

Discrimination in recruiting employees

Legal information for Australian not-for-profit organisations

This fact sheet covers:

- ▶ what is discrimination?
- ▶ do the anti-discrimination laws apply to your organisation?
- ▶ when is discrimination lawful?
- ▶ best practice tips to avoid complaints of discrimination
- ▶ complaint processes



Issues of discrimination can arise when recruiting employees. It's important to understand these issues and how to avoid them during the recruitment process.

The information in this fact sheet will help you understand discrimination law (at a state and federal level) as it generally applies to community organisations across Australia.



Disclaimer

This fact sheet provides general information on discrimination when recruiting employees. The specific prohibitions and exceptions that apply differ depending on the jurisdiction in which you are based and the specific circumstances. This information is intended as a guide only and is not legal advice. If you or your organisation have a specific legal issue, you should seek legal advice before deciding what to do.

Please refer to [the full disclaimer](#) that applies to this fact sheet.



For more information on how discrimination laws apply in the workplace, see [our guide to workplace behaviour laws](#), which also covers how sexual harassment, bullying and victimisation laws apply in the workplace.

What is discrimination?

Broadly, discrimination is treating, or proposing to treat, someone less favourably because of a personal attribute protected by law.



A person (including an employee or prospective employee) can be discriminated against on the basis that they:

- have a particular attribute
- had at any one time a particular attribute
- have a characteristic that a person with that attribute generally has, is imputed to have, or presumed to have had at any time, or
- under some laws, may have a particular attribute in the future

Discrimination can be direct or indirect.

Direct discrimination occurs where a person treats, or proposes to treat a person with a particular attribute less favourably because of that attribute. For example, promoting one candidate over a more qualified candidate because the more qualified candidate has a disability.

Indirect discrimination occurs where an unreasonable condition, requirement or practice is put in place, or is proposed to be put in place, that puts a person (or group of people) with an attribute at a disadvantage. For example, requiring a role to be performed in the office full-time (where there is no reasonable basis for such a requirement), which could have the effect of disadvantaging people with caring responsibilities.

Examples of personal attributes that are grounds for unlawful discrimination include:

- in all jurisdictions:
 - age
 - race, colour, descent, nationality, national extraction or origin, ethnic origin or social origin
 - sex, sexual orientation, intersex status, gender identity
 - physical or mental disability
 - parental or carer status, family or carer responsibilities, marital or relationship status, pregnancy or potential pregnancy
 - political belief or opinion
 - religion (including belief or activity)
 - association with someone who has, or is assumed to have, a protected attribute
- in certain states and territories:
 - accommodation status
 - kinship responsibilities
 - physical appearance or features
 - lawful sexual activity
 - religious appearance or dress
 - profession, trade or occupation, employment status, and employment activity (including current or past employment in sex work or engagement in sex work),
 - industrial activity or trade union activity
 - irrelevant criminal record or spent convictions
 - genetic information
 - breastfeeding
 - sex characteristics
 - immigration status
 - HIV / hepatitis status
 - expunged homosexual convictions
 - subjection to family and domestic violence
 - language, including sign language



If your organisation operates across different states and territories, it is important to note that discrimination on the basis of certain attributes may be unlawful in some states or territories but not others. For example, at this stage Victoria is the only jurisdiction that expressly prohibits discrimination on the basis of spent conditions.

In practice, discrimination in offering employment could occur:

- in determining who should be offered employment
- in the terms on which employment is offered
- by refusing or deliberately omitting to offer employment, or
- by denying a person access to an occupational training program



Note

The definition of 'discrimination' and what is a 'protected attribute' varies between federal and state and territory laws. This is a complex and continuously evolving area of law, and you should regularly review your obligations.

Do anti-discrimination laws apply to your organisation?

Generally, yes. As an employer, anti-discrimination laws will apply to your organisation, but this is a complex area of law, so it might be difficult to work out what they mean and how they apply to you. If you are unsure about which anti-discrimination laws apply to your organisation, and what your obligations are under those laws, seek legal advice

Anti-discrimination laws exist at both a federal and state or territory level.

The following federal (Commonwealth) legislation includes anti-discrimination provisions:

- [*Racial Discrimination Act 1975 \(Cth\)*](#)
- [*Sex Discrimination Act 1984 \(Cth\)*](#)
- [*Disability Discrimination Act 1992 \(Cth\)*](#)
- [*Age Discrimination Act 2004 \(Cth\)*](#)
- [*Fair Work Act 2009 \(Cth\)*](#)
- [*Australian Human Rights Commission Act 1986 \(Cth\)*](#) (and the [*Australian Human Rights Commission Regulations 2019 \(Cth\)*](#) expand the discrimination attributes)

The [Australian Human Rights Commission](#) (established under the [Australian Human Rights Commission Act 1986 \(Cth\)](#)) is an independent body that has the power to:

- inquire into complaints about unlawful discrimination and any act or practice that may be inconsistent with or contrary to any human right
- conciliate complaints of unlawful discrimination
- inquire into organisations and businesses that it reasonably suspects are not complying with their positive duty to take reasonable and proportional measures to eliminate:
 - discrimination on the grounds of sex in a work context
 - sexual harassment in connection with work
 - sex-based harassment in connection with work
 - conduct creating a workplace environment that is hostile on the grounds of sex
 - related acts of victimisation, and
- report its findings and recommendations to the Attorney-General



Prospective employees may also make a general protections application to the Fair Work Commission under the Fair Work Act on the basis that a prospective employer discriminated against them.

Anti-discrimination laws differ between states and territories.

Each state and territory has its own anti-discrimination laws, which contain specific provisions relating to discrimination against employees and prospective employees.

There are also state and territory specific avenues available in respect of discrimination claims (see 'Complaints process' below).

State or territory	Relevant laws
New South Wales	<ul style="list-style-type: none"> • <u>Anti-Discrimination Act 1977 (NSW)</u>
Victoria	<ul style="list-style-type: none"> • <u>Equal Opportunity Act 2010 (Vic)</u> • <u>Charter of Human Rights and Responsibilities Act 2006 (Vic)</u> • <u>Racial and Religious Tolerance Act 2001 (Vic)</u>
South Australia	<ul style="list-style-type: none"> • <u>Equal Opportunity Act 1984 (SA)</u> • <u>Racial Vilification Act 1996 (SA)</u> • <u>Civil Liability Act 1936 (SA)</u> – certain provisions cover racial victimisation • <u>Public Interest Disclosure Act 2018 (SA)</u>
Queensland	<ul style="list-style-type: none"> • <u>Anti-Discrimination Act 1991 (Qld)</u> • <u>Human Rights Act 2019 (Qld)</u>
Tasmania	<ul style="list-style-type: none"> • <u>Anti-Discrimination Act 1998 (Tas)</u>
Western Australia	<ul style="list-style-type: none"> • <u>Equal Opportunity Act 1984 (WA)</u> • <u>Spent Convictions Act 1988 (WA)</u>
Australian Capital Territory	<ul style="list-style-type: none"> • <u>Discrimination Act 1991 (ACT)</u> • <u>Human Rights Commission Act 2005 (ACT)</u>
Northern Territory	<ul style="list-style-type: none"> • <u>Anti-Discrimination Act 1992 (NT)</u>



For more information, see the [Australian Human Rights Commission's website](#).

The Australian Human Rights Commission has also published '[A quick guide to Australian discrimination laws](#)'

When is discrimination not unlawful?

Depending on the jurisdiction, there are some exceptions under anti-discrimination laws which mean that discrimination in employment can be lawful in some circumstances, for example if:

- someone with a disability can't meet the inherent requirements of a particular position, even if reasonable adjustments were made
- the work involves the performance, exhibition or distribution of an artistic work, if the action is taken reasonably and in good faith



- the discrimination is reasonably necessary to protect health or safety (for example, hiring people of a particular age to perform a role such as someone over 18 to work in a childcare centre)
- it is a genuine occupational requirement that an employee is of a particular sex (for example, to preserve decency or privacy because the job involves the person entering areas ordinarily used only by people of that sex while those people are undressed)
- it is positive discrimination based on, among other things, race, disability or age (for example, older people are often more disadvantaged by redundancy, so providing additional notice entitlements for older workers), or
- if the action is otherwise expressly permitted or required by law

Whether an exception to anti-discrimination laws applies will depend on the circumstances and the applicable laws. You should check the applicable anti-discrimination legislation that applies to you to determine which, if any, exceptions may apply to your organisation. This is a complex area of law, so if you are not sure, seek legal advice.

In some circumstances, organisations can apply for an **exemption** from discrimination law. If granted, the effect of an exemption is that certain provisions of the anti-discrimination law will not apply to that organisation for a certain period of time (as specified in the exemption granted).

Jurisdiction – Commonwealth

An organisation can apply to the [Australian Human Rights Commission](#) for an exemption of up to five years under the *Age Discrimination Act 2004* (Cth), the *Disability Discrimination Act 1992* (Cth) or the *Sex Discrimination Act 1984* (Cth).

Each Act has its own criteria guidelines. For more information, see the [Australian Human Rights Commission's 'Exemptions' webpage](#).

Jurisdiction – New South Wales

An organisation can apply to the [NSW Anti-Discrimination Board](#) for an exemption of no more than **10 years**.

When considering whether to grant an exemption, the Board must take into account:

- whether the proposed exemption is appropriate or reasonable
- whether the proposed exemption is necessary
- whether there are any non-discriminatory ways of achieving the objects or purposes for which the proposed exemption is sought
- whether reasonable steps have been taken, or could be taken, to avoid or reduce the adverse effect of a particular act or action before seeking the exemption
- the public, business, social or other community impact of the granting of the proposed exemption, and
- any conditions or limitations to be contained in the proposed exemption

For more information, see [Anti-Discrimination NSW's 'Exemptions and certifications' webpage](#).

Jurisdiction – Victoria

An organisation can apply to the [Victorian Civil and Administrative Tribunal \(VCAT\)](#) for an exemption of no more than **five years**.

The applicant must provide a copy of the application the [Victorian Equal Opportunity and Human Rights Commission](#).

In deciding whether to grant, renew or revoke an exemption, VCAT must consider:

- whether the proposed exemption is unnecessary because:
 - an existing exception or exemption already applies to the conduct sought to be exempted, or
 - because the conduct sought to be exempted would not be discriminatory, and



- whether the proposed exemption is a reasonable limitation on the rights to equality set out in the [Charter of Human Rights and Responsibilities](#), and
- all other relevant circumstances of the case

See [VCAT's website](#) for more information about applying for an exemption.

Jurisdiction – South Australia

An organisation can apply to the [South Australian Civil and Administrative Tribunal \(SACAT\)](#) for an exemption of not more than **three years**.

In deciding whether to grant an exemption, the SACAT may consider:

- the desirability of certain discriminatory conduct being permitted for the purpose of redressing the effect of past discrimination (where relevant), and
- other factors it considers relevant

Jurisdiction – Queensland

An organisation can apply to the:

- [Queensland Industrial Relations Commission \(QIRC\)](#) for work-related exemptions, and
- [Queensland Civil and Administrative Tribunal \(QCAT\)](#) for all other exemptions,

for an exemption of not more than **five years**.

The *Anti-Discrimination Act 1991* (Qld) doesn't specify particular matters QCAT or the QIRC must consider. However, the Queensland Human Rights Commissioner, who must be provided with a copy of the organisation's application, is entitled to make submissions on the application and the QIRC must have regard to any such submissions.

Jurisdiction – Tasmania

An organisation can apply to the Office of the Anti-Discrimination Commissioner (in writing) for an exemption of not more than **three years**.

When considering whether to grant an exemption, the Anti-Discrimination Commissioner may have regard to:

- the desirability of certain actions being permitted to redress the effect of past discrimination or prohibited conduct, and
- any other factors it considers relevant (including, for example, whether there is significant public interest in the exemption being granted)

An exemption will not be granted where it is not deemed appropriate or necessary or if an exception already clearly applies.

See the Office of the [Anti-Discrimination Commissioner's 'Exemptions' webpage](#) for more information.

Jurisdiction – Western Australia

An organisation can apply to the [State Administrative Tribunal](#) for an exemption of not more than **five years**.

The *Equal Opportunity Act 1984* (WA) doesn't specify particular matters that the State Administrative Tribunal must or may consider when making a decision whether to grant an exemption.

Jurisdiction – Australian Capital Territory

An organisation can apply to the [ACT Human Rights Commission](#) for an exemption of not more than **three years**.

When considering whether to grant an exemption, the Commission must have regard to:

- the need to promote an acceptance of, and compliance with, the *Discrimination Act 1991* (ACT), and
- the desirability of certain discriminatory actions being permitted for the purpose of redressing the effects of past discrimination (if relevant)

See the [ACT Human Rights Commission's website](#) for more information about exemptions.

Jurisdiction – Northern Territory

An organisation can apply to the [Northern Territory Anti-Discrimination Commissioner](#) for an exemption of not more than **three years**.

When considering whether to grant an exemption, the Commissioner may have regard to the desirability of certain discriminatory conduct being permitted to redress the effect of past discrimination, and any other relevant factors.



Example

An Aboriginal theatre company in Victoria would like to advertise the position of its Artistic Director as only available to people with an Indigenous background. The theatre company may be able to argue that it can limit the offering of employment to people with an Indigenous background for reasons of authenticity or credibility in the theatre's performances.

From a practical perspective, when advertising the position, the theatre company should highlight the aspects of the role that necessitate applicants with Indigenous backgrounds. This is because job advertisements could be critical to establishing this necessity, if the organisation needs to defend allegations of discrimination by a non-Indigenous applicant.

To limit risks associated with anti-discrimination claims, the organisation may also wish to apply for an exemption under the *Equal Opportunity Act 2010* (Vic), being the applicable anti-discrimination law in Victoria.



Example

Women's Aid in Victoria is an organisation that provides welfare and support services to women experiencing homelessness. Most of the women that Women's Aid assists have experienced domestic violence. Women's Aid wishes to recruit more welfare officers to its organisation, but it wants to limit those roles to women only.

This may be permissible if the organisation can show:

- a genuine occupational requirement for these roles to be performed by women, having regard to the nature of the work and the needs of the organisation's clients, and/or
- that those services can be provided most effectively and appropriately by women and that recruitment on that basis is necessary for the advancement of the women receiving care

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Best practice tips

Minimise the risk of complaints of discrimination

- **Accurate position descriptions** – Before recruiting employees, prepare a position description that focuses on the specific requirements for the role. Avoid references to personal attributes that a person may or may not have that are irrelevant to the role.
- **Accurate advertising** – When advertising a position, ensure the advertisement focuses on the skills and qualifications needed for the role and not the personal attributes of the candidate.
- **Accurate interview questioning** – Prepare a list of standard questions for interviews that relate directly to the role requirements. Avoid asking questions that may be presumed to be relevant only to certain individuals or questions that intrude into irrelevant details about a candidate's personal life or attributes. For example, a potentially discriminatory question would be asking a female-identifying job applicant if they plan to have a baby in the future or if they are currently pregnant.
- **Beware of your personal bias** – Do not allow personal bias, myths or stereotypes to influence your decision or make assumptions about whether a candidate is suitable for the role.
- **Document the recruitment process** – Take and keep interview notes. Document the reasons for choosing the successful candidate. This will help the organisation to ensure (and to prove, if necessary) that it made the decision to hire that person instead of any other candidates for legitimate, non-discriminatory reasons

Other obligations

Obligation not to request discriminatory information

In some instances, it is unlawful for a person to request information from another person that could be used to discriminate against the other person, unless the information is reasonably necessary for a purpose that does not involve unlawful discrimination. For example, it may be unlawful for a prospective employer to request a prospective employee's health information, unless that information is reasonably necessary to determine whether the prospective employee can perform the inherent requirements of the role.

Duty to make reasonable adjustments

In some instances, employers must make reasonable adjustments to accommodate the requirements of a person who is offered employment. For example, such requirements may arise from a person's disability or responsibilities as a parent or carer.

Positive duty to eliminate discrimination

At a federal level, employers have a positive duty to take 'reasonable and proportionate' measures to eliminate sex discrimination, sexual and sex-based harassment, a hostile workplace environment and victimisation.

The following states and territories also have laws that impose a positive duty on employers to implement measures to eliminate discrimination, sexual harassment and unlawful vilification:

- Australian Capital Territory
- Northern Territory
- Victoria, and
- Queensland

For organisations in the remaining states that don't have an express positive duty, you should still take measures to ensure compliance with federal law and to minimise the risk of complaints.

'Reasonable and proportionate' measures to eliminate discrimination may include (but are not limited to):

- introducing policies aimed at preventing discrimination and harassment, and
- implementing a discrimination complaint procedure and addressing, in a timely manner, any complaints made

Policies and procedures should be reviewed regularly, and workers should be trained in the requirements of the policies and procedures (including how the policies apply to them and their obligations under any such policies).



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Whether an employer has taken 'reasonable and proportionate' measures to eliminate discrimination will be assessed based on a number of factors, including:

- the size, nature and circumstances of the organisation or business
- their resources, financial or otherwise
- the nature of the business and its operational priorities, and
- the practicality and costs of the measures in question



Note

If you implement internal policies and procedures in your organisation which specify certain practices or obligations in respect of discrimination, you must ensure that you (and your employees) comply with these policies. In some circumstances, a failure to comply with internal policies or procedures could be used as a basis for an employee to bring a claim, including a breach of contract claim. If you are unsure about this issue, seek legal advice.



See the [Victorian Equal Opportunity and Human Rights Commission website](#) guidance on how employers in Victoria can meet the positive duty.

See also the [Australian Human Rights Commission website](#) for further guidance on how to comply with the positive duty under federal law.

Complaint process

Internal complaints process

If an employee or potential employee believes that they have been unlawfully discriminated against by your organisation (or a person in your organisation), you should make sure they are aware of your complaint-handling procedure and know who they can talk to in the organisation.

It is advisable to include potential employees in your complaints policy, so that you can deal with complaints internally in the first instance. This allows you to reflect on and improve your processes while also minimising the risk of an external complaint. Good internal complaints processes can be beneficial for both parties because they can facilitate greater flexibility in how complaints are managed and provide for quicker, less expensive, and more effective resolutions.

Your complaints policy should clearly outline how an employee or potential employee may make an internal complaint and should be easily accessible by all workers (and any potential employees).

External complaints process

Most states and territories require that a complaint go through the relevant commission or board first, where a conciliation may be facilitated. A conciliation is a private and informal process that gives the complainant and the employer (or prospective employee) the opportunity to talk through the dispute and try to reach a resolution. The aim of conciliation is for the parties to agree to an outcome in a way that is less formal, faster, and less expensive than other more formal processes (such as in tribunals or courts).

The avenues for employees and potential employees to make a complaint in each jurisdiction are set out in the table below. Time limitations for lodging complaints may apply and will depend on the jurisdiction.



Jurisdiction – Commonwealth

First instance – If a potential employee believes they have been discriminated against based on their age, sex, disability or race, they can make a complaint to the [Australian Human Rights Commission \(AHRC\)](#). The AHRC may investigate the complaint, direct the parties to take part in conciliation or terminate the complaint.

Potential employees who believe they have been discriminated against based on certain other attributes such as religion, criminal record, trade union activity, political opinion or social origin can also make a complaint to the AHRC.

After a complaint has been made to the AHRC, the AHRC will consider whether it can deal with the complaint. If the complaint is accepted, the AHRC may investigate the complaint and/or invite the parties to the complaint to attend a conciliation.

Prospective employees may also make a general protections application to the Fair Work Commission on the basis that a prospective employer discriminated against them.

Taking it further – If a complaint about discrimination based on age, sex, disability or race is not resolved through conciliation (or is terminated before conciliation), the employee can make an application to the Federal Court of Australia or the Federal Circuit and Family Court of Australia.

If a complaint about discrimination in employment based on other reasons is not resolved through conciliation, the President of the Commission will decide if discrimination has occurred. If the President is of the opinion that discrimination has occurred, the President may report the matter to the federal Attorney-General, who may, for example, recommend that the respondent employer change its policies or practices.

Jurisdiction – New South Wales

First instance – [Anti-Discrimination New South Wales](#) (the **Board**) helps people to resolve complaints of discrimination. If the Board accepts the complaint, the Board may investigate and invite the parties to attend a conciliation.

The Board may choose to decline taking further action in respect of a complaint in certain circumstances.

Taking it further – If a complaint can't be resolved by the Board (or is declined), the Board may transfer the complaint to the [New South Wales Civil and Administrative Tribunal](#).

If, at any stage, the Board is satisfied that the complaint has been settled or resolved, the Board can 'terminate' the complaint (or a relevant part), and the complainant has no right to require the Board to escalate the complaint (or part).

Jurisdiction – Victoria

First instance – A complainant can make a discrimination complaint to the Victorian Equal Opportunity and Human Rights Commission (**Commission**) or make an application to the Victorian Civil and Administrative Tribunal (**VCAT**).

The [Victorian Equal Opportunity and Human Rights Commission](#) helps people to resolve complaints, including complaints of discrimination. Those involved in the alleged discrimination are able to discuss the issues with the Commission who will attempt to resolve the dispute among the parties. The Commission may decline to provide dispute resolution in certain circumstances (for example, if the matter has been adequately dealt with by a court or tribunal, or the alleged discrimination occurred more than 12 months prior to the complaint).

The Commission may also investigate a complaint if it raises a serious issue relating to a class or group of people and cannot reasonably be expected to be resolved by dispute resolution.

Unlike the Commission, VCAT can make binding decisions about the matter. VCAT may, in some circumstances, refer a matter before it to the Commission for the Commission to consider whether it should investigate the matter.

Taking it further – If a complainant first brings the matter to the Commission and it can't be resolved at conciliation, the complainant may make an application to VCAT to have the matter listed for hearing.



If a complainant applies to VCAT and is dissatisfied with the VCAT's decision, the complainant may seek leave to appeal to the Supreme Court of Victoria. Any application for leave must be made within 28 days of the VCAT decision (unless an extension has been granted).

Jurisdiction – South Australia

First instance – If a person believes they have experienced unlawful discrimination, they can make a complaint to the [Equal Opportunity Commission SA](#). The Commission may investigate the complaint, direct the parties to take part in conciliation, or both. The Commission can also dismiss the complaint.

The Commission may decline complaints in certain circumstances.

Taking it further – In some circumstances, the complainant can request that a complaint be dealt with by the [South Australian Civil and Administrative Tribunal](#).

The Commission might otherwise refer the complaint to the Tribunal if:

- conciliation is not successful
- the Commissioner is of the view that it cannot be resolved via conciliation, or
- the Commissioner otherwise deems it appropriate that the matter be heard by the Tribunal

Note – In most cases, matters will be referred to the Tribunal, but in some cases, the matter may also be referred to the [South Australian Employment Tribunal](#) if the Commissioner deems it more appropriate.

Jurisdiction – Queensland

First instance – The [Queensland Human Rights Commission](#) provides a free service to help people resolve complaints, including complaints of discrimination.

If the Commission accepts the complaint, the parties involved in the complaint will be able to discuss the issues with the Commission, which will attempt to resolve the dispute among the parties, including through investigation or conciliation. The Commission can direct parties to attend conciliation, and can dismiss complaints.

Taking it further – If the complaint can't be resolved through the Commission's conciliation process, the complainant may require the Commission to refer a work-related complaint to the [Queensland Industrial Relations Commission \(QIRC\)](#) or all other complaints to the [Queensland Civil and Administrative Tribunal \(QCAT\)](#) to have the matter listed for hearing. Strict time limits will apply.

Jurisdiction – Tasmania

First instance – A discrimination complaint can be made to the [Office of the Anti-Discrimination Commissioner \(Tas\)](#).

The Commissioner may investigate the complaint and direct the parties to take part in conciliation. The Commissioner may also reject the complaint in certain circumstances (for example, if the Commissioner is of the opinion that a more appropriate remedy is reasonably available, or the complaint is trivial, vexatious, misconceived, or lacking in substance).

Taking it further – If the Commissioner believes the complaint can't be resolved by conciliation, or there has been an unsuccessful conciliation attempt, or they otherwise believe that it should be referred for inquiry, they may refer the complaint to the [Tasmanian Civil & Administrative Tribunal](#) for it to hold an inquiry.

A complainant whose complaint is rejected or dismissed by the Commissioner may apply to the Tribunal for that decision to be reviewed.



Jurisdiction – Western Australia

First instance – A discrimination complaint can be made to the [Equal Opportunity Commission](#).

If the complaint is accepted by the Commission, the Commission will delegate an officer to investigate the complaint. As part of the investigation, they may direct the parties to take part in a conciliation. The Commission may dismiss a complaint at any stage of an investigation if satisfied that the complaint is misconceived, frivolous or vexatious, lacks substance, or relates to an act that is not unlawful.

Taking it further – If the Commission believes the complaint can't be resolved by conciliation, or there has been an unsuccessful conciliation attempt, or it otherwise believes that it should be referred, the Commission may refer the complaint to the [State Administrative Tribunal](#) for it to hold an inquiry.

The complainant can require the Commission to refer a complaint to the Tribunal if the Commission dismisses the complaint.

Jurisdiction – Australian Capital Territory

First instance – A discrimination complaint may be made to the [ACT Human Rights Commissioner](#).

The Commissioner may consider the complaint (including by requiring people to produce documents, information etc.), direct the parties to take part in conciliation, or both.

Taking it further – If the complaint can't be resolved by conciliation or the Commissioner decides not to refer the complaint for conciliation, the complainant can require the matter be referred by the Commissioner to the [ACT Civil and Administrative Tribunal](#).

Individual people can't bring complaints directly to the Tribunal.

Jurisdiction – Northern Territory

First instance – A formal discrimination complaint may be made to the [Northern Territory Anti-Discrimination Commission](#). Alternatively, an anonymous informal report can be made to the Commission.

The Commissioner may accept or decline a formal complaint. If accepted, the Commission may direct the parties to attend a conciliation.

In some cases, the Commission may refer the complaint directly to an evaluation. During the evaluation process, the Commission may require the parties to provide evidence or specific documents they have about the matter. The Commission will then decide whether there is a reasonable prospect of success if the complaint is heard by the [Northern Territory Civil and Administrative Tribunal](#). If so, the matter may be referred directly to the Tribunal for a hearing.

Taking it further – If a complaint is not resolved by conciliation at the first instance, the complainant can elect to proceed to an evaluation. If the Commission determines that the complaint has merit, it will be referred to the Tribunal.

If the Commission declines to refer the matter, the complainant can apply directly to the Tribunal.