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Chair  
Legal Affairs and Community Safety Committee  
Parliament House  
George Street  
BRISBANE QLD 4000

**By email:** [lacsc@parliament.qld.gov.au](mailto:lacsc@parliament.qld.gov.au)

Dear Chair

## **JUSTICE AND OTHER LEGISLATION AMENDMENT BILL 2019**

Thank you for the opportunity to make a submission to the inquiry into the Justice and Other Legislation Amendment Bill 2019.

The purpose of the Bill is to amend various legislation within the justice portfolio so as to improve efficiencies, clarify, and update the legislation. The Bill includes amendments to the *Anti-Discrimination Act 1991* relating to complaints about allegations of contraventions that occurred both inside and outside the statutory time limit for making a complaint to the Queensland Human Rights Commission (the Commission).

This submission is confined to the proposed amendments to the *Anti-Discrimination Act 1991* in the Bill.

### **The Commission's functions relative to the Bill**

The Commission's functions include dealing with complaints made under the *Anti-Discrimination Act 1991*, namely, complaints about contraventions of the *Anti-Discrimination Act 1991* and complaints about reprisal under the *Public Interest Disclosure Act 2010*.

The Commission's complaint handling function under the *Anti-Discrimination Act 1991* is, essentially, to endeavour to resolve complaints through conciliation. Complaints that are not resolved through conciliation may be referred to a tribunal for hearing and determination. For complaints about work-related matters the tribunal is the Queensland Industrial Relations Commission, and for all other complaints the tribunal is the Queensland Civil and Administrative Tribunal.

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#### STATEWIDE

tollfree  
1300 130 670  
info@qhrc.qld.gov.au  
qhrc.qld.gov.au  
fax 07 3193 9979

#### Brisbane

Level 20  
53 Albert Street  
Brisbane Q 4000  
PO Box 15565  
City East Q 4002

#### Cairns

Ground Floor  
10 Grove Street  
PO Box 4699  
Cairns Q 4870

#### Townsville

Ground Floor  
187-209 Stanley Street  
PO Box 1566  
Townsville Q 4810

#### Rockhampton

Level 1  
209 Bolsover Street  
PO Box 1390  
Rockhampton Q 4700

## Background

A statutory time limit requires a complaint to be made to the Commission within one year from the alleged contravention.<sup>1</sup> However, a complaint that is made more than one year after the alleged contravention (out-of-time) may be accepted if the person making the complaint shows good cause.<sup>2</sup> The Commissioner's discretion to accept an out-of-time complaint is unfettered, however case law guides the types of factors that are relevant when considering whether to exercise the discretion.<sup>3</sup>

A decision whether or not to accept a complaint made out-of-time affects the rights of the parties to the complaint, and accordingly the Commissioner must provide natural justice (also called procedural fairness) to the parties. This involves:

- giving the complainant an opportunity to provide submissions as to why the discretion should be exercised in their favour;
- giving those submissions to the respondents with an opportunity to make submissions; and
- giving the complainant the opportunity to reply to the respondents' submissions.

Complaints are often about more than one incident, and some complaints are about things that have happened over a period of time. Some complaints include incidents that occurred within the one year time limit (within-time) as well as incidents that occurred out-of-time. The process described above for deciding the out-of-time component of a complaint is lengthy and can be costly for the parties. It is often adversarial and can cause the parties to become more polarised, thereby hindering conciliation.

In recent years the number of complaints received by the Commission has increased significantly, with a consequential impact on resources. Given the primary purpose of dealing with complaints is to resolve them through conciliation, the decision-making process for out-of-time complaints diverts resources from achieving the purpose.

Adopting a process whereby complaints with both in-time and out-of-time components are taken to conciliation before deciding whether to accept the out-of-time component, has resulted in some of these complaints resolving, thereby reducing the number of administrative decisions required to be made.

## The Bill

The Bill would give statutory effect to the process of deferring a decision on the out-of-time component of a complaint that includes both in-time and out-of-time components, until the parties have participated in a conciliation conference.

This is achieved by inserting a new provision authorising the deferral of a decision on out-of-time contraventions (clause 10), and amending provisions about

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<sup>1</sup> *Anti-Discrimination Act 1991*, section 138(1).

<sup>2</sup> *Anti-Discrimination Act 1991*, section 138(2).

<sup>3</sup> See for example, *Buderim Ginger Ltd v Booth* [2001] QSC 349; *State of Queensland v Ball & Ors* [2011] QSC 50.

conciliation of complaints (clause 12) and referral of a complaint to a tribunal after a conciliation conference (clause 13).

Clause 11 also clarifies that certain decisions not to accept a complaint have the same effect as a decision to reject a complaint. Where there has been a decision to reject a complaint, the complaint lapses and the person cannot make another complaint about the same subject matter. Under the Bill, this would also apply to decisions:

- that it is not fair to accept a complaint where there is a prior agreement not to complain (section 137); and
- not to accept a complaint, or part of a complaint, made out-of-time (section 138).

This provision would align the rights and interests of parties to complaints that include both in-time and out-of-time components, with the rights and interests of parties to complaints that are wholly out-of-time (i.e. that do not include in-time components), where a decision is made not to accept the out-of-time components of the complaint.

This is because:

- decisions whether or not to accept a complaint, or component of a complaint, made out-of-time, are not subject to review by the relevant tribunal;<sup>4</sup>
- a limited right of review of these decisions is available under the *Judicial Review Act 1991*;<sup>5</sup>
- the Queensland Civil and Administrative Tribunal has allowed a referred complaint to be amended to include out-of-time components that the Commission had decided not to accept;<sup>6</sup>
- if a complaint that does not include in-time components is not accepted by the Commission, the complaint is not referred to a relevant tribunal and there is no opportunity for it to be considered by the tribunal.

The provision would also clarify that a decision of the Commission made under section 137 of the Act<sup>7</sup> not to accept a complaint, also has the same effect as a decision to reject a complaint.

In removing the potential disparity in the rights of complaint parties, clause 11 is consistent with the principle of equality before the law. Equality before the law is an important human right under Queensland's *Human Rights Act 2019*, which will take

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<sup>4</sup> Under the *Anti-Discrimination Act 1991* the only decisions that may be reviewed by a relevant tribunal are decisions that a complainant has lost interest in pursuing a complaint, which is a decision made under section 169 of the Act.

<sup>5</sup> An application for review under the *Judicial Review Act 1991* is made to the Supreme Court of Queensland.

<sup>6</sup> *Bond v State of Queensland* [2017] QCAT 132 (2 May 2017).

<sup>7</sup> Section 137 enables the Commissioner to accept a complaint even though there has been a prior agreement not to complain (e.g. a settlement deed is satisfaction of all claims).

effect from 1 January 2020. This amendment is a timely opportunity to make this aspect of the Act compatible with human rights.

### **Conclusion**

The Commission was consulted about the proposed amendments to the *Anti-Discrimination Act 1991*, and information and feedback that the Commission provided has been appropriately considered.

The proposed amendments will simplify processes for dealing with the subject complaints, and improve efficiencies for the Commission to the benefit of the public.

The Commission supports the proposed amendments to the *Anti-Discrimination Act 1991* and asks the Committee to recommend that clauses 7 to 14 of the Bill be passed.

Yours sincerely



**SCOTT MCDOUGALL**  
**Queensland Human Rights Commissioner**