

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CHANGES FOR ANTI DISCRIMINATION TRIBUNAL

What did the Anti-Discrimination Tribunal do?

Generally, the Anti-Discrimination Tribunal (ADT) dealt with complaints of discrimination, sexual harassment and vilification, as well as requests for opinions referred to it by the Anti-Discrimination Commissioner. It also dealt with applications for exemption from the *Anti-Discrimination Act 1991*. In addition, the ADT reviewed decisions made by the Commissioner to lapse certain complaints.

Do the Anti-Discrimination Tribunal and the *Anti-Discrimination Act 1991* continue to exist?

The *Anti-Discrimination Act 1991* continues to exist. The provisions of the *Anti-Discrimination Act 1991* that establish the ADT were repealed under the *Queensland Civil and Administrative Tribunal (Jurisdiction Provisions) Amendment Act 2009*. The Anti-Discrimination Tribunal ceased to exist on 1 December 2009 when the Queensland Civil and Administrative Tribunal (QCAT) commenced operation.

The jurisdiction to deal with anti-discrimination matters (e.g. complaints referred by the Commissioner and applications for exemption) was conferred on QCAT and QCAT has all of the powers and functions previously exercised by the ADT.

Which members in QCAT hear anti-discrimination matters?

The members who hear discrimination matters in QCAT are appointed under the *Queensland Civil and Administrative Tribunal Act 2009* membership provisions.

Generally, the *Queensland Civil and Administrative Tribunal Act 2009* requires that members appointed to QCAT are either lawyers, or other people who have special knowledge, expertise or experience about particular matters dealt with by QCAT. The administrative arrangements supporting the Act require detailed specific expertise for the various jurisdictions, including for the anti-discrimination jurisdiction.

There are senior and ordinary members of QCAT who are appointed on a full time and sessional basis. Senior legal members and ordinary legal members are Australian lawyers.

The *Anti-Discrimination Act 1991* requires that a legally qualified member of QCAT will conduct hearings of anti-discrimination cases in QCAT with the exception of opinions sought by the Anti-Discrimination Commissioner where the tribunal will be constituted by a judicial member.

What happened to former members of the ADT?

All former sessional members of the Anti-Discrimination Tribunal were automatically appointed as sessional members of QCAT for a period of two years, if they agreed to this. There were no full time members of the Anti-Discrimination Tribunal.

What happened to the ADT registry?

The ADT registry is now part of the QCAT registry which is located on Level 9, Bank of Queensland Building, 259 Queen Street Brisbane. QCAT also has regional offices which operate through Magistrates Courts throughout Queensland.

How does QCAT deal with anti-discrimination matters?

There are no significant changes to the way that an anti-discrimination matter is dealt with.

Once a complaint is referred to QCAT by the Commissioner, or an application is filed with QCAT, the proceedings are dealt with in the Human Rights Division.

An application or referral is dealt with by QCAT in accordance with the *Anti-Discrimination Act 1991* and the *Queensland Civil and Administrative Tribunal Act 2009*.

Are anti-discrimination matters heard in the original or review jurisdiction of QCAT?

Anti-discrimination matters are within the original jurisdiction of QCAT. The original jurisdiction of QCAT means that the tribunal makes a primary decision about the matter. It is the first time that the matter has been decided by an independent body, even if the matter has gone through mediation or conciliation.

An application to review the Commissioner's decision regarding a lapsed complaint is heard by QCAT in its review jurisdiction.

Are there any special processes for dealing with anti-discrimination complaints that will continue to apply?

When a person wishes to make a complaint about discrimination, the person will first need to make their complaint to the Anti-Discrimination Commissioner. The Commissioner will retain the role of assessing complaints, their investigative powers and the power to direct a person to take part in conciliation.

How are anti-discrimination matters appealed?

A party to an application brought under the *Anti-Discrimination Act 1991* may appeal against the decision of QCAT to the QCAT Appeal Tribunal. The appeal may be made on a question of law, and with leave on a question of fact or a question of mixed law and fact. The decision of the Appeal Tribunal may be appealed with leave on a question of law to the Court of Appeal.

If a judicial member constituted the tribunal for the original hearing the appeal is to the Court of Appeal. Section 228A of the *Anti-Discrimination Act 1991* requires that the tribunal is constituted by a judicial member where the Anti-Discrimination Commissioner requests an opinion. Therefore, appeals on opinions are to the Court of Appeal. The appeal may be on a question of law, or with the leave of the Court on a question of fact or mixed law and fact.

The Appeal Tribunal is made up of one, two or three judicial members, or one, two or three suitably qualified members chosen by the President. A member who was on the original panel cannot sit on the Appeal Tribunal for the same matter.

What has happened to the practice directions and/or rules of the Anti-Discrimination Tribunal?

The practice directions and rules of the ADT no longer exist. QCAT has its own rules (the *Queensland Civil and Administrative Tribunal Rules 2009*) and practice directions (made by the President).

The rules and practice directions of the ADT were taken into account in the development of the rules and practice directions for QCAT.

What happens to applications in the Anti-Discrimination Tribunal when QCAT commences?

The *Queensland Civil and Administrative Tribunal Act 2009* sets out the standard approach to how specific matters were dealt with when QCAT commenced on 1 December 2009.

If a person was able to apply to the ADT before 1 December 2009 and was still within time to apply, the person applies to QCAT, and the hearings and procedure, powers and rights of appeal are those set out in the *Queensland Civil and Administrative Tribunal Act 2009*.

If a person already filed the application in the ADT before 1 December 2009 but the matter had not yet begun to be heard, the matter will be heard in

QCAT with hearing processes and procedures, powers and rights of appeal as set out in the *Queensland Civil and Administrative Tribunal Act 2009*.

If the application had already started to be heard by the ADT on 1 December 2009, the application will be transferred and be heard in QCAT, with the hearing processes and procedures as set out in the *Queensland Civil and Administrative Tribunal Act 2009*. However the powers and functions are limited to those powers and functions under the former ADT. The rights of appeal are also those rights of appeal that applied under the former ADT.

If the application has been heard by the ADT but the decision has not been delivered before 1 December 2009, the decision will be made by QCAT, but under the powers and functions of the former ADT. The rights of appeal are also those rights of appeal that applied under the former ADT.