

Your reference: AD/2026/9  
Our reference: LP2026008A

26 February 2026

The Presiding Member  
Queensland Industrial Relation Commission  
66 Eagle Street  
BRISBANE 4001

**By email:** [QIRC.Registry@QIRC.qld.gov.au](mailto:QIRC.Registry@QIRC.qld.gov.au)

Dear Member

### **EXEMPTION APPLICATION BY ARC DISABILITY LTD**

I refer to the application by ARC Disability Ltd for an exemption from the operation of the *Anti-Discrimination Act 1991* (the **AD Act**).

Under section 113 of the AD Act, before deciding an exemption application, the Queensland Industrial Relations Commission (the **tribunal**) is required to:

- give the Human Rights Commissioner copies of the application and all material filed in support of it; and
- have regard to any submissions of the Commissioner about the substance of the application and/or the process for deciding the application.

The tribunal made directions on 5 February 2026 for consultation and the filing and service of submissions. This is a preliminary submission to raise two issues that the applicant may wish to address in its supplementary submissions to be filed and served by 4pm on 6 March 2026.

At this stage, the Commission considers:

- recruiting for a position on the basis the person must have an impairment is not prima facie unlawful discrimination under the AD Act;
- if the conduct is not prima facie unlawful discrimination, an exemption is not necessary.

### **Complaints**

According to the Commission's records there are no current complaints against the applicant.<sup>1</sup>

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<sup>1</sup> It would not be appropriate for the tribunal to decide an application for an exemption if there was a current complaint against the applicant about the subject of the exemption.

## **The application**

The applicant seeks an exemption under the AD Act to allow it to recruit a Lived Experience Practice Manager. It is a requirement of the position that the person has lived experience of disability.

The Chief Executive officer of the applicant has deposed that the role requires the person to draw upon their lived experience of disability to:

- provide practical insight into the impact of policies, service delivery, and staff actions
- guide participant-centred approaches
- enhance human rights aligned services design
- identify barriers and risks specific to people with disability
- lead continuous improvement activities
- support complaint resolution processes
- engage meaningfully with participants, families, carers, and advocates.<sup>2</sup>

The exemption is sought for a period of three years. Part 3 of the Application form 83 states the provisions of the Act from which exemption sought are sections 104 and 105. Those provisions are general exemptions that provide it is not unlawful to do an act that is a welfare measure or an equal opportunity measure.

An application relating to work would ordinarily seek exemption from the operation of sections 14 (pre-work), 15 (work), 124 (unlawful requests for information), and 127 (discriminatory advertising) in relation to one or more of the attributes in section 7 the AD Act.

## **Tribunal exemptions under the *Anti-Discrimination Act 1991***

The tribunal has a discretion to grant an exemption from the operation of a specified provision of the AD Act. As there are no express criteria in the AD Act for the exercise of the discretion, the extent of the power is to be determined by reference to the subject matter, scope, and purpose of the AD Act.

The tribunal must first consider whether an exemption under section 113 of the AD Act is necessary in the sense that the conduct would otherwise contravene the AD Act.

If the tribunal is satisfied that an exemption is necessary, factors relevant to the exercise of the discretion include:

- (a) whether the proposed exemption is appropriate and reasonable;
- (b) whether there are any non-discriminatory ways of achieving the purpose for which the exemption is sought;
- (c) whether the exemption is in the community interest;
- (d) whether the exemption is supported by other persons;

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<sup>2</sup> Affidavit of Benjamin Keast filed 4 February 2026.

- (e) whether the exemption is consistent with the objects and purposes of the Act;<sup>3</sup> and
- (f) the effect of not granting the exemption.

The decision must also be compatible with human rights under the *Human Rights Act 2019* (the **HR Act**).

### **Is an exemption necessary?**

The applicant must satisfy the tribunal that the conduct would arguably contravene the AD Act without the exemption. The granting of an exemption is not a trivial matter nor routine as it deprives citizens and claimants of rights and actions they would otherwise have.<sup>4</sup>

The AD Act prohibits discrimination on the basis of attributes in section 7 in any of the prescribed areas of activity. The applicant's recruitment proposal would be in the pre-work and work areas of activity.

Given that the affidavit in support of the application says that lived experience of disability is an inherent requirement of the role and without the exemption the applicant cannot lawfully require applicants to be a person with disability,<sup>5</sup> it seems the applicant considers the relevant attribute is impairment, section 7(h). Impairment is defined in the dictionary at Schedule 1 of the AD Act – an extract of the definition is attached to this submission.

The applicant's proposal is to exclude from recruitment people who do not have lived experience of impairment. While it may be unlawful to exclude a person because of an impairment, it is not unlawful to exclude a person because they do not have an impairment. The absence of impairment is not within the definition of impairment in the AD Act, and it is not a protected attribute.

The conduct for which the exemption is sought would not contravene the AD Act, and therefore the exemption is not necessary. It is not appropriate to grant an exemption that is not necessary

If, however, the applicant intended to limit eligibility for the position to a type of impairment, an exemption would be necessary.

### **Human rights**

When deciding an application for exemption from the operation of the AD Act, the tribunal acts in an administrative capacity and must comply with section 58(1) of the HR Act. This means the tribunal must properly consider human rights and make a decision that is compatible with human rights.

Where an exemption would limit a human right such as the right to equality and freedom from discrimination, the limitation must be reasonable and demonstrably justified in accordance with the test in section 13 of the HR Act.

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<sup>3</sup> *Boeing Australian Holdings Pty Ltd & related entities* [2003] QADT 21; *Downer EDI Mining* [2013] QCATA 276; *Sundale Limited* [2019] QCAT 83.

<sup>4</sup> See *Re Children by Choice Association Inc.* [2018] QIRC 153 [7] where the tribunal referred to *Downer EDI Mining* [2013] QCAT 99 [16].

<sup>5</sup> Affidavit of Benjamin Keast filed 4 February 2026, paragraph 1.

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If an exemption were necessary, the onus of establishing that the exemption sought is justified under section 13 lies with the applicant, and the standard of proof is the balance of probabilities.<sup>6</sup> The application does not address compatibility with human rights.

**Close**

The applicant may wish to address the issues of necessity and compatibility with human rights in its supplementary submissions. The Commission will then consider whether to provide further submissions in accordance with the Directions Order of 5 February 2026.

Yours sincerely



**DEBORAH PLATZ**  
**Human Rights Commissioner**

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<sup>6</sup> *Lifestyle Communities Ltd (No. 3) (Anti-Discrimination)* [2009] VCAT 1869 at [298].

# ***Anti-Discrimination Act 1991***

## **Schedule 1 Dictionary**

***impairment***, in relation to a person, means—

- (a) the total or partial loss of a person's bodily functions, including the loss or a part of the person's body; or
- (b) the malfunction, malformation or disfigurement of a part of the person's body; or
- (c) a condition or malfunction that results in the person learning more slowly than a person without the condition or malfunction; or
- (d) a condition, illness or disease, perception of reality, emotions or judgment or that results in disturbed behaviour; or
- (e) the presence in the body of organisms capable of causing illness or disease; or
- (f) reliance on a guide, hearing or assistance dog, wheelchair or other remedial device;

whether or not arising from an illness, disease or injury or from a condition subsisting at birth, and includes an impairment that—

- (g) presently exists; or
- (h) previously existed but no longer exists.