

How to complain using the Commonwealth Disability Discrimination Act

In Queensland, if you believe you are being discriminated against on the basis of your disability you can complain using either Queensland's Anti-Discrimination Act or the Commonwealth's Disability Discrimination Act (DDA).

You cannot make a complaint with both at the same time. For information on which one to use in your situation, please see the Basic Rights Qld (BRQ) website and the Fact Sheet "*Who Should I complain to when I have experienced Disability Discrimination*"

This Fact Sheet outlines how to complain and what happens when you complain using the Commonwealth Disability Discrimination Act.

The Australian Human Rights Commission (AHRC) investigates complaints made using the Disability Discrimination Act.

Who can make a complaint?

- If you believe you have been discriminated against because of your disability, you can make a complaint to the AHRC.
- The DDA also allows anyone to make a complaint on behalf of somebody else even if the person concerned isn't aware of the complaint.
- A complaint may be rejected if the person discriminated against does not want to pursue it.
- Making a complaint to the Australian Human Rights Commission is free.

When can I make a complaint?

A complaint must be made within **twelve months** of the discrimination taking place. You can contact the AHRC to discuss whether they will accept a late complaint.

How long does it take to handle my complaint?

- The entire process may take a number of months.
- The AHRC states that it takes on average eight months to finalise a complaint.
- If the discrimination you have experienced is time-sensitive; the process can be accelerated where possible; e.g. you have been refused modifications to allow you to sit an exam to take place in a month's time. If this is the case, give the AHRC a call to discuss how to move forward.

Do I need legal representation to make a complaint?

You do not need a lawyer to make a complaint to the Australian Human Rights Commission (AHRC). You can choose to get legal advice or representation, but you will need to do so at your own cost.

You can have a support person with you at the Conciliation Conference if you wish.

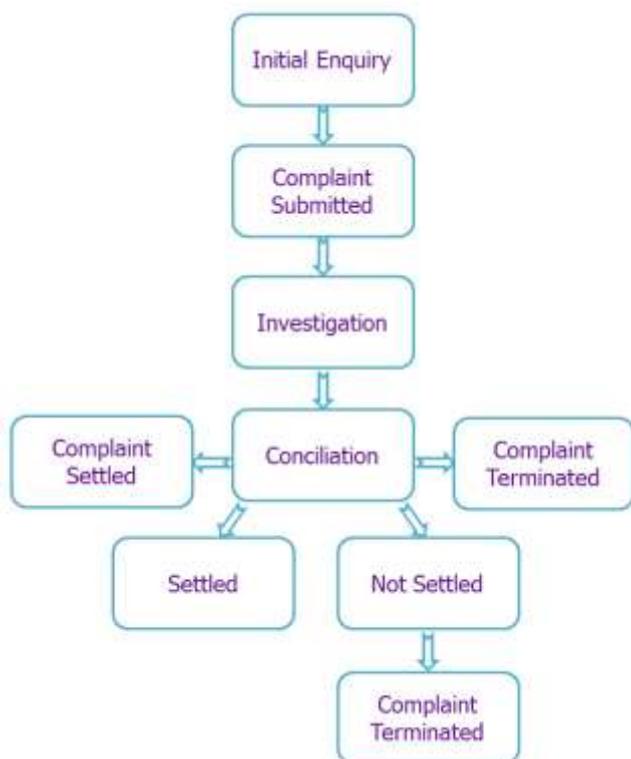
What happens if I decide I do not want to continue with my complaint?

- You can withdraw your complaint at any point in the process, without any penalty, if you no longer want to go ahead with it.
- You should write to the AHRC or speak to the officer handling your complaint to tell them you do not wish to continue with it. You do not have to tell them your reasons for stopping the complaint.
- You are able to resubmit your complaint if you change your mind and the matter is still within time limits.

How do I make a complaint?

- The complaint must be submitted in writing. The Australian Human Rights Commission (AHRC) will help you to write your complaint if necessary. You can make the complaint by either using their complaints form or writing a letter using the information asked for on the form.
- It is advisable to use the AHRC complaint form as this will assist you to make sure you are including all the information that the Commission requires to assess your complaint.
- For information about how to write your complaint, please see the BRQ Fact Sheet "How to Write a Disability Discrimination Complaint".
- Providing information clearly and concisely is the best way to avoid your complaint being rejected or declined.

What happens after I've made the complaint?



Assessment

Your complaint will be assessed by an Australian Human Rights Commission Conciliator. The Conciliator will forward your complaint to the person or organisation you have lodged the complaint about (in legal terms they are referred to as "the Respondent") and they will be asked to respond. This response will be sent to you.

You will be asked to reply to it. You may be satisfied with their response to the matter and can elect for it to be settled at this point (e.g. if they accept some responsibility for the discrimination and suggest a solution that you agree with).

In some cases this process can be more flexible with the AHRC encouraging communication via phone and email and working towards an early resolution to the issue.

After Assessment the AHRC may decline to proceed if:

- The complaint lacks substance - they are satisfied no discrimination occurred
- The discrimination was trivial, misconceived or vexatious
- The person/organisation accused of discrimination may argue they should be granted an exemption. An exemption such as 'unjustifiable hardship' effectively makes the discrimination lawful
- If this occurs the AHRC will contact you to ask if you wish to continue your complaint so that you can have your say, but you may have little chance of resolving the complaint in your favour (for more information on 'unjustifiable hardship' please see the BRQ Fact Sheet What is Disability Discrimination and When is it Against the Law?)
- The Commissioner thinks another authority or commission should deal with your complaint (for example the Health Rights Commission).
- The subject matter of your complaint has already been dealt with by another authority. Perhaps the Commissioner believes that an

Industrial Relations Commission have sufficiently dealt with your complaint.

What happens if my complaint is rejected?

If your complaint is declined, you will receive a letter from AHRC terminating your dispute. It will outline the reason your complaint has been ended.

You have **60 days** to either apply to the Federal Magistrates Court or Federal Court to deal with your complaint.

If you do not apply within this period you lose your right to make the complaint.

What happens if my complaint is accepted? - Conciliation

If your complaint is not resolved during assessment, the Australian Human Rights Commission will organise a Conciliation Conference to take place between you and the person or organisation you are complaining about.

What is a Conciliation Conference?

A Conciliation Conference is a discussion and negotiation between parties who have an issue to resolve.

- It is assisted by an independent person (Conciliator) whose job it is to help an agreement to be achieved
- The Conciliator does not take sides and cannot make you settle, or advise you how to settle the complaint
- Conferences can take place in person or where required, over the phone
- Each side will be asked to tell their story and how the events affected them. Both sides then discuss how they could resolve the complaint

- The assigned Conciliator may not be the person who has investigated your matter.

For more information on Conciliation Conferences please see the BRQ Fact Sheet "Conciliation Conferences".

You can also visit the ADCQ website and watch; *Working it through: a guide to the ADCQ conciliation conference.*

Go to <http://www.adcq.qld.gov.au> and click on 'Making a Complaint'.

What happens if the issue isn't settled in Conciliation?

If you fail to reach settlement following a Conciliation Conference, you will receive a letter from AHRC terminating your dispute.

You have **60 days** to either apply to the Federal Magistrates Court or Federal Court to deal with your complaint.

If you do not apply within this period you lose your right to make the complaint.

Going to the Federal Magistrates Court or Federal Court

- The processes of taking matters to the Federal Courts are more formal and can have significant costs associated with them.
- While it is not necessary to have legal representation, it is a good idea to get legal advice before making an application.
- The Australian Human Rights Commission cannot assist you with this process.
- Cases in the Federal Courts must be argued on points of law. This requires a good knowledge of legislation and legal proceedings.

For More Information

BRQ Fact Sheets

What is Disability Discrimination and when is it Against the Law?

How to Write a Disability Discrimination Complaint

Conciliation Conferences

How to Complain Using the Qld Anti-Discrimination Act

Websites

Australian Human Rights Commission
www.hreoc.gov.au

Anti-Discrimination Commission Queensland
www.adcq.qld.gov.au

Basic Rights Queensland
www.brq.org.au

Please Note:

This Fact Sheet contains general information only. It does not constitute legal advice. If you need legal advice please contact Basic Rights Qld on **3421 2510** or if outside of Brisbane on **1800 358 511**.

Basic Rights Qld is a community legal centre, which provides specialist advocacy and legal services in Social Security and Disability Discrimination in employment law, administration and policy.

We are independent of Centrelink and all assistance is free.

This Fact Sheet was updated in February 2016

www.brq.org.au