



Making a human rights complaint to the Australian Human Rights Commission

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What is this fact sheet about?

This fact sheet outlines the process for making a complaint to the Australian Human Rights Commission for an alleged breach of human rights.

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Key takeaways

- Individuals can lodge complaints with the Australian Human Rights Commission (**Commission**) alleging breaches of human rights identified in the *Australian Human Rights Commission Act 1986* (Cth) (**AHRC Act**).
- A human rights complaint must:
 - be made in writing by a person who is 'aggrieved' or by someone on their behalf;
 - identify who the complaint is about, the alleged act, practice or omission which breached any human right and, which human right(s) was or were breached under the AHRC Act.
- The Commission can investigate human rights complaints, undertake conciliation to attempt to resolve complaints, and report its findings and recommendations to the Commonwealth Attorney-General if human rights inconsistencies are identified.

Background

The Commission is established under the AHRC Act¹ and can investigate complaints about discrimination and breaches of human rights.²

The Commission has inquiry and conciliatory functions under the AHRC Act.³ The Commission is not a court and cannot make binding or legally enforceable decisions.

Human rights complaints process

The Commission is empowered to investigate and conciliate potential breaches of human rights when a complaint has been lodged.⁴ A complaint must be made in writing to the Commission and be lodged by or on behalf of one of more persons who are 'aggrieved' (in other words, impacted) by an act or practice on the basis that the act or practice is inconsistent with or contrary to any human right protected under the AHRC Act.⁵

If the Commission receives a complaint it is required to act quickly and do its best to finish dealing with the complaint within 12 months of the complaint being made.⁶

A complaint can also be made to the Commission in relation to an act, or omission or practice which is alleged to be unlawful discrimination.⁷ This fact sheet is confined to the

¹ AHRC Act, s 7.

² AHRC Act, s 20(1)(b).

³ AHRC Act, s 11(f).

⁴ AHRC Act, s 20(1)(b).

⁵ AHRC Act, s 20(1)(b).

⁶ AHRC Act, s 20(10).

⁷ AHRC Act, ss 46P(1), s 3(1) - **unlawful discrimination** means any acts, omissions or practices that are unlawful under one of the following discrimination statutes: *Sex Discrimination Act 1984* (Cth), *Disability Discrimination Act 1992* (Cth), *Racial Discrimination Act 1975* (Cth), *Age Discrimination Act 2004* (Cth).

process of making a human rights complaint, but we note the process of lodging an unlawful discrimination complaint largely mirrors the human rights complaint process.

How can I make a human rights complaint?

A human rights complaint can be made by either the person (or people) aggrieved by the relevant act or practice or by another person on their behalf.⁸

The complaint should identify who the complaint is about, the alleged act, practice or omission which breached a human right under the AHRC Act (discussed further below) and, which human right(s) were breached under the AHRC Act. A complaint should be kept to one document of no more than 20 pages, with no more than two attachments.⁹

Complaints can either be lodged online, by post or by telephone.¹⁰

What are ‘acts and practices’?

A human rights complaint must identify an ‘act’ or ‘practice’ which is inconsistent with or contrary to any human right under the AHRC Act.¹¹

An ‘**act**’ means an act done, and a ‘**practice**’ means a practice engaged in:¹²

- by or on behalf of the Commonwealth or an authority of the Commonwealth;
- under any Commonwealth or Territory law (other than a law of the ACT or NT);
- wholly within a Territory; or
- partly within a Territory to the extent to which the act was done within the Territory.

An act includes a refusal or failure to do an act.¹³ Therefore, a human rights complaint could be brought in relation to a positive or negative act or practice (i.e. doing something or failing to do something).

The functions of the Commission in relation to human rights inquiries are only engaged where the relevant act or practice is within the discretion of the Commonwealth.¹⁴ In other words, the Commission cannot investigate complaints about an act or practice which is **not**

⁸ AHRC Act, s 20(1)(b).

⁹ [Make a complaint | Australian Human Rights Commission](#)

¹⁰ Online using the complaint form: Make a complaint | Australian Human Rights Commission; by post to GPO Box 5218, Sydney NSW 2001 or facsimile to 02 9284 9611; or with the assistance of the Commission by telephone on their National Information Service on 1300 656 419 or (02) 9284 9600.

¹¹ AHRC Act, s 20(1)(b).

¹² AHRC Act, s 3(1).

¹³ AHRC Act, s 3(1).

¹⁴ *Secretary, Department of Defence v Human Rights and Equal Opportunity Commission* [1997] FCA 960; 149 ALR 309.

required by law (i.e. discretionary acts or practices). The distinction is illustrated in the examples below.¹⁵

Examples of ‘acts’ and ‘practices’

Required by law		Discretionary
‘Act’	<p>The decision to detain a person when required under s 189(1) of the <i>Migration Act 1958</i> (Cth):</p> <p><i>If an officer knows or reasonably suspects that a person in the migration zone [...] is an unlawful non - citizen, the officer must detain the person.</i></p>	<p>The manner in which a person might be detained under s 189(1), for example the decision to use force to detain someone, how much force is used, and each use of force.</p>
‘Practice’	<p>Continuing to detain a person in immigration detention under s 196 of the <i>Migration Act 1958</i> (Cth):</p> <p><i>An unlawful non - citizen detained under section 189 must be kept in immigration detention until [he or she is removed from Australia, deported, or granted a visa].</i></p>	<p>Insisting one member of a family remain in an immigration detention centre separated from the rest of their family who are also detained in another location.</p>

Who can make a human rights complaint?

A human rights complaint can be made to the Commission by one or more person who is (or are) aggrieved by an act or practice.¹⁶

The AHRC Act does not define a ‘person aggrieved’, but a ‘person aggrieved’ usually means a complainant must show that they have faced an injustice which is beyond that which will be suffered by an ordinary member of the public.¹⁷ The mere fact that a person feels aggrieved or has no more than an intellectual or emotional concern is not sufficient to satisfy the threshold of this test.¹⁸

What are ‘human rights’?

Under the AHRC Act, the term ‘human rights’ means the rights and freedoms which are:¹⁹

¹⁵ *Mr Parvis Yousefi, Mrs Mehrnoosh Yousefi and Manoochehr Yousefi v Commonwealth of Australia* (Department of Immigration and Citizenship) [2011] AusHRC 46 (1 July 2011).

¹⁶ AHRC Act, s 20(1)(b).

¹⁷ *Access for All Alliance (Hervey Bay) Inc v Hervey Bay City Council* (2007) 162 FCR 313 at 331, [52].

¹⁸ *Ibid* at 328, [40].

¹⁹ AHRC Act, s 3(1), Schedule 2-5 inclusive.

- recognised in the [*International Covenant on Civil and Political Rights*](#);
- declared by the [*Declaration of the Rights of the Child*](#), the [*Declaration on the Rights of Mentally Retarded Persons*](#), the [*Declaration on the Rights of Disabled Persons*](#); or
- recognised or declared by 'any relevant international instrument'.

Whether an act or practice is inconsistent with or contrary to a human right is a matter of interpretation and depends on the meaning of the right infringed, how the breach is alleged, the scope and nature of the alleged breach and whether the right is contained in the relevant human rights instruments.

Investigation of complaints

Once a complaint has been lodged, the Commission will usually:²⁰

- contact the complainant to talk about the complaint and to obtain further information;
- contact the person or organisation complained about (the respondent) and provide them with a copy of the complaint; and
- try to resolve the complaint by conciliation (a process where a third party attempts to resolve the dispute through discussions), where appropriate.

The Commission may require the production of documents or information relevant to the complaint,²¹ or require a person to answer questions relevant to the issues.²²

The Commission can decide not to investigate, or to discontinue, a complaint for reasons including that:²³

- the Commission is satisfied:
 - the act or practice is not inconsistent with or contrary to any human right;²⁴
 - an inquiry into the act or practice is not warranted;²⁵
 - the complaint can be adequately dealt with by some other available remedy²⁶ or by the Commission or another statutory authority;²⁷
 - the complaint has been settled or resolved;²⁸

²⁰ [The complaint process for complaints about breaches of human rights by the Commonwealth | Australian Human Rights Commission.](#)

²¹ AHRC Act, s 21(1).

²² AHRC Act, ss 21(5), 22.

²³ AHRC Act, s 20(2).

²⁴ AHRC Act, s 20(2)(a).

²⁵ AHRC Act, s 20(2)(ba).

²⁶ AHRC Act, s 20(2)(c)(iv).

²⁷ AHRC Act, s 20(2)(c)(v).

²⁸ AHRC Act, s 20(2)(c)(iib).

- the complaint was made more than 12 months after the act was done.²⁹

If the Commission elects to discontinue a complaint, the Commission must notify the complainant in writing and provide reasons about why the complaint was discontinued.³⁰

Conciliation of complaints

If the Commission considers it appropriate to do so it may try to achieve a settlement of the complaint by conciliation.³¹ Conciliation will usually take place in a face-to-face meeting or in a meeting over the telephone. The Commission can conduct conciliation as it thinks fit and is not bound by the rules of evidence.³² The Commission may protect the anonymity of a person during a complaint,³³ and may direct that any evidence or information given shall not be published.³⁴

Commission's decision

If the Commission has investigated a complaint and finds that an act or practice *is* inconsistent with or contrary to a human right, then the Commission may prepare a report to the Attorney-General which includes relevant recommendations.³⁵ Recommendations may include suggestions for preventing the act or practice from occurring again,³⁶ remedying loss or damage suffered,³⁷ or the payment of compensation.³⁸

Where a complaint relates to legislation which is inconsistent with any human right, the Commission must include recommendations to amend the legislation to ensure the legislation is consistent with human rights.³⁹ The Commission must provide a reasonable opportunity for respondents to make written or oral submissions in relation to the complaint *before* it delivers its report to the Attorney-General.⁴⁰

A decision of the Commission does not create a legally enforceable right or obligation at law.

Challenging a decision

In certain limited circumstances, a decision of the Commission may be the subject of judicial review proceedings if the Commission or a decision-maker under the AHRC Act has made a legal error. Judicial review proceedings are usually complex, time-consuming and

²⁹ AHRC Act, s 20(2)(c)(i).

³⁰ AHRC Act, s 20(4).

³¹ AHRC Act, s 11(1)(f)(ii).

³² AHRC Act, s 14(1).

³³ AHRC Act, s 14(2).

³⁴ AHRC Act, s 14(3).

³⁵ AHRC Act, s 20A.

³⁶ AHRC Act, s 29(2)(b).

³⁷ AHRC Act, s 29(2)(c)(ii).

³⁸ AHRC Act, s 29(2)(c)(i).

³⁹ AHRC Act, s 29(1).

⁴⁰ AHRC Act, s 27.

costly. Before commencing judicial review proceedings, an applicant should obtain legal advice.

Where can I get more information?

Australian Human Rights Commission

- [Home | Australian Human Rights Commission](#)
- National Information Service: Enquiries can be made by phone on 1300 656 419 (Option 2) or in writing, including by email. The phone line is open Monday to Friday between the hours of 10:00 AM and 4:00 PM AEST/AEDT.

Making a complaint

- Further information on the complaint process for breaches of human rights can be found here: [Complaint Process: Breaches of Human Rights](#)
- Complaint guides produced by the Commission are available here: [Complaint Guides | Australian Human Rights Commission](#)
- Examples of the Commission's previous decisions about breaches of human rights are available here: [Human Rights Reports | Australian Human Rights Commission](#)

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