face-to-face conference instead of over the phone or by video conference, make sure you tell the conciliator.

When you lodge your complaint you should ask ADNSW or the AHRC about how they are doing conciliation.

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 such as a friend, family member or community worker.

You don't have an automatic right to be represented at a conciliation conference by a lawyer, union official or other advocate. If you want a representative to go with you, you need to ask the conciliator for permission. The conciliator is more likely to give you permission 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 strongly 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 usually ask you to send them a 'settlement proposal'. This is a list of what you would like to get from the conciliation – for example, an apology, compensation, or your job back. Your settlement proposal is generally used as a starting point for negotiations during the conciliation conference.

It can be useful to send your settlement proposal in 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 decide on 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 them to know how the way they treated me made me feel."*
- *"I want them to introduce anti-discrimination policies and training."*
- *"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 are possible. 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 do some training on discrimination, or for the company to develop and implement some anti-discrimination policies.

Here are some of the outcomes people have achieved from conciliation:

- verbal or written apology;
- anti-discrimination/harassment training for the person who treated them badly;
- introduction of 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;
- 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;
- 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. There are lots of examples of conciliated outcomes on the ADNSW and the AHRC websites (see >> **page 137**). 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 since 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, such as a psychologist's report, 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, such as lost wages, 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 Medicare.

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 the respondent pays you compensation for lost wages.

Workers' compensation. Sometimes money you receive from a discrimination complaint can impact on your workers' compensation entitlements. Make sure you check with your workers' compensation lawyer if you will be affected or not.

How can I prepare myself for 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 pros and cons of taking your discrimination complaint to a court or tribunal – including what the lawyer thinks about your chances of success if a judge or tribunal member decides your case.

Tips for conciliation



Leave the whole day free. Don't make any other plans.



Re-read all the documents and bring them all with you.



Think about what you are prepared to settle your complaint for.



You will be asked if you want to say anything at the conciliation conference, 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:

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.

If the conciliation is face to face, everyone will usually sit in the same room at the beginning.

The conciliator will begin the meeting by explaining why you're all there, what their role is and the ground rules for the meeting. 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.

If you want to, you will get to talk about what happened to you and how it affected you. This can be hard, but many people find it is a valuable thing to do.

This is because it is a chance to say what you want 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 about it.

If you think you will have trouble talking about what happened, try writing something out before the conciliation conference and taking it with you. You can read it out or give a copy of it to the other side. The other side can then respond to what you have said. 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. The conciliator can't make decisions about who is right or wrong anyway. What is important at conciliation is to focus on finding a solution you can live with so you can put the whole thing behind you.

After you have both had your say, the discussions/negotiations about possible resolution 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.



If both sides agree on a resolution, the conciliator will help you put it in writing. This is called a 'settlement agreement' (see >> **page 72**).

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.

If it is clear that you and the other side are not going to reach an agreement, the conciliator will end the conference (see >> **page 73** for what will happen next).

If it looks like the two sides can find a solution but need more time, the conciliator will usually agree to this and set a time limit. Sometimes, people need a second conciliation conference.

Tip



The AHRC has produced a DVD called *Pathways to Resolution* which explains the conciliation process and how to prepare for it. The AHRC can send you a copy or you can view it online at the AHRC website www.humanrights.gov.au or on YouTube www.youtube.com/watch?v=9BfFB2mOg2o.

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. Think about it carefully.



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 no matter what you agree to in conciliation.



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 impartial. 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 52).

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.

Once your settlement agreement has been signed, ADNSW or the AHRC will close your complaint.

If the other side doesn't do what they have agreed to do, you will need to get legal advice about your options as soon as possible.

If your conciliation was in ADNSW and the other side have not done what they agreed to do in the settlement agreement, you will be able to register that written agreement with NCAT if it is less than **6 months** since the agreement was signed. You will then be able to enforce the agreement, for example by applying to have money deducted from the respondent's wages if they have not paid you compensation as they agreed to.

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

If you don't resolve your complaint in conciliation at the AHRC, 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 FCFCOA or the FCA. You have **60 days** after the termination notice to apply to the federal courts. You may need to ask the court for leave to apply, depending on the reason for termination (see >> **page 106**).

If you can't resolve your complaint at ADNSW, they will tell you they cannot take it any further. They will ask you if you want your

complaint sent ('referred') to NCAT. If you say yes, they will send it to NCAT (see >> **page 91**).

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 ADNSW 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. Her former employer denies that they discriminated against Ivy and claim that there had been problems with her work performance. 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 ADNSW terminates her complaint. Ivy must now decide whether to take her case to NCAT.

How long does the ADNSW/AHRC complaint process take?

ADNSW will usually contact you within about 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.

ADNSW 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 NCAT.

The AHRC will usually acknowledge your complaint within two days of receiving it. It will be allocated to an investigator/conciliator within a few months, or more quickly if your complaint has been assessed as urgent. The average time it takes to finalise an AHRC complaint is about four to six months. Again, more complex cases can take longer.

ADNSW and the AHRC like to keep the process moving and resolve complaints quickly. If you think that 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 without getting into trouble. Just write to ADNSW or the AHRC and let them know that this is what you want to do.

Does conciliation work?

For most people, yes. There are positives and negatives, but in most cases we strongly recommend giving it a go.

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 – including changes to policies, practices or procedures that might have benefits for the wider community;
- 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 possible expense of going to a court or tribunal;
- It's more informal than a court or tribunal process;
- You can do it without a lawyer (although it can be a good idea to have a lawyer with you);
- You can settle your complaint confidentially without your name and story becoming public; and
- Both sides can learn about their rights and responsibilities under discrimination law.

The negatives can be:

- It's not a court, which means you won't get a decision about who's right and who's wrong. Usually cases will resolve at conciliation without any legal finding (decision) that the law has been broken;
- What happened to you usually won't become public, so it could be 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; and
- The compromises you might have to make to settle your case in conciliation might not seem fair.

If you don't resolve your complaint at conciliation, your only option, if you want to keep going, is to take your case to a court or tribunal where a decision will be made. This is a big step. Although you can achieve positive outcomes from a court or tribunal process, it is usually more stressful, can be more expensive and takes more time – 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.

Sarah has made a sexual harassment complaint to the AHRC 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 attend so Sarah decides to give conciliation a go.

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 and got to have her say. She's also glad that she doesn't have to take her case to court.

What if I'm not happy with how the AHRC or ADNSW handles my complaint?

Both ADNSW and the AHRC 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 137**).

Discrimination complaint essentials

What do I need to remember?

- You should make your complaint to the AHRC within **24 months** of when the discrimination happened or to ADNSW 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, and the earlier the better.
- Your complaint must be in writing.
- You can withdraw your complaint at any time.
- The AHRC and ADNSW won't take sides; they stay impartial.
- The AHRC and ADNSW 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

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General information

Remember your acronyms

AHRC stands for the Australian Human Rights Commission

ADNSW stands for Anti-Discrimination NSW

NCAT stands for the NSW Civil and Administrative Tribunal

FCFCOA stands for the Federal Circuit and Family Court of Australia*

FCA stands for the Federal Court of Australia

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

If you lodged your complaint at ADNSW and it didn't get resolved, you go to the NSW Civil and Administrative Tribunal (NCAT).

If you lodged your complaint at the AHRC and it didn't get resolved, you go to the Federal Circuit and Family Court of Australia (FCFCOA) or the Federal Court of Australia (FCA).

NCAT is a tribunal and the FCFCOA and FCA are courts. Tribunals and courts are different. Tribunals are more relaxed and informal than courts. Most tribunals, including NCAT, do not have to follow the same technical rules that a court does. This makes it

* At the time of publishing this edition, the Federal Circuit Court had just merged with the Family Court of Australia to create a new federal court called the Federal Circuit and Family Court of Australia (FCFCOA). Please check with the FCFCOA to make sure its rules and procedures haven't changed.

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 NCAT, the FCFCOA and FCA are open to the public.

Remember, it is your choice whether to take your case to a court or tribunal but you might need the court's permission to go to the FCFCOA or FCA.

If you are taking your case to NCAT, the FCFCOA or FCA, here are some basic things you need to know.

What is everyone called?

When your complaint was with ADNSW or the AHRC, 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 NCAT, your case will usually be decided by one to 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 usually call them Member and then their last name – 'Member Smith', for instance. To make sure you get it right, ask a staff member at NCAT on the day whether the member/s hearing your case has a preferred title or name.

If you are in the FCFCOA or FCA, your case will be decided by a Federal Circuit Court or Federal Court judge. When you speak to the judge 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 against (that is, that it is more than 50 per cent likely to be true). This is easier to prove than the standard of proof in criminal cases ('beyond a reasonable doubt').

You prove your case 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' (or 'lodge') and 'serve' documents. You file or lodge 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/lodged and served. You should always contact the registry to find out:

- how many copies of the documents they want you to give them (which will include copies for them, for yourself, and the other side);
- how you can file/lodge the documents;
- how the documents should be served on the other side; and
- when they have to be served on the other side.

Filing/lodging 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/lodge the documents by going to the registry in person or posting the documents to the registry.

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(s).

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.**

Here 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(s) has a lawyer representing them, and the respondent(s) has given their lawyer the 'authority to accept service' of court documents, you need to 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 the address they want to use for service of documents.
- If the respondent(s) is not represented by a lawyer and is an individual (not an organisation), you serve the documents on that person. If the respondent(s) 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(s) by posting, emailing or faxing them (always check with the registry to see if this OK), but they often 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.
- Whatever method you use to serve documents (post, in person, etc), it is very important that you keep records. If you fax them, print out a fax confirmation sheet and keep a copy. If you send them by post, send them by registered post so that you have a record that they have been sent. 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 a 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 NCAT uses and ‘subpoena’ is the word the FCFCOA and FCA use.

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

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 agree 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. The courts and tribunals also have instructions on their websites about summonses and subpoenas (see >> **page 137**).

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 by the due date.

When you serve the summons or subpoena, you also have to give the person or organisation 'conduct money'. This must cover their reasonable expenses related to providing the documents or turning up at court (for example, travel costs or meals).

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 suggestions:

- 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 or tribunal member. Doing any of these things might affect everyone's opinion of you.
- Always ask the judge or 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 or tribunal member whenever you or they walk in or out of the courtroom.

- Address the judge or tribunal member/s appropriately (see >> **page 81**).
- 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 NCAT 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 FCFCOA or FCA, stand up when the judge speaks directly to you, and stand up when you are speaking to the judge 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.

NSW Civil and Administrative Tribunal

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

Tip



Always contact the NCAT Registry or check its website to confirm the proper procedures you need to follow in your case.

Does it cost me any money to take my case to NCAT?

No. After you have complained to ADNSW It does not cost anything to take your case to NCAT 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 example (see >> **page 84**).

Do I need a lawyer to represent me in NCAT?

Not necessarily. You can represent yourself in NCAT. NCAT's procedures are designed to help people who are not legally represented.

You can be represented by a lawyer. We think this is a good idea because discrimination law is technical and complex, and NCAT staff (including tribunal members) cannot give you legal

advice or help you present your case. You might be able to get free legal representation from Legal Aid NSW or your closest community legal centre (see from >> **page 138**).

You can also be represented by an 'agent' with NCAT's permission. This is a representative who is not a lawyer such as a union official or a disability advocate.



If you want a lawyer or an agent to represent you, you and your lawyer will need to sign a form (sometimes called a 'Notice of Representation by a legal practitioner or agent'), lodge it with the NCAT Registry and serve it on the respondent(s). You will need to follow up with the NCAT Registry or tribunal member about whether or not you have permission to have an agent represent 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 ADNSW 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 hearing)?
- 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?
- How long will this process take?
- What happens if I lose?



When can I go to NCAT?

Your complaint can only go to NCAT if it is referred there by ADNSW.

You don't have to fill in an application form or pay any fees to start your case in NCAT.

If ADNSW declined your complaint in the first place, you will not be able to take your case to NCAT (see >> **page 56**).

ADNSW can refer your case to NCAT if ADNSW accepted your complaint for investigation but later declined it (see >> **page 59**). In this situation you will need to ask NCAT's permission for your case to go ahead. This is called 'applying for leave'.

ADNSW can refer your case to NCAT and you won't have to 'apply for leave' if:

- your complaint was not resolved through conciliation; or
- your complaint was with ADNSW for more than 18 months.

When ADNSW refers your complaint to NCAT they send a bundle of documents called the 'President's Report' to NCAT. 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 ADNSW; and
- copies of any documents the respondent gave to ADNSW.

Once ADNSW 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 is a document prepared by staff at ADNSW which sets out:

- the names and contact details of you and the respondent;
- the 'period of your complaint' (that is, what time frame is covered by the complaint);
- whether your complaint was declined by ADNSW;
- the number of complaints you have made;
- the 'type of complaint' you have made, which means: the ground and the area of discrimination and the sections and parts of the law that apply to your complaint;
- 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 ADNSW. It might also mention legal issues that your case raises.

What happens when my complaint is referred to NCAT?

Within about a week of NCAT receiving your complaint from ADNSW, NCAT will send you a letter and a copy of the President's Summary of Complaint (see above). The letter from NCAT will tell you what happens next.

The President's Summary of Complaint is a very important document, because it summarises your whole case for NCAT. 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 concerns you, make sure you mention it at the first NCAT case conference (see >> **page 93**).

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

The first letter you get from NCAT will tell you if you need 'leave' (permission) before you can go any further. This is because your complaint had been declined by ADNSW. If you do need leave, 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 one tribunal member decides whether or not to let your case go ahead at NCAT – 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 ADNSW declined your complaint.

The tribunal member will base their decision on what is 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 whether you have a reasonable chance of winning at an NCAT hearing;
- ADNSW'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 an agent to represent you at this hearing, the agent 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 of NSW. You have **28 days** to appeal. The Supreme Court will only look at whether NCAT got the law wrong ('error of law'). Appeals like these are a specialised

and technical area of law so we strongly recommend that you get legal advice before doing this.

If NCAT 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 NCAT 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. The first one usually happens 3 to 5 weeks after NCAT sends you its first letter. Each case conference usually lasts 30 to 45 minutes.

Since COVID-19, case conferences have been done by telephone. If there is a good reason, you can ask to attend a case conference in person. You will need to arrange it with the NCAT registry beforehand.

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 NSW who can give you free advice about your case;
- Decide whether you are allowed to be represented by an 'agent', if that's what you've asked for;
- 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;

it is very important to 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 84**). You need to ask for approval to issue summonses for all your witnesses, and for any documents you want but can't get. If approval is given you should find out the process you need to follow to issue the summonses;
- Ask you and the respondent whether you want to try mediation (see from >> **page 97**). Although the Tribunal can order you to try mediation, it will usually 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 agreed to mediation), usually 3 to 4 weeks after the case conference, and dates for getting your evidence filed/lodged and served. Sometimes you will be asked to file/lodge and serve evidence before there is a mediation.

The tribunal member might use the information you and the respondent give them at the case conference, to write a document called the 'Tribunal's Summary of Complaint'. If the member does this, it will set out:

- The issues that you and the respondent agree on;
- The issues that you and the respondent do not agree on;
- The evidence you will need to give NCAT to try and prove your case;
- The evidence the respondent will need to give NCAT to try and prove its defence;
- A date for mediation if mediation has been agreed to or ordered; and

- A timetable for getting your evidence ready, that you and the respondent will have to follow if there is no mediation or if your case does not resolve at mediation.

At the end of the case conference you should ask the tribunal member for a copy of the Summary of Complaint to keep for your records.

How do I prepare for my case conference?

Before the first case conference, you should:

- Read and follow the instructions in the information sheet given to you by NCAT – ‘How to Respond to the President’s Summary of Complaint’;
- Check the President’s Summary of Complaint very carefully to make sure everything that should be there is included;
- Check that all the times when you suffered discrimination, harassment, victimisation or vilification are there, and check that all the people and the organisations you are complaining about are named as respondents. You must use the registered legal name of the organisation, which is not always the same as the name of the business (see >> **page 52**);
- 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 84**);
- Make a list of witnesses you think could come to NCAT 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 or agent to represent you.

What happens after the first case conference?

If any issues come up at the first case conference which need to be decided, the next step could be a mini-hearing where a tribunal member will make a decision about that particular issue.

For example if you asked for your complaint to be amended to include something you think should be a part of it, and the respondent doesn't agree. If there are no preliminary issues to be decided and you and the respondent are going to try mediation, mediation will usually be the next step.

If you and the respondent are not having mediation, the next step is usually for you to prepare your evidence and then file (lodge) and serve it according to NCAT's timetable.

Fatima works at a local school. She complains to the principal that another teacher 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 ADNSW. 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.

Her complaint is not resolved at ADNSW and her case goes to NCAT. 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 Fatima tells the tribunal member about this and asks if she can amend her complaint by adding victimisation. The respondent objects so the tribunal member decides to have a hearing at a future date to decide if victimisation should be included in Fatima's complaint.

At the hearing the tribunal member decides that victimisation should be a part of Fatima's complaint because she had mentioned the promotion issue to ADNSW when she made her complaint there.

What is mediation?

Mediation in NCAT is similar to conciliation in ADNSW (see from >> **page 61**). It is run by a mediator, who is a tribunal member of NCAT or an experienced mediator from outside NCAT. 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.

Since COVID-19, mediations are usually done by telephone. Mediations can only be done in person if you have a good reason and make a special application to the tribunal. If you want a face to face mediation, you should make a special application to the tribunal before the mediation to get the tribunal's permission.

In the future, NCAT might change its rules about how mediation happens because of COVID-19.



Mediation has many benefits. It is free, and it gives you another chance 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 ADNSW, don't assume mediation won't work at NCAT. The respondent may be more willing to settle the complaint at mediation, when the alternative is a tribunal hearing. Hearings can 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. If you do change your mind, make sure you contact the NCAT registry and let them know.

How do I prepare for mediation?

You prepare the same way you prepared for conciliation at ADNSW. This includes preparing 'proposed terms of settlement' and giving them to the respondent before or at the mediation. (see from >> **page 64**).

It is a good idea to get some legal advice about this.

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 72**). 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 NCAT case. The agreement should say that you will only withdraw your case after the respondent has done everything they promised to do.

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

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

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

At the first case conference Martin 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 in NCAT a go.

What if mediation is not arranged 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 includes instructions (called 'directions') which say that:

- You must file/lodge and serve your documents/statements by a certain date (you are usually given 28 days but can ask for more time if you need it);
- The respondent must file/lodge and serve their documents/statements by a certain date (they are usually given 28 days after they receive copies of your documents/statements);

- You must file/lodge and serve any response to the respondent's documents/statements by a certain date (you are usually given 14 days after you receive the respondent's evidence);
- You and the respondent must tell each other which witnesses you want to cross-examine at the hearing, no later than 14 days before the hearing.

The timetable might also include instructions about summonses. Part of your preparation for the hearing is making sure you get approval from NCAT for any summonses you need, then getting them issued by the registry and properly served (see >> **page 84**). It is your responsibility to follow up on every stage of the summons process.

It is important to stick to the timetable. You might be ordered to pay legal costs, or your complaint might be dismissed, if you don't follow the timetable. If there are any genuine reasons why you can't (for example, illness, or delays caused by the respondent), ask NCAT for an extension of time. 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 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 second case conference happens 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. One to three tribunal members will hear the case and then decide whether you have been unlawfully discriminated against.

One of the tribunal members hearing your case must be an 'Australian lawyer'. Any other tribunal members hearing your case will be people who have knowledge and experience of the particular issues involved in your case.

The usual order in a hearing is:

Step 1: You (or your lawyer) make an opening statement.

Step 2: The respondent (or their lawyer) makes an opening statement.

Step 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'.

Step 4: The respondent's witnesses give evidence in the witness box, and they go through the same process. This time you (or your lawyer) do the cross-examination.

Step 5: You (or your lawyer) can make a closing statement summing up your case.

Step 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 NCAT 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 decisions can NCAT 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, NCAT will say that your complaint has been 'dismissed'. If you win your case, NCAT 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.

NCAT can make several kinds of orders, including:

- the respondent has to pay you compensation (up to \$100,000 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 or did);

- the respondent has to change discriminatory parts of a contract or agreement; or
- 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 NCAT is \$100,000 for each complaint.

Compensation payments for discrimination are generally not high in Australia. People are rarely ever given anywhere near the \$100,000 maximum. We hope this will change in the future.

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

In NCAT, 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 own case, whether you win or lose.

Sometimes, NCAT might order the loser to pay the winner's legal fees. This might happen, for example, if the person who loses had a hopeless case, 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 your case at any time before the end of the tribunal hearing. Talk to the NCAT registry about how to do it. It usually involves writing a letter to NCAT to tell them you are withdrawing your case, and giving a copy of the letter to the respondent.

If you withdraw your case 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 doesn't happen often. 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 NCAT'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 NCAT. This is made up of between one to three tribunal members (not the same ones who heard your case). The Appeal Panel will usually only look at whether NCAT got the law wrong ('error of law'). In some circumstances, where the tribunal gives you permission, the Appeal Panel can hear an appeal of your case for reasons other than an 'error of law'.

If you think NCAT got the law wrong (either the tribunal member/s in making the decision you lost your case, or the Appeal Panel if you appealed), 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 NCAT Appeal Panel or the Supreme Court.

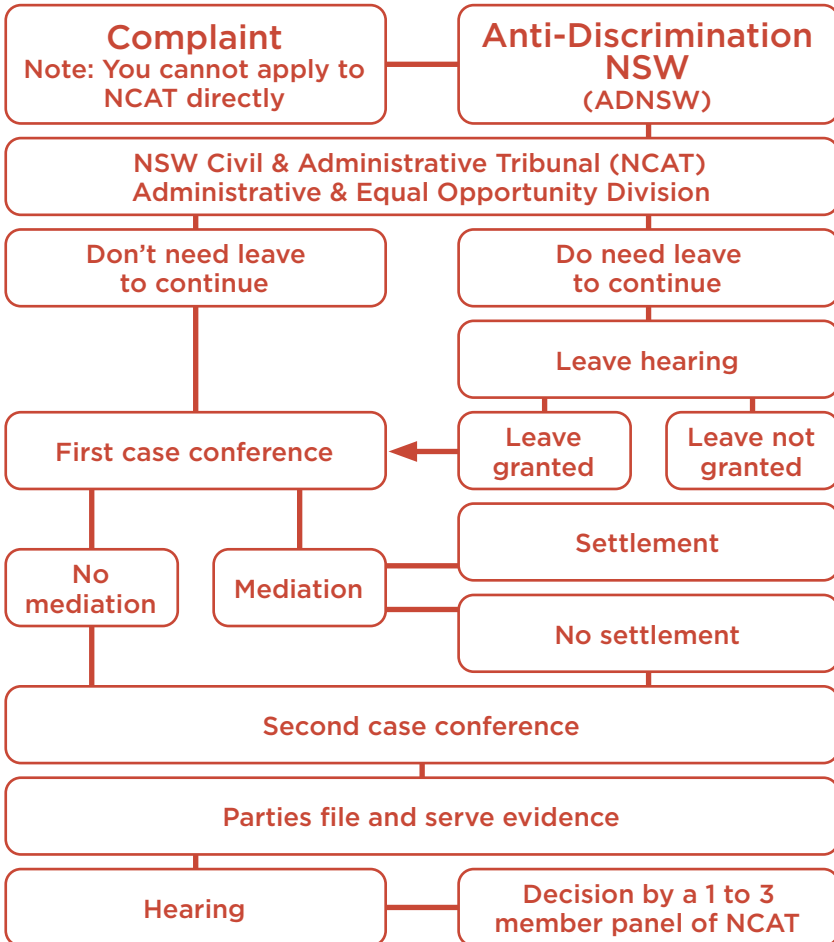
If you are considering appealing an NCAT decision, you should definitely seek urgent legal advice. It is a technical and specialised area of law and there are risks you need to know about before you go ahead.

Can I get an interpreter?

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

NSW Civil and Administrative Tribunal flowchart

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



The Federal Courts

The Federal Court of Australia (FCA) and the Federal Circuit and Family Court of Australia (FCFCOA) deal with cases of discrimination, harassment, vilification or victimisation that are not resolved at the AHRC.

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 FCFCOA. It is usually cheaper to run your case in the FCFCOA 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 FCFCOA.

We are only going to deal with the FCFCOA in this section because the majority (around 70%) of AHRC complaints which go to court go to the FCFCOA, not the FCA. Processes in the FCA are similar to those in the FCFCOA but the FCA has different forms, procedures and rules. If you do take your case to the FCA make sure that you get current information from the FCA website (www.fedcourt.gov.au) and the FCA registry.

Before you decide to take your AHRC complaint to either the FCFCOA or the FCA, you should definitely get legal advice.

How does my AHRC complaint get to the FCFCOA?

First, your complaint must have been terminated by the AHRC. You will know if it has been terminated because the AHRC will send you a document called a 'Notice of Termination'. The AHRC 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 FCFCOA. You start the process by filing an 'Application' in the FCFCOA. You might need the FCFCOA's permission before you can take your complaint there, depending on why your complaint was terminated.

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

You have **60 days** from the date on the Notice of Termination to file your Application in the FCFCOA.

If your **60 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 file your Application, for example. You will have to give these reasons in writing to the court when you file 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 filed late.

Yumi makes a sex discrimination complaint to the AHRC that does not settle at conciliation. The AHRC terminates the complaint and Yumi is advised that she has 60 days to apply to the FCFCOA.

Yumi decides to go home to Japan for 3 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 FCFCOA 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.



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

Not necessarily. You can represent yourself in the FCFCOA, 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 judge 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 file your initial Application. Remember that you can get free legal advice (and sometimes representation) from Legal Aid NSW or community legal centres (see from >> **page 138**).

The types of things you could ask a lawyer are:

- How much will it cost for you to represent me and can I apply for legal aid?
- 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?
- How do I correctly describe the type of discrimination in my case?
- Have I named the correct respondents? (see >> **page 52**)
- What evidence do I need to prove my case?
- How do I prepare court documents, such as an Application, affidavits, and subpoenas?

- What orders should I ask the judge to make if I win (including how much money can I ask for)?

How do I file my initial Application?

You start your case by filing a document called 'Application-Human Rights' ('Application') at the court registry closest to where you live. You can find a list of all the registries on the FCFCOA website (www.fcfcOA.gov.au).

You can download and print a blank Application from the FCFCOA website.

You have to file one original copy of the Application and any documents attached to it, plus a photocopy of the entire Application for each respondent, for the Australian Human Rights Commission and for yourself.

How do I prepare my Application?

The front page of the Application has instructions on how to fill it in. The information you ('the Applicant') have to provide on the form includes:

Part A – Orders sought

- what outcome ('remedy') you want from your case if you win ('final orders sought by applicant'). See >> **page 125** for the types of orders you can ask the court to make.
- any orders you want the court to make now or before the end of the hearing (these are called 'interlocutory, interim or procedural orders sought by the applicant'). For example. If your case involves discrimination at work, and you are about to lose your job, you might want to ask the court to make orders that your employer is not allowed to fire you while your case is being decided by the court.

Part B – Grounds of Application

- what type of discrimination you are complaining about. Write here if the discrimination is: direct and/or indirect; the ground (race, sex, disability, age, victimisation etc); the area (employment; goods and services etc). See from >> **page 12** for information on Grounds and Areas of discrimination.
- the sections of the law that relate to your case. Write the legislation that applies to your case (eg. the *Racial Discrimination Act*), and the relevant sections of that legislation. The AHRC will usually have sent you copies of these sections after you first made your complaint. If you think that the AHRC might have missed something that you included in your original complaint to them, make sure you include this in your Application.

Part C – The applicant/s

- your personal details (full name, contact details, any special help you need at court such as wheelchair access, a personal assistant or an interpreter).

Part D – The respondent/s

- your relationship to the respondent (eg. employee, customer, etc).

Note:



There is also a section at the bottom of the first page of the Application where you need to write in all your contact details, or your lawyer's contact details if you have a lawyer representing you.

Part E – Extension of time

- whether you need an extension of time (if you are filing your Application after the **60 day** time limit), and if you do, the reasons why. Remember to attach a piece of a paper to the

Application with detailed information about why you are late, as well as attaching any medical or other documents that help explain why you are late.

Part F – Required documents

- confirmation that you have attached to your Application a copy of the original complaint you made to the AHRC and the Notice of Termination the AHRC sent you.

‘Important Notice to Respondent’

- You must write the respondents’ names and addresses for service in here. Remember 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 name (see >> **page 52**).

Note:



Don’t forget that you must also sign and date the Application form.

Do I need to file anything else with the FCFCOA when I file my Application?

Yes. You must also prepare, and file with the court registry at the same time that you file your Application, a document called the ‘Applicant’s Genuine Steps Statement’.

The Genuine Steps Statement is a way of telling the court what steps, if any, you and the respondent have taken up until then to try to resolve your complaint.

You can print this form from the FCFCOA website or contact the court registry to ask how to get one.

In the part of the form where it says ‘The following steps have been taken to try to resolve the issues in dispute between the

applicant and the respondent in the proceeding:' and 'specify the steps taken', you should write something like:

"Australian Human Rights Commission complaint resolution procedures were undertaken, and a conciliation conference was held, but the complaint did not resolve".

If you have taken any other steps to try and sort it out with the respondent apart from the AHRC processes (for example, you lodged an internal grievance at your workplace), you should also write those down on the form.

What happens when I file my Application and Genuine Steps Statement?

When you file your Application and Genuine Steps Statement at the court registry, (using eLodgment, email or in person), the registry will electronically file the documents and print you a sealed copy. You can photocopy it and serve a copy on the respondent(s) and keep a copy for yourself. The registry does not keep hard copies of documents. The registry will also write the address of the court and a date on the Application. This tells you the place where you have to go to court and the date you need to attend for the first time. This is called the 'first court date' (see >> **pages 114–115**).

When do I serve my Application and Genuine Steps Statement?

After your Application and Genuine Steps Statement are filed, and the stamped copies sent back to you, you have to organise personal service of the Application (and any attachments) on the respondent. You can do this yourself or get someone else to do it for you (see >> **page 82** for how to serve documents).

There are some other rules about serving court documents on the respondent:

- you must serve your Application on the respondent at least seven (7) days before the first court date; and

- the person who serves the court documents on the respondent should prepare an 'affidavit of service', which will say who the Application (and Genuine Steps Statement) was served on, and when and where they were served. This affidavit is proof for the court that you have served these documents on the respondent.

Note:



A copy of your Application must also be served on the AHRC.

What happens after I serve my Application and Genuine Steps Statement?

The respondent will probably file two documents – a 'Response Form' and a 'Respondent's Genuine Steps Statement'.

Response Form

The respondent has 14 days after being served with the Application to file a Response with the court, and must then serve a copy of the Response on you.

The Response will include the following information:

- the respondent's contact details (including an address for the service of documents);
- the orders listed in your Application that the respondent does not agree to, and why;
- the orders listed in your Application that the respondent agrees to; and
- the orders the respondent wants the court to make, and why.

Respondent's Genuine Steps Statement

If you have filed and served on the respondent an 'Applicant's Genuine Steps Statement', the respondent must also file a 'Respondent's Genuine Steps Statement' and serve it on you. This document will say whether the respondent agrees with your Genuine Steps Statement, and if not, why they disagree with it.

After the respondent files and serves the Response (and their Genuine Steps Statement) on you, the next step in the process will usually be the first court date.

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 unless the court tells you to appear by telephone or using an online platform. This is the date that was written on your Application by the court when you filed it. The respondent (or their lawyer) has to go to court on that date too. This first court date is also called a 'directions hearing'.

In certain circumstances, for example if you live in a regional area, you might be able to ask the court if you can participate in the first court date by telephone. If you want to make that request you should speak to the court registry about how to do so.

If you don't go to court, and have not arranged to participate by telephone, 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).

Can I get an interpreter?

Yes. If you need an interpreter, the court will organise one for you (it won't cost you anything). You might have already let the court know that you need an interpreter in the Application you filed. If you didn't let the court know when you filed your Application, you should let the court registry know before the first court date.

What happens at the first court date?

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

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

- whether they are defending your Application (arguing against you), and if so, why, and whether they have filed a Response and a Genuine Steps Statement;
- what witnesses will be giving evidence for them; and
- how long they think the hearing will take.

The judge will also ask you and the respondent:

- whether you are going to file any more documents (such as affidavits from you and any other witnesses); and
- whether you want any subpoenas issued (see >> **page 84**).

The judge might also make an order that you and the respondent attend mediation. If the judge does this then you and the respondent will be asked where you want the mediation to take place (either at the court itself or at another location if you don't live in the city).

What orders can be made at the first court date?

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

- set a date for mediation, if mediation was ordered, or give you instructions about how you can get a date;
- approve the subpoenas you and the respondent asked for;

- set a timetable for when you and the respondent have to file and serve evidence (such as affidavits from witnesses and documents);
- set a date for another directions hearing in the court; and
- set a date for your hearing.

If at the first court date the judge made orders that you and the respondent try mediation, you probably won't be given a hearing date at this stage. Instead the judge might give you a date for another directions hearing that will happen after mediation.

If you have applied for 'interlocutory, interim or procedural orders', the judge 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.

Is mediation in the FCFCOA useful?

Yes. Mediation is a chance to resolve your case without spending the time, energy and money a court hearing requires. Respondents are often more willing to settle when a court date is coming closer. Mediation for discrimination cases in the FCFCOA is free. Many cases settle at mediation.

What happens at mediation?

Mediation at the FCFCOA is a meeting where you and the respondent try to agree on a settlement of the case. Mediation in the FCFCOA is not run by the judge who will hear your case. The mediator is usually a 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 to resolve your case.

How do I prepare for mediation?

You prepare in the same way you prepared for conciliation at the AHRC (see from >> **page 61**). 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 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 72**).

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 FCFCOA 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 must file a 'Notice of Discontinuance' in the court registry. You can get a Notice of Discontinuance form from the FCFCOA website or by phoning the court registry. You must file an original copy with the court registry and serve the copies stamped by the court on each respondent. Also keep a copy for yourself.

At the directions hearing before the mediation, you would have been given a date for a second directions hearing after the



mediation. If you have filed your Notice of Discontinuance before the date of the second directions hearing, the court will cancel that second directions hearing.

If you have not filed your Notice of Discontinuance before the second directions hearing, you will have to go to court again to tell the judge if you settled your case at mediation and, if yes, when you will be filing your Notice of Discontinuance.

Note:



The side that loses in a court hearing usually has to pay the winner's legal fees (costs). If you settle your case in mediation, make sure that the written settlement 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 will 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 judge 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 an order that you pay their legal costs.

If for some reason you can't stick to the timetable, you must 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. You should 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. If mediation is part of the timetable, the judge might order you and the respondent to prepare your evidence after the mediation takes place. This is to avoid unnecessary work and expense in circumstances where the case might settle at mediation.

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 (for example medical or psychological reports) 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 you and any other witnesses you have (see next page). 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. Each party can issue up to 5 subpoenas in the FCFCOA

without having to ask for the court's permission. Do this as soon as you can, then make sure the subpoenas are issued by the court and properly served on the witnesses (see >> **page 84**).

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 can 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.

How do I prepare an 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). 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 >> **pages 122-123**).

There is no standard format for an affidavit, but it's probably best if you use the model form on the FCFCOA website. There is also a sample affidavit on >> **page 129**.

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, about what you saw or heard, not your opinions. For example:

Write: Meena said to me, “I am going now.” I saw that she had an angry expression on her face.

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 2014 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 witnesses your affidavit].

The blanks get filled in by you and the authorised person when the affidavit is signed (see >> **page 123**).

- 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.

‘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.

In NSW there are five things that must be done to have your affidavit properly signed and witnessed:

1. 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.
2. 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.
3. The authorised person must fill in and sign the front page of each annexure.
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.
5. If you are swearing or affirming your affidavit in front of a justice of the peace, solicitor or barrister in NSW, the authorised person must confirm your identity. That means they will usually stamp or write on the affidavit that they have known you for 12 months or more, or have seen your identification. Make sure you take your photo ID with you when you see the authorised person.

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

Note:



If your English language skills are limited, you might also need to involve an interpreter in swearing/affirming your affidavit. If this applies to you, get some advice on what you need to do.

What happens at a hearing?

Your hearing will be held in the FCFCOA. A judge will hear the case and then decide whether or not you have been unlawfully discriminated against.

The usual order in a hearing is:

Step 1: You (or your lawyer) make an opening statement.

Step 2: The respondent (or their lawyer) makes an opening statement.

Step 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 is called ‘re-examination’.

Step 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 the one doing the cross-examination.

Step 5: You (or your lawyer) can make a closing statement summing up your case.

Step 6: The respondent (or their lawyer) can make a closing statement summing up their case.

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

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

Once both sides have put forward all their evidence and made their statements, the judge 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 FCFCOA judge make?

If the judge decides that you have been unlawfully discriminated against, they will decide whether to make the orders you asked for in your Application. The judge 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 NCAT, there is no upper limit on how much compensation you can get in the FCFCOA. But compensation amounts paid in discrimination cases are still not high. Look at past cases to get an idea of the amounts courts have given people in other cases. The online AHRC publication *Federal Discrimination Law* can give you some guidance on this. You can find it on the AHRC website www.humanrights.gov.au.

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

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



If your case is in the FCFCOA, the amount of costs the loser will pay will be a lump sum that depends on how many stages the case has gone through. You can get a list of costs from the court registry or on the FCFCOA website. If you have any questions about it, contact the court registry, or ask a lawyer.

Costs in the FCA are calculated differently. The FCA website has information on costs and links to the costs' rules. Costs in the FCA will

usually be higher than in the FCFCOA. There is an option to ask the FCA at a directions hearing if they can put a maximum limit on the amount of costs you might have to pay. If your case is in the FCA you should ask a lawyer about this.

If you are being represented by Legal Aid NSW and you lose your case, the first \$15,000 of the respondent's legal costs that you are ordered to pay, will be paid for by Legal Aid NSW. You will have to pay the balance of any higher amount.

If you win your case, you can ask the judge 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.

If you are not represented by a lawyer, you are not entitled to an order for legal fees.

Can I withdraw my case if I want to?

Yes, you can stop your case. In the FCFCOA you can discontinue the matter up to 14 days before the hearing. After that time, you may need to seek leave of the court (permission), as well as agreement from the respondent(s) to stop your case.

This is called 'discontinuing proceedings'. To do this, you need to file a Notice of Discontinuance in the court registry and serve a copy of it on the respondent. You can get a Notice of

Discontinuance from the FCFCOA website or by calling the court 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 court 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. If you and the respondent agree to this, you should get them to put it in writing for you.

How long will the court process take?

Every case is different, but generally it will take between twelve to eighteen months from the time you file your Application with the registry to when you get a decision.

If you agree to mediation then the mediation will usually take place about three to six months after you file your Application.

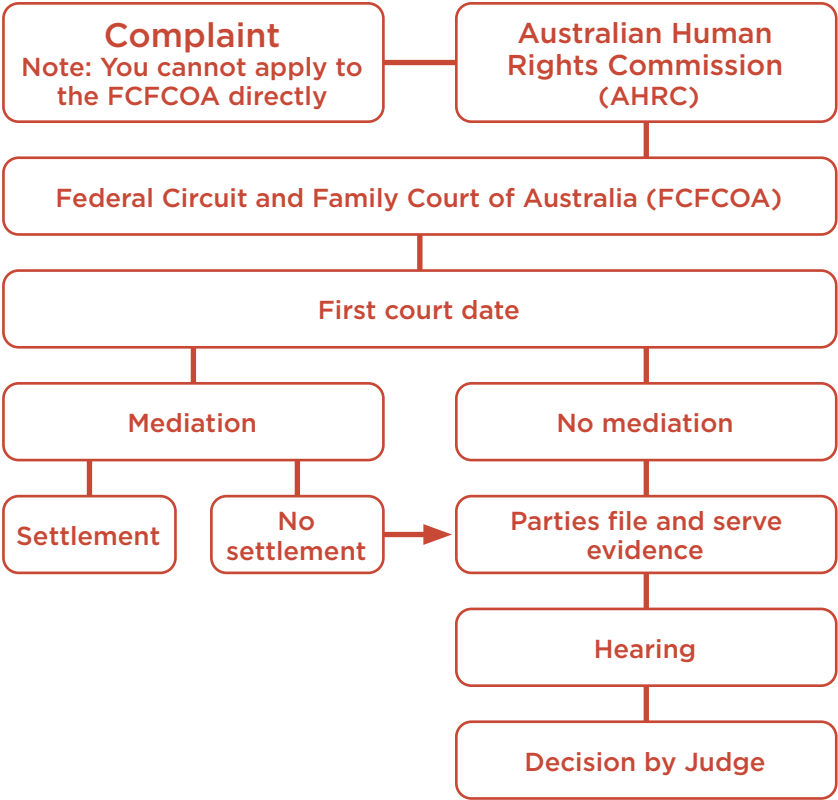
What if I lose? Can I appeal?

If you lose your case in the FCFCOA, you can appeal to the FCA. The appeal will be decided by a single Federal Court judge or in some circumstances by three Federal Court judges. You have **28 days** from the date you receive the FCFCOA 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.

Federal Circuit and Family Court of Australia (FCFCOA) flowchart

This flow chart shows how a case usually runs in the FCFCOA. Not all cases follow this exact order.



Sample Affidavit

Affidavit

Family Law Rules 2021 – RULE 8.15
General Federal Law Rules 2021 – RULE 4.04

Filed in:

- ☒ Federal Circuit and Family Court of Australia
☐ Family Court of Western Australia
☐ Other (specify) _____

Type of proceedings:

- ☐ Family law proceedings
☐ Migration proceedings
☒ General federal law proceedings
☐ Other (specify) _____

Filed on behalf of:

Full name: SALLY MARIE ANDERSON

COURT USE ONLY

Client ID _____

File number SYDNEY XXXX

Filed at SYDNEY

Filed on _____

Court location SYDNEY

Court date _____

Name of person swearing/affirming this affidavit (SEE PART C)

SALLY MARIE ANDERSON

Date of swearing/affirming 3/8/2021

Part A About the parties

APPLICANT 1

Family name as used now

ANDERSON

Given names

SALLY MARIE

RESPONDENT 1

Family name as used now

STAVROS

Given names

MARINA

APPLICANT 2

Family name as used now

Given names

RESPONDENT 2

Family name as used now

XYZ COMPANY PTY. LTD.

Given names

What is the contact address (address for service) in Australia for the party filing this affidavit?

You do not have to give your residential address. You may give another address at which you are satisfied that you will receive documents. If you give a lawyer's address, include the name of the law firm. You **must** also give an email address.

Pravin Singh, solicitor, Birchville Legal Services

444 Princess Highway Birchville

State NSW Postcode 2227

Phone (02) 5463 1111

Lawyer's code 2011123

Email psingh@bls.com.au

Part B About the independent children's lawyer (if appointed)

Independent children's lawyer family name	Given names

Firm name

Part C About you (the deponent)

What is your family name used now?	Your given names?
ANDERSON	SALLY MARIE

Gender	Usual occupation
<input type="checkbox"/> Male <input checked="" type="checkbox"/> Female <input type="checkbox"/> X	FULL TIME PARENT

What is your address?



You do not have to give your residential address if you are concerned about your safety. You may give another address at which you are satisfied that you will receive documents.

C/- Pravin Singh, solicitor, Birchville Legal Services		
444 Princess Highway Birchville		
DX 216533	psingh@bls.com.au	State NSW Postcode 2227

Part D Evidence

- Set out the facts divided into consecutively numbered paragraphs. Each paragraph should be confined to a distinct part of the subject matter.
 - Attach extra page(s) if you need more space. Make sure that the page containing Part E is always the last page of the form. You and the witness to your affidavit must sign the bottom of each additional page.
- I was born on 1 January 1976 and am 38 years of age. I am currently on the Parenting Payment Single and have the full time care of my child Ben, who was born on 10 May 2010.
 - Since leaving school in 1994 I have had a number of jobs in the hospitality and service industry and have only been unemployed for short periods.
 - I was employed by XYZ Company Pty. Ltd. between 12th June 2005 and 19th December 2013. 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 2013 I was earning \$650 per week gross including superannuation.
 - On 5th December 2013 I told my direct supervisor, Martina Stavos,
I am pregnant. It's about four months. I would like to take some time off from about March 2014. 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.
 - On or about 12th December 2013 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.
 - On 19th December 2013 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. Don't worry, you can have your job back after you've had the baby.
I felt really bad about what my supervisor had said but did not know what to say in reply.

7. 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.
8. In mid June 2014 I met a friend, Winny Cheng, who worked for XYZ Company Pty. Ltd. 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.*
9. The next day I rang XYZ Company Pty. Ltd. and spoke to the Human Resources Manager, 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.*
10. 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.
11. 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.


 Signature of person making this affidavit (deponent)	 Signature of witness
---	---

Part E Signature

I swear* /affirm* the contents of this affidavit are true

 Signature of Deponent
--

Place BIRCHVILLE Date 3/8/2021
--

 Before me (signature of witness)

PRAVIN SINGH Full name of witness (please print)
--

- ☐ Justice of the Peace
☐ Notary public
☒ Lawyer

* delete whichever is inapplicable

This affidavit was prepared / settled by
 ☐ deponent/s
☒ lawyer

PRAVIN SINGH 2011123 <small>PRINT NAME AND LAWYER'S CODE</small>
--



Getting help

- Legal advice and representation133
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- Resources..... 149

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 advising or representing you.

The people who work at ADNSW and the AHRC or the courts and tribunals 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.

A lawyer can lodge a complaint with ADNSW or the AHRC on your behalf, but they will need to get permission to represent you at a conciliation conference.

You do not need permission for a lawyer to represent you in NCAT, the FCFCOA or the FCA.

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 from >> **page 50** for what to include in your statement);
- collect any documents that are relevant to your case; and
- think about what you want to achieve by making a complaint – is it a practical solution to your problem (for instance, having a ramp installed at your local supermarket), a monetary solution (for instance, payment of lost wages if you were fired) or do you want your hurt feelings recognised (for instance, with an apology and/or some compensation).

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 Toolkit.

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.

LawAccess NSW

A good place to start is to call the free telephone helpline – LawAccess NSW. They will give you free information, referrals, and in some cases, legal advice about your legal problem. Call **1300 888 529**.

See >> **page 138** for contact details.

Legal Aid NSW

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

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

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

To apply, you would need to fill out a legal aid application form and give it to a person at the Legal Aid NSW 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 NSW to represent you, or for Legal Aid NSW to pay a private lawyer to represent you.

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

Legal Aid NSW looks 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 NSW 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 >> **page 138** 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 140** for contact details.

Private lawyers and solicitors

If you can afford to pay for a lawyer, the Law Society of NSW 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 141** for contact details.

Useful contacts

Organisations that handle discrimination complaints

The places listed below deal with enquiries and complaints about discrimination, victimisation harassment and public threats of violence.

Anti-Discrimination NSW (ADNSW)

www.antidiscrimination.nsw.gov.au

Locked Bag 5000, Parramatta
NSW 2124

(02) 9268 5544 (discrimination
enquiries and complaints)

1800 670 812 (toll free)

(02) 9268 5500 (fax)

complaintsadb@justice.nsw.gov.au

Australian Human Rights Commission (AHRC)

www.humanrights.gov.au

Level 3, 175 Pitt Street

Sydney NSW 2000

GPO Box 5218

Sydney NSW 2001

1300 369 711 (general enquiries)

1800 620 241 (TTY)

1300 656 419 (National Information
Service)

(02) 9284 9611 (fax)

infoservice@humanrights.gov.au

NSW Civil and Administrative Tribunal (NCAT) (Administrative and Equal Opportunity Division)

www.ncat.nsw.gov.au

John Maddison Tower

Level 10, 86–90 Goulburn St

Sydney NSW 2000

1300 006 228 (general enquiries)

1300 555 727 (National Relay
Service)

aeod@ncat.nsw.gov.au

Federal Circuit and Family Court of Australia (FCFCOA)

www.fcfcga.gov.au

1300 352 000 (general enquiries)

133 677 (National Relay Service)

Federal Court of Australia (FCA)

www.fedcourt.gov.au

Sydney

Law Courts Building
Level 17, Queens Square
Sydney NSW 2000
1300 720 980
(02) 9230 8295 (fax)

nswreg@fedcourt.gov.au

Brisbane

Level 6, Harry Gibbs
Commonwealth Law Courts
Building Brisbane QLD 4000
1300 720 980
(07) 3248 1260 (fax: general)
(07) 3248 1240 (fax: filing)

qldreg@fedcourt.gov.au

Melbourne

Owen Dixon Commonwealth Law
Courts Building, 305 William St
Melbourne VIC 3000
1300 720 980
(03) 8600 3351 (fax)

vicreg@fedcourt.gov.au

Fair Work Commission (FWC)

www.fwc.gov.au

Level 10, Terrace Tower
80 William Street
East Sydney NSW 2011
1300 799 675 (national help line)
(02) 9380 6990 (fax)

sydney@fwc.gov.au

Fair Work Ombudsman

www.fairwork.gov.au

Level 13, 175 Liverpool Street
Sydney NSW 2000
GPO Box 9887 Sydney NSW 2001
131 394 (general enquiries)
1800 555 677 (TTY)
1800 555 727 (Speak and Listen)

Interpreters

Translating and Interpreting Service (TIS National)

www.tisnational.gov.au

To use an interpreter over the
telephone, call 131 450 (24 hours
7 days)

Places to get legal information, advice and assistance about discrimination

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.

LawAccess NSW

www.lawaccess.nsw.gov.au

1300 888 529

Legal Aid NSW

www.legalaid.nsw.gov.au

Legal Aid NSW provides
free legal advice and legal
representation in court for
eligible clients. Call LawAccess
NSW on **1300 888 529** or find
your nearest Legal Aid NSW
office at [www.legalaid.nsw.gov.
au/contact-us](http://www.legalaid.nsw.gov.au/contact-us)

Kingsford Legal Centre

www.klc.unsw.edu.au

(02) 9385 9566

(02) 9385 9583 (fax)

Discrimination Law Line:

1300 722 795

legal@unsw.edu.au

Public Interest Advocacy Centre

www.piac.asn.au

(02) 8898 6500

(02) 8898 6555 (fax)

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.

Aboriginal and Torres Strait Islander women

Wirringa Baiya Aboriginal Women's Legal Centre

www.wirringabaiya.org.au

(02) 9569 3847

1800 686 587

info@wirringabaiya.org.au

Women's Legal Services NSW – First Nations Women's Legal Program

www.wlsnsw.org.au

(02) 8745 6977

1800 639 784

Children and Young People (Under 18)

Marrickville Legal Centre Youth Legal Service

www.mlc.org.au

(02) 9559 2899

Youth Law Australia

www.yla.org.au

1800 950 570

Shopfront Youth Legal Centre

www.theshopfront.org

(02) 9322 4808

Disability

Australian Centre for Disability Law

www.disabilitylaw.org.au

(02) 9370 3135

1800 800 708

National Relay Service

www.communications.gov.au/what-we-do/phone/services-people-disability/accesshub/national-relay-service

1300 555 727

133 677 (TTY)

0423 677 767 (SMS)

Gay, lesbian, bisexual, transgender and intersex

Inner City Legal Centre

www.iclc.org.au

(02) 9332 1966

1800 244 481

iclc@iclc.org.au

HIV/AIDS

HIV/AIDS Legal Centre

www.halc.org.au

(02) 9206 2060

Intellectual Disability

Intellectual Disability Rights Service

www.idrs.org.au

(02) 9265 6350 (enquiries)

(02) 9265 6300/1300 665 908

(Justice Advocacy Service)

Older People

Seniors Rights Service

www.seniorsrightsservice.org.au

(02) 9281 3600

1800 424 079

info@seniorsrightsservice.org.au

Women

Women's Legal Services NSW

www.wlsnsw.org.au

(02) 8745 6988

1800 801 501

Community legal centres

Community Legal Centres NSW

www.clcnsw.org.au

(02) 9212 7333

Central Coast Community Legal Service

www.centralcoastclc.org.au

(02) 4353 4988

Central Tablelands and Blue Mountains Community Legal Centre

www.ctbmclc.org.au

Blue Mountains, Lithgow, Oberon and Bathurst regions

(02) 4704 0207

1300 363 967

Far West Community Legal Centre

www.farwestclc.org.au

(08) 8088 2020

reception@farwestclc.org.au

Hume Riverina Community Legal Service

www.hrcls.org.au

(02) 6055 8090

1800 918 377

Hunter Community Legal Centre

www.hunterclc.com.au

(02) 4040 9120

1800 650 073

Illawarra Legal Centre

www.illawarralegalcentre.org.au

(02) 4276 1939

Inner City Legal Centre

www.iclc.org.au

(02) 9332 1966

1800 244 481

Kingsford Legal Centre

www.klc.unsw.edu.au

(02) 9385 9566

Macarthur Legal Centre

www.maclegal.net.au

(02) 4628 2042

Marrickville Legal Centre

www.mlc.org.au

(02) 9559 2899

**North & North West Community
Legal Service**

www.nnwcls.org.au

(02) 6772 8100

1800 687 687

**Northern Rivers Community
Legal Centre**

www.northernriversclc.org.au

(02) 6621 1000

Redfern Legal Centre

www.rlc.org.au

(02) 9698 7277

1800 689 889

**Shoalcoast Community Legal
Centre**

www.shoalcoast.org.au

(02) 4422 9529

1800 229 529

South West Sydney Legal Centre

www.swslc.org.au

(02) 9601 7777

**University of Newcastle Legal
Centre**

www.newcastle.edu.au/school/newcastle-law-school/legal-centre

(02) 4921 8666

**Western Sydney Community
Legal Centre Limited**

www.wscslc.org.au

(02) 8833 0911

**Western NSW Community Legal
Centre Inc**

www.wnswclc.org.au

(02) 6884 9422

1800 655 927

Private solicitors

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

www.lawsociety.com.au

Solicitor Referral Service

(02) 9926 0300

Email: ereferral@lawsociety.com.au

NSW Bar Association

www.nswbar.asn.au

Legal Assistance Referral Scheme

(02) 9232 4055

legalassist@nswbar.asn.au

**Justice Connect (formerly Public
Interest Law Clearing House
(PILCH))**

www.justiceconnect.org.au

(02) 8599 2100

Places that handle other sorts of complaints

For a detailed directory of places where you can make complaints, 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. The services listed below are arranged by type of problem.

Accommodation

NSW Fair Trading

www.fairtrading.nsw.gov.au

133 220

Tenants' Union of NSW

www.tenants.org.au

(02) 8117 3700

1800 251 101

Banks and other credit providers

Australian Financial Complaints Authority

www.afca.org.au

1800 931 678

Consumer (goods and services)

Australian Competition and Consumer Commission (ACCC)

www.accc.gov.au

1300 302 502

ACCC Indigenous Infoline

1300 303 143

Australian Financial Complaints Authority

www.afca.org.au

1800 931 678

NSW Fair Trading

www.fairtrading.nsw.gov.au

133 220

Education

Catholic Education Commission

www.csns.catholic.edu.au

(02) 9287 1555

NSW Department of Education

www.education.nsw.gov.au

1300 679 332

Employment

Comcare Australia

www.comcare.gov.au

(02) 6276 0333

1300 366 979

Fair Work Commission

www.fwc.gov.au

1300 799 675

Fair Work Ombudsman

www.fairwork.gov.au

131 394

NSW Industrial Relations Commission

www.irc.nsw.gov.au

(02) 8688 3516

SafeWork NSW & State Insurance Regulatory Authority (SIRA)

www.safework.nsw.gov.au

131 050

Government departments

Commonwealth Ombudsman

www.ombudsman.gov.au

(for complaints about
Commonwealth Government
departments)

1300 362 072

NSW Ombudsman

www.ombo.nsw.gov.au

(for complaints about NSW
government departments)

(02) 9286 1000

1800 451 524

Health

Health Care Complaints Commission

www.hccc.nsw.gov.au

(02) 9219 7444

(02) 9219 7555 (TTY)

1800 043 159

Each health care profession also
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 NSW

www.ahansw.com.au

(02) 9281 6922

Immigration

Department of Home Affairs

www.homeaffairs.gov.au

131 881

Office of the Migration Agents Registration Authority

www.mara.gov.au

(02) 9078 3552

1300 226 272

Insurance

Australian Financial Complaints Authority

www.afca.org.au

1800 931 678

Commonwealth Ombudsman

www.ombudsman.gov.au

1300 362 072

Lawyers

Office of the Legal Services Commissioner

www.olsc.nsw.gov.au

(02) 9377 1800

(02) 9377 1855 (TTY)

1800 242 958

Local Councils

The Office of Local Government

www.olg.nsw.gov.au

(02) 4428 4100

Media and advertising

Ad Standards

www.adstandards.com.au

(02) 6173 1500

Australian Communications and
Media Authority

www.acma.gov.au

1300 850 115

Media, Entertainment and Arts
Alliance

www.meaa.org

1300 656 513

Australian Press Council

www.presscouncil.org.au

(02) 9261 1930

1800 025 712

Advertising Council Australia

www.advertisingcouncil.org.au

(02) 8297 3800

Neighbour disputes

Community Justice Centres

www.cjc.justice.nsw.gov.au

1800 990 777

Police

NSW Ombudsman

www.ombo.nsw.gov.au

1800 451 524

NSW Police Service Customer
Assistance Unit

www.police.nsw.gov.au

1800 622 571

Privacy

Information and Privacy
Commission NSW

www.ipc.nsw.gov.au

1800 472 679

Office of the Australian
Information Commissioner

www.oaic.gov.au

1300 363 992

Registered clubs

NSW Office of Liquor, Gaming
and Racing

www.liquorandgaming.nsw.gov.au

1300 024 720

Telecommunications

Telecommunications Industry
Ombudsman

www.tio.com.au

1800 062 058

Transport

Transport for NSW

www.transport.nsw.gov.au

(02) 8202 2200

State Transit Authority of NSW

www.transport.nsw.gov.au/state-transit

131 500

Sydney Trains

www.transport.nsw.gov.au/sydneytrains

131 500

NSW Taxi Council

www.nswtaxi.org.au

(02) 8339 4644

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. You can also call the **Victims Services' Victims Access Line**, or visit its website to get information, support and referrals to other service providers:

www.victimsservices.justice.nsw.gov.au

1800 633 063

1800 019 123 (Aboriginal Contact Line)

Unions

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

Australian Council of Trade Unions

www.actu.org.au

1300 486 466

Unions NSW

www.unionsnsw.org.au

(02) 9881 5999

Other advocacy or support services

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

You might also like to check for other advocacy services offered by ADA Australia for aged and disability advocates:

www.adaaustralia.com.au/aged-care-advocacy

1800 818 338

Ageing and Disability Commission

Ageing and Disability Abuse

www.ageingdisabilitycommission.nsw.gov.au

Helpline: 1800 628 221

Australian Centre for Disability Law

www.disabilitylaw.org.au

1800 800 708

(02) 9370 3135

Carers NSW Australia

www.carersnsw.org.au

(02) 9280 4744

1800 422 737 Carer Gateway services

Deaf Society of New South Wales

www.deafsociety.org.au

(02) 8833 3600

1800 893 855

(02) 8833 3691 (TTY)

Dementia Australia NSW

www.dementia.org.au

(02) 9805 0100

1800 100 500

Disability Advocacy NSW

www.da.org.au

(02) 4927 0111

1300 365 085

People With Disability Australia (PWDA)

www.pwd.org.au

(02) 9370 3100

1800 422 015

Disability Gateway

www.disabilitygateway.gov.au

1800 643 787

Embrace Multicultural Mental Health

www.embracementalhealth.org.au

(02) 6285 3100

Ethnic Communities Council

www.eccnsw.org.au

(02) 9319 0288

Family Advocacy

www.family-advocacy.com

(02) 9869 0866

1800 620 588

Federation of Parents and Citizens' Associations of NSW

www.pandc.org.au

1300 885 982

Gay and Lesbian Rights Lobby

www.glrll.org.au

Jack Whitney – Co-convenor
0411 387 913

The Gender Centre Inc.

www.gendercentre.org.au

(02) 9569 2366

(02) 9519 7599

IDEAS (Information on Disability Education & Awareness Services)

www.ideas.org.au

(02) 6947 3377

Immigrant Women's Speakout Association Inc

www.speakout.org.au

(02) 9635 8022

Indigenous Disability Advocacy Service

(02) 9687 7688

Multicultural Disability Advocacy Association

www.mdaa.org.au

(02) 9891 6400

1800 629 072

National Disability Insurance Scheme

www.ndiscommission.gov.au

1800 800 110

NDIS Quality and Safeguards Commission

www.ndis.gov.au

1800 035 544

NSW Council for Intellectual Disability

www.cid.org.au

1800 424 065

One Door Mental Health

www.onedoor.org.au

(formerly Schizophrenia Fellowship of NSW)

1800 843 539

Settlement Services International

www.ssi.org.au

(02) 8799 6700

Self-Advocacy Sydney Inc.

www.sasinc.com.au

(02) 9622 3005

Seniors Rights Service

www.seniorsrightsservice.org.au

1800 424 079

Transcultural Mental Health Centre

www.dhi.health.nsw.gov.au/transcultural-mental-health-centre

(02) 9912 3850

1800 011 511

Way Ahead Mental Health Association NSW

www.wayahead.org.au

(02) 9339 6000 (WayAhead office)

1300 794 991 (mental health enquiries)

1300 794 992 (support line for anxiety disorders)

Counselling services

Many people who have experienced discrimination find it helpful to speak to a counsellor. To find the right counsellor for you, talk to your GP, your local community health centre or someone at one of the advocacy and support services listed in this Toolkit. 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.

Domestic Violence Line

1800 656 463

Headspace (National Youth Mental Health Foundation)

www.headspace.org.au/eheadspace

1800 650 890 (ehespace)

Kids Help Line

www.kidshelp.com.au

1800 551 800

Lifeline

www.lifeline.org.au

131 114

Mensline Australia

www.mensline.org.au

1300 789 978

NSW Mental Health Line

1800 011 511

NSW Rural Mental Health Support Line

www.dpi.nsw.gov.au/emergencies/droughthub_old/wellbeing

1800 201 123

Sexual Assault Hotline

1800 424 017

Resources

Here is a list of websites where you can get resources that might help you with your discrimination complaint.

Useful websites

Anti-Discrimination NSW (ADNSW)

www.antidiscrimination.nsw.gov.au

Australian Human Rights Commission

www.humanrights.gov.au

Fair Work Commission

www.fwc.gov.au

Fair Work Ombudsman

www.fairwork.gov.au

LawAccess NSW

www.lawaccess.nsw.gov.au

Legal Aid NSW

www.legalaid.nsw.gov.au

Racism No Way

www.racismnoway.com.au

Stop Public Threats

www.stoppublicthreats.legalaid.nsw.gov.au

Youth Law Australia

Legal information for young people under 25

yla.org.au

Publications

Australian & New Zealand Equal Opportunity Law & Practice

CCH Australia Limited

Discrimination: Law and Practice (4th edition)

Chris Ronalds & Elizabeth Raper, Federation Press, 2012

Discrimination Toolkit:

Your Guide To Making a Discrimination Complaint

Legal Aid NSW, Central Tablelands and Blue Mountains Community Legal Centre & Kingsford Legal Centre, 2014.

2021 version available in hard copy or online at: www.legalaid.nsw.gov.au/publications

Federal Discrimination Law

Australian Human Rights Commission, Available online at www.humanrights.gov.au

Retreat from Injustice: Human Rights Law in Australia

Nick O'Neill, Simon Rice and Roger Douglas, Federation Press, 2004



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Glossary

ADNSW. See Anti-Discrimination New South Wales.

Administrative and Equal Opportunity Division. The section of the NSW Civil & Administrative Tribunal (NCAT) that deals with discrimination, harassment, vilification and victimisation cases.

AFCA. See Australian Financial Complaints Authority.

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.

AHRC. See Australian Human Rights Commission.

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 New South Wales (ADNSW). 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 ADNSW before you can take it to NCAT.

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 NCAT, it is heard by an Appeal Panel, which is a group of between one to three NCAT members.

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

Applicant's Genuine Steps

Statement. The document you have to prepare and file with the FCFCOA or Federal Court registry at the same time as you file your Application. It tells the court what you have done up until then to try and resolve your complaint with the respondent.

Application form. The document you have to prepare and file in the FCFCOA or Federal Court registry to start court proceedings.

Applying for leave. Asking NCAT for permission for your case to go ahead if your complaint was declined by ADNSW.

Area. The name for the particular area of public life that you have been treated unfairly in. Areas include employment, accommodation, 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. See Australian Securities and Investments Commission.

Australian Financial Complaints

Authority. A federal government organisation that provides consumers and small businesses with fair, free and independent dispute resolution for financial complaints.

Australian Human Rights

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

Australian Human Rights

Commission Act. A federal law that covers some parts of discrimination law. Federal laws cover people everywhere in Australia.

Australian Securities and Investments 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 tribunal members and judges use to describe giving something to the person who wins a case. They would say for example, "I award the Applicant \$X as compensation for the hurt, humiliation and distress she suffered because of the unlawful discrimination."

Bullying. Workplace bullying occurs when an individual or group of individuals repeatedly behaves unreasonably towards a worker or group of workers at

work, and the behaviour creates a risk to health and safety

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). This ground is called 'carer's responsibilities' under NSW law, and 'family responsibilities' under federal laws.

Case conference. A conference or meeting held at NCAT 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 NCAT process.

Closing statement. The last step in a court or tribunal hearing, where each party (side) gets to give the judge 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 that people who take legal action might get to compensate them for the way they were treated.

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

Conciliation conference. Where an impartial third person (ie. someone who is not involved in the dispute), runs a meeting between a complainant and a respondent to help them try to resolve a dispute without having a court or tribunal hearing. In discrimination cases in New South Wales, the conciliation process is done through ADNSW or the AHRC. In unfair dismissal and general protections cases, conciliation is run by the Fair Work Commission.

Conciliator. The person who runs your conciliation conference and helps you try to resolve your dispute with the respondent. A conciliator cannot take sides. In discrimination cases in New South Wales, it will be someone who works for ADNSW or the AHRC.

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 and subpoenas.

Crimes Act 1900 (NSW) section 93Z. A NSW law that makes it illegal to intentionally or recklessly make a public threat against another person or group of people because of their race, religion, sexual orientation, gender identity, intersex or HIV/AIDS status.

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 of money a court or tribunal orders one party (side) to pay another as compensation.

Decline. The word used by ADNSW when they decide not to accept your discrimination,

harassment, victimisation or vilification complaint for investigation. This phrase is also used by ADNSW 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 in an area of public life (education, employment etc) because of a ground (age, race, sex, etc).

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

Directions hearing. A court or tribunal hearing where a tribunal member or judge gives the parties instructions about what they have to do to prepare their case.

Disability Discrimination Act.

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

Disability Standards. Standards made by the federal government which set out rights and responsibilities about equal access and opportunity for people with a disability. Standards can be made in the areas of employment, education, public transport services, access to premises, accommodation and the administration of Commonwealth laws and programs.

Dismissed. The word the tribunal member or judge uses at a hearing to say you have lost your case.

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

Enforcing the agreement.

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

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

Fair Work Commission. A tribunal that helps people to resolve employment disputes under the *Fair Work Act*. It can make a final decision in an unfair dismissal claim.

Fair Work Ombudsman. An organisation that investigates various employment matters including breaches of the law and underpayment of wages and entitlements. It is not a court or tribunal and cannot make final decisions.

Family responsibilities. This is one of the grounds under federal 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). This ground is called 'carer's responsibilities' under NSW discrimination laws.

FCA. See Federal Court of Australia.

FCFCOA. See Federal Circuit and Family Court of Australia.

Federal Circuit and Family Court of Australia (FCFCOA). A federal court that decides less complicated discrimination law cases for people (throughout Australia) when their cases have not been resolved at the AHRC.

Federal Court of Australia (FCA). A high-level federal court that decides complicated discrimination law cases for people (throughout Australia) when their cases have not been resolved at the AHRC. The FCA hears appeals of decisions made by the FCFCOA.

Federal Court judge. A FCFCOA or FCA judge who runs hearings and decides cases in the FCFCOA or FCA.

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 or tribunal registry (office).

Final hearing. The final process in NCAT, the FCFCOA or FCA where a decision is made about whether or not unlawful discrimination happened, and if it did, what should be done about it.

First case conference. The first tribunal date that happens after a complaint is referred from ADNSW to NCAT.

First case conference Result Sheet. A document prepared by a tribunal member of NCAT after the first case conference. It summarises the complaint and what happened at the first case conference. It includes the timetable that both parties (sides) have to follow.

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

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).

Gender identity. A ground for making a complaint under federal discrimination laws.

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

General protections. Parts of the *Fair Work Act* that aim to protect your workplace rights, including protection from unlawful discrimination. General protections apply to most Australian workplaces.

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 or tribunal member makes a decision about a person's case.

Indirect discrimination. A type of discrimination where a rule or policy which applies 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.

Interim/Interlocutory order.

A decision made by a judge in the FCFCOA or FCA that keeps things the way they are until the case is finished.

Interlocutory hearing. A hearing in front of a judge in the FCFCOA or FCA to decide whether you will get the interim/interlocutory orders you asked for.

Intersex status. A ground for making a complaint under federal discrimination laws.

Investigation phase. The period when ADNSW or the AHRC 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.

LawAccess NSW. A free government telephone legal information and referral service for people living in NSW. LawAccess NSW has a lot of useful legal information, self-help guides and other resources on its website.

Leave. Permission for your case to go ahead in NCAT or the FCFCOA/FCA. You need to apply for this if ADNSW declined your complaint during the investigation stage. In some circumstances you might also

need to apply for this to go ahead with your case in the FCFCOA or FCA.

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

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

Legal entities. A person or organisation that legal action can be brought against. Individuals and companies can be 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, for example "The complaint is made out."

Mediation. Where an impartial third person (someone who is not involved in the dispute) runs a meeting with the parties (sides) in a court or tribunal case to help them try to resolve the dispute without a hearing. Mediation is available in NCAT, the FCFCOA and FCA.

Mediator. The person who facilitates a mediation (see above) in NCAT, the FCFCOA or FCA.

Member. The name for people at the NSW Civil and Administrative Tribunal (NCAT) who hear and decide discrimination law cases, and sometimes run mediations. Some NCAT Members are lawyers or judges (The President; Deputy Presidents; 'Principal Members' and 'Senior Members'). Other Members (called 'General Members') are not lawyers or judges, but have skills or experience relevant to the discrimination case being decided.

NCAT. See NSW Civil and Administrative Tribunal.

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 work health 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.

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

Notice of Termination. A document you might get from the AHRC telling you that they cannot take your complaint any further. You have 60 days from the date on the Notice of Termination to take your case to the FCFCOA or FCA.

NSW Civil and Administrative Tribunal (NCAT). A NSW tribunal (similar to a court) which runs discrimination law cases that have not been resolved at ADNSW. The Administrative & Equal Opportunity Division of NCAT runs discrimination law cases. NCAT also has other Divisions which run different types of legal cases.

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.

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.

Occupational health and safety.

See Work health and safety.

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. Written 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 ADNSW sends to NCAT after it has referred a

discrimination complaint to NCAT. The President's Report includes the documents the complainant and respondent gave to ADNSW and the President's Summary of Complaint.

President's Summary of Complaint.

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

Public threats of violence. In NSW intentionally or recklessly publicly threatening or inciting violence against another person because of their race, religion, sexual orientation, gender identity, intersex or HIV/AIDS status is against the law.

Proven. A word a court or tribunal might use to say you have won your case or a particular part of your case.

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

Racial hatred. When someone says or does something in public which is likely to offend, humiliate, insult or intimidate a

person, and it is said or done because of that person's race, colour or national or ethnic origin. This is a ground for making a complaint under federal discrimination laws.

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 ADNSW sends a complaint to NCAT.

Registrar. A senior person who works for NCAT, the FCFCOA or FCA.

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 ADNSW or the AHRC, or who you are running a case against in NCAT, the FCFCOA or FCA. That is, the other side.

Respondent's Genuine Steps Statement. A court form which a respondent must file with the FCFCOA registry and serve on you in response to your 'Applicant's Genuine Steps Statement'.

Response Form. A document or form from the FCFCOA 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 sexual harassment, pregnancy, sexual orientation and intersex status discrimination) is against the law. This law covers everyone in Australia.

Sexual harassment. 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.

Sexual orientation. A ground for making a complaint under federal discrimination laws.

Shuttle negotiation. Where during a conciliation conference at ADNSW or the AHRC, 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 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.

Stop bullying order. The Fair Work Commission has the power to make an order to stop bullying, if there is a risk that a worker will continue to be bullied at work by a particular individual or group.

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

Substantiated. A word a court or tribunal can use to say you have

won your case, for example “The complaint is substantiated.”

Summary of complaint form. A document prepared by a tribunal member of NCAT after the first case conference. It summarises the complaint, the respondent's response to the complaint and the factual and legal issues in dispute.

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

Supreme Court of New South Wales. A high-level state court that deals with many types of cases in New South Wales, including some types of appeals of decisions made by NCAT.

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 the AHRC uses to tell you they cannot take your complaint any further for whatever reason. ADNSW 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 ADNSW.

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 if complaining to ADNSW and 24 months if complaining to the AHRC, from when the discrimination, harassment, victimisation or vilification happened.

Tribunal members. See Member.

Tribunal's Summary of complaint form. See summary of complaint form.

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 discrimination complaint. 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 person or a particular group of people. You can make a complaint under discrimination laws about some types of vilification.

Work health and safety (occupational health and safety).

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

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