

Information sheet

Recent changes to federal discrimination powers and complaint processes

May 2023



This information sheet provides general information and is not a substitute for legal advice.

Introduction

In December 2022, changes were made to how the Australian Human Rights Commission (**the Commission**) can handle complaints and tackle discrimination, as well as changes to running discrimination claims in the federal courts.

The changes to the *Australian Human Rights Commission Act 1986 (Cth)* (**AHRC Act**) implement recommendations of the *Respect@Work: Sexual Harassment National Inquiry Report*. They apply to discrimination claims under all four federal discrimination acts: *Racial Discrimination Act 1975 (Cth)*, *Sex Discrimination Act 1984 (Cth)*, *Disability Discrimination Act 1992 (Cth)* and *Age Discrimination Act 2004 (Cth)*.

The main changes are:

1. A longer period (24 months) to make age discrimination, race discrimination and disability discrimination complaints. This is consistent with the timeframe for making complaints based on sex, sexual orientation, gender identity and intersex status under the *Sex Discrimination Act 1984 (Cth)*.
2. A new power for the Commission to inquire into patterns of discrimination ('systemic unlawful discrimination').
3. 'Standing' for organisations to pursue discrimination complaints in the federal courts on behalf of people they represent in the federal courts.
4. Improving protection from 'victimisation', to prevent unfair treatment of people involved in making a complaint of discrimination.

24 months to lodge discrimination complaints

There is no fixed timeframe to lodge a complaint with the Commission. However, the President of the Commission may terminate a complaint if it is lodged more than 24 months after the alleged incident.

This has been extended from 6 months, giving people and representative bodies longer to lodge a complaint.

New power to inquire into systemic unlawful discrimination

The Commission now has a power to inquire into ‘systemic unlawful discrimination’ or ‘suspected systemic unlawful discrimination’.¹ This power applies to all four federal discrimination acts.

‘Systemic unlawful discrimination’ means unlawful discrimination that ‘affects a class or group of persons’ and ‘is continuous, repetitive or forms a pattern’.²

The Commission can use its power to inquire when requested by the relevant Minister or when it is ‘desirable to do so’.³

The Commission could use this power to inquire into unlawful discrimination within a business or across an industry or sector. The Commission can compel information and documents, and examine witnesses. Depending on its findings, the Commission may report to the Minister or publish a report recommending changes.⁴

Organisations can request the Commission to inquire into systemic unlawful discrimination. As the Commission’s resources to conduct inquiries are limited, organisations might consider collaborating on systemic issues put forward to the Commission.

‘Standing’ to make representative claims

Representative bodies (such as advocacy groups, human rights organisations or unions) now have ‘standing’ to pursue discrimination complaints on behalf of people they represent in the federal courts.⁵

Previously, if a ‘representative complaint’ was not resolved at the Commission, organisations could not pursue the complaint on behalf of the group in the federal courts. This meant it was better for individuals to make complaints to the Commission (even where the alleged discrimination affected a group) because they could pursue the complaint in court.

This change recognises the challenges and costs individuals face with the court system. And acknowledges the value of a representative claim where a problem affects a group of people.

More protection from ‘victimisation’

Victimisation involves treating a person unfairly because the person has made or plans to make a discrimination complaint, or has provided information about a complaint.

Some victimising conduct can be a criminal offence. Now victimising conduct can also result in a discrimination complaint under the *Racial Discrimination Act 1975* (Cth), *Disability Discrimination Act 1992* (Cth) and *Age Discrimination Act 2004* (Cth).⁶ This protection is already available under the *Sex Discrimination Act 1984* (Cth).

¹ *Australian Human Rights Commission Act 1986* (Cth) (‘AHRC Act’) s 35L(1).

² *AHRC Act* s 35L(2).

³ *AHRC Act* s 35M.

⁴ *AHRC Act* s 35Q.

⁵ *AHRC Act* s 46PO(1).

⁶ *Racial Discrimination Act 1975* (Cth) s 18AA; *Disability Discrimination Act 1992* (Cth) s 58A; *Age Discrimination Act 2004* (Cth) s 47A.