

either personally or by counsel or representative assist the complainant in the presentation of the case of the complainant to the Tribunal; and

- (b) may, if the complainant requests the Commissioner to do so and the Commissioner considers it appropriate in all the circumstances (including the financial circumstances of the complainant) to do so, make such contribution towards the cost of witness and other expenses as is necessary to enable the complainant to call or give, or to call and give, evidence before the Tribunal.
- (2a) The Commissioner may, in making a contribution under subsection (2)(b), make the contribution subject to such conditions as the Commissioner thinks fit.
- (2b) If a condition to which the making of a contribution is subjected under subsection (2a) requires the complainant to repay to the Commissioner in circumstances specified in that condition the whole or any part of the contribution made under subsection (2)(b) and those circumstances arise, the Commissioner may recover that whole or part from the complainant by action in a court of competent jurisdiction as a debt due to the Commissioner.
- (3) Evidence of anything said or done in the course of conciliation proceedings under Section 91 shall not be admissible in subsequent proceedings before the Tribunal.

[Section 93 amended by No. 40 of 1988 s.18; No. 74 of 1992 s.27.]

FAILURE TO ATTEND CONCILIATION PROCEEDINGS OR CONFERENCE - S.157

- (1) A person who has been given a notice under Section 91 to appear before the Commissioner for the purpose of endeavouring to resolve a complaint by conciliation shall not, without reasonable excuse, fail to appear as required by the notice.
- Penalty:
- (a) in the case of a natural person \$1 000; or
(b) in the case of a body corporate \$5 000.
- (2) A person who has been given a direction under Section 87 to attend a conference shall not, without reasonable excuse
- (a) fail to attend as required by the direction; or
(b) fail to attend and report from day to day unless excused, or released from further attendance, by the person presiding at the conference.
- Penalty:
- (a) in the case of a natural person \$1 000; or
(b) in the case of a body corporate \$5 000.



Information brief: Complaint Handling and Conciliation in the Equal Opportunity Commission.

CONCILIATION OFFICERS

Conciliation officers are delegated by the Commissioner to investigate and conciliate complaints.

The role of a Conciliation Officer is to provide the complainant and respondent with an opportunity to present their points of view and keep the parties focussed on the issues, with the aim of helping them to resolve the dispute.

They do not take sides in complaints, advocate for or represent either party.

CONFIDENTIALITY

The Commissioner and her staff are required by the *Equal Opportunity Act 1984* (the Act) to protect the confidentiality of complaints, including the parties.

This requirement means information about a complaint cannot be revealed to the media or any person, other than parties to the complaint or those required to provide information or evidence about the complaint.

INVESTIGATION

The purpose of an investigation is to allow both parties to submit information or documents to reveal facts.

This process, which is both impartial and confidential, begins prior to the

conciliation conference and may continue after the conference, depending on the circumstances of each case.

A Conciliation Officer may request additional information such as dates of specific incidents, witness statements, and medical information relevant to the complaint.

Under the Act the Commissioner has the power to compel complainants, respondents and any witnesses to attend conferences, provide information and produce documents.

HOW ARE COMPLAINTS CONCILIATED?

Conciliation is often conducted at a formal conciliation conference which the parties are required to attend; but it may also be conducted through a teleconference or an exchange of letters.

In all conciliation conferences the discussions are confidential and 'without prejudice' to enable the complainant and respondent to speak freely.

If the matter is not resolved, and is referred to the State Administrative Tribunal (the Tribunal), information about the conference is not provided in the report sent by the Commissioner to the Tribunal and evidence of anything said or done in the conference cannot be given at a hearing.

WHO COMES TO THE CONFERENCE?

In most cases, both the complainant and respondent attend in person.

A friend or support person may also attend and in certain circumstances, a party can be represented by an agent or a solicitor. (See S 92 of the Act - on page three)

PREPARING FOR THE CONFERENCE

- Consider all the issues and think about the other party's perspective.
- have some options about how you think the complaint may be resolved
- be prepared to negotiate; and
- consider if you need to obtain legal, financial or other advice prior to the conference.

POSSIBLE OUTCOMES FROM CONCILIATION

Some of the outcomes which the complainant and respondent may agree to include:

- Offering an apology
- making available something that was previously refused, such as accommodation, admission to a course or access to a shop or nightclub
- introducing or improving equal opportunity policies and practices
- compensation for a specific loss, for example income, or compensation for emotional harm, for example pain and suffering
- staff training programs on equal opportunity and discrimination.

When a complaint is conciliated the complainant, respondent and the conciliation officer usually sign a confidential agreement.

Once the terms of the agreement are met then the complaint is closed.

WHERE THE COMPLAINT DOES NOT RESOLVE

If the complaint is not conciliated the Commissioner will review the file and either dismiss the complaint or refer the matter to the State Administrative Tribunal for hearing and determination.

The Tribunal is an independent statutory body established by the *State Administrative Tribunal Act 2004*.

The Tribunal is empowered to determine complaints of unfair discrimination referred to it by the Commissioner for Equal Opportunity.

The Commissioner may dismiss the complaint at any stage if she is satisfied the complaint is misconceived, lacks substance, is frivolous, vexatious or relates to an act that is not unlawful by reason of a provision of the Act.

If the Commissioner dismisses a complaint for any of the above reasons, the complainant has 21 days to notify the Commissioner, in writing, that they require the matter be referred to the Tribunal.

ONUS OF PROOF

Under the Act, the complainant has to prove that the discrimination happened.

Where the respondent relies upon an exception under the Act, the respondent has to prove that the exception applies.

VICTIMISATION

It is against the law for anyone to threaten, harass or subject a person to a detriment because they have made a complaint or intend to make a complaint under the Act.

This protection is also afforded to anyone giving evidence about a complaint, or to someone who complains about unlawful discrimination, even if they have not made a complaint to the Commission.

Relevant sections, applicable to conciliation, of the Equal Opportunity Act 1984

RESOLUTION OF COMPLAINT BY CONCILIATION - S.91

- (1) Where the Commissioner is of the opinion that a complaint other than a complaint that the Commissioner has dismissed under Section 89, may be resolved by conciliation, the Commissioner shall endeavour to resolve the complaint by conciliation.
- (2) The Commissioner may, by notice in writing, require the complainant and the respondent, or either of them, to appear before the Commissioner, either separately or together, for the purpose of endeavouring to resolve the complaint by conciliation

REPRESENTATION IN CONCILIATION PROCEEDINGS - S.92

- (1) A complainant or respondent in conciliation proceedings before the Commissioner
 - (a) is entitled to appear personally or, subject to Section 91(2), by an agent other than a solicitor or counsel; or
 - (b) may, by leave of the Commissioner, be represented by a solicitor or counsel.
- (2) No person other than a solicitor or counsel is entitled to demand or receive any fee or reward for representing a party in conciliation proceedings before the Commissioner.

REFERENCE OF COMPLAINTS TO THE TRIBUNAL - S.93

- (1) Without prejudice to the Commissioner's powers under Section 89, where the Commissioner
 - (a) is of the opinion that a complaint cannot be resolved by conciliation;
 - (b) has endeavoured to resolve a complaint by conciliation but has not been successful in such endeavours; or
 - (c) is of the opinion that the nature of a complaint is such that it should be referred to the Tribunal,

the Commissioner shall refer the complaint to the Tribunal together with a report relating to the investigation made by the Commissioner into the complaint.

- (2) When a complaint is referred to the Tribunal under subsection (1), the Commissioner
 - (a) shall, if the complainant requests the Commissioner to do so,