# Remedies

This document was prepared by the Equality Law Program. We are a specialised team of lawyers at Victoria Legal Aid providing advice and representation to eligible people experiencing discrimination, sexual harassment and victimisation.

## What are remedies?

Remedies are the outcomes of a complaint of discrimination, sexual harassment or victimisation.

A Tribunal can order remedies if your complaint is proven.

You can also get remedies if you and the person or party who discriminated against you (the Respondent) make a settlement agreement. This can happen at any stage, including before you start legal proceedings, at a conciliation or mediation, or in the lead up to the hearing.

## What remedies are available in a discrimination complaint?

Before a hearing your discrimination complaint can settle for anything that you and the Respondent agree to. These settlements are usually private and confidential.

After a hearing a tribunal can make a declaration that you were discriminated against or order that the discriminatory conduct stop. A tribunal can also order that the Respondent do discrimination training, or change policies or procedures (sometimes called ‘systemic remedies’), to reduce the likelihood that other people will be treated the way you were. However these remedies are rare after a hearing.

The most common remedy after a hearing is financial compensation. The purpose of compensation is to place the person back in the position in which they would have been had the discriminatory conduct not happened. You can claim lost earnings, compensation for hurt and humiliation, and related out of pocked expenses such as medical expenses.

To get financial compensation, you need to prove you were discriminated against and you also need to prove that the loss or damage is a result of the discriminatory conduct.

## Calculating the financial compensation you may receive at hearing

### Lost earnings

If the discriminatory conduct occurred in employment and included dismissal, demotion or refusal of a job application you may be able to seek compensation for lost earnings. These can be separated into past lost earnings and future lost earnings

## Past lost earnings

Calculate your past lost earnings by the number of weeks since you were dismissed, demoted etc, to the current date. Then deduct any actual earnings you’ve made in that period, and any wages you received in lieu of notice.

Example: Jane’s employment was terminated when she told her employer she was pregnant. She lodged a complaint with the Victorian Equal Opportunity and Human Rights Commission and her matter was listed for a conciliation 8 weeks later. As Jane received 2 weeks wages in lieu of notice from her employer, her past lost earnings at the date of the conciliation is 6 weeks wages.

## Future lost earnings

Future lost earnings can be more difficult to calculate. A good starting point is to consider how long you think it will take you to find another job. It is relevant how long you would have remained in your previous job had the discrimination not occurred. Keep in mind that any future loss is likely to be capped by a Tribunal to a reasonable period often based on how long you would have stayed working in your job, and is unlikely to exceed 12 months.

Example: Rick was working as a retail salesperson when his employment was suddenly terminated. He believes it may have been because of his religious beliefs. It took Rick 2 months to find the job. He thinks it will take him at least 2-3 months to find another job. He calculates the sum of 3 months of wages to claim as compensation for future lost earnings.

### Deductions on financial loss

**Mitigating your loss**

You have an obligation to mitigate or reduce your loss. This means that if you wish to claim compensation for lost earnings you need to show that you were trying to find alternative employment in the relevant period. Keep a record of any jobs you apply for (such as emails or dated application forms). Damages for lost income will be reduced if a Tribunal decides you haven’t done enough to reduce your loss.

You may not be required to look for alternative employment if the discriminatory conduct caused an injury to you which would prevent you from working anyway. You would need medical evidence to support this.

**Vicissitudes**

Any award of compensation for economic loss is likely to be discounted to reflect “vicissitudes” of life (or unpredictable life occurrences). For instance, a Tribunal might take into account possibility that your employment could have been terminated in future for another lawful reason. This discount is usually between 15% - 25%.

### Lost entitlements

You can also claim any benefits (such as superannuation) you would have received if you hadn't been discriminated against. This may also include things like annual leave or long service leave.

### Hurt and humiliation

Compensation for hurt and humiliation is also called ‘general damages’ or ‘pain and suffering’. It can more difficult to quantify and ultimately any award is at the discretion of the Tribunal.

You will be assisted in seeking compensation under this heading by providing evidence of the psychological impact the discrimination had on you, or any other adverse effects. If you had a pre-existing mental health condition you will not be precluded from seeking hurt and humiliation, but you should obtain medical evidence setting out how your illness was exacerbated by the alleged conduct.

### Medical expenses

You may also be able to claim for out of pocket medical expenses and reasonable future medical expenses including counselling sessions. It will be important to show that these expenses arise out of the discriminatory conduct. You should obtain a medical report supporting your need for treatment and provide details of the duration and cost.

### Other considerations when calculating financial compensation

**Centrelink**

You have obligations to notify Centrelink if you receive compensation. A settlement amount could affect the payments you receive from Centrelink. If you receive compensation for lost income you may be precluded from receiving Centrelink payments for a period, or have to repay money you received back to Centrelink.

**Tax**

If you receive any compensation for lost income it is likely that income tax will be deducted from that amount. Usually income tax is not deducted from awards representing compensation for hurt and humiliation or general damages.

**Medicare**

If you are seeking compensation for out of pocket medical expenses, including treatment that you received because of the discrimination, you might have to repay some money to Medicare if the treatment was covered by Medicare (that is, if you received a rebate).

**Workers compensation**

In addition to having a claim for discrimination, you may also be eligible to make a workers compensation claim. You should speak to a personal injury lawyer about the impact of any lump sum settlement for lost income on your workers compensation entitlements. VLA guidelines do not cover claims for workers compensation**.**

### Keep in mind

There are more remedies available at a conciliation or mediation stage and few limits to what you can suggest as an outcome. You can ask for an apology or a statement of service, anti-discrimination training for the person who treated you badly, or the introduction of workplace policies around discrimination and sexual harassment. Refer to Fact sheet: ‘Achieving a positive outcome at conciliation or mediation’.

## Where to get help

Contact our Legal Help telephone information service for free information about the law and how we can help you. It’s open Monday to Friday, 8.45 am to 5.15 pm. Call us on 1300 792 387.

If we can’t help you with your legal problem, we may be able to refer you to other organisations that can.

You can also contact the Victorian Equal Opportunity and Human Rights Commission, the Fair Work Ombudsman, or the Australian Human Rights Commission for more information.