

TAKING ACTION ON DISABILITY DISCRIMINATION



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Legal Service Inc

Published by DARU, print and online,
June 2018

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About this booklet

If you or someone in your care feels they have been discriminated against or were involved in discrimination, this booklet is designed to help you:

- find out if you have been discriminated against unlawfully
- avoid discrimination, by informing you of your rights
- get a better understanding of disability discrimination law
- make a complaint of disability discrimination.

In this booklet, you will find:

- easy to read information on the laws and processes that protect people from unlawful discrimination
- examples of discrimination that is legal and illegal
- how to go about making a complaint
- what happens when you make a complaint
- what outcomes you can pursue in relation to a complaint.

IMPORTANT: This booklet is only a guide so it is always better to call the Disability Discrimination Legal Service (DDLS) and speak with a solicitor. Legal terms can be confusing. DDLS solicitors can give you legal advice and explain anything about this booklet that you don't understand.

The Victorian Equal Opportunity and Human Rights Commission has a more extensive publication about disability discrimination law. A free copy is available online [here](#). You may want to read this publication for a more detailed discussion on any of the subject matters of this booklet.

About the Disability Discrimination Legal Service

The Disability Discrimination Legal Service (DDLS) Incorporated is an independent community organisation that specialises in disability discrimination matters. It is a not-for-profit incorporated association that provides free legal service to people with disabilities. It also provides community legal education and works on law and policy reform projects in the areas of disability and discrimination.

A committee of volunteers manages the service. The DDLS Management Committee includes people with disabilities. Many people with disabilities, volunteers and students contribute their efforts to the work of the DDLS.

The DDLS works as an active member of the community legal sector and the disability advocacy sector.

About the Disability Advocacy Resource Unit

The Disability Advocacy Resource Unit (DARU) is unique in Australia as a dedicated resource unit funded to work with disability advocates to promote and protect the rights of people with disability. DARU is delivered by a partnership between the Victorian Council of Social Service (VCOSS) and Disability Advocacy Victoria (DAV).

It develops and distributes resources to keep disability advocates informed and up-to-date about issues affecting people with disability in Victoria. It organises forums to provide opportunities for a co-ordinated approach to issues of concern, provides professional development opportunities and undertakes capacity building projects.

What is disability?

There are many kinds of disabilities. The meaning of disability is not limited to what a doctor or Centrelink may say. Discrimination law gives a very broad definition of disability.

According to current Australian and Victorian legislation:

Disability includes impairments of physical, sensory or mental functions which may affect undertaking activities or participating in community life.

It may be caused by accident, trauma, genetics or disease.

A disability may be temporary or permanent, total or partial, lifelong or acquired, visible or invisible.

What counts as a disability?

Courts have found a range of impairments may be considered as disabilities.

For example, stress – the adverse reaction people have to excessive pressure or other types of demands placed on them – may be considered a disability under discrimination law if:

- it has lasted for a significant period of time, and
- it is having a debilitating effect on your ability to carry out usual tasks or daily activities.

CASE STUDY 1

Being severely upset or stressed can constitute an impairment

Laviya v Aitken Greens Pty Ltd, 2010, Victorian Civil and Administration Tribunal (VCAT)

Facts: Anne Laviya was an employee at the Aitken Hill conference centre on the outskirts of Melbourne. She made complaints of discrimination on the grounds of impairment, age and sexual harassment under the Equal Opportunity Act 1995 against her employer in the wake of the Black Saturday bushfires in 2009. Ms Laviya was directly affected by the fires – while her house was saved by a wind change, her car and water tanks were damaged, and she lived without power and services in the days following. Her employer telephoned her a number of times requiring her to return to work directly following the bushfire when she was unfit to do so.

Decision: The Tribunal found that Ms Laviya had experienced discrimination on the grounds of impairment in being required to return to work immediately after the bushfires when she was “unfit, and so unable, to do so”. The Tribunal said that “being severely upset to the extent that she was unable to cope with the demands of her job” constituted an impairment.

What is disability discrimination?

Disability discrimination means that someone treats you unfairly or less favourably because of your disability.

Discrimination may not always be unlawful – there are exemptions, such as some court rulings or matters to do with public health – but unlawful discrimination applies most often to complaints about the workplace, educational institutions and access to public spaces.

The following are the laws that apply to and deal with unlawful disability discrimination in Victoria:

Victorian law – the *Equal Opportunity Act 2010* of Victoria

Commonwealth law – the *Disability Discrimination Act 1992*

For employment cases – the *Fair Work Act 2009*.

CASE STUDY 2

Unequal access to training and promotion is discriminatory

Garity v Commonwealth Bank of Australia, 1999, Human Rights & Equal Opportunity Commission

Facts: Sally Garity began work with the Commonwealth Bank in 1989. She had a vision impairment, with no sight in the right eye and 40 per cent sight in the left. She told the Commission that, from the very first day at the bank, she received no effective training and, over time, no promotion opportunities. It was only when she was transferred to the Central Branch five years later that she had a full picture of the information, training and support she had not had access to, for example, staff circulars and memos, staff meetings and training programs. She formed the view that no one cared about the quality of her work, her requests for assistance or about her personally.

Decision: The Commission found that Mrs Garity had been discriminated against in not being given equal access to promotional and training opportunities. She was awarded \$153,500 damages.

CASE STUDY 3

Withdrawing a job offer due to an imputed condition is discrimination

Gordon v Commonwealth of Australia, 2008, Federal Court of Australia

Facts: Mark Gordon was offered a position as a GST Compliance Officer at the Australian Tax Office (ATO), subject to satisfying a medical assessment. Subsequent medical tests indicated that Mr Gordon suffered from severe high blood pressure. As a result, the ATO withdrew the job offer, saying the condition would affect his ability to drive and therefore his capacity to fulfill the job requirements.

Decision: The Court found that the medical reports produced by the ATO's doctor did not accurately depict Mr Gordon's blood pressure and that he had suffered from what is known as 'white coat syndrome', anxiety when undergoing medical assessments. As a result, his blood pressure was temporarily raised when the readings were taken. Although he did have slightly raised blood pressure in other circumstances, the Court found this could be appropriately treated with medication and would not hinder his capacity to perform the job requirements.

It was held that the ATO had terminated his employment on the basis of an imputed disability (severe hypertension) – that is, one he did not actually have.

The Court did not order reinstatement, given that five years had passed since the job offer had been withdrawn and that Mr Gordon now had another job, but he was awarded significant damages.

What forms can discrimination take?

You may have experienced unlawful discrimination in the following ways:

- direct discrimination because of your disability
- indirect discrimination because of your disability
- harassment because of your disability
- being asked discriminatory questions
- discrimination because of your reliance on an assistance animal, disability aid or equipment
- breach of Disability Standards for public transport, education and access to public buildings
- victimisation.

QUESTIONS TO CONSIDER

For it to be found that you have been treated less favourably because of your disability, there must be a clear connection between your disability and the discrimination you experienced.

Ask yourself:

- Is your disability the reason why you are being treated less favourably?
- If you did not have a disability, how would the person treat you? Would it be different or the same?
- Is there another person who does not have a disability but is facing the same circumstances as you in employment, education or service provision? Compared to you, how was that person treated? Did that person get something you did not receive?
- Is there another reason why you are being treated less favourably?

IMPORTANT: If you are being treated less favourably because of your disability AND another reason, it will also be considered discrimination if your disability is a substantial reason. Substantial means your disability was a big factor.



Direct discrimination

This occurs when:

1. Someone treats you less favourably (or proposes to) than they would treat someone else, in similar circumstances, who does not have a disability.
2. Your request for *reasonable adjustments* to be made to your workplace, school or other educational premises, or other public space so that you can participate or access services and activities, is not met.

CASE STUDY 4

A medical condition does not mean inability to do the required work

Trindall v NSW Commissioner of Police, 2005, Federal Magistrates Court of Australia

Facts: Bradley Trindall was a New South Wales police officer with an inherent sickle cell condition, an inherited disorder that affects red blood cells. Mr Trindall alleged that he was placed on restricted duties after a medical examination revealed the condition, and was at one stage threatened with discharge from the police force on medical grounds.

Decision: It was found that Mr Trindall was directly discriminated against on the basis of his disability. The Court found that the Police Medical Officer (PMO) who placed the unnecessary restrictions on him treated him less favourably than he would have treated someone in the same or a similar situation. The officer's medical certificate stated that he was fit and healthy but needed to take precautions in some situations. The PMO failed to enquire about the precautions noted in the certificate where, in other situations, he would have.

CASE STUDY 5

School made 'flawed assumptions' in decision to not accept enrolment

Scarlett Finney v The Hills Grammar School, 2000, Australian Human Rights Commission

Facts: Scarlett Finney was born with Spina Bifida. In 1997 her parents, Bernadette and Scott Finney, sought to enroll her in the kindergarten class at a private school. The covering letter noted that she had Spina Bifida and required a school with certain specifications, for example wheelchair accessibility. Following an interview, the school informed her parents that it would not offer Scarlett a place, saying it did not have adequate resources to look after her in the manner she required.

Decision: The Commission found that the Hills Grammar School discriminated against Mr and Mrs Finney on the grounds of Scarlett's disability. It described the school's decision as "genuine but misguided", "based on general and often flawed assumptions". The Commission encouraged the parties to discuss settlement, however the school applied to the Federal Court for review of the decision. It dismissed the application, with costs.



Indirect discrimination

This occurs when:

There is an unreasonable rule or policy that is the same for everyone but has an unfair effect on people who have a particular attribute.

For example:

- Requiring customers to enter a store using three steps is unreasonable for people who use wheelchairs and puts them at a disadvantage.
- Requiring all students to make a presentation in front of the class is unreasonable for any student who has anxiety and may suffer panic attacks before speaking in front of a lot of people. This can be a disadvantage when there are other ways of assessing a student's learning progress.

CASE STUDY 6

Inability to achieve full potential at school can be 'serious disadvantage'

Hurst v Queensland, 2006, Full Federal Court

Facts: Seven year old Tiahna Hurst had been Deaf since birth and used Auslan (Australian Sign Language) as her first language. Education Queensland policy required her to be taught in English (signed) without an Auslan interpreter.

Her family claimed that her education would be diminished because of this requirement. The original judge held that there was no indirect discrimination as she was able to cope with the requirement.

Decision: The Full Court held that while Tiahna may have been able to 'cope' with signed English, it would have likely diminished her education. It said that inability to achieve one's full potential, in educational terms, can amount to 'serious disadvantage'. It found that the previous judge confused the ability to cope with being disadvantaged by the requirement. The Court declared that Education Queensland had breached the Disability Discrimination Act.

CASE STUDY 7

Olympics website and ticketing information found inaccessible

Maguire v SOCOG, 1999, Human Rights and Equal Opportunity Commission

Facts: In the lead-up to the 2000 Sydney Olympics, Bruce Maguire, a blind person who wanted to apply for tickets for himself and his two children, lodged a complaint against the Sydney Organising Committee for the Olympic Games (SOCOG) for failing to provide its website and ticketing information in a format accessible to people with a vision impairment. SOCOG argued that correcting the site would cause it unjustifiable hardship.

Decision: The Commission disagreed and ordered SOCOG to upgrade its website prior to the start of the Games and provide ticketing information in Braille. After the Olympics had finished the SOCOG website was found to only be partly compliant and \$20,000 damages were awarded.

Difference between direct and indirect discrimination

Direct discrimination occurs when you complain that the discriminator treats you differently, in a way that causes you a disadvantage.

For example, you and a person without a disability have the same qualifications and skills, but the employer chose the other because the employer thought that your disability would cause you to take a lot of time off.

Indirect discrimination is where you complain that the discriminator is treating you the same as everyone else and it puts you at a disadvantage because of your disability.

For example, you did not get the job because it requires all workers to have a driver's licence. If your disability prevents you from driving, the requirement to obtain a driver's licence is unreasonable, or puts you at a disadvantage, if driving is not an essential part of your duties.

It is not your job to prove what is reasonable. The law requires the discriminator to prove that:

- the condition or requirement you are asked to do or meet is NOT unreasonable, or
- the adjustments you requested for your disability are NOT unreasonable.

What is a 'reasonable adjustment'?

If your disability stops you from performing an essential or inherent requirement of the job, then you need to advise your employer, and ask for *adjustments* so that you can.

The employer is not allowed to discriminate against you simply because you require reasonable adjustments. Education authorities and goods and services providers are also required to make changes so that a person with disability can access education and services.

These changes are known as *reasonable adjustments*. Here are some examples.

At work:

The Victorian Equal Opportunity and Human Rights Commission says some adjustments that an employer may need to make to the workplace include:

- reviewing and, if necessary, adjusting the performance requirements of the job
- being flexible with work hours

- providing equipment and internet access for employees with hearing or speech impairments to access the National Relay Service to make and receive phone calls
- purchasing screen reading software for employees with a vision impairment
- approving more regular breaks for people with chronic pain or fatigue
- buying desks with adjustable heights for people using a wheelchair.

In education:

If your disability prevents you from learning or being examined in the same way that other students without disability do, the school or university needs to make adjustments.

Examples given by the Australian Disability Clearinghouse on Education and Training include:

- providing information or course materials in accessible format, such as a text book in Braille
- changes in teaching practices, e.g. wearing an FM microphone to enable a student to hear lectures
- supplying specialised equipment or services, such as a notetaker for a student who cannot write
- changes in lecture schedules and arrangements, including relocating classes to an accessible venue
- changes to course design, such as substituting an assessment task
- modifying the physical environment, including from installing lever taps to building ramps and installing a lift
- modifying computer equipment in the library.

In the provision of services:

Adjustments to make services accessible may include:

- installing a ramp or lift so people can access buildings
- allowing an assistance dog regardless of any policy prohibiting animals
- providing an Auslan Interpreter for a Deaf person in the audience attending a presentation
- not charging costs of admission to the carer of a person who has complex needs.

What if they cause hardship to provide?

Adjustments required for people with disability must be considered *reasonable*.

The employer, authority and/or service provider can refuse to provide adjustments for you if it would cause them *unjustifiable hardship*.

Unjustifiable hardship happens when the person's interests or business would suffer to the extent that they will face a lot of difficulties that they cannot manage.

There are many factors to consider in working out if an adjustment will cause unjustifiable hardship, including:

- how much it will cost to make the adjustment
- the resources of the person or organisation making the adjustment
- the nature of your disability and how you would be disadvantaged if the adjustment was not provided
- the benefits the adjustment will have for you and other people with a disability
- the disadvantages the adjustment will have for other people who may be affected.

CASE STUDY 8

Requirement to stand was unreasonable workplace policy

Daghlian v Australian Postal Corporation, 2003, Federal Court of Australia

Facts: Sarah Daghlian worked for Australia Post. She had a physical disability that prevented her from standing for extended periods of time. Australia Post introduced a new policy that banned employees from using stools at retail counters. Ms Daghlian continued to use a stool and was dismissed for breaching the new policy.

Decision: The Court found that Australia Post engaged in indirect discrimination that was not considered reasonable. There was no evidence that Ms Daghlian's stool caused any danger to herself or her co-workers or affected her efficiency or caused any other complaints.

CASE STUDY 9

Airline was able to claim unjustifiable hardship with wheelchair policy

King v Jetstar Airways Pty Ltd, 2012, Federal Court of Australia

Facts: Mrs Sheila King used a motorised scooter wheelchair for mobility. She booked an interstate flight with Jetstar Airways, which had a policy of limiting the number of passengers who require wheelchair assistance to two passengers per flight. Mrs King was the third passenger requiring wheelchair assistance and Jetstar enforced its policy and asked her to take the next flight.

Decision: Jetstar admitted that it discriminated against Mrs King because of her disability but defended its action on the basis of unjustifiable hardship. The airline said it had conducted a time and motion study of the steps required to board and disembark passengers requiring wheelchair assistance. As a budget airline, Jetstar said financial constraints forced it to limit the number of passengers requiring this type of assistance to two passengers per flight. The Court agreed that this outweighed any inconvenience caused to individual passengers.

The Australian Human Rights Commission later commented:

This case demonstrates how the court interprets and applies the exemption of unjustifiable hardship and what factors are considered. This case was a disappointing decision for many and highlights the fact that the Disability Discrimination Act, while designed to promote equality, does not require 100 per cent accessibility, allowing for the application of certain exemptions.

CASE STUDY 10**Refusing reasonable adjustments was discriminatory**

Watts v Australian Postal Corp [2014] Federal Court of Australia

Facts: Andrea Watts, an Australia Post employee, suffered from a psychological injury within the workplace and took time away from work. When she attempted to return several months later, Australia Post sought to restrict her employment under a 'non work related medical restrictions policy'. Ms Watts resisted this new policy but eventually attended a medical examination with an independent psychiatrist who produced a report stating she was fit to return to her pre-injury role. However he stated she needed some workplace adjustments to be able to perform the role. She requested reduction in her duties and extension of deadlines, which were refused.

Decision: The Court found that Australia Post had engaged in unlawful discrimination on the ground of Ms Watts' disability, by failing to make reasonable adjustments so she could remain at work.

**Harassment**

If you feel abused, have been subjected to rude and embarrassing treatment or to any considerable detriment because of your disability, that form of discrimination is called harassment.

You need to contact your local police station or your nearest community legal centre to advise you, or help you take the appropriate legal action.

CASE STUDY 11**Manager's actions designed to cause discomfort & constituted harassment**

McDonald v the Hospital Superannuation Board, 1999, Human Rights and Equal Opportunity Commission

Facts: Peter McDonald had multiple sclerosis (MS), a condition he had disclosed to his employers after he had accepted his role. Mr McDonald and his team leader did not get along well and she increased his workload to try to push him to leave. She put bookshelves near Mr McDonald's desk to block his view, and moved him to a hotter part of the building, which exacerbated his MS symptoms. The team leader acknowledged all these changes and the negative effect they would have on his disability.

Decision: The Commission found that offensive remarks and the behaviour of the team leader were designed to cause Mr McDonald discomfort or humiliation concerning his disability, and therefore constituted harassment, even though these happened within the broader context of the poor working relationship.

Being asked discriminatory questions

It is not legal for anyone to ask questions that may be used to discriminate against you on the basis of your disability.

Generally, people do not have to talk about their disability or how it affects them when they are applying for jobs. Disability, symptoms of disability, or what medical treatment you are receiving is private and sensitive information. It is up to you whether you wish to share this information or not.

However it becomes tricky when disclosure is required for employment.

If you are applying for a job, your prospective employers may require a medical assessment. However, they cannot discriminate against you with the information that comes from the medical assessment.

An employer is prohibited from refusing to employ a person based on a disability where it is not relevant to the inherent requirements of the job.

WHAT QUESTIONS CAN THEY ASK?

Here is a guide to questions that can and cannot be asked at a job interview:

Do you have a disability?

An employer may not ask such a broad question with no apparent purpose but to find out if you have a disability.

Do you have a family history of a certain type of disability?

This question is discriminatory. You are the job applicant so the employer doesn't have a right to know of your family history of disability.

Do you take any medications?

This is also a very broad question with no apparent purpose but to find out if you take medications for a disability.

Have you made a work cover claim?

This question is discriminatory, the employer doesn't have a right to know about any workers' compensation history you may have.

Do you have a disability that prevents you from performing any requirements of your job safely?

You need to be very careful in answering either 'Yes' or 'No' to such a question. You will need to understand clearly what the requirements of the job are, and how your disability may impact on them.

**TIP**

It is difficult to pinpoint circumstances where you do not disclose your disability. As a starting point you should not disclose your disability UNLESS there are specific circumstances which make it necessary. For example, if you are applying for a position that requires the operation of industrial machines or motor vehicles, and you have a particular type of epilepsy and experience seizures, you may need to make a disclosure. But in general, you should not disclose disability until you are given a job offer.

Are you taking any medications which, if you don't take them, will affect your ability to perform the requirements of the job?

This is another difficult question. It is similar to the question above and also includes an assumption of what may happen if you don't take your medication. You may say that this question does not apply to you because you are a responsible person and will take medications as required.

What special requirements do you need us to provide to you?

This is another way of asking you if you have a disability and should be asked after an offer of employment.

Reliance on mobility equipment, assistive devices or assistance animal

Many people with disability rely on mobility and assistive devices for access to a range of facilities or services, including shops, education facilities or workplaces.

Mobility equipment includes a wheelchair, scooter, walking frame or cane.

Assistive devices include vision, hearing, and breathing equipment or accessories.

Assistance animals include guide dogs, hearing dogs or a dog that has received adequate training:

- in hygiene and behaving appropriately in public or in the presence of other animals, and
- in what to do specifically in order to alleviate the symptom of a person's disability.

An assistance animal that has not had both these parts of training or only serves as a companion animal is not an assistance animal under discrimination law. The animal must be able to demonstrate that the skills acquired from training alleviate the effects of the disability.

The owner or manager of a place open to the public is required to allow an assistance animal in the premises even if they have a 'no animal on site' policy. However, they can refuse the entry of a pet or companion animal.



TIP

It is helpful to carry a copy of the dog's registration as an assistance animal wherever you go. The dog trainer may be able to provide you with a vest that the dog wears to indicate that it is working as your assistance animal.

You must ensure that your animal receives a regular health check. If it has an infectious disease, or behaves in a manner dangerous to the public, it will not be able to work as an assistance animal.

CASE STUDY 12

Refusal to allow assistance dog on board was discriminatory

Mulligan v Virgin Australia Airlines Pty Ltd, 2015, Federal Court of Australia

Facts: David Mulligan attempted to board a Virgin Airlines plane with an assistance dog who was trained to assist him with hearing and vision impairments, as well as his cerebral palsy. Virgin refused to allow the dog on board.

Decision: The Court held that this was discriminatory. The dog had been trained to help him in relation to his disabilities and therefore was an assistance animal under the Disability Discrimination Act. Mr Mulligan was awarded monetary compensation and Virgin's actions were declared to be unlawfully discriminatory.



Breach of standards

Under the Disability Discrimination Act 1992, the Commonwealth Parliament may pass standards of minimum compliance with the law for:

- public transport
- education
- access to premises.

The Disability Standards set out what a person/organisation needs to do to avoid a discrimination complaint. If you experience difficulty because of their failure to do so, you can make a complaint.

Disability Standards for Public Transport

Under the Disability Standards for Public Transport which became law in 2002, public transport providers were given 20 years to make sure their vehicles, trams, trains and buses were accessible to people with disabilities. They needed to be:

- 90 per cent compliant by 2017
- 100 per cent compliant by 2022.

If a public transport provider is having extreme difficulties meeting the requirements, the Standards allow them to apply for a limited extension of time.

Disability Standards for Education

The Disability Standards for Education, which became law in 2005, require education authorities to consult with students with disabilities, their associates and health professionals to identify their needs and what adjustments are needed for them to attend school and participate in activities. Schools need to ensure that students can participate in their courses.

Disability Standards Access to Premises

The Disability Standards for Access to Premises, which became law in 2011, require new buildings and those undergoing significant renovation to be accessible to people with disabilities. These Standards are very technical. Access Design Specialists can advise as to whether the Standards apply to a building you have concerns about and what, if anything, must be done for that building to be compliant.

CASE STUDY 13

Bus company did not have wheelchair accessible buses

Haraksin v Murrays Australia Ltd (No2) [2013] Federal Court of Australia

Facts: In August 2009, Julia Haraksin, who relied on a wheelchair for mobility, tried to book a seat on a bus between Sydney and Canberra. The bus company, Murrays, told her they did not have any wheelchair accessible buses and so could not accept her booking.

Decision: Ms Haraksin did not seek financial compensation, but rather successfully sought orders from the Federal Court requiring Murrays to modify their vehicles to make them accessible to people using wheelchairs.

Victimisation

Victimisation is a very serious form of discrimination because it is an offence, that is, it can result in a prison sentence. Victimisation most commonly occurs when, instead of helping you with an experience of discrimination, a person makes things more difficult for you. For example, if you were working as a disability support worker and management tried to stop you from making a complaint about abuse and neglect of a client that you had witnessed, this would amount to victimisation.

Discrimination against a person without a disability

You may also experience disability discrimination even if you don't have a disability.

Personal association

This happens if you are a personal associate of a person with a disability and you have been discriminated against because of that person's disability. Personal association with a person with a disability means you are their:

- carer
- spouse
- partner
- relative, or
- close friend.

Past, future and imputed

An imputed disability means a disability that you don't actually have but the discriminator thinks you have it.

CASE STUDY 14

Discrimination can occur even when it is not intended

Oberoi v Human Rights and Equal Opportunity Commission, 2001, Federal Magistrates Court of Australia

Facts: When Rajiv Oberoi lodged complaints of race discrimination with the Human Rights and Equal Opportunity Commission, the investigator reported to the Commission that Mr Oberoi's perception of events was affected by his depression, and therefore lacked credibility. After his initial complaints were dismissed, Mr Oberoi lodged another complaint alleging that the investigator had discriminated against him.

Decision: The Court held that the Commission had decided without any evidence that the employee had depression which affected his credibility in their view. Mr Oberoi was awarded damages and an apology from the HREOC.

This case study shows that unlawful discrimination can take place without an intent to discriminate. The discriminator did not intend to discriminate against Mr Oberoi but because the Commission's representative made a decision against him based on a belief that he had a disability, unlawful discrimination occurred.



Part 2 > What action can I take?

What laws apply to disability discrimination?

It is best to get legal advice in deciding which law you will use to address discrimination.

Most of the time the Equal Opportunity Act 2010 (Victoria) and the Disability Discrimination Act 1992 (Commonwealth) will apply to your complaint and you can choose between them. There are some cases where it is compulsory to use a particular Act.

Here is a guide for action in Victoria:

You must use the **Disability Discrimination Act 1992** if you have a:

- complaint about discrimination by a club
- complaint about an owner's corporation
- complaint against Commonwealth agencies
- complaint that involves other Commonwealth laws or international treaties
- complaint against an employer who is not in Victoria and the discrimination happened during your employment outside Victoria.

These complaints should be lodged with the Australian Human Rights Commission (AHRC).

You must use the **Equal Opportunity Act 2010** if you have a:

- complaint against a Victorian government employer.
- These complaints should be lodged with the Victorian Equal Opportunity and Human Rights Commission (VEOHRC), or the Victorian Civil and Administrative Tribunal (VCAT).*

Where your complaint of discrimination is about what happened at work or what your employer did or failed to do, you can choose to make your complaint under the:

- Equal Opportunity Act 2010 – if your employment is in Victoria
- Disability Discrimination Act 1992 – if your employment is outside Victoria or your employer is a Commonwealth organisation, or
- Fair Work Act 2009 – in any other case, provided you are not a contractor.

Complaints under the Fair Work Act 2009 should be lodged with the Australian Fairwork Commission (AFC).



TIP

In most employment cases, it is better for you to make a complaint against your employer under the Fair Work Act 2009 instead of the Equal Opportunity Act 2010 or Disability Discrimination Act 1992 because the law requires the employer to disprove your complaint.

Please note however that the limitation period is shorter.



TIP

Changing your mind about which law to take action under may mean loss of time and money so it helps to think about this carefully before you make your complaint.

Also if your complaint under the Equal Opportunity Act 2010 is accepted by the Victorian Equal Opportunity and Human Rights Commission or the Victorian Civil and Administrative Tribunal (VCAT), you are not able to transfer your case, or make the same complaint, under the Disability Discrimination Act 1992.

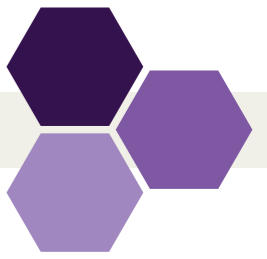
However, if you started a complaint under the Disability Discrimination Act 1992, you can stop and continue it under the Equal Opportunity Act 2010.

IMPORTANT: You may need to take into account the risk of costs associated with making a complaint.

Generally speaking (but there are exceptions) VCAT is a not a cost associated jurisdiction, so you will not have to pay the other side's legal costs if your complaint goes to a hearing and you lose.

However if your complaint cannot be settled at the Australian Human Rights Commission and goes on to the Federal Court, costs will be automatically awarded against the losing party at the end of a trial.

Make sure you think carefully about this and discuss any risks with a lawyer.



What complaint do I have?

Your complaint should talk about the unfair treatment you experienced.

- Is it about being refused or denied something?
- Is it about exclusion?
- Is it about conditions or requirements that you believe are unfair?
- Is it about a place you are not able to go?
- Is it about your participation in an activity or program?
- Is it about being allowed to practice your profession?
- Is it about discriminatory questions you have been asked about work?
- Is it about adjustments you have asked for but were refused?

What limitations are there to complaints?

You can only make a complaint about certain areas in life. You must describe the relationship between the discriminator and you. This includes:

- employment
- education
- access to premises used by the public
- accommodation
- goods, services and facilities
- clubs and associations
- sport
- local government
- Commonwealth laws and programs.

Who do I complain about?

The discriminator is the person or persons who are:

- treating you unfairly because of your disability
- requiring you to do something which you cannot do because of your disability, or
- helping the discriminator or authorising the actions of the discriminator.

You need to:

1. Identify the correct person and have names and contact details.
2. If it is a business, find out how the business is operated. If it is operated by a company or corporation, it will have “Incorporated” or “Pty Ltd” in its name.

The company or corporation is a legal entity and is responsible for the actions of the people who run the company. If you are complaining about discrimination by an employee of a company or an organisation, you may need to include both the employee and the company or organisation in your complaint.

For example, if a security guard refused you and your assistance dog entry into a shopping centre, your complaint may be made against the security guard, the employer of the security guard, and the owner of the shopping centre.

Preventing discrimination

Organisations, businesses and other entities can develop and implement a Disability Action Plan to prevent disability discrimination. Further information is available here: <https://www.humanrights.gov.au/our-work/disability-rights/action-plans-and-action-plan-guides> The Disability Action Plan identifies potential areas of discrimination, what the organisation or company intends to do about it, and how and when they will implement it. The Plan is usually made public or available on request. Some are registered with the Australian Human Rights Commission.

The organisation may use the action plan, not as a complete defence to a complaint, but to provide evidence that they are trying to do the right thing.

Who can make a complaint?

You can make a complaint about something that happened to you or you can ask an advocate, family member, friend, or lawyer to make the complaint on your behalf.

You can also make a complaint about something that happened to another person if:

- you are that person’s parent or guardian
- you have legal authority to act on behalf of that person
- the person gave you permission to act on their behalf (it helps to get that in writing).

Before you lodge a complaint, you should obtain advice from the Disability Discrimination Legal Service or another lawyer.

What if the discrimination happens to a group of people?

The law allows you to make a complaint on behalf of a group of other people. This is called a representative complaint or class action.

That must involve a number of people who:

- experience the same type of discrimination by the same person/organisation and are asking for the same solution to the discrimination.

Under representative complaints or class actions, people who are discriminated against but do not have the resources to make a complaint can benefit from the outcome of the complaint.

If you wish to make this kind of complaint, it is better if you meet with as many people that you can find who are experiencing the same discrimination. You may need to seek legal advice from the Disability Discrimination Legal Service or another lawyer.

CASE STUDY 15

Wage setting system discriminatory for workers with intellectual disability

Nojin v Commonwealth of Australia and Another, 2012, Federal Court of Australia

Facts: Two employees with intellectual disabilities worked in separate businesses that both used the Business Service Wage Assessment Tool (BSWAT). Their employers used the BSWAT to measure how much work their employees had done by asking them a broad range of questions. The data and results were then used to assess and set wages. Both employees claimed that the device was unfair for those who had intellectual disabilities.

Decision: The Federal Court of Australia found that the wage setting process was discriminatory against those with an intellectual disability. The BSWAT was not flexible in responding to all types of disabilities and that the way it assessed productivity had little to do with the competency of the worker.

CASE STUDY 16

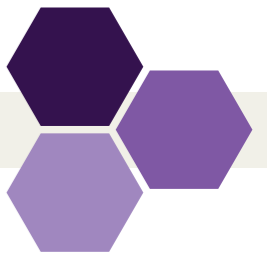
Class action finds against wage setting system in ADEs

Duval-Comrie v Commonwealth of Australia, 2016, Federal Court of Australia

Facts: After the court decision in the Nojin case (above), Tyson Duval-Comrie made a representative complaint. He said the use of BSWAT discriminated against people with intellectual disabilities who were or had been employed at Australia Disability Enterprises (ADEs), a business in which the majority of employees have disabilities. The work generally includes gardening, packing and destroying confidential documents.

BSWAT was the single most common wage assessment tool used in ADEs and was used, at the time of Mr Duval-Comrie’s complaint, by more than 100 ADEs. Thousands of people were discriminated against and were paid less than they deserved.

Decision: The court approved a settlement of the case. Among other measures, the Commonwealth Government agreed to pay 70% of the compensation owed to employees.



I'm a volunteer: am I protected from discrimination?

Volunteers are generally understood to be community minded people who give their time and skill on a voluntary basis without expecting to be paid.

If you work for free and do not get paid, you are not an employee. You cannot complain of disability discrimination but you can make a complaint under the following circumstances:

- if you have been sexually harassed by another person or volunteer who works for the organisation, or
- if you are also receiving services from the organisation, in which case the discrimination is not in employment but in the provision of services.

If you started as a volunteer but later on the manager gives you specific work, controls what you do and gives you an agreed amount of money for that work, you may be considered an employee under discrimination law.

If you get any of the following benefits in exchange for your volunteer work you will NOT be considered to be an employee:

- meal allowance
- taxi voucher or train travel card
- ticket to movies or concerts
- gifts in kind.

Volunteers who discriminate against others

If you are an employee and a volunteer worker has discriminated against you, you can make a complaint against the volunteer and your employer. Your employer cannot avoid liability for the discrimination by saying that the discriminator is only a volunteer and not an employee.

How quickly should I take action?

If your complaint is about something that happened a long time ago, it will not be accepted. It is important that you make your complaint within the time allowed by the law, or what is called the 'limitation period'.

The limitation periods are:

- Under the *Equal Opportunities Act 2010*, you can make a complaint within 12 months of the discrimination.
- Under the *Disability Discrimination Act 1992*, you can make the complaint within 24 months of the discrimination.
- If you are an employee, under the *Fair Work Act 2009* you can make the complaint within 21 days of the termination or within 6 years of the discrimination if you remain to be employed.



TIP

COUNTING THE LIMITATION PERIOD

Don't leave making a complaint to the last day. It is best to do it as soon as you can and plenty of time before the limitation period ends.

Counting the limitation period means you start counting the day after the discrimination happened. If you were terminated from work, the discrimination happens on the day the termination takes effect.

For example if you get a letter dated 8 June saying that your employment is terminated effective 15 June, you begin counting one day after 15 June, not 8 June.

What if I can't put in my complaint on time?

If something prevented you from making a complaint within the limitation period, you may be able to apply for an extension of time if:

- the delay is not for a very long time; and
- you have good reasons for the delay, for example if you had to go to hospital and there is no one who could have made the complaint for you.

What if the discrimination is ongoing?

If the discrimination keeps on happening, then there is no limitation period or you can count from the date of the last act of discrimination.

For example, if a building doesn't have disability access, the discrimination is ongoing until the owner installs a suitable ramp or lift.

If you are banned from a venue because of behaviour which is part of your disability, the discrimination happens every day you are refused entry or until the ban is lifted.

How do I prepare a complaint?

The complaint must be in writing and include supporting documentation. Here are some tips:

- It does not need to be very long. Include important dates, write what happened and what people said.
- If you cannot do this alone, ask for help from a disability advocate, family member or friend. You can tell your story and another person can write it down for you.
- Collect copies of important letters, emails or any paperwork related to your claim of discrimination.
- Make sure all names and addresses are correct.
- Speak with a disability discrimination advocate or lawyer.
- Keep a copy of your complaint and supporting documents.
- Get in touch with the people who may be able to support your complaint, for example a doctor who wrote a report.

CHECKLIST

After you have written your complaint, check if you have included the following:

- Your name, and contact details. If you are making a complaint on behalf of someone else, make sure that you also provide their name and contact details.
- Description of your disability, or of the other person's disability if you are acting on their behalf.
- The name, address, and phone number of the person or organisation you are complaining about.
- Your relationship with the person you are complaining about (is it your employer, are you a customer at their store, or do you want to access their building?).
- The details of the discriminatory acts that happened to you, including:
 - > who was involved
 - > what happened
 - > when it happened
 - > where it happened.
- The effect the discrimination has had on you.
- Any steps that you have already taken to deal with the situation.
- What outcome you want.

You can submit your complaint by email, send it by post, or fax. For a guide, see sample complaints in Part 4.



What happens with my complaint?

Once the Australian Human Rights Commission or Victorian Equal Opportunity and Human Rights Commission receives your complaint, it will:

- assign a Case Investigations Officer who will be the contact point for sharing communication between the office, the discriminator and yourself
- provide a copy of your complaint to the discriminator and request them to reply, either verbally or in writing
- share the discriminator's response with you and ask you for comments.

See the Process Flow Charts in Part 4 for what you can expect.

What if the discriminator doesn't respond?

Sometimes the discriminator doesn't provide a reply and/or doesn't want to participate in the process. In such a case, the Case Investigations Officer usually will not force that person or organisation to participate as the process is regarded as voluntary.

If this happens, you need to speak to a lawyer who can advise you about taking the case further to either VCAT or the Federal Court.

What happens at a Conciliation Conference?

A Conciliation Conference is the first likely step for a discrimination case.

This is an informal meeting where you and the discriminator talk about what happened and try to come to some agreement about what should happen next.

You can expect that often there will be no agreement about the facts of what occurred, and you may hear annoying and stressful things from the discriminator.

However the purpose of the conference is to work out a resolution, so it is important to know what outcome you are after. About 7 out of 10 complaints are resolved by conciliation.

It is unlikely that you will get everything you want and you may have to compromise. However this is your decision.

What outcomes are possible?

What do you hope to achieve from taking action?

Think about what you would like as a result of this process so that steps can be made to attempt to resolve the issue.

Potential outcomes could include:

- a verbal or written apology or statement of regret
- changes to policy or practice
- reversal of discriminatory action, for example, getting your job back, or promotion
- order for the discriminators to receive training in equal opportunity and preventing discrimination
- payment of compensation for loss of earnings or harm that you have experienced because of the discrimination.

What happens in a Settlement Agreement?

If an agreement is reached, it will be put in writing. It will become a contract between you and the discriminator. Usually settlements are confidential and made with no admission of liability.

The whole process may take between 2 to 4 months.



Part 3 > When is discrimination allowed?

When you make a complaint, you need to be prepared that the discriminator will say that your complaint is not correct or you are not telling the truth. Some may accept that their action is discriminatory but say that the discrimination is allowed by the law.

The Disability Discrimination Act permits discrimination in certain circumstances, such as on public health grounds when a person's disability is an infectious disease or for reasonable differences in the provision of insurance and superannuation. There is also an exemption in relation to combat duties or peacekeeping services in the Australian Defence Force or Australian Federal Police.

Special measures

It is lawful for a person with a disability to be treated more favourably than people without that disability. This is necessary when a person has special needs and needs to be provided with something that is usually not given to everyone.

For example it would not be discriminatory for a school specifically set up to cater for Deaf students to decline the enrolment of a student without that particular disability, such as someone who has cerebral palsy, but is not Deaf.

Order of a Court or Tribunal

This means the action or conduct of the person is authorised by an order.

For example, the Family Court or Children's Court can make an order taking away custody of a child from a parent with a disability because it believes the person is not able to look after the best interests of the child. The court action and that of any person or organisation following the court order is lawful.

Actuarial or statistical data

This refers to insurance. Insurance is essentially a discriminatory business because it is about assumption of risk. Insurance companies will not assume risks that will put their business at risk. They may refuse an application for insurance cover or payment of benefit if they have widely accepted written reports saying that certain types of disability are too much risk for the company to assume.

In the case study below, however, the Victorian Civil and Administrative Tribunal (VCAT) decided against the insurance company because they could not supply acceptable data to back up the relevant exclusionary clause.

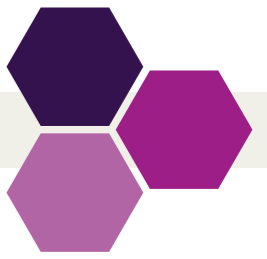
CASE STUDY 17

Travel insurance wrongly excluded mental health claims

Ingram v QBE Insurance (Australia) Ltd, 2015, VCAT

Facts: Ella Ingram booked a trip to New York and purchased a trip cancellation insurance policy with QBE. Ahead of her planned departure, Ms Ingram experienced symptoms of depression for the first time and was later diagnosed with and treated for severe depression. Ms Ingram cancelled her trip upon her doctor's advice. She subsequently claimed compensation from QBE Insurance who rejected her claim on the basis that the travel insurance policy excluded coverage for claims related to mental illness.

Decision: VCAT held that QBE engaged in unlawful discrimination against Ms Ingram and ordered the insurer to pay approximately \$4,000, being the value of her cancelled trip, and \$15,000 for hurt and humiliation.



Decisions on visa applications and other migration matters

Discriminatory provisions of the Migration Act 1958 are exempt from the Disability Discrimination Act. For example if a migrant is refused permanent residence because of a disability, this is not unlawful discrimination.

Public health

It is lawful to discriminate against a person with an infectious disease if the discrimination is 'reasonably necessary' in order to protect public health.

Temporary exemption

A person who cannot avoid committing an act of discrimination may apply for an exemption from discrimination law. The purpose of the exemption is to give them a period of time to improve their systems or services and prevent discrimination from happening in the future.

For example, a building may be inaccessible to people who use wheelchairs. The building of a ramp or the installation of a lift may require planning and time to complete.

The Victorian Equal Opportunity and Human Rights Commission gives exemptions for up to 3 years. The Australian Human Rights Commission gives exemptions for up to 5 years. When the 3 or 5 year period is finished, the person/organisation may apply for an extension of time.

Essential job requirements

All employees must be able to perform the tasks that are essential to the job. An employee who is not able to perform the 'inherent' or genuine and reasonable requirements of the job may be terminated lawfully.

It is very important to identify what are essential or inherent tasks. If there is a particular way of doing the job which you are not able to do, you should be allowed to carry out your duties in a different way if doing so will deliver the same outcome.

For example if an employee is required to use a computer to write correspondence, using the computer is an essential task, but using a keyboard is not. So a person who may not have the fine motor skills to use the keyboard can use a voice activated computer and still be able to write the required correspondence.

However if you are hired as a sales person and need to travel around country areas and demonstrate how to operate a machine, that travel is an inherent part of your job and, depending on circumstances, driving may be an essential requirement. If you lose or do not have a licence to drive because of a disability, then you are not able to perform an inherent requirement of the job.

CASE STUDY 18

Dismissal upheld because of requirement to lift heavy objects

Alcock v TNT Australia Pty Ltd, 2014, Fair Work Commission

Facts: Philip Alcock was employed by TNT Express as a pickup and delivery driver. In 2014, TNT Express decided he was no longer able to safely perform the inherent requirements of his position and had him undergo a functional assessment conducted by a medical practitioner. On the basis of that report, he was dismissed. The duties of collection and delivery drivers at TNT Australia were set out in the driver handbook distributed to employees, including that they were required to lift heavy objects/packages.

Decision: It was held that lifting heavy items could not be avoided, and if he was not able to do this safely, the discrimination would be lawful.

CASE STUDY 19

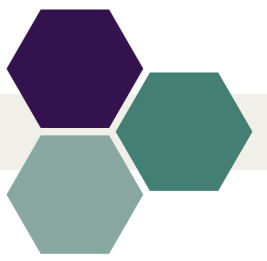
Colour blindness did not mean inability to do the work

Crombie v Commonwealth of Australia, 1998, Australian Human Rights Commission

Facts: Alan Crombie, who had colour blindness, applied for a promotion at work. He failed the standard medical test for colour vision and therefore was not granted the promotion. The employer argued that the discrimination was not unlawful, because Mr Crombie was not able to meet the inherent requirements of the job.

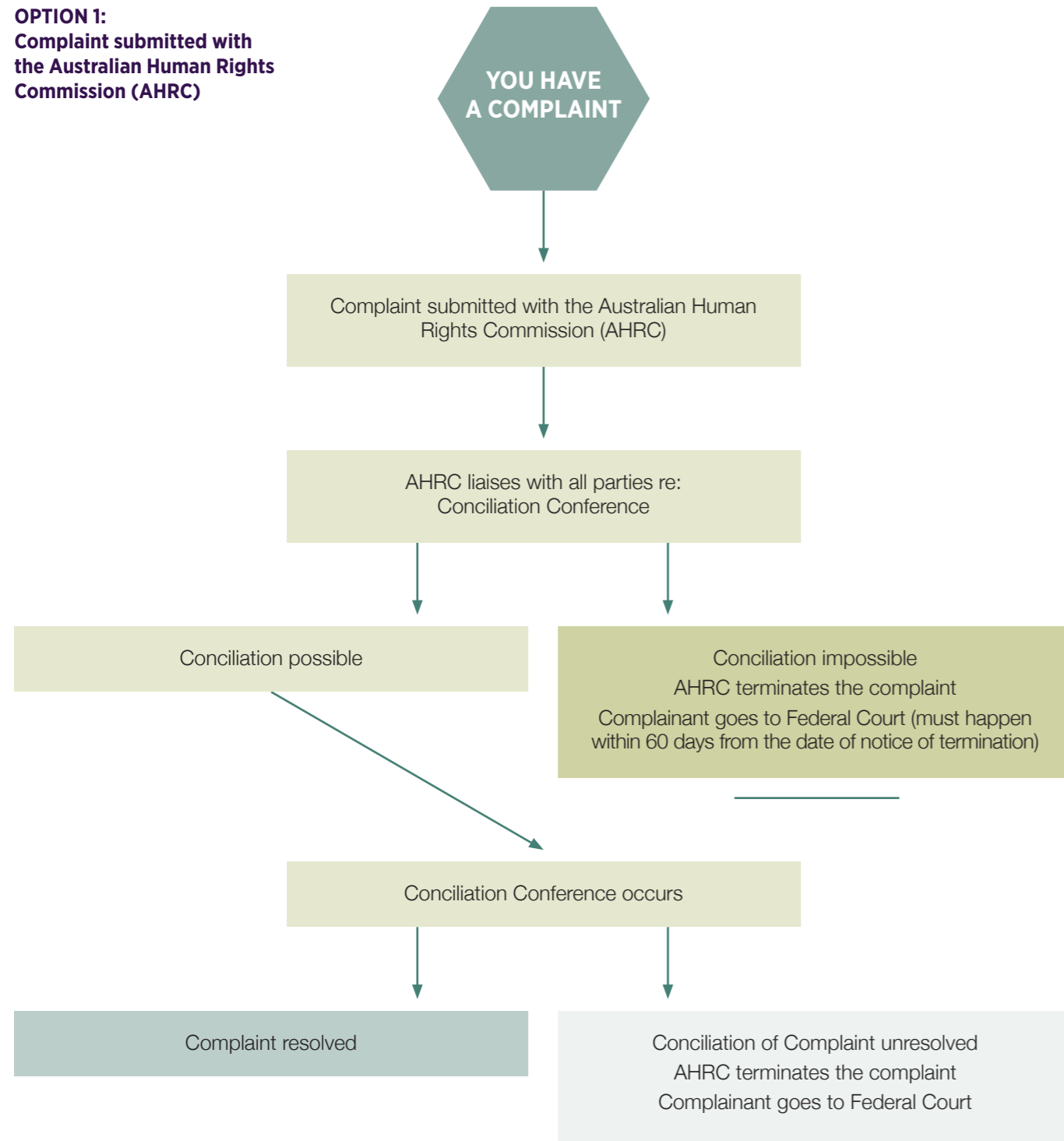
Decision: The Commission found that some ability to differentiate colours was an inherent requirement of the job. However it found that the standard colour test might exclude too many people given the actual requirement. Evidence showed that Mr Crombie was able to differentiate colours well enough to fulfill the inherent requirements of the job. Passing the standard colour test was held not to be an inherent requirement of the job.





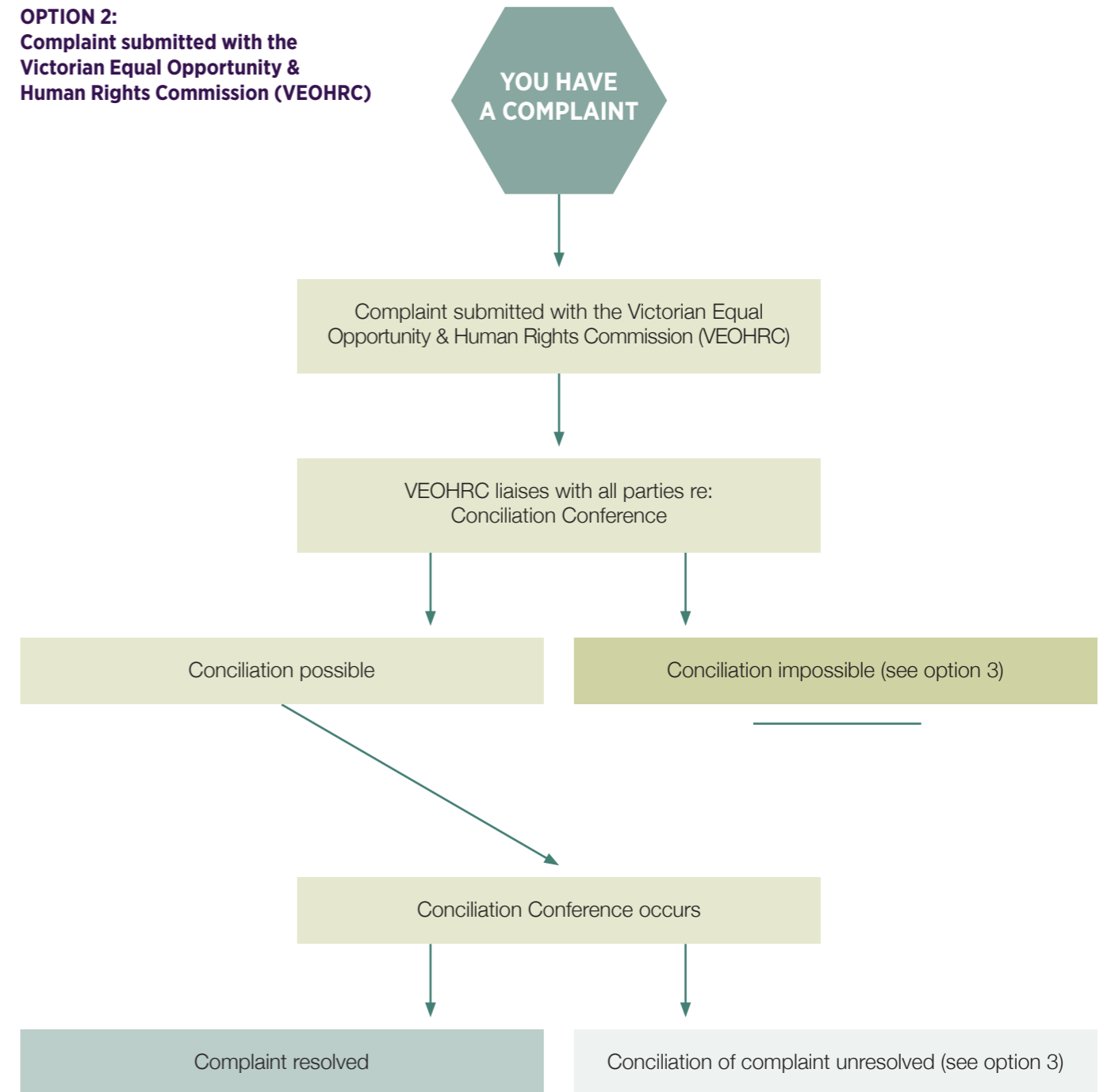
How the process works

OPTION 1:
Complaint submitted with the Australian Human Rights Commission (AHRC)



How the process works

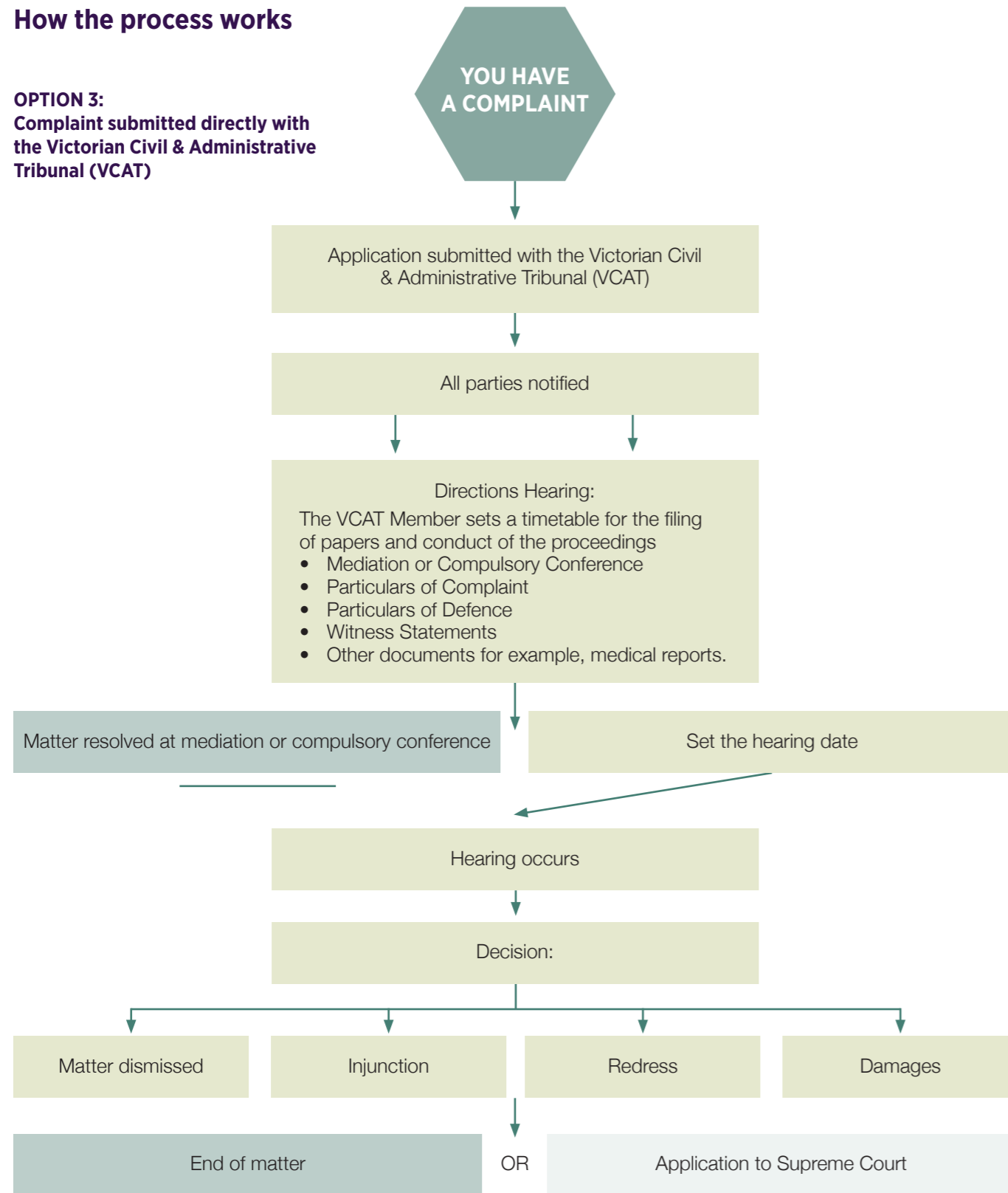
OPTION 2:
Complaint submitted with the Victorian Equal Opportunity & Human Rights Commission (VEOHRC)





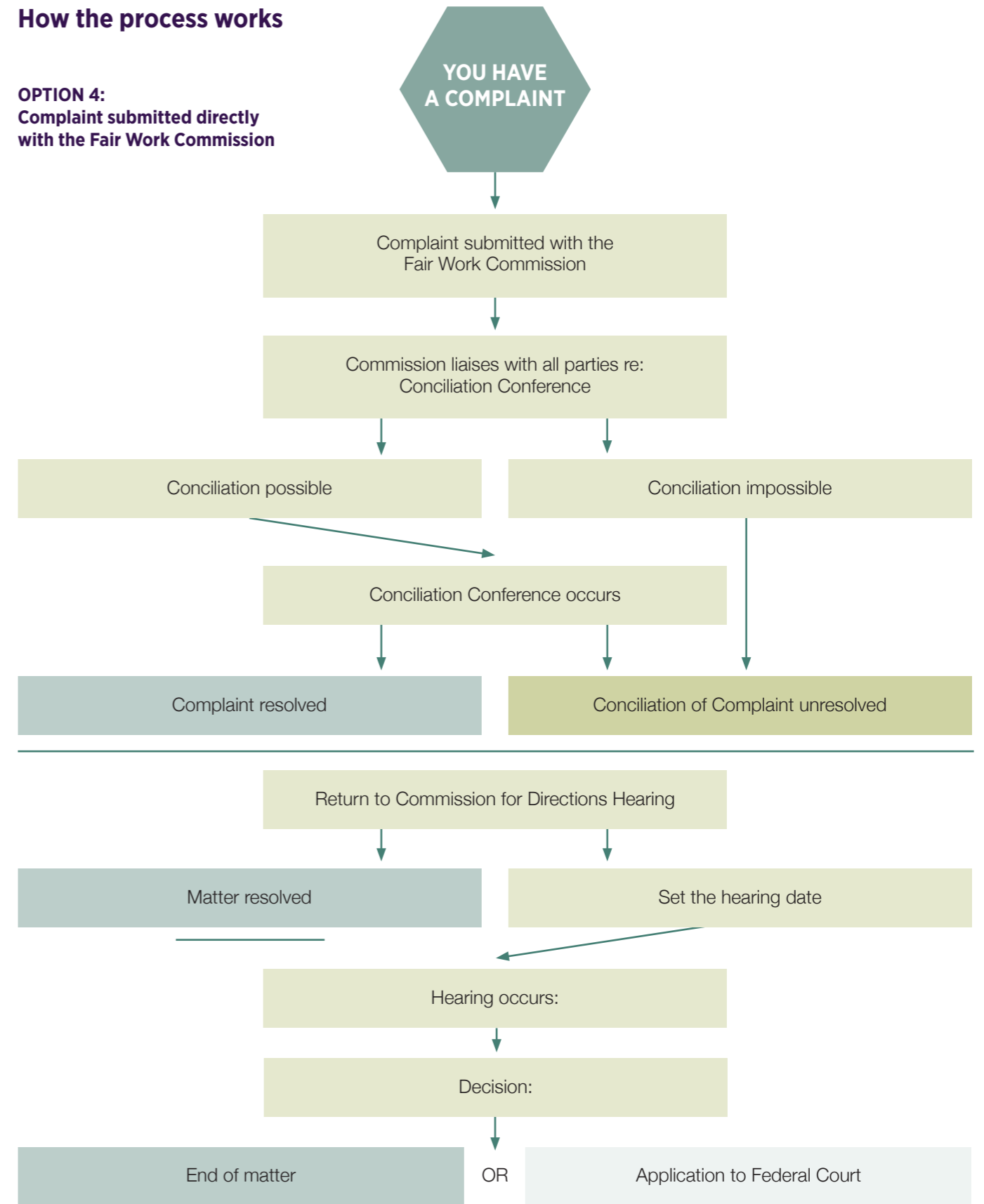
How the process works

OPTION 3:
Complaint submitted directly with the Victorian Civil & Administrative Tribunal (VCAT)



How the process works

OPTION 4:
Complaint submitted directly with the Fair Work Commission





Disability Discrimination Checklist

STEP 1: COMPLAINANT

The Complainant is the person who has been discriminated against in this case.

Name:

Postal Address:

Mobile:

Email:

If you are acting on behalf of someone, your name:

STEP 2: IS YOUR COMPLAINT DISCRIMINATION DUE TO DISABILITY?

You can make a claim under Disability Discrimination Act (Commonwealth) OR Equal Opportunity Act (Victorian) if:

1. You have OR are acting on behalf of someone with a disability or are personally associated (e.g. parent, carer, spouse) with someone with a disability
AND
2. have been discriminated against
3. DUE to the disability.

DISABILITY: includes physical, intellectual, psychiatric, sensory, neurological and learning disabilities.

It also includes physical disfigurement and the presence in the body of disease-causing organisms, such as the HIV virus.

Disabilities include those that people have now, had in the past, may have in the future or which they are believed to have.

STEP 3: IS YOUR COMPLAINT WITHIN THE TIME LIMIT?

What was the date when the discrimination took place?

- Equal Opportunity Act – generally a complaint needs to be made within ONE YEAR of the alleged discrimination.
- Disability Discrimination Act – generally a complaint needs to be made with SIX MONTHS of the alleged discrimination.
- If you can show that there was a hardship which prevented you from complaining within the time limit then exceptions may be made.

STEP 4: THE OTHER PARTY

The person who has done the discriminating. It can be a person, a business, an educational institution etc.

Name:

(In the case of a business - you can find a business' full name by searching the shorthand name, Australian Business Number (ABN) or Australian Company Number (ACN) Search "ABN look up" into Google or go to "<http://abr.business.gov.au/>").

Postal Address:

(In the case of a business you can find the postal address for a business by clicking through the ABN (see above). You will find "Business Names" this will take you to the ASIC website which should provide an address).

Alternate method of contact?

If you are unable to provide an address, do you have a mobile, office number, email or any other method of contacting the person who has discriminated?



STEP 5: DESCRIPTION OF THE DISCRIMINATION

1. Date(s) when the discrimination occurred?

2. Description of the discrimination:

- What happened?

- Why did it happen?

- Where did it happen?

- Was the problem resolved/attempted to be resolved at all?

- Who was involved?

- What effect did the problem have on the Complainant (the person who has been discriminated against)?

STEP 6: OUTCOMES

What outcome do you hope to achieve from taking action?

Think about what you would like out of this process so that steps can be made to attempt to resolve the issue.

Potential outcomes could include:

- An apology or a statement of regret
 - You may choose to request an apology from the other party, a court may choose to order it, however they are not obliged to do so. If a person is given a court order to apologise they must do so appropriately.
 - If there is a settlement, a statement of regret may be made.
- Changes to policy or practice.
- Reversal of discriminatory action, e.g. reinstatement at a job.
- Compensation
 - A claim for compensation may be appropriate depending on the circumstances of the case. You should consider:
 - Have you been at a financial loss due to the discrimination?
 - Has there been pain and suffering due to emotional distress?



Sample VEOHRC complaint form

Complaint form



Complete our complaint form and post your complaint directly to the Victorian Equal Opportunity and Human Rights Commission.

You should include your name, address and, if possible, a phone number so we can contact you. We cannot accept your complaint unless you include your name and address. If you have any queries or need help filling in this form please contact our Enquiry Line on 1300 292 153.

ABOUT YOU

The complainant

Please note, the information provided on this page is for the Commission's use only. Information containing your personal/contact details will not be provided to the respondent.

Name: ~~Mr/Mrs/Miss/Ms/Mx~~: **Hannah Dawn**

Address: **55 Smith Street, Caulfield North, VIC**

Post code: **3161**

Contact numbers: **Home: 03 2212 5642 Business: 03 1253 6643 Fax: 03 4467 5542**

Mobile: **0425 746498** TTY: Email: **Hannah.Dawn@yahoo.com**

Do you need to communicate with us electronically?

No

Yes

Please advise why:

Complete this information only if you are making the complaint on behalf of someone else

Name of that person:

What is your relationship to that person?.....

Complete this information only if you have a solicitor/advocate representing you

Name of representative:

Organisation:

Postal address:

Contact numbers: Home: Business: Fax:

Mobile: TTY: Email:

How did you hear about the Commission?

Please note, the information provided on this page is for the Commission's use only. Information containing your personal/contact details will not be provided to the respondent.

VEOHRC website

VEOHRC publication

VEOHRC training session

Other training session

Internet search (e.g. Google)

Fair Work Commission / Fair Work Ombudsman

Newspaper

Radio

Television

Social media (e.g. Facebook)

Referral from another organisation (please specify)

Word of mouth



Sample VEOHRC complaint form *continued*

PART 1 – THE COMPLAINT

Name of person making this complaint: **Hannah Dawn**

I am making this complaint:

- On my own behalf only
 On my own behalf and on behalf of the person/people/group named below
 On behalf of the person/people/group named below

Complete the following information if you are complaining on behalf of someone else

Name of that person:

What is your relationship to that person?.....

PART 2 – ABOUT THE RESPONDENT(S)

The person(s) or organisation(s) you are complaining about

.....

a) Name/organisation: **Blossom Hospital**

Address: **121 Flower Avenue, Caulfield South VIC**

Postcode: **3162**

Contact numbers: Business: **039811 4367** Fax: **03 96788535**

Mobile: TTY: Email: **admin@blossomhospital.com.au**

What is the respondent's relationship to you? e.g. employer, landlord, education provider, provides goods or services to you?

Blossom Hospital was a provider of medical services. I attended the hospital when I was unwell, seeking treatment at home, for my condition.

b) Name/organisation:

Address:

Post code:

Contact numbers: Home: Business: Fax:

Mobile: TTY: Email:

What is the respondent's relationship to you? e.g. employer, landlord, education provider, provides goods or services to you?

Provides services

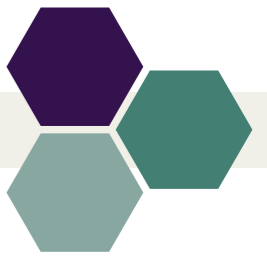
.....

PART 3 – ABOUT THE COMPLAINT

Why are you complaining to the Commission?

Do you believe you have been discriminated against because of your:

- age
 breastfeeding
 employment activity (*making reasonable requests or communicating concerns about employment entitlements or workers' rights*)
 gender identity (*people of one sex identifying as a member of another sex*)
 disability (*including physical, sensory and intellectual disability, work related injury, medical conditions, mental, psychological and learning difficulties, uses a guide dog for mobility*)
 industrial activity (*where an employee participates in and/or is a member of an industrial organisation or association, or their refusal to participate in or join such an organisation*)
 lawful sexual activity
 marital status
 parental status or carer status (*including family responsibilities*)
 physical features
 political belief or activity
 pregnancy
 race (including colour, nationality, ethnicity and ethnic origin), racial vilification
 religious belief or activity, religious vilification
 sex
 sexual orientation
 expunged homosexual conviction
 personal association with someone who has, or is assumed to have, one of these personal characteristics.
 I have been discriminated against for another reason.
Please state the reason:
.....
.....
- I have been sexually harassed
 I have been victimised (*Under the Equal Opportunity Act, victimisation means punishing or threatening to punish someone because they have asserted their rights under equal opportunity law, made a complaint, helped someone else to make a complaint, or refused to do something because it would be discrimination, sexual harassment or victimisation.*)



Sample VEOHRC complaint form *continued*

When did this happen to you?

Provide the date or dates of the events you are complaining about

October 2016

What happened?

Describe the events that you want to complain about. You need to say what happened, who did it and where it happened. Put in as much detail as you can and explain why you think this happened, for example because of your race, sex, disability etc.

My name is Hannah Dawn. I have a history of intravenous drug use and I rely on taking morphine every day. I am making a complaint against Blossom Hospital for disability discrimination.

For a number of years, the hospital has offered a nursing program called Blossom at Home ('BAH scheme'). The BAH scheme enables a patient to be treated by the hospital without having to be admitted to a ward as an inpatient. The program could be run for a patient in one of two ways. Either a nurse would visit the patient at home for treatment ('home visits program'), which was the usual course, or the patient lived at home but attended the hospital for treatment as an outpatient.

In October 2016 I was ill and went to the Blossom Hospital to seek treatment. The BAH nurse on duty at the time came to speak with me. The nurse explained the BAH program and took my history. I told the nurse that I was a past intravenous drug user. I also asked to be treated at home under the BAH scheme.

The nurse left the room to discuss my situation with the manager of the BAH program. When the nurse returned, she told me that I could not be treated at home due to my history of intravenous drug use and the occupational health and safety risks presented to nurses. I became very upset. The manager then came out to talk to me and explained further why I could not be treated at home. I told the manager how I had previously been treated at home under the BAH scheme in 2010. She still insisted that home visits were not an option. She told me that my options were to be treated at the hospital by a BAH nurse or to attend the emergency department each time I needed treatment.

I signed a consent form indicating that I would come to the hospital for the daily intravenous antibiotic treatment. However, because of the way the hospital treated me, I decided to receive treatment from my general practitioner at his clinic.

I believe that intravenous drug use is a disability and in refusing to provide the service of home treatment, the hospital discriminated against me because of that disability.

PART 4 – HOW HAS THIS AFFECTED YOU?

What loss or harm have you experienced because of what happened to you?

I suffered loss and inconvenience as a result of having to attend my general practitioner daily for intravenous antibiotic treatment. I also suffered the humiliation of being denied a service from the hospital because of my disability.

PART 5 – RESULTS

What kind of outcome do you want to resolve your dispute?

I have incurred financial loss and also I have been inconvenienced as a result of having to visit my general practitioner every day, instead of receiving treatment at my home under the BAH Scheme.

PART 6 – OTHER WAYS YOU HAVE TRIED TO RESOLVE THE DISPUTE

Have you made your complaint to another agency, e.g. Australian Human Rights Commission, Fair Work Australia?

- Yes
 No

If Yes, what was the outcome of your complaint?

.....

PART 7 – DOCUMENTATION

Do you intend to attach additional documents to your complaint?

Documents could include medical certificates, termination notices, references, copies of advertisements, or relevant photos. If you have electronic documents or photos that will help our inquiry you should send them to complaints@veohrc.vic.gov.au after you complete this form.

- Yes
 No

By filling in this form, I consent to enter into dispute resolution

Signature: *H Dawn*

Date: 12 July 2017

Please send your completed complaint form and written statement to us by post, fax, or email:

Post: Level 3, 204 Lygon Street,
CARLTON VIC 3053

Email: complaints@veohrc.vic.gov.au

Fax: 1300 891 858

If you would like to make an appointment, need further information, or need these documents in another language or format, please contact the Enquiry Line on 1300 292 153.

If you require an interpreter, please call 1300 152 494.



Sample AHRC complaint form

Complaint form



The Australian Human Rights Commission investigates and conciliates complaints about discrimination and breaches of human rights.

We will need to contact you about your complaint, so please provide your name and contact details, including one contact number if possible. If you do not provide this information we may not be able to deal with your complaint.

We will use the information you provide to assess, investigate and/or conciliate your complaint. We will usually provide a copy of your complaint (excluding your contact details) to the person or organisation you are complaining about and, if necessary, others who have relevant information about your complaint. By completing and submitting this form you consent to the Commission using your information for these purposes. If you have any questions about this or need help to complete this form please contact our National Information Service on 1300 656 419 or 02 9284 9600.

Your personal information will be used and stored in accordance with the *Privacy Act 1988* (Cth). The Commission's privacy policy is available at www.humanrights.gov.au.

PART A – ABOUT YOU, THE COMPLAINANT*

Title: **Ms** First Name: **Stephanie** Last Name: **Saxon**
 Address: **34 Oxford Street**
 Suburb: **Collingwood** State/Territory: **Victoria** Postcode: **3066**
 Email: **steph45@gmail.com**
 Phone (AH): **(03) 1234 5678**
 Phone (BH): **(03) 5678 1234**
 Mobile: **0102 030 040**
 Fax: TTY:

If you require assistance to participate in the complaint process, please outline the assistance you require:

If you are complaining on behalf of someone else, please provide the following details about this person.*

Title: **Ms** First Name: **Stephanie** Last Name: **Saxon**
 Address: **as above**
 Suburb: State/Territory: Postcode:

What is their relationship to you? **Daughter**

Please advise if they need assistance to participate in the complaint process and the kind of assistance they need: **My daughter is aged 10 and is profoundly deaf. I am making the Complaint on her behalf.**

If someone is assisting you with the complaint, for example, a legal representative, advocate or union representative, please provide the following details about this person.*

Title: First Name: Last Name:
 Position:
 Organisation:
 Address:
 Suburb: State/Territory: Postcode:
 Email:
 Phone (BH):
 Mobile:
 Fax: TTY:

Please advise if they need assistance to participate in the complaint process and the kind of assistance they need:



Sample AHRC complaint form *continued*

PART B – WHO IS THE COMPLAINT ABOUT? *

Respondent 1'

Name of person or organisation:

[State of Victoria \(Department of Education and Early Childhood Development\)](#)

ABN of organisation (if relevant):

Address: [15 Caroline Street](#)

Suburb: [Clifton Hill](#) State/Territory: [Victoria](#) Postcode: [3068](#)

Email:

Phone (BH):

Mobile:

Fax: TTY:

What is your relationship to this respondent? [Student](#)

Respondent 2'

Name of person or organisation: [Clifton Springs Pre-School](#)

ABN of organisation (if relevant):

Address: [15 Caroline Street](#)

Suburb: [Clifton Hill](#) State/Territory: [Victoria](#) Postcode: [3068](#)

Email:

Phone (BH):

Mobile:

Fax: TTY:

What is your relationship to this respondent? [Student](#)

Note: If you are complaining about more than two people or organisations, please provide information about each additional person or organisation.

PART C – WHAT ARE YOU COMPLAINING ABOUT?

For information about the types of complaints the Commission can consider, please go to <https://www.humanrights.gov.au/complaints/complaint-guides/information-people-making-complaints>.

I am complaining because I believe:

(Please select at least one reason below)

- I have been discriminated against because of my**
- Age What is your age?
- Disability What is your disability? [Profound deafness](#)
- Association with a person with a disability What is the person's disability?
- Status as a person with a disability who uses an assistance animal or disability aid or has a carer
- Sex What is your sex?
- Pregnancy
- Breastfeeding
- Marital or relationship status What is your marital or relationship status?
- Family responsibilities
- Sexual orientation What is your sexual orientation?
- Gender identity What gender do you identify as?
- Intersex status
- Race (this includes colour, national origin, descent or ethnic origin)
What is your race/national or ethnic origin/descent?
- I have been sexually harassed**
- I have experienced racial hatred**
What is your race/national or ethnic origin/descent?
- I have been discriminated against in my employment because of my**
- Trade union activity
- Criminal record What is your criminal record?
- Religion What is your religion?
- Political opinion What is your political opinion?
- My human rights have been breached by a Commonwealth government body.**
- I have been victimised because I made, or tried to make, a complaint about discrimination**

When did the alleged event(s) happen? [February 2017](#)



Sample AHRC complaint form *continued*

Note: The President of the Commission can decide not to investigate into a complaint alleging unlawful discrimination where the complaint is lodged more than six months after the alleged event(s) happened. If the event(s) being complained about happened more than six months ago, please explain the reasons for the delay in making a complaint to the Commission.

For complaints alleging human rights breaches and discrimination under the ILO Convention, the relevant time frame is twelve months.

Reason(s) for delay:

.....

What happened?

Describe the event(s) that you want to complain about. We need to know what you say happened, where it happened and who was involved. Please give us all the dates and other details that you can remember.

If you are complaining about employment, please tell us when you commenced employment, your job title and whether you are still employed.

Tracy was born on 15 March 1998. She has profound deafness.

In 2003 Tracy attended a state pre-school, Clifton Springs.

Tracy had developed sign language skills in Auslan (native Australian sign language). Tracy is bilingual, her first language being Auslan, and her second language being English.

Tracy is able to talk and is capable of being understood by those who are close to her but she is accustomed to communicating in Auslan.

Clifton Springs Pre-School refused to teach Tracy in Auslan. It required that she be taught in English (including Signed English) without the assistance of an Auslan teacher, or an Auslan interpreter.

Profound deafness is a disability and Clifton Springs Pre-School indirectly discriminated against Tracy connected to her disability when it refused to supply a teacher who was fluent in Auslan, or an Auslan interpreter, as Auslan is considered the best, and most appropriate, method of communication with profoundly deaf children.

This indirect discrimination against Tracy resulted in a lower educational outcome, with a serious risk of Tracy falling behind in her classes. To ensure this did not happen Tracy's father and I arranged for Tracy to attend private speech therapy classes. These extra classes entailed considerable investment in terms of travel, time and financial costs to Tracy and her family.

Supporting documents

Please attach copies of any documents that support the claims in your complaint. For example - letters, separation certificate, doctors certificate. If you cannot do this,

Please tell us about the documents or other information and how this information can be obtained.

[Audiology reports](#)

[Doctors' certificates](#)

[Affidavit by expert in Auslan](#)

[Letters to the pre-school](#)

[Receipts for speech therapy classes](#)

[Estimates of travel expenses](#)

How do you think this complaint could be resolved?

For example, a complaint may be resolved with an agreement that a respondent will change its procedures, introduce training or policies on anti-discrimination, take other action to prevent possible discrimination and/or by payment of compensation.

[Training on the importance of education being supplied in Auslan or with the assistance of an Auslan teacher](#)

[Introduce the policy of utilising sign language skills in Auslan as the form of education for profoundly deaf students](#)

[Re-imburement of costs](#)

[Compensation](#)

Have you made a complaint to another organisation?

For example, a state anti-discrimination or equal opportunity agency, a worker's compensation agency, an ombudsman or the Fair Work Commission.

Yes

If yes, you must provide the name of the agency, the date the complaint was made, the status of the complaint, or outcome of the complaint. Please also attach copies of relevant documents, including a copy of your complaint and any letters you have received from the agency.

No

Were you referred to the Commission by another organisation?

If so, what organisation?

PART D – LODGING THE COMPLAINT **

Please send the complaint form to the Commission by:

Post: Australian Human Rights Commission, GPO Box 5218. Sydney NSW 2001

Fax: 02 9284 9611

Email: complaints@humanrights.gov.au

Signature: _____

Date: _____





Level 8/128 Exhibition Street, Melbourne 3000

Phone (03) 9639 5807

Email admin@daru.org.au

Web www.daru.org.au

Twitter @daruvic