



FACT SHEET:

Complaints about prisons, community corrections and service providers

Anti-Discrimination Act 1991 (ADA) vs Human Rights Act 2019 (HRA)

This applies to complaints made to the Commission from 22 July 2022.

Issues	Complaints under ADA	Complaints under HRA
What can prisoners complain about?	<p>Discrimination - when a person is treated worse than somebody else because of something like race, age, or sex.</p> <p>Sexual harassment - when someone does something to a person that is sexual and makes them feel upset, embarrassed, or afraid.</p> <p>Vilification - when someone says or does something in public, which may make other people hate or make fun of another person because of their race, religion, gender identity, or sexuality.</p> <p>Victimisation - when someone is treated badly because they have complained about discrimination, sexual harassment or vilification etc.</p>	<p>Unreasonable limitation on a person's human rights such as to be treated humanely when deprived of liberty.</p> <p>This generally means the way a prisoner is treated is worse than the normal restrictions that are unavoidable in prison</p>

Issues	Complaints under ADA	Complaints under HRA
Does an internal complaint need to be made first?	<p>Yes -</p> <p>A person in prison should make a complaint to the person in charge of the prison (Chief Superintendent/General Manager) and wait 4 months.</p> <p>A person on a community based order should make a complaint to the office where they report and wait 4 months.</p> <p>If they don't respond in that time, or if they provide an inadequate response, a complaint may be lodged with us.</p>	<p>Yes -</p> <p>Make a complaint to the prison or community corrections;</p> <p>and</p> <p>wait 45 business days, unless there are exceptional circumstances.</p> <p>If they don't respond in that time, or if they provide an inadequate response, a complaint may be lodged with us.</p>
Is there a time limit on making a complaint?	<p>Yes -</p> <p>Complaints to the QHRC should be made within a year of the matter being complained about.</p> <p>This can only be extended if the prisoner can show good cause to accept the complaint. This includes the reasons for the delay.</p>	<p>Yes -</p> <p>Complaints to the QHRC should be made within a year of the matter being complained about.</p> <p>This can only be extended if the prisoner can show good reasons to accept the complaint.</p> <p>Complaints under the HRA can only be made about events that have happened since 1 January 2020.</p>
Can a HRA complaint be lodged first and then an ADA complaint about the same thing, or vice versa?	<p>Yes -</p> <p>A HRA complaint does not necessarily prevent a later ADA complaint about the same thing.</p>	<p>A prisoner's human rights will be considered as part of an ADA complaint.</p> <p>A HRA complaint made after an ADA complaint in relation to the same events may be refused.</p>
Will QHRC try to resolve the complaint?	<p>Yes -</p> <p>If accepted, we will usually try to resolve a complaint through a private conciliation conference.</p>	<p>Yes -</p> <p>We may try to resolve a complaint through a private conciliation conference or by talking separately with the prisoner and the prison or service provider.</p>

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<p>Is it possible to receive compensation?</p>	<p>Yes - by:</p> <p>reaching an agreement in conciliation which includes compensation; or</p> <p>referring an unresolved complaint to the tribunal and, if the tribunal finds that there has been a breach of the ADA, seeking compensation.</p> <p>BUT -</p> <p>under the <i>Corrective Services Act 2006</i> there are restrictions on the tribunal ordering compensation.</p> <p>Any compensation arising out of imprisonment will be taken to pay compensation to the victims of crime or any child support or outstanding fines and penalties.</p>	<p>There is nothing that prevents reaching an agreement in conciliation that includes payment of money.</p> <p>However, a public entity may not agree to pay compensation at a conciliation conference, as compensation is not a something a court or tribunal can order for a breach of the HRA.</p>
<p>Can agreements reached through conciliation be enforced?</p>	<p>Yes -</p> <p>Agreements are able to be filed and enforced in the tribunal.</p>	<p>Yes -</p> <p>The agreement would not be filed with the tribunal. However, agreements may be enforced through the courts, but this can be difficult and expensive.</p>
<p>If the complaint is not resolved, is there a public hearing?</p>	<p>Yes -</p> <p>A prisoner may refer their complaint for a public hearing in the tribunal.</p> <p>The tribunal may consider breaches of the HRA that are raised in addition to the complaint under the ADA.</p>	<p>No -</p> <p>There is no right to refer a complaint for a public hearing under any circumstances.</p> <p>If there is no agreement to resolve the complaint, we will make a report for the parties.</p> <p>In some cases we may publish the report. The report may include details of action the Commissioner considers the prison or service provider should take to ensure its acts and decisions are compatible with human rights.</p>

Issues	Complaints under ADA	Complaints under HRA
Can complaints be withdrawn at any time?	<p>Yes -</p> <p>If a prisoner decides to withdraw, they have 28 days to change their mind.</p> <p>Once this period expires, the prisoner cannot make another complaint about the same events and the complaint is closed.</p>	<p>Yes -</p> <p>If a complaint is withdrawn it is closed.</p> <p>A prisoner may resubmit their complaint, but remember the time limit for making a complaint outlined above.</p>