



ANTI-DISCRIMINATION TRIBUNAL

TASMANIA

PRACTICE DIRECTIONS 2016

All persons having conduct of or having responsibility for matters before the Anti-Discrimination Tribunal (ADT) are expected to comply with these Directions.

PART I - REFERRAL OF COMPLAINT TO ADT FOR INQUIRY

1. Inquiry Process

- 1.1 Within 48 days after a complaint has been referred for Inquiry by the ADT by the Anti-Discrimination Commissioner (“Commissioner”) or an authorised person, shall provide the ADT with a report (s79) in which the following matters are to be addressed:
- (a) Issues raised in the complaint that remain unresolved;
 - (b) A description of the complaint;
 - (c) Any amendments that were made to the complaint;
 - (d) Application of exemptions and exemptions under Part 5 of the Act;
 - (e) Admitted facts;
 - (f) Facts to be established;
 - (g) Witnesses to be called;
 - (h) List of documents to be provided;
 - (i) Any material evidence to substantiate the complaint or to support the position of the respondent; and
 - (j) Attempts at resolving the complaint by conciliation, excluding details of the matters discussed during the attempts.
- 1.2 Prior to forwarding the report to the ADT the Commissioner or authorised person shall advise the ADT that a referral to the ADT will occur and provide the ADT with the identity and contact details of the interested parties and nature of complaint; the ADT will create a file and advise the Commissioner of the reference number of that file.
- 1.3 As soon as practicable after providing the report to the ADT the Commissioner or authorised person shall provide to the Tribunal an electronic

copy of all documents on the List of Documents (1.1(h)) with each document entered as a separate PDF format titled so as to identify each document in accordance with the List of documents and the ADT file number.

- 1.4 The Commissioner, or an authorised person, upon providing the report referred to in para 1.1 to the ADT is also to provide a copy of the report to the complainant and the respondent of the inquiry.
- 1.5 Parties may request from the ADT copies of any documents listed in the List of documents that are not in their possession. Such request is to include an email address (if available) as documents will be provided in electronic format once in the possession of the ADT.
- 1.6 The Inquiry will first be subject to the *preliminary stage* within the Tribunal. This preliminary stage will consist of telephone or face to face conferences and the purpose of this stage is to ascertain the nature of the issues raised, to identify the steps required to be taken by the parties to advance the Inquiry and to ensure that the parties realise their obligations and duties in relation to the Inquiry before the ADT.
- 1.7 All teleconferences will be initiated by the ADT and there will be no costs to the parties in the normal course.
- 1.8 The first teleconference will be held as soon as practicable after the Inquiry is referred to the ADT. Any number of telephone or face to face conferences may be held as are required to ensure that the parties advance their preparedness in respect of the Inquiry.
- 1.9 The preliminary stage may be conducted by a Tribunal Member, Registrar or officer of the ADT, each of whom may give directions as to what is required to be provided or actioned by a party. In particular, a party may be required to prepare and provide:
 - (a) Factual outlines of the matters relied upon;
 - (b) Witness statements in the form of an affidavit or statutory declaration;
 - (c) Other relevant documentary evidence.
- 1.10 At an appropriate time the ADT will give notice of a *directions conference*. Parties and their legal or other representative are to attend this in person. Formal directions will be given at this hearing in order to ensure the Inquiry can proceed fairly and expeditiously. Directions may be given:
 - (a) Requiring the provision of factual and documentary evidence not yet provided by a party pursuant to a direction given during the preliminary process;
 - (b) Provision of other documentary evidence intended to be relied upon;
 - (c) Requiring a written outline of the submission in support of the relief sought and an answering submission opposing such relief;

- (d) Any applicable timetable in regard to these matters.
- 1.11 At the directions conference it will be expected the parties will confirm:
- (a) The provisions of the Act alleged to have been breached;
 - (b) The provisions of the Act relied upon in defence of any alleged breach;
 - (c) The main factual dispute;
 - (d) Any agreed facts;
 - (e) The legal issues to be determined;
 - (f) Whether there are any preliminary matters that could be determine by a separate hearing;
 - (g) Whether there is scope for narrowing the issues or for part or all of the complaint to be resolved.
- 1.12 If the ADT believes it is appropriate in the circumstances of a particular matter, it may, by notice, require any person (not just a party) to attend at a directions conference and require that person to provide and produce specified information and documents to that directions conference.
- 1.13 Following the directions conference the ADT will prepare a written outcome of the formal directions made by the ADT and provide this to the parties.
- 1.14 Subsequent to the directions conference and compliance with the directions made at that time, the ADT will arrange for the application to proceed to the conciliation stage. During this stage a formal conciliation conference will occur unless the ADT believes that there is no prospect of a resolution of the application by such process.
- 1.15 The conciliation conference may be conducted by a Tribunal Member, Registrar or other officer of the ADT. This is a confidential process; the conciliator remains impartial and anything said during this process cannot be used as evidence in a hearing. The object of proceeding to conciliation is to provide for an effective mechanism for resolving or partly resolving applications that are before the Tribunal. It provides an avenue for the parties to achieve an acceptable outcome without the risks and costs associated with a formal hearing. It provides the ability for parties to settle on terms that the ADT may not have the power to order. It is held in private as opposed to a hearing which is open to the public.
- 1.16 The parties and their authorised legal advisor or advocate/support person are (unless relieved of that obligation by the appointed conciliator) required to attend the conciliation conference. Where one of the parties is an incorporated body or a statutory or government agency the person attending the conciliation conference on behalf of such entity must have the authority to settle the matter on behalf of the authority they represent.

- 1.17 A party shall not (unless leave is granted by the ADT) be permitted to raise any issue or rely upon any evidence, material or submission not disclosed or made prior to the conclusion of the conciliation stage.
- 1.18 If a matter fails to settle during the conciliation process, the Tribunal will list the matter for hearing.
- 1.19 Prior to the date of hearing a pre-hearing conference will be held at which time the parties are to confirm:
- (a) What witnesses are required and their availability;
 - (b) What witness statements will be admitted without the necessity of the witness appearing;
 - (c) The issues that remain unresolved;
 - (d) Whether summonses are required to be issued;
 - (e) Any other matters necessary to ensure the matter proceeds on the date listed for hearing.
- 1.20 Notice of a pre-hearing conference will be provided to the Commissioner. Should the Commissioner seek leave to intervene in the hearing of a matter, application for leave to do so is to be made at the pre-hearing conference.
- 1.21 At the conclusion of a hearing if the ADT finds that the complaint is substantiated it shall make orders as provided by s89 of the Act.

PART II – REVIEW OF EXEMPTION DECISION

2. Exemption Review Process

2.1 A person or organisation aggrieved by a decision made by the Anti-Discrimination Commissioner (“Commissioner”) under s57(2) and (3) to:

- (a) Grant an exemption;
- (b) Renew an exemption;
- (c) Refuse to grant an exemption;
- (d) Refuse to renew an exemption;
- (e) Impose or vary a condition of an exemption,

may refer that decision for review to the ADT.

2.2 Such referrals are required to be made to the ADT within a time limit as follows:

- (a) A grant of exemption or renewal of an exemption: within 28 days of the publication of the notice of the grant or renewal of an exemption in the *Gazette*;
- (b) Refusal to grant to an exemption or refusal to renew an exemption: within 28 days after receipt of the reasons provided by the Commissioner for the refusal;
- (c) Imposing or varying a condition of an exemption: within 28 days after the condition is imposed or varied.

2.3 Such referrals shall be in the approved form and must identify clearly the relevant exemption the subject of the review.

2.4 Within 14 days of receiving a referral relating to an exemption decision, the ADT shall forward an electronic copy of that referral to the Commissioner which shall be endorsed with the ADT file number. The Commissioner shall, within 14 days of receipt of that referral (or such further time approved by the ADT), provide to the ADT an electronic copy of:

- (a) The application relating to the exemption;
- (b) A list of documents held by the Commissioner relevant to the determination as to the exemption;
- (c) A PDF copy of each of the documents in the List of documents, each separately titled so as to be identified from the list of documents and incorporating the ADT file number.

- (d) The advice provided by the Commissioner as to the exemption matter and the reasons for the determination in respect of the exemption; and
 - (e) The identity and contact details of any other person or organisation that was involved in the process conducted by the Commissioner and accordingly may have an interest in the review of the Commissioner's decision.
- 2.5 Upon receipt of the required documents from the Commissioner, the ADT (via a Member, Registrar or Tribunal officer) will:
- (a) Contact any other interested party and supply to them(via electronic means if available)copies of any of the relevant documents not in their possession, should they wish to be involved in the process;
 - (b) Hold a preliminary conference either by phone or in person at which time the person/organisation who made the referral shall be obliged to outline the reasons or grounds relied upon for the review. Any interested person who has been joined will also be required to outline the nature of the matters relied upon.
 - (c) All teleconferences will be initiated by the ADT and there will be no costs to the parties in the normal course
- 2.6 When the ADT is satisfied that:
- (a) All relevant documents have been provided;
 - (b) The issues to be decided have been identified,
- the matter will be set down for hearing.
- 2.7 Upon hearing the review, the ADT may:
- (a) Confirm the decision of the Commissioner; or
 - (b) Quash the decision and direct the Commissioner to take such action as the ADT considers appropriate.

PART III – REVIEW OF REJECTED OR DISMISSED COMPLAINT DECISION

3. REVIEW OF REJECTED COMPLAINT DECISION

- 3.1 Where a person or organisation is aggrieved by a decision made by the Commissioner, under s64 to reject a complaint made to the Commissioner, that person or organisation may refer that rejection to be reviewed by the ADT.
- 3.2 An application for review is to be in writing and is to be made within 28 days upon receipt of the notification of the decision to reject the complaint and the statement of the reason for the rejection provided by the Commissioner.
- 3.3 Such referral shall be in the approved form and must clearly identify the relevant complaint which has been rejected by the Commissioner.
- 3.4 If a person does not make an application to review within the time set out in paragraph 3.2, a complaint lapses at the end of that period.
- 3.5 Within 14 days of receiving a referral relating to a rejection decision, the ADT shall forward an electronic copy of the referral endorsed with the ADT file number to the Commissioner. The Commissioner shall, within 14 days of receipt of that referral (or such time approved by the ADT), provide to the ADT in electronic format:
 - (a) A copy of the complaint;
 - (b) A copy of the correspondence to the complainant advising of the Commissioner's decision together with the reasons for the decision;
 - (c) A list of documents held by the Commissioner in relation to that complaint relevant to the consideration by the Commissioner of that complaint.
- 3.6 As soon as practicable after forwarding the required documents (3.5) the Commissioner shall provide by electronic means a PDF copy of the documents in the List of documents each separately titled so as to be identified from the list of documents and incorporating the ADT file number.
- 3.7 Upon receipt of the documents (3.6) the ADT will provide the list of documents to the applicant who upon request will be provided with a copy (via electronic means if available) of any listed document not in the applicant's possession.
- 3.8 Upon receipt of the required documents from the Commissioner, the ADT (via Member, Registrar or officer of the Tribunal) will hold a preliminary conference either by phone or in person at which time the person/organisation who made the referral shall be obliged to outline the reasons or grounds relied

upon for the review and details of any additional evidence or documents that will be sought to be relied upon.

3.9 All teleconferences will be initiated by the ADT and there will be no costs to the parties in the normal course

3.10 When the ADT is satisfied that:

(a) All relevant documents and evidentiary material has been provided; and

(b) The issues to be decided have been identified,

the matter will dependent upon the Tribunal's view and the nature of the review be determined upon an assessment of the documents before the tribunal or alternatively be set down for hearing.

3.11 Upon the hearing of this matter the ADT shall:

(a) If the application is dismissed: provide advice to the person/organisation who referred the complaint and to the Commissioner;

(b) If the application is upheld: refer the complaint back to the Commissioner for investigation in accordance with the Act.

4. REVIEW OF DISMISSAL OF COMPLAINT

4.1 A person or organisation aggrieved by a decision made by the Commissioner to dismiss a complaint as provided under s71(1)(a) may refer that decision to the ADT for review.

4.2 An application for review is to be made within 28 days upon receipt by the aggrieved person or organisation of a written statement from the Commissioner or authorised person as to the reasons for the dismissal of the complaint.

4.3 If a complainant does not make an application within the period specified in paragraph 4.2 the complaint lapses.

4.4 Such referrals shall be in the approved form and must identify clearly the relevant complaint and decision of the Commissioner or authorised person which is to be the subject of the review.

4.5 Within 14 days of receiving a referral relating to a dismissal of complaint decision, the ADT shall forward an electronic copy of that referral endorsed with the ADT file number to the Commissioner. The Commissioner shall, within 14 days of receipt of that referral (or such time approved by the ADT), provide to the ADT by electronic means:

(a) A copy of the relevant complaint;

- (b) A List of documents held by the Commissioner relevant to the investigation conducted by the Commissioner into that complaint;
 - (c) The advice provided by the Commissioner or authorised person as to the dismissal of the complaint and a copy of the reasons for that dismissal;
 - (d) The identity and contact details of any other person or organisation that was involved in the process conducted by the Commissioner and who may have an interest in the review of the Commissioner decision.
- 4.6 As soon as possible after forwarding the information referred to in 4.5 the commissioner shall forward a PDF of each of the documents in the List of documents each document being separately titled in order to be identified from the list of documents and incorporating the ADT file number.
- 4.6 Upon receipt of the required documents from the Commissioner, the ADT (via a Member, Registrar or officer of the Tribunal) will:
- (a) Contact any other interested party and supply to them (via electronic means if available) the list of documents and upon request a copy of any document not in their possession should they wish to be involved in the proceedings;
 - (b) Hold a preliminary conference either by phone or in person at which time the person or organisation who made the referral shall be obliged to outline the reasons or grounds relied upon for the review. Any interested person who has been joined will also be required to outline the nature of the matters that they may rely upon in relation to the review of the dismissal.
 - (c) All teleconferences will be initiated by the ADT and there will be no costs to the parties in the normal course
- 4.7 The ADT shall conduct as many telephone conferences with the parties as may be required in order to ensure:
- (a) The issues to be determined have been identified;
 - (b) All relevant documents and material has been provided;
 - (c) Any additional evidentiary material not considered by the Commissioner has been disclosed and provided to the ADT and any other party.
- 4.8 When the ADT is satisfied that all preliminary matters have been concluded the parties shall be required to attend a conciliation conference.
- 4.9 If the matter is not resolved by way of conciliation it shall be referred for hearing before the ADT. At the hearing before the ADT the parties are restricted as to the evidence, issues and material to those matters disclosed and

settled when the matter was referred to conciliation. No other new or additional material or issues may be introduced without leave of the ADT.

4.10 Upon hearing the application for review the ADT may either:

- (a) Determine that the decision of the Commissioner or authorised person to dismiss the complaint was correct, and if so, the complaint lapses; or
- (b) If the ADT is not satisfied that the Commissioner or authorised person made a correct decision in dismissing the complaint, the ADT will thereupon deal with the complaint as if it were an Inquiry.

PART V - MISCELLANEOUS

5. Miscellaneous

- 5.1 A party may be permitted by the ADT to be represented by a lawyer or other authorised person or accompanied by another person in respect of a matter before the ADT. An application (written or verbal) for such permission must be made to the ADT at the earliest opportunity.
- 5.2 Any person suffering a disability that may in any way affect their ability to engage in the ADT processes or who may require the assistance of an interpreter, should advise the ADT of this as early as possible in order that steps may be taken to assist that person.
- 5.3 The preliminary stage, directions conference and conciliation conference are held in private. The pre-hearing conference and hearing are held in public unless the Tribunal otherwise directs.
- 5.4 The ADT may order that any oral or documentary evidence not be published or that the identity of any party, witness or child not be publicly disclosed. Any person seeking such an order may request this at any stage either verbally or in writing. The person making the request must provide details as to the reason why such order should be made.
- 5.5 At a hearing of an Inquiry the ADT may be constituted by one or more members, one of whom shall be a legal practitioner.
- 5.6 The presiding member of the ADT shall determine how a hearing of the ADT proceeds. In general proceedings will start with a short opening statement or introduction to their case by the parties.
- 5.7 The applicant presents their case first. This includes evidence given by witnesses. The respondent can then cross-examine the applicant's witnesses and next the respondent presents its case and the applicant can cross-examine the witnesses for the respondent.
- 5.8 After cross-examination, a witness may be re-examined by the party who presented that witness to the ADT.
- 5.9 The ADT may limit the time that a party can spend presenting their case.
- 5.10 After all the evidence has been presented, each party will be given a chance to make a submission as to what factual findings that party believes the ADT should make on the basis of the evidence, what the relevant law is and how the law applies to the facts of the case. Submissions of this kind would normally be made at the conclusion of the hearing but the Tribunal may allow parties to make submissions at a later stage either in writing or orally.
- 5.11 Either at the conclusion of the hearing or after a period of time that may be required by the ADT, it shall make an order in respect of the hearing. If

requested by a party, the ADT is to give reasons in writing for an order. Such request is to be in writing and is to be made within 28 days after the making of the order.

- 5.12 Although the parties have a responsibility to present their own case, the conduct of an Inquiry is inquisitorial and the ADT is not restricted to the evidence or material relied upon by the parties. Although obliged to comply with the rules of natural justice, the ADT is not bound by the laws of evidence and will ensure that all material that may assist its consideration of a matter is provided to it.
- 5.13 At a hearing of a review of a rejection or dismissal of a complaint by the Commissioner, the ADT is not confined to a consideration of the evidence and material before the Commissioner. In determining whether the Commissioner made a correct decision (s72) the ADT must determine what decision ought to have been made and in doing so the ADT will make a determination based upon the relevant material before the ADT which is not limited only to the material that was before the Commissioner.
- 5.14 As a general rule each party will pay their own legal costs in relation to matters before the ADT. However, the ADT does have discretion to award costs if it considers the circumstances of a particular matter justify such an order.
- 5.15 An application for an interim order (s98) shall be made by an application in the approved form. Attached to that application shall be an outline of the facts or circumstances in affidavit or statutory declaration form relied upon by the person making the application (the application and supporting documents can be in electronic format):
 - (a) Within 14 days of the receipt of such application the ADT will forward a copy (via electronic means if available)to the other parties;
 - (b) Any party who receives a copy of an application for an interim order has 14 days to provide any responding documents or affidavit/statutory declaration setting out factual matters that party may seek to rely upon (this information and supporting documents can be in electronic format);
 - (c) The ADT will then conduct a directions conference at which time such directions will be made to ensure that the issues relevant to the determination of the application for an interim order are identified and all relevant evidence and documentary material has been provided for that purpose;
 - (d) At the directions conference the ADT will endeavour to achieve a suitable outcome addressing the issues raised by the application for the interim order by way of undertakings by the parties or consent orders, if this cannot be achieved the matter will be set for hearing.

5.16 At any time after any matter is referred to the ADT a party may request that the ADT require a person to provide specified information or produce specified documents that such person believes to be relevant to the matter being considered by the ADT:

- (a) Such application shall be in writing in the approved form and shall:
 - (i) Identify the nature of the information sought;
 - (ii) Identify the documents sought or provide a general description of the nature and type of documents sought; and
 - (iii) Outline why it is asserted that the information or documents are relevant to the matter before the ADT.

(b) The ADT may, upon receipt of that request, or after the supply of additional information sought from the applicant party, make a requirement in accordance with s97.

5.17 Once a matter is before the ADT, arrangements may be made between the ADT and the parties to that matter for the exchange or provision of documents and information referred to in these guidelines, to be conducted via electronic means or other approved format rather than by via post.