

FACT SHEET:

Our complaints process

We take complaints under three pieces of legislation: the Anti-Discrimination Act 1991, the Public Interest Disclosure Act 2010, and the Human Rights Act 2019.

Your complaint could be covered by one or more of these Acts. You don't need to know which piece of legislation your complaint is covered by before you lodge it. We will contact you to discuss it after lodgement, to help figure out the best way of moving forward with it. You can also talk to us before you lodge it if you're unsure or need more information.

If a complaint is accepted by the Commission, we generally try to resolve it through a complaint resolution process, called a conciliation. The process may differ depending on your circumstances and which piece of legislation the complaint is made under.

This process is free, and you don't need a lawyer to make a complaint.

Our role

The Commission is not a court, and we cannot decide if discrimination or a human rights breach has happened.

We are an impartial body, which means we are not on one side or the other. Our Commission staff who deal with complaints are not advocates for the person making the complaint (the complainant) or the person or organisation the complaint is about (the respondent). They are there to help the parties involved in the complaint reach an agreement about how to resolve it.

If you are involved in a complaint, we recommend that you keep the complaint confidential and only tell your legal and professional advisers. This may make it easier to resolve the complaint at conference.

The complainant can withdraw their complaint at any time.

Legal information, support or advice

You do not need a lawyer to make or respond to a complaint or participate in a conciliation conference. If you want a lawyer, you will need to organise this yourself.

Lawyers, advocates and other representatives can only take part in a conciliation conference with the permission of the conciliator.

If you need legal or other advice about your case, we can suggest where to go for help, but we cannot give you legal advice.

Prior complaint to the person or organisation you are complaining about

Most complaints dealt with under the Anti-Discrimination Act 1991 do not require you to complain to the person or entity you are complaining about prior to lodging a complaint with the Commission.

However, the Commissioner cannot deal with a complaint under the Human Rights Act 2019 until you first make a complaint to the public entity you are complaining about, and wait at least 45 business days after you make your complaint.

If there are exceptional circumstances as to why the Commission should deal with your complaint urgently, you must still make a prior complaint to the public entity you are complaining about, but we may be able to waive the 45 business days waiting time.

It is your responsibility to satisfy the Commission that you have followed the prior complaint process. To do this you will need to advise us of the date you made the complaint, send us a copy of your complaint to the public entity, and send us the latest correspondence you received from them. If you do not have these documents, you must tell us how you complied with the complaint process.

The Commission may also defer dealing with a complaint if you have complained to the public entity as required, but we consider that the public entity has not yet had an adequate opportunity to deal with the complaint. We will discuss this with you and the public entity before making a decision.

Our complaint management process

You can watch the Working It Through video, produced by the Commission, to see how our complaints process works step by step. Although it relates specifically to complaints made under the Anti-Discrimination Act, most processes are similar for complaints under the Human Rights Act and the Public Interest Disclosure Act.

Lodgement

The legislation states that complaints must:

- be made in writing (this includes through our online complaint form);
- set out reasonably sufficient details to indicate that the person complained about may have breached the Anti-Discrimination Act or the Human Rights Act, or committed a reprisal under the Public Interest Disclosure Act; and
- be lodged with or sent to the Commission.

A complaint can be made to the Commission within one year of the incident complained about. In some cases we might accept a complaint made more than one year from the alleged conduct, depending on a range of factors including the length of the delay and the reason for it.

Assessment

When a written complaint is received by the Commission, it is assessed to see if the matters raised in the complaint would come within the Anti-Discrimination Act, the Human Rights Act, or the Public Interest Disclosure Act.

A complaint may be assessed as coming within more than one piece of legislation.

The assessment usually occurs within 28 days of the Commission receiving the complaint.

The assessment is not to determine whether there has been a breach of any of the Acts. We are not a court or tribunal, and do not make a ruling about whether unlawful conduct took place. The assessment simply determines whether or not the allegations in the complaint are covered by relevant legislation.

If there is sufficient information provided in the complaint and it is assessed to come within any of the Acts, it is accepted and the respondents will be notified about the complaint. We will contact the complainant to discuss the best way of moving forward with the complaint – this will depend on which Act/s the complaint may be covered by.

If a complaint is not accepted, the complainant is advised in writing with reasons and referred to a more appropriate agency if there is one. If the complainant has further information, they may provide this to the Commission to consider.

The Commissioner can also reject a complaint.

Deciding how to deal with a complaint

Most complaints dealt with under the Anti-Discrimination Act 1991 will be referred for a conciliation conference to try to resolve the complaint. More information about conciliation conferences are set out below.

Complaints dealt with under the Human Rights Act 2019 may go to conciliation conference, or there may be other actions we might take to try and resolve the complaint.

If you lodge a complaint and it is accepted, a conciliator will call you to discuss your options for moving forward with it.

Sometimes a complaint may be better dealt with by another agency. If this is the case we might refer you elsewhere, but we can only do this with your consent.

Notification

If the complaint is accepted, all parties are notified in writing and a date is set for a conciliation conference. Conciliation conferences are compulsory for all parties involved in the complaint.

The date set for the conference is generally between four and six weeks from the written notification of a complaint being accepted.

The respondent is given an opportunity to provide a written response, and/or request an earlier conference date. If all parties agree, the conference may be brought forward.

Conciliation conference

A meeting is held with all parties and a conciliator to discuss the issues and try to resolve the complaint. This is called a conciliation conference. They are usually held with all parties face to face, but may be via teleconference, or with the parties in separate rooms.

The Commission is an impartial body in this process, and our conciliators are not able to make a ruling about whether or not the conduct in the complaint breached the Act. The role of the conciliator is to help the complainant and the respondent come to an agreement on how to resolve the complaint in a way that reflects the purposes of the Act.

Complaints resolved under the Anti-Discrimination Act

If an agreement is reached by all parties, it is written down, signed by all parties, and filed. Work-related complaints are filed at the Queensland Industrial Relations Commission. All other complaints are filed at the Queensland Civil and Administrative Tribunal. The agreement is then binding on all parties, as if it is a court order. The complaint is closed and this is the end of the process.

Complaint resolved under the Human Rights Act

If agreement is reached through conciliation, the conciliator may write the agreement and ask all parties to sign it. If an agreement is signed, a copy of the agreement will be given to all parties and the complaint is finalised.

Alternatively, the conciliator may prepare a notice setting out the outcome of the complaint and provide that to all parties before finalising the complaint.

If the complaint is unable to be resolved through conciliation

Sometimes, the parties are unable to reach an agreement at conciliation. If the conciliator considers the complaint may be resolved by further negotiations, they may give the parties time after the conference to reach an agreement.

Complaints not resolved under the Anti-Discrimination Act

If the complaint is not resolved by conciliation, the complainant may request the complaint be referred to a tribunal for a hearing.

Tribunal hearings are public, and any determination made by a tribunal is binding on all parties.

Work-related complaints are dealt with by the Queensland Industrial Relations Commission. All other complaints are dealt with by the Queensland Civil and Administrative Tribunal.

If a matter proceeds to tribunal, a complainant must provide evidence to prove that the act of discrimination, harassment, vilification, victimisation or reprisal took place. Similarly, the respondent must provide evidence to prove that their behaviour was reasonable, or that an exemption to the Act applies, if that is what they are intending to argue.

The Commission produced a video about taking matters before the Queensland Civil and Administrative Tribunal. It is intended as a guide for applicants (complainants), respondents, and advocates, and has information about what is involved at each stage of the process.

Our Legal Information section also has information about the various processes required in the lead up to the hearing of a complaint. These notes are based on decisions of the Queensland Civil and Administrative Tribunal and discuss topics such as filing contentions, complying with orders and producing documents.

Complaints not resolved under the Human Rights Act 2019

If the complaint is not resolved through conciliation, the Commission will prepare a report for the parties. This report may include recommendations for actions the respondent should take to ensure its actions and decisions are compatible with human rights.

Information in the report, excluding personal information, may be published by the Commission in –

Reports about unresolved complaints; and

Annual Reports.

The report is not admissible in any legal proceedings unless all parties, and the court, agree.