

How to complain using the Queensland Anti-Discrimination Act

In Queensland, if you believe you are being discriminated against on the basis of your disability, you can complain using either Queensland's Anti-Discrimination Act (ADA) or the Commonwealth's Disability Discrimination Act.

You cannot make a complaint with both at the same time and once you have made a complaint under the Anti-Discrimination Act you cannot lodge a complaint about the same matter under the Commonwealth's Disability Discrimination Act. For advice on which Act is applicable in your situation, contact Basic Rights Queensland (BRQ).

The Anti-Discrimination Commission Queensland (ADCQ) investigates complaints made using the ADA.

Who can make a complaint?

If you believe you have been discriminated against because of your disability you can lodge a complaint to the ADCQ.

- The ADA also allows a parent of the person discriminated against to make a complaint on their behalf, or the nominated guardian of someone who does not have the capacity to make one themselves.
- Making a complaint to the Queensland Anti-Discrimination Commission is free.
- For information on what unlawful disability discrimination is please see the BRQ website and the Fact Sheet *"What is Disability Discrimination and when is it Unlawful?"*

When can I make a complaint?

A complaint must be made within **twelve months** of the discrimination taking place.

You can contact the ADCQ to discuss whether they will accept a late complaint. You will need

to have a good reason for not complaining within the time limits stated above.

How long does it take to handle my complaint?

The entire process may take a number of months to resolve. It will depend on the complexity of your issue

Do I need legal representation to make a complaint?

You do not need a lawyer to make a complaint to the Anti-Discrimination Commission. You can choose to get legal advice or representation, but you will need to do so at your own cost. BRQ can provide free legal advice on these matters.

You can also choose to have a support person with you at the Conciliation Conference.

What happens if I decide I do not want to continue with my complaint?

- You can withdraw your complaint at any point in the process without any penalty if you no longer want to go ahead with it.
- You should write to the ADCQ or speak to the officer handling your complaint and tell them you do not wish to continue with it.
- You do not have to tell them your reasons for stopping the complaint.

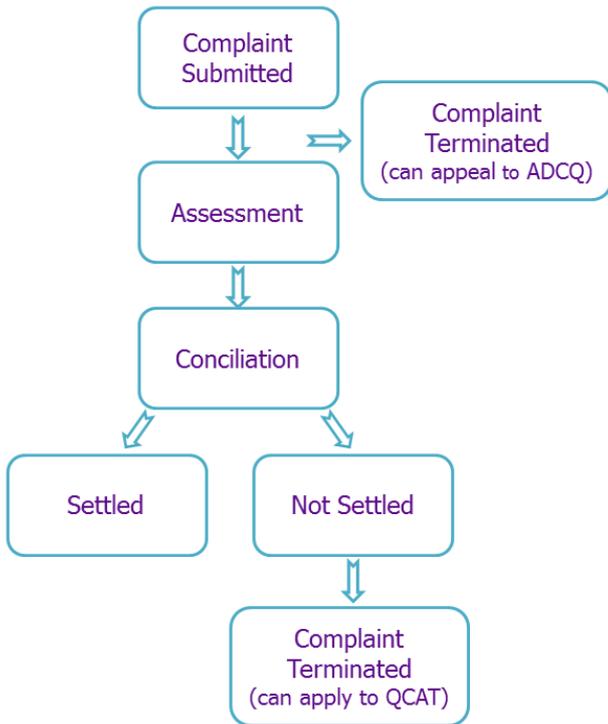
Before Making a Complaint

It is a good idea to ring the Anti-Discrimination Commission Queensland to talk with an Enquiry Officer.

They can give you information about whether your complaint is able to be handled by them

and may give you some ideas of how you might be able to settle the issue yourself.

What happens after I've made the complaint?



Complaints Process Flowchart

Assessment

After lodging your complaint you will receive an acknowledgement letter. The Anti-Discrimination Commission Qld will then assess your complaint to see if it has merit under the Act. The ADCQ have 28 days to make a decision of whether to accept or reject your complaint.

The ADCQ will then give the person or organisation you are complaining about ("the respondent") the option to provide a written response to your complaint within 28 days, and the opportunity to request an early conciliation conference.

What happens if your complaint is rejected?

After Assessment the ADCQ may decline to proceed if:

- They are satisfied no discrimination occurred.
- The discrimination was considered trivial.
- The person/organisation accused of discrimination may argue a defence such as 'unjustifiable hardship' which makes the discrimination lawful.

If this occurs the AHRC will contact you to ask if you wish to continue your complaint so that you can have your say, but you may have little chance of resolving the complaint in your favour. For more information on 'unjustifiable hardship' please see the BRQ website and the Fact Sheet "*What is Disability Discrimination and When is it Against the Law?*".

- The Commissioner thinks another authority or commission should deal with your complaint (for example the Health Rights Commission).
- The subject matter of your complaint has already been dealt with by another authority. Perhaps the Commissioner believes that an Industrial Relations Commission have sufficiently dealt with your complaint.

If your complaint is rejected you can ask the Anti-Discrimination Commissioner to reconsider.

If the Commissioner won't change their mind your only avenue is to go to the Queensland Civil and Administrative Tribunal to ask them to overturn the decision.

Conciliation Conference

After the complaint has been investigated the ADCQ will arrange the Conciliation Conference.

The conference must take place within six weeks of the respondent(s) being notified of the complaint.

What's a Conciliation Conference?

A Conciliation Conference is a discussion and negotiation between parties who have an issue to resolve.

- It is assisted by an independent person (Conciliator) whose job it is to help an agreement to be achieved.
- The conciliator does not take sides and cannot make you, or advise you how to settle the complaint.
- Conferences can take place in person or where required, over the phone.
- Each side will be asked to tell their story and how the events affected them. Both sides then discuss how they could resolve the complaint.
- The assigned conciliator may not be the person who has investigated your matter.

For more information on Conciliation Conferences please see the BRQ website and the Fact Sheet "*Conciliation Conferences*". You can also visit the ADCQ website and watch; *Working it through: a guide to the ADCQ conciliation conference*.

Go to <http://www.adcq.qld.gov.au> and click on 'Making a Complaint'.

What happens if the Conciliation Conference is successful?

If you are able to reach an agreement that you are happy with in the Conference the Anti-Discrimination Commission Conciliator will write up an agreement and you and the other side will be required to sign it.

You have two weeks after the date of the Conciliation Conference to sign it.

It will also include a clause that you agree not to take the matter to any other bodies (e.g. the Australian Human Rights Commission).

What happens if the Conciliation Conference is unsuccessful?

- Sometimes the other side will not agree to your proposal and even if they offer you a reasonable settlement you can still decline it.
- If you are unable to reach an agreement in the conciliation conference the ADCQ will ask you if you want the matter referred to the Queensland Civil and Administrative Tribunal (QCAT) for a public hearing. You must also fill out an application with QCAT within 28 days.
- If you miss this deadline you lose the right to continue with your complaint.
- You can also decide to drop your complaint and not proceed any further.

The Queensland Civil and Administrative Tribunal

The Queensland Civil and Administrative Tribunal (QCAT) is a tribunal that deals with a wide range of matters in different areas of law including discrimination.

- You are not required to have legal representation, self-representation is encouraged. You must apply to the Tribunal if you wish to be represented by a lawyer.
- QCAT is designed to be accessible, fair, just, economical and quick.
- You are required to outline your issue and detail how you have been discriminated against by referencing the relevant sections of the Anti-Discrimination Act.
- You can only refer to the same facts you raised in your complaint to the Anti-Discrimination Commission.
- When the Anti-Discrimination Commission refers the matter to QCAT they will provide

them with the original complaint documentation. QCAT will not have access to the information disclosed in the Conciliation Conference.

What happens at a Tribunal hearing?

- A Tribunal hearing will consist of 1 to 3 people, one of whom may be a judge. The members of the Tribunal are chosen based on their experience of the type of matter they are hearing.
- The tribunal is required to act fairly and according to the merits of the case and observe the rules of natural justice (that the process is fair, everyone has an opportunity to present their case and all evidence is considered).
- All people involved must have opportunity to call or give evidence, examine or cross-examine witnesses and make submissions.
- You are able to have a support person with you but they cannot be connected to your case.
- QCAT will make their decision on the matter either on the final hearing day or in writing at a later date. They may give you the decision in writing and you can request a copy at any time.

What if I am Still Unhappy with the Decision?

If you are unhappy with the decision made in the Tribunal you can appeal to the Supreme Court.

The Supreme Court can only hear appeals based on a question of law. You will need legal representation and there can be significant costs involved.

For More Information

Contact Us

If you have any questions about the information in this fact sheet or require any additional assistance please contact us on **1800 358 511** or **07 3847 5532**.

BRQ Fact Sheets

What is Disability Discrimination and when is it Against the Law?

How to Write a Disability Discrimination Complaint

Conciliation Conferences

How to Complain Using the Commonwealth Disability Discrimination Act

Websites

Australian Human Rights Commission

www.hreoc.gov.au

Anti-Discrimination Commission Queensland

www.adcq.qld.gov.au

Basic Rights Queensland www.brq.org.au

Please Note:

This Fact Sheet contains general information only. It does not constitute legal advice. If you need legal advice please contact Basic Rights Qld on **3421 2510** or if outside of Brisbane on **1800 358 511**.

Basic Rights Qld is a community legal centre, which provides specialist advocacy and legal services in Social Security and Disability Discrimination in employment law, administration and policy.

We are independent of Centrelink and all assistance is free.

This Fact Sheet was updated in February 2016

www.brq.org.au