

Australian Human Rights Commission for WA employees

A Circle Green Community Legal claim guide

Introduction

This claim guide is for all employees in Western Australia who wish to make a complaint to the Australian Human Rights Commission.

There are two systems of employment law in Western Australia: a state system and a national system. While this information resource is suitable for both state system employees and national system employees, it will help you to know which system of employment law you are covered by. If you are unsure, please see our publication: [“Q&A: State or national for WA employees”](#).

The information below has been written to assist you with the practical process of making a complaint to the Australian Human Rights Commission. If you are not yet ready to make a claim and you are seeking more general information, you may wish to view our Q&A resources first. If you need legal advice before making a claim, you can [submit an application for advice to us here](#) or see our [private solicitors list here](#).

This claim guide is provided as general information only and is not intended to be a substitute for legal advice. By using the information on this page, you agree to our full [disclaimer](#).

Key terms used

This information resource uses a number of key terms. You can click on our glossary in a new window and read what the key term means. See our glossary here:

<https://circlegreen.org.au/resource/glossary-workplace-law/>

We encourage you to read this claim guide from start to finish. If you are looking for a specific piece of information, you can click on any heading below to skip to that section.

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Overview

This claim guide is a complaint process guide for persons who wish to make a discrimination claim at the Australian Human Rights Commission (**AHRC**).

It is against the law for someone to discriminate against you because you have a particular characteristic or because you are in a certain situation.

These characteristics and circumstances include your:

race	age (or association to someone's age)	religion (including lack or absence of religious conviction)
colour	marital status	political opinion
gender identity / history	family or carer's responsibilities (including family violence related matters)	ethnicity
physical or mental disability (includes mental health conditions, association to someone with a disability, use of an assistance animal or disability aid, or for having a carer)	pregnancy (including potential pregnancy and / or breastfeeding)	national extraction or immigration status
	sex	social origin sexual orientation

These are considered protected characteristics, and if someone treats you less favorably because of a protected characteristic that you have, you may be able to make a discrimination claim to the AHRC. The AHRC investigates and conciliates complaints about discrimination and breaches of human rights. It is important to note, discrimination can be direct or indirect.

You have these protections against discrimination when you are applying for a job, while you are working, and if you lose your job.

Sometimes you can make a complaint if your employer discriminates against you because of a criminal conviction or spent conviction. However, protections are limited in these areas. You may wish to visit the website of the Australian Human Rights Commission for further information on this type of complaint.

For general information about discrimination and alternative claims that may be available, please see Circle Green's publication: ["Q&A: Workplace discrimination for WA employees"](#).

Time Limits

You generally have to make a complaint to the AHRC within a certain period of time after the alleged act, omission, or practice took place. This period depends on what the complaint is about, and when the alleged act, omission or practice took place.

For complaints under the *Sex Discrimination Act 1984* (Cth) about something that took place:

- **on or after 11 September 2021:** 24 months
- **before 11 September 2021:** 6 months

For other complaints about something that took place:

- **on or after 13 December 2022:** 24 months
- **after 13 April 2017 and before 13 December 2022:** 6 months
- **before 13 April 2017:** 12 months

You may be able to make a complaint outside of these time periods, but you will likely need to explain to the AHRC why you have made your complaint out of time, and the AHRC may choose not to accept your complaint.

Costs

There is no filing fee for making a claim to the AHRC.

However, if an AHRC claim is unsuccessful, a filing fee may apply to lodge a claim in the Federal Circuit and Family Court of Australia (FCC) or the Federal Court of Australia (FC).

Filing fees can be found here:

- Federal Circuit and Family Court of Australia: <https://www.fccoa.gov.au/gfl/gfl-fees>
- Federal Court of Australia: <https://www.fedcourt.gov.au/forms-and-fees/court-fees/fees>

Outcomes

The AHRC investigates and attempts to resolve complaints that are made to the AHRC.

The AHRC can assist you to come to a resolution with your employer and may schedule a conciliation to help facilitate this resolution. The conciliation process helps both parties come to a settlement through negotiation.

You can ask for compensation, noting there is no cap for compensation for an AHRC claim.

Representation

You can contact the AHRC to make a complaint and it will be able to assist you in making the complaint and starting the process.

You do not need a lawyer to make a complaint or respond to a complaint, however, you may want to organise one to assist with the complaint and response.

The complaint can also be lodged on behalf of one or more other people aggrieved by the alleged unlawful discrimination.

Complaint process

You would generally think about going to the AHRC if you do not feel comfortable reporting incidents of discrimination to your employer, or if you have reported the incidents of discrimination to your employer and you believe they have not handled it correctly.

You can report the discrimination to the AHRC, who may be able to assist you in making a complaint or attempting to resolve the situation with your employer.

The AHRC specialises in handling discrimination complaints.

Starting a complaint

A complaint must be made in writing. The complaint can be made online, or if preferred, you can print off a complaint form and post it to AHRC. If necessary, AHRC can help you write down your complaint. The complaint form can be found on the AHRC website:

<https://humanrights.gov.au/complaints/make-complaint>

Your complaint must meet certain requirements. For example, it must be about unlawful discrimination you have experienced, and you must provide as much information about the complaint and why you think it was unlawful discrimination.

Once you have submitted a complaint, the AHRC will use language to describe you and your employer or any other people you have named as involved in your complaint.

You will be described as the 'complainant', as the person who is making the complaint. Your employer will be the 'respondent', as will any other companies or people you name as part of your complaint. For example, if you have been discriminated based on race at work, you might include the person who was discriminatory towards you in your complaint. This person will also become a respondent to your complaint.

Response

The AHRC will contact the person or organisation you are complaining about and give them a copy of your complaint. The AHRC may ask them to provide specific information and / or a response to the complaint. This is to ensure the respondent has a fair opportunity to respond and resolve the complaint.

Other people who you may have mentioned in your complaint form may need to be contacted and provided information about your claim. The AHRC may ask the respondent to provide

information or documents relating to the complaint. If they do not comply within a certain time frame or do not respond, the AHRC may compel them by law to provide this information.

The AHRC may suggest the resolution of your complaint by conciliation.

Conciliation

The purpose of the conciliation is to see if the complaint can be resolved. To facilitate resolution, conciliations are confidential, and any discussions, offers, or admissions made during the conciliation cannot be raised at a later hearing.

Conciliations are a less formal process than hearings or other court proceedings. The conciliator is a neutral party who is not there to take sides, but to assist both parties to come to a resolution.

The conciliation can be face-to-face or over the telephone. The AHRC can arrange special assistance such as language or sign language interpreter if required.

Your employer may say things that you do not agree with in the conciliation, or things that are upsetting to hear. You should not interrupt when your employer or the conciliator is speaking, but you may like to take notes so you can address these points when you have a chance to respond.

At certain points, the conciliator may speak to each party alone to assist with the negotiation process.

Conciliation can be a good opportunity to try and resolve the matter outside of a more stressful and formal process of a hearing. It is a good idea to approach the conciliation with an open mind and be prepared to negotiate.

Preparing for conciliation

You may wish to draft detailed notes – even in a script format – to lay out your side of the story. You should organise your notes in chronological order, including sufficient detail but avoiding going into irrelevant matters.

You would have received your employer and any other respondent's reply to your complaint, which may have mentioned defences to their actions. Be prepared to argue against any such defences.

You should consider exactly what you would like to achieve in terms of remedies. This could be compensation, an apology, or other outcomes such as reinstatement to a job or changes to a policy. If you are seeking compensation, you should think about how much, and how you arrived at that figure.

Resolution at conciliation

You may be able to reach an agreement that is acceptable to both you and your employer at the conciliation. As mentioned above in 'outcomes', this could include both financial compensation and other forms of compensation, like an apology.

It is possible that a settlement agreement could be drawn up on the spot and become binding when accepted and signed by both parties.

It may be that your employer wants a lawyer to draw up a settlement agreement, which will be sent to you after the conciliation, so even though an agreement has been reached there is not an opportunity to close the matter on the spot.

It's important to clarify if you are making an agreement to settle whether the agreement is settling just your AHRC claim, or all possible claims. It is quite common for employers to want to settle all claims.

Settlement is usually concluded with a deed, which will often include standard clauses like non-disparagement and confidentiality, as well as mutual release from further legal action. Signing a deed will likely mean you are bound by all clauses within the deed.

No resolution at conciliation

If the complaint is not resolved, the AHRC may ask for more information before making a final decision about the complaint. If the President of the AHRC is satisfied the complaint cannot be resolved, the complaint may be terminated.

You may be able to make a claim to the FCC or the FC if your complaint is terminated. However, this must be done within 60 days of the date your complaint is terminated.

The AHRC cannot take the matter to court for you or help you present your case in court. Therefore, you may wish to seek help from a lawyer or legal service if you wish to proceed to court.

Victimisation

It is against the law to victimise a person for making or proposing to make a complaint to the AHRC.

If your employer treats you badly as a result of you making or proposing to make a complaint, you may be able to add this to your complaint to the AHRC and seek further advice.

Federal Court

As discussed above, your complaint may come before FC if the complaint is terminated.

Please note, the FC and FCC are independent of the AHRC.

In order to make a claim in the FC, the complaint you made to the AHRC must be terminated. You will need a copy of the termination notice from the AHRC.

You will need to complete Form 116 (originating application) under the AHRC Act, and if required Form 16. Links to these forms can be found on the FC website here:

<https://www.fedcourt.gov.au/forms-and-fees/forms/federal-court-rules>

If you are making your complaint more than 60 days after the date of the notice of termination you need to complete the 'Extension of time' part of Form 116. You must provide a copy of the complaint made to AHRC with your originating application.

Once you have completed the application and provided any supporting documentation you will need to lodge these with the Court. Once accepted, the Court will 'file' these documents. You may lodge the documents via eLodgement or by local registry or fax. As noted previously, upon lodgment you must pay the application fee.

Once you have filed the required documents with the Court, you must give a copy of the stamped application with accompanying document(s), to each of the people involved in the complaint. This is known as service. More information can be found on the FC website regarding the procedure of proceeding to the FC court.

Federal Circuit and Family Court of Australia

If you wish to proceed to the FCC you will need to file an application titled Application – Human rights, a copy of the complaint that you made to the AHRC, and a copy of the notice of termination from the President of the AHRC.

If you are out of time and want to apply for an extension you must complete Part E of the Application – Human rights.

Forms can be found here: <https://www.fccoa.gov.au/gfi/forms>

You must serve a copy of the documents on each party involved in the complaint and this must be filed seven days before the day fixed for hearing the application unless the Court orders otherwise.

You can file the documents online using eLodgement, however if this is not possible you may be able to file your documents in-person, by mail, or in certain circumstances, by fax or email. Service must be by hand unless the Court orders otherwise. Service can be done in person or by sending them registered or express post.

You can find eLodgement information here: <https://www.elodgment.fedcourt.gov.au/eLodgment/>

At least five days before the first court date, you must give the AHRC a:

- a sealed copy of the application, and
- a copy of the other documents filed.

An affidavit of service must be completed once all documents have been served. More information can be found on the FCC website: <https://www.fccoa.gov.au/forms/affidavit-service>

Related resources

- [Q&A: Workplace Discrimination for WA Workers](#)
- [Q&A: Conciliation Conferences for WA Employees](#)

Further information and assistance

Circle Green Community Legal

WA employees can request free and confidential legal assistance with employment and workplace discrimination issues from Circle Green Community Legal.

Complete an online request: circlegreen.org.au/get-help

Telephone enquiries: 08 6148 3636 (Please note that we do not provide on demand legal advice)

For further information on our Workplace law services, please visit:

circlegreen.org.au/workplace

Courts and Commissions	Government departments & other supports
<p>Australian Human Rights Commission</p> <p>Phone: (02) 9284 9888 or 1300 656 419 Email: infoservice@humanrights.gov.au Web: http://www.humanrights.gov.au/</p> <p>Federal Circuit and Family Court of Australia</p> <p>Phone: (08) 9268 7100 Email: waregistry@fedcourt.gov.au Web: https://www.fcfoa.gov.au/</p> <p>Federal Court of Australia</p> <p>Phone: 1300 720 980 Email: perth.registry@fedcourt.gov.au Web: https://www.fedcourt.gov.au/</p>	<p>WorkSafe</p> <p>Phone: 1300 307 877 Web: http://www.dmirs.wa.gov.au/worksafe</p>

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This factsheet only contains general information. This factsheet is not legal advice and should not be relied on as a substitute for legal advice. You may wish to seek advice from a lawyer regarding your own particular circumstances. We are not responsible for any consequences arising from your use of, or reliance on, the information contained in this factsheet.

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<https://circlegreen.org.au/disclaimer/>