

7 March 2022



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Queensland Human Rights Commission
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Dear Commissioner

Review of the *Anti-Discrimination Act 1991* (Queensland)

Thank you for the opportunity to provide this submission to the Queensland Human Rights Commission (**QHRC**) for consideration in the review of the *Anti-Discrimination Act 1991* (**ADA**).

Background

LawRight is a not-for-profit, community-based legal organisation, which coordinates the provision of pro bono legal services to disadvantaged Queenslanders.

LawRight's Court and Tribunal Services (**CTS**) assist with non-employment-related complaints under the ADA that have been referred to the Queensland Civil and Administrative Tribunal (**QCAT**) for hearing and determination (after failing to resolve through conciliation in the QHRC). LawRight does not assist with matters referred from QHRC to the Queensland Industrial Relations Commission (**QIRC**).

LawRight Submission

This submission considers the following discussion questions raised by the QHRC's discussion paper on the review of the ADA:

- Discussion Question 10
- Discussion Question 23
- Discussions Question 45

Discussion Question 10

This question considers whether the ADA should include a direct right of access to QCAT and in what circumstances this right of access should apply.

LawRight is opposed to all complainants having direct access to QCAT without firstly applying to the QHRC. We consider the QHRC conciliation to be an effective process for early resolution of complaints and appreciate the 'gatekeeper' role of the QHRC to

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QCAT. We fear that a universal direct right of access would have the opposite impact to that intended. It would increase delays at an already under-resourced QCAT, now having to also process unfiltered, unmeritorious or vexatious complaints.

Process

As mentioned in the discussion paper, a direct right of access to QCAT may be appropriate where conciliation is futile or inappropriate or where the matter raises a question of public interest. We would support an early referral (pre QHRC conciliation) of these types of complaints to QCAT but submit that it should be at the Commissioner's discretion and not the complainant's.

In the Commonwealth system, the President of the Australian Human Rights Commission (**AHRC**) can terminate a complaint in numerous circumstances including where there is no reasonable prospect of the matter being resolved by conciliation¹ or where the President is satisfied that the subject matter of the complaint involves an issue of public importance that should be considered by the Federal Court or the Federal Circuit and Family Court of Australia (Division 2) (**FCFCOA**)².

Once the complainant receives notice of termination of their complaint, they can proceed to filing an application in the FCFCOA within 60 days.

We submit that if the ADA is to be amended to allow for an early referral to QCAT that it should be a similar approach to that of the AHRC whereby a complaint to the relevant Commission is still a prerequisite, but early termination or referral is possible.

Time limits

In addition to adopting this feature from the Commonwealth system, we submit that the timeframe for a complainant to take the next step and request a referral to QCAT should be extended from the current 28-day time frame to at least 60 days. We submit this extension should apply, not just in instances of early referral but in all matters that do not resolve at QHRC.

LawRight has observed many applicants who request referral of their unresolved complaint from QHRC to QCAT who have not had the benefit of legal advice before deciding to have their matter referred.

While QCAT is designed for self-represented parties, the ADA is complicated and the elements of direct and indirect discrimination are not easily understood, particularly by those with vulnerabilities such as English as a second language or cognitive impairment.

¹ Section 46PH 1B *Australian Human Rights Commission Act 1986* (Cth) (AHRC Act)

² Section 46PH 1(h) AHRC Act

Following the referral of a complaint, QCAT makes standard directions for the complainant to file a 'Statement of Contentions'. In LawRight's experience, complainants typically find these directions confusing and struggle to particularise their complaint without legal assistance. Due to the informal nature of the QHRC and the low threshold for acceptance of a complaint, in most instances, this is the first time the complainant has had to particularise their complaint and consider the prospects of proving their case to the requisite standard of proof under the ADA.

LawRight is often approached at this stage by complainants seeking assistance to comprehend these directions. In most circumstances, the time frame for compliance is imminent or has already passed. This can be burdensome on a legal assistance service particularly when the complaint material is voluminous. This will often result in the client seeking an extension from QCAT which results in further delay for the parties and an administrative burden on QCAT.

We submit that a longer time frame within which complainants can request a referral to QCAT will allow parties to obtain legal advice before proceeding to QCAT. We also submit that increased funding would assist with alleviating the burden on legal assistance services.

Discussion Question 23

This question considers whether QCAT should have a specialist list for ADA matters and what other issues relating to the functions, processes, power and outcomes of the Tribunals should be considered by the review.

LawRight does not consider that a specialist list is necessary for ADA matters in QCAT. It has not been the experience of LawRight that QCAT Members are underqualified or have made incorrect decisions in anti-discrimination matters.

However, we do have concerns about the enforceability of some agreements made at Compulsory Conferences. LawRight has observed instances where a matter is settled at a Compulsory Conference and the agreement between the parties has been made into consent orders which are unlikely to be enforceable. A monetary order can be easily enforced in the Magistrates Court but enforcement of a non-monetary order is problematic where the wording is vague or the effect of the order is impractical.

Conversely, where a settlement agreement is not made into a consent order the parties only option for seeking compliance is to make a claim for breach of contract in a higher court which is costly and time consuming.

LawRight would support either training for Members as to the enforceability of orders and agreements or the insertion of a section in the ADA that would allow parties to return to QCAT if a consent order or settlement agreement is not complied with, is breached or requires further interpretation.

Discussion Question 45

This question considers whether section 28 of the ADA should be repealed, so that there is no longer an exemption to the operation of the ADA for people who are sex workers or who are transgender or intersex to be discriminated against in relation to employment that involves the care or instruction of minors.

LawRight agrees with the position outlined in the discussion paper that the exemption appears to be redundant given the rigorous working with children screening processes that already take place for when people work with minors.

This section of the ADA has no place in civil society. The only lawful reason a person should be denied child related employment is where they are a restricted person under the *Working with Children (Risk Management and Screening) Act 2000*.

LawRight supports an amendment to the ADA to remove section 28.

Contacting us

We appreciate the opportunity to provide a submission for consideration in review of the ADA.

Please contact us on [REDACTED] or by email to [REDACTED] if you have any questions about this letter.

Yours faithfully



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