

What is a Tribunal exemption?

Under section 113 of the *Anti-Discrimination Act 1991*, the tribunal may grant a temporary exemption for the operation of the *Anti-Discrimination Act*. If granted, the discriminatory conduct would not be unlawful for the duration of the exemption.

For work-related matters, the tribunal is the Queensland Industrial Relations Commission (QIRC), and for all other matters, the tribunal is the Queensland Civil and Administrative Tribunal (QCAT).

How long does an exemption last?

The tribunal decides how long the exemption is to last, but it cannot be for more than five years.

An exemption may be renewed for further periods of up to five years. An application has to be made to the tribunal to renew an exemption.

What factors does the tribunal consider for an exemption?

The tribunal has to be satisfied the exemption is necessary. This means the applicant has to show an arguable case that the conduct would be unlawful under the *Anti-Discrimination Act*.

If the tribunal is satisfied an exemption is necessary, the tribunal will consider:

- whether there are any non-discriminatory ways of achieving the purpose for which the exemption is sought;
- whether there is support for granting the exemption;
- whether it would be appropriate and reasonable to grant the exemption;
- whether the exemption is in the community interest.

The tribunal must also take into consideration any submissions the Anti-Discrimination Commissioner might make about the application.

Access tables of exemption decisions on the Commission's website at:

www.adcq.qld.gov.au/resources/legal-information/exemptions

What is a defence or exception?

There are a number of exceptions (or exemptions – sometimes called defences) in the *Anti-Discrimination Act*. General exemptions apply to discrimination in all the areas covered by the Act, and specific exemptions apply to discrimination in particular areas of life covered by the Act.

The tribunal will not generally grant an exemption if a defence or exception is available under the *Anti-Discrimination Act*.

General exemptions include:

- welfare measures;
- equal opportunity measures;
- public health; and
- workplace health and safety.

The Act provides a specific exemption for work, to allow a person to impose genuine occupational requirements for a position.

The tribunal has refused to grant an exemption in circumstances where it considered an exemption or defence applied, or was reasonably arguable. These include:

Welfare measures – example

- providing counselling, support services, and a safe environment for women who have experienced violence by men.

Equal opportunity measures – examples

- offering investment banking scholarships for female students.
- recruiting women to work in traditionally male-dominated industries (e.g. car sales)
- recruiting Indigenous people for trainee positions at mine sites.

Genuine occupation requirement – examples

- recruiting only females to work at a women's refuge.
- recruiting an Indigenous person to work as an advisor for a National Aboriginal Health Unit.

How to apply for a Tribunal exemption

For work-related exemption applications, use the QIRC form 83 *Application for exemption or renewal of exemption*. The form includes a statement that must accompany the application.

For all other exemption applications, use the QCAT form 20 *Application for exemption or renewal of exemption from the Anti-Discrimination Act 1991*. You must also provide a statement or affidavit in support of your application.

The statement or affidavit needs to set out (in detail) information to satisfy the tribunal that the exemption is necessary, and that it is appropriate and reasonable.

You need to complete all sections of the relevant application form accurately and in detail.

For QCAT, the completed application and the statement or affidavit (and any other documents in support of the application) must be lodged with the tribunal with an additional **three copies** of each document.

You can lodge the application in person or by mail. Refer to the relevant tribunal websites for addresses.

There is no fee for applying for an exemption or to renew an exemption.

What happens after I lodge my application?

A tribunal member may make directions for you to file further information.

A copy of the application and all your material in support will be sent to the Anti-Discrimination Commissioner. The Commissioner may make submissions to the tribunal about the application itself, and about the process for considering the application.

The Commissioner will be asked to inform the tribunal whether there are any current complaints against you. It is not appropriate for the tribunal to consider an application while there is a current

complaint about the subject matter of the application.

The tribunal might consider that other people should be notified about the application and given an opportunity to have a say about it. In some cases the tribunal might consider it appropriate to notify the public at large, or to hold a public hearing.

In most cases though, the tribunal will decide the application on the material it has from you, and any submissions from the Commissioner. The decision is made by a tribunal member, who will provide written reasons for the decision.

All documents lodged with the tribunal are available for public inspection, unless the tribunal makes a non-publication order. The decision of the tribunal will be published on the Queensland Supreme Court Library website.

Appeal from tribunal decision

An appeal can be made by the applicant, the Commissioner, or any person who has an interest in the subject of the application.

For a QCAT decision, an appeal is made to the QCAT Appeal Tribunal, and must be made within 21 days.

For a QIRC decision, an appeal is made to the Industrial Court of Queensland, and must be made within 21 days.

Depending on the grounds of appeal, it may be necessary to first apply to the relevant appeal body for permission (leave) to appeal the decision.

For more information
contact the
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Queensland**
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