

Taking human rights claims to court

Fact Sheet



This fact sheet covers:

- ✔ When can I commence a human rights claim in court?
- ✔ Which court should I apply to?
- ✔ How do I apply?
- ✔ What orders can the court make?

This fact sheet provides information on discrimination claims in the Federal Court and Federal Circuit Court of Australia.

1. When can I commence a human rights claim in court?

To commence a human rights proceeding in court you must first lodge a claim with the Australian Human Rights Commission (AHRC). If you are unable to resolve your claim through the AHRC you will then have the opportunity to commence a court claim.

You have 60 days to commence a claim in the Federal Court of Australia (FCA) or Federal Circuit Court of Australia (FCC) from receiving a "Notice to Terminate" from the AHRC. If you take any longer than this, you will need to complete an extension of time request explaining the reasons for your delay. This is part of the initiating form.

Initiating forms:

- [FCC – Application Human Rights](#)
- [FCA – Form 116 Originating application under the Australian Human Rights Commission Act 1986](#)

! TIME LIMITS

You have 60 days from receiving the "Notice of Termination" to commence a court claim.

2. Which court should I apply to?

You can apply to the FCA or the FCC. The FCC is less formal and you may not have to wait as long before your matter is heard by a judge.

2.1 Fees

Current fees in the FCC are available on the FCC website [here](#). Current fees in the FCA are available from the FCA website [here](#).

Fees current as at July 2016:

Federal Circuit Court	Federal Court of Australia
\$55.00 to file your application	\$55.00 to file your application

The filing fee is generally the only court fee which needs to be paid in bringing a human rights claim to court (please see regulation [2.10](#) and schedule 1 of the Federal Court And Federal Circuit Court Regulation 2012 for more details).

You may not have to pay the filing fee if you hold certain government concession cards or are suffering financial hardship. More information is available [here](#).

COSTS ORDERS

Please note that even if you are not required to pay a filing fee, if you go to court and lose your case it is likely that you will have to pay the legal costs of the respondent (the person or company that your claim is against).

3. How do I apply?

Step 1: Fill out forms

Federal Circuit Court	Federal Court
<p>You need to fill out the “Application – Human Rights”, this is your initiating application. In completing the Application you will need to attach a copy of the complaint that you made to the AHRC and a copy of the notice of termination of the complaint.</p> <p>The Application form and instructions in relation to the form can be found here.</p>	<p>You need to fill out the “Form 116”, this is your initiating application. In completing the Form 116 you will need to attach a copy of the complaint that you made to the AHRC and a copy of the notice of termination of the complaint.</p> <p>The Form 116 and instructions in relation to the form can be found here.</p> <p>You must also complete a Form 16 - Applicant’s genuine steps statement, which can be found here. In completing the form you must specify the steps you have taken to try to resolve the issues in dispute. If no steps have been taken, you must state why.</p>

Step 2: File the forms

You can file your forms:

- if filing at the FCC - in person at a FCC registry (you can find addresses and hours of business hours [here](#));

- if filing with the FCA - in person at a FCA registry (you can find addresses and hours of business hours [here](#));
- by post, including a cover letter with your contact details and instructions for the court to file your forms; or
- by fax or using the e-lodgement facility (find more information [here](#)).

Step 3: Serve the forms

a. The respondent

Once you have filed your forms, you need to give a copy of the forms stamped by the court to the respondent(s) so they can respond to your claim.

If the respondent is a **person**, you need to:

- give the forms to them in person; or
- if they won't accept the forms, put them down in their presence and explain what they are.

If the respondent is a **company**, you need to:

- post the forms to the company's registered office (address it to the "Proper Officer");
- take the forms to the registered office and leave it with an employee; or
- hand the forms personally to a director of the company.

You can check the company's registered address by searching the [ASIC Register](#).

b. The Australian Human Rights Commission

You must also give a stamped copy of the application form, and any other documents filed with the court, to the AHRC at least five days before the date fixed for the hearing.

! TIME LIMITS

For the **FCC**, service must be done **at least 7 days** before the date of the first hearing.

For the **FCA**, this must be done **at least 5 business days** before the date of the first directions hearing.

WHAT HAPPENS NEXT?

See our factsheets: [Preparing to go to Court](#) and [Tips for the day of the hearing](#).

4. What orders can the court make?

Both the FCC and the FCA can make orders:

- declaring that the respondent has committed unlawful discrimination and directing the respondent not to repeat or continue the unlawful discrimination;
- requiring a respondent to do something to make up for any loss or damage you have suffered;
- requiring a respondent to employ or re-employ you;

- requiring a respondent to pay money compensating you for any loss or damage you have suffered because of their conduct;
- requiring a respondent to vary the termination of a contract or agreement to make up for any loss or damage you have suffered; and / or
- declaring that it would be inappropriate for any further action to be taken in the matter.

USEFUL RESOURCES

- [Federal Court Rules 2011](#)
- [Federal Circuit Court Rules 2001](#)
- [The Law Handbook Chapter 19 - Discrimination](#)
- [Australian Human Rights Commission – Complaints Process](#)
- [Law Access NSW](#)

