

Summary of suggested positions:

Position 1:

Amend the Act to provide that the Commissioner must approve a person who makes a complaint on behalf of another.

Position 2:

Amend the Act to provide a process for the appointment of a litigation guardian for children and persons who do not have the capacity to complain due to a disability.

Position 3:

Amend the Act to provide that the Commissioner and/or the Tribunal dealing with a matter must approve settlement outcomes in matters involving children or persons who do not have the capacity to approve due to a disability.

Position 4:

Amend the Act to provide that matters investigated by the Commissioner on his/her own motion be treated as complaints that may, after investigation, be referred to the Tribunal for determination.

Position 5:

Amend the Act to provide that the Commissioner may amend a complaint to name a respondent.

Position 6:

Amend the Act to allow for the amendment of a complaint; taking into account the decision of *Commissioner of Police v Reid* when developing the amendment.

Position 7:

Amend the Act to allow respondents to have a copy of the complaint as well as being provided with a summary of the complaint.

Position 8:

- a) Amend Section 68 to allow the Commissioner to continue to investigate complaints that have been withdrawn (voluntarily or involuntarily) if it is in the public interest to do so; and
- b) Amend the Act to allow complainants to reinstitute complaints that have been withdrawn involuntarily if it is in the public interest to do so.

Position 9:

- a) Amend the Act to provide that a complaint lapses where the complainant has failed to make contact with the Commissioner within 12 months of the last contact.
- b) Amend the Act to include this category in the list of lapsed matters which cannot be reopened in Section 73.

Position 10:

Note that the issue regarding disclosure of details of the investigatory process under FOI has also been explored in the recent review of the FOI Act and is deferred to the outcome of that review.

Position 11:

Amend the Personal Information Protection Act 2004 to provide that the Office of the Anti-Discrimination Commissioner has a similar status to a law enforcement agency for the purposes of that Act.

Position 12:

Amend the Act to provide a regulation making power for procedural matters such as referrals to the Tribunal from the Commissioner; reviews and inquiries.

Position 13:

Amend the Act to give the Tribunal discretion to publish de-identified decisions on review matters.

Position 14:

Amend the Act to include a power to direct the parties to early conciliation before or during the investigation of a complaint.

Position 15:

Amend the Act to allow for subsequent investigation following early conciliation.

Position 16:

Amend the Act to provide the Commissioner with unilateral power to extend the time for an investigation.

Position 17:

Amend the Act to allow for extensions of time not exceeding an additional 6 months to investigate or conciliate matters (thus giving the Commissioner up to 12 months to investigate and conciliate a complaint).

Position 18:

Amend Section 79(3) so that the referral report (to the Tribunal) includes reference to conciliation of a complaint (but not the details of what was discussed), a description of the complaint, a reference to amendments to the complaint and any material evidence to substantiate the complaint or to support the respondent's position.

Position 19:

Amend the Act to give the Tribunal discretion to publish decisions on procedural and other matters.

Position 20:

Amend Section 80(4) to include the words 'without reasonable excuse'.

Position 21:

Amend the Act to ensure that the Tribunal must be satisfied that the majority of members consent to a class action.

Position 22:

Amend the Act to ensure that a child's name or information revealing the identity of a child shall not be published unless permitted by the Tribunal.

Position 23:

Amend Section 85 to explicitly provide that the Tribunal may give or withdraw permission for a party to be represented or accompanied at anytime during the progress of a matter.

Position 24:

Amend the Act to allow for the establishment of a fund under the control of the Public Trustee for the distribution of any settlement monies.

Position 25:

Amend the Act to provide that agreements reached at Tribunal facilitated conciliation through the *Alternative Dispute Resolution Act 2001* be enforceable as if they were orders of the Tribunal.

Position 26:

Amend the Act to provide that only the Tribunal has power to make interim orders.

Position 27:

Amend the Act to allow a complainant to voluntarily withdraw a complaint from inquiry or an application for review and to provide that if it is withdrawn there can be no further complaint or application in relation to the same matter.

Position 28:

Amend Section 99A to give the Tribunal discretion to order a party's representative to pay all or part of the costs of proceedings.

Position 29:

Amend the Schedule to the *Judicial Review Act 2000* to include the *Anti Discrimination Act 1998* in the list of Acts exempt from the *Judicial Review Act 2000*.

Position 30:

Amend Section 17 so that it applies to all the attributes in section 16.

Position 31:

Amend Section 101 to include the words 'in good faith'.

Position 32:

Amend the Act to extend immunity from suit to authorised officers and conciliators.

Position 33:

- a) Amend the definition of 'club' to include 'or' after the words 'from the funds of the association'; and
- b) Amend the definition of 'competitive sporting activity' to include the word 'and' before the word 'umpiring'.

Position 34:

Amend the definition of sexual orientation to exclude transsexuality.

Position 35:

Amend the Act to define the term 'intersex' and include it as a separate attribute.

Position 36:

- a) Amend the Act to define the term 'child' as a person under the age of 18 years and b) to allow for the Commissioner to accept a complaint from a child if the Commissioner is satisfied the child has capacity to be the complainant.

Position 37:

Amend the Act to allow for the appointment of a Registrar and other staff to assist the Tribunal.

Position 38:

Amend the Act to allow discrimination on the basis of religious belief, religious affiliation or religious activity in educational institutions conducted in accordance with the doctrines, tenets, beliefs, teachings, principles or practices of a particular religion in so far as the

policies of that educational institution provide for preferential admission to those students who also adhere to the particular religion. The exemption should not extend beyond the point of admission.