

My discrimination complaint was not resolved. What happens next?

Going to the Queensland Civil and Administrative Tribunal or the Queensland Industrial Relations Commission

If you lodged a discrimination complaint in the Queensland Human Rights Commission (QHRC) and it was not resolved at your conciliation conference, the QHRC will issue you with a notice confirming your complaint was not resolved.

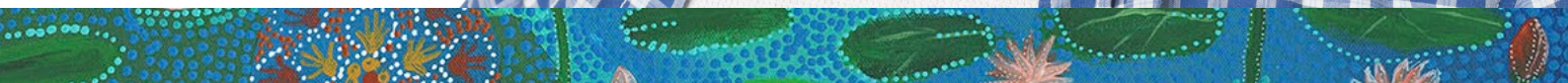
If you choose to take no further action after receiving this notice, your complaint will come to an end.

However, if you want to take your complaint further you will have 28 days to ask your QHRC conciliator to refer your complaint to:

- the Queensland Industrial Relations Commission (QIRC) — for work-related complaints
- the Queensland Civil and Administrative Tribunal (QCAT) — for all other complaints.

Please call or email the QHRC to make this request, using the contact details listed on your notice.

The following information should be used as a guide only. Follow the QCAT's or the QIRC's directions and contact the registry or your case manager if you have any questions.



Going to the QCAT or the QIRC

Once the QHRC has referred your complaint to the QIRC or QCAT, you will be sent a list of directions which will 'direct' you (the complainant) and the respondent/s to your complaint to complete certain tasks by certain times and dates.

The directions usually include the following:

- Anyone who wants to be represented by a lawyer must apply for leave (permission) using QCAT *Form 56 – Application for leave to be represented*.
- The complainant and the respondent/s must file and serve their 'contentions' (a document explaining each party's version of events and legal arguments). Read more about contentions in the next section of this factsheet.
- The complainant and respondent/s must file and serve on each other a statement of evidence for each witness (including statements for themselves).
- Anyone who wants to have a conference (similar to an QHRC conciliation) must ask for a conference. Conferences can give you and the respondent/s a further opportunity to clarify the issues in dispute and resolve your complaint without a hearing. Read more about compulsory conferences on the QCAT website at www.qcat.qld.gov.au (also relevant for QIRC conferences).
- Everyone must attend a hearing. Generally, you will be expected to attend in person. If it's going to be difficult for you to attend in person, you can apply for permission to appear at a hearing by telephone. You can apply using QCAT's *Application for attendance at hearing, compulsory conference or mediation by remote conferencing form*. Read more about hearings on the QCAT website (also relevant for QIRC hearings).

If you are concerned you can't follow a direction by the due date and time, you will need to request an extension of time. It is very important to request an extension of time before the due date and time has passed. Let the QCAT or the QIRC know immediately and submit a request in writing for an extension of time using QCAT *Form 42 – Application to extend or shorten a time limit or for waiver of compliance with procedural requirement*.

Watch the *Getting a fair go in the Tribunal* video on the QHRC website (www.QHRC.qld.gov.au) for information on how the QCAT deals with discrimination complaints.

QCAT forms

- *Form 56 – Application for leave to be represented*
- *Application for attendance at hearing, compulsory conference or mediation by remote conferencing form*
- *Form 42 – Application to extend or shorten a time limit or for waiver of compliance with procedural requirement*
- *Complainant's contentions on referral under the Anti-Discrimination Act 1991 form*
- *Respondent's contentions on referral under the Anti-Discrimination Act 1991 form*

QIRC forms

- *Form 23 – List of documents*
- *Form 85A – Complainant's statement of facts and contentions*
- *Form 85B – Response to the complainant's statement of facts and contentions*

How do I prepare contentions for the QCAT or the QIRC?

For the QCAT, complete the *Complainant's contentions on referral under the Anti-Discrimination Act 1991 form*. There is also a version for respondents. You may find it easier to complete parts A and D of the form, sign and date it, and then write the details of your contentions in a separate document and attach it to the form. This way you can easily edit your contentions and won't be restricted by the size of parts B and C of the form.

The QIRC has a *Form 85A – Complainant's statement of facts and contentions* for complainants to complete. Respondents can complete *Form 85B – Response to the complainant's statement of facts and contentions*. There are some sample statements of facts and contentions on the QIRC website which may help you complete the form—search for 'facts and contentions' on the QIRC website to see the samples.

What should I include in my contentions?

Your contentions for the QCAT or the QIRC should include:

- the key facts (what happened)
- why you believe the respondent has breached the *Anti-Discrimination Act 1991* (Qld)

- how the discrimination has affected you
- what orders you want the QCAT or the QIRC to make.

Your contentions should only refer to matters that were included in your complaint referred from the QHRC. If you want to raise new matters, you must ask the QCAT or the QIRC for permission to do so.

As the complainant, your contentions need to explain why you believe you have been discriminated against, so you will need to give these details:

- on what ground/s did the alleged discrimination occur (eg race, age, sex, impairment)
- in what area did the discrimination happen (eg at work or when you were receiving goods and services)
- whether the discrimination was direct, indirect or both:
 - if you have a direct discrimination complaint, how you were treated differently (less favourably) than the comparator:
 - › if the comparator is a real person, who that person is and why they are an appropriate comparator
 - › if the comparator is hypothetical (not real), a description of that person
 - if you have an indirect discrimination complaint, how you were treated the same and how that same treatment negatively impacted you because of your attribute (eg disability, sex, race):
 - › what was the same treatment (requirement, term or policy) imposed on you?
 - › why you were negatively impacted by that same treatment
 - › how a higher proportion of people weren't negatively impacted.

What is a comparator?

To work out if direct discrimination has occurred, QCAT and the QIRC will look at how the respondent/s treated you compared to how they treated another person, the 'comparator'. The comparator may be a real person (eg work colleague of yours who does not have a disability) or you may need to describe a hypothetical comparator who does not have your attribute (eg a disability).

How do I prepare a statement of evidence for the QCAT or the QIRC?

You, as the complainant, and any witnesses you think can help you to prove your case, will need to prepare a statement of evidence.

Your statement of evidence should:

- tell your story in chronological (from beginning to end) order
- be written in first person (eg "I, Joe Smith ...")
- be set out in numbered paragraphs
- attach all evidence you want to rely on.

Read more about preparing statements on the QCAT website (also relevant for QIRC statements).

What happens at the QCAT or the QIRC hearing?

The QCAT or the QIRC member is the person in charge of the hearing who will make the decision about your complaint. The member will tell you how they want the hearing to proceed. Be prepared to:

- make an opening and/or closing statement setting out your case
- be cross-examined by the respondent/s
- cross-examine the witnesses for the respondent/s.

What is cross-examined?

If someone has given evidence they might be cross-examined, which means they'll be asked detailed questions about their evidence to check if it is accurate and credible. Cross examining someone might also reveal new information.

You need to prove, 'on the balance of probabilities' the respondent unlawfully discriminated against you. This means you have to convince the member your version of events is more likely to be true than the respondent/s version of events.

The member will read, listen to and observe the evidence and make findings about what happened, and whether it meets the discrimination criteria in the *Anti-Discrimination Act 1991* (Qld). The member may not make their decision on the day of the hearing.

A QIRC or QCAT decision about your complaint will be binding on you and the respondent/s to your complaint.

If you are successful, the member will make orders in your favour. If you are unsuccessful, your complaint will be dismissed. If you are unhappy with the outcome, you can appeal the decision.

If you decide to appeal the decision, contact the QCAT or the QIRC immediately as strict appeal time limits apply.

Who pays my costs for going to the QCAT or the QIRC?

Generally, each person pays the cost (eg lawyer's fees) of preparing and presenting their case in the QCAT or the QIRC, no matter what the outcome.

However the QCAT or the QIRC may make an order for someone to cover another person's costs if it is in the 'interests of justice'. This could happen if you:

- don't follow the orders and directions, unless you have a reasonable excuse
- don't attend conferences, mediations or hearings, unless you have a reasonable excuse
- cause delay, are dishonest (deceitful) or cause frustration, irritation or annoyance (act vexatiously)
- unreasonably rejected a previous offer from the respondent/s to settle your complaint.

Get legal advice

Legal Aid Queensland

You can book a free one-off legal advice telephone appointment (up to 60 minutes) to help you understand your rights, and the strengths and weaknesses of your discrimination complaint. Call 1300 65 11 88 (local call cost from a landline anywhere in Queensland) and ask to book a legal advice telephone appointment with a discrimination lawyer.

You may be eligible for a grant of aid to have a lawyer represent you at a conciliation conference and/or final hearing. Read the *Can I get legal aid?* factsheet for more information on our eligibility criteria for grants of aid. You can get a *Legal aid application form* from our offices throughout Queensland or from our website www.legalaid.qld.gov.au.

Community legal centres

Queensland's community legal centres provide free information, advice, referral, and representation for vulnerable clients and communities facing legal problems. Go to www.legalaid.qld.gov.au or call 1300 65 11 88 to check services in your area.

If you are representing yourself at the QCAT, you may be eligible for help from the LawRight Self Representation Service. The service may be able to help you to understand and follow QCAT directions, draft documents and help you to represent yourself in the best possible way at the conference and/or hearing. Call LawRight on 07 3846 6317 for more information.

Queensland Law Society

Call the Queensland Law Society on 1300 367 757 or visit www.qls.com.au for names of private lawyers who can help.

Your local Legal Aid Queensland office:

BRISBANE

44 Herschel St, 4000

BUNDABERG

3rd Floor, WIN Tower,
Cnr Quay & Barolin Sts, 4670

CABOOLTURE

Ground Floor, Kingsgate
42 King St, 4510

CAIRNS

Level 2, Cairns Square Complex,
42-52 Abbott St, 4870

INALA

Level 1, Inala Commonwealth
Offices, 20 Wirraway Pde, 4077

IPSWICH

Level 7, 117 Brisbane St, 4305

MACKAY

Ground Floor,
17 Brisbane St, 4740

MAROOCHYDORE

Ground Floor, M1 Building
1 Duporth Ave, 4558

MOUNT ISA

6 Miles St, 4825

ROCKHAMPTON

Ground Floor, 35 Fitzroy St, 4700

SOUTHPORT

Level 2, 7 Bay St, 4215

TOOWOOMBA

1st Floor, 154 Hume St, 4350

TOWNSVILLE

Level 4, Northern Securities
Building, 22 Walker St, 4810

WOODRIDGE

1st Floor, Woodridge Place,
Cnr Ewing Rd & Carmody St, 4114

For more information
about our services visit
legalaid.qld.gov.au

or phone **1300 65 11 88** or **1300 650 143**
(Aboriginal and Torres Strait Islander Information Line)

