

# Complaint Process

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



*Equal Opportunity Commission*



## What is a complaint?

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

A complaint may be lodged by a parent or guardian on behalf of a child or a person with a disability who is unable to lodge a complaint themselves.

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

In some circumstances the Western Australian Commissioner for Equal Opportunity (the Commissioner) may accept incidents that have occurred more than 12 months before the complaint is lodged if the person lodging the complaint shows 'good cause' for those incidents to be included.

## Making a complaint

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

## Onus of proof

Under the Act the person who makes the complaint must prove the discrimination, harassment or victimisation happened, supported by evidence where possible.

There are exceptions under the Act, and where a party relies on an exception, that party must prove the exception applies in the circumstances.

## Confidentiality

The Commissioner and Commission staff are required by the Act to protect the confidentiality of all complaints. This means that information about a complaint cannot be revealed to the media or any third party by the Commissioner or Commission staff. Parties to a complaint (including their representatives), or those required to provide evidence about the complaint, are encouraged to maintain confidentiality since this can assist resolution.

## Victimisation

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

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

### **Complaint outcomes**

#### Conciliated

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

#### Withdrawn

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

#### Lapsed

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

#### Dismissed

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

#### Commissioner Referred

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

#### Complainant Referred

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

#### Disclaimer

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

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December 2024

### **Investigation**

The complaint will be assessed to see if it is covered by the Act. If it is not covered, information about why the complaint is not accepted is provided to the complainant, along with advice about organisations that may be able to assist. If the complaint is accepted the Commissioner will delegate an officer to investigate the allegations and this process is both impartial and confidential.

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

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

If the complaint has not been dismissed by the Commissioner, the allegations in a complaint are provided to the respondent. A written response is requested to the allegations and this response is usually then provided to the complainant. This exchange of documents may resolve the matter.

### **Conciliation**

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

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

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

## **How to contact the Commission**

### **By telephone**

General enquiries: 9216 3900  
Training courses: 9216 3927  
Country callers: 1800 198 149

### **By email**

[eoc@eoc.wa.gov.au](mailto:eoc@eoc.wa.gov.au)


### **By visiting our website**

[www.eoc.wa.gov.au](http://www.eoc.wa.gov.au)

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### **Our office**

**Albert Facey House**  
**469 Wellington Street**  
**Perth WA 6000**

 Interpreter service: 13 14 50

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