

# Anti-Discrimination Tribunal Queensland



## SELF HELP KIT

June 2008

## TABLE OF CONTENTS

<b>INTRODUCTION</b>	<b>5</b>
<b>THE TRIBUNAL</b>	<b>6</b>
Tribunal Registry	6
<b>STEPS FOLLOWING REFERRAL OF A COMPLAINT TO THE TRIBUNAL</b>	<b>7</b>
Referral Report	7
First steps	7
The parties can try and resolve the complaint without a Final Hearing	7
Additional steps and the Final Hearing	8
<b>ADDRESS FOR SERVICE</b>	<b>9</b>
<b>HOW TO FILE AND SERVE DOCUMENTS</b>	<b>10</b>
Filing	10
Serving	10
<b>DIRECTIONS</b>	<b>11</b>
What are Directions?	11
What sort of Directions can be made?	11
Initial Directions	12
Further/Other Directions if a complaint does not settle at the Conciliation Conference	12
What if I cannot comply with the Directions made by the Tribunal?	12
<b>DIRECTIONS HEARINGS</b>	<b>14</b>
What are Directions Hearings?	14
How will I know if I have to attend and do I have to go in person?	14
Confirmation of orders made at Directions Hearing	14
What do I need to do at a Directions Hearing?	15
You must attend the Directions Hearing in person or by telephone link	15
Answer any questions that the Tribunal Member asks you	15
If you don't understand something, ask the Tribunal Member to explain it to you	15
You should be polite	15
If you can, make a note of the Directions which the Member orders	15
What will happen at a Directions Hearing?	16
Attending the hearing	16
Names announced	16
Where to sit	16

The Tribunal Member (or President) Making Orders	16 16
<b>WITNESS STATEMENTS</b>	<b>17</b>
Preparing a witness statement for the Tribunal	17
What is a witness statement and why does the Tribunal need it?	17
Who should make a statement?	17
Content of witness statements	17
Formatting witness statements	18
Remedies	18
Filing and serving the witness statement	18
<b>CONCILIATION CONFERENCES AT THE TRIBUNAL</b>	<b>29</b>
When do I participate in a Conciliation Conference at the Tribunal?	29
You may be ordered to attend	29
Where will the conciliation be held?	29
What happens if I do not participate?	30
What can I do to prepare for the Conciliation Conference?	30
For Complainants, what do you want to resolve the complaint before a Final Hearing?	30
For Respondents, what are you prepared to do to resolve the complaint before a Final Hearing?	31
What will happen at the Conciliation Conference?	31
How is the conciliation run?	31
Things to remember	31
What happens if we reach agreement at the Conciliation Conference?	32
What happens if the complaint doesn't resolve at the Conciliation Conference?	32
<b>RESOLVING A COMPLAINT BEFORE A FINAL HEARING</b>	<b>33</b>
Settlement	33
Withdrawal	33
<b>APPLYING FOR DOCUMENTS TO BE PRODUCED BY A 'NON-PARTY' BEFORE A TRIBUNAL HEARING</b>	<b>34</b>
What is a 'non-party'?	34
What you need to file in the Tribunal:	34
The Application and Draft Order Forms:	34
The Supporting Affidavit:	35
Filing and Serving the Application and Supporting Material:	35
Hearing the Application:	35
Relevant Case Law:	36

<b>THE FINAL HEARING</b>	<b>37</b>
When will the Final Hearing be held?	37
Can I represent myself at the Final Hearing?	37
Can I have someone represent me at the Final Hearing?	37
Do I have to pay any fees for the Final Hearing?	38
What should I do to prepare for the Final Hearing?	38
Witnesses	38
Documents	38
Prepare questions for the other party's witnesses	38
Prepare your closing address	39
What happens if a witness won't come?	39
Final Hearings are usually held in public	39
What happens at the Final Hearing?	40
The Complainant usually presents their case first	40
The Respondent then presents their case	40
Closing address	40
What if I don't attend the Final Hearing?	40
Transcript of the proceedings	41
Decisions	41
Appeals from a decision	41
<b>ORDERS THE TRIBUNAL CAN MAKE AFTER THE FINAL HEARING</b>	<b>42</b>
<b>COSTS</b>	<b>43</b>
<b>ORGANISATIONS FOR LEGAL HELP</b>	<b>44</b>

## INTRODUCTION

The purpose of this kit is to assist self represented parties who have matters before the Anti-Discrimination Tribunal Queensland. It provides information about what happens at the Tribunal.

The kit will be reviewed and further information provided from time to time. If you have any suggestions on how the kit could be improved, please write and tell the Tribunal Registry.

The information in this kit is not legal advice. If you want legal advice, you can contact one of the organisations listed under the heading *Where to go for help*.

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## THE TRIBUNAL

The Tribunal hears and decides complaints of alleged breaches of the *Anti-Discrimination Act 1991* which have been referred to it by the Anti-Discrimination Commission Queensland. These include complaints of alleged discrimination, sexual harassment, victimisation, and race, religious, sexuality, and gender identity vilification.

- The Tribunal can only hear and decide complaints that have been referred to it by the Anti-Discrimination Commission. Complaints that the *Anti-Discrimination Act* has been breached need to be made first of all to the Anti-Discrimination Commission.
- The Tribunal is separate from the Anti-Discrimination Commission. The Tribunal process is more formal and different to the Commission process, but it is less formal than a court process.
- The Tribunal is similar to a Court but its proceedings are less formal.
- The Members of the Tribunal are experienced barristers and solicitors who are part-time Tribunal Members.

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## Tribunal Registry

The Tribunal Registry is like the office of the Tribunal. The main functions of the Registry are to receive documents for filing, maintain the Tribunal's records, and to perform all necessary administrative work associated with the Tribunal.

- To communicate with a Tribunal Member, you must contact the Tribunal Registry. You cannot contact Tribunal Members directly.
- The Registry can give information about the Tribunal processes but **it cannot give legal advice or advice about how to conduct your case.**
- The Registrar is the person responsible for the operation of the Registry and has power to make Directions and to allocate hearing dates.
- When you are communicating with the Registry, always refer to the file number 'HEA...'.  
• Registry hours are: Monday to Friday 9am to 12pm and 2pm to 4pm

The Registry is situated at: Level 11, Bank of Queensland Building, 259 Queen Street, Brisbane (near the corner of Edward Street, next to the GPO.)

- Address correspondence to:  
Anti-Discrimination Tribunal Queensland  
GPO Box 487  
Brisbane Qld 4001
- The Registry can also be contacted on:  
Telephone: (07) 3239 6408  
Facsimile: (07) 3239 6397  
TTY: (07) 3239 0718

## STEPS FOLLOWING REFERRAL OF A COMPLAINT TO THE TRIBUNAL

After the Tribunal receives the complaint from the Anti-Discrimination Commission, there are certain steps which need to be taken before the Final Hearing.

How long it takes until the Final Hearing of the complaint depends on many different things. It usually takes at least 8 to 12 months before a complaint is set down for a Final Hearing, but it may take longer.

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### Referral Report

- When a complaint is referred from the Anti-Discrimination Commission, the Tribunal receives a *Referral Report* from the Commission. The Referral Report contains copies of all relevant documents provided by the parties to the Commission in relation to the complaint.
  - The Tribunal provides a copy of the Referral Report to each of the parties as soon as practicable after it is received from the Commission.
- 

### First steps

- Usually when the Tribunal writes to the parties and gives them a copy of the Referral Report it also tells them what *Directions* have been ordered. The parties need to each comply with these Directions.
  - In most cases, the initial Directions ordered will be that the parties each file and serve Witness Statements (or Points of Claim and Points of Defence if they are legally represented) and then attend a Conciliation Conference.
  - Sometimes, the Tribunal sends the parties a copy of the Referral Report and requires them to attend a Directions Hearing instead.
- 

### The parties can try and resolve the complaint without a Final Hearing

- The parties can try to reach an agreement to resolve the complaint at any time.
  - The parties may have an opportunity to resolve the complaint at a Conciliation Conference at the Tribunal.
  - If the parties reach an agreement, they need to write it down, sign it, and then file the original with the Tribunal Registry. This usually then finalises the complaint and the Tribunal closes its file.
  - A complaint can also be withdrawn by a Complainant at any time.
-

## **Additional steps and the Final Hearing**

- If the parties are unable to resolve the complaint, the Tribunal may make some Further Directions.
  - When the complaint is ready for the Final Hearing, the Tribunal will set a particular date, time and place for the Final Hearing to take place.
  - At the Final Hearing, each party presents their evidence, similar to a hearing or trial in a court. The Tribunal Member has control over the hearing, like a Judge or Magistrate. After all of the evidence has been presented, the Tribunal Member will make a decision. The decision and the reasons for the decision are usually delivered some time after the hearing.
-

## **ADDRESS FOR SERVICE**

When the complaint was being dealt with by the Commission, the parties had to give the Commission written notice of an address for service. The address for service of each party is on the front page of the Referral Report. The Tribunal uses these addresses as the address for service for the relevant party.

An address for service is the address that the Tribunal and the other parties can use to communicate with you.

If you change address or want to use a different address for service, you should inform the Registry, preferably in writing. You can simply write to the Tribunal Registry saying that you wish to change your address for service, and give the Registry the new address. You should send a copy of this letter to the other parties.

An address for service can be a:

- Residential address;
- Business address; or
- Post office box address

If you would prefer to receive information and documents by fax or email, you can say so when notifying an address for service, but the registry and the other parties are not obliged to communicate with you in that manner.

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## HOW TO FILE AND SERVE DOCUMENTS

The Tribunal will order that certain documents are 'filed and served'. Filing documents gives the Tribunal the document. Serving documents means the other party has a copy of that document too.

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### Filing

To file a document, the original has to be delivered to the Tribunal Registry with at least 2 (two) copies. The Tribunal Registry will stamp the original and copies and will keep the original and 1 (one) copy. The Tribunal Registry does not copy documents, so make sure you have enough copies.

You have to give a copy of each document you file to every other party to the complaint. Use this to work out how many copies of a document you need to file:

- The Tribunal Registry will keep the original AND one (1) copy
- You need one (1) copy for each other party
- You need one (1) copy for yourself

Documents can be filed by:

- Delivering them to the Tribunal Registry in person
  - Sending them by post to the Tribunal Registry
- 

### Serving

You can serve a copy of a document on a party by delivering or posting it to their address for service.

The easiest way to serve a document is to post it to the other party's address for service. It can be sent in the ordinary post or you can send it by express post or registered mail.

Alternatively, you can deliver a document yourself or ask someone to do it for you. If you do this, you should make a note for yourself of the date and time that the document is delivered, and the name of the person who delivered the document. Documents should only be served this way on week days during office hours.

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## DIRECTIONS

The Tribunal makes Directions setting out the steps that have to be taken in order to prepare for a Final Hearing.

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### What are Directions?

- Directions are orders made by the Tribunal about the steps the parties must take to prepare for the Final Hearing.
  - Directions are orders of the Tribunal and the parties must comply with them.
  - The Tribunal often tells the parties what orders have been made in a letter. Sometimes, the Tribunal will make the orders after a Directions Hearing.
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### What sort of Directions can be made?

The Tribunal can make whatever Directions it thinks are appropriate for a particular complaint. Examples of some of the Directions the Tribunal may make are as follows: -

Who	Direction	Date to be completed
Complainant	File and serve Points of Claim and any medical reports to be relied on at the hearing	
Respondent	File and serve Points of Defence and any medical reports to be relied on at the hearing	
All parties	Participate in a Conciliation Conference in person at [date, time and place advised]	
All parties	File and serve a List of Documents	
All parties	Conduct an Inspection of Documents held by each other party and provide a copy of any document as requested	
Complainant	File and serve all Statements of Witnesses to be relied on at the hearing (including any expert statements or medical reports)	
Respondent	File and serve all Statements of Witnesses to be relied on at the hearing (including any expert statements or medical reports)	

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## Initial Directions

In the first letter sent to each party with the Referral Report, the Tribunal usually makes initial Directions about what steps must be taken.

- Sometimes the Tribunal requires the parties to attend a Directions Hearing so it can hear from them before it decides what Initial Directions will be made.
- Where all parties are legally represented, the Tribunal will usually make Initial Directions that the Complainant file and serve *Points of Claim* and the Respondent/s file and serve *Points of Defence*. (Lawyers sometimes call these types of documents 'pleadings'.)
- Where either party is not legally represented, the Tribunal will usually order instead, that each party file and serve Witness Statements.
- The Tribunal will usually also order that after the parties have each filed and served their Witness Statements (or pleadings), they participate in a Conciliation Conference at the Tribunal.
- If a complaint does not settle at a Conciliation Conference at the Tribunal, further directions can be made.

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## Further/Other Directions if a complaint does not settle at the Conciliation Conference

Further Directions can be made if a complaint does not settle at the Tribunal Conciliation Conference, in one of the following ways: -

- Sometimes the parties can agree what further Directions should be made at the end of the Conciliation Conference. The conciliator can explain the kinds of steps which could be taken and can help the parties see whether they can agree about the steps. The Tribunal will then write and confirm the further Directions which have been made 'by consent'.
- The Tribunal may write and tell each party what further Directions have been made.
- The Tribunal may set the matter down for a Directions Hearing.

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## What if I cannot comply with the Directions made by the Tribunal?

Directions can be changed in one of 2 ways: -

**By the parties agreeing to the changes. This is called 'varying the orders by consent'.**

To do this, you need to contact the other party (or their representative) and ask if they will agree to the changes you want. If they do, then both parties need to tell the Tribunal Registry about the changes.

**Please note that the arrangements for the Tribunal Conciliation Conference usually cannot be changed.** If you agree that you want to change

the arrangements for the Conciliation Conference, you will need to speak to the Tribunal Registry to see if this is possible.

OR

**By a further order made by the Tribunal**

If you want the Tribunal to decide whether the orders should be changed, you can write and ask that the complaint be listed for a Directions Hearing.

The Tribunal will then hear from both parties at the Directions Hearing and decide what changes, if any, should be made to the existing Directions. Depending on when Tribunal Members are available, it may be a month or so before the complaint can be listed for a Directions Hearing.

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## **DIRECTIONS HEARINGS**

At a Directions Hearing, the Tribunal Member hears from all the parties and decides what Directions (or steps) must be taken to prepare a complaint for its Final Hearing.

Directions Hearings are not open to the public. They are not recorded or transcribed (typed up).

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### **What are Directions Hearings?**

A Directions Hearing is a hearing before a Tribunal Member who decides what Directions should be made to prepare a complaint for the Final Hearing. Directions are orders of the Tribunal and must be obeyed.

A Directions Hearing is not a Final Hearing. The Tribunal Member does not make any decision about whether the complaint has been proven.

**It is very important that you attend the Directions Hearing (either in person or by taking the telephone call linking you in by phone). If you do not attend, the Directions Hearing will go ahead without you and the Tribunal Member may make orders in your absence.**

The Tribunal Member hears from all the parties and then makes Directions which order the parties to do certain things. See the heading What sort of Directions can be made? for examples of the standard types of orders that may be made. If you want an unusual order, you need to ask the Tribunal Member if this order can be made and explain why you want it made.

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### **How will I know if I have to attend and do I have to go in person?**

If the parties have to attend a Directions Hearing, the Tribunal Registry will write and tell each party the date and time where the Directions Hearing will be held.

The Directions Hearing is usually held in a court room. Depending on where the parties are, they will need to come to the court room or take a telephone call linking them to the hearing. The Tribunal Registry will tell the parties whether they need to attend the hearing in person or by telephone link.

If you are required to attend **in person**, the Tribunal Registry will tell you this and where you have to go.

If you are going to be linked to the Directions Hearing **by telephone**, the Tribunal Registry will tell you what telephone number you will be contacted on. If you want to be contacted on a different number, you should tell the Registry immediately.

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### **Confirmation of orders made at Directions Hearing**

The Tribunal Registry will write to all the parties after the Directions Hearing to confirm the Directions which have been ordered. This is an important letter. You should read it carefully so you know what you have to do and when it has to be done by.

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## **What do I need to do at a Directions Hearing?**

### **You must attend the Directions Hearing in person or by telephone link**

Usually a Tribunal Member will consider a number of different complaints one after another at a Directions Hearing. There will probably be a different complaint having a Directions Hearing before or after your matter. Even though your matter will be set down for hearing at a particular time, it might start later if the matter before it is running late. You must wait until the Tribunal reaches your matter.

If you do not attend in person or by telephone, the Directions Hearing will go ahead without you and the Tribunal Member may order Directions in your absence.

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### **Answer any questions that the Tribunal Member asks you**

The Tribunal Member may ask you questions about what has happened so far in relation to the complaint. You should listen carefully to any questions and answer them as clearly as you can. The Tribunal Member will ask you more questions if necessary.

Remember, this is not the time to argue about why your case is right and the other side is wrong. This happens at the Final Hearing.

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### **If you don't understand something, ask the Tribunal Member to explain it to you**

The Tribunal Members understand that self-represented people are not lawyers and will explain what you need to do.

Tribunal Members cannot give you legal advice or advice about how to prove your case.

However, if you don't understand what has been said or what Directions have been ordered, you should tell the Tribunal Member and ask her/him to explain it to you further.

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### **You should be polite**

Even though you may feel very angry about the complaint, you should be polite at the Directions Hearing and listen to what everyone has to say.

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### **If you can, make a note of the Directions which the Member orders**

The Tribunal Registry will write to you after the Directions Hearing and tell you what Directions have been ordered. However, sometimes things need to be done very quickly, so you may find it useful to make a note of the Directions which are ordered.

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## **What will happen at a Directions Hearing?**

### **Attending the hearing**

If you are attending the Directions Hearing **in person** (rather than by telephone link), you will need to wait outside near the court room until it is time for your matter. If you are attending by telephone link, you need to take the telephone call and wait until your matter is reached.

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### **Names announced**

When it is time for your matter, the names of the parties involved in the complaint will be announced by the Tribunal Member's 'associate'. The associate is one of the Tribunal Registry staff who assists the Tribunal Member.

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### **Where to sit**

If you are attending in person, you should come into the court room and sit at the table in front of the Tribunal Member. The Complainant usually sits at the right hand side of the table (on the Tribunal Member's left) and the Respondent usually sits on the left hand side (on the Member's right). If you are not sure where to go, the associate will show you.

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### **The Tribunal Member (or President)**

You may notice that when lawyers talk to the Tribunal Member they refer to them as 'President' or 'Member' or 'Madam' or 'Sir'. Lawyers also usually stand up whenever they are talking to the Tribunal Member. You may want to do this as well, but you won't get in trouble and it won't affect your case if you don't.

You need to listen carefully to what the Tribunal Member says. The Tribunal Member may ask one of the parties to explain what has happened so far.

If the other party says something you disagree with, try not to interrupt or become angry. The Tribunal Member will make sure you have a turn to talk. When it is your turn, you can tell the Tribunal Member if you think the other side has said something you don't agree with.

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### **Making Orders**

After the Tribunal Member has heard from all the parties, the Member will order Directions telling the parties what they now have to do. Often the Tribunal Member will start doing this by saying 'I order...'

If you can, you should make a note of these orders, particularly if it is only a short time until you have to do something. The Tribunal Registry will write to you after the Directions Hearing confirming the Directions which have been ordered.

If you don't understand what you have to do, you should tell the Tribunal Member. Although Tribunal Members cannot give you advice about how to prove your case or legal advice, they will explain what has been said and any Directions that have been ordered.

After the Directions have been ordered, the Tribunal Member will tell you that the Directions Hearing is finished. You can then leave the court room or hang up the telephone.

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## WITNESS STATEMENTS

The Tribunal will usually order that the parties each file and serve Witness Statements.

The Tribunal may also order that your Witness Statements include *statements of any experts* or *medical reports*. If you want to rely on a doctor's report or a report by an expert, you need to file this at the same time as your Witness Statements.

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### Preparing a witness statement for the Tribunal

#### What is a witness statement and why does the Tribunal need it?

The Tribunal needs to know what your case is about. Where all parties are legally represented, they tell the Tribunal about their case in 'Points of Claim' and 'Points of Defence'. These are legal documents, also known as 'Pleadings'.

However, where a party is **not** legally represented, the Tribunal will usually order the parties to set out their case by Witness Statements. Witness Statements need to tell the Tribunal:

- (a) what happened; and
- (b) how you think the *Anti-Discrimination Act 1991* applies (or why it does not apply)
- (c) what you want the Tribunal to do. (See Orders the Tribunal can make after the Final Hearing.)

At a Tribunal hearing, neither side should have new information sprung on them, without the opportunity to consider it. This is why statements are prepared and exchanged between the parties prior to the final hearing.

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#### Who should make a statement?

You need to provide statements from every person who will give evidence for you if this complaint goes to a Final Hearing before the Tribunal.

- **Remember, you should give a statement yourself**
- You should also get statements from anyone else who can tell the Tribunal what happened
- You must also provide statements from doctors or other specialists or experts, if you are going to rely on medical or other expert witnesses at the hearing.

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#### Content of witness statements

- Put in as much *relevant* detail as you can
- List events in the order in which they happened
- If letters or other documents are referred to in the statement, attach a copy of these to the statement. Mark the attachment with a letter (eg A, B, C) and refer to that in your statement.

eg. 'The respondent sent me a letter on 3 July 2005 terminating my employment. This letter is attached and marked "A".'

- **Remember, even though there may be many things involved in this dispute, the Tribunal can only deal with allegations of breaches of the *Anti-Discrimination Act 1991*.**
- 

### **Formatting witness statements**

- Put the Tribunal's file number on the top right-hand corner of the front page of each statement. This reference number starts with 'HEA' and appears on the top of all your correspondence from the Tribunal
  - Use numbered paragraphs
  - Use headings such as: Background; , Alleged discrimination etc
  - If the statement responds to several statements provided by the other party, use headings to show which of the other party's statements you are referring to.
- 

### **Remedies**

After you have set out what happened, put down what you want to resolve the matter. Section 209 of the Act sets out what orders the Tribunal can make.

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### **Filing and serving the witness statement**

After the statement has been finalised and signed, it needs to be filed and served in the Tribunal.

**The original SIGNED witness statement must be filed in the Tribunal Registry.** The Tribunal Registry will not accept unsigned statements for filing. (See How to file and serve documents for more information about how to do this.)

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IN THE ANTI-DISCRIMINATION

TRIBUNAL QUEENSLAND

HEA05/678

**BETWEEN:**

BETTY JONES

Complainant

**AND:**

BILL BLOGGS

First Respondent

**AND:**

XYZ PTY LTD

Second Respondent

**STATEMENT OF THE COMPLAINANT - BETTY JONES**

1. I am the complainant.
2. I allege that Bill Bloggs & XYZ Pty Ltd have discriminated against me on the basis of my impairment.
3. My impairment is multiple fractures to my right leg which has left me with a permanent limp.

**Background**

4. I started work with the second respondent, XYZ Pty Ltd, on 7 June 1998 as a salesperson.
5. I was promoted to the position of manager of the Mt Gravatt store of XYZ Pty Ltd on 3 August 2002.
6. On 12 June 2004, I was driving to see a customer and I was involved in a car accident. I sustained multiple fractures of my right leg. Attached and marked "A" is a letter from my treating doctor, Dr Smyth, about my injuries.

7. As a result of my injuries I was off work between 12 June 2004 and 1 November 2004 on workers' compensation. During this time I gave XYZ Pty Ltd medical certificates and kept them informed about my progress. Attached and marked "B" are copies of 6 medical certificates I gave to XYZ Pty Ltd.

### **Alleged Discrimination**

8. On 12 October 2004, I went in to speak with the first respondent, Bill Bloggs, who was my boss and the general manager of XYZ Pty Ltd. By this time my leg was out of plaster but I was using a walking stick and limping badly.
9. I told Bill Bloggs that I was ready to come back to work but the doctors had recommended I start with a few hours and then build up my hours over 2 months, so that by January 2005, I would be working full time again.
10. Bill Bloggs said this should be OK but there was no need to hurry back because another employee, Jane Doe, was doing my job while I was away.
11. He also asked me how much longer I would need a walking stick. I told him the doctors thought I would always need to use this because of the injury to my leg.
12. I asked Bill Bloggs if I could start on 5 November 2004 working 2 days a week.
13. Bill Bloggs said he would have to check this was alright and he would get back to me in the next couple of days.
14. After 1 week I had not heard back from Bill Bloggs so I rang him up again. I'm not sure when this was but I think it was around 19 October 2004.
15. Bill Bloggs told me that XYZ Pty Ltd had restructured while I was away and my job as manager of the Mt Gravatt store was no longer available.
16. I was very upset about this and asked what my job would be.

17. Bill Bloggs told me that I could go back to my old position as a salesperson.
18. I told Bill Bloggs that this wasn't right and he said to me that I could "*take it or leave it*". I said I needed to think about what he had said.
19. One week later on 26 October 2004, I received a letter from XYZ Pty Ltd, signed by Bill Bloggs advising me that my job as manager of the Mt Gravatt store had been made redundant and giving me 4 weeks pay. A copy of this letter is attached and marked "C".
20. I have since been told by Fred Nurk and Mary Smith who still work at the XYZ store at Mt Gravatt, that Bill Bloggs said at a team meeting that "*he was not going to have a manager who had to hobble around on a walking stick.*"
21. I think this is discrimination on the basis of my impairment and that both Bill Bloggs and his employer, XYZ Pty Ltd, are responsible for this discrimination.

### **Results of alleged discrimination**

22. I was very depressed about my employment being terminated. My doctor, Dr Smyth, prescribed anti-depressant medication for me which I took between mid-October 2004 and the end of February 2005.
23. I still feel angry and upset about how Bill Bloggs and XYZ Pty Ltd have treated me.
24. It took me another 8 months to find a new job as a salesperson with ABC Pty Ltd. In this new job I earn \$50.00 a week less than I did when I worked for XYZ Pty Ltd.

### **THE ORDERS I AM SEEKING**

I want the Tribunal to order that:-

26. (a) Bill Bloggs and XYZ Pty Ltd are to give me a written apology for what they did.
- (b) Bill Bloggs and XYZ Pty Ltd give me a written reference.
- (c) Bill Bloggs and all staff at XYZ Pty Ltd undergo anti-discrimination training.
- (d) Bill Bloggs and XYZ Pty Ltd pay me for the wages I have lost. I calculate that I have lost the following amounts:-
- i. Two-fifths of my weekly wage of \$500 (namely \$200 per week) between 5 November 2004 and when I would have gone back to work full-time in mid-January 2005 (10 weeks x \$200 = \$2000)
  - ii. My weekly wage of \$500 between mid-January 2005 and when I started my new job on 19 June 2005 (24 weeks x \$500 = \$12,000)
  - iii. the difference of \$50.00 per week between my wage now and the wage I was earning at XYZ Pty Ltd from 19 June 2005 until the present time.
- (e) Bill Bloggs and XYZ Pty Ltd pay me compensation for my hurt, embarrassment and humiliation.
- (f) Bill Bloggs and XYZ Pty Ltd pay me interest on the amount of lost wages and compensation.
- (g) Any other order the Tribunal thinks is appropriate.

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2005.

---

Betty Jones

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## Notes

In this example, Betty should also try to get statements from: -

- Dr Smyth
- Fred Nurk
- Mary Smith

EXAMPLE ONLY

**IN THE ANTI-DISCRIMINATION  
TRIBUNAL QUEENSLAND**

**HEA05/678**

**BETWEEN:**

BETTY JONES

Complainant

**AND:**

BILL BLOGGS

First Respondent

**AND:**

XYZ PTY LTD

Second Respondent

**STATEMENT OF THE 1<sup>ST</sup> RESPONDENT - BILL BLOGGS**

25. I am the first respondent.
26. I am the general manager of the second respondent, XYZ Pty Ltd.
27. In relation to paragraphs 3 and 6 of the statement of Betty Jones dated 1 March 2005, I agree that Betty Jones was involved in a car accident on 12 June 2004 while she was driving to see a customer and that she injured her right leg in that accident.
28. In relation to paragraph 7 of her statement, I agree that Betty Jones was off work on workers' compensation between 12 June 2004 and 1 November 2004.
29. I do not agree that Betty Jones told the company or I about her progress when she was off work. She provided monthly medical certificates but they simply said she was unfit for work.
30. XYZ Pty Ltd had been running at a loss since March 2003. In early January 2004, the company's accountant, Joan Jenkins of Jenkins Accounting told

me I should get a management consultant in to see whether XYZ Pty Ltd should be restructured to reduce costs.

31. Based on this advice, on 20 January 2004, XYZ Pty Ltd engaged a management consultant, Frank Brown of Brown HR Solutions, to advise whether a restructuring should occur.
32. On 15 February 2004, I called a meeting of all the store managers, including Betty Jones. I introduced Frank Brown and explained that he was investigating whether XYZ Pty Ltd should be restructured to save costs.
33. On 6 May 2004, Frank Brown provided me with a report recommending a restructure which included removing the 6 store managers' positions and replacing them with one State Manager. The 6 store managers would instead be employed as senior salespeople. Attached and marked "A" is a copy of that report.
34. On 30 May 2004, the directors of XYZ Pty Ltd decided that the restructure proposed by Mr Brown would be implemented. Attached and marked "B" is a copy of the minutes of that meeting.
35. On 6 June 2004, I had a meeting with Betty Jones and the other 5 store managers about the restructure. I told them that they would all be able to either apply for one of the new positions as a senior salesperson or they could take a redundancy. A copy of the minutes of this meeting are attached and marked "C".
36. I remember Betty Jones was unhappy about the restructuring and said to me something to the effect of "*I've had enough of this place – I'll take a redundancy*".
37. Betty Jones had her car accident only a couple of days later, before I could do anything to implement the restructuring.
38. I agree that Betty Jones came in to see me on 12 October 2004. I asked her how she was going and what the doctors had said about her prognosis.
39. I agree with what Betty Jones has stated in paragraph 9 of her statement.

40. However, in relation to paragraphs 10 to 18 of her statement, I have a different recollection of what was said.
41. I told Betty Jones that while she was off work, the restructuring we had spoken about just before her accident had occurred and Jane Doe had been appointed Manager.
42. I said that we were happy for Betty Jones to come back on a return to work plan starting on 5 November 2004 working 2 days a week and building up to full time work by January 2005. I told her that she would be working as a senior salesperson since the position of store manager at Mt Gravatt no longer existed.
43. I remember explaining to Betty Jones that the new manager, Jane Doe, was also helping the staff at the Mt Gravatt store with sales until Betty Jones got back from leave.
44. Betty Jones told me that she needed to think about this and would let me know her decision the next day.
45. In relation to paragraph 14 of her statement, I agree that Betty Jones called me on 19 October 2004. However, I deny that I only told her about the restructuring at this time. I told her that the restructuring had occurred when she came in on 12 October 2004.
46. When Betty Jones called me on 19 October 2004, she told me that she had decided to look for different work as she was upset about the restructuring because she would now be working as a salesperson and not a manager. She told me she wanted a redundancy payment and asked me to arrange this.
47. In relation to paragraph 18 of her statement, I deny that at any time I said that Betty Jones could "*take it or leave it*". I was sorry to lose such an experienced employee and tried to encourage her to stay.

### **Termination of Betty Jones' employment**

48. In relation to paragraph 19 of her statement, I agree that on 26 October 2004 I sent a letter to Betty Jones confirming the redundancy and giving her 4 weeks' pay.
49. In relation to paragraph 20 of her statement, I deny I said anything of the sort at any time.
50. Attached and marked "C" is a copy of the duty statement for the State Manager. Attached and marked "D" is a copy of the duty statement for Betty Jones' job as store manager.
51. In relation to paragraph 22 of her statement, I have been told by Harry White (who worked with Betty Jones for many years at the Mt Gravatt store) that Betty Jones had been using anti-depressants for many years before her car accident.
52. In relation to paragraph 24 of her statement, although I agree Betty Jones earns about \$50.00 per week less in her new job, I say that she also has extra benefits such as private use of a work vehicle and a bonus scheme.

### **Response to orders claimed**

53. I deny that XYZ Pty Ltd or I terminated Betty Jones' employment because of the injury to her right leg, or the time she had off work because of that injury.
54. I deny that XYZ Pty Ltd or I have discriminated against Betty Jones on the basis of her impairment.
55. In relation to the orders that Betty Jones seeks in paragraph 26 of her statement , I say: -
  - (b) I am not prepared to apologise, and neither is XYZ Pty Ltd, because we have done nothing wrong.



## **CONCILIATION CONFERENCES AT THE TRIBUNAL**

The Tribunal will usually order that the parties participate in a Conciliation Conference to see if the complaint can be resolved without proceeding to a Final Hearing.

Conciliation Conferences are conducted by a specialist Tribunal conciliator, the Registrar of the Tribunal or one of the Tribunal Members.

Conciliators do not make a decision about the complaint. Their role is to facilitate discussions between the parties about resolving the complaint.

The discussions in the Conciliation Conference are confidential. The parties cannot tell a Tribunal Member what was said in the conference and the conciliator cannot tell a Tribunal Member what was discussed.

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### **When do I participate in a Conciliation Conference at the Tribunal?**

#### **You may be ordered to attend**

You need to attend a Conciliation Conference at the Tribunal if the Tribunal orders you to do so. The Tribunal may send a letter telling you that a Conciliation Conference has been ordered or the order may be made at a Directions Hearing.

If you do not attend the Conciliation Conference as ordered, you will be in breach of the Tribunal's order.

You must attend a Conciliation Conference which has been ordered by the Tribunal even if other Directions ordered by the Tribunal (such as orders that Witness Statements or pleadings be provided) have not been complied with.

However, you do not have to participate if you are told by a Tribunal Member or one of the Tribunal Registry staff that you do not need to attend the Conciliation Conference.

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### **Where will the conciliation be held?**

Usually, parties are required to attend a Conciliation Conference in person. The Tribunal Registry will tell you where the conference will be held.

The Conciliation Conference will usually be held in a major regional centre nearest to where the events are alleged to have taken place, or which is most convenient to the majority of the parties and the Tribunal.

Sometimes, when parties are not all in the same place, the Tribunal will order that the parties to be linked in by telephone. If this is the case for you, the Tribunal Registry will write and tell you what telephone number you will be called on. If you want to be contacted on a different number, you should tell the Tribunal Registry immediately.

If you are linked in to the Conciliation Conference by telephone, you must take the telephone call at the set time. If you do not accept the telephone

call at the specified time, you will be taken to have not attended the Conciliation Conference and you will be in breach of the Tribunal's orders.

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### **What happens if I do not participate?**

If you do not participate in the Conciliation Conference, you have breached a Tribunal Order and the complaint will be listed for a Directions Hearing .

If you do not have a reasonable excuse for not attending the Conciliation Conference: -

#### **If you are a Complainant**

the Respondent may ask the Tribunal to dismiss your complaint.

#### **If you are a Respondent**

the Complainant may ask the Tribunal to order costs against you.

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### **What can I do to prepare for the Conciliation Conference?**

#### **Think about how you will prove your case.**

For example: -

- What evidence do you have to prove your case? This might be things like your own evidence, what other people will say happened or what is contained in documents. You do not need to bring documents or witnesses to the Conciliation Conference.
  - For Complainants, look at how your situation is covered by the *Anti-Discrimination Act 1991*. Remember, some situations may be unfair or wrong, but the Tribunal cannot deal with them if they are not covered by the Act.
  - For Respondents, is there an exemption in the Act which applies, and if so, how will you prove it?
- 

### **For Complainants, what do you want to resolve the complaint before a Final Hearing?**

Look at Orders the Tribunal can make after a Final Hearing.

However, you might be able to reach agreement about other things that the Tribunal does not have the power to order. Think about all the things that might resolve the complaint.

If you want an amount of compensation, how much do you want and how have you calculated this amount?

Make a list of what you want to resolve the complaint. You must comply with Amended Practice Direction 3 which says you should set out in writing what you are claiming.

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## **For Respondents, what are you prepared to do to resolve the complaint before a Final Hearing?**

You can look at Orders the Tribunal can make after a Final Hearing to get an idea about what the Tribunal could order if the Complainant proves their case.

However, you might be able to reach agreement about other things that the Tribunal does not have the power to order. Think about things that might resolve the complaint.

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## **What will happen at the Conciliation Conference?**

### **How is the conciliation run?**

The conciliator decides how the conference is run.

The conciliator will usually talk to each party separately at first. The conciliator will not pass on any information from these private discussions unless the party clearly tells them to.

The conciliator will introduce everyone and talk about what will happen at the Conciliation Conference.

The conciliator will usually then ask the Complainant to speak first about their complaint and what they want to resolve it.

After this, the Respondent will be asked to respond to what has been said and talk about how they think the complaint should be resolved.

At any time, there can be a break from the joint meeting so the parties can speak privately with the conciliator.

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### **Things to remember**

A Conciliation Conference may take several hours so make sure you have enough time set aside.

It is important that while someone else is talking, you listen and do not interrupt. If you have any questions or comments, you should make a note of them so you can raise them when it is your turn to talk.

The conciliator will not make any decision about the case and will not give you legal advice. The conciliator can give information about the *Anti-Discrimination Act 1991* and explain the Tribunal procedures to you.

Even though you may feel angry about the complaint, it is important to be polite to the conciliator and the other parties while you are at the Conference.

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## **What happens if we reach agreement at the Conciliation Conference?**

If the complaint is resolved at the Conciliation Conference, the parties will be asked to write out what they have agreed and sign that document.

The original of this agreement is then filed in the Tribunal and copies are given to all the parties.

This will usually end the complaint and the Tribunal's file will be closed.

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## **What happens if the complaint doesn't resolve at the Conciliation Conference?**

If the complaint does not resolve, further Directions will usually be made, in one of the following ways: -

- Sometimes the parties can agree what further Directions should be made at the end of the Conciliation Conference. The conciliator can explain the kinds of steps which could be taken and can help the parties see whether they can agree about the steps. The Tribunal will then write and confirm the further Directions which have been made 'by consent'.
  - The Tribunal may write and tell each party what further Directions have been made.
  - The Tribunal may set the matter down for a Directions Hearing.
-

## **RESOLVING A COMPLAINT BEFORE A FINAL HEARING**

### **Settlement**

The parties can try to reach an agreement to resolve the complaint at any time. If they reach an agreement, they must make a written record of the agreement, sign it, and then file the original with the Tribunal Registry.

This will then end the complaint, and the Tribunal will close its file.

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### **Withdrawal**

If a Complainant decides not to continue with a complaint, the Complainant can withdraw the complaint by writing to the Tribunal Registry saying that he or she does not want to continue with the complaint. The complaint then lapses.

The Registry will then write to the other parties and tell them that the complaint has lapsed.

When a complaint is withdrawn, it is finished. You cannot decide later to proceed with the complaint or make another complaint about the same things.

A Complainant may withdraw a complaint at any time before the Final Hearing.

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## **APPLYING FOR DOCUMENTS TO BE PRODUCED BY A 'NON-PARTY' BEFORE A TRIBUNAL HEARING**

Generally, disclosure of documents between the parties to a complaint should be completed before applying for non-party disclosure. Disclosure usually takes place after a Tribunal conciliation conference. Efforts should also be made to obtain the documents without an order of the Tribunal.

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### **What is a 'non-party'?**

A non-party is a term used to describe a person, organisation or business that is not named as either a Complainant or a Respondent to the complaint in the Tribunal. In other words, the person or entity is not a party to the complaint in which you are involved.

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### **What you need to file in the Tribunal:**

The Applicant must file:

1. an Application for Order (Form 2);
2. an affidavit or statement in support of the application; and
3. a Draft Order to Attend form (Form 7).

The forms are available at <http://www.adcq.qld.gov.au/tribunal/forms.html>, or from the Tribunal Registry.

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### **The Application and Draft Order Forms:**

The Form 2 (Application) and the Form 7 (Draft Order to Attend) will contain similar information, however, the Form 2 is the formal document that you use to apply to the Tribunal for the orders sought, and the Form 7 is the document that is signed by the Tribunal Member or Registrar if your application is granted. The Form 7 should not be signed by anyone other than a Tribunal Member or the Tribunal Registrar.

In the past, some Applications have been a two-step process:

1. The Applicant would apply to the Tribunal for the documents to be produced to it; then
2. The Applicant would make a subsequent Application to the Tribunal to view the documents.

In order to save time as well as costs, you should make it clear that you are applying for orders for the documents to be produced to the Tribunal, and then to view the documents (at a time, date and place to be arranged in consultation with the Tribunal Registry) and take copies of them.

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## The Supporting Affidavit:

A supporting affidavit or statement should be filed at the time you file your application. In this affidavit you should attempt to at least set out the following to the best of your ability:

1. evidence of the probable existence of the documents or class of documents of which production is sought;<sup>1</sup>
2. evidence that the documents or class of documents in question are within the possession or power of the 'non-party';<sup>2</sup>
3. evidence, or at least a submission, which demonstrates that the documents sought are directly relevant to the matters in issue between the parties;<sup>3</sup>
4. evidence that there is not available to the applicant another reasonably simple and inexpensive way of proving the issues that are sought to be proved by obtaining the documents.<sup>4</sup>

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## Filing and Serving the Application and Supporting Material:

When filing any document in the Tribunal, you must file one original, plus at least two copies of the material in the Tribunal. The original plus one copy are kept on file in the Tribunal. The remaining copy is stamped with the Tribunal's seal and returned to you. You must serve this copy on the other party to the complaint.

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## Hearing the Application:

The Registrar will usually make an order giving the other party to the complaint the opportunity to file and serve material or submissions in response to the Application.

The Application, the supporting documents and any material from the other party is then given to a Tribunal Member for consideration.

The Tribunal Member will either:

1. Decide the Application on the papers – this means there is no public hearing about the Application and the Member will make a decision based on the material that has been filed in relation to the Application;

or

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<sup>1</sup> *Waite v King's College* [2005] QADT 1 at paragraph 18.

<sup>2</sup> *Waite v King's College* [2005] QADT 1 at paragraph 19.

<sup>3</sup> *Waite v King's College* [2005] QADT 1 at paragraph 20.

<sup>4</sup> *Waite v King's College* [2005] QADT 1 at paragraph 21.

2. Set the Application down for hearing – this means that the parties are required to appear before the Tribunal and argue why the application should or should not be granted.
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### **Relevant Case Law:**

Two cases that should be considered before making an application for non-party disclosure are:

- *Waite v Kings College* [2005] QADT 1; and
- *RK v State of Queensland & Ors* [2007] QADT 24.

These cases are available at

<http://www.austlii.edu.au/au/cases/qld/QADT/>.

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## **THE FINAL HEARING**

The Final Hearing is when the Tribunal Member hears all the evidence from each party and decides whether there has been a breach of the *Anti-Discrimination Act 1991*.

The Final Hearing takes place before a single Member of the Tribunal.

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### **When will the Final Hearing be held?**

Before the Final Hearing takes place, the parties must comply with Directions made by the Tribunal. After the Directions have been complied with, the Tribunal will consider setting the complaint down for a Final Hearing.

The Tribunal will write and ask the parties to provide information about how long they think the Final Hearing will take and any dates that they are not available. The Tribunal Registry will then arrange for a date for the Final Hearing.

Sometimes a Tribunal Member may give dates for a Final Hearing at a Directions Hearing.

The Registry will write to the parties confirming the date/s and place for the Final Hearing.

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### **Can I represent myself at the Final Hearing?**

Yes you can. Many people represent themselves at Final Hearings.

The Tribunal Members understand that people who represent themselves are not lawyers. However, they cannot give you advice about how to prove your case or legal advice.

The Tribunal Registry can give you information about the Tribunal's processes, but cannot give you legal advice or advice about how to prove your case.

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### **Can I have someone represent me at the Final Hearing?**

Yes you can. You can ask the Tribunal for permission to be represented by a lawyer or someone else. The Tribunal usually gives permission for lawyers to act as representatives.

If you want someone other than a lawyer to represent you, that person will need to ask the Tribunal for permission to represent you. They will also need to comply with Practice Direction 9.

If you do want someone to represent you, the earlier you organise this, the easier it will be for your representative to prepare your case.

The Where to go for help section gives you the names of organisations you may want to contact to see if they can assist you.

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## Do I have to pay any fees for the Final Hearing?

No. There are no fees you have to pay to the Tribunal.

However, there may be incidental costs, such as paying expenses for witnesses to attend the hearing. Also if your case is unsuccessful, the Tribunal may order that you pay the other side's costs.

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## What should I do to prepare for the Final Hearing?

This is not legal advice about how to run your case. These are suggestions about some things you should consider when preparing for the Final Hearing.

### Witnesses

- Arrange for all the people who have given Witness Statements for your case to come to the Final Hearing.
  - It is more convenient for witnesses if you can arrange for them to come at a particular time to give their evidence. See below for what happens at the hearing to help you work out what time you might need your witnesses.
  - If you want a medical or other expert to give evidence on your behalf, you should see what time during the hearing suits this person best. Then let the other parties and the Tribunal Registry know what time you propose that this person would give their evidence.
  - In some circumstances, (for example, if a witness is interstate or ill) the Tribunal may allow evidence to be given by telephone or video link-up. You should tell the Tribunal Registry as soon as you can that you want this to happen. You will need to ask the Tribunal Member at the Final Hearing for permission for evidence to be given in this way.
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### Documents

- Make sure you have all your documents available.
  - Where possible, you should have **original** documents, if not copies may be able to be used.
  - You may want to make a copy of your documents so you have your own copy of any document you give to the Tribunal Member during the Final Hearing.
  - Make sure that you have made available to the other party any documents that you want to rely on.
- 

### Prepare questions for the other party's witnesses

- Prepare the questions you will ask the other party and their witnesses when it is your turn to cross-examine them.

- Looking at the Witness Statements for the other party may help you do this.
- 

### **Prepare your closing address**

- The closing address is where each party makes submissions to the Tribunal Member at the end of all the evidence from witnesses, about why their case should win.
  - You may want prepare for yourself a summary of the facts (you may need to change this during the Final Hearing), how you say the law applies to those facts and what decision you want the Tribunal to make.
- 

### **What happens if a witness won't come?**

If you want someone to be a witness at the Final Hearing and they have refused to come, you can ask the Tribunal to make an 'Order to Attend' which requires that person to attend the Final Hearing.

You should make this application for an 'Order to Attend' after you are told of the dates for the Final Hearing and as soon as you become aware that the person will not attend.

Practice Direction 2 sets out what you need to do to apply for an Order to Attend. You need to: -

1. Complete a Form 2 - Application for Order
2. Complete a Form 7 - Order to Attend
3. File the original and 3 copies of each of these documents in the Tribunal Registry
4. Serve each of these documents on the other party

The Tribunal Member will then consider your application and decide whether to make the Order to Attend. If the Tribunal Member does make the Order to Attend the Tribunal Registry will contact you so you can arrange to collect the order or have it posted to you.

You must then serve the order on the person, together with any witness expenses which are required. See *Anti-Discrimination Regulation 2005*.

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### **Final Hearings are usually held in public**

Final Hearings are public and open to the media, unless a party applies for orders of anonymity and orders about keeping the matter confidential are made.

If you want to apply for orders for anonymity or to keep the matter confidential, you should tell the Tribunal Registry and they will explain what you need to do.

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## **What happens at the Final Hearing?**

The Tribunal is not bound by the rules of evidence and may receive information in any way it considers appropriate. Sometimes the Tribunal Member will ask the parties about their case at the beginning of the Final Hearing. Witnesses must give their evidence under oath or affirmation.

### **The Complainant usually presents their case first**

- The Complainant presents his or her case by first giving evidence and then calling each witness in turn to give their evidence.
  - The Respondent can then 'cross-examine' (that is, question) the Complainant and each of the Complainant's witnesses.
  - The Complainant can 're-examine' (that is, ask further questions of) the witnesses on any issues asked about in cross examination.
  - The Tribunal Member may also ask the Complainant and any of the Complainant's witnesses questions.
- 

### **The Respondent then presents their case**

- The Respondent then presents his or her case by first giving evidence and then calling each witness in turn to give their evidence.
  - The Complainant can then 'cross-examine' the Respondent and each of the Respondent's witnesses.
  - The Respondent can 're-examine' the witnesses on any issues asked about in cross examination.
  - The Tribunal Member may also ask the Respondent and any of the Respondent's witnesses questions.
- 

### **Closing address**

After all the witnesses have given evidence, the Complainant and the Respondent each give a 'closing address' summarising their case. The closing address is a summary of the facts, how each party says the law applies to those facts and what decision they want the Tribunal to make.

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## **What if I don't attend the Final Hearing?**

You must attend the Final Hearing. If you do not attend the Final Hearing: -

### **If you are a Complainant**

the Tribunal may dismiss your complaint and order that you pay the Respondent's costs

### **If you are a Respondent**

the Tribunal may proceed with the Final Hearing in your absence and make any orders it considers appropriate.

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### **Transcript of the proceedings**

The Tribunal usually engages the State Reporting Bureau to record Final Hearings. If the Tribunal has asked for the hearing to be transcribed (typed up), the parties will be provided with a copy of the transcript.

A copy of the transcript may be purchased where the Tribunal has not asked for the hearing to be transcribed, or a person who is not a party wants a copy of the transcript. The Tribunal Registry will advise the cost of such transcript.

If a hearing has been closed to the public, the transcript will only be available to the parties directly concerned.

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### **Decisions**

The Tribunal may give its decision immediately, but usually gives its decision on a later date after it has fully considered the evidence. The decision is usually given to the parties in writing.

If the Tribunal does not give its decision immediately, the Registrar of the Tribunal will send the decision to the parties when it is ready.

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### **Appeals from a decision**

Appeals from Tribunal decisions must be made within 28 days after the day on which the decision was made.

The appeal can only be on a question of law. There is no right of appeal against a Member's decision about the facts. If you want to appeal, you need to contact the Supreme Court to find out what you need to do.

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## ORDERS THE TRIBUNAL CAN MAKE AFTER THE FINAL HEARING

If the Tribunal decides that there has been a contravention of the Act, section 209 of the *Anti-Discrimination Act 1991* provides that it can order the Respondent to do one or more of the following things: -

- a) Not to commit a further contravention of the Act against the Complainant or another person
- b) To pay an amount for compensation
- c) To do specified things to redress the loss or damage suffered by the Complainant
- d) To make a private apology or retraction
- e) To make a public apology or retraction
- f) To implement programs to eliminate unlawful discrimination
- g) To pay interest on an amount of compensation

The Tribunal can also declare an agreement to be not legally binding if it was made in connection with a contravention of the Act.

If the Tribunal decides that there has **not** been a contravention of the Act, it will make an order dismissing the complaint.

The Tribunal may also make an order that one party pay the other party's costs.

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## **COSTS**

The Tribunal has the power to order a party to pay the costs that the Tribunal considers are reasonable.

The Tribunal may order that the party who loses the case has to pay the legal costs of the party who wins the case, but this is not always so. The Tribunal will take into account all of the circumstances of the matter and decide whether it is fair to order a party to pay another party's legal costs.

Sometimes after making a decision, the Tribunal Member will decide the amount of costs to be paid after hearing submissions from the parties.

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## ORGANISATIONS FOR LEGAL HELP

*DISCLAIMER: This is not a recommendation by the Tribunal that you should contact any of these organisations. It is a list of organisations where you may be able to get legal assistance. You should contact only those organisations which you think may be able to assist you with your legal problem.*

Organisation name	Contact phone
Aboriginal and Torres Strait Islander Legal Service- Brisbane Outside Brisbane or local office	3221 1448 1800 012 255
Aboriginal & Torres Strait Islander Women's Legal & Advocacy Service (ATSIWLAS) Outside Brisbane	3844 2450 1800 442 450
Bayside Community Legal Service	3206 2724
Cairns Community Legal Centre	4031 7688
Caloundra Community Legal Service	5491 4511
Caxton Legal Centre	3254 1811
Central Qld Community Legal Service	4922 1200
Disability Discrimination Legal Advocacy Service Outside Brisbane TTY	3847 5532 1800 358 511 3847 5533
Gold Coast Community Legal Service	5595 2060
Highway Legal Service - Southport, Runaway Bay, Palm Beach, Coolangatta, Beenleigh	5532 9611 3287 2840
Legal Aid	1300 651 188
Legal Aid Indigenous Hotline	1300 650 143
Logan Legal Advice Centre	3290 4199
Logan Youth Legal Service	3208 8199
Nundah Community Legal Service	3260 6820
Petrie Community Legal Service	3205 2955
Peninsula Community Legal Service	3284 4543
Prisoners Legal Service Outside Brisbane	3846 3384 1800 813 940
Queensland Law Society	3842 5888
Queensland Public Interest Law Clearing House (QPILCH)	3012 9773
Queensland Working Women's Service (Brisbane)	1800 621 458
Queensland Working Women's Service (Gladstone)	(07) 4971 2370

Organisation name	Contact phone
Roma Community Legal Service	4622 4547
South West Brisbane Community Legal Service (Inala)	3372 7677
Stanthorpe Community Legal Service	4681 3777
Students Legal Service	3377 2238
Sunshine Coast Community Legal Service	5443 7827
Taylor Street Legal Service (Hervey Bay)	4124 6555
Toowoomba Community Legal Service	4616 9700
Townsville Community Legal Service	4721 5511
Western Qld Justice Network (Mt Isa)	4749 5155
Youth Advocacy Centre	3857 1155