



Applying for an exemption

What is an exemption?

The Anti-Discrimination Tribunal has the power to grant an exemption to allow a person, or a class of persons, to do something that is otherwise unlawful under the *Anti-Discrimination Act 1991*. For example: to advertise for and recruit female workers only; to provide accommodation only for people over 50. Exemptions granted by the Tribunal are for a temporary period of up to 5 years. The exemption can be renewed for further periods of up to 5 years by making an application for renewal.

What does the Tribunal consider in an exemption application

The Anti-Discrimination Act does not say how the Tribunal should exercise the power to grant exemptions. The following factors have been taken into account in previous cases:

- (a) Whether it is appropriate and reasonable to grant the exemption;
- (b) Whether there are any non-discriminatory ways of achieving the objects or purposes for which the exemption is sought;
- (c) Whether any other person or bodies other than the applicant support the application;
- (d) Whether there are sound social economic or other reasons, consistent with the purposes of the Act, for the exercise of the discretion in favour of an exemption;
- (e) That the object of the Act is principally to promote equality of opportunity;
- (f) The interests of the community;
- (g) The effect of not granting the exemption;
- (h) The possible ameliorative strategies;
- (i) The scheme of the Act.

Relevant legislation:

- *Anti-Discrimination Act 1991*, s113;
- *Anti-Discrimination Tribunal Rule 2005*, s17;
- Form 1;
- Practice Direction 1.

The Form and Practice Direction are also available from the [Tribunal Registry](#).

Make sure you read these documents and comply with the requirements.

What you need to file with the Tribunal:

The Applicant must file:

1. Application for Exemption or Renewal of Exemption (Form 1);
2. An Affidavit or statement setting out detailed information in support of the application.

You must file the original application and affidavit or statement and at least 2 copies. The Tribunal will keep the original and one copy and the other is for your records.

The application must set out:

- (a) The provisions of the Act from which the exemption is sought;
- (b) The period or further period, for which the exemption is sought;
- (c) The person, people or class of people for whom the exemption is sought; and
- (d) A statement of the grounds on which the application is made.

What happens after you file the application:

A copy of the application and supporting material will be given to the Commissioner of the Anti-Discrimination Commission Queensland. The Commissioner has an opportunity to make submissions to the Tribunal about how the Tribunal should deal with the application, as well as the substance of the application. For example, the Commissioner might consider it desirable for the application to be advertised in the paper, served on certain organizations, or dealt with by a public hearing.

If the Commissioner makes any submissions to the Tribunal, the Commissioner will give a copy of the submissions to the Applicant.

The Tribunal will also ask the Commissioner whether there are any current complaints before the Commission involving the Applicant and relating to the circumstances of the application for an exemption;

The Tribunal will firstly decide how to deal with the application, including whether the application should be publicized or otherwise brought to the attention of people, or organizations representing people, who may have an interest in the subject matter of the application. The Tribunal might require the Applicant to participate in a Directions Hearing, or it might decide this issue on the written material before it.

After all the procedural issues are determined and finalized, the Tribunal will make a decision on the application, either after a public hearing, or on the written material before it.

Relevant case law:

[A list of all exemptions that have been granted by the Tribunal](#) is available from the Tribunal's website.

All the [decisions of the Tribunal about exemption applications](#) are available from the AustLII (Australasian Legal Information Institute) website.