



How SACAT deals with complaints under the *Equal Opportunity Act 1984*

What types of complaints can SACAT hear?

SACAT can hear complaints referred to it by the SA Equal Opportunity Commissioner about discrimination, victimisation and sexual harassment which occurs in certain circumstances, plus some other specified unfair practices.

Before the matter goes to SACAT

You could consider contacting the other party to see if you can settle the dispute between you. You could also consider seeking legal advice (see below).

If you cannot resolve your dispute with the other party you must first lodge a complaint with the **SA Equal Opportunity Commission** before the matter is referred to SACAT. You should contact the **SA Equal Opportunity Commission** on (08) 8207 1977 or 1800 188 163 or look at the Commissioner's website for information: <https://eoc.sa.gov.au>

The Commission provides advice and dispute resolution services and can conciliate or finalise the complaint without needing to refer it to SACAT. There are certain time limits that apply.

If the complaint cannot be resolved, or if the Commissioner declines to recognise the complaint and the complainant still wants to proceed, the Equal Opportunity Commissioner can refer the complaint to SACAT with some brief particulars of the complaint.

Referral to SACAT

SACAT can deal with matters referred by the Commissioner and can make certain orders if the complaint is proven to amount to a breach or contravention of the *Equal Opportunity Act 1984*. Not every act of discrimination, victimisation, sexual harassment or other discriminatory behaviour will be a breach of the Act.

Unlawful discrimination

When we think of 'discrimination', we think of behaviour that is treating people unfairly because they have a disability, or behaviour that is sexist, racist, ageist, homophobic or otherwise prejudiced such as discrimination based on religious appearance, sexual orientation or gender identity.

SACAT is only able to hear complaints about behaviour that is considered to be an act of 'unlawful discrimination' which is behaviour that is prohibited (that is, not allowed) by the *Equal Opportunity Act 1984*.



Discrimination is only unlawful under the *Equal Opportunity Act* if the complainant can show that:

- (a) they have been treated unfavourably or to their detriment because of a certain personal characteristic, circumstance or appearance (such as disability, race, gender, age, sexual orientation) AND
- (b) the conduct occurs in the course of a particular recognised relationship in an area of public life between the Complainant (the person making the complaint) and the Respondent (the person about whom the complaint is made).

For SACAT to be able deal with the matter the act of discrimination must have occurred in an area of public life (this list is not exhaustive):

- By an employer or contracting principal in a contract work relationship, or within a partnership
- By an association
- By a 'qualifying body' such as a professional registration body
- By an educational authority
- In relation to disposing of land
- In relation to the provision of goods and services (as defined)
- In relation to the provision or failure to provide accommodation
- By the provider of a superannuation fund (in some cases).

But there are some specified exemptions or exceptions to this in the Act.

Unlawful victimisation

SACAT can also hear complaints about behaviour that is considered to be an act of 'unlawful victimisation'.

The term 'unlawful victimisation' describes behaviour that is prohibited (that is, not allowed) by the *Equal Opportunity Act 1984*.

This term is defined in the *Equal Opportunity Act 1984* and in the *Public Interest Disclosure Act 2018* to mean that a person is treated unfavourably or to their detriment because they make, or state that they intend to make, a complaint under the *Equal Opportunity Act* or a public interest disclosure (as defined).

What can SACAT do?

SACAT can assist both parties in coming to an agreement about the satisfactory resolution of a complaint. This may include supporting both parties in coming to an agreement about the conduct, offering an apology and other agreed resolutions.

If the matter progresses to a hearing, the Tribunal may make an Order that:

- requires the respondent (person you make the complaint about) to perform specified acts with a view to redressing loss or damaging arising from the contravention or remedy a discriminatory or unlawful act
- requires the respondent to refrain from further contravention of the Act
- requires the respondent to pay compensation (of such amount as the Tribunal thinks fit) to a person for loss or damage arising from the contravention

What will happen at SACAT?

After the Equal Opportunity Commission has referred your complaint to SACAT – both parties will be asked to attend SACAT for one of the following:

A directions hearing is a short preliminary hearing where the parties will be directed to do certain procedural things such as filing

documents or providing “further particulars” (see below) and where the matter may be referred to a conference or a full hearing.

A conference is time set for both the person making the complaint and the person who the complaint is about to attend the Tribunal and discuss the issues in confidence with a view to reaching an agreement. You will be assisted in a conference by a Tribunal Member or Deputy Registrar to help explore options for reaching agreement. The Tribunal Member or Deputy Registrars are selected specifically for their skills and experience in helping parties reach agreement.

The process might require more than one meeting and additional information to be provided. The meeting may be face-to-face, over the phone or video chat, or both parties may sit in different rooms and the conciliator will move between them.

An agreement reached must be consistent with the law and one that both parties can live with. Any agreement reached is confidential and binding on the parties and will be recorded by SACAT. An Order will be made by SACAT that reflects the agreement reached.

The conference might resolve the dispute completely or resolve some of the issues in dispute. If the dispute is not completely resolved, the dispute will be referred back to a further directions hearing or to a full **hearing**.

A full hearing will be conducted by a different Tribunal Member and will not take into account anything said in a conference. At a hearing, each party must present their case to assist the Tribunal member in making a decision. While the Tribunal is not bound by the rules of evidence that the Courts must use, the Tribunal will grant both sides a fair opportunity to present their side of the story and will make an unbiased decision based on all the facts before them.

What does it mean to provide further particulars of the complaint?

‘Particulars’ is a legal term meaning the ‘who, what, where, when’ and other relevant details of a complaint. In the Equal Opportunity law, it identifies the details of the conduct that may constitute unlawful discrimination, harassment or victimisation.

While complaints made under the *Equal Opportunity Act 1984* regarding discrimination, harassment and victimisation can be extremely emotive and distressing for people to make – it is vital that both the Tribunal and the person or organisation you are making a complaint against knows the details of the complaint you are making.

Particulars help:

- To inform the parties and the Tribunal of the issues to be dealt with at conferences and hearing
- To avoid surprise at conferences or hearings
- To allow the complainant to focus the documents, witnesses and evidence they present on the specifics they have identified
- To enable the respondent to know what it is they are alleged of doing so they can prepare their response and organise their own witnesses, documents and evidence

What sorts of particulars should I provide with my complaint?

Attached to this fact sheet is a document that you should complete to provide the details of your complaint.

The main things the respondent and the Tribunal need to know are:

- The type of discrimination which is alleged to have occurred or

- The circumstances of the alleged victimisation or harassment
- When and how the act of discrimination, victimisation or harassment happened and by whom
- How the complainant says that they were treated unfavourably in comparison to others because of their personal characteristic, circumstances or appearance (such as disability, race, gender, age, sexual orientation)
- For a complaint about discrimination, the particular circumstances or recognised relationship between the complainant and the respondent that is covered by the Act.

Where can I get legal or other assistance?

You can choose to be represented by a lawyer in these proceedings (the **Law Society** may be able to direct you to a list of lawyers who work in this area), but many people choose to represent themselves at SACAT. You can contact the **Legal Services Commission** for some free initial advice.

Free legal advice may also be available from the **Equal Opportunity Commission Legal Advice Service**, run by the **Adelaide University Law School**.

The service provides legal advice on areas of Equal Opportunity Law - including discrimination, harassment and victimisation - and assistance in drafting legal documentation, statements, and preparation for conciliation and Tribunal hearings.

The service is operated by final year law students under the supervision of fully qualified legal practitioners.

The service can also assist clients with managing their own cases, and may refer you to other agencies who have the capacity to

handle more complex matters or matters in other jurisdictions if necessary.

Please visit <https://law.adelaide.edu.au/free-legal-clinics/equal-opportunity-commission-legal-advice-service> for more information. This service can be contacted by phone on (08) 8207 1977 or by email at eoclas@adelaide.edu.au.

Costs and Fees

No fees apply in this jurisdiction of SACAT.

Costs orders (an order made that one party is to reimburse another party for its legal fees or associated costs) are generally not made by SACAT and are rarely made against a party in these types of proceedings.

However, SACAT can make a costs order in its discretion in some cases, especially if the complaint is found to have no proper legal basis and the party has been told about that before, or the complaint is brought inappropriately.

Disclaimer

This fact sheet is general in nature and is provided as a guide only. It does not constitute legal advice and does not relate to the circumstances of any individual matter. Legal advice should be sought independently. For further clarification please refer to the Equal Opportunity Act 1984 (available through the SACAT website).